Finance Committee Agenda

METRO FLOOD DIVERSION AUTHORITY

Diversion Authority Finance Committee

December 15, 2021 @ 4:00 p.m. CST
This meeting will be held virtual only.

1. Call to Order
    a. Roll call of Members
2. Approve minutes from November 17, 2021 meeting
   [Attachment 00.01] (Pg. 3)
3. Approve order of Agenda
4. Approval of Bills
   [Attachment 00.02] (Pg. 7)
5. Finance Report
   [Attachment 01.00] (Pg. 25)
6. Executive Director Financial Report
   [Attachment 02.00] (Pg. 52)
7. Contracting Actions
   [Attachment 03.00] (Pg. 58)
    a. DA Board Approval Contract Actions
        i. Cass Rural Water WP50F Agreement
           [Attachment 03.01] (Pg. 60)
    b. DA Board Approval 2021 Cash Budget Changes – Nothing to Report
8. Other Business
    a. 2022 Cash Budget Final
       [Attachment 04.00] (Pg. 70)
    b. Resolution for Contracting Actions Amendment 3
       [Attachment 05.00] (Pg. 72)
    c. DA Board Approved MOU and Agreement Actions
       [Attachment 06.00] (Pg. 97)
        i. NDDOT & MFDA MOU for DCAI [Attachment 06.01] (Pg. 101)
        ii. City of Horace MOU for SEAI [Attachment 06.02] (Pg. 162)
        iii. City of Horace MOU for DCAI [Attachment 06.03] (Pg. 191)
        iv. Polar Communications Mutual Aid Corporation MURA for SEAI
            [Attachment 06.04] (Pg. 229)

MFDA 2022 Public Meeting Calendar
[Attachment 07.00] (Pg. 268)

d. Program Information Points – December 2021

9. Next meeting: January 26, 2022
10. Adjournment

MEDIA AND PUBLIC PARTICIPATION INFORMATION

There are multiple ways to attend or watch this public meeting.

- View the Meeting on Fargo TV or at www.TVFargo.com
- View the Meeting on the City of Fargo's Facebook or Twitter feed.
- View the Meeting at FMDiversion.com/Meeting
- View the Meeting at Twitter.com/FMDiversion

Metro Flood Diversion Authority
Finance Committee
Meeting Minutes
4:00 PM – November 17, 2021

A regular meeting of the Metro Flood Diversion Authority Finance Committee was held on November 17, 2021. The following members were present: Bernie Dardis, Mayor, City of West Fargo; Dr. Tim Mahoney, Mayor, City of Fargo; Chad Peterson, Cass County Commissioner; Dan Jacobson, Chairman, Cass County Joint Water Resource District; Kent Costin, City of Fargo Finance Director; Lori Johnson, Clay County Auditor/Treasurer; Mike Redlinger, City of Fargo Assistant Administrator; Shelly Carlson, Mayor, City of Moorhead; Mike Rietz, City of Moorhead Assistant City Manager and Rick Steen, Cass County Commissioner.

Member absent: Dave Piepkorn, Fargo City Commissioner.

1. CALL TO ORDER

Mayor Dardis called the meeting to order at 4:00 PM. Roll call was taken, and a quorum was present.

2. APPROVE MINUTES FROM THE OCTOBER 2021 MEETING

MOTION PASSED

Mayor Carlson moved to approve the minutes from the October 2021 meeting and Mr. Jacobson seconded the motion. On a voice vote, the motion carried.

3. APPROVE ORDER OF AGENDA

MOTION PASSED

Mr. Steen moved to approve the order of the agenda and Mr. Costin seconded the motion. On a voice vote, the motion carried.

4. APPROVAL OF BILLS

Mr. Costin reported that $4,777,676.45 are the bills payable through November 10, 2021. Mr. Costin had no further comment on the bills that were presented.

MOTION PASSED

Mr. Steen moved to approve the bills as presented by Mr. Costin and Mayor Carlson seconded the motion. On a roll call vote, the motion carried.

METRO FLOOD DIVERSION AUTHORITY

5. FINANCIAL REPORT

Mr. Costin reported that $102,058,791 is the 2021 year to date spent and $748,450,283 is the grand total spent on the project. Mr. Costin also reported the current net position is $100,774,695. $16,125,733 was released and deposited with the trustee in the P3 reserve fund by the fiscal agent per the Master Indenture of Trust agreement.

MOTION PASSED

Mr. Jacobson moved to approve the financial report as presented by Mr. Costin and Mr. Steen seconded the motion. On a roll call vote, the motion carried.

6. EXECUTIVE DIRECTOR FINANCIAL REPORT

Mr. Paulsen reported that there has been no significant change from last month and the majority of expenditures continue to be in land acquisitions.

7. CONTRACTING ACTIONS

DA Board Approval Contracting Actions:

Mr. Paulsen reported on the following contracting actions:

- Task Order 01, Amendment 4 – Consulting Services – Additional budget for consulting services and extend POP to December 31, 2022, Program Advisor Services $500,000

  MOTION PASSED

  Mr. Steen moved to approve Program Advisor Services Task Order 01 Amendment 4 as presented by Mr. Paulsen and Dr. Mahoney seconded the motion. On a roll call vote, the motion carried.
- Task Order 101, Amendment 1 – Design and Construction Support – Sub tasks and budget updated for a program of work up to December 2026 completion HMG $15,070,210
- Task Order 102, Amendment 1 – H&H, Mitigation and Permitting Support – Sub tasks and budget updated for a program of work up to December 2026 completion HMG $10,489,441

  MOTION PASSED

  Dr. Mahoney moved to approve HMG Task Orders 101 and 102 together and Mr. Peterson seconded the motion. On a roll call vote, the motion carried.
- Master Services Agreement – Consulting Services – Public Outreach and Communications Support Michael H. Klein $0

  MOTION PASSED

  Mayor Carlson moved to approve the new MSA for Michael Klein consulting services and Mr. Reitz seconded the motion. On a roll call vote, the motion carried with members Mahoney, Costin, Redlinger and Steen voting nay.

DA Board Approval 2021 Cash Budget Adjustments:

There were no budget adjustments to report for November.

8. OTHER BUSINESS

a. 2022 Cash Budget Final Draft

Mr. Paulsen addressed the 2022 cash budget final draft and asked for input; it will go to the December board meeting for final approval.

b. DA Board Approved MOUs

Mr. Shockley provided a summary outlining the purpose and necessity for the following MOUs:

- City of Comstock & MFDA Mitigation
  The MOU addresses preliminary activities, design, construction, operations and maintenance, right of way acquisition, permits, dispute resolution, etc. for a Flood Control Project, Lagoon Project and Storm Drain Improvement Project. At this time, it has been decided that a Flood Control Project is not needed but would be the responsibility of MFDA if deemed needed in the future. Reimbursement includes the following: (i) project funding; (ii) costs and expenses associated with design work and preliminary activities; and (ii) construction work. Actual costs agreed upon within this MOU include $66,700 for engineering for the Storm Drain Improvement Project and $188,000 for engineering for the Lagoon Project.

  MOTION PASSED

  Dr. Mahoney moved to approve the City of Comstock MOU as summarized by Mr. Shockley and Mr. Peterson seconded the motion. On a roll call vote, the motion carried.

- Cass Rural Water Users District & MFDA DCAI
  The purpose of this MOU is to ensure a coordinated, time-efficient, equitable and cost-effective process for completing the Utility Relocation Project and coordination of the operations and maintenance activities after completion of the Utility Relocation Project. The MOU includes the proposed utility adjustments scope of work that will be required for construction of the DCAI. The utility relocates associated with this MOU are to be completed by the P3 Developer. This MOU was approved by the MFDA Board of Authority in September of 2021. However, CRWUD

requested additional changes after the approval. The changes are summarized as follows: (i) language for the valves in Section 6.04 c. 1.; (ii) warranty period in Section 6.13; and (iii) addition of "Retire and" in the table in Exhibit 51 row 4.

MOTION PASSED

Mr. Jacobson moved to approve the CRWUD MOU as summarized by Mr. Shockley and Mr. Peterson seconded the motion. On a roll call vote, the motion carried.

9. NEXT MEETING

The next meeting will be December 15, 2021.

10. ADJOURNMENT

The meeting adjourned at 4:32 PM.

Finance Committee Bills from December 2021

Vendor	Description		
City of Fargo	Reimburse complementary in-town flood projects	$	4,105,055.26
Cass County Joint Water Resource District	Diversion bills – Request #92 CCJWRD	$	3,663,340.26
Clay County	Diversion bills – Request #14 MCCJPA	$	1,636,471.26
City of Fargo	Reimburse complementary in-town flood projects	$	932,285.78
Ohnstad Twichell, P.C.	Legal services rendered through November 21, 2021	$	116,855.98
Clay County	Reimburse Hwy 2 project costs from Ulteig	$	112,270.68
Cass County	Reimburse misc expenses from Diversion Authority office	$	15,631.72
Cass County	Reimburse Cass Co Hwy Dept for gravel along 173 Ave	$	2,835.00
Total Bills Received through December 9, 2021		$	10,584,745.94

THE CITY OF Fargo FAR MORE

FINANCE OFFICE
PO Box 2083
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1333 | Fax: 701.476.4188
www.FargoND.gov

November 24, 2021

Metro Flood Diversion Board of Authority
PO Box 2806
Fargo, ND 58108-2806

Dear Metro Flood Diversion Board of Authority,

The City of Fargo is submitting for reimbursement invoices paid totaling $4,105,055.26. These costs are for work on complementary in-town flood protection projects for the period October 1, 2021 through October 31, 2021.

Project Narrative, this request:

Project Number	Project Description	Amount
FLDADM	Flood Adminstration Expense	242.71
FLDBUY	Flood Buyouts - Property Acquisition Expense	5,278.58
FM15F	Harwood, Hackberry, & River Drive - Flood Risk Management	0.00
FM15J	Belmont Flood Risk Management Project	0.00
FM16A	North Side - Flood Risk Management	1,559,886.44
FM19A	Riverwood Additional Area - Flood Risk Management	859,477.36
FM19B	Royal Oaks Area - Flood Risk Management	0.00
FM19C	Woodcrest - Flood Risk Management	0.00
FM19E	Elm Circle Area - Flood Risk Management	65,466.54
FM19F	Oak Grove Area - Flood Risk Management	1,484,289.26
FM19H	University Drive Floodwall – Geotechnical Evaluation	1,568.00
NR19B	Storm Lift Rehab - #24	128,846.37
	Total Expense for Period	**$4,105,055.26**

If you have any questions relating to our request, please feel free to contact us. Thank you.

Sincerely,

Kent Costin

Kent Costin
Director of Finance, City of Fargo

City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
October 1, 2021 - October 31, 2021

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name
FLDADM	FLOOD ADMINISTRATION	46035305105760	9/28-10/1 TRAVEL EXPENSES	168.12	314779	10/1 REIMB	10/14/2021	MAHONEY, DR TIMOTHY J
FLDADM	FLOOD ADMINISTRATION	46035305105760	TAXI SVC ARLINGTON	20.16	887	09/28-10/14/21	11/05/2021	P CARD BMO
FLDADM	FLOOD ADMINISTRATION	46035305105760	SQ UVC	19.75	887	09/28-10/14/21	11/05/2021	P CARD BMO
FLDADM	FLOOD ADMINISTRATION	46035305105760	SQ UVC	10.68	887	09/28-10/14/21	11/05/2021	P CARD BMO
FLDADM	FLOOD ADMINISTRATION	46035305105760	92571 - FARGO HECTOR I	24.00	887	09/28-10/14/21	11/05/2021	P CARD BMO
			460-3530-510.57-60 - Total	242.71				
FLDADM - Total				242.71				
FLDBUY	FLOOD ACQUISITION	46035305103325	FLOOD RELATED ACQUISITION	1,650.00	314546	3080-	10/07/2021	ERIK R JOHNSON & ASSOCIATES
FLDBUY	FLOOD ACQUISITION	46035305103325	SERKLAND LAW FIRM	3,461.50	891	10/15-10/27/21	11/05/2021	P CARD BMO
			460-3530-510.33-25 - Total	5,111.50				
FLDBUY	FLOOD ACQUISITION	46035305106250	419 3RD ST N-WAREHOUSE	30.60	314860	750688027	10/14/2021	XCEL ENERGY
			460-3530-510.62-50 - Total	30.60				
FLDBUY	FLOOD ACQUISITION	46035305106251	419 3RD ST N-GEN SRVC	136.48	314860	750688027	10/14/2021	XCEL ENERGY
			460-3530-510.62-51 - Total	136.48				
FLDBUY - Total				5,278.58				
FM16A0	FLOOD MIT-N Cass 20/I29	46035305103305	COUNTY 20 AREA FLOOD MITI	27,154.94	315301	28282	11/04/2021	MOORE ENGINEERING INC
FM16A0	FLOOD MIT-N Cass 20/I29	46035305103305	GEOTECH TESTING	17,109.70	315301	28283	11/04/2021	MOORE ENGINEERING INC
			460-3530-510.33-05 - Total	44,264.64				
FM16A0 - Total				44,264.64				
FM16A1	FLOOD MIT-N Cass 20/I29	46000002062000	Retainage and Retainage R	-79,772.20	315275	FM16A1 Est #10	11/04/2021	KEY CONTRACTING INC
			460-0000-206.20-00 - Total	-79,772.20				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305106810	PERMIT APPLICATION	-50.00	304917	6/30/2020	07/01/2020	CASS COUNTY HIGHWAY DEPARTMENT
			460-3530-510.68-10 - Total	-50.00				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107352	Flood Mitigation	107,000.00	315275	FM16A1 Est #10	11/04/2021	KEY CONTRACTING INC
			460-3530-510.73-52 - Total	107,000.00				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107358	Storm Sewer	1,379,400.00	315275	FM16A1 Est #10	11/04/2021	KEY CONTRACTING INC
			460-3530-510.73-58 - Total	1,379,400.00				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107359	Miscellaneous	17,500.00	315275	FM16A1 Est #10	11/04/2021	KEY CONTRACTING INC
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107359	Pavement	66,344.00	315275	FM16A1 Est #10	11/04/2021	KEY CONTRACTING INC
			460-3530-510.73-59 - Total	83,844.00				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107369	Flood Mitigation	25,200.00	315275	FM16A1 Est #10	11/04/2021	KEY CONTRACTING INC
			460-3530-510.73-69 - Total	25,200.00				
FM16A1 - Total				1,515,621.80				
FM19A3	FLOOD MIT-Riverwood Addn	46000002062000	Retainage and Retainage R	-45,235.65	314987	FM19A3 Est #5	10/21/2021	SELLIN BROS INC
			460-0000-206.20-00 - Total	-45,235.65				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107320	Miscellaneous	456.00	314987	FM19A3 Est #5	10/21/2021	SELLIN BROS INC
			460-3530-510.73-20 - Total	456.00				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107352	Miscellaneous	90,718.50	314987	FM19A3 Est #5	10/21/2021	SELLIN BROS INC
FM19A3	FLOOD MIT-Riverwood Addn	46035305107352	Flood Mitigation	101,509.75	314987	FM19A3 Est #5	10/21/2021	SELLIN BROS INC
			460-3530-510.73-52 - Total	192,228.25				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107356	Paving	17,501.00	314987	FM19A3 Est #5	10/21/2021	SELLIN BROS INC
			460-3530-510.73-56 - Total	17,501.00				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107358	Storm Sewer	457,216.93	314987	FM19A3 Est #5	10/21/2021	SELLIN BROS INC
			460-3530-510.73-58 - Total	457,216.93				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107359	Paving	101,666.25	314987	FM19A3 Est #5	10/21/2021	SELLIN BROS INC
			460-3530-510.73-59 - Total	101,666.25				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107362	Watermain	3,500.00	314987	FM19A3 Est #5	10/21/2021	SELLIN BROS INC
			460-3530-510.73-62 - Total	3,500.00				

FM19A3	FLOOD MIT-Riverwood Addn	46035305107363	Sanitary Sewer	4,296.58	314987	FM19A3 Est #5	10/21/2021	SELLIN BROS INC
			460-3530-510.73-63 - Total	4,296.58				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107366	Miscellaneous	126,678.00	314987	FM19A3 Est #5	10/21/2021	SELLIN BROS INC
			460-3530-510.73-66 - Total	126,678.00				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107369	Miscellaneous	1,170.00	314987	FM19A3 Est #5	10/21/2021	SELLIN BROS INC
			460-3530-510.73-69 - Total	1,170.00				
FM19A3 - Total				859,477.36				
FM19E1	FLOOD MIT-Elm Circle	46000002062000	Retainage and Retainage R	-3,438.55	314765	FM19E1 Est #4	10/14/2021	KEY CONTRACTING INC
			460-0000-206.20-00 - Total	-3,438.55				
FM19E1	FLOOD MIT-Elm Circle	46035305103899	51-9464640-5	35.15	314640	748366996	10/07/2021	XCEL ENERGY
FM19E1	FLOOD MIT-Elm Circle	46035305103899	SUBMISS/RECORD FEE	23.00	314620	15003801787	10/07/2021	SIMPLIFILE LC
FM19E1	FLOOD MIT-Elm Circle	46035305103899	SIGN DIGITA	75.94	314619	225417	10/07/2021	SIGN SOLUTIONS USA
			460-3530-510.38-99 - Total	134.09				
FM19E1	FLOOD MIT-Elm Circle	46035305107352	Miscellaneous	1,200.00	314765	FM19E1 Est #4	10/14/2021	KEY CONTRACTING INC
FM19E1	FLOOD MIT-Elm Circle	46035305107352	Flood Mitigation	1,545.00	314765	FM19E1 Est #4	10/14/2021	KEY CONTRACTING INC
			460-3530-510.73-52 - Total	2,745.00				
FM19E1	FLOOD MIT-Elm Circle	46035305107366	Miscellaneous	39,535.00	314765	FM19E1 Est #4	10/14/2021	KEY CONTRACTING INC
			460-3530-510.73-66 - Total	39,535.00				
FM19E1	FLOOD MIT-Elm Circle	46035305107369	Flood Mitigation	26,491.00	314765	FM19E1 Est #4	10/14/2021	KEY CONTRACTING INC
			460-3530-510.73-69 - Total	26,491.00				
FM19E1 - Total				65,466.54				
FM19F1	FLOOD MIT-Oak Grove Area	46000002062000	Retainage and Retainage R	-78,120.49	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
			460-0000-206.20-00 - Total	-78,120.49				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107352	Miscellaneous	43,134.00	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
FM19F1	FLOOD MIT-Oak Grove Area	46035305107352	Flood Mitigation	1,153,779.55	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
			460-3530-510.73-52 - Total	1,196,913.55				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107356	Paving	986.00	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
			460-3530-510.73-56 - Total	986.00				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107358	Storm Sewer	66,451.88	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
FM19F1	FLOOD MIT-Oak Grove Area	46035305107358	Flood Mitigation	12,424.00	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
			460-3530-510.73-58 - Total	78,875.88				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107359	Paving	22,539.08	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
			460-3530-510.73-59 - Total	22,539.08				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107360	Lighting	6,637.00	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
			460-3530-510.73-60 - Total	6,637.00				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107361	Paving	461.50	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
			460-3530-510.73-61 - Total	461.50				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107362	Watermain	45,149.77	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
			460-3530-510.73-62 - Total	45,149.77				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107363	Sanitary Sewer	40,985.47	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
			460-3530-510.73-63 - Total	40,985.47				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107366	Miscellaneous	160,597.50	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
			460-3530-510.73-66 - Total	160,597.50				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107369	Miscellaneous	2,889.00	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
FM19F1	FLOOD MIT-Oak Grove Area	46035305107369	Flood Mitigation	6,375.00	314789	FM19F1 Est #5	10/14/2021	MEYER CONTRACTING INC
			460-3530-510.73-69 - Total	9,264.00				
FM19F1 - Total				1,484,289.26				
FM19H0	FLOOD MIT-52 Ave S/Univ	46035305103899	BRAUN INTERTEC CORP	1,568.00	887	09/28-10/14/21	11/05/2021	P CARD BMO
			460-3530-510.38-99 - Total	1,568.00				
FM19H0 - Total				1,568.00				
NR19B1	STORM LIFT RHAB #24	46035305107358	PKG PAY APP #15-DA SHARE	128,846.37	WP10210019	WP10210019	10/25/2021	City of Fargo
			460-3530-510.73-58 - Total	128,846.37				
NR19B1 - Total				128,846.37				
Overall - Total				4,105,055.26				

CASS COUNTY GOVERNMENT

Cass County Joint Water Resource District

Dan Jacobson
Chairman
West Fargo, North Dakota

Rodger Olson
Manager
Leonard, North Dakota

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrd@casscountynd.gov
casscountynd.gov

SENT VIA EMAIL

December 7, 2021

Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

Greetings:

RE: Metro Flood Diversion Project

Enclosed please find copies of bills totaling $3,663,340.26 regarding the above referenced projects.

At this time, we respectfully request 100% reimbursement per the Joint Powers Agreement between the City of Fargo, Cass County and Cass County Joint Water Resource District dated June 1, 2015.

If you have any questions, please feel free to contact us. Thank you.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT

Carol Harbeke Lewis
Secretary-Treasurer

Enclosures

	METRO FLOOD DIVERSION RIGHT OF ENTRY/LAND ACQUISITION COST SHARE INVOICES						12/2/2021
Invoice Paid	Invoice Date	Invoice No.		Project No.	Amount	Vendor	Description
					7.86	Cass County Joint WRD	Invite letter postage
					15.19	Cass County Joint WRD	NOI Postage
					19.61	Cass County Joint WRD	Farmland Management Transition letter
11/10/2021	11/10/2021	17374			26.73	Cass Rural Water Users District	service to 5210 124 Av S
11/19/2021	10/29/2021	178819		90007	357.00	Ohnstad Twichell, P.C.	Legal-Basin Project 2009
11/19/2021	10/29/2021	178820		130007	17,869.72	Ohnstad Twichell, P.C.	Legal-Diversion Right of Way Acquisition
11/19/2021	10/29/2021	178821		160007	3,074.00	Ohnstad Twichell, P.C.	Legal-Channel Phase I
11/19/2021	10/29/2021	178822		160007	2,922.00	Ohnstad Twichell, P.C.	Legal-Drayton Dam
11/19/2021	10/29/2021	178823		160007	850.50	Ohnstad Twichell, P.C.	Legal-Channel Phase II
11/19/2021	10/29/2021	178824		160007	1,398.00	Ohnstad Twichell, P.C.	Legal-Channel Phase III
11/19/2021	10/29/2021	178825		170007	4,356.00	Ohnstad Twichell, P.C.	Legal-Upstream Mitigation Area
11/19/2021	10/29/2021	178827		187007	6,157.34	Ohnstad Twichell, P.C.	Legal-Diversion - Southern Embankment
11/19/2021	10/29/2021	178828		197007	544.00	Ohnstad Twichell, P.C.	Legal-Western Tie Back
11/19/2021	10/29/2021	178829		207007	9,859.50	Ohnstad Twichell, P.C.	Legal-Wetland Mitigation Drain 27
11/19/2021	11/5/2021	178907		187007	3,217.00	Ohnstad Twichell, P.C.	Legal-Bio/Geo Easements
11/19/2021	11/5/2021	178908		207007	540.00	Ohnstad Twichell, P.C.	Legal-Delaney (OIN 1202) Quick Take Eminent Domain
11/19/2021	11/5/2021	178909		207007	138.00	Ohnstad Twichell, P.C.	Legal-Kvalvog/Nyquist (OIN 9400) quick take eminent domain
11/19/2021	11/5/2021	178910		207007	420.00	Ohnstad Twichell, P.C.	Legal-Brakken (OIN 9174) quick take eminent domain
11/19/2021	11/5/2021	178911		207007	180.00	Ohnstad Twichell, P.C.	Legal-Larson (OIN 1199) quick take eminent domain
11/19/2021	11/5/2021	178912		207007	120.00	Ohnstad Twichell, P.C.	Legal-Cossette (OIN 722,723) quick take eminent domain
11/19/2021	11/5/2021	178913		207007	1,470.00	Ohnstad Twichell, P.C.	Legal-Thunberg Living Trust (OIN 720) QTED
11/19/2021	11/5/2021	178914		207007	1,834.00	Ohnstad Twichell, P.C.	Legal-Larry A Brandt Revlocable LT (OIN 9348) QTED
11/19/2021	11/5/2021	178915		207007	2,740.00	Ohnstad Twichell, P.C.	Legal-Germanson (OIN 5004/5009-5012/9055-9056) QTED
11/19/2021	11/5/2021	178916		207007	48.00	Ohnstad Twichell, P.C.	Legal-Julie A Ottis Revocable Trust (OIN 5024) QTED
11/19/2021	11/5/2021	178917		207007	3,458.00	Ohnstad Twichell, P.C.	Legal-Brie Estates LLLP (OIN 843) QTED
11/19/2021	11/5/2021	178918		207007	2,430.00	Ohnstad Twichell, P.C.	Legal - Samuelson RLT (OIN 1182/1182) QTED
11/19/2021	11/5/2021	178919		207007	218.00	Ohnstad Twichell, P.C.	Legal-Jameson (OIN 9749) QTED
11/19/2021	11/5/2021	178920		217007	480.00	Ohnstad Twichell, P.C.	Legal-Coster Real EstateTrust (OIN 9736/9737) QTED
11/19/2021	11/5/2021	178921		217007	3,240.00	Ohnstad Twichell, P.C.	Legal-Quiet Title Action for EME
11/19/2021	11/5/2021	178922		217007	360.00	Ohnstad Twichell, P.C.	Legal-Allen and Diane Ricker Relocation Appeal
11/19/2021	11/5/2021	178923		217007	2,283.67	Ohnstad Twichell, P.C.	Legal-Sauvageau (OIN 1107) QTED
11/19/2021	11/5/2021	178924		217007	797.00	Ohnstad Twichell, P.C.	Legal-Richard (OIN 27 1083) QTED
11/19/2021	11/5/2021	178925		217007	2,227.00	Ohnstad Twichell, P.C.	Legal-Bailly RT (OIN 213/214) QTED
11/19/2021	11/5/2021	178926		217007	1,891.00	Ohnstad Twichell, P.C.	Legal-Richard Farm Enterprises (OIN 1087/1093/1095/5002) QTED
11/19/2021	11/5/2021	178927		217007	1,059.00	Ohnstad Twichell, P.C.	Legal-Bruneele LE (OIN 1108-1110) QTED
11/19/2021	11/9/2021	795810		38810.00008	632.00	Larkin Hoffman Attorneys	Legal-CCJT v Mary K Adams
11/19/2021	11/9/2021	795806		38810.00003	434.50	Larkin Hoffman Attorneys	Legal-CCJT v Verden Anderson/Prairie Scale Systems
11/19/2021	11/9/2021	795809		38810.00007	1,065.50	Larkin Hoffman Attorneys	Legal-CCJT v Daniel Flaten
11/19/2021	11/9/2021	795812		38810.0001	118.50	Larkin Hoffman Attorneys	Legal-CCJT v Derek Flaten
11/19/2021	11/9/2021	795811		38810.00009	79.00	Larkin Hoffman Attorneys	Legal-CCJT v Steve and Lisa Loberg
11/19/2021	11/9/2021	795803		38810	2,731.50	Larkin Hoffman Attorneys	Legal-CCJT v Johnson/Monson/Tintes/Anderson
11/19/2021	11/9/2021	795808		38810.00005	1,619.50	Larkin Hoffman Attorneys	Legal-CCJT v Newman Signs/Mary Newman Trust condemnation
11/19/2021	11/9/2021	795807		38810.00004	3,989.50	Larkin Hoffman Attorneys	Legal-CCJT v Righland/Cass Cos/App for Permit to Enter Land
11/19/2021	11/9/2021	795805		38810.00002	276.50	Larkin Hoffman Attorneys	Legal-Richland County ROE Agreements
11/19/2021	11/9/2021	795804		38810.00001	7,900.00	Larkin Hoffman Attorneys	Legal-Acq of Property from Terry and Kristie Sauvageau
11/19/2021	11/3/2021	1200386053			31,920.76	HDR Engineering Inc	Engineering - Property Acquisition Services
11/19/2021	10/31/2021	13783.00-18			63,457.11	SRF Consulting Group Inc	Proj Mgmt, ROW Services and relocation services
11/19/2021	10/29/2021	4592			21,500.00	Crown Appraisals, Inc.	Appraisals OIN 2046-2047, 2183 and 856-857/1972
11/19/2021	11/4/2021				200.00	The Title Company	Fees for RIMP Loan
11/19/2021	11/19/2021				216,288.85	The Title Company	Property purchase - Hanson
11/19/2021	11/11/2021				27,740.67	Michael and Cheryl Post	Moving cost reimbursement on OIN 9401
11/19/2021	11/11/2021				17,346.00	Dave's Machine Shop	Moving cost reimburwsement on OIN 1202
11/19/2021	11/11/2021				16,427.00	Static Electric Construction LLC	moving cost reimbursement on OIN 1202
11/19/2021	11/11/2021				5,397.28	Glacier Enterprises	moving cost reimbursement on OIN 1202
11/19/2021	11/11/2021				365.00	Duane and Donna Siebel	Moving cost reimbursement on oIN 2185
11/19/2021	11/16/2021				183,594.00	Prairie Scale	moving cost reimbursement on OIN 220
11/19/2021	11/18/2021				485,550.00	Clerk of District Court	quick take deposit
11/19/2021	11/18/2021				30,200.00	Clerk of District Court	quick take deposit
11/23/2021	11/23/2021				2,467,752.98	The Title Company	Property purchase - Germanson
11/29/2021	11/12/2021	1160310			62.25	Cass County Electric Cooperative	Service to 3703 124 Av S - Final bill
11/29/2021	11/12/2021	1108711			46.45	Cass County Electric Cooperative	Service to 5210 124 Av S
11/29/2021	11/12/2021	1132169			37.29	Cass County Electric Cooperative	Service to 17031 50 ST SE
				Total	**3,663,340.26**		
				Grand Total	**3,663,340.26**		

COUNTY AUDITOR
LORI J. JOHNSON
Office Telephone (218) 299-5006

December 2, 2021

Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

RE: Metro Flood Diversion Project

Greetings:

Attached to this email, please find a spreadsheet summary of invoices/expense and all documentation for invoices paid by Clay County for the FM Flood Diversion project. All requests were approved or authorized by the Diversion Authority. Current invoice/expense reimbursement request total is as follows:

Metro Flood Diversion	$1,636,471.26

We respectfully request 100% reimbursement as per the Joint Powers Agreement.

If you have any questions, please feel free to contact us.

Sincerely,

Lori J. Johnson
Clay County Auditor

Enclosures

Clay County Government Center
3510 12th Ave S
PO Box 280
Moorhead, MN 56560

FM Diversion MCCJPA invoices							
	Invoice		Invoice		Date		
Vendor	Date	Description	Amount	Invoice #	Approved	Date Paid	Notes
Building & Grounds Management	9/22/21	Lawn svc oin 9169-9170	$250.00	7189	9/24/21	10/6/21	Mowing Services
Integra Realty Resources	9/9/21	Appraisal svcs 1252, 1834	$18,000.00	124-2021-0245	9/22/21	10/6/21	Property Acquisition & Relocation Services
Lake Region Electric Coop	9/8/21	svc 1021 100th ave	$153.34	2208702-9-8-21	10/5/21	10/13/21	Electric - 1021 100th Ave
Integra Realty Resources	9/29/21	Appraisal oin 7102	$4,500.00	124-2021-0255	10/7/21	10/20/21	Property Acquisition & Relocation Services
Integra Realty Resources	9/27/21	Appraisal oin 1314,1868,1689,1841,1294	$22,000.00	124-2021-0247	10/7/21	10/20/21	Property Acquisition & Relocation Services
SRF Consulting Group	9/30/21	Prof svc thru 9/30/21	$6,762.57	13820.00-12	10/12/21	10/20/21	Property Acquisition & Relocation Services
Lake Region Electric Coop	10/7/21	svc 1021 100th Ave	$46.47	2208702-10-7-21	10/19/21	10/27/21	Electric - 1021 100th Ave
Ohnstad Twichell	9/30/21	Environmental monitoring	$2,518.00	178235	10/17/21	10/27/21	Legal Services
Ohnstad Twichell	9/30/21	Upstream mitigation	$2,639.50	178235	10/17/21	10/27/21	Legal Services
Ohnstad Twichell	9/30/21	Southern embankment	$9,217.50	178237	10/17/21	10/27/21	Legal Services
Ohnstad Twichell	9/30/21	General 2021	$6,907.00	178238	10/17/21	10/27/21	Legal Services
Ohnstad Twichell	9/30/21	eminent domain oin 9325	$680.00	178239	10/17/21	10/27/21	Legal Services
Ohnstad Twichell	9/30/21	eminent domain	$3,673.60	178240	10/17/21	10/27/21	Legal Services
Red River Valley Coop	10/5/21	Svc 13689 3rd St S	$56.17	9980003-10-5-21	10/19/21	10/27/21	Electric - 13689 3rd St S
Clay County Court Administration	10/26/21	eminent domain oin 249 blilie	$85,350.00	OIN-249	10/27/21	10/28/21	Land Purchase - Eminent Domain
The Title Co.	10/22/21	oin 9325 livdahl purchase	$110,522.23	OIN-9325	10/22/21	10/28/21	Land Purchase
The Title Co.	10/22/21	oin 9234 crowe purchase	$568,939.70	OIN-9234	10/22/21	10/28/21	Land Purchase
Crown Appraisals, Inc.	10/29/21	appraisals oin 1314,1790,1811,1257,1250	$17,000.00	4694	11/5/21	11/10/21	Property Acquisition & Relocation Services
The Title Co.	10/19/21	oin 1834 spanier purchase	$629,614.82	OIN-1834	10/19/21	11/12/21	Land Purchase
Lake Region Electric Coop	11/5/21	A#2208702 1021 100th ave	$40.90	2208702-11-5-21	11/19/21	11/24/21	Electric - 1021 100th Ave
Ohnstad Twichell	10/21/21	Upstream mitigation	$16,137.50	178706	11/8/21	11/24/21	Legal Services
Ohnstad Twichell	10/26/21	Southern embankment	$5,466.50	178707	11/8/21	11/24/21	Legal Services
Ohnstad Twichell	10/26/21	General 2021	$2,614.00	178708	11/8/21	11/24/21	Legal Services
Ohnstad Twichell	10/26/21	Livdahl oin 9325 eminent domain	$3,111.00	178709	11/8/21	11/24/21	Legal Services
Ohnstad Twichell	10/26/21	rrcs eminent domain	$1,905.70	178710	11/8/21	11/24/21	Legal Services
Red River Valley Coop	11/3/21	svc 13689 3rd st s	$56.17	9980003-11-3-21	11/19/21	11/24/21	Electric - 13689 3rd St S
ProSource Technologies	11/17/21	prof svc 06/21	$26,153.08	46073	11/24/21	12/1/21	Property Acquisition & Relocation Services
ProSource Technologies	11/17/21	prof svc 07/21	$11,323.24	46074	11/24/21	12/1/21	Property Acquisition & Relocation Services
ProSource Technologies	11/17/21	Prof svc 08/21	$13,356.10	46075	11/24/21	12/1/21	Property Acquisition & Relocation Services
ProSource Technologies	11/17/21	prof svc 09/21	$20,786.95	46076	11/24/21	12/1/21	Property Acquisition & Relocation Services
ProSource Technologies	11/17/21	prof svc 10/21	$17,402.40	46078	11/24/21	12/1/21	Property Acquisition & Relocation Services
ProSource Technologies	11/17/21	prof svc 05/21	$24,184.82	46072	11/23/21	12/1/21	Property Acquisition & Relocation Services
SRF Consulting Group	10/31/21	Prof svcs thru 10/31/21	$5,102.00	13820.00-13	11/22/21	12/1/21	Property Acquisition & Relocation Services
		Total	$1,636,471.26				

THE CITY OF Fargo FAR MORE

FINANCE OFFICE
PO Box 2083
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1333 | Fax: 701.476.4188
www.FargoND.gov

December 9, 2021

Metro Flood Diversion Board of Authority
PO Box 2806
Fargo, ND 58108-2806

Dear Metro Flood Diversion Board of Authority,

The City of Fargo is submitting for reimbursement invoices paid totaling $932,285.78. These costs are for work on complementary in-town flood protection projects for the period November 1, 2021 through November 30, 2021.

Project Narrative, this request:

Project Number	Project Description	Amount
FLDBUY	Flood Buyouts - Property Acquisition Expense	1,660.27
FM15F	Harwood, Hackberry, & River Drive - Flood Risk Management	2,819.79
FM15J	Belmont Flood Risk Management Project	154,901.03
FM16A	North Side - Flood Risk Management	40,816.19
FM19A	Riverwood Additional Area - Flood Risk Management	144,469.86
FM19B	Royal Oaks Area - Flood Risk Management	109,121.28
FM19C	Woodcrest - Flood Risk Management	56,638.83
FM19E	Elm Circle Area - Flood Risk Management	38,285.36
FM19F	Oak Grove Area - Flood Risk Management	361,663.73
FM19H0	University Drive Floodwall – Geotechnical Evaluation	2,221.00
FM21A	Red River Erosion Protection & Bank Stabilization	15,364.44
HD19A	City Wide – Demo/Restore	395.25
MS20K0	Existing Flood Mitigation Projects - Geotechnical Review	3,928.75
	Total Expense for Period	**$932,285.78**

If you have any questions relating to our request, please feel free to contact us. Thank you.

Sincerely,

Kent Costin

Kent Costin
Director of Finance, City of Fargo

City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
November 1, 2021 - November 30, 2021

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name
FLDBUY	FLOOD ACQUISITION	4.60353E+13	FLOOD RELATED ACQUISITION	887.50	315598	3086-	11/18/2021	ERIK R JOHNSON & ASSOCIATES
			460-3530-510.33-25 - Total	887.50				
FLDBUY	FLOOD ACQUISITION	46035305103325	SERKLAND LAW FIRM	102.17	896	11/15-11/27/21	12/05/2021	P CARD BMO
			460-3530-510.33-25 - Total	102.17				
FLDBUY	FLOOD ACQUISITION	46035305104105	IN HOUSE WATER PAYMENTS	532.60	JH11210002	JH11210002	11/10/2021	City of Fargo
			460-3530-510.41-05 - Total	532.60				
FLDBUY	FLOOD ACQUISITION	46035305106250	51-4341057-3 DIVERSION	30.60	315706	754365699	11/18/2021	XCEL ENERGY
			460-3530-510.62-50 - Total	30.60				
FLDBUY	FLOOD ACQUISITION	46035305106251	51-4341057-3 DIVERSION	107.40	315706	754365699	11/18/2021	XCEL ENERGY
			460-3530-510.62-51 - Total	107.40				
FLDBUY - Total				**1,660.27**				
FM15F4	FLOOD RISK-Harwd Hack Rvr	46035305103332	FLOOD MITIGATION HARWOOD	2,819.79	315688	13448.02-11	11/18/2021	SRF CONSULTING GROUP, INC
			460-3530-510.33-32 - Total	2,819.79				
FM15F4 - Total				**2,819.79**				
FM15J5	FLOOD MIT-Belmnt Prk/intk	46035305103305	FEMA LOCAL SHARE REQ #3	24,492.96	WP11210001	WP11210001	11/01/2021	City of Fargo
			460-3530-510.33-05 - Total	24,492.96				
FM15J5	FLOOD MIT-Belmnt Prk/intk	46035305107362	FEMA LOCAL SHARE REQ #3	109,081.07	WP11210001	WP11210001	11/01/2021	City of Fargo
			460-3530-510.73-62 - Total	109,081.07				
FM15J5	FLOOD MIT-Belmnt Prk/intk	46035305107410	FEMA LOCAL SHARE REQ #3	21,327.00	WP11210001	WP11210001	11/01/2021	City of Fargo
			460-3530-510.74-10 - Total	21,327.00				
FM15J5 - Total				**154,901.03**				
FM16A0	FLOOD MIT-N Cass 20/I29	46035305103305	CASS COUNTY 20 AREA FLOOD	33,597.02	315809	28595	11/24/2021	MOORE ENGINEERING INC
FM16A0	FLOOD MIT-N Cass 20/I29	46035305103305	CASS COUNTY 20 FLOOD MITI	7,015.29	315809	28596	11/24/2021	MOORE ENGINEERING INC
			460-3530-510.33-05 - Total	40,612.31				
FM16A0 - Total				**40,612.31**				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305103899	SIGN	203.88	315682	226442	11/18/2021	SIGN SOLUTIONS USA
			460-3530-510.38-99 - Total	203.88				
FM16A1 - Total				**203.88**				
FM19A0	FLOOD MIT-Riverwood Addn	46035305103305	RIVERWOOD FLOOD MITIGATIO	24,480.50	315773	0056714	11/24/2021	HOUSTON ENGINEERING INC
			460-3530-510.33-05 - Total	24,480.50				
FM19A0 - Total				**24,480.50**				
FM19A1	FLOOD MIT-Riverwood Addn	46035305103476	Televised Sewer	1,616.18	SS20211114	SS20211114	11/29/2021	City of Fargo
			460-3530-510.34-76 - Total	1,616.18				
FM19A1	FLOOD MIT-Riverwood Addn	46035305103899	IRRIGATION REIMB AQUA LAW	1,467.36	315785	41010	11/24/2021	JORDAHL, RICHARD
			460-3530-510.38-99 - Total	1,467.36				
FM19A1 - Total				**3,083.54**				
FM19A2	FLOOD MIT-Riverwood Addn	46035305103305	FLOOD MITIGATION RIVERWOO	1,247.19	315688	13448.00-12	11/18/2021	SRF CONSULTING GROUP, INC
			460-3530-510.33-05 - Total	1,247.19				
FM19A2	FLOOD MIT-Riverwood Addn	46035305107110	E.SONDREAL RELOCATION CLA	10,644.11	315686	10/20/2021	11/18/2021	SONDREAL, ELLEN
			460-3530-510.71-10 - Total	10,644.11				
FM19A2 - Total				**11,891.30**				
FM19A3	FLOOD MIT-Riverwood Addn	46000002062000	Retainage and Retainage R	-5,159.03	315681	FM19A3 Est #6	11/18/2021	SELLIN BROS INC
			460-0000-206.20-00 - Total	-5,159.03				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107352	Miscellaneous	740.00	315681	FM19A3 Est #6	11/18/2021	SELLIN BROS INC
FM19A3	FLOOD MIT-Riverwood Addn	46035305107352	Flood Mitigation	1,288.00	315681	FM19A3 Est #6	11/18/2021	SELLIN BROS INC
			460-3530-510.73-52 - Total	2,028.00				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107356	Paving	47,791.00	315681	FM19A3 Est #6	11/18/2021	SELLIN BROS INC
			460-3530-510.73-56 - Total	47,791.00				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107358	Storm Sewer	2,125.00	315681	FM19A3 Est #6	11/18/2021	SELLIN BROS INC

			460-3530-510.73-58 - Total	2,125.00				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107359	Paving	7,820.00	315681	FM19A3 Est #6	11/18/2021	SELLIN BROS INC
			460-3530-510.73-59 - Total	7,820.00				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107361	Paving	3,540.00	315681	FM19A3 Est #6	11/18/2021	SELLIN BROS INC
			460-3530-510.73-61 - Total	3,540.00				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107366	Miscellaneous	17,242.00	315681	FM19A3 Est #6	11/18/2021	SELLIN BROS INC
FM19A3	FLOOD MIT-Riverwood Addn	46035305107366	Flood Mitigation	2,915.00	315681	FM19A3 Est #6	11/18/2021	SELLIN BROS INC
			460-3530-510.73-66 - Total	20,157.00				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107368	Paving	165.00	315681	FM19A3 Est #6	11/18/2021	SELLIN BROS INC
			460-3530-510.73-68 - Total	165.00				
FM19A3	FLOOD MIT-Riverwood Addn	46035305107369	Flood Mitigation	19,554.60	315681	FM19A3 Est #6	11/18/2021	SELLIN BROS INC
			460-3530-510.73-69 - Total	19,554.60				
FM19A3 - Total				**98,021.57**				
FM19A4	FLOOD MIT-Riverwood Addn	46000002062000	Retainage and Retainage R	-198.75	315328	FM19A4 Est #3	11/04/2021	RICK ELECTRIC INC
FM19A4	FLOOD MIT-Riverwood Addn	46000002062000	Retainage and Retainage R	-169.30	315968	FM19A4 Est #4	12/02/2021	RICK ELECTRIC INC
			460-0000-206.20-00 - Total	-368.05				
FM19A4	FLOOD MIT-Riverwood Addn	46035305107358	Electrical	2,061.00	315968	FM19A4 Est #4	12/02/2021	RICK ELECTRIC INC
			460-3530-510.73-58 - Total	2,061.00				
FM19A4	FLOOD MIT-Riverwood Addn	46035305107360	Electrical	3,975.00	315328	FM19A4 Est #3	11/04/2021	RICK ELECTRIC INC
FM19A4	FLOOD MIT-Riverwood Addn	46035305107360	Electrical	1,325.00	315968	FM19A4 Est #4	12/02/2021	RICK ELECTRIC INC
			460-3530-510.73-60 - Total	5,300.00				
FM19A4 - Total				**6,992.95**				
FM19B0	FLOOD MIT-Royal Oaks Dr	46035305103305	ROYAL OAKS FLOOD MITIGATI	43,571.11	315773	0056715	11/24/2021	HOUSTON ENGINEERING INC
			460-3530-510.33-05 - Total	43,571.11				
FM19B0 - Total				**43,571.11**				
FM19B1	FLOOD MIT-Royal Oaks Dr	46000002062000	Retainage and Retainage R	-6,860.53	315800	FM19B1 Est #6	11/24/2021	MASTER CONSTRUCTION CO INC
			460-0000-206.20-00 - Total	-6,860.53				
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305107352	Miscellaneous	2,500.00	315800	FM19B1 Est #6	11/24/2021	MASTER CONSTRUCTION CO INC
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305107352	Flood Mitigation	55,145.00	315800	FM19B1 Est #6	11/24/2021	MASTER CONSTRUCTION CO INC
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305107352	3680 River Dr S	1,440.00	315800	FM19B1 Est #6	11/24/2021	MASTER CONSTRUCTION CO INC
			460-3530-510.73-52 - Total	59,085.00				
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305107359	Paving	67,299.70	315800	FM19B1 Est #6	11/24/2021	MASTER CONSTRUCTION CO INC
			460-3530-510.73-59 - Total	67,299.70				
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305107360	Miscellaneous	7,276.00	315800	FM19B1 Est #6	11/24/2021	MASTER CONSTRUCTION CO INC
			460-3530-510.73-60 - Total	7,276.00				
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305107361	Paving	250.00	315800	FM19B1 Est #6	11/24/2021	MASTER CONSTRUCTION CO INC
			460-3530-510.73-61 - Total	250.00				
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305107369	Miscellaneous	1,100.00	315800	FM19B1 Est #6	11/24/2021	MASTER CONSTRUCTION CO INC
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305107369	Paving	2,200.00	315800	FM19B1 Est #6	11/24/2021	MASTER CONSTRUCTION CO INC
			460-3530-510.73-69 - Total	3,300.00				
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305107399	Adjustments	-64,800.00	315800	FM19B1 Est #6	11/24/2021	MASTER CONSTRUCTION CO INC
			460-3530-510.73-99 - Total	-64,800.00				
FM19B1 - Total				**65,550.17**				
FM19C0	FLOOD MIT-Woodcrest	46035305103305	WOODCREAT FLOOD MITIGATIO	13,638.83	315773	0056719	11/24/2021	HOUSTON ENGINEERING INC
			460-3530-510.33-05 - Total	13,638.83				
FM19C0 - Total				**13,638.83**				
FM19C1	FLOOD MIT-Woodcrest Dr N	46035305103899	CLASS III CULTURAL RESOUR	2,500.00	315394	CRM4436	11/10/2021	BEAVER CREEK ARCHAEOLOGY
			460-3530-510.38-99 - Total	2,500.00				
FM19C1 - Total				**2,500.00**				
FM19C2	FLOOD MIT-Woodcrest Dr N	46035305103332	APPRAISAL REPORT	4,500.00	315670	CF-JOHNSON	11/18/2021	PAGAN, JORGE L
FM19C2	FLOOD MIT-Woodcrest Dr N	46035305103332	APPRAISAL REPORTS	36,000.00	315670	CF-WOODCREST	11/18/2021	PAGAN, JORGE L
			460-3530-510.33-32 - Total	40,500.00				
FM19C2 - Total				**40,500.00**				
FM19E0	FLOOD MIT-Elm Circle	46035305103305	ELM CIRCLE FLOOD MITIGATI	36,060.27	315773	0056716	11/24/2021	HOUSTON ENGINEERING INC
			460-3530-510.33-05 - Total	36,060.27				
FM19E0 - Total				**36,060.27**				

FM19E1	FLOOD MIT-Elm Circle	46035305103899	51-9464640-5	142.21	315531	752579253	11/10/2021	XCEL ENERGY
FM19E1	FLOOD MIT-Elm Circle	46035305103899	WATER RESTORATION	1,317.88	315509	1528	11/10/2021	SERVPRO OF FARGO-MOORHEAD
FM19E1	FLOOD MIT-Elm Circle	46035305103899	0000648243	765.00	315792	539672	11/24/2021	LANEYS INC
			460-3530-510.38-99 - Total	2,225.09				
FM19E1 - Total				2,225.09				
FM19F0	FLOOD MIT-Oak Grove Area	46035305103305	OAK GROVE FLOOD MITIGATIO	42,521.50	315773	0056718	11/24/2021	HOUSTON ENGINEERING INC
			460-3530-510.33-05 - Total	42,521.50				
FM19F0 - Total				42,521.50				
FM19F1	FLOOD MIT-Oak Grove Area	46000002062000	Retainage and Retainage R	-20,810.83	315804	FM19F1 Est #6	11/24/2021	MEYER CONTRACTING INC
			460-0000-206.20-00 - Total	-20,810.83				
FM19F1	FLOOD MIT-Oak Grove Area	46035305103476	Televised Sewer	1,736.48	SS20211114	SS20211114	11/29/2021	City of Fargo
			460-3530-510.34-76 - Total	1,736.48				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107352	Flood Mitigation	261,277.20	315804	FM19F1 Est #6	11/24/2021	MEYER CONTRACTING INC
			460-3530-510.73-52 - Total	261,277.20				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107356	Paving	50,388.00	315804	FM19F1 Est #6	11/24/2021	MEYER CONTRACTING INC
			460-3530-510.73-56 - Total	50,388.00				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107358	Storm Sewer	87,064.97	315804	FM19F1 Est #6	11/24/2021	MEYER CONTRACTING INC
			460-3530-510.73-58 - Total	87,064.97				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107359	Paving	11,233.66	315804	FM19F1 Est #6	11/24/2021	MEYER CONTRACTING INC
			460-3530-510.73-59 - Total	11,233.66				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107368	Paving	6,065.75	315804	FM19F1 Est #6	11/24/2021	MEYER CONTRACTING INC
			460-3530-510.73-68 - Total	6,065.75				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107369	Miscellaneous	187.00	315804	FM19F1 Est #6	11/24/2021	MEYER CONTRACTING INC
			460-3530-510.73-69 - Total	187.00				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107399	Adjustments	-78,000.00	315804	FM19F1 Est #6	11/24/2021	MEYER CONTRACTING INC
			460-3530-510.73-99 - Total	-78,000.00				
FM19F1 - Total				319,142.23				
FM19H0	FLOOD MIT-52 Ave S/Univ	46035305103899	BRAUN INTERTEC CORP	2,221.00	893	10/28-11/14/21	12/05/2021	P CARD BMO
			460-3530-510.38-99 - Total	2,221.00				
FM19H0 - Total				2,221.00				
FM21A0	FLOOD MIT-RR Erosion SUnv	46035305103305	RED RIVER EROSION PROTECT	15,364.44	315450	0056653	11/10/2021	HOUSTON ENGINEERING INC
			460-3530-510.33-05 - Total	15,364.44				
FM21A0 - Total				15,364.44				
HD19A1	DEMO RESTOR-City Wide	46035305103899	BRAUN INTERTEC CORP	395.25	893	10/28-11/14/21	12/05/2021	P CARD BMO
			460-3530-510.38-99 - Total	395.25				
HD19A1 - Total				395.25				
MS20K0	Flood Geo Tech Review	46035305103305	FLOOD MITIGATION PROJECT	3,928.75	315450	0056652	11/10/2021	HOUSTON ENGINEERING INC
			460-3530-510.33-05 - Total	3,928.75				
MS20K0 - Total				3,928.75				
Overall - Total				932,285.78				

OHNSTAD TWICHELL, P.C.
Attorneys at Law

P.O Box 458
West Fargo, ND 58078-0458
701-282-3249

15-1395 **JTS Invoice # 179374**

Flood Diversion Board
Bond Counsel Work - PPP

Date: December 1, 2021

To: Flood Diversion Board
P.O Box 2806
Fargo, ND 58108-2806

PROFESSIONAL SERVICES RENDERED

	Hours	Rate	Totals
JTS	82.9	$340.00	$28,186.00
CMM	8.6	$340.00	$2,924.00
LDA	3.2	$340.00	$1,088.00
RGH	0.8	$340.00	$272.00
KJB	52.3	$340.00	$17,782.00
TJL	69.7	$320.00	$22,304.00
JRS	18.0	$280.00	$5,040.00
KJD	54.2	$250.00	$13,550.00
DCP	9.7	$290.00	$2,813.00
AJR	38.3	$185.00	$7,085.50
CMS	10.9	$165.00	$1,798.50
KMM	0.6	$85.00	$51.00
Total Fees:	**349.2**		**$102,894.00**
Abstracting Fees			$5,210.00
NDRIN			$7.00
Prof Service Fee Colliers Securities			$281.25
Prof Service Fee Gwendolyn			$7,000.00
*Credit Card Processing Fee - 3%			$218.44
Travel/Mileage			$1,213.88
Meals			$31.41
Total Expenses:			**$13,961.98**
Grand Total			**$116,855.98**

		Rates
JTS	John T. Shockley, Partner, Supervising Attorney	$340.00
CMM	Christopher M. McShane, Partner	$340.00
ADC	Andrew D. Cook, Partner	$340.00
SNW	Sarah M. Wear, Partner	$340.00
RGH	Robert G. Hoy, Partner	$340.00
KJB	Katie J. Bertsch, Partner	$340.00
MWM	Marshall W. McCullough, Partner	$340.00
TJL	Tyler J. Leverington, Partner	$320.00
LWC	Lukas W. Croaker, Associate	$300.00
ABG	Bo Gruchala, Associate	$290.00
JRS	J.R. Strom, Associate	$280.00
KJD	Kathryn J. DelZoppo, Associate	$250.00
LRC	Leah R. Carlson, Associate	$290.00
BTB	Brent T. Boeddeker, Associate	$290.00
DCP	David C. Piper, Associate	$290.00
JAM	Jenna A. McPherson, Associate	$235.00
CAS	Carol A. Stillwell, Paralegal	$185.00
AJR	Andrea J. Roman, Paralegal	$185.00
CRD	Christie R. Dettling, Paralegal	$165.00
DLR	Dena L. Ranum, Legal Administrative Assistant	$160.00
CMV	Cassie M. Van Horn, Paralegal	$165.00
KK	Kiara J. Klinkhammer, Paralegal	$155.00
KMM	Karla M. Maertens, Legal Administrative Assistant	$85.00
SAR	Stephanie A. Ruth, Legal Administrative Assistant	$70.00
TWS	Tim W. Steuber, Paralegal	$170.00

COST ADVANCES BY US FOR YOUR ACCOUNT, FOR WHICH WE HAVE NOT BEEN BILLED, WILL APPEAR ON YOUR NEXT STATEMENT.

PROFESSIONAL SERVICES RENDERED

15-1395 JTS Invoice # 179374	Flood Diversion Board	Bond Counsel Work - PPP
FILE NUMBER	MATTER DESCRIPTION	INVOICE - TOTAL FEES
151395-1	General Topics (Includes General Governance Questions, Notices, etc.)	$29,727.50
151395-2	Executive Director	$481.50
151395-3	P3 Procurement	$15,041.50
151395-4	Public Finance Issues	$1,342.00
151395-5	Consultant Contract Review/Development	$1,258.00
151395-9	Environmental Permitting Issues/NEPA	$3,604.00
151395-11	Legislative Interface/Lobbying Support	$340.00
151395-12	USACE Interface/Questions	$1,240.50
151395-13	Third Party Utility MOU's	$48,471.50
151395-17	EPA WIFIA Loan	$1,183.50
151395-20	USDOT PABs	$204.00
TOTAL		**$102,894.00**

Section 17.04 COORDINATION WITH CLAY COUNTY-HIGHWAY 2 PROJECT. The Diversion Authority will also coordinate with Clay County to provide additional funds to assist in the repair or replacement of Clay County Highway 2 within Comstock city limits, as they exist on the Effective Date. The Diversion Authority will coordinate with the Clay County Engineer to determine if the Highway 2 Project can be constructed using storm sewers rather than rural section ditches.

Ulteig

Please Remit To:
3350 38th Ave. S.
Fargo ND 58104
Phone: (888) 858-3441
EIN #45-0220725

April 5, 2021
Project No: R20.02406
Invoice Num 104678

Clay County, MN
Courthouse
807 11th St N
Moorhead, MN 56560

Amount Due This Invoice: $50,000.00

Project R20.02406 Clay County - County Road 2 Reconstruction

Professional Services through February 27, 2021

Phase 1002 Municipal Civil - Basic Services

Fee

Estimated Construction Cost	2,500,000.00				
Fee Percentage	8.00				
Total Fee	200,000.00				
Percent Complete	25.00	Total Earned		50,000.00	
		Previous Fee Billing		0.00	
		Current Fee Billing		50,000.00	
		Total Fee			**50,000.00**
			Total this Phase		**$50,000.00**
			Total this Invoice		**$50,000.00**

TERMS: NET 30 DAYS
Past due invoices may be subject to finance charges.
We appreciate the opportunity to provide these services to you.

Section 17.04 COORDINATION WITH CLAY COUNTY-HIGHWAY 2 PROJECT. The Diversion Authority will also coordinate with Clay County to provide additional funds to assist in the repair or replacement of Clay County Highway 2 within Comstock city limits, as they exist on the Effective Date. The Diversion Authority will coordinate with the Clay County Engineer to determine if the Highway 2 Project can be constructed using storm sewers rather than rural section ditches.

Ulteig

Please Remit To:
3350 38th Ave. S.
Fargo ND 58104
Phone: (888) 858-3441
EIN #45-0220725

November 18, 2021
Project No: R20.02406
Invoice Num 114564

David Overbo
Clay County, MN
Courthouse
807 11th St N
Moorhead, MN 56560

Amount Due This Invoice: $62,270.68

Project R20.02406 Clay County - County Road 2 Reconstruction

Professional Services through October 31, 2021

Phase 1002 Municipal Civil - Basic Services

Fee

Estimated Construction Cost	2,800,000.00			
Fee Percentage	8.00			
Total Fee	224,000.00			
Percent Complete	50.00	Total Earned	112,000.00	
		Previous Fee Billing	50,000.00	
		Current Fee Billing	62,000.00	
		Total Fee		**62,000.00**

Unit Billing

Mileage - Car/Pickup - IRS Rate	103.0 Miles @ 0.56	57.68	
GPS Rover (1 unit & controller)	6.0 Hours @ 28.00	168.00	
Mileage - Survey Vehicle	30.0 Miles @ 0.75	22.50	
Mileage - Survey Vehicle	30.0 Miles @ 0.75	22.50	
Total Units		**270.68**	**270.68**

Total this Phase **$62,270.68**

Total this Invoice **$62,270.68**

TERMS: NET 30 DAYS
Past due invoices may be subject to finance charges.
We appreciate the opportunity to provide these services to you.

CASS COUNTY GOVERNMENT
PO BOX 2806
211 9th STREET SOUTH
Fargo, ND 58108

(701) 241-5600

DATE: 12/01/21

TO: CITY OF FARGO
PO BOX 2083
FARGO, ND 58107

CUSTOMER NO: 198/294 TYPE: CA - FINANCE OFFICE

CHARGE	DATE	DESCRIPTION	REF-NUMBER	DUE DATE	TOTAL AMOUNT
	12/01/21	BEGINNING BALANCE			78,663.80
~~** AUDIT~~	~~11/01/21~~	~~FM DIVERSION~~			~~66,866.21~~
		PAYROLL EXPENSES			
~~** AUDIT~~	~~11/01/21~~	~~FM DIVERSION~~			~~11,797.59~~
		MISC EXPENSES			
~~AUDIT~~	~~12/01/21~~	~~FM DIVERSION~~			~~82,432.79~~
		PAYROLL EXPENSES			
AUDIT	12/01/21	FM DIVERISON			15,631.72
		MISC EXPENSES			

Submitted for approval at Dec board mtg

** - PREVIOUSLY BILLED - INCLUDED IN BEGINNING BALANCE

Current	30 days	60 days	90 days
176728.31			

DUE DATE: 12/31/21

PAYMENT DUE: 176,728.31
TOTAL DUE: $176,728.31

PLEASE DETACH AND SEND THIS COPY WITH REMITTANCE

DATE: 12/01/21 DUE DATE: 12/31/21 NAME: CITY OF FARGO
CUSTOMER NO: 198/294 TYPE: CA - FINANCE OFFICE

REMIT AND MAKE CHECK PAYABLE TO:
CASS COUNTY FINANCE
211 9TH ST S
PO BOX 2806
FARGO ND 58108-2806
(701) 241-5606

TOTAL DUE: $176,728.31

11/16/21

Cass County Highway Department

Summary of Reimbursable Work

Facility: 173 Ave Graveling **WR #:** 5158

Description: Wild Rice Inlet Structure Road

Date completed: 11/9/21

Material:

Item	Quantity	Price	Total
Class 13 Gravel	135 Yards	$21.00	$2,835.00

Total Material: $2,835.00

Total Amount: $2,835.00

Bill to: FM Diversion Authority

FM Metropolitan Area Flood Risk Management Project
Fiscal Accountability Report Design Phase
As of 11/30/21

							790: FM Diversion Projet Fund	770: Budget Fund		773: Excess Capital Fund		
	2011-2016	2017	2018	2019	2020	2021	Total	2021	Fund	2021	Total	Grand Total
Revenues												
City of Fargo	105,418,227	30,112,100	30,150,091	32,835,957	30,746,840	28,052,566	257,315,780	-	-	-	-	257,315,780
Cass County	178,489,131	13,925,658	14,305,401	15,637,755	15,716,168	14,680,214	252,754,328	-	-	-	-	252,754,328
State Water Commission	139,942,984	25,892,783	9,227,010	26,655,616	69,249,584	34,621,035	305,589,011	-	-	-	-	305,589,011
Cass County Joint Water Resource District	-	-	-	-	-	28,630,991	28,630,991	-	-	-	-	28,630,991
Other Agencies	706,805	-	-	-	-	-	706,805	-	-	-	-	706,805
City of Oxbow MOU Repayment	428,392	1,158,044	-	358,178	878,020	122,038	2,944,671	-	-	-	-	2,944,671
Reimbursements	33,880	44,719	27,396	22,600	40,007	1,369	169,971	-	-	-	-	169,971
Lease/Rental Payments	612,685	354,466	527,903	653,883	802,745	107,639	3,059,320	-	-	-	-	3,059,320
Asset Sales	1,107,856	114,479	-	-	13,234	1,362,862	2,598,431	-	-	-	-	2,598,431
Interest Income	-	505,157	1,246,875	1,885,896	1,152,843	607,553	5,398,325	-	-	-	-	5,398,325
Miscellaneous	1,279	2,600	356	-	651	5,867	10,753	-	-	-	-	10,753
Total Revenues	426,741,239	72,110,007	55,485,032	78,049,884	118,600,091	108,192,134	859,178,387	-	-	-	-	859,178,387
Expenditures												
7905 Army Corp Payments	51,929,000	1,230,000	-	-	-	-	53,159,000	-	-	-		53,159,000
7910 WIK - Administration	1,276,502	729,947	849,081	1,201,725	2,068,489	2,331,999	8,457,743	385,984	385,984	-	-	8,843,728
7915 WIK - Project Design	25,491,276	2,907,309	2,142,880	2,516,133	3,258,835	1,586,996	37,903,430	-	-	-	-	37,903,430
7920 WIK - Project Management	29,993,888	15,211,372	6,817,589	8,326,357	10,369,118	10,067,526	80,785,852	-	-	-	-	80,785,852
7925 WIK - Recreation	163,223	-	-	40,000	75,000	-	278,223	-	-	-	-	278,223
7930 LERRDS - North Dakota	132,090,024	38,286,144	8,114,895	30,223,861	66,942,804	32,173,195	307,830,924	-	-	-	-	307,830,924
7931 LERRDS - Minnesota	2,176,988	25,949	4,914	5,352	2,769,551	1,761,640	6,744,394	-	-	-	-	6,744,394
7940 WIK Mitigation - North Dakota	587,180	256,326	69,283	12,357	97,512	35,279,546	36,302,204	-	-	-	-	36,302,204
7941 WIK Mitigation - Minnesota	-	-	-	-	-	-	-	-	-	-	-	-
7950 Construction - North Dakota	64,092,419	5,267,083	4,384,090	18,183,794	12,172,911	16,022,240	120,122,537	-	-	-	-	120,122,537
7951 Construction - Minnesota	-	-	-	-	-	-	-	-	-	-	-	-
7952 Construction - O/H/B	17,118,125	10,907,637	4,111,617	369,936	1,104,928	2,060,131	35,672,375	-	-	-	-	35,672,375
7955 Construction Management	9,169,855	1,002,575	296,092	685,741	444,536	109,338	11,708,136	-	-	-	-	11,708,136
7980 Operations & Maintenance	6,403	28,538	41,493	35,328	79,049	2,971	193,782	-	-	-	-	193,782
7990 Project Financing	7,847,599	6,914,504	9,879,405	11,434,046	12,017,311	12,334,440	60,427,305	-	-	-	-	60,427,305
7995 Project Eligible - Off Formula Costs	-	-	-	-	-	-	-	-	-	-	-	-
7999 Non Federal Participating Costs	116	221,568	-	-	-	-	221,684	-	-	-	-	221,684
Total Expenditures	341,942,599	82,988,952	36,711,339	73,034,630	111,400,046	113,730,022	759,807,588	385,984	385,984	-	-	760,193,573
Other Financing Sources (Uses)												
Transfers From Other Diversion Funds	-	-	-	-	-	-	-	439,711	439,711		-	439,711
7998 Transfers to Other Diversion Funds	-	-	-	-	-	(109,928)	(109,928)					(109,928)
Total Other Financing Sources (Uses)	-	-	-	-	-	(109,928)	(109,928)	439,711	439,711	-	-	329,783

FM Metropolitan Area Flood Risk Management Project
Statement of Net Position
November 30, 2021

	FM Diversion Project Fund	Budget Fund	Grand Total
Assets			
Cash	$ 76,295,912	$ 163,655	$ 76,459,567
Cash Horace 3.01 MIT	2,500,049	-	2,500,049
Cash Held In Trust at BND			
Excess Revenue Fund	200,169	-	200,169
Temp Debt Obligation Fund	451,200	-	451,200
Authority Loan Fund	2,242	-	2,242
P3 Reserve Fund	16,125,733	-	16,125,733
Receivables			-
State Water Commission *	8,002,977	-	8,002,977
Prepaid Expense	95,934	-	95,934
Total assets	**103,674,217**	**163,655**	**103,837,871**
Liabilities			
Vouchers payable	4,666,908	-	4,666,908
Retainage payable	167,048	-	167,048
Rent Deposit	19,100	-	19,100
Total liabilities	**4,853,055**	**-**	**4,853,055**
NET POSITION	**$ 98,821,161**	**$ 163,655**	**$ 98,984,816**

***** Receivable balance is as of 10/31/2021

FM Metropolitan Area Flood Risk Management Project
FY 2021 Summary Finacial Budget Report (In Thousands)
As of 30 Nov 2021

	2021 Approved Budget	Current Month	Fiscal Year To Date	% Expended	Outstanding Encumbrances	Remaining Budget Balance
Revenue Sources						
City of Fargo Sales Tax	32,000	2,691	28,053			
Cass County Sales Tax	16,000	1,484	14,680			
Cass County Joint Water Resource District	-	-	28,631			
State of ND - 50 % Match	109,900	5,735	34,094			
State of ND - 100% Match	-	-	527			
State of Minnesota	-	-	-			
Other Agencies	-	-	-			
City of Oxbow MOU Reimbursement	-	-	122			
Financing Proceeds	200	1	588			
Reimbursements	-	-	1			
Sales of Assets	-	-	1,363			
Property Income	1,100	23	108			
Miscellaneous	60,712	-	2			
MIT Inter-Fund Transfers		110	442			
Total Revenue Sources	**219,912**	**10,043**	**108,612**	**-**	**-**	**111,301**
Funds Appropriated						
Diversion Channel & Assoc. Infrastructure	35,720	3,605	10197	29%	3,593	21,930
Southern Embankment & Assoc. Infrastructure	5,460	-	400	7%	2	5,058
Other Mitigation Projects	41,850	224	38675	92%	853	2,323
In-Town Flood Protection	35,249	-	15601	44%	59	19,588
Enabling Work / Other	62	8	23	0%	-	39
Land Acquisition & Mitigation	69,096	6,361	31521	46%	40,353	(2,778)
Engineering & Design Fees	7,025	367	2296	33%	1,920	2,809
Program Management	17,331	1,179	9186	53%	80,363	(72,218)
Contingency	-	-	0	0%		-
Debt Service	7,990	-	6214	78%	469	1,307
Maintenance	130	-	3	2%	-	127
Total Appropriations	**219,912**	**11,743**	**114,116**	**52%**	**127,612**	**(21,815)**

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Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
770-7910-429.11-00	11/10/2021	315406	Cass County Government	$53,070.66	SALARY REIMB	V00106	ED & STAFF-PR/ADMIN EXP
			Full Time Staff / Salaries	**$53,070.66**			
770-7910-429.20-01	11/10/2021	315406	Cass County Government	$3,958.00	SALARY REIMB	V00106	ED & STAFF-PR/ADMIN EXP
			Employee Benefits / Health Insurance	**$3,958.00**			
770-7910-429.20-03	11/10/2021	315406	Cass County Government	$160.00	SALARY REIMB	V00106	ED & STAFF-PR/ADMIN EXP
			Employee Benefits / Dental Insurance	**$160.00**			
770-7910-429.21-01	11/10/2021	315406	Cass County Government	$2,836.39	SALARY REIMB	V00106	ED & STAFF-PR/ADMIN EXP
			Employee Benefits / Social Security	**$2,836.39**			
770-7910-429.21-02	11/10/2021	315406	Cass County Government	$751.36	SALARY REIMB	V00106	ED & STAFF-PR/ADMIN EXP
			Employee Benefits / Medicare	**$751.36**			
770-7910-429.22-07	11/10/2021	315406	Cass County Government	$6,506.47	SALARY REIMB	V00106	ED & STAFF-PR/ADMIN EXP
			Pension Benefits / Retirement	**$6,506.47**			
770-7910-429.33-98	11/10/2021	315406	Cass County Government	$1,049.65	MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Other Services / Personnel Recruitment	**$1,049.65**			
770-7910-429.34-20	11/10/2021	315406	Cass County Government	$330.26	MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Technical Services / Marketing / Public Relat.	**$330.26**			
770-7910-429.38-99	11/10/2021	315406	Cass County Government	$350.00	MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Other Services / Other Services	**$350.00**			
770-7910-429.53-20	11/10/2021	315406	Cass County Government	$274.02	MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Communications / Cellular Phone Service	**$274.02**			
770-7910-429.56-60	11/10/2021	315406	Cass County Government	$92.40	MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			In State Travel / In State Travel Expenses	**$92.40**			
770-7910-429.57-60	11/10/2021	315406	Cass County Government	$281.92	MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Out of State Travel / Out of State Travel Exp	**$281.92**			
770-7910-429.59-21	11/10/2021	315406	Cass County Government	$616.10	MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Education / Seminar & Conf. Outstate	**$616.10**			

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770-7910-429.61-10	11/10/2021	315406	Cass County Government	$40.44	MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			General Supplies / Office Supplies	**$40.44**			
770-7910-429.61-50	11/10/2021	315406	Cass County Government	$7.95	MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			General Supplies / Postage	**$7.95**			
770-7910-429.68-30	11/10/2021	315406	Cass County Government	$1,716.93	MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Miscellaneous / Meeting Incidentals	**$1,716.93**			
770-7910-429.74-12	11/10/2021	315406	Cass County Government	$16.11	MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Capital Outlay / Computer Software	**$16.11**			
			770 Subtotal	**$72,058.66**			
790-0000-206.10-00	11/24/2021	315774	INDUSTRIAL BUILDERS INC	$20,710.00	PAY RETAINAGE	V06004	WP50D.2-STRUCTURE REMOVL
	11/24/2021	315790	KPH, Inc.	$32,274.01	PAY RETAINAGE	V06601	OHB RING LEVEE WP-43D5
			Retainage	**$52,984.01**			
790-7910-429.33-25	12/5/2021	893	OHNSTAD TWICHELL PC	$101,110.00	OHNSTAD TWICHELL PC	V00102	General & Admin. WIK
			Other Services / Legal Services	**$101,110.00**			
790-7910-429.34-20	11/10/2021	315483	Neon Loon Communications, LL	$9,726.25	COMMUNICATIONS SUPPORT	V09601	COMMUNICATIONS SUPPORT
	11/10/2021	315498	PR for Good, Inc	$16,303.75	COMMUNICATIONS SUPPORT	V07101	COMMUNICATIONS SUPPORT
	11/24/2021	315818	Neon Loon Communications, LL	$7,448.75	COMMUNICATIONS SUPPORT	V09601	COMMUNICATIONS SUPPORT
	11/24/2021	315833	PR for Good, Inc	$8,712.50	COMMUNICATIONS SUPPORT	V07101	COMMUNICATIONS SUPPORT
			Technical Services / Marketing / Public Relat.	**$42,191.25**			
790-7910-429.34-56	11/24/2021	ES112100	City of Fargo	$16,000.00	FISCAL AGENT FEE - 11/21	V05902	MONTHLY FISCAL AGENT FEE
				$16,000.00			
790-7910-429.38-68	11/10/2021	315435	GA Group, PC	$5,000.00	GOVT RELATIONS COUNSEL	V07601	2021 GOVERNMENT RELATIONS
			Other Services / Lobbyist	**$5,000.00**			
790-7910-429.43-50	11/10/2021	315493	ACONEX (North America) INC	$184,358.77	SERVICE AGREEMENT UPDATE	V01401	8 Year Service Agreement
			Repair and Maintenance / Maintenance Service Contract	**$184,358.77**			

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790-7910-429.52-30	11/4/2021	315294	DAWSON INSURANCE AGEN	$11,135.00	GEN LIABILITY INSURANCE	V00102	General & Admin. WIK
			Insurance / General Liability	**$11,135.00**			
790-7915-429.33-05	11/10/2021	315451	HOUSTON-MOORE GROUP L	$71,014.76	GRADE RAISE, DRAINAGE	V01633	DESIGN & CONST. SUPPORT
	11/10/2021	315451	HOUSTON-MOORE GROUP L	$131,683.22	SURVEYING, WATER CONTROL	V01634	H&H MITIG. & PERMIT SUPPORT
	11/24/2021	315711	AECOM	$56,444.45	CULTURAL RESOURCES INVEST	V01004	SEAI CULTURAL RES INVEST
			Other Services / Engineering Services	**$259,142.43**			
790-7920-429.33-05	11/10/2021	315451	HOUSTON-MOORE GROUP L	$18,046.89	GRADE RAISE, DRAINAGE	V01633	DESIGN & CONST. SUPPORT
	11/10/2021	315451	HOUSTON-MOORE GROUP L	$19,194.20	SURVEYING, WATER CONTROL	V01634	H&H MITIG. & PERMIT SUPPORT
			Other Services / Engineering Services	**$37,241.09**			
790-7920-429.33-79	11/10/2021	315411	CH2M Hill Engineers Inc	$477,429.12	PROGRAM MGMT & SERVICES	V00211	CH2M HILL-6/2019-12/2021
	11/10/2021	315411	CH2M Hill Engineers Inc	$513,028.88	SUPPORT SERVICES	V00212	P3 PROCUREMENT SUPPORT
			Other Services / Construction Management	**$990,458.00**			
790-7930-429.33-05	11/4/2021	315217	HDR Engineering, Inc.	$65,419.43	HDR ENGINEERING INC	V01201	Cass Joint Water ROE
	11/4/2021	315217	Prosource Technologies, Inc	$62,336.31	PROSOURCE TECHNOLOGIES	V01201	Cass Joint Water ROE
	11/4/2021	315217	SRF Consulting Group	$109,785.20	SRF CONSULTING GROUP INC	V01201	Cass Joint Water ROE
	11/4/2021	315217	ULTEIG ENGINEERS INC	$18,422.45	ULTEIG ENGINEERING	V01201	Cass Joint Water ROE
	11/10/2021	315451	HOUSTON-MOORE GROUP L	$16,808.96	GRADE RAISE, DRAINAGE	V01633	DESIGN & CONST. SUPPORT
	11/24/2021	315710	ADVANCED ENGINEERING I	$215,194.12	DIVERSION PROJECT	V00302	PROGRAM MGMT SERVICES
	12/2/2021	315892	HDR Engineering, Inc.	$43,178.95	HDR ENGINEERING INC	V01201	Cass Joint Water ROE
	12/2/2021	315892	SRF Consulting Group	$46,949.68	SRF CONSULTING GROUP INC	V01201	Cass Joint Water ROE
	12/2/2021	315892	ULTEIG ENGINEERS INC	$39,973.32	ULTEIG ENGINEERING	V01201	Cass Joint Water ROE
			Other Services / Engineering Services	**$618,068.42**			
790-7930-429.33-25	11/4/2021	315217	ASPIRE BANK	$4,000.00	ASPIRE BANK	V01701	ND LAND PURCH-OUT OF TOWN
	11/4/2021	315217	Larkin Hoffman Attorneys	$8,930.00	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
	11/4/2021	315217	OHNSTAD TWICHELL PC	$128,941.44	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
	11/4/2021	315310	NORMANNA TOWNSHIP	$12,045.44	REIMB WOLD JOHNSON LEGAL	V09401	NORMANNA TOWNSHIP MOU
	12/2/2021	315892	Larkin Hoffman Attorneys	$31,539.50	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
	12/2/2021	315892	OHNSTAD TWICHELL PC	$79,498.39	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
			Other Services / Legal Services	**$264,954.77**			

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790-7930-429.33-32	11/4/2021	315217	Appraisal Services Inc.	$9,000.00	RAY KVALVOG	V01201	Cass Joint Water ROE
	11/4/2021	315217	CROWN APPRAISALS	$33,500.00	CROWN APPRAISALS, INC	V01201	Cass Joint Water ROE
	11/4/2021	315217	GE Bock Real Estate, LLC	$24,800.00	GE BOCK REAL ESTATE LLC	V01201	Cass Joint Water ROE
	11/4/2021	315217	Patchin Messner Valuation Coun	$44,000.00	PATCHIN MESSNER VALUATION	V01201	Cass Joint Water ROE
	11/4/2021	315217	Tinjum Appraisal Company, Inc.	$10,300.00	TINJUM APPRAISAL COMPANY	V01201	Cass Joint Water ROE
	11/10/2021	315416	CROWN APPRAISALS	$100,000.00	FLOWAGE EASEMENT STUDY 21	V05102	FLOWAGE EASEMENT-PHASE 2
	12/2/2021	315892	COMPASS LAND CONSULTA	$26,100.00	COMPASS LAND CONSULTANTS	V01201	Cass Joint Water ROE
	12/2/2021	315892	CROWN APPRAISALS	$1,000.00	CROWN APPRAISALS, INC.	V01201	Cass Joint Water ROE
	12/2/2021	315892	CROWN APPRAISALS	$9,500.00	CROWN APPRAISAL, INC.	V01201	Cass Joint Water ROE
	12/2/2021	315892	Patchin Messner Valuation Coun	$8,000.00	PATCHIN MESSNER VALUATION	V01201	Cass Joint Water ROE
			Other Services / Appraisal Services	**$266,200.00**			
790-7930-429.33-47	11/4/2021	315217	Mid-America Consultants Intern	$12,075.00	MID-AMERICA CONSULTANTS	V01201	Cass Joint Water ROE
				$12,075.00			
790-7930-429.33-79	11/10/2021	315411	CH2M Hill Engineers Inc	$19,009.78	PROPERTY ACQUISITION	V00210	CH2M HILL-LAND ACQUISITON
			Other Services / Construction Management	**$19,009.78**			
790-7930-429.34-65	11/4/2021	315217	0411 - AALAND, CASH H AN	$7,000.00	CASH & LAURA AALAND	V01701	ND LAND PURCH-OUT OF TOWN
	11/4/2021	315217	9061 - SAUVAGEAU, LEEVO	$750.00	LEEVON SAUVAGEAU	V01701	ND LAND PURCH-OUT OF TOWN
			Technical Services / Right of Entry Requests	**$7,750.00**			
790-7930-429.38-95	11/10/2021	315521	Turf Tamers	$2,800.00	MOWING SERVICES	V01701	ND LAND PURCH-OUT OF TOWN
	11/24/2021	315861	Turf Tamers	$7,500.00	MOWING SERVICES	V01701	ND LAND PURCH-OUT OF TOWN
			Other Services / Mowing Services	**$10,300.00**			
790-7930-429.38-99	11/4/2021	315217	Cass County Weed Control	$110.95	CASS COUNTY TREASURER	V01701	ND LAND PURCH-OUT OF TOWN
			Other Services / Other Services	**$110.95**			
790-7930-429.41-05	11/4/2021	315217	Cass Rural Water	$54.00	CASS RURAL WATER USERS	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	Cass Rural Water	$27.00	CASS RURAL WATER USERS	V01701	ND LAND PURCH-OUT OF TOWN
			Utility Services / Water and Sewer	**$81.00**			

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790-7930-429.52-10	11/4/2021	315217	DAWSON INSURANCE AGEN	($541.46)	MARSH & MCLENNAN AGENCY	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	DAWSON INSURANCE AGEN	$20,075.91	MARSH & MCLENNAN AGENCY	V01701	ND LAND PURCH-OUT OF TOWN
			Insurance / Property Insurance	**$19,534.45**			
790-7930-429.61-50	11/4/2021	315217	CASS COUNTY JOINT WATE	$157.94	CASS COUNTY JOINT WRD	V01201	Cass Joint Water ROE
	11/4/2021	315217	CASS COUNTY JOINT WATE	$23.60	UPS	V01201	Cass Joint Water ROE
	12/2/2021	315892	CASS COUNTY JOINT WATE	$21.99	CASS COUNTY JOINT WRD	V01201	Cass Joint Water ROE
	12/2/2021	315892	CASS COUNTY JOINT WATE	$28.81	UPS	V01201	Cass Joint Water ROE
			General Supplies / Postage	**$232.34**			
790-7930-429.62-51	11/4/2021	315217	Cass County Electric Cooperativ	$222.97	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	Cass County Electric Cooperativ	$120.87	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
			Energy / Electricity	**$343.84**			
790-7930-429.67-11	11/4/2021	315217	2185 - SIEBELS	$549.99	RED RIVER REMOVAL	V01701	ND LAND PURCH-OUT OF TOWN
	11/4/2021	315217	9383 - HOLCK	$8,281.21	JEREMY & NICHOLE HOLCK	V01701	ND LAND PURCH-OUT OF TOWN
	11/4/2021	315217	9393 - TYSDAL	$454.54	TLC MAINTENANCE LLC	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	2185 - SIEBELS	$74,183.53	DUANE & DONNA SIEBEL	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	2185 - SIEBELS	$3,312.00	FETTES TRANSPORTATION	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	5033 - PAUL & JANICE JOHN	$5,436.00	BRADLEY JOHNSON	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	9383 - HOLCK	$17,883.00	JEREMY & NICHOLE HOLCK	V01701	ND LAND PURCH-OUT OF TOWN
			Relocation / Residential Buildings	**$110,100.27**			
790-7930-429.67-12	11/4/2021	315217	1112 - TERRY M & KRISTIE	$40,000.00	JOSEPH & JOLENE SAUVAGEAU	V01701	ND LAND PURCH-OUT OF TOWN
	11/4/2021	315217	1113 - TERRY M & KRISTIE	$40,000.00	TERRY & KRISTIE SAUVAGEAU	V01701	ND LAND PURCH-OUT OF TOWN
	11/4/2021	315217	9754 - SCHMITZBRENNAN	$83,153.32	BLACK POWDER, LLC	V01701	ND LAND PURCH-OUT OF TOWN
	11/4/2021	315217	9754 - SCHMITZBRENNAN	$33,500.00	SCHMITZ FOODS, LLC	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	0220 - ANDERSON 2	$83,337.18	PRAIRIE SCALE SYSTEMS	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	9754 - SCHMITZBRENNAN	$19,000.00	SCHMITZ FOODS, LLC	V01701	ND LAND PURCH-OUT OF TOWN
			Relocation / Commercial Buildings	**$298,990.50**			

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790-7930-429.68-10	11/4/2021	315217	CASS COUNTY JOINT WATE	$9.00	CASS COUNTY JOINT WRD	V01201	Cass Joint Water ROE
	12/2/2021	315892	Cass County Government	$34.45	CASS COUNTY FINANCE	V01201	Cass Joint Water ROE
	12/2/2021	315892	CASS COUNTY JOINT WATE	$2.00	CASS COUNTY JOINT WRD	V01201	Cass Joint Water ROE
			Miscellaneous / Miscellaneous	**$45.45**			

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7930-429.71-30	11/4/2021	315217	0904 - FITTERER	($360,800.00)	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	11/4/2021	315217	0904N - ERVIN J & MILDRED	$396,168.39	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	11/4/2021	315217	1078N - CASS COUNTY JOIN	$639.50	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	11/4/2021	315217	1099N - CASS COUNTY JOIN	$513,664.98	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	11/4/2021	315217	2185 - SIEBELS	$148,203.74	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	11/4/2021	315217	5278 - PAUL M & CAROLYN J	($18,500.00)	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	11/4/2021	315217	5278N - PAUL M & CAROLYN	$23,648.31	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	0027 - LEO A & SHIRLEY J RI	$343,400.00	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	0028 - TERRY M & KRISTIE	$588,325.00	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	0213 - VIVIAN E BAILLY RE	$777,975.00	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	0214 - ROBERT A BAILLY T	$777,975.00	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	0220 - ANDERSON 2	$2,064,800.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	1083 - LEO A & SHIRLEY J RI	$343,400.00	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	1086 - TERRY M & KRISTIE	$588,325.00	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	1087 - RICHARD FARM ENTE	$122,766.67	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	1093 - RICHARD FARM ENTE	$122,766.67	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	1107 - GENE J & BRENDA J S	$460,000.00	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	1108 - PHYLLIS J BRUNELLE	$67,053.34	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	1109 - PHYLLIS J BRUNELLE	$67,053.33	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	1110 - PHYLLIS J BRUNELLE	$67,053.33	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	5002 - RYAN C & JESSICA L	$122,766.66	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	5004N - DAVID GERMANSON	($311,684.12)	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	5009N - DAVID GERMANSON	($311,684.12)	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	5010N - DAVID GERMANSO	($311,684.12)	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	5011N - DAVID GERMANSON	($311,684.13)	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	5012N - DAVID GERMANSON	($311,684.13)	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	9054 - GERMANSON	($311,684.12)	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	9055N - DAVID GERMANSON	($311,684.13)	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	9056N - DAVID GERMANSON	($311,684.13)	CLERK OF DISTRICT COURT	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	9407N - SHANNEN D & KIMB	$40,103.86	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	12/2/2021	315892	9754 - SCHMITZBRENNAN	$43,000.00	SCHMITZ AND BRENNAN LLC	V01701	ND LAND PURCH-OUT OF TOWN

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			Land / Land Purchases	**$4,806,315.78**			
790-7930-429.73-20	11/24/2021	315774	INDUSTRIAL BUILDERS INC	$112,567.00	WORK PKG 50D2	V06004	WP50D.2-STRUCTURE REMOVL
			Infrastructure / Site Improvements	**$112,567.00**			
790-7931-429.33-05	11/4/2021	315224	SRF Consulting Group	$21,386.41	SRF CONSULTING GROUP	V06201	MCCJPA - MN ROE
			Other Services / Engineering Services	**$21,386.41**			
790-7931-429.33-25	11/4/2021	315224	OHNSTAD TWICHELL PC	$13,538.10	OHNSTAD TWICHELL	V06201	MCCJPA - MN ROE
			Other Services / Legal Services	**$13,538.10**			
790-7931-429.34-65	11/4/2021	315224	0477 - GESS ETAL ELAINE F	$39.68	PETER DEMARREAU	V02301	MN LAND PURCHASES
			Technical Services / Right of Entry Requests	**$39.68**			
790-7931-429.52-10	11/4/2021	315224	DAWSON INSURANCE AGEN	$2,730.56	MARSH & MCLENNAN	V02301	MN LAND PURCHASES
			Insurance / Property Insurance	**$2,730.56**			
790-7931-429.62-51	11/4/2021	315224	LAKE REGION ELECTRIC CO	$167.28	LAKE REGION ELECTRIC COOP	V02301	MN LAND PURCHASES
	11/4/2021	315224	RED RIVER VALLEY COOPE	$86.18	RED RIVER VALLEY COOP	V02301	MN LAND PURCHASES
			Energy / Electricity	**$253.46**			
790-7931-429.71-30	11/4/2021	315224	0251N - MOORHEAD CLAY C	$170,286.98	THE TITLE CO	V02301	MN LAND PURCHASES
			Land / Land Purchases	**$170,286.98**			
790-7940-429.33-06	11/10/2021	315402	BRAUN INTERTEC CORP	$9,010.85	TESTING SERVICES	V00402	TESTING - WP-43 & WP-28A
			Other Services / Quality Testing	**$9,010.85**			
790-7950-429.33-05	11/10/2021	315451	HOUSTON-MOORE GROUP L	$30,113.39	GRADE RAISE, DRAINAGE	V01633	DESIGN & CONST. SUPPORT
			Other Services / Engineering Services	**$30,113.39**			
790-7950-429.33-06	11/10/2021	315402	BRAUN INTERTEC CORP	$14,046.25	TESTING NUSTAR PIPELINE	V00404	TESTING - NUSTAR PIPELINE
			Other Services / Quality Testing	**$14,046.25**			
790-7950-429.33-25	11/24/2021	315841	OHNSTAD TWICHELL PC	$357.00	REIMB OHNSTAD TWICHELL INV	V08801	RUSH RIVER-DRAIN EXPENSE
			Other Services / Legal Services	**$357.00**			
790-7950-429.38-99	11/24/2021	315830	Pleasant Township	$3,655.60	REIMB TURNER GRAVEL INV	V06801	WILD RICE STUC-BLDG PRMT
			Other Services / Other Services	**$3,655.60**			

Summary Of Expenses
EXP-2021-11

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7950-429.67-11	11/15/2021	ES112100	Denae Swalstad	$3,516.87	RECLASS EASEMENTS & RELOC	V05408	FLOOD MIT-ROYAL OAKS AREA
	11/15/2021	ES112100	Susan Montplaisir	$3,731.00	RECLASS EASEMENTS & RELOC	V05408	FLOOD MIT-ROYAL OAKS AREA
				$7,247.87			
790-7950-429.71-30	11/15/2021	ES112100	Denae Swalstad	($3,516.87)	RECLASS EASEMENTS & RELOC	V05408	FLOOD MIT-ROYAL OAKS AREA
	11/15/2021	ES112100	Richard Jordahl	($10,000.00)	RECLASS EASEMENTS & RELOC	V05407	FLOOD MIT-RIVERWOOD ADDTN
	11/15/2021	ES112100	Susan Montplaisir	($3,731.00)	RECLASS EASEMENTS & RELOC	V05408	FLOOD MIT-ROYAL OAKS AREA
				($17,247.87)			
790-7950-429.71-31	11/15/2021	ES112100	Richard Jordahl	$10,000.00	RECLASS EASEMENTS & RELOC	V05407	FLOOD MIT-RIVERWOOD ADDTN
				$10,000.00			
790-7950-429.73-59	11/4/2021	315208	BORDER STATES PAVING, I	$8,293.50	CASS CO HWY DEP CR-17	V04204	CR17 - PAVING BYPASS ROAD
			Infrastructure / Street & Roadway System	**$8,293.50**			
790-7952-429.33-05	11/10/2021	315451	HOUSTON-MOORE GROUP L	$8,083.21	GRADE RAISE, DRAINAGE	V01633	DESIGN & CONST. SUPPORT
			Other Services / Engineering Services	**$8,083.21**			
790-7952-429.73-52	11/24/2021	315790	KPH, Inc.	$32,023.70	REIMB LEVEE RECONSTRUCTION	V06601	OHB RING LEVEE WP-43D5
	12/2/2021	315928	INDUSTRIAL BUILDERS INC	$54,414.32	OHB WETLAND MITIGATION	V06002	WP43G-OHB WETLAND MITIGTN
			Infrastructure / Flood Control	**$86,438.02**			
790-7955-429.33-05	11/10/2021	315451	HOUSTON-MOORE GROUP L	$15,312.40	GRADE RAISE, DRAINAGE	V02827	IN TOWN LEVY MAINTENANCE
			Other Services / Engineering Services	**$15,312.40**			
790-7990-429.33-05	11/10/2021	315451	HOUSTON-MOORE GROUP L	$88.00	GRADE RAISE, DRAINAGE	V01633	DESIGN & CONST. SUPPORT
			Other Services / Engineering Services	**$88.00**			
790-7990-429.33-25	12/5/2021	893	OHNSTAD TWICHELL PC	$24,404.00	OHNSTAD TWICHELL PC	V00102	General & Admin. WIK
			Other Services / Legal Services	**$24,404.00**			
790-7990-429.34-55	11/10/2021	315387	AON RISK SERVICES CENTR	$1,856.25	RISK ADVISORY SERVICES	V03201	PRE-AWARD P3 RISK ADVISOR
	11/10/2021	315426	Ernst & Young	$52,021.10	FINANCIAL ADVISORY SERVICE	V03301	PPP FINANCL ADVISORY SVCS
			Technical Services / Financial Advisor	**$53,877.35**			
790-7990-429.34-57	11/24/2021	28562	BANK OF NORTH DAKOTA	$16,000.00	BND TRUSTEE FEE 11/2021	V08502	MONTHLY TRUSTEE FEE
			Technical Services / FMDA Trustee Fees BND	**$16,000.00**			

Summary Of Expenses
EXP-2021-11

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7990-429.38-13	11/11/2021	JB112100	PLENARY AMERICAS USA L	$3,000,000.00	PLENARY AMERICAS	V09301	P3 UNSUCCESSFUL BID STIPEN
			Other Services / Misc-Stipend Payment	**$3,000,000.00**			
790-7998-555.90-81	11/24/2021	ES112100	Diversion Admin Budget Transfe	$0.00	ANNUAL ADMIN BDGT TRF-NOV	VADMIN	Diversion Administration
			FMDA Admin. Budget Fund	**$0.00**			
			790 Subtotal	**$11,724,214.86**			

Total Amount Invoiced this period:	**$11,796,273.52**	
	$52,984.01	**Less Paid Retainage**
	$11,743,289.51	**Total Less Paid Retainage**

METRO FLOOD DIVERSION AUTHORITY **Tuesday, December 7, 2021**

Data Through Date: Friday, November 26, 2021

Cummulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
LAND PURCHASE	$242,858,536.09	$242,858,536.09	$0.00	Land Purchase
CH2M HILL ENGINEERS INC	$153,075,591.12	$83,601,595.64	$69,473,995.48	Project & Construction Management
HOUSTON-MOORE GROUP LLC	$61,338,356.88	$60,028,701.91	$1,309,654.97	Engineering Services
INDUSTRIAL BUILDERS INC	$58,129,514.54	$57,492,606.20	$636,908.34	2nd St N Pump Station Project and 2nd St Floodwall, South of Pu
ARMY CORP OF ENGINEERS	$53,159,000.00	$53,159,000.00	$0.00	Local Share
RICHLAND-WILKIN JPA	$35,000,000.00	$35,000,000.00	$0.00	Economic Impact Relief Fund
NORTH DAKOTA PUBLIC FINANCE AUTHORIT	$23,989,850.00	$23,989,850.00	$0.00	Debt Service
INDUSTRIAL CONTRACT SERVICES INC	$18,419,743.64	$18,419,743.64	$0.00	4th St Pump Station and 2nd Street Floodwall
MEYER CONTRACTING	$16,350,649.08	$16,350,649.08	$0.00	WP-43CD and Gatewell - PVD & Surcharge Installation
ADVANCED ENGINEERING INC	$14,663,193.01	$6,453,994.86	$8,209,198.15	Lands Management and Public Outreach
OHNSTAD TWICHELL PC	$13,827,290.10	$13,827,290.10	$0.00	Legal Services
WELLS FARGO	$11,607,080.05	$11,607,080.05	$0.00	Debt Service
DORSEY & WHITNEY LLP	$11,166,442.49	$11,166,442.49	$0.00	Legal Services
DAKOTA UNDERGROUND	$11,141,625.69	$11,141,625.69	$0.00	Utility Relocation
LANDSCAPES UNLIMITED	$11,007,612.78	$11,007,612.78	$0.00	Golf Course Construction - Oxbow Country Club
OKEEFE, OBRIAN, LYSON & FOSS LTD	$9,962,512.68	$9,962,512.68	$0.00	FLDBUY - COF Flood Home Buyouts
ASHURST LLP	$7,795,542.81	$6,246,808.31	$1,548,734.50	PPP Legal Counsel
KEY CONTRACTING INC	$6,464,350.42	$6,464,350.42	$0.00	FM1413 - Oakcreek and Copperfield Court Levee
ERNST & YOUNG	$5,377,000.00	$4,907,611.80	$469,388.20	P3 Financial Advisory Services
MOORE ENGINEERING INC	$5,310,804.27	$5,236,581.37	$74,222.90	Engineering Services
PROSOURCE TECHNOLOGIES, INC	$4,198,291.71	$2,403,882.12	$1,794,409.59	Land Acquisition Services
RILEY BROS	$3,656,841.67	$3,656,841.67	$0.00	Construction - OHB Ring Levee & WP-28A
CENTURYLINK COMMUNICATIONS	$3,544,465.02	$3,425,723.78	$118,741.24	Utility Relocation
CITY OF FARGO	$3,455,659.99	$3,455,659.99	$0.00	Utility Relocation, Accounting Svcs, Interest on Deficit Funds
PLENARY AMERICAS USA LTD	$3,000,000.00	$3,000,000.00	$0.00	Stipend Payment for P3 RFP
MINNESOTA DNR	$2,636,755.60	$2,617,681.40	$19,074.20	EIS Scoping and Permit Application
SRF CONSULTING GROUP	$2,588,596.69	$1,280,617.72	$1,307,978.97	Engineering Services

Data Through Date: Friday, November 26, 2021

Cummulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
HOUSTON ENGINEERING INC	$2,450,102.41	$2,450,102.41	$0.00	Engineering Services
OXBOW, CITY OF	$2,383,317.16	$2,383,317.16	$0.00	OXBOW MOU - LAND ADVANCE
LANDWEHR CONSTRUCTION INC	$2,304,622.16	$2,304,622.16	$0.00	In-Town and WP-43 Demolition Contracts
ACONEX (NORTH AMERICA) INC	$2,098,721.65	$1,056,353.97	$1,042,367.68	Electronic Data Mgmt and Record Storage System
HOUGH INC	$2,088,832.83	$2,088,832.83	$0.00	Construction WP-42F.2 and Oxbow River Intake & Pumping Syst
URS CORPORATION	$1,805,670.90	$1,805,670.90	$0.00	Cultural Resources Investigations
ULTEIG ENGINEERS INC	$1,744,157.63	$1,178,250.48	$565,907.15	Land Acquisition Services
REINER CONTRACTING INC	$1,599,646.21	$1,599,646.21	$0.00	El Zagal Flood Risk Management
CROWN APPRAISALS	$1,575,455.00	$1,122,230.00	$453,225.00	Flowage Easements Valuation and Appraisal Services
PROGRAM ADVISOR SERVICES, LLC	$1,505,000.00	$897,362.29	$607,637.71	Program Consulting Services
SELLIN BROS INC	$1,498,211.56	$1,498,211.56	$0.00	Riverwood Flood Risk Project - Construction
CASS COUNTY GOVERNMENT	$1,317,304.90	$1,317,304.90	$0.00	Gravel on County Rd 17 Bypass
HDR ENGINEERING, INC.	$1,232,783.68	$890,052.45	$342,731.23	Engineering Services
US BANK	$1,205,546.13	$1,205,546.13	$0.00	Loan Advance Debt Service Payments
CASS COUNTY TREASURER	$1,116,960.74	$1,116,960.74	$0.00	Property Taxes
SCHMIDT AND SONS INC.	$1,078,719.86	$1,067,751.86	$10,968.00	Residential Demolition in Oxbow
CONSOLIDATED COMMUNICATIONS	$1,073,621.75	$1,073,621.75	$0.00	Utility Relocation
XCEL ENERGY-FARGO	$1,057,266.02	$1,010,666.02	$46,600.00	Utility Relocation
KPH, INC.	$1,048,093.28	$1,025,640.12	$22,453.16	WP-43D5 Construction
CASS RURAL WATER	$1,023,509.00	$404,841.00	$618,668.00	Utilities and Utility Relocation WP43CD
CLERK OF DISTRICT COURT	$939,044.32	$939,044.32	$0.00	FLDBUY - COF Flood Home Buyouts
TERRACON CONSULTING ENGINEERS	$887,718.41	$887,718.41	$0.00	Materials Testing
CASS COUNTY ELECTRIC COOPERATIVE	$840,957.28	$769,347.25	$71,610.03	Electrical Services
AECOM	$838,725.00	$314,528.06	$524,196.94	Cultural Resources Investigations
BRAUN INTERTEC CORP	$824,592.77	$741,465.73	$83,127.04	Materials Testing
DAKOTA CARRIER NETWORK	$760,065.86	$147,523.86	$612,542.00	Utility Relocation
UNITED STATES ENVIRONMENTAL PROTECTI	$707,886.35	$707,886.35	$0.00	WIFIA LOAN APPLCATION FEE

Data Through Date: Friday, November 26, 2021

Cummulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
ERIK R JOHNSON & ASSOCIATES	$658,709.73	$658,709.73	$0.00	Legal Services
METROPOLITAN COUNCIL OF GOVERNMENTS	$637,390.01	$637,390.01	$0.00	Digital Aerial Photography
DUCKS UNLIMITED	$587,180.00	$587,180.00	$0.00	Wetland Mitigation Credits
AT&T	$586,269.60	$586,269.60	$0.00	Utility Relocation
COMPASS LAND CONSULTANTS, INC	$531,547.50	$492,107.50	$39,440.00	Property Appraisal Services
MASTER CONSTRUCTION CO INC	$528,237.54	$528,237.54	$0.00	Flood Mitigation - Royal Oaks Area - Construction
RED RIVER BASIN COMMISSION	$501,000.00	$501,000.00	$0.00	Retention Projects - Engineering Services
HOFFMAN & MCNAMARA CO.	$489,029.39	$483,034.67	$5,994.72	General Landscaping and Planting (WP-42G)
LINNCO, INC.	$485,221.25	$485,221.25	$0.00	House Demo and Removal
BUFFALO-RED RIVER WATERSHED DISTRICT	$471,568.00	$471,568.00	$0.00	Retention Projects - Engineering Services
MIDCONTINENT COMMUNICATIONS	$462,379.87	$462,379.87	$0.00	Utility Relocation
NUSTAR PIPELINE OPERATING PARTNERSHIP	$459,693.17	$442,844.05	$16,849.12	Utility Relocation
ROBERT TRENT JONES	$440,431.73	$440,431.73	$0.00	Oxbow MOU - Golf Course Consulting Agreement
NDSU BUSINESS OFFICE-BOX 6050	$391,989.00	$356,145.00	$35,844.00	Ag Risk Study Services
BEAVER CREEK ARCHAEOLOGY	$389,029.14	$338,908.20	$50,120.94	Engineering Services
PATCHIN MESSNER VALUATION COUNSELORS	$387,187.50	$335,925.00	$51,262.50	Property Appraisal Services
MBA	$380,636.36	$380,636.36	$0.00	Golf course and pump house - Oxbow Country Club
LARKIN HOFFMAN ATTORNEYS	$348,373.99	$348,373.99	$0.00	Legal Services
MVM CONTRACTING	$339,448.03	$339,448.03	$0.00	Fiber Relocation
AON RISK SERVICES CENTRAL INC	$330,000.00	$241,638.50	$88,361.50	Risk Advisory Services P3 Pre-Award
DFI BRIDGE CORPORATION	$316,211.21	$316,211.21	$0.00	Bridge Construction - Oxbow Country Club
FEDERAL STEEL SUPPLY, INC.	$307,378.00	$307,378.00	$0.00	OHB - 42 inch steel pipe
DIRT DYNAMICS	$301,332.37	$301,332.37	$0.00	HD18A1 - Oakcreek, Copperfield & Univerisy - Demo
MAGELLAN PIPELINE	$285,900.00	$0.00	$285,900.00	Utility Relocation
GARY KILLEBREW	$279,500.00	$279,500.00	$0.00	Project Manager Services - Oxbow Country Club
TURMAN & LANG	$277,139.55	$277,139.55	$0.00	Legal Services
MOODYS INVESTORS SERVICE, INC.	$274,375.00	$274,375.00	$0.00	WIFIA loan fees

Data Through Date: Friday, November 26, 2021

Cummulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
INTEGRA REALTY RESOURCES	$271,062.50	$192,250.00	$78,812.50	Property Appraisal Services
702 COMMUNICATIONS	$266,892.07	$266,892.07	$0.00	Utility Relocation
SPRINT COMMUNICATIONS COMPANY L.P.	$256,409.37	$256,409.37	$0.00	Fiber Optic Relocation for WP-43CD
SWANSON HEALTH PRODUCTS, INC.	$252,949.00	$252,949.00	$0.00	FM1471 - Storm Lift Stations #55 and #56 - Drain 27
WATTS AND ASSOCIATES, INC.	$250,000.00	$161,900.28	$88,099.72	Crop insurance product development services
PR FOR GOOD, INC	$246,975.00	$227,027.28	$19,947.72	Communications Support Services
FREDRIKSON & BYRON, PA	$241,881.28	$241,881.28	$0.00	Lobbying Services
NORTHERN IMPROVEMENT COMPANY	$235,531.95	$235,531.95	$0.00	CR-17 asphalt paving
GRAY PANNELL & WOODWARD LLP	$231,300.68	$231,300.68	$0.00	Legal Services
FORUM COMMUNICATIONS	$216,643.02	$216,643.02	$0.00	Advertising Services
AMERICAN ENTERPRISES, INC.	$200,281.00	$200,281.00	$0.00	Construction/Demolition
CITY OF OXBOW MOU	$200,000.00	$200,000.00	$0.00	Oxbow Park Relocation MOU Amendment
EXECUTIVE MANAGEMENT SYSTEMS, INC.	$196,763.96	$157,763.96	$39,000.00	Executive Coaching
MAPLETON, CITY OF	$179,605.00	$61,416.07	$118,188.93	Prelim Engineering Services
SPRINGSTED INCORPORATED	$178,010.15	$178,010.15	$0.00	Financial Advisor
KADRMAS LEE & JACKSON, INC.	$176,164.00	$176,164.00	$0.00	Engineering Services
MINNKOTA POWER COOPERATIVE	$173,393.07	$73,393.07	$100,000.00	Utility Relocation
SERKLAND LAW FIRM	$170,262.51	$170,262.51	$0.00	Legal services
MUNICIPAL AIRPORT AUTHORITY	$166,981.00	$166,981.00	$0.00	Easement for Airport
SOIL BORINGS	$166,232.50	$166,232.50	$0.00	Soil Borings
DAWSON INSURANCE AGENCY	$157,363.15	$157,363.15	$0.00	Property Insurance - Home Buyouts
PLEASANT TOWNSHIP	$154,317.60	$154,317.60	$0.00	Building Permit Application
UNITED STATES GEOLOGICAL SURVEY	$151,520.00	$151,520.00	$0.00	Water Level Discharge Collection & Stage Gage Installation
PFM PUBLIC FINANCIAL MANAGEMENT	$146,460.00	$146,460.00	$0.00	Financial Advisor
S&P GLOBAL RATINGS	$145,625.00	$145,625.00	$0.00	Ratings Evaluation Service
DAILY NEWS	$141,989.76	$141,989.76	$0.00	Advertising Services
CHAPMAN AND CUTLER	$140,000.00	$140,000.00	$0.00	Legal Services

Cummulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
QUANTUM SPATIAL, INC.	$139,061.35	$139,061.35	$0.00	Digital Aerial Photography
C THREE MEDIA, LLC	$128,910.00	$22,511.70	$106,398.30	Videography Services
SENTRY SECURITY, INC.	$121,212.85	$121,212.85	$0.00	Security Services
ENVENTIS	$115,685.62	$115,685.62	$0.00	Utility Relocation
GE BOCK REAL ESTATE, LLC	$113,690.00	$106,990.00	$6,700.00	Property Appraisal Services
TINJUM APPRAISAL COMPANY, INC.	$113,450.00	$56,500.00	$56,950.00	Property Appraisal Services
OXBOW COUNTRY CLUB	$110,391.68	$110,391.68	$0.00	Golf Course - Oxbow
DAVID CLARDY	$105,215.05	$105,215.05	$0.00	Home buyouts - easement
BANK OF NORTH DAKOTA	$102,713.67	$102,713.67	$0.00	Legal review fees
117 Vendors	**Report Totals:**	**$848,543,940.92**	**$757,391,730.49**	**$91,152,210.43**

Data Through Date: Friday, November 26, 2021

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
BIOGEO	**421**	**195**	**129**	**77%**	**97**	**$993,335**
BIOGEO	292	195	0	67%	97	$992,835
HC	129	0	129	100%	0	$500
CHANNEL	**679**	**462**	**211**	**99%**	**6**	**$90,089,205**
HC	214	3	211	100%	0	$2,402,417
LAP01	130	129	0	99%	1	$6,586,765
LAP02	97	97	0	100%	0	$11,553,186
LAP03	84	79	0	94%	5	$18,503,021
LEGACY	154	154	0	100%	0	$51,043,816
MOBILITY	**123**	**0**	**0**	**0%**	**123**	**$0**
DA_MOB37_MN	51	0	0	0%	51	$0
DA_MOB37_ND	19	0	0	0%	19	$0
DA_MOB38TH	53	0	0	0%	53	$0
NA	**7**	**0**	**7**	**100%**	**0**	**$0**
HC	7	0	7	100%	0	$0
SEAILAND	**312**	**221**	**29**	**80%**	**62**	**$31,398,980**
DRAIN 27	44	34	0	77%	10	$9,864,578
HC	31	1	29	97%	1	$50,981
LEGACY	43	43	0	100%	0	$6,738,472
SE_I29	12	12	0	100%	0	$1,061,872
SE-1	44	43	0	98%	1	$200,152
SE-2A	10	6	0	60%	4	$1,475,775
SE-2B	34	20	0	59%	14	$2,882,800
SE-3	6	5	0	83%	1	$25,000
SE-4	27	7	0	26%	20	$1,494,045
SE-5	7	0	0	0%	7	$1,000
UMA	1	0	0	0%	1	$0
WP26	9	9	0	100%	0	$2,952,107
WP30	8	8	0	100%	0	$0
WP35	36	33	0	92%	3	$4,652,200
WP36	**2**	**0**	**0**	**0%**	**2**	**$2,750**
WRDAM	2	0	0	0%	2	$2,750

Data Through Date: Friday, November 26, 2021

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
WP38	**1,032**	**98**	**356**	**44%**	**578**	**$26,581,388**
BIOGEO	2	2	0	100%	0	$4,500
HC	358	2	356	100%	0	$511,938
LEGACY	1	1	0	100%	0	$750
SE-5	2	0	0	0%	2	$0
UMA	582	93	0	16%	489	$26,064,200
UMA-C	34	0	0	0%	34	$0
UMA-C2	16	0	0	0%	16	$0
UMA-C3	1	0	0	0%	1	$0
UMA-W	24	0	0	0%	24	$0
UMA-W2	6	0	0	0%	6	$0
UMA-W3	6	0	0	0%	6	$0
WP40	**16**	**2**	**10**	**75%**	**4**	**$0**
DRAYTON	6	2	0	33%	4	$0
HC	10	0	10	100%	0	$0
WP42	**66**	**50**	**3**	**80%**	**13**	**$37,850,061**
HC	4	1	3	100%	0	$0
LEGACY	6	6	0	100%	0	$18,014,935
WP42A1A3	8	5	0	63%	3	$376,008
WP42A2	2	2	0	100%	0	$0
WP42C1	4	3	0	75%	1	$0
WP42C2	2	1	0	50%	1	$9,948,373
WP42F1N	2	2	0	100%	0	$27,000
WP42F1S	13	11	0	85%	2	$5,852,463
WP42H1	4	4	0	100%	0	$76,000
WP42H2	8	8	0	100%	0	$2,463,170
WP42I2	13	7	0	54%	6	$1,092,111
WP43	**264**	**116**	**145**	**99%**	**3**	**$78,541,365**
Non-OIN Hard Land Cost	0	0	0	0%	0	$22,598,547
HC	145	0	145	100%	0	$500
LEGACY	4	4	0	100%	0	$2,422,914
WP43A	1	1	0	100%	0	$0
WP43B	6	6	0	100%	0	$675,833
WP43C	74	74	0	100%	0	$45,142,769
WP43D	20	20	0	100%	0	$6,437,831
WP43D5	5	5	0	100%	0	$1,175,055
WP43G	9	6	0	67%	3	$87,915

METRO FLOOD DIVERSION AUTHORITY

Tuesday, December 7, 2021

Data Through Date: Friday, November 26, 2021

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
Totals	**2,922**	**1,144**	**890**	**70%**	**888**	**$265,457,083**

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of November 30, 2021

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
Commercial Relocations - Fargo		16,099,989.70	-	16,300,462.10	(1,100.00)	32,399,351.80
Home Buyouts - Fargo		3,044,054.89	-	521,417.80	-	3,565,472.69
Home Buyouts - Moorhead		495,809.91	-	84,060.80	(8,440.00)	571,430.71
Home Buyouts - Oxbow		29,678,181.97	-	17,142,531.46	(368,167.87)	46,452,545.56
Home Buyouts - Hickson		1,031,674.37	-	120,422.18	-	1,152,096.55
Home Buyouts - Horace		7,602,598.67	-	594,955.88	-	8,197,554.55
17031 50 St SE (Auditors Lot 2 SW 1/4 8-137-49)	11/4/2021	148,203.74		78,045.52		
Home Buyouts - Argusville		215,030.91	-	6,912.57	-	221,943.48
Easements - Fargo		504,716.00	-	-	-	504,716.00
Easements - Hickson		500.00	-	-	-	500.00
Easements - Oxbow		55,500.00	-	-	-	55,500.00
Easements - Diversion Inlet Control Structure		4,234,581.90	-	-	-	4,234,581.90
Easements - Piezometer		1,500.00	-	-	-	1,500.00
Easements - Minesota		1,542,370.79	-	-	-	1,542,370.79
Farmland Purchases		201,933,186.04	-	3,895,866.64	(1,460,296.28)	93,075,514.31
Land Purchases		91,792,089.36	-	1,986,573.09	(730,148.14)	93,075,514.31
Auditor's Lot Three (3) of the Southwest Quarter (SW¼) of Section Thirty-four (34), Township One Hundred Thirty-eight (138) North, Range Forty-nine (49) West	2/11/2021	259,591.06	-	-	-	
Right of way Easment for part of the Northeast Quarter (NE1/4) of Section 13, Township 138 North, Range 50 West of the 5th Principal Meridian,	2/11/2021	1,011,265.00	-	-	-	
Part of the North Half of the North Half (N1/2N1/2) of Section 24, Township 138 North, Range 50 West of the 5th Principal Meridian AND That part of the North Half of the Northeast Quarter (N1/2NE1/4) of Section 24, Township 138 North, Range 50 West of the 5th Principal Meridian	2/11/2021	948,000.00	-	-	-	

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of November 30, 2021

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
Right of way easement that part of the Southeast Quarter (SE1¼) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian	2/11/2021	64,000.00	-	-	-	
Lot 57 Oxbow Country Club Estates	2/11/2021	48,643.12	-	-	-	
That part of the Southeast Quarter (SE1/4) of Section 14, Township 139 North Range 50 West of the 5th Principal Meridian AND That part of the Southwest Quarter (SW¼) of Section 14, Township 139 North Range 50 West of the 5th Principal Meridian	2/11/2021	1,507,100.00	-	-	-	
That part of Auditor's Lot 5 of the Southeast Quarter (SE1/4) of Section 10, Township 139 North, Range 50 West of the 5th Principal Meridian	2/11/2021	22,000.00	-	-	-	
That part of the Southeast Quarter (SE1/4) of Section 35, Township 142 North, Range 49 West of the 5th Principal Meridian AND that part of the Southeast Quarter (SE1/4) of Section 35, Township 142 North, Range 49 West of the 5th Principal Meridian AND that part of the Southeast Quarter of Section 17, Township 141 North, Range 49 West of the 5th Principal Meridian	3/4/2021	870,684.48	-	-	-	
That part of the Southeast Quarter of the Northwest Quarter, that part of Government Lot 4 and that part of Government Lot 5, All in Section 6,Township 137 North, Range 49 West of the 5th Principal Meridian AND That part of Government Lot 6 of Section 6, Township 137 North, Range 49 West of the 5th Principal Meridian AND That part of the Southwest Quarter of the Southeast Quarter of Section 1,Township 137 North, Range 50 West of the 5th Principal Meridian AND That part of the Southeast Quarter of the Southeast Quarter of Section 1,Township 137 North, Range 50 West of the 5th Principal Meridian AND That part of Government Lot 7 of Section 6, Township 137 North, Range 49 West of the 5th Principal Meridian AND That part of the Southeast Quarter of the Northeast Quarter of Section 6, Township 137 North, Range 49 West of the 5th Principal Meridian AND That part of Government Lot 1 and that part of Government Lot 2, Section 6,Township 137 North, Range 49 West of the 5th Principal Meridian AND That part of Government Lot 3 of Section 6, Township 137 North, Range 49 West of the 5th Principal Meridian AND That part of Government Lot 3 of Section 6, Township 137 North, Range 49 West	5/6/2021	2,502,659.00	-	-	-	
The South Half of the Southeast Quarter of Section 28, Township 138 North, Range 49 West of the Fifth Principal Meridian	6/3/2021	2,113,349.06	-	-	-	
Government lot 3 of Section one Township 136, North Range 49, Wolverton Township	6/3/2021	556,336.63	-	17,399.98	-	
SW Corner of the NW quarter section of Section 6 Township 137 North of Range 54 West	6/3/2021	5,203.86	-	-	-	
NW Quarter of Section 33 Township 139, North Range 49 West of the 5th Principle Meridian EXCEPT Auditors Lot 1	6/3/2021	2,125,007.49	-	-	-	
That part of Government Lot 4 in Section 30, Township 137 North, Range 48 West of the Fifth Principal Meridian	8/5/2021	190,088.42				
A tract of land in the Northwest Quarter of the Northeast Quarter of Section Nine, Township One Hundred Thirty-seven, Range Forty-nine West of the Fifth Principal Meridian	8/5/2021	199,525.83				

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of November 30, 2021

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
All of Job Third Subdivision, a replat of Block One, Job Second subdivision, a part of the NE quarter section 35, Township 137 North, Range 49 West Less Lot One, Block one	8/5/2021	347,242.20				
Lots 11 and 12 in block 2 of Rivershore Subdivision	8/5/2021	32,099.84				
That part of the SW quarter of Section 20, Township 141 North, Range 49West of the 5th Prinicpal Meridian	8/5/2021	5,150.00				
The west half of the NE Quarter Section 33 Township 138 North of Range 49 West of the 5th Principal Meridian	9/9/2021	1,404,768.38				
The North 435.60 feet of the West 400 feet of the Northwest Quarter of the Northeast Quarter of Section 33, in Township 138 North, of Range 49, West of the Fifth Principal Meridian	9/9/2021	616,981.72				
Part of the Southeast Quarter (SE1/4) of Section 6, T137N, R48W, 5th P.M	9/9/2021	511,331.57				
The West 20 feet of the South 30 feet of the SW quarter of the NW quarter of Section 27, Township 138, North Range 49 West of the 5th Principal Meridian	11/4/2021	639.50				
That part of the Northeast Quarter of the Northeast Quarter of Section 11, Township 137 North, Range 50 West of the 5th Principal Meridian	11/4/2021	5,148.31				
Part of the Southeast Quarter (SE1/4), Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian	11/4/2021	35,368.39				
Auditors Lot 1, stuated in the NW Quarter of Section 33 Township 138, Range 49	12/2/2021	460,000.00				
The West 60.00 feet of the Southwest Quarter of Section 28, Township 138 North, Range 49 West of the Fifth Principal Meridian AND That part of the Southwest Quarter of Section 28, Township 138 North, Range 49 West of the Fifth Principal Meridian AND That part of the Southwest Quarter of Section 28, Township 138 North, Range 49 West of the Fifth Principal Meridian	12/2/2021	1,176,650.00				
Auditors Lot 3 of the SW Quarter, Section 30, Township 138N Range 49 W	12/2/2021	2,064,800.00		83,337.18		
That part of Government Lot 9 of the South Half of the Northwest Quarter of Section 6, Township 137 North, Range 48 West of 5th Principal Meridian	12/2/2021	40,103.86				
That part of the Northwest Quarter of the Southeast Quarter of Section 33,Township 138 North, Range 49 West of the Fifth Principal Meridian AND That part of the Southwest Quarter of the Southeast Quarter of Section 33, Township 138 North, Range 49 West of the Fifth Principal Meridian AND That part of the Northwest Quarter of the Southeast Quarter of Section 33,Township 138 North, Range 49 West of the Fifth Principal Meridian	12/2/2021	201,160.00				
That part of the Northeast Quarter of Section 29, Township 138 North, Range 49 West of the Fifth Principal Meridian AND That part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 138 North, Range 49 West of the Fifth Principal	12/2/2021	1,555,950.00				
The South 1610.00 feet of the West 60.00 feet of the Northwest Quarter of Section 28, Township 138 North, Range 49 West of the Fifth Principal Meridian AND That part of the Northwest Quarter of Section 28, Township 138 North, Range 49 West of the Fifth Principal Meridian	12/2/2021	686,800.00				
That part of the Southwest Quarter of the Southeast Quarter of Section 29, Township 138 North, Range 49 West of the Fifth Principal Meridian	12/2/2021	368,300.00				

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of November 30, 2021

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
Part of Government Lot 7 situated in the south hald of the south half of section 6, Township 137 North, Rage 48 West	11/4/2021			454.54		
65.09 AC W1/2 OF SW1/4 LESS R/W & LESS THE FOLL: COMM AT IRON MON MARK THE SW COR OF SEC 33 THN ON AN ASSM BRG DUE N ON & ALG W LN OF SEC 33 FOR 296.60' TO PT OF BEG,THN CONT N ALG W LN OF SEC 33 FOR 666.57' THN E A DIST OF 666.57' AND 9.20 AC PT W1/2 OF SW1/4 DESC AS FOLL: COMM AT IRON MONUMENT MARKING THE SW CORN OF SEC 33 THEN ON AN ASSUMED BEAR ON DUE N ON & ALG W LN OF SEC 33 FOR 296.60' TO THE PT OF BEG. THEN CONT N AG W LN OF SEC 33 FOR 666.57' THEN	11/4/2021			80,000.00		
		266,439,695.15	-	38,666,629.43	(1,838,004.15)	303,268,320.43
					Property Management Expense	3,850,634.03
					Grand Total	**$ 307,118,954.46**

FM Metropolitan Area Flood Risk Management Project
In-Town Levee Work
as of November 30, 2021

Vcode #	Vendor Name	Descriptions	Contract Amount	Amount Paid
V02801	Industrial Builders	WP42.A2 - 2nd Street North Pump Station	$ 8,696,548.46	$ 8,696,548.46
V02802	Terracon Consulting	WP-42 (In Town Levees) Materials Testing	$ 884,070.41	$ 884,070.41
V02803	Consolidated Communications	2nd Street Utility Relocation	$ 1,178,781.73	$ 1,178,781.73
V02804	702 Communications	2nd Street Utility Relocation	$ 266,892.07	$ 266,892.07
V02805	ICS	WP-42A.1/A.3 - 4th St Pump Station & Gatewell and 2nd St Floodwall S	$ 18,365,229.13	$ 18,365,229.13
V02806	HMG	WP42 - Services During Construction	$ 6,513,429.90	$ 6,513,429.90
V02807	CCJWRD	In-Town Levee Work	$ 5,886,140.36	$ 5,886,140.36
V02808	City of Fargo	Relocation of fiber optic along 2nd Street North	$ 397,906.52	$ 397,906.52
V02809	AT & T	2nd Street Utility Relocation	$ 586,269.60	$ 586,269.60
V02811	Xcel Energy	2nd Street & 4th Street Utility Relocations	$ 769,791.73	$ 769,791.73
V02812	Industrial Builders	WP-42F.1S - 2nd Street North Floodwall, South of Pump Station	$ 16,720,591.15	$ 16,720,591.15
V02813	Landwehr Construction	Park East Apartments Demolition	$ 1,169,651.74	$ 1,169,651.74
V02814	Primoris Aevenia	2nd Street Utility Relocation	$ 16,230.00	$ 16,230.00
V02815	Centurylink Communications	2nd Street Utility Relocation	$ 2,660,937.92	$ 2,660,937.92
V02816	Landwehr Construction	WP-42C.1 - In-Town Levees 2nd Street/Downtown Area Demo	$ 907,999.08	$ 907,999.08
V02817	Reiner Contracting, Inc	WP-42H.2 - El Zagal Area Flood Risk Management	$ 1,599,646.21	$ 1,599,646.21
V02818	Industrial Builders	WP-42I.1 - Mickelson Levee Extension	$ 738,880.50	$ 738,880.50
V02819	Industrial Builders	WP42F.1N - 2nd Street North	$ 13,362,906.82	$ 13,362,906.82
V02820	CH2M Hill	WP42 - Construction Management Services	$ 851,775.30	$ 851,775.30
V02821	Hough Incorporated	WP42F.2 - 2nd Street South	$ 1,639,524.33	$ 1,639,524.33
V02822	City of Fargo	COF - 2016 O&M on Lifts	$ 184,958.12	$ 184,958.12
V02823	Hoffman & McNamara	WP-42G General Landscaping and Planting	$ 489,029.39	$ 483,034.67
V02824	City of Fargo	COF – In-Town Flood Protection Debt Payments	$ 23,989,850.00	$ 23,989,850.00
V01703	Various	In-Town Property Purchases	$ 39,409,623.22	$ 38,192,183.71
V02825	Industrial Builders	WP-42E - 2nd Street South and Main Avenue Flood Mitigation	$ 8,632,103.73	$ 8,625,353.73
V02826	City of Fargo	In-Town Levee Maintenance	$ 8,823.82	$ 8,823.82
V054XX	City of Fargo	In-Town Complementary Work - Reimbursements	$ 39,289,243.78	$ 39,289,243.78
			$ 195,216,835.02	$ 193,986,650.79

Fargo-Moorhead Metropolitan Area Flood Risk Management Project
State Water Commission Funds Reimbursement Worksheet
Fargo Flood Control Project Costs - HB1020 & SB2020

Time Period for This Request: October 1, 2021 - October 31, 2021

Drawdown Request No: 119	
Requested Amount:	**$ 5,734,800.64**
Total Funds Expended This Period:	11,469,601.27
SB 2020 Matching Requirements	50%
Total Funds Requested at 50% Match	5,734,800.64
Total Funds Requested:	**5,734,800.64**

STATE AID SUMMARY:		
Summary of State Funds Appropriated		
Appropriations from 2009 Legislative Session		$ 45,000,000
Appropriations from 2011 Legislative Session		30,000,000
Appropriations from 2013 Legislative Session		100,000,000
Appropriations from 2015 Legislative Session		69,000,000
Appropriations from 2015 Legislative Session - Interior Flood Control		60,000,000
Appropriations from 2017 Legislative Session		66,500,000
Appropriations from 2019 Legislative Session		44,000,000
Anticipated appropriations to be deferred from 2019 Legislative Session	22,500,000	
Anticipated appropriations to be funded in 2021 Legislative Session	66,500,000	
Anticipated appropriations to be funded in 2023 Legislative Session	66,500,000	
Anticipated appropriations to be funded in 2025 Legislative Session	66,500,000	
Anticipated appropriations to be funded in 2027 Legislative Session	66,500,000	
Anticipated appropriations to be funded in 2029 Legislative Session	47,000,000	
Total State Funds	335,500,000	414,500,000
Less: Payment #1 through #35 - City of Fargo		(55,510,209.00)
Less: Payment #1 - Cass County		(136,039.36)
Less: Payment #1 through #7 - Interior Flood Control		(60,000,000.00)
Less: Payment #1 through #28 - FM Diversion Authority		(38,049,107.00)
Less: Payment #29 through #115 - FM Metro Area Flood Risk Management Project		(209,838,261.15)
Less: Payment #116 - FM Metro Area Flood Risk Management Project		(5,862,311.78)
Less: Payment #117 - FM Metro Area Flood Risk Management Project		(5,543,347.82)
Less: Payment #118 - FM Metro Area Flood Risk Management Project		(2,268,176.69)
Less: Payment #119 - FM Metro Area Flood Risk Management Project		(5,734,800.64)
Total Funds Reimbursed		(382,942,253.44)
Total State Fund Balances Remaining		**31,557,746.57**

LOCAL MATCHING FUNDS SUMMARY:	
Matching Funds Expended To Date - FM Metro Area Flood Risk Management Project	$ 101,279,533
Less: Match Used on Payment #1 through #35 - City of Fargo	(41,506,620)
Less: Match used on Payment #1 - Cass County	(136,039)
Less: Match Used on Payment #1 - 114 - FM Metro Area Flood Risk Management Project	(59,636,874)
Balance of Local Matching Funds Available	**$ (0)**

METRO FLOOD DIVERSION AUTHORITY

Diversion Authority Finance Committee Meeting

December 15, 2021

Financial Report

Joel Paulsen

Overall Status – Level 1 Summary

METRO FLOOD DIVERSION AUTHORITY

Program Categories Non-Federal Portion	Estimate at Completion (EAC) Millions	Overall Cost to Date As of: 11/26/2021	FY2021 Annual Budget (Millions)	FY2021 Cost To Date As of: 11/26/2021
P3 Support Services	$85.51	$35.05	$15.34	$8.99
Milestone Payments to the Developer	$763.14	$3.98	$20.38	$2.49
Fargo In-Town Projects	$92.90	$90.93	$1.12	$1.00
Fargo- River Stage 37' Projects	$99.40	$39.30	$34.13	$17.10
Moorhead- River Stage 37' Projects	$43.80	$0.00	$0.00	$0.00
Lands and Impacted Property Mitigation	$416.43	$306.37	$69.10	$40.47
Engineering, Legal, Financial	$200.37	$131.20	$24.72	$14.28
DA Construction Contingency	$160.85	$0.00	$0.00	$0.00
3rd Party MOU Mitigation	$27.32	$37.88	$43.57	$37.02
Net Current Interest / Financing Fees Paid	$27.95	$0.00	$0.00	$0.00
Designated P3 Channel Bridges	$23.82	$0.00	$0.00	$0.00
Designated Options and Easements after 2024	$83.37	$0.00	$0.00	$0.00
Designated 37' River Stage	$20.33	$0.00	$0.00	$0.00
DA Payment to USACE	$67.39	$53.16	$0.00	$0.00
Other/Mitigation Construction	$72.56	$29.27	$3.57	$2.39
Financing Costs				
Short Term Loan Payments	$329.87	$36.13	$7.99	$6.31
Non-Federal Totals	**$2,515.00**	**$763.28**	**$219.91**	**$130.05**
Less Outstanding Accounts Payable		**($3.08)**		
Actual Expenditure To Date		**$760.19**		

Overall Status – Level 2 Detail

METRO FLOOD DIVERSION AUTHORITY

Schedule Budget Categories Non-Federal Portion	Overall Cost to Date (Millions) 11/26/2021	FY2021 Annual Budget	FY2021 Cost To Date 11/26/2021
Diversion Channel & Assoc. Infrastructure	**$39.04**	**$35,720,000**	**$11,477,754**
Management, Legal, Financial, Procurement	$35.05	$15,340,000	$8,985,909
Channel - Construction and Mitigation	$3.98	$20,380,000	$2,491,845
Southern Embankment & Assoc. Infrastructure	**$56.54**	**$5,460,000**	**$528,541**
WP-26 Diversion Inlet	$0.07	$0	$0
WP-27 Red River - West Embankment	$0.00	$0	$0
WP-29 Red River - East Embankment	$0.00	$0	$0
WP-30 Wild Rice River Control Structure	$0.00	$0	$0
WP-31 I-29 Grade Raise	$2.86	$230,000	$226,843
WP-33 CR81 Bridge	$0.00	$0	$0
WP-35 Red River Control Structure	$0.00	$0	$0
WP-46 SEAI / UMA Utility Relos	$0.46	$5,230,000	$301,698
WP-47 Contracted Utility Relocations	$0.00	$0	$0
WP-51 - Recreation SEAI (Metro-COG)	$0.00	$0	$0
USACE Local Share \ Management Oversight	$53.16	$0	$0

Overall Status – Level 2 Detail

METRO FLOOD DIVERSION AUTHORITY

Schedule Budget Categories Non-Federal Portion	Overall Cost to Date (Millions) 11/26/2021	FY2021 Annual Budget	FY2021 Cost To Date 11/26/2021
Other Mitigation Projects	**$65.31**	**$41,849,832**	**$39,087,518**
WP-36 Wild Rice Dam Mitigation	$0.00	$0	$0
WP-40 Drayton Dam Mitigation	$0.00	$0	$0
WP-41 Richland/Wilkin County JPA	$35.25	$35,000,000	$35,250,000
WP-43 Oxbow-Hickson-Bakke	$27.88	$3,509,832	$2,365,389
WP-49 Cultural Remediation	$0.00	$0	$0
WP-50 Phase II Demo	$1.89	$2,200,000	$1,187,074
WP-52 Township & City MOU Agreements	$0.29	$1,140,000	$285,055
In-Town Flood Protection	**$130**	**$35,248,600**	**$18,104,691**
WP-42 In-Town Levees	$90.93	$1,120,000	$1,002,755
Fargo- River Stage 37' Projects	$39.30	$34,128,600	$17,101,936
Moorhead- River Stage 37' Projects	$0.00	$0	$0
Enabling Work / Other	**$1**	**$62,000**	**$22,866**
WP-28 - Cass County Road 16 and 17 Bridge	$1.39	$62,000	$22,866
Land Acquisition & Mitigation	**$306**	**$69,095,810**	**$40,472,972**
Management, Legal, Financial, Procurement	$32.41	$16,000,000	$6,692,100
Diversion Channel & Assoc. Infrastructure	$90.09	$7,931,810	$18,351,848
Southern Embankment & Assoc. Infrastructure	$31.40	$18,924,000	$12,324,762
Mitigation & Assoc. Infrastructure (OHB)	$87.03	$500,000	$198,258
WP-38 Upstream Staging	$27.42	$25,740,000	$2,906,004
In-Town Flood Protection	$38.02	$0	$0

Overall Status – Level 2 Detail

METRO FLOOD DIVERSION AUTHORITY

Schedule Budget Categories Non-Federal Portion	Overall Cost to Date (Millions) 11/26/2021	FY2021 Annual Budget	FY2021 Cost To Date 11/26/2021
Engineering & Design Fees	**$46.4**	**$7,025,000**	**$2,708,378**
Management, Legal, Financial, Procurement	$9.07	$3,200,000	$1,138,692
Work-In-Kind Programs (WIK) Studies	$13.97	$1,480,000	$1,029,130
Indicative Design	$7.13	$1,000,000	$247,460
Land, Easements, ROW, Relocation & Disposal	$0.46	$100,000	$30,723
Permitting	$5.17	$1,200,000	$262,373
Certification	$0.00	$0	$0
FMDA Detention Funding	$0.72	$0	$0
Other Mitigation Projects	$9.85	$45,000	$0
Enabling Work	$0.00	$0	$0
Program Support Services	**$81.72**	**$17,331,080**	**$11,272,295**
Management, Legal, Financial, Procurement	$80.39	$16,035,000	$10,508,075
Diversion Authority Operations	$1.32	$1,296,080	$764,220
Contingency	**$0**	**$0**	**$0**
Debt Service	$36.13	$7,990,168	$6,305,088
Maintenance	$0.18	$130,000	$73,196
Report Totals	**$763.28**	**$219,912,490**	**$130,053,299**
Less Outstanding Accounts Payable	**-$3.08**		
Actual Expenditure To Date	**$760.19**		

Diversion Authority Operations – Budget Summary

METRO FLOOD DIVERSION AUTHORITY

Expense Category	FY2021 Budget	Cost to Date	Remining Budget
Salary	$854,563	$590,335	$264,228
Benefits	$217,661	$158,325	$59,336
Office	$79,011	$66,859	$12,151
Other	$144,845	$27,953	$116,892
Totals	$1,296,080	$843,472	$452,608

METRO FLOOD DIVERSION AUTHORITY

Diversion Authority Finance Committee Meeting

December 15, 2021

Contracting Actions

Joel Paulsen

DA Board Approval Contract Actions (Action)

Description	Company	Budget/ Estimate ($)
WP50F Agreement – Revision 1 – Capping Cass Rural Water facilities for WP50F	Cass Rural Water	$12,840.00

Executive Director Contracting Recommendation

Date: 11/5/2021

RECOMMENDATION FOR ACTION:

The Executive Director has reviewed and recommends approval of the following Contract Action(s).

SUMMARY OF CONTRACTING ACTION:

Per the contract review and approval procedures that were adopted by the Diversion Authority on November 10, 2016 and amended February 11, 2021, the Owner's Program Management Consultant (PMC) or Engineer of Record (EOR) is directed to prepare task orders and task order amendments for existing Master Services Agreements (MSA) and submit them to the Executive Director for review and action. If the task order or amendment is greater than $200,000, the Executive Director's recommendation shall be submitted to the Finance Committee for review and action, and the Finance Committee shall submit their recommendation to the Diversion Authority Board for approval.

The PMC has prepared the following Contract Action(s):

Cass Rural Water

WP50F Agreement-Rev1

Capping Cass Rural Water facilities for WP50F Project. $ 12,840.00

BACKGROUND AND DISCUSSION:

CH2M, now Jacobs, has served as the Program Management Consultant (PMC) to the OWNER since November of 2011, with primary responsibilities to plan and implement the Fargo-Moorhead Area Diversion Project (the PROJECT). As such, the OWNER and CONSULTANT have agreed to enter into a Task Order focused on managing and reporting on the various aspects of the PROJECT. The PMC reports directly to the Executive Director.

The purpose of this Agreement is for Cass Rural Water to provide (the "Services") of capping Cass Rural Water facilities for WP50F.

The Services are subject to the Terms referenced in the WP50F Agreement.

The table below summaries the contracting history for this task order and the current contracting action.

Summary of Contracting History and Current Contract Action:

Original Agreement or Amendment	Budget Change ($)	Previous Budget Cost ($)	Revised Project Cost ($)	Project Start	Project Completion	Comments
WP50F Agreement	0	12,840.00	0	11/01/2021	06/30/2022	Original.

Summary of Budget Allocation – Year 2021

Original Agreement or Amendment	Cost account code	Total cost 2021 ($)	Budget Allocated 2021 ($)	Budget Remaining 2021 ($)	Comments
WP50F	CN-4725	4,620.00	60,000.00	28,250.00	Capping facilities. Assume 3 will be done in 2021 and remaining 5 in 2022. Budget remaining calculations as follows: Original 2021 budget of $60,000 – (paid to date $23,130) –

Original Agreement or Amendment	Cost account code	Total cost 2021 ($)	Budget Allocated 2021 ($)	Budget Remaining 2021 ($)	Comments
					(this amendment $4,620) = $28,250 which will be returned to the program.
Total for 2021	CN-4725	4,620.00	60,000.00	32,250.00	

Summary of Budget Allocation – Year 2022

Original Agreement or Amendment	Cost account code	Total cost 2021 ($)	Budget Allocated 2021 ($)	Budget Remaining 2021 ($)	Comments
WP50F	CN-4725	8,220.00	8,220.00	0	Capping facilities. Assume the 5 remaining locations will be done in 2022.
Total for 2022	CN-4725	8,220.00	8,220.00	0	

The PMC prepared this contracting action, and feels the information is accurate, complete, and ready for Executive Director review.

ATTACHMENT(S):

1. WP50F Agreement

Prepared by: Program Management Consultant

Ian Joynes

Ian Joynes
Jacobs

11/05/2021
Date

Submitted by:

Joel Paulsen

Joel Paulsen
Diversion Authority Executive Director

Concur: X *Non-Concur:*

Cc: Technical Advisory Group

- Nathan Boerboom, City of Fargo Engineer/Diversion Authority Project Manager
- David Overbo, Clay County Engineer
- Jason Benson, Cass County Engineer
- Robert Zimmerman, Moorhead City Engineer
- Matt Stamness, Assistant Cass County Engineer/Diversion Authority Project Manager
- Dustin Scott, West Fargo City Engineer
- Kris Bakkegard, PE, FMDA Director of Engineering

UTILITY RELOCATION AGREEMENT

(PROPERTY STRUCTURE MITIGATION - PHASE 50F (WP-50 F)-REV1

THIS UTILITY RELOCATION AGREEMENT (the "Agreement") is made and entered into this 16th day of December, 2021 (the "Effective Date") by and between the Metro Flood Diversion Authority, a North Dakota political subdivision, whose principal address is 207 4th St. N., Suite A, Fargo, North Dakota 58102 (the "Authority"); and Cass Rural Water Users District, a North Dakota political subdivision, whose principal address is 131 Maple St., Kindred, North Dakota 58051 ("Cass Rural") (collectively, the Authority and Cass Rural are referred to as the "Parties").

RECITALS

WHEREAS the Authority is in the process of planning one (1) property structure mitigation project known as PROPERTY STRUCTURE MITIGATION – PHASE 50 F (WP-50 F), (referred to as the "Property Structure Mitigation Project"); and

WHEREAS, the Property Structure Mitigation Project consist of property demolition at various locations and includes the demolition or removal of homes, roadway, out buildings, foundations, walkways, driveways, landscaping, and other components in Cass County, North Dakota; and

WHEREAS, construction of the Property Structure Mitigation Projects will require seven (7) Cass Rural water lines to be capped and may require the abandonment or removal of additional service lines and related appurtenances (the "Cass Rural Facilities"), to accommodate the Property Structure Mitigation Project (the "Cass Rural Project"); and

WHEREAS, Cass Rural has agreed to construct the Cass Rural Project, subject to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

AGREEMENT

1. **The Cass Rural Project**. Cass Rural agrees and acknowledges that it will cap eight (8) Cass Rural Facilities and related appurtenances and, if necessary, will abandon or remove service lines and related appurtenances to accommodate the Property Structure Mitigation Project, and to otherwise construct the Cass Rural Project.

2. **Right of Way**. If necessary and to the extent possible, Cass Rural will relocate the Cass Rural Facilities within any of Cass Rural's existing easements. In the event Cass Rural cannot

relocate any portion of the Cass Rural Facilities within the confines of any of Cass Rural's existing easements, Cass Rural will secure new or additional easement rights to accommodate the relocation of the Cass Rural Facilities as necessary to accommodate the Cass Rural Project.

3. **Reimbursement**. Cass Rural's estimated cost of the Cass Rural Project, including all costs associated with engineering, construction, administration, legal, permits, and all other costs is not to exceed $12,840.00; attached as **Exhibit A** is a copy of Cass Rural's cost estimate for the Cass Rural Project. Cass Rural shall submit an invoice upon completion of the work and within thirty (30) days of receipt of the invoice, the Authority will remit payment to Cass Rural. In the event the costs of the Cass Rural Project exceed $12,840.00, Cass Rural will provide evidence of the additional costs to the Authority and the Authority will reimburse Cass Rural for all reasonable costs above the original cost estimate attached as **Exhibit A**. Cass Rural acknowledges any payments made by the Authority under this Agreement represent full and final payment to Cass Rural regarding the Cass Rural Project, and that Cass Rural is not entitled to any further payments under any state or federal statute, constitutional provision, rule, regulation, or other legal authority.

4. **Invoicing and Payment**.

(a) Cass Rural shall deliver invoices to the Authority within thirty (30) days of receipt of the invoice. Cass Rural must review each invoice before it is sent to the Authority to determine its accuracy and to ensure the invoice complies with the requirements in this Agreement. Each invoice will be entered into the Aconex System and processed by the Authority for the following month.

(b) Cass Rural must submit each original invoice to:

Metro Flood Diversion Authority
c/o Kris Bakkegard
BakkegardK@fmdiversion.gov

and

APInvoicesFMDiv@ch2m.com

(c) Cass Rural's invoices must be detailed and precise. Cass Rural's invoices must clearly indicate fees and expenses for the current billing period month and include at least the following information:

(i) Cass Rural's name and address;
(ii) Cass Rural's federal employer identification number;
(iii) Unique invoice number;
(iv) Billing period;

(v) Description of each activity performed for each day in which services were performed;
(vi) Work order number associated with each activity;
(vii) Name, billing rate, and hours worked by each person involved in each activity;
(viii) Total amount of fees and costs "billed to date," including the preceding months;
(ix) Preferred remittance address, if different from the address on the invoice's coversheet; and
(x) All of the work performed during that billing period.

(d) After the Authority receives Cass Rural's invoice, the Authority will either process the invoice for payment or give Cass Rural specific reasons, in writing within fifteen (15) business days, why part or all of the Authority's payment is being withheld and what actions Cass Rural must take to receive the withheld amount.

(e) In the event of disputed billing, only the disputed portion will be withheld from payment, and the Authority shall pay the undisputed portion. The Authority will exercise reasonableness in disputing any bill or portion thereof. Interest will accrue on any disputed portion of the billing determined to be due and owing to Cass Rural.

(f) Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, Cass Rural must credit any payment in error from any payment that is due or that may become due to Cass Rural under this Agreement.

(g) The Authority will be charged interest at the rate of one-half percent (1/2%) per month, or that permitted by law if lesser, on all past-due amounts starting thirty (30) days after receipt of invoice. Payments will first be credited to interest and then to principle.

(h) If the Authority fails to make payments in full within thirty (30) days of the date due for any undisputed billing, Cass Rural may, after giving seven (7) days' written notice to the Authority, suspend services under this Agreement until paid in full. In the event of suspension of services, Cass Rural will have no liability to the Authority for delays or damages caused by the Authority because of such suspension.

5. **Notice**. All notices under the Agreement will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier services, with delivery receipt requested; or (d) sent by facsimile or e-mail communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses. All notices will be marked as

regarding PROPERTY STRUCTURE MITIGATION – PHASE 50F (WP-50F), and will be delivered to the following addresses:

If to the Authority: Metro Flood Diversion Authority
Attn: Executive Director
207 4th St. N., Suite A
Fargo, North Dakota 58102

If to Cass Rural: Cass Rural Water Users District
Attn: Jerry Blomeke
P.O. Box 98
Kindred, North Dakota 58051

6. **WIFIA Loan**. Cass Rural is a political subdivision of the State of North Dakota. In order to finance the design, construction, operation, and maintenance for comprehensive flood protection in the Fargo-Moorhead metropolitan area, the Authority will seek a loan through the Water Infrastructure Finance and Innovation Act ("WIFIA") program. For the purposes of a WIFIA loan obtained by the Authority, Cass Rural will undertake all work related to Cass Rural Project.

7. **Conflict with Memorandum of Understanding Regarding Utility Relocation Along the Diversion Channel**. Nothing in this Agreement is intended to supersede, amend, or otherwise modify the Memorandum of Understanding regarding utility relocations along the Diversion Channel by and between the Authority and Cass Rural.

8. **Damages**. The Authority and Cass Rural will each be responsible for any damages including any environmental liabilities, caused by the acts or omissions of their own contractors, subcontractors, consultants, employees, agents, or representatives. The Authority will not be liable to Cass Rural for any damages arising out of or related to the Cass Rural Project, with the exception of damages arising out of the Authority's sole negligence or intentional misconduct.

9. **Subcontractors**. Cass Rural is solely responsible for completing the Cass Rural Project in an adequate and timely manner. However, to the extent Cass Rural wishes to retain any contractors or subcontractors to perform any portion of the Cass Rural Project, Cass Rural is solely responsible for any contractor's or subcontractor's work, including the adequacy and the timeliness of any contractor's or subcontractor's work, and including all acts and omissions of any contractor or subcontractor. Cass Rural is fully responsible for scheduling and coordinating the work of any contractor or subcontractor, and Cass Rural is solely responsible for paying or compensating any contractor or subcontractor. The Authority will not have any contractual relationship with any of Cass Rural's contractors or subcontractors.

10. **Cooperation**. The Parties agree to cooperate to complete and accomplish the purposes and terms of this Agreement, and to execute any documents necessary, including any releases and easements.

11. **Agency**. The Parties agree this Agreement does not create any agency, partnership, joint venture, or any other relationship between the Parties, and that Cass Rural is solely responsible for its own acts or omissions regarding the Cass Rural Project.

12. **Compliance with Laws**. Cass Rural will comply with all applicable laws, ordinances, rules, and regulations of all federal, state, county, and municipal governments, and any other applicable governmental entities or political subdivisions, and their appropriate departments, commissions, boards, and officers, which may be applicable to the Cass Rural Project. In addition, Cass Rural will obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

13. **Entire Agreement**. This Agreement, and any subsequent amendments, constitutes the entire agreement between the Parties regarding the Cass Rural Project or the Property Structure Mitigation Project and all other matters described in this Agreement.

14. **Binding Effect**. The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the Parties' successors and assigns.

15. **Representation**. The Parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other Parties.

16. **Survival of Agreement**. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable; the Parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Agreement is invalid, illegal, or unenforceable.

17. **Force Majeure**. No Party will be liable to another Party during any period in which its performance is delayed or prevented, in whole or in part, by circumstances beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike, or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Parties of the same.

18. **Successors**. The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the Parties' successors and assigns.

19. **Governing Law**. This agreement will be construed in accordance with and governed by North Dakota law.

20. **Assignment**. Neither Party may transfer or assign this Agreement or any rights or obligations under this Agreement without the express written consent of the other Party.

21. **Amendments**. Any modifications or amendments of this Agreement must be in writing and signed by both Parties to this Agreement.

22. **Interpretation**. This Agreement will be construed as if prepared by both Parties.

23. **Headings**. Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

24. **Effective Date**. This Agreement will become effective on the date of execution by the last Party to sign.

25. **Electronic Signature**. Electronic signatures to this Agreement shall be as valid as an original signature of the Authority and Cass Rural and shall be valid to bind the Parties to this Agreement. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

(Signatures appear on the following pages.)

IN WITNESS WHEREOF, the Parties executed this Agreement on the date written above.

AUTHORITY:

Metro Flood Diversion Authority

_____

Michelle (Shelly) Carlson, Chair

_____

Joel Paulsen, Executive Director

ATTEST:

_____

Dawn Lindblom, Executive Assistant

CASS RURAL:

Cass Rural Water Users District

_____
Jerry Blomeke, General Manager
Cass Rural Water Users District

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2021, before me, a Notary Public within and for said County and State, personally appeared Jerry Blomeke, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that that person executed the same.

_____
Notary Public

(SEAL)

METRO FLOOD DIVERSION AUTHORITY

Diversion Authority Finance Committee Meeting

December 15, 2021

2022 Final Cash Budget

Joel Paulsen

METRO FLOOD DIVERSION AUTHORITY

Schedule Budget Categories	FY 2021 Budget	FY 2021 Actual Cost thru Sept 2021	FY 2021 Estimate to Completion (ETC)	FY 2021 Estimate at Completion (EAC)	Final FY 2022 Budget
DIVERSION CHANNEL & ASSOC. INFRASTRUCTURE	**$ 35,720,000**	**$ 6,883,920**	**$ 16,094,500**	**$ 22,978,420**	**$ 45,607,981**
Management, Legal, Financial, Procurement	$ 15,340,000	$ 5,452,161	$ 6,390,000	$ 11,842,161	$ 8,090,000
Channel - Construction & Mitigations	$ 20,380,000	$ 1,431,758	$ 9,704,500	$ 11,136,258	$ 37,517,981
SOUTHERN EMBANKMENT & ASSOC. INFRASTRUCTURE	**$ 5,460,000**	**$ 408,235**	**$ 3,735,497**	**$ 4,143,732**	**$ 8,000,000**
WP-26 Diversion Inlet	$ -	$ -	$ -	$ -	$ -
WP-27 Red River - West Embankment	$ -	$ -	$ -	$ -	$ -
WP-29 Red River - East Embankment	$ -	$ -	$ -	$ -	$ -
WP-30 Wild Rice River Control Structure	$ -	$ -	$ -	$ -	$ -
WP-31 I-29 Bridge Grade Raise	$ 230,000	$ 106,537	$ 138,000	$ 244,537	$ -
WP-33 CR81 Bridge	$ -	$ -	$ -	$ -	$ -
WP-35 Red River Control Structure	$ -	$ -	$ -	$ -	$ -
WP-46 SEAI / UMA Utility Relocations paid by DA	$ 5,230,000	$ 301,698	$ 3,597,497	$ 3,899,195	$ 8,000,000
WP-47 Contracted Utility Relo	$ -	$ -	$ -	$ -	$ -
WP-51 Recreation (Metro-COG)	$ -	$ -	$ -	$ -	$ -
USACE Local Share \ Management Oversight	$ -	$ -	$ -	$ -	$ -
OTHER MITIGATION PROJECTS	**$ 41,849,832**	**$ 38,154,081**	**$ 2,236,945**	**$ 40,391,027**	**$ 7,259,570**
WP-36 Wild Rice Dam Mitigation	$ -	$ -	$ -	$ -	$ -
WP-40 Drayton Dam Mitigation	$ -	$ -	$ -	$ -	$ -
WP-41 Richland/Wilkin Cty. JPA	$ 35,000,000	$ 35,250,000	$ -	$ 35,250,000	$ -
WP-43 Oxbow-Hickson-Bakke	$ 3,509,832	$ 1,820,153	$ 912,500	$ 2,732,653	$ 1,027,000
WP-49 Cultural Remediation	$ -	$ -	$ -	$ -	$ -
WP-50 Phase II Demo	$ 2,200,000	$ 1,016,874	$ 184,445	$ 1,201,320	$ 591,000
WP-52 WP-52 Township & City MOU Agreements	$ 1,140,000	$ 67,054	$ 1,140,000	$ 1,207,054	$ 5,641,570
IN-TOWN FLOOD PROTECTION	**$ 35,248,600**	**$ 9,820,494**	**$ 8,807,150**	**$ 18,627,644**	**$ 25,006,000**
WP-42 In-Town Levees	$ 1,120,000	$ 992,183	$ 275,000	$ 1,267,183	$ 6,000
In-Town Flood Protection (R37')	$ 34,128,600	$ 8,828,310	$ 8,532,150	$ 17,360,460	$ 25,000,000
ENABLING WORK / OTHER	**$ 62,000**	**$ 14,572**	**$ -**	**$ 14,572**	**$ -**
WP-28 - Cass County Road 16 and 17 Improvements	$ 62,000	$ 14,572	$ -	$ 14,572	$ -
LAND ACQUISITION & MITIGATION	**$ 69,095,810**	**$ 33,354,730**	**$ 24,361,203**	**$ 57,715,933**	**$ 77,860,539**
Management, Legal, Financial, Procurement	$ 16,000,000	$ 5,000,944	$ 3,842,500	$ 8,843,444	$ 12,950,000
DIVERSION CHANNEL AND ASSOCIATED	$ 7,931,810	$ 15,989,689	$ 1,982,953	$ 17,972,642	$ 6,000,000
SOUTHERN EMBANKMENT AND ASSOCIATED	$ 7,214,000	$ 3,418,359	$ 3,807,000	$ 7,225,359	$ 22,200,539
MITIGATION AND ASSOCIATED INFRASTRUCTURE	$ 12,210,000	$ 6,419,258	$ 250,000	$ 6,669,258	$ 4,260,000
WP-38 Upstream Staging	$ 25,740,000	$ 2,526,480	$ 14,478,750	$ 17,005,230	$ 32,450,000
IN-TOWN FLOOD PROTECTION	$ -	$ -	$ -	$ -	$ -
ENGINEERING & DESIGN FEES	**$ 7,025,000**	**$ 2,154,908**	**$ 2,068,333**	**$ 4,186,489**	**$ 6,983,000**
Management, Legal, Financial, Procurement	$ 3,200,000	$ 778,016	$ 910,000	$ 1,688,016	$ 5,300,000
WORK-IN-KIND PROGRAMS (WIK) STUDIES	$ 1,480,000	$ 938,629	$ 108,333	$ 1,010,709	$ 440,000
INDICATIVE DESIGN	$ 1,000,000	$ 203,192	$ 1,000,000	$ 1,203,192	$ -
(LERRDs) - LAND, EASEMENTS, ROW, RELOCATION	$ 100,000	$ 28,320	$ -	$ 28,320	$ -
PERMITTING	$ 1,200,000	$ 206,751	$ 50,000	$ 256,251	$ 1,043,000
CERTIFICATION	$ -	$ -	$ -	$ -	$ -
FMDA DETENTION FUNDING	$ -	$ -	$ -	$ -	$ -
OTHER MITIGATION PROJECTS	$ 45,000	$ -	$ -	$ -	$ 200,000
ENABLING WORK	$ -	$ -	$ -	$ -	$ -
PROGRAM MANAGEMENT\LEGAL\FINANCIAL\PROCUREMENT	**$ 17,331,080**	**$ 9,343,010**	**$ 6,746,520**	**$ 16,089,530**	**$ 16,844,000**
MANAGEMENT, LEGAL, FINANCIAL, PROCUREMENT	$ 16,035,000	$ 8,740,595	$ 6,422,500	$ 15,163,095	$ 15,344,000
DIVERSIONAUTHORITYOPERATIONS	$ 1,296,080	$ 602,415	$ 324,020	$ 926,435	$ 1,500,000
CONTINGENCY	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**
SYSTEM WIDE CONTINGENCY	$ -	$ -	$ -	$ -	$ -
DIVERSION CHANNEL AND ASSOCIATED INFRASTRUCTURE	$ -	$ -	$ -	$ -	$ -
SOUTHERN EMBANKMENT AND ASSOCIATED	$ -	$ -	$ -	$ -	$ -
OTHER MITIGATION PROJECTS	$ -	$ -	$ -	$ -	$ -
IN-TOWN FLOOD PROTECTION	$ -	$ -	$ -	$ -	$ -
ENABLING WORK	$ -	$ -	$ -	$ -	$ -
LAND ACQUISITION	$ -	$ -	$ -	$ -	$ -
DEBT SERVICE \ MAINTENANCE	**$ 8,120,168**	**$ 6,451,384**	**$ 2,030,042**	**$ 7,800,440**	**$ 7,278,000**
Debt Service	$ 7,990,168	$ 6,378,188	$ 1,997,542	$ 7,694,744	$ 7,194,000
Maintenance	$ 130,000	$ 73,196	$ 32,500	$ 105,696	$ 84,000
Report Totals	**$ 219,912,490**	**$ 106,585,334**	**$ 66,080,190**	**$ 171,947,785**	**$ 194,839,090**

Revenue Sources	FY 2022 Proposed Budget
Sales Tax City of Fargo	$ 38,800,000
Sales Tax Cass County	19,968,000
State of North Dakota	97,419,000
Investment Income	100,000
Property Income	200,000
Loan or Bond Proceeds	-
Use of Fund Balance	38,352,090
Total Sources	**$ 194,839,090**

RESOLUTION ADOPTING THE THIRD AMENDMENT TO THE PROCEDURE FOR APPROVAL OF CONSTRUCTION, MAINTENANCE, TECHNICAL, ARCHITECTURAL, PROFESSIONAL SERVICES, AND GENERAL SERVICES CONTRACTS, MASTER SERVICES AGREEMENTS, AND CHANGE ORDERS AND AMENDMENTS

of the

METRO FLOOD DIVERSION AUTHORITY

Approved on _____, 2021.

This instrument was drafted by:
Ohnstad Twichell, P.C.
P.O. Box 458
West Fargo, North Dakota 58078

DRAFT

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Exhibit A – Original Procedure

Exhibit B – First Amendment to Procedure

Exhibit C – Second Amendment to Procedure

DRAFT

Member _____ introduced the following Resolution and moved for its adoption:

RESOLUTION ADOPTING THE THIRD AMENDMENT TO THE PROCEDURE FOR APPROVAL OF CONSTRUCTION, MAINTENANCE, TECHNICAL, ARCHITECTURAL, PROFESSIONAL SERVICES, AND GENERAL SERVICES CONTRACTS, MASTER SERVICES AGREEMENTS, AND CHANGE ORDERS AND AMENDMENTS

WHEREAS, the City of Moorhead, the City of Fargo, Clay County, Cass County, and the Cass County Joint Water Resource District (the "Member Entities") entered into a Joint Powers Agreement ("JPA") on June 1, 2016, creating the Metro Flood Diversion Authority (the "Authority").

WHEREAS, Article XII of the JPA contains the general procedures for bidding, contracting, and payment procedures for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (hereinafter further defined as the "Comprehensive Project"); and

WHEREAS, the Member Entities recognize that the size and complexity of the Comprehensive Project require the adoption of additional operating procedures regarding the bidding, contracting, and payment procedures for the Comprehensive Project; and

WHEREAS, the governing body of the Authority, the Diversion Authority Board ("Diversion Authority Board"), is authorized to adopt by written resolution specific written operating procedures regarding the bidding, contracting, and payment procedures for the Comprehensive Project in accordance with Section 12.05 of the JPA; and

WHEREAS, on November 10, 2016, the Diversion Authority Board adopted the Resolution Confirming the Procedure for Approval of Construction Contracts; Contracts for Engineering, Architectural, and Other Professional Services; and Change Orders and Amendments ("Procedure"); and

WHEREAS, a copy of the Procedure is attached hereto as Exhibit A; and

WHEREAS, on August 23, 2018, the Diversion Authority Board adopted the Resolution Amending the Procedure for Approval of Construction Contracts; Contracts for Engineering, Architectural, and Other Professional Services; and Change Orders and Amendments ("First Amendment"); and

WHEREAS, a copy of the First Amendment is attached hereto as Exhibit B; and

WHEREAS, on February 11, 2021, the Diversion Authority Board adopted the Resolution Amending the Procedure for Approval of Construction Contracts; Contracts for Engineering, Architectural, and Other Professional Services; and Change Orders and Amendments ("Second Amendment"); and

WHEREAS, a copy of the Second Amendment is attached hereto as Exhibit C; and

WHEREAS, the Diversion Authority Board now desires to adopt a third amendment to the Procedure, modifying the approving authority for certain construction and Maintenance Contracts and other technical, architectural, or Professional Services, or General Services.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Authority that the Procedure for Approval of Construction and Maintenance Contracts, Master Services Agreements and Contracts for Technical, Architectural, and Other Professional Services and General Services, and Change Orders and Amendments is amended as follows:

Section 1. Applicability to Member Entities and P3 Procurement. Pursuant to Article XII of the JPA, if a portion of the Comprehensive Project is delegated to a Member Entity, that Member Entity is responsible for developing, approving, and making changes to contracts for that specific portion of the Comprehensive Project. In the event a portion of the Comprehensive Project is delegated to a Member Entity, that Member Entity shall follow the bidding and procurement requirements of the state in which the Member Entity is located, in accordance with Section 12.09 of the JPA. This Resolution shall only apply to contracts that are to be developed and approved by the Authority. Additionally, this Resolution shall not apply to the P3 procurement, which has been considered by the Diversion Authority Board by way of separate resolution, enacted on August 9, 2021.

Section 2. Definitions.

All capitalized terms used and not otherwise defined herein shall have the meanings given them in this Resolution and as defined in this Section unless a different meaning clearly applies from the context.

"Addenda" means written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

"Authority" means the Metro Flood Diversion Authority, a North Dakota political subdivision and joint powers entity created by the JPA.

"Authority Work Directive" means a work directive given by the Authority to a Contractor or service provider.

"Best Efforts" means that the individual or entity will act in Good Faith, in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this Resolution, in accordance with applicable federal and state laws, regulations, and rules.

"Bid" means the offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

"Bidder" means an individual or entity that submits a Bid to the Owner.

"Bidding Documents" means the Bidding Requirements, the proposed Contract Documents, and all Addenda.

"Bidding Requirements" means the advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.

"Business Day" means any day that is not a Saturday, a Sunday, or a state or federal public holiday.

"Calendar Day" means any day, including Saturdays, Sundays, or state or federal holidays.

"Chair" means the Chair of the Diversion Authority Board, as described in Section 5.06 of the JPA.

"Change Order" means a document that is signed by the Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

"Change Proposal" means a written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

"Comprehensive Project" includes a storm water diversion channel through North Dakota that conveys 20,000 cubic feet per second at the one percent chance of a 100-year event and is approximately 30 miles long with tie-back embankments, a staging area, a diversion inlet structure, a 6-mile connecting channel, a control structure on each of the Red and Wild Rice Rivers, an aqueduct hydraulic structure on each of the Maple and Sheyenne Rivers, a drop structure on each of the Rush and Lower Rush Rivers, 3 railroad bridges, in-town work, community ring levees, and environmental mitigation, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013, and the Final Supplemental Environmental Assessment #2, Fargo Moorhead Metropolitan Area Flood Risk Management Project, dated February 2019 and approved by the District Engineer, St. Paul District on February 28, 2019.

"Contract" means the entire and integrated written contract between the Owner and Contractor concerning the Work.

"Contract Documents" means those items so designated in the Contract, which together comprise the Contract.

"Contract Price" means the money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

"Contract Times" means the number of Calendar Days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

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"Contractor" means the individual or entity with which the Owner has contracted for performance of the Work.

"Deputy Executive Director" means a position of the Authority created by Section 14.03 of the Joint Powers Agreement.

"Director of Engineering" means the individual, or his or her designee, who is officially appointed by the Executive Director as the Director of Engineering for the Authority.

"Engineer of Record" means a professional engineer who seals drawings, reports, or documents for a project to be bid out. The seal shall acknowledge that the professional engineer prepared, coordinated, or had subordinates prepare under the direct supervision of the professional engineer, drawings, reports, or documents for a project.

"Executive Director" means the chief administrative officer of the Authority as set forth in the JPA.

"Field Order" means all work, services, and obligations required to be furnished, performed, and provided under a Contract.

"First Amendment" means the Resolution Amending the Procedure for Approval of Construction Contracts; Contracts for Engineering, Architectural, and Other Professional Services; and Change Orders and Amendments adopted by the Diversion Authority Board on August 23, 2018.

"General Counsel" means an individual or firm responsible for providing general legal services for the Comprehensive Project.

"General Services" means any and all services, aside from construction or Maintenance services, technical services, architectural services, or other Professional Services, that the Diversion Authority Board desires to retain.

"Good Faith" means observance of reasonable commercial standards of fair dealing in a given trade of business.

"JPA" means the Joint Powers Agreement dated June 1, 2016, by and between the Member Entities, which created the Authority.

"Maintenance" means the upkeep, repair, replacement, and/or rehabilitation of an element of the Comprehensive Project.

"Master Services Agreement" means the entire and integrated written master services agreement between the Owner and Contractor concerning the Work.

"Master Utility Relocation Agreement" means the entire and integrated written master utility relocation agreement between the Owner and a third party concerning utility relocations necessitated by the Comprehensive Project.

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"Member Entities" shall mean the City of Moorhead, the City of Fargo, Clay County, Cass County, and Cass County Joint Water Resource District. The term Member Entity does not include the City of West Fargo, Wilkin County, or Richland County.

"Member Entity Technical Representatives" or "METR" means the technical representatives appointed by the Member Entities, with each of the Member Entities allowed to appoint one (1) technical representative.

"Memorandum of Understanding" means the entire and integrated memorandum of understanding between the Owner and a third party concerning work necessitated by the Comprehensive Project.

"N.D.C.C." means the North Dakota Century Code.

"Owner" means the individual or entity with which the Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract or the Master Services Agreement.

"P3 Procurement" means the procurement process being used to bid the Project Agreement for the construction of the Diversion Channel and Associated Infrastructure pursuant to Chapter 48-02.1 of the North Dakota Century Code.

"PMC" or "Program Management Consultant" means an individual or firm responsible for planning and implementing the Comprehensive Project, which shall be under the direct supervision of the Executive Director, the Deputy Executive Director, and the Diversion Authority Board, and will consult with Member Entity staff.

"Procedure" means the Resolution Confirming the Procedure for Approval of Construction Contracts; Contracts for Engineering, Architectural, and Other Professional Services; and Change Orders and Amendments adopted by the Diversion Authority Board on November 10, 2016.

"Professional Services" means services which generally include but are not limited to: (i) accounting; (ii) land surveying; (iii) medicine; (iv) optometry; (v) real estate appraising; (vi) service contracts for the collection of waste and janitorial services; (vii) forensic science; (viii) legal services; and (ix) those services deemed to be professional services under North Dakota law.

"Second Amendment" means the Resolution Amending the Procedure for Approval of Construction Contracts; Contracts for Engineering, Architectural, and Other Professional Services; and Change Orders and Amendments adopted by the Diversion Authority Board on February 11, 2021.

"Secretary" means the Secretary of the Authority, as described in Section 5.08 of the JPA.

"Task Order" means a written request for work or services issued by the Authority pursuant to a Master Services Agreement.

"Work" means all work, services, and obligations required to be furnished, performed, and provided under a Contract or a Master Services Agreement.

"Work Change Directive" means a written directive to a Contractor that does not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated into a subsequently issued Change Order.

Section 3. **Contract Negotiations.** The Executive Director is the chief purchasing agent for the Authority. The PMC and the General Counsel may assist the Executive Director with the negotiation and development of Contracts and Master Services Agreements and changes to Contracts and Master Services Agreements as described below.

Section 4. **Internal Reviews, Comments, and Approvals Generally and Execution.** All parties responsible for conducting internal reviews or providing comments or approvals of any contracting action described herein are able to do so verbally, electronically via email, or electronically via the electronic document management system workflows. If approvals are provided verbally or electronically, the contracting officer is granted the authority to place the approving parties' electronic signatures and comments into the contracting documents as necessary. The Executive Director, Chair, and Secretary are authorized to electronically execute Contracts, Master Services Agreements, Memorandums of Understanding, Master Utility Relocation Agreements, Change Orders, Field Orders, Work Change Directives, Task Orders, Authority Work Directives, and any amendments thereto, approved in accordance with this Resolution.

Section 5. **Procedure for Authority Approval of Construction, Maintenance, Technical, Architectural, Professional Services and General Services Contracts, Master Services Agreements, and Memorandums of Understanding and Master Utility Relocation Agreements.**

A. All Contracts and Master Services Agreements relating to construction and Maintenance activities and related technical, architectural, or Professional Services or General Services of the Comprehensive Project shall identify the Authority as the Owner under the Contract or the Master Services Agreement, unless the Contract or Master Services Agreement utilizes funds generated by special assessments levied and collected by the Cass County Joint Water Resource District ("CCJWRD"), in which case the Contract or Master Services Agreement may be held in either name.

B. All Contracts and Master Services Agreements for construction and Maintenance activities and related technical, architectural, or Professional Services or General Services presented to the Diversion Authority Board shall be approved at a public meeting by either a resolution or a motion approved by the affirmative vote of a majority of the members of the Diversion Authority Board.

C. Any Contract or Master Services Agreement presented to the Diversion Authority Board for approval will be approved upon a majority vote of all members of the Diversion Authority Board, in accordance with Section 5.09 of the JPA.

D. For construction or Maintenance Contracts in the amount of ten thousand dollars ($10,000) or less:

(1) The PMC and/or the Executive Director shall submit a proposed Contract to the Member Entity Technical Representatives. The Member Entity Technical

Representatives shall review the Contract electronically and provide comments, either verbally or in writing, to the PMC, who shall consolidate all of the comments into a single form and provide that form to the Director of Engineering. The Member Entity Technical Representatives will have two (2) Business Days to provide comments, and if no comments are provided by a Member Entity Technical Representative during such period, then that Member Entity Technical Representative will be deemed to have waived review. The Director of Engineering shall review the Contract and provide a recommendation to the Executive Director.

(2) Upon receiving comments from the Member Entity Technical Representatives and a recommendation from the Director of Engineering, the Executive Director may approve the Contract. A Contract approved by the Executive Director must be signed by the Executive Director on behalf of the Authority.

(3) Contracts utilizing funds generated by special assessments levied and collected by CCJWRD shall also be approved by the CCJWRD Board, as required under N.D.C.C. § 61-16.1-24. Such Contracts shall first be approved by the CCJWRD Board before being signed by the Executive Director.

E. For construction or Maintenance Contracts greater than ten thousand dollars ($10,000) and less than two hundred thousand dollars ($200,000):

(1) The PMC and/or Executive Director shall use their Best Efforts to request and secure three (3) competitive quotes for the proposed Work. In the event that the PMC and Executive Director concur that only one Contractor or supplier is capable of providing the Work or materials, the Executive Director shall provide such recommendation to the Finance Committee. The Finance Committee shall review and make a recommendation to the Executive Director and the Executive Director may dispense with the requirement to use his or her Best Efforts to request and secure three (3) competitive quotes.

(2) The PMC or the Executive Director shall submit a proposed Contract to the Member Entity Technical Representatives. The Member Entity Technical Representatives shall review the Contract electronically and provide comments, either verbally or in writing, to the Director of Engineering. The Member Entity Technical Representatives will have two (2) Business Days to provide comments, and if no comments are provided by a Member Entity Technical Representative during such period, then that Member Entity Technical Representative will be deemed to have waived review. The Director of Engineering shall review the Contract and provide a recommendation to the PMC.

(3) The PMC shall consolidate the comments of the Member Entity Technical Representatives and the recommendations of the PMC, General Counsel, and the Director of Engineering regarding the proposed Contract into a single form and submit a written recommendation to the Executive Director for review and/or approval.

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(4) Contracts utilizing funds generated by special assessments levied and collected by CCJWRD shall also be approved by the CCJWRD Board, as required under N.D.C.C. § 61-16.1-24. Such Contracts must first be approved by the CCJWRD Board before being signed by the Executive Director.

F. For construction or Maintenance Contracts in the amount of two hundred thousand dollars ($200,000) or more:

(1) If the estimated cost for the proposed project meets the public improvement threshold of two hundred thousand dollars ($200,000), as provided for in N.D.C.C. § 48-01.2-02.1, the PMC and/or the Engineer of Record shall advertise for Bids in accordance with North Dakota law and receive all Bids and/or proposals for the Contract.

(2) The PMC and/or the Engineer of Record shall open the Bids and/or proposals at a public meeting in accordance with N.D.C.C. § 48-01.2-07. The PMC and/or the Engineer of Record will review the Bid and/or proposal of the lowest responsible Bidder in accordance with N.D.C.C. § 48-01.2-07, in conjunction with the Member Entity Technical Representatives, and make a written recommendation to the Authority as to the sufficiency of the Bid and/or proposal. In the event the recommendation of the PMC and/or the Engineer of Record is to reject all Bids, the PMC and/or the Engineer of Record shall submit the Bids to the Member Entity Technical Representatives and the Director of Engineering and receive concurrence from the Member Entity Technical Representatives and the Director of Engineering to reject all Bids prior to making a recommendation that all Bids be rejected. The PMC and/or the Engineer of Record shall also submit the Bid and/or proposal to the Finance Committee. Upon reviewing the Bid and/or proposal, the Finance Committee shall submit a written recommendation to the Diversion Authority Board. The Diversion Authority Board may then approve the Contract. The Diversion Authority Board may also reject all Bids and/or proposals subsequently re-advertise for Bids if no Bids and/or proposals are satisfactory.

(3) Contracts utilizing funds generated by special assessments levied and collected by CCJWRD shall also be approved by the CCJWRD Board, as required under N.D.C.C. § 61-16.1-24. Such Contracts shall first be approved by the CCJWRD Board before being presented to the Diversion Authority Board for approval.

G. Contracts for Technical, Architectural, and Other Professional Services and General Services in the amount of ten thousand dollars ($10,000) or less:

(1) For Contracts pertaining to technical services, the PMC and/or the Executive Director shall submit a proposed Contract to the Member Entity Technical Representatives. The Member Entity Technical Representatives shall review the Contract electronically and provide comments, either verbally or in writing, to the PMC, who shall consolidate all of the comments into a single form and provide that form to the Director of Engineering. The Member Entity Technical Representatives will have two (2) Business Days to provide comments, and if no comments are provided by a Member Entity Technical Representative during such

period, then that Member Entity Technical Representative will be deemed to have waived review. The Director of Engineering shall review the Contract and provide a recommendation to the Executive Director.

(2) For Contracts relating to architectural services, Professional Services, or General Services other than technical services, the PMC and/or the Executive Director shall submit a proposed Contract to the Deputy Executive Directors. The Deputy Executive Directors shall review the Contract and submit their comments, either verbally or in writing, to the Executive Director. The Deputy Executive Directors will have two (2) Business Days to provide comments, and if no comments are provided by a Deputy Executive Director during such period, then that Deputy Executive Director will be deemed to have waived review.

(3) Upon receiving comments from the Member Entity Technical Representatives and a recommendation from the Director of Engineering on a technical services Contract or comments from the Deputy Executive Directors on an architectural or non-technical services Contract, the Executive Director may approve the Contract. A Contract approved by the Executive Director must be signed by the Executive Director on behalf of the Authority.

(4) Contracts utilizing funds generated by special assessments levied and collected by CCJWRD shall also be approved by the CCJWRD Board, as required under N.D.C.C. § 61-16.1-24. Such Contracts shall first be approved by the CCJWRD Board before being signed by the Executive Director.

H. Contracts for Technical, Architectural, and Other Professional Services or General Services greater than ten thousand dollars ($10,000) and less than two hundred thousand dollars ($200,000):

(1) The PMC and/or Executive Director shall use its Best Efforts to request and secure three (3) competitive quotes for the proposed services. In the event that the PMC and Executive Director concur that only one Contractor or supplier is capable of providing the services, the Executive Director shall provide such recommendation to the Finance Committee. The Finance Committee shall review and make a recommendation to the Executive Director and the Executive Director may dispense with the requirement to use his or her Best Efforts to request and secure three (3) competitive quotes.

(2) For Contracts pertaining to technical services, the PMC or the Executive Director shall submit a proposed Contract to the Member Entity Technical Representatives. The Member Entity Technical Representatives shall review the Contract electronically and provide comments, either verbally or in writing, to the PMC, who shall consolidate all of the comments into a single form and provide that form to the Director of Engineering. The Member Entity Technical Representatives will have two (2) Business Days to provide comments, and if no comments are provided by a Member Entity Technical Representative during such period, then that Member Entity Technical Representative will be deemed to have waived

review. The Director of Engineering shall review the Contract and make a recommendation to the PMC.

(3) For Contracts relating to architectural services, Professional Services, or General Services other than technical services, the PMC or the Executive Director shall submit a proposed Contract to the Deputy Executive Directors. The Deputy Executive Directors shall review the Contract and then provide their comments to the Executive Director. The Deputy Executive Directors will have two (2) Business Days to provide comments, and if no comments are provided by a Deputy Executive Director during such period, then that Deputy Executive Director will be deemed to have waived review.

(4) The PMC shall consolidate recommendations of General Counsel and the Director of Engineering and comments of the Member Entity Technical Representatives on a technical services Contract and comments of the Deputy Executive Directors on an architectural services or non-technical services Contract into a single form and submit a written recommendation to the Executive Director for review and/or approval.

(5) Contracts utilizing funds generated by special assessments levied and collected by CCJWRD shall also be approved by the CCJWRD Board, as required under N.D.C.C. § 61-16.1-24. Such Contracts shall first be approved by the CCJWRD Board before being signed by the Executive Director.

I. Contracts for Technical, Architectural, and Other Professional Services or General Services in the amount of two hundred thousand dollars ($200,000) or more:

(1) If the estimated cost for the proposed technical, architectural, or other Professional Services or General Services meets or exceeds two hundred thousand dollars ($200,000), the PMC and/or the Engineer of Record shall issue a request for qualifications or a request for proposals for the services and receive all statements of qualifications or proposals for the Contract.

(2) For Contracts relating to technical services, the PMC and/or the Engineer of Record shall open and review the statements of qualifications and/or proposals and make a written recommendation to the Diversion Authority Board. The PMC and/or the Engineer of Record shall also submit the statements of qualifications and/or proposals to the Member Entity Technical Representatives, the Director of Engineering, and the Finance Committee. Upon reviewing the statements of qualifications and/or proposals, the Member Entity Technical Representatives shall provide comments, either verbally or in writing, to the PMC, who shall consolidate all of the comments into a single form and provide that form to the Diversion Authority Board. The Director of Engineering and the Finance Committee shall also submit written recommendations to the Diversion Authority Board. The Member Entity Technical Representatives will have two (2) Business Days to provide comments, and if no comments are provided by a Member Entity Technical Representative during such period, then that Member Entity Technical Representative will be deemed to have waived review. The Diversion Authority

Board may then approve the Contract. The Diversion Authority Board may also reject all statements of qualifications and/or proposals and subsequently reengage in a request for qualifications or request for proposals if no statements of qualifications and/or proposals are satisfactory.

(3) For Contracts relating to architectural services, Professional Services, or General Services other than technical services, the PMC shall open and review the statements of qualifications and/or proposals and make a written recommendation to the Diversion Authority Board. The PMC shall also submit the statements of qualifications and/or proposals to the Deputy Executive Directors and the Finance Committee. Upon reviewing the statements of qualifications and/or proposals, the Deputy Executive Directors shall provide comments, either verbally or in writing, and the Finance Committee shall submit a written recommendation to the Diversion Authority Board. The Deputy Executive Directors will have two (2) Business Days to provide comments, and if no comments are provided by a Deputy Executive Director during such period, then that Deputy Executive Director will be deemed to have waived review. The Diversion Authority Board may then approve the Contract. The Diversion Authority Board may also reject all statements of qualifications and/or proposals and subsequently reengage in a request for qualifications or request for proposals if no statements of qualifications and/or proposals are satisfactory.

(4) Contracts utilizing funds generated by special assessments levied and collected by CCJWRD shall also be approved by the CCJWRD Board, as required under N.D.C.C. § 61-16.1-24. Such Contracts shall first be approved by the CCJWRD Board before being presented to the Diversion Authority Board for approval.

J. Master Services Agreements for Services of the PMC:

(1) The Executive Director shall submit a proposed Master Services Agreement for the services of a PMC to the Deputy Executive Directors. The Deputy Executive Directors shall review the Master Services Agreement and then provide comments, either verbally or in writing, to the Executive Director. The Deputy Executive Directors will have two (2) Business Days to provide comments, and if no comments are provided by a Deputy Executive Director during such period, then that Deputy Executive Director will be deemed to have waived review.

(2) The Executive Director shall thereafter submit a Master Services Agreement for the services of a PMC, along with a recommendation and the comments, either verbally or in writing, of the Deputy Executive Directors, to the Finance Committee for review. The Finance Committee shall then submit its recommendation, along with all other recommendations, and the proposed Master Services Agreement, to the Diversion Authority Board for review and approval.

K. Master Services Agreements for Technical, Architectural, or Other Professional Services or General Services:

(1) For Master Services Agreements pertaining to technical services, the PMC or the Executive Director shall submit a proposed Master Services Agreement to the Member Entity Technical Representatives. The Member Entity Technical Representatives shall review the Master Services Agreement electronically and provide comments, either verbally or in writing, to the PMC, who shall consolidate all of the comments into a single form and provide that form to the Director of Engineering. The Member Entity Technical Representatives will have two (2) Business Days to provide comments, and if no comments are provided by a Member Entity Technical Representative during such period, then that Member Entity Technical Representative will be deemed to have waived review. The Director of Engineering shall review the Master Services Agreement and make a recommendation to the PMC.

(2) For Master Services Agreements relating to architectural services, Professional Services, or General Services other than technical services, the PMC or the Executive Director shall submit a proposed Master Services Agreement to the Deputy Executive Directors. The Deputy Executive Directors shall review the Master Services Agreement and then provide their comments to the Executive Director. The Deputy Executive Directors will have two (2) Business Days to provide comments, and if no comments are provided by a Deputy Executive Director during such period, then that Deputy Executive Director will be deemed to have waived review.

(3) The PMC shall consolidate recommendations of General Counsel and the Director of Engineering and comments of the Member Entity Technical Representatives on a technical services Master Services Agreement and comments of the Deputy Executive Directors on an architectural services or non-technical services Master Services Agreement into a single form and submit a written recommendation to the Executive Director for review.

(4) The Executive Director shall thereafter submit the Master Services Agreement, along with a recommendation and the comments, either verbally or in writing, to the Finance Committee for review. The Finance Committee shall then submit its recommendation, along with all other recommendations, and the proposed Master Services Agreement, to the Diversion Authority Board for review and approval.

L. Memorandums of Understanding and Master Utility Relocation Agreements:

(1) The Executive Director shall submit a proposed Memorandum of Understanding or Master Utility Relocation Agreement to the Director of Engineering. The Director of Engineering shall review the Memorandum of Understanding or Master Utility Relocation Agreement and then provide a recommendation to the Executive Director.

(2) The Executive Director shall thereafter submit a Memorandum of Understanding or Master Utility Relocation Agreement, along with a recommendation and the recommendation of the Director of Engineering, to the Finance Committee for review. The Finance Committee shall then submit its recommendation, along

with all other recommendations, and the proposed Memorandum of Understanding or Master Utility Relocation Agreement to the Diversion Authority Board for review and approval.

Section 6. <u>Procedure for Authority Approval of Changes and Amendments to Existing Contracts and Master Services Agreements</u>.

A. The Diversion Authority Board recognizes and acknowledges that, due to the size and complexity of the Comprehensive Project, situations will arise that require the Executive Director to authorize Change Orders prior to submitting a Change Order, Work Change Directive, and Authority Work Directive to the Diversion Authority Board pursuant to the procedure outlined in this section. The Executive Director will use his or her Best Efforts to secure Diversion Authority Board approval of all Change Orders, Work Change Directives, and Authority Work Directives prior to work being commenced; however, the Diversion Authority Board hereby authorizes the Executive Director to authorize Change Orders, Work Change Directives, and Authority Work Directives, without prior Diversion Authority Board approval, when public safety dictates that actions need to be taken in order to stabilize worksites and/or mitigate costs to the public and/or the Authority. If the Executive Director acts pursuant to the authority set forth in this section, he or she shall make a Good Faith effort to contact the Authority Board Chair and the Finance Committee Chair prior to authorizing a contractor to proceed. The Executive Director shall report such actions and/or decisions to the recommendation to the Finance Committee for review and then to the Diversion Authority Board for formal approval.

B. Any Change Orders, Work Change Directives, and Authority Work Directives, or amendments to a master service agreement presented to the Diversion Authority Board will be approved upon a majority vote of all members of the Diversion Authority Board, in accordance with Section 5.09 of the JPA.

C. Change Orders to construction or Maintenance Contracts:

(1) Change Order requests to Authority construction or Maintenance Contracts shall state in detail the reason for the proposed change and all costs associated with the change. The PMC and/or the Engineer of Record shall be responsible for preparing the Change Order requests with an itemization and narrative explanation of each Change Order. The Fiscal Agent for the Authority shall provide the PMC and/or Engineer of Record with the requirements for submitting all Comprehensive Project costs.

(2) The PMC and/or the Engineer of Record shall submit a construction or Maintenance Change Order request for fifty thousand dollars ($50,000) or less to the Executive Director and to the Member Entity Technical Representatives. The Member Entity Technical Representatives shall review the Change Order request electronically and provide comments, either verbally or in writing, to the PMC, who shall consolidate all of the comments into a single form and provide that form to the Director of Engineering. The Member Entity Technical Representatives will have two (2) Business Days to provide comments, and if no comments are provided by a Member Entity Technical Representative during such period, then

that Member Entity Technical Representative will be deemed to have waived review. The Director of Engineering shall review the Change Order and provide a recommendation to the Executive Director. Upon comments from the Member Entity Technical Representatives and a recommendation from the Director of Engineering, the Executive Director may approve the Change Order in his or her discretion.

(3) The PMC and/or the Engineer of Record shall submit a construction or Maintenance Change request for greater than fifty thousand dollars ($50,000) to the Member Entity Technical Representatives. The Member Entity Technical Representatives shall review the Change Order request electronically and provide comments, either verbally or in writing, to the PMC, who shall consolidate all of the comments into a single form and provide that form to the Director of Engineering. The Member Entity Technical Representatives will have two (2) Business Days to provide comments, and if no comments are provided by a Member Entity Technical Representative during such period, then that Member Entity Technical Representative will be deemed to have waived review. The Director of Engineering shall review the Change Order and provide a recommendation to the Executive Director.

(4) The Executive Director shall submit the Change Order request for greater than fifty thousand dollars ($50,000) and his or her recommendation, along with the comments of the Member Entity Technical Representatives and the recommendation of the Director of Engineering, to the Finance Committee. The Finance Committee will review the Change Order request at its next regular meeting and submit the Finance Committee's recommendation along with the Executive Director's recommendation to the Diversion Authority Board for approval. If a Contract with an estimated cost of more than one hundred thousand dollars ($100,000) utilizes funds generated by special assessments levied and collected by CCJWRD, the CCJWRD Board must approve the Change Order before being approved by the Diversion Authority Board.

(5) A Change Order approved by the Executive Director or the Diversion Authority Board may be approved in whole or in part.

(6) The Diversion Authority Board recognizes that time is of the essence in making Change Orders, and therefore, agrees to approve or deny requests for Change Orders during the next Diversion Authority Board meeting after submittal to the Member Entity Technical Representatives and the Director of Engineering.

D. Field orders under construction and Maintenance Contracts:

(1) Field orders to Authority construction and Maintenance Contracts not affecting the cost of the original Contract shall be prepared by the PMC and/or the Engineer of Record and shall state in detail the reason for the change. The PMC and/or the Engineer of Record shall submit a field order to the Member Entity Technical Representatives.

(2) The Member Entity Technical Representatives shall review the field order electronically and provide comments, either verbally or in writing, to the PMC, who shall consolidate all of the comments into a single form and provide that form to the Director of Engineering. The Member Entity Technical Representatives will have two (2) Business Days to provide comments, and if no comments are provided by a Member Entity Technical Representative during such period, then that Member Entity Technical Representative will be deemed to have waived review. The Director of Engineering shall review the field order and provide a recommendation to the Executive Director. The Executive Director may then approve and sign the field order.

E. Work Change Directives to construction and Maintenance Contracts:

(1) Work Change Directives to Authority construction and Maintenance Contracts shall be prepared by the PMC and/or the Engineer of Record and shall state in detail the reason for the change. The PMC and/or the Engineer of Record shall be responsible for preparing the Work Change Directive with sufficient detail.

(2) The PMC and/or the Engineer of Record shall submit a construction or Maintenance Work Change Directive to the Member Entity Technical Representatives. The Member Entity Technical Representatives shall review the Work Change Directive electronically and provide comments, either verbally or in writing, to the PMC, who shall consolidate all of the comments into a single form and provide that form to the Director of Engineering. The Member Entity Technical Representatives will have two (2) Business Days to provide comments, and if no comments are provided by a Member Entity Technical Representative during such period, then that Member Entity Technical Representative will be deemed to have waived review. The Director of Engineering shall review the Work Change Directive and provide a recommendation to the Executive Director.

(3) Upon receipt of comments from the Member Entity Technical Representatives and a recommendation from the Director of Engineering, the Executive Director may approve and sign the Work Change Directive. If the original Contract utilizes funds generated by special assessments levied and collected by CCJWRD, CCJWRD's engineer must approve the Work Change Directive before it is signed by the Executive Director.

(4) The Diversion Authority Board recognizes that time is of the essence in making Work Change Directives, and therefore, agrees to approve or deny Work Change Directives during the next Diversion Authority Board meeting after submittal to the Executive Director.

F. New task orders and amendments to task orders under a master services agreement:

(1) New task orders under a master services agreement relating to technical services and amendments to existing task orders relating to technical services shall be prepared by the PMC and/or the Engineer of Record. The PMC and/or the Engineer of Record shall submit the new task order or amendment to a task order

to the Executive Director and also to the Member Entity Technical Representatives. The Member Entity Technical Representatives shall review the new task order or amendment to a task order electronically and provide comments, either verbally or in writing, to the PMC, who shall consolidate all of the comments into a single form and provide that form to the Director of Engineering. The Member Entity Technical Representatives will have two (2) Business Days to provide comments, and if no comments are provided by a Member Entity Technical Representative during such period, then that Member Entity Technical Representative will be deemed to have waived review. The Director of Engineering shall review the new task order or amendment to a task order and provide a recommendation to the Executive Director.

(2) The Executive Director may, within his or her discretion, and upon receiving comments from the Member Entity Technical Representatives and a recommendation from the Director of Engineering for a new task order or amendment to a task order pertaining to technical services, approve of a new task order or an amendment to a task order for two hundred thousand dollars ($200,000) or less. If a new task order or an amendment to a task order relating to technical services is greater than two hundred thousand dollars ($200,000), the Executive Director shall submit the new task order or the amendment to a task order, along with a recommendation and the comments of the Member Entity Technical Representatives and the recommendation of the Director of Engineering, to the Finance Committee. The Finance Committee will review the new task order or the amendment to a task order at its next regular meeting and submit the new task order or the amendment to a task order, and the Finance Committee's recommendation, to the Authority for approval.

(3) New task orders under a master services agreement relating to architectural services, Professional Services, or General Services other than technical services and amendments to existing task orders relating to architectural services, Professional Services, or General Services other than technical services shall be prepared by the PMC. The PMC shall submit the new task order or amendment to a task order to the Executive Director and also to the Deputy Executive Directors. The Deputy Executive Directors shall review the new task order or amendment to a task order and provide comments, either verbally or in writing, to the Executive Director. The Deputy Executive Directors will have two (2) Business Days to provide comments, and if no comments are provided by a Deputy Executive Director during such period, then that Deputy Executive Director will be deemed to have waived review.

(4) The Executive Director may, within his or her discretion, and upon receiving comments from the Deputy Executive Directors for a new task order or amendment to a task order relating to architectural services, Professional Services, or General Services other than technical services, approve a new task order or an amendment to a task order for two hundred thousand dollars ($200,000) or less. If a new task order or amendment to a task order relating to architectural services, Professional Services, or General Services other than technical services is greater than two hundred thousand dollars ($200,000), the Executive Director shall

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submit the new task order or the amendment to a task order, along with a recommendation and the comments of the Deputy Executive Directors, to the Finance Committee. The Finance Committee will review the new task order or the amendment to a task order at its next regular meeting and submit the new task order or the amendment to a task order, and the Finance Committee's recommendation, to the Authority for approval.

G. Amendments to Master Services Agreements or Contracts:

(1) Amendments to existing Master Services Agreements or Contracts relating to technical services shall be prepared by the PMC and/or the Engineer of Record. The PMC and/or the Engineer of Record shall submit an amendment to a Master Services Agreement or Contract relating to technical services to the Executive Director and also to the Member Entity Technical Representatives. The Member Entity Technical Representatives shall review the amendment to an existing Master Services Agreement or Contract electronically and provide comments, either verbally or in writing, to the PMC, who shall consolidate all of the comments into a single form and provide that form to the Director of Engineering. The Member Entity Technical Representatives will have two (2) Business Days to provide comments, and if no comments are provided by a Member Entity Technical Representative during such period, then that Member Entity Technical Representative will be deemed to have waived review. The Director of Engineering shall review the amendment to an existing master services agreement and provide a recommendation to the Executive Director.

(2) If an amendment to an existing Master Services Agreement or Contract relating to technical services is two hundred thousand dollars ($200,000) or less, the Executive Director may, in his or her discretion, and upon receiving comments from the Member Entity Technical Representatives and a recommendation from the Director of Engineering, approve of the amendment to an existing Master Services Agreement or Contract. The Executive Director shall submit an amendment to a Master Services Agreement or Contract relating to technical services greater than two hundred thousand dollars ($200,000), along with a recommendation and the comments of the Member Entity Technical Representatives and the recommendation of the Director of Engineering, to the Finance Committee. The Finance Committee will review the amendment to a Master Services Agreement or Contract at its next regular meeting and submit the amendment to a Master Services Agreement or Contract and the Finance Committee's recommendation to the Diversion Authority Board for approval.

(3) Amendments to existing Master Services Agreements or Contracts relating to architectural services, Professional Services, or General Services other than technical services shall be prepared by the PMC. The PMC shall submit an amendment to a Master Services Agreement or Contract relating to architectural services, Professional Services, or General Services other than technical services to the Executive Director and also to the Deputy Executive Directors. The Deputy Executive Directors shall review the amendment to the existing Master Services Agreement or Contract and provide comments, either verbally or in writing, to the

Executive Director. The Deputy Executive Directors will have two (2) Business Days to provide comments, and if no comments are provided by a Deputy Executive Director during such period, then that Deputy Executive Director will be deemed to have waived review.

(4) If an amendment to an existing Master Services Agreement or Contract relating to architectural services, Professional Services, or General Services other than technical services is two hundred thousand dollars ($200,000) or less, the Executive Director may, in his or her discretion, and upon receiving comments from the Deputy Executive Directors, approve of the amendment to an existing Master Services Agreement or Contract. The Executive Director shall submit an amendment to a Master Services Agreement or Contract relating to architectural services, Professional Services, or General Services other than technical services greater than two hundred thousand dollars ($200,000), along with a recommendation and the comments of the Deputy Executive Directors, to the Finance Committee. The Finance Committee will review the amendment to a Master Services Agreement or Contract at its next regular meeting and submit the amendment to a Master Services Agreement or Contract and the Finance Committee's recommendation to the Diversion Authority Board for approval.

H. New Authority Work Directives and amendments to Authority Work Directives:

(1) New Authority Work Directives and amendments to existing Authority Work Directives relating to technical services shall be prepared by the PMC and/or the Engineer of Record. The PMC and/or the Engineer of Record shall submit a new Authority Work Directive and an amendment to an Authority Work Directive relating to technical services to the Executive Director and also to the Member Entity Technical Representatives. The Member Entity Technical Representatives shall review the new Authority Work Directive or the amendment to an existing Authority Work Directive electronically and provide comments, either verbally or in writing, to the PMC, who shall consolidate all of the comments into a single form and provide that form to the Director of Engineering. The Member Entity Technical Representatives will have two (2) Business Days to provide comments, and if no comments are provided by a Member Entity Technical Representative during such period, then that Member Entity Technical Representative will be deemed to have waived review. The Director of Engineering shall review the new Authority Work Directive or amendment to an existing Authority Work Directive and provide a recommendation to the Executive Director.

(2) Upon receiving comments from the Member Entity Technical Representatives and a recommendation from the Director of Engineering for a new Authority Work Directive or an amendment to an existing Authority Work Directive relating to technical services, the Executive Directory may, in his or her discretion, approve of the new Authority Work Directive or amendment to existing Authority Work Directive.

(3) New Authority Work Directives and amendments to existing Authority Work Directives relating to architectural services, Professional Services, or General

Services other than technical services shall be prepared by the PMC. The PMC shall submit a new Authority Work Directive or an amendment to an Authority Work Directive relating to architectural services, Professional Services, or General Services other than technical services to the Executive Director and also to the Deputy Executive Directors. The Deputy Executive Directors shall review the new Authority Work Directive or amendment to existing Authority Work Directive and provide comments, either verbally or in writing, to the Executive Director. The Deputy Executive Directors will have two (2) Business Days to provide comments, and if no comments are provided by a Deputy Executive Director during such period, then that Deputy Executive Director will be deemed to have waived review.

(4) Upon receiving comments from the Deputy Executive Directors for a new Authority Work Directive or an amendment to an existing Authority Work Directive relating to architectural services, Professional Services, or General Services other than technical services, the Executive Director may, in his or her discretion, approve of the new Authority Work Directive or the amendment to an existing Authority Work Directive.

Section 7. **North Dakota Law Applies.** This Resolution will be controlled by the laws of the State of North Dakota.

Section 8. **Effective Date.** This Resolution will take effect immediately upon adoption.

Section 9. **Electronic Signatures**. Electronic signatures to this Resolution shall be valid as original signatures and shall be valid to bind the Authority. For purposes hereof: (i) "electronic signature" means a manually signed signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

Dated: _____, 2021.

METRO FLOOD DIVERSION AUTHORITY

APPROVED:

_____
Michelle (Shelly) Carlson, Chair

ATTEST:

_____
Dawn Lindblom, Secretary

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The motion for adoption of the foregoing resolution was duly seconded by Member _____ and upon roll call vote, the following Members voted in favor thereof: _____. The following were absent and not voting: _____. The following voted against the same: _____. A majority of the Members having voted aye, the resolution was declared duly passed and adopted.

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EXHIBIT A

ORIGINAL PROCEDURE

(*See the following pages.*)

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EXHIBIT B

FIRST AMENDMENT TO PROCEDURE

(*See the following pages.*)

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EXHIBIT C

SECOND AMENDMENT TO PROCEDURE

(*See the following pages.*)

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METRO FLOOD DIVERSION AUTHORITY

Diversion Authority Finance Committee Meeting

December 15, 2021

MOU and Agreement Actions for Consideration

John Shockley

DA Memorandum of Understanding (Action)

METRO FLOOD DIVERSION AUTHORITY

MOU Parties	Project	MOU Cost and Summary
NDDOT & MFDA MOU	DCAI	The MOU outlines respective roles and responsibilities for the design, construction, and relocation of road and bridge facilities in conjunction with the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. The MOU addresses design; preliminary planning and engineering activities; property interest acquisition; construction and performance; inspection, operation and maintenance; construction of the diversion channel; future changes or additions; conformity with regulations, codes and specifications; etc. Reimbursement includes the following: (i) NDDOT reimbursable costs; and (ii) outside consultant costs if necessary.
City of Horace & MFDA MOU	SEAI	The MOU outlines respective roles and responsibilities of the Parties in regard to the impacts resulting from construction of the Diversion Inlet Structure and Reaches SE-1 and SE-2 of the Fargo-Moorhead Metropolitan Flood Risk Management Project. Pursuant to the terms of the PPA, the Authority is responsible, on behalf of USACE, for obtaining the interests and authorizations necessary for construction, operation, and maintenance of the Elements, which will be designed and constructed by USACE. As a result, the Parties desire to enter this MOU to address the Parties' respective rights and obligations related to the design, construction, obligation, and maintenance of the Elements. Reimbursement includes the following: (i) reimbursement to the City of up to $5,000 annually between the effective date of the MOU and completion of the final element for project related expenses; (ii) reimbursement up to $2,500 annually following completion of the final element for project related expenses; and (iii) extraordinary expenses as a result of the project if the City first receives written authorization from the Authority.

DA Memorandum of Understanding (Action)

METRO FLOOD DIVERSION AUTHORITY

MOU Parties	Project	MOU Cost and Summary
City of Horace & MFDA MOU	DCAI	The MOU outlines respective roles and responsibilities of the Parties in regard to the impacts resulting from construction of the Storm Water Diversion Channel and Associated Infrastructure of the Fargo-Moorhead Metropolitan Flood Risk Management Project. The Authority, in conjunction with USACE, is designing, constructing, operating, and maintaining the Comprehensive Project. One element of the Comprehensive Project is the SWDCAI, with the Authority intends to deliver through a public private partnership with a Developer. The Authority intends to transfer the majority of the obligations set forth in this MOU to the Developer through the entrance of the Project Agreement. If an obligation is not transferred to the Developer, the Authority will undertake such obligation itself or assign the same to a third party. In the event the Authority's design creates a Parcel Without Access within the incorporated city limits of Horace, the Authority will be responsible for establishing a New Street to provide access to that parcel and the Authority will be responsible for all costs associated with establishing a New Street. In the event Horace desires to add a crossing of the SWDCAI, Horace must secure written approval from the Authority. Low water crossings of the SWDCAI will neither be considered nor allowed by the Authority. The Authority will install, at its own cost and expense, up to three (3) sanitary sewer crossings under the SWDCAI at the request of Horace. Horace will not make these requests until a developer has applied for a plat approval for property west of the SWDCAI. The sizing of the crossings will be discussed by the Authority and Horace at the time the requests are made and will be dependent upon not only the proposed development but projected future capacity needs that would be serviced by that crossing. Reimbursement includes the following: (i) reimbursement to the City of up to $5,000 annually between the effective date of the MOU and completion of the final element for project related expenses; (ii) reimbursement up to $2,500 annually following completion of the final element for project related expenses; and (iii) extraordinary expenses as a result of the project if the City first receives written authorization from the Authority.

DA Utility Relocation Agreements (Action)

Agreement Parties	Project	Agreement Cost and Summary
Polar Communications Mutual Aid Corporation & MFDA MURA	SEAI & UMA	The purpose of this Agreement is to ensure a coordinated, time efficient, and cost-effective process for completing the Utility Relocation Project, for coordinating operations and maintenance activities after completion of the Utility Relocation Project, and for the development of individual Task Orders issued in conjunction with, and subject to, the terms and conditions of this Agreement. The Authority shall pay all reasonable costs of the Utility Relocation Project that are identified within Section VII of the agreement, excluding the utility's internal costs. The Utility shall be responsible for costs and expenses of betterments installed during the utility relocation project.

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

THE METRO FLOOD DIVERSION AUTHORITY

AND

THE NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

Dated as of December 2, 2021

Relating to:

A Memorandum of Understanding outlining respective roles and responsibilities for the design, construction, and relocation of road facilities in conjunction with the Fargo-Moorhead Metropolitan Area Flood Risk Management Project

This instrument was drafted by:
Ohnstad Twichell, P.C. (TJL)
P.O. Box 458
West Fargo, North Dakota 58078

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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (hereinafter the "Memorandum of Understanding") is made and entered into this _____ day of December, 2021, by and between the METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota (hereinafter, the "Authority"), and the NORTH DAKOTA DEPARTMENT OF TRANSPORTATION, an Agency of the State of North Dakota (hereinafter, "NDDOT").

WHEREAS, construction of the locally preferred plan for the Comprehensive Project (as defined herein) at the Fargo, North Dakota, and Moorhead, Minnesota, Metropolitan Area was authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-121; and

WHEREAS, the Authority (as defined herein), the City of Fargo, North Dakota, and the City of Moorhead, Minnesota, are the Non-Federal Sponsors for the Comprehensive Project and have entered into a Project Partnership Agreement (the "PPA") with the United States Army Corps of Engineers (hereinafter the "USACE") for the construction, operation, and maintenance of the Comprehensive Project; and

WHEREAS, the PPA sets forth a split delivery method for the Comprehensive Project, establishing the respective responsibilities of both the Non-Federal Sponsors and USACE; and

WHEREAS, pursuant to the PPA, USACE will be responsible for completing the diversion inlet structure; the approximately six (6) mile connecting channel; the control structures on the Red River of the North and the Wild Rice River; the Diversion Inlet Structure; the southern embankment; the overflow embankment; construction of road raises associated with the staging area; and all mitigation features that are not the responsibility of the Non-Federal Sponsors; and

WHEREAS, pursuant to the PPA, part of the Authority's responsibility will be to design, construct, manage, operate, and maintain thirty (30) miles of channel and associated features; the channel outlet; two (2) aqueducts; two (2) hydraulic structures; various local drainage inlets; various levees; four (4) railroad bridges; four (4) interstate bridges; various county bridges, as well as road work and associated environmental mitigation and vegetation features (the "SWDCAI"); and

WHEREAS, the Authority is the entity responsible for the Non-Federal Sponsors' obligations under the PPA; and

WHEREAS, to facilitate the design, construction, operation, and maintenance of the SWDCAI, on September 2, 2015, the Authority approved a Notice of Intent to develop a Public-Private Partnership with a Developer pursuant to North Dakota Century Code chapter 48-02.1; and

WHEREAS, on July 14, 2016, the Authority authorized the release of a Request for Qualifications for the P3 Procurement, and on December 15, 2016, the Authority authorized the release of a draft Request for Proposals for the P3 Procurement; and

WHEREAS, the Authority anticipates the Developer will maintain the SWDCAI for a thirty (30) year maintenance term; and

WHEREAS, the Non-Federal Sponsors' responsibilities under the PPA also include the acquisition of real estate interests necessary for the SWDCAI and the operation and maintenance of the SWDCAI when constructed; and

WHEREAS, under a Joint Powers Agreement entered by the member entities of the Authority, the Authority is responsible for undertaking the Non-Federal Sponsors' responsibility to acquire necessary real estate interests; and

WHEREAS, NDDOT owns, holds, or controls certain rights-of-Way on which NDDOT is operating and maintaining Existing Roads, which will be affected by the construction, operation, and maintenance of the SWDCAI; and

WHEREAS, this Memorandum of Understanding is only intended to bind the Parties in regard to the portion of the Comprehensive Project north of the Southern Embankment and shall have no implications for or binding power in regard to the Parties work, efforts, or relations in the Southern Embankment. The Parties' interactions with one another in the Southern Embankment shall be governed by a separate agreement between the Parties; and

WHEREAS, it is necessary for the construction, operation, and maintenance of the SWDCAI that portions of the aforementioned title, rights, and privileges of NDDOT be acquired, and that portions of said Existing Roads of NDDOT be moved, rearranged, and/or altered.

NOW, THEREFORE, in consideration of the faithful performance of each Party of the mutual covenants and agreements herein set forth, it is mutually agreed as follows:

ARTICLE I.
DEFINITIONS AND INTERPRETATION

Section 1.01 DEFINITIONS. All capitalized terms used and not otherwise defined herein shall have the meanings given to them in this Memorandum of Understanding and as defined in this Section unless a different meaning clearly applies from the context.

"Applicable Law" means, collectively, the Constitutions of the United States and the State of North Dakota, all common law and principles of equity, and all federal, state, and local laws including, without limitation, all environmental laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation, or administration thereof, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations, and permits of, and agreements with, any governmental authority, and, with respect to any person, the articles of incorporation, bylaws, or other organizational or governing documents of such person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to the Authority, NDDOT, or the Comprehensive Project.

"Authority" means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota and a permanent joint powers entity formed through the Joint Powers Agreement to provide the Fargo-Moorhead metropolitan area with permanent and comprehensive flood protection, and for the purposes of this Memorandum of Understanding. References to the

Authority throughout this Memorandum of Understanding includes references to other entities engaged by the Authority, including the Developer, to complete such work. Where this Memorandum of Understanding assigns responsibilities to the "Authority," the term shall also include the Developer.

"Authorized Representative" has the meaning set forth in Section 15.06.

"Betterment" means any improvement in design, construction, or capacity over and above what is required to provide road facilities of equal service and utility to NDDOT. Notwithstanding the foregoing, the following are not considered Betterments:

(a) Any upgrades from current infrastructure required for accommodation of the SWDCAI;

(b) Replacement devices or materials that are of equivalent standards although not identical;

(c) Replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;

(d) Any upgrading required by law;

(e) Replacement devices or materials used for reasons of economy (e.g., it may be uneconomical to purchase non-stocked items); and

(f) Any upgrading required by a utility owner's applicable utility relocation standards.

"Bridge" means a single-span or multiple-span structure including supports, erected over a depression or obstruction such as water, highway, or railway; and having a track or passageway for carrying traffic or other moving loads; and having a length measured along the center of the Road of more than twenty (20) feet between under copings of abutments or extreme ends of openings for multiple boxes that will be constructed pursuant to this Memorandum of Understanding to move, relocate, and/or alter an Existing Road to accommodate construction, operation, and maintenance of the SWDCAI.

"Bridge Acceptance" means agreement by NDDOT and the Authority of Bridge Completion.

"Bridge Completion" means the completion of all major Construction Work on a Bridge, including that all permanent safety appurtenances and signing are installed, all striping is in-place, and all lanes of traffic are available to open and operate at normal speed limits.

"Buildable Unit" means discrete and/or identifiable portions of the SWDCAI that will be designed and constructed individually, and that when completed, make up a Bridge, Road, or other SWDCAI elements, and ultimately the entire SWDCAI.

"Business Day" means a day in which normal business is conducted and excludes weekends and federal holidays.

"Cause" exists where: (1) the Project Agreement has been terminated; and (2) the Authority has provided notice to NDDOT that the Authority does not intend to continue or finish the SWDCAI.

"Compensation Event" means any of the following events:

(a) any breach of this Agreement by the Authority;

(b) any violation of Applicable Law by the Authority;

(c) any Qualifying Change in Law;

(d) any Material Flood Event that occurs prior to the Project Substantial Completion Date;

(e) the issuance by the Authority of any Directive Letter;

(f) any Required Action taken by the Authority or USACE Step-in, in each case, in the circumstances described in Section 47.4 (Step-In without Developer Breach);

(g) any suspension of the Construction Work or O&M Work that constitutes a Compensation Event pursuant to Section 14.4 (Suspension of Construction Work) or Section 17.6 (Suspension of O&M Work);

(h) any damage, interruption or interference to the Work caused by a capital works project carried out by the Authority, another Governmental Entity, or a Utility Owner (or any contractor on behalf of any such party) on or in the vicinity of the Project Site, excluding any Utility Adjustment Work;

(i) the issuance by the Authority of any Safety Compliance Order that does not arise as a direct result of any Developer-Related Entity's failure to comply with one or more Safety Standards;

(j) any Hazardous Materials Release into the Project Site at any time after the Commercial Closing Date, but only to the extent that such release:

    (1) constitutes a Hazardous Environmental Condition; and

    (2) does not constitute a Developer Hazardous Materials Release;

(k) the discovery of any Undisclosed Utility during the carrying out of the Construction Work;

(l) the discovery of any Undisclosed Hazardous Environmental Conditions during the carrying out of the Construction Work;

(m) the discovery of any Undisclosed Endangered Species during the carrying out of the Construction Work;

(n) the discovery of any Undisclosed Archaeological Remains during the carrying out of the Construction Work;

(o) the discovery of any Undisclosed Access Restriction;

(p) the issuance of any preliminary or permanent injunction or temporary restraining order or other similar order, legal restraint, or prohibition by a Governmental Entity of competent jurisdiction under Applicable Law that materially and adversely affects the Authority's or the Developer's performance under this Agreement;

(q) the relevant Governmental Entity does not issue a Key Governmental Approval by the applicable Key Governmental Approval Deadline;

(r) any amendment or variation to the terms and conditions of any Authority-Provided Approval after the Setting Date not previously agreed to by the Developer (including any variation to the terms and conditions of any extension or renewal of any final Authority-Provided Approval), as compared to those versions of such Authority-Provided Approvals provided to the Developer (including in draft form) as part of the Disclosed Information prior to the Setting Date, except to the extent such amendment or variation is caused by a difference between an Indicative Design and the Final Design;

(s) the exercise by the Authority of its right under Section 14.5(b) (Right to Uncover) in the circumstances described in Section 14.5(e) (Right to Uncover);

(t) the execution by the Authority of a Utility MOU or Third-Party MOU on terms that are materially inconsistent with the version of that Utility MOU or Third-Party MOU provided to the Proposers as of the Setting Date, except to the extent any inconsistencies are the result of a difference between an Indicative Design and the Final Design;

(u) any amendment to the terms of a Utility MOU or Third-Party MOU after the date it is executed, except to the extent such amendment is the result of a difference between an Indicative Design and the Final Design.

(v) a failure by a Utility Owner to comply with its obligations under its Utility MOU or to cooperate with the Developer in relation to a Utility Adjustment that, in each case, constitutes a Compensation Event under Section 11.7(j) (Failure by Utility Owner to Cooperate); or

(w) any error in the Relied Upon Geotechnical Data discovered during the Design Work or Construction Work.

except, in each case, to the extent attributable to any breach of this Memorandum of Understanding, Applicable Law, or any Governmental Approval by, or any negligent act or negligent omission of, a Developer-Related Entity.

"Comprehensive Project" means the Fargo-Moorhead Metropolitan Area Flood Risk Management Project authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo Moorhead Metropolitan Area Flood Risk Management, dated July 2011 and approved in accordance with the Chief's Report, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the U.S. Army Engineer, St. Paul, on September 19, 2013 and the Final Supplemental Environmental Assessment #2, Fargo Moorhead Metropolitan Area Flood Risk Management Project, dated February 2019 and approved by the District Engineer, St. Paul District on February 28, 2019.

"Construction Bypass Route" means a temporary bypass route, established during construction to accommodate traffic.

"Construction Work" means all employment of labor, materials, equipment, and incidentals necessary to construct or complete the Bridges and Roads in accordance with the Project Agreement.

"Data Room" means the data room created by the Authority to provide information related to the SWDCAI during the P3 Procurement Request for Proposals phase.

"Design Work" means all Work related to design, redesign, engineering, or architecture.

"Developer" means Red River Valley Alliance, LLC, which entered into the Project Agreement with the Authority to design, finance, build, operate, and maintain the SWDCAI. References to the Developer throughout this MOU include references to other entities engaged by the Developer to complete such work.

"Engineer" means a registered professional engineer licensed in the State of North Dakota.

"Environmental Law" means any federal, state, or local law, regulation, code, rule, ordinance, order, judgment, decree, injunction, or common law relating in any way to human health, occupational safety, natural resources, plant or animal life, or the environment, including without limitation, principles of common law and equity, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

"Existing Road" means a road or bridge owned, held, or controlled by NDDOT that is currently in existence, as identified in Exhibit A, or will be in existence at the time the Project Agreement is executed.

"Frontage Road" means the frontage road running on the south side of Interstate 94 from 165th Avenue Southeast to 38th Street Northwest.

"Financial Closing Date" means the date on which all of the conditions precedent to financial close set forth in the Project Agreement have been satisfied or otherwise waived in accordance with the terms of the Project Agreement.

"Final Design" means the design for a Bridge or Road that has reached ninety-five percent (95%) completion, as determined by the Authority.

"Hazardous Materials" means any element, chemical, compound, mixture, material, or substance, whether solid, liquid, or gaseous, which at any time is defined, listed, classified, or otherwise regulated in any way under any Applicable Law (including CERCLA), or any other such substances or conditions (including mold and other mycotoxins, fungi, or fecal material) which may create any unsafe or hazardous condition or pose any threat or harm to the Environment or human health and safety.

"Innovative Technical Concept" or **"ITC"** means a technical, financial, or other concept that deviates from the Technical Requirements.

"Maintenance Termination Date" means October 1 following the twenty-ninth (29th) anniversary of Project Substantial Completion.

"Material Change or Modification" means a change or modification affecting the operation or performance of a Bridge, Road, or Township SWDCAI element.

"Member Entities" means those entities—the City of Moorhead and Clay County, Minnesota, and the City of Fargo, Cass County, and Cass County Joint Water Resource District, North Dakota—that signed the Joint Powers Agreement dated as of June 1, 2016, which established and continued a joint powers entity called the Metro Flood Diversion Authority.

"NDDOT" means the North Dakota Department of Transportation, an agency of the State of North Dakota.

"Non-Structural Maintenance" means the (A) re-striping Bridge deck and Road; (B) plowing snow from the Bridge deck and Road; (C) controlling ice and snow (e.g., application of salts, chlorides, sand, etc.) on Bridge deck and Road; (D) removing roadkill; and (E) maintenance of signs existing prior to the construction of the SWDCAI.

"Operating Period" means the period set forth in the Project Agreement during which the Developer operates and maintains the SWDCAI until the Maintenance Termination Date.

"Party" means the Authority or NDDOT, as the context may require, and their respective legal representatives, successors, and permitted assigns, and wherever a reference in this Memorandum of Understanding is made to any Parties hereto, "Parties" means the Authority and NDDOT, collectively, and their respective legal representatives, successors, and permitted assigns.

"Preliminary Design" means the design for a Buildable Unit that has reached thirty percent (30%) completion, as determined by the Authority.

"Project Agreement" means a public-private partnership agreement dated August 19, 2021, as authorized by Chapter 48-02.1 of the North Dakota Century Code, by and between the Metro Flood Diversion Authority**,** or one or more Member Entities authorized by the Metro Flood Diversion Authority, and the Developer for design, construction, financing, operation, and maintenance of the Comprehensive Project.

"Project Substantial Completion" means the completion of all substantial completion conditions as outlined in the Project Agreement for the substantial completion of the SWDCAI

"Project Management Consultant" or **"PMC"** means the Authority's management consultant that will coordinate the implementation of this Memorandum of Understanding on the Authority's behalf.

"Record Drawings Deliverable" means an organized set of plans, details, specifications, calculations, and related documentation that accurately represent what was constructed, and the conditions encountered during construction, all as described in this Memorandum of Understanding.

"Released for Construction Documents" or **"RFC Documents"** means all drawings, specifications, revisions thereto, and any other items necessary to construct the Work, Signed and Sealed by the Engineer of Record, which have been "Released for Construction" in accordance with the Project Agreement.

"Relief Event" means:

(a) any Change in Law that is not a Qualifying Change in Law;

(b) any Force Majeure Event;

(c) any flood (excluding Material Flood Events during the D&C Period);

(d) any fire, explosion, or earthquakes;

(e) any tornado or named windstorm and ensuring storm surges;

(f) any riot or civil commotion;

(g) any blockade or embargo;

(h) any:

(1) official or unofficial strike;

(2) lockout;

(3) go-slow; or

(4) other labor dispute,

(i) generally affecting the construction industry or a significant sector of it;

(j) any accidental loss or damage to the Project Site or any roads servicing them (including obstructed waterways);

(k) any delay in obtaining any Governmental Approval (other than any Authority-Provided Approval) to the extent that such delay is (i) beyond the reasonable control of any Developer - Related Entity and (ii) not a Compensation Event under clause (q) (Delay in Obtaining Key Approvals) of the definition of Compensation Event, except, in each case, to the extent attributable to any breach of this Memorandum of Understanding, Applicable Law or any Governmental Approval by, or any negligent act or negligent omission of a Developer-Related Entity.

"Renewal Work" means all Work related to the maintenance, repair, reconstruction, rehabilitation, restoration, renewal, or replacement of any worn-out, obsolete, deficient, damaged, or under-performing component of the Project, not including routine maintenance, so that such component does not prematurely deteriorate and remains fully functional.

"Request for Proposals" means the solicitation issued by the Authority as part of the P3 Procurement, which outlines proposal requirements and seeks proposals to design, finance, build, operate, and maintain the SWDCAI, and all applicable addenda.

"Request for Qualifications" means the solicitation that was issued by the Authority as part of the P3 Procurement seeking statements of qualifications to design, finance, build, operate, and maintain the SWDCAI, and all applicable addenda.

"Road" means the portion of a highway, including shoulders, intended for vehicular use.

"Road Acceptance" means agreement by NDDOT and the Authority of Road Completion.

"Road Completion" means the completion of all major Construction Work on a Road, all permanent safety appurtenances and signing are installed, all striping is in-place, and all lanes of traffic are open and available to operate at normal speed limits.

"Structural Maintenance" means maintenance activities listed in Exhibit D and all other maintenance activities not listed under **Non-Structural Maintenance**.

"SWDCAI" means the Storm Water Diversion Channel and Associated Infrastructure, portion of the Comprehensive Project, which is being procured by the Metro Flood Diversion Authority and includes, but is not limited to, the approximately thirty (30) mile channel and associated features, including the outlet, river and drain inlets, road bridges, railroad bridges, aqueducts, and recreational features, to be constructed as part of the Comprehensive Project. The SWDCAI does not include the portion of the Comprehensive Project known as the Southern Embankment.

"Technical Requirements" means the technical requirements for the SWDCAI to be determined by the Authority, including those requirements supplied by NDDOT, and included in the Request for Proposals.

"Uniform Act" means the Relocation Assistance and Real Property Acquisition Policies Act of 1970.

"USACE" means the United States Army Corps of Engineers.

"Utility Relocation" means each relocation (temporary or permanent), abandonment, protection in place, removal, replacement, reinstallation, and/or modification of existing utilities necessary to accommodate construction, operation, maintenance, and/or use of the SWDCAI.

"Work" means the Design Work, Construction Work, and Structural Maintenance, and all other work, services and obligations required to be furnished, performed, and provided by the Authority for the SWDCAI under this Memorandum.

Section 1.02 TERMS GENERALLY. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (b) any reference herein to any person shall be construed to include such person's permitted successors and assigns, (c) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this Memorandum of Understanding in its entirety and not to any particular

provision hereof, (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this Memorandum of Understanding, and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

Section 1.03 TERM AND SURVIVAL. This Memorandum of Understanding shall survive through the Operating Period and for successive ten-year terms until a Party hereto terminates this Memorandum of Understanding with at least one-year notice to the other Party.

Section 1.04 INTENT TO ASSIGN. NDDOT authorizes and acknowledges that the Metro Flood Diversion Authority intends to assign certain rights and obligations under this Memorandum of Understanding to the Developer.

Section 1.05 COOPERATION IN PLATTING. The Authority intends to plat right-of-way acquired for Project purposes. NDDOT shall reasonably cooperate with said platting efforts if requested to do so by the Authority.

ARTICLE II.
DESIGN

Section 2.01 BRIDGES AND ROADS.

(a) The Authority will, using an Engineer, design the Bridges, Roads, and any physical alterations necessary to relocate Existing Roads for construction, operation, and maintenance of the SWDCAI, within the design parameters described in Exhibit B of this Memorandum of Understanding. The Engineer will provide designs for each Bridge and Road, and said designs will retain the functional capabilities of existing facilities.

(b) The Authority will be responsible for selecting the Engineer, any necessary contracting to accomplish the designs, and paying all costs associated with completing the Work described in this Section.

(c) The Authority will ensure that the Released for Construction Documents for each Bridge and Road meet the requirements of NDDOT for continuation of its operations, while at the same time accommodating the construction, operation, and maintenance of the SWDCAI.

(d) The Authority will be solely responsible for ensuring the design of the Bridges and Roads allows for construction of the SWDCAI.

(e) The Released for Construction Documents for each Bridge and Road will conform to NDDOT Guidelines, including but not limited to the standards found in the Manual on Uniform Traffic Control Devices and the National Highway System and Interstate Design Standards found in 23 C.F.R. § 625 (2015), as provided in the Technical Requirements and as amended by ITCs.

(f) Load ratings of the structures need to be completed both during the design phase and construction phase in accordance with the NDDOT Load Rating Manual. An initial load rating should be completed during the design phase to ensure the bridge will meet intended design loads.

Section 2.02 TECHNICAL REQUIREMENTS AND INNOVATIVE TECHNICAL CONCEPTS.

(a) Upon execution of this Memorandum of Understanding, NDDOT will identify work limitations and provide NDDOT design guidelines required for the Authority's construction of the Bridges and Roads. NDDOT will have the continuing obligation to supplement these work limitations and provisions if required of the Authority.

(b) The Authority will provide the work limitations, and NDDOT guidelines to the Developer.

Section 2.03 NOTICE.

(a) The Authority will provide NDDOT notice of when design work will be commencing. The notice provided by the Authority will include the identity and description, if possible, of the Engineer who will be working on the designs for the Bridges and Roads.

Section 2.04 BETTERMENTS. NDDOT agrees that the relocation, rearrangement, and/or alteration to be accomplished under this Memorandum of Understanding will provide NDDOT with facilities equal in service and utility to those now in existence. If NDDOT desires any Betterments, NDDOT will notify the Authority of each individual Betterment sought as soon as reasonably possible. In the event the Authority constructs Betterments upon request of NDDOT, the Authority will invoice NDDOT for those costs and expenses incurred for construction of the Betterments in accordance with the procedure laid out in this Article.

Section 2.05 NDDOT REVIEW AND ACCEPTANCE.

(a) NDDOT will complete two (2) reviews of the designs for each Buildable Unit:

(1) a review of the Preliminary Design, and

(2) a review of the Final Design. NDDOT's review is limited to whether the design is in compliance with the technical specifications provided herein.

(b) After Preliminary Design and Final Design drawings have been submitted to NDDOT, NDDOT shall complete its review within twenty-one (21) calendar days after receipt thereof. If NDDOT finds the design is inaccurate, out-of-date, out of compliance with the requirements of this Memorandum of Understanding, or incomplete, NDDOT shall provide the PMC written notice of its determination as soon as reasonably possible, and the Authority will correct such deficiency in the design and resubmit the design for review and concurrence. NDDOT will have

seven (7) calendar days to review a resubmittal, and review is limited to the matters necessitating the resubmittal.

(c) In the event NDDOT fails to approve or provide comment on a design within the time periods specified in this Section, the Authority will provide written notice to NDDOT's Authorized Representative of the failure to respond. Within five (5) business days of NDDOT's Authorized Representative receiving the written notice of failure to respond, NDDOT shall provide approval or comment on the design or the Authority shall be entitled to proceed as if NDDOT had approved the design.

(d) The Authority will not reimburse NDDOT for costs incurred in connection with NDDOT staff reviewing the designs.

(e) The Authority may submit up to twenty Buildable Units for review at any one time.

Section 2.06 RELEASE. NDDOT warrants that the designs it approves will accommodate its operations.

Section 2.07 OWNERSHIP OF WORK. The designs resulting from this Memorandum of Understanding will be the property of the Authority as well as NDDOT.

ARTICLE III.
PRELIMINARY PLANNING AND ENGINEERING ACTIVITIES

Section 3.01 COORDINATION WITH USACE. All communication and coordination between NDDOT and USACE regarding any aspect of the Comprehensive Project shall run through the Authority. Except as expressly authorized herein, NDDOT shall not communicate directly with USACE regarding any aspect of the Comprehensive Project or any other subject-matter referenced in, related to, or arising from this Memorandum of Understanding, without the prior written authorization of the Authority. The restrictions detailed in this Section shall not apply in emergency situations during which NDDOT reasonably fears a material risk to the safety and well-being of the public or any individual utilizing NDDOT infrastructure. In the event of such an emergency, NDDOT's communication with USACE shall be focused on the emergency at hand.

Section 3.02 SITE TESTING. The Authority will be responsible for all preliminary engineering activities within the work limits for the Bridges and Roads, including: (a) technical studies and analyses; (b) geotechnical, seismic, flooding, and biological investigations; (c) right-of-way mapping, surveying, and appraisals; (d) subsurface investigations and mapping; (e) Hazardous Materials investigations; and (f) archeological, paleontological, and cultural investigations.

Section 3.03 MITIGATION. The Authority is responsible, at its sole cost and expense, for the remediation and removal of all Hazardous Materials unearthed as a result of the SWDCAI Work.

Section 3.04 UTILITY RELOCATION. The Authority is responsible for coordinating and/or performing Utility Relocations of all utilities and will be responsible for costs incurred for these relocations.

Section 3.05 PERMITS AND APPROVALS. The Authority is responsible for securing any necessary permits and/or approvals for construction and/or maintenance of the Bridges and Roads, including but not limited to those required by NDDOT and applicable water resource district permits. The Authority shall secure from NDDOT a single permit allowing access to all of NDDOT's property and/or rights-of-way for the construction and maintenance of the Bridges and Roads and the SWDCAI. NDDOT shall respond to the Authority's permit request within seven (7) calendar days of receiving such request. The Parties shall cooperate to secure any and all other necessary approvals and permits including, but not limited to, those from the Federal Highway Administration, review of the work zone traffic control plan, Traffic Management plan, and design reports. NDDOT shall provide the Authority with a permit to access all facilities or rights-of-way within the Footprint, which shall be renewed every five (5) years for the duration of the thirty (30) year operation and maintenance period following Project Substantial Completion. On an annual basis, the Authority shall provide NDDOT with proof of compliance with the insurance requirements listed in this Memorandum of Understanding. Furthermore, the Authority must obey and abide by all Applicable Laws.

ARTICLE IV.
PROPERTY INTEREST ACQUISITION

Section 4.01 ACQUISITION. The Authority will, at its sole cost and expense, obtain all rights-of-way across real property necessary for the relocation and/or alteration of the Bridges and Roads in accordance with the Uniform Act, including rights-of-way for any required temporary bypass.

Section 4.02 TRANSFER OF INTEREST.

(a) The Authority, after consultation with NDDOT, will convey to NDDOT the necessary right-of-way and/or easement interests to construct, operate, and maintain NDDOT's relocated/altered Bridges and Roads on any additionally acquired lands.

(b) NDDOT will convey to the Authority, via permit, as referenced in Article III of this Memorandum of Understanding, the right to construct and maintain the Bridges and Roads and the SWDCAI on or across NDDOT's property or right-of-way to the extent NDDOT may convey such rights.

(c) NDDOT will convey to the Authority the necessary easements to operate and maintain the SWDCAI within NDDOT's property or right-of-way to the extent that NDDOT may convey such rights.

ARTICLE V.
CONSTRUCTION & PERFORMANCE

Section 5.01 BRIDGES AND ROADS. The Authority will construct the Bridges and Roads and any physical alterations necessary to relocate Existing Roads for construction, operation, and maintenance of the SWDCAI. Construction of the Bridges and Roads and any physical alterations will occur based upon the Released for Construction Documents, except as otherwise provided in Section 5.03. The Authority will sequence the work at combined crossing locations to maintain access and minimize closures.

Section 5.02 WORK ZONE TRAFFIC CONTROL. The Authority will replace appropriate work zone traffic control signs and establish Construction Bypass Routes during construction of the Bridges, Roads, and SWDCAI, as necessary.

Section 5.03 MATERIAL CHANGES OR MODIFICATIONS. Any Material Change or Modification to a Released for Construction Document during construction will be subject to written approval by NDDOT. NDDOT's review of any proposed Material Change or Modification will occur in accordance with the parameters and timelines set forth in Section 2.05 hereof. NDDOT has the ability, in its sole discretion, to waive any of the design reviews afforded by this Section. Additionally, if NDDOT fails to respond to a design, after the notice provided under Section 2.05(c), the Authority may treat NDDOT's failure to respond as concurrence in the design and may commence further design or being Work, as applicable.

Section 5.04 CONSTRUCTION SCHEDULE. To facilitate scheduling for construction of the Bridges and Roads, the Authority will provide NDDOT's Authorized Representative a proposed construction schedule for the Bridges and Roads and at least thirty (30) calendar days advanced written notice of the proposed start date for construction of each Bridge or Road. Should the construction schedule be changed, the Authority shall notify NDDOT of the change as soon as reasonably possible. After the proposed start date, NDDOT shall not let or permit any new construction on the adjacent roadway that will impact the SWDCAI. Any maintenance work by NDDOT will be coordinated with the Developer's schedule.

Section 5.05 EXISTING ROADS. During the process of constructing the Bridges and Roads, the Authority will deconstruct and remove all remaining portion of Existing Roads, unless the requirement to do so is waived by NDDOT.

Section 5.06 NDDOT AND FHWA REVIEW AND INSPECTION. NDDOT and the Federal Highway Administration will have the right to review construction work and Renewal Work, in its current state, performed hereunder at any time during its progress. The Authority will permit and facilitate reasonable access to NDDOT for the reasonable inspection and review of work and shall cooperate fully with inspection personnel. The presence or absence of a NDDOT or Federal Highway Administration inspector does not relieve the Authority from any requirement in this Memorandum of Understanding, nor is any inspector authorized to change any term or condition of this Memorandum of Understanding or the Project Agreement. The Authority shall provide NDDOT with advanced notice of, and the opportunity to witness, all inspection and test activity with respect to the Construction Work. If the Authority does not provide such notice and opportunity, the Authority shall, at the request of NDDOT, uncover any relevant part of the

Construction Work that has been covered up or otherwise put out of view to permit NDDOT to inspect the relevant Construction Work.

Section 5.07 MAINTENANCE DURING CONSTRUCTION.

(a) The Authority shall maintain the roadway surface to ensure it is free of potholes, pavement dips or bumps and drop-offs greater than two (2) inches.

(b) Pavement shall have standard reflective markings, which the Authority shall reapply annually in May or more often as required by NDDOT.

(c) During winter months (November 1 to April 1), the Authority will maintain traffic on two 12-foot wide, paved interstate lanes, with 10-foot (minimum) paved outside shoulder and 4-foot (minimum) paved inside shoulder, open in each direction, matching highway capacity of the roadway prior to the Authority's work, at a design speed of seventy-five (75) miles per hour, subject to winter driving conditions.

(d) The Authority shall complete all maintenance described in the table attached hereto as Exhibit D.

(e) At all times when active construction does not pose a safety hazard, NDDOT shall be responsible for snow removal, ditch mowing, and otherwise ensure all roads and bridges with impacts arising from or related to this Memorandum of Understanding are safe for public use.

Section 5.08 BRIDGE AND ROAD COMPLETION. The Authority will provide NDDOT's Authorized Representative with written notice of any anticipated Bridge Completion and Road Completion at least sixty (60) calendar days and fifteen (15) business days prior to the anticipated date for Bridge Completion and Road Completion. Within fifteen (15) calendar days of the anticipated date for Bridge Completion and Road Completion, NDDOT and the Authority will conduct a final inspection of the Bridge and Road to determine whether the structure meets the Released for Construction Documents and any material changes or modifications made per Section 5.03 of this Memorandum of Understanding. If NDDOT finds the construction is not in accordance with the Released for Construction Documents or any approved Material Changes or Modifications, NDDOT will notify the Authority of such fact and the Authority will correct such deficiency in the construction work and re-notify for inspection. Once NDDOT finds a Bridge and Road has reached Bridge Completion and Road Completion, NDDOT will provide a certificate of Bridge Acceptance and Road Acceptance confirming the Work has been completed in accordance with design and specifications.

Section 5.09 OWNERSHIP. Upon Bridge Acceptance and Road Acceptance and final inspection of the Bridge and Road by NDDOT, the Authority will transfer ownership of the Bridge and Road and any real property on which the Bridge or Road sits which is outside of existing NDDOT right-of-way to NDDOT via a Warranty Deed, and excepting from said transfer all interests in oil, gas, or fluid mineral interests. Immediately following transfer of the Bridge, Road, and applicable real property, if any, NDDOT agrees to grant and convey to Cass County Joint Water Resource District, an Easement, a copy of which is included herein as Exhibit G, granting

the right to construct, operate, and maintain the SWDCAI and all other aspects of the Project under, or through applicable NDDOT property and right-of-way.

Section 5.10 RECORD DRAWINGS. Prior to the turnover of ownership of a Road to NDDOT, Record Drawings Deliverable shall be submitted to NDDOT. NDDOT will have the opportunity to review and comment on the Record Drawings Deliverable. The Record Drawings Deliverable shall include:

(a) An index of the Record Drawing Deliverable listing the documents included and a summary of the contents of each document.

(b) Provide a summary of team members.

(c) Provide a summary of Project times, including date Released for Construction, planned and actual start date, and planned and actual completion date(s).

(d) Provide a complete set of As-Built Drawings conformed to reflect revisions after the Construction Documents Submittals were released for construction and account for actual field conditions and changes; clearly designate changes using "clouded" graphic elements on the drawings:

(1) Provide an updated set of native drawings and model files for the design packages that reflect revisions after the Construction Documents Submittals were Released for Construction.

(2) Reflect actual conditions of the constructed Work, including ground conditions encountered, changes to the design after the Construction Documents Submittals, and location of existing or abandoned features encountered during construction.

(3) Geotechnical Engineer to document the ground conditions encountered and reflect said conditions on the revised drawings; use the same descriptive language and soil type designations as the Project geotechnical reports.

(4) Show and describe the location of existing and relocated utilities using surveyed coordinates.

(5) Show and describe the location of new facilities using surveyed coordinates.

(6) Update title sheets and drawing title blocks indicating the documents are Record Drawings deliverable; include dates, names, and signatures of the engineering and drafting personnel making the as-constructed annotations or changes.

(7) The final load rating should be completed prior to acceptance and should reflect as-built conditions.

(e) Provide a complete set of the specifications conformed to reflect revisions after the Construction Documents Submittals were Released for Construction. Clearly designate changes using "track changes" mode in Microsoft Word, or equivalent. Submit native files and bookmarked PDF copies of the specifications generated from the word processing software.

(f) Include a complete set of approved Change Requests.

(g) Include a complete set of Cultural/Archaeological monitoring reports, if applicable.

(h) Include a complete set of test plans conformed to show final test results and associated compliance with this Agreement.

(i) Include a complete set of Shop Drawings and Samples submittals, calculations, and related documents, all annotated to reflect actual as-constructed conditions.

(j) Include a complete set of vendor-supplied O&M Manuals, and related documents, for products and equipment.

(k) Include a copy of Weekly Construction Progress Reports and Monthly Construction Progress Reports.

(l) Include an organized set of original diaries, logs, checklists, notebooks, records, reports, test results, and other documents prepared during construction for the Buildable Unit design packages.

(m) Conduct continuous QA/QC procedures to ensure that each Record Drawings Deliverable meets the requirements stated herein.

(n) Submit bookmarked PDFs generated from the native software and native software file versions of the contents of each Record Drawings Deliverable.

Section 5.11 FRONTAGE ROAD. Between 166th Avenue Southeast and the SWDCAI, the Authority will convert the Frontage Road to a minimum maintenance roadway by reclaiming/milling the existing asphalt. The Authority will install a gate on the east side of 166th Avenue Southeast. The remainder of the Frontage Road – between the SWDCAI and 38th Street Northwest and between 165th Avenue Southeast and 166th Avenue Southeast – will remain paved. That portion of the Frontage Road remaining between the SWDCAI and 38th Street Northwest will be utilized as a means to access the multi-use road/trail being constructed as part of the SWDCAI. The Authority will install a T-Type cul-de-sac for a Single Unit vehicle, as shown in Figure 5-1G of the AASHTO A Policy on Geometric Design of Highways and Streets, at the east side of the SWDCAI to allow access to the multi-use road/trail and to provide a turnaround for vehicles.

ARTICLE VI.
INSPECTION, OPERATION, AND MAINTENANCE

Section 6.01 INSPECTION. Following Bridge Acceptance and Road Acceptance, the Authority and NDDOT will make joint inspections of Roads and Bridges altered or built pursuant

to this Memorandum of Understanding prior to being opened to traffic and subsequently at intervals not to exceed twenty-four (24) months as well as soon as is reasonably possible following any event that may have caused or likely to have caused damage to or impact the safety of a Road or Bridge. Any bridge safety inspector hired by the Authority must be certified under federal law to inspect the structure he or she is inspecting. The representative of the Authority responsible for conducting inspections must be a certified bridge team leader, as required by 23 CFR 650 and the NDDOT Bridge Inspection Manual. All NDDOT procedures and forms shall be followed throughout the inspection process. Upon completion of an inspection and submission of a maintenance report, the Authority shall take immediate steps toward correction of all Significant and Critical Findings. Following any Significant Findings and/or Critical Findings identified by an annual inspection, the Authority will develop a corrective action plan, which must have approval from NDDOT. A corrective action plan must address the following conditions at a minimum: (1) repair a deck, substructure, or superstructure when a condition rating of seven (7) or greater is not achieved; and (2) repair approach slabs when elevation exceeds two (2) inches from the original plan profile. The Authority is responsible for all costs associated with a corrective action plan.

Section 6.02 STRUCTURAL MAINTENANCE. From Bridge Acceptance and Road Acceptance, until the end of the Operating Period, the Authority will be responsible for conducting Structural Maintenance on each Bridge and Road in accordance with Technical Requirements and Exhibit D, Performance and Measurement Table. Upon Project Substantial Completion, NDDOT and the Authority will document the completion date and the commencement of the Operating Period with a signed and dated document that details the start and end dates for the Operating Period. After acceptance, any maintenance load ratings would be handled by the NDDOT.

Section 6.03 NON-STRUCTURAL MAINTENANCE. At all times following Bridge Acceptance and Road Acceptance, NDDOT, at its sole cost and expense, will conduct Non-Structural Maintenance on each Road and Bridge. If at any time the Authority, in its sole discretion, believes NDDOT is deficient in its Non-Structural Maintenance of a Road or Bridge, the Authority will notify NDDOT's Authorized Representative of said deficiency.

Section 6.04 SIGNIFICANT STRUCTURAL DAMAGE. Should significant structural damage occur to a bridge or Road and make it unsafe for public use, the Authority shall use reasonable efforts to notify NDDOT when it becomes aware of the damage. Provision of traffic control shall be at the expense of the Authority. The Authority shall complete an inspection in tandem with NDDOT within twenty-four (24) hours to assess the initial damage and to determine options for repair or replacement. If the Authority fails to repair the damage within thirty (30) days or a longer period defined by NDDOT, NDDOT may elect to hire a third entity to repair the damage at the expense of the Authority.

Section 6.05 NOTICE OF MAINTENANCE ACTIVITY. The Authority shall provide thirty (30) days written notice to NDDOT's Authorized Representative prior to scheduled maintenance to Roads and Bridges. If maintenance by the Authority requires a lane closure, the Authority will notify NDDOT of the closures for the month on the first day of the month in which closures are scheduled and any planned for the following month. All closures must have approval from NDDOT. If changes occur in the Authority's schedule of planned maintenance for which a closure is required, the Authority will request and obtain written approval from NDDOT at least fourteen (14) calendar days before undertaking the Work requiring such closure. If, in the Authority's

discretion, an emergency or incident requires closure of a Road or Bridge, the Authority will immediately notify NDDOT.

Section 6.06 WINTER INSPECTION. Prior to September 1 each year, beginning after Bridge Acceptance and Road Acceptance and lasting until the Maintenance Termination Date, the Authority will inspect the Bridges and Roads.

Section 6.07 HANDBACK. At the end of the Operating Period, the Authority will return operations and maintenance of the Roads and Bridges to NDDOT. In doing so, the Authority shall:

(a) Prepare a comprehensive operations and maintenance manual with one (1) year and five (5) year planning windows. NDDOT will review the comprehensive operations and maintenance manual and ensure it is in compliance with this Memorandum of Understanding.

(b) Conduct handback inspections and prepare handback inspection reports. Three (3) years prior to the Authority ceasing to provide maintenance on the Bridges and Roads, the Authority will inspect all Bridges in accordance with NDDOT procedures. Within one (1) month of the inspection, with input from NDDOT, the Authority will create a scope of work document outlining necessary repairs or replacements to Bridges prior to the end of the thirty (30) year period. The final version of the scope of work document is subject to NDDOT approval. The Authority will perform the Work required by the scope of work document, and within six (6) months of handback to NDDOT, the Authority and NDDOT will jointly inspect all Bridges and identify any necessary repairs or replacements remaining. The Authority will continue to inspect the structures until the Authority has completed all necessary repairs or replacements in full compliance with NDDOT requirements.

(c) Provide staff training on the operation and maintenance management plan and the operations and maintenance manual.

Section 6.08 NDDOT STEP-IN RIGHTS. NDDOT may step-in and perform Structural Maintenance as outlined herein if the Authority is failing to do so, but prior to stepping in, NDDOT and the Authority must take the following steps:

(a) In the event that NDDOT believes the Authority is not meeting any of the outlined maintenance requirements, it shall provide written notification to the PMC indicating which maintenance requirements in the Performance and Measurement Table are not being met on which structure(s).

(b) Upon receiving notification, or upon otherwise becoming aware of the failure to abide by the maintenance requirements of the Performance and Measurement Table, the Authority shall have the response time provided in column “e” plus the additional corresponding cure period in column “j” in the Performance and Measurement Table to correct the maintenance defect.

(c) In the event the Authority does not correct the maintenance defect during the period outlined in this Section, NDDOT may undertake the maintenance of the structure. The Authority will reimburse NDDOT for costs incurred in connection with NDDOT maintenance under its step-in rights. NDDOT will submit an invoice in accordance with Article X for the allowable costs.

(d) In the event a repair is needed immediately, the Authority may contract with NDDOT to make any repair for public safety and submit an invoice in accordance with Article X.

ARTICLE VII.
CONSTRUCTION OF THE DIVERSION CHANNEL

Section 7.01 TRANSFER OF INTEREST. Concurrent with the transfer of property required by Section 5.09 of this Memorandum of Understanding, NDDOT will convey to Cass County Joint Water Resource District an easement in the form of Exhibit G to allow construction, operation, and maintenance of the SWDCAI across NDDOT property, infrastructure, and right-of-way that is near or crosses the SWDCAI.

Section 7.02 PLANS AND SPECIFICATIONS.

(a) The Authority shall furnish to NDDOT plans and specifications for those portions of the SWDCAI that will be constructed on NDDOT property or right-of-way. NDDOT's review of the plans and specifications will be limited to whether the plans and specifications meet the requirements for continuation of NDDOT operations, while accommodating the construction, operation, and maintenance of the SWDCAI, Bridges, and Roads. NDDOT will complete its review of plans within twenty (20) calendar days after receipt by its Authorized Representative. Any comments from NDDOT must be resolved to the satisfaction of both NDDOT and the Authority.

(b) Any concurrence of the plans and specifications by NDDOT will in no way obligate NDDOT in any manner with respect to the finished SWDCAI design and/or construction, except to allow construction thereof by the Authority. Additionally, a concurrence by NDDOT will only mean that the plans and specifications meet the subjective standards of NDDOT, and such approval by NDDOT shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes, or local ordinances.

Section 7.03 CONSTRUCTION. The Authority will perform all Work detailed in the plans and specifications reviewed by NDDOT. If a Material Change or Modification is made to the plans or specifications during construction, any Material Change or Modification will be subject to written approval by NDDOT. The Authority will submit the proposed changes or modifications to NDDOT's Authorized Representative. NDDOT will provide approval or a written explanation of its specific objections to the changes or modifications within twenty (20) calendar days of receipt of the proposed changes or modifications by its Authorized Representative. The Authority will not

reimburse NDDOT for internal and staff costs incurred in connection with the review of changes or modifications.

Section 7.04 COMPLETION DATE. Subject to the requirements of Section 5.08 of this Memorandum of Understanding, the Authority will advise NDDOT's Authorized Representative, in writing, of the completion of construction work on each Buildable Unit on NDDOT's property or right-of-way within thirty (30) calendar days after completion of each Buildable Unit.

Section 7.05 OPERATION. The Authority will operate and manage the SWDCAI in a manner that will cause the least disruption to NDDOT's operations as reasonably possible under the circumstances.

ARTICLE VIII.
FUTURE CHANGES OR ADDITIONS AND OTHER USES

Section 8.01 BRIDGES AND ROADS.

(a) NDDOT retains the ability, at its sole cost and expense, to adjust or alter a Bridge or Road within the Footprint to the extent such may be accomplished without adversely affecting, changing, or altering the SWDCAI or other components of the Comprehensive Project, upon written approval by the Authority.

(b) If it becomes necessary or desirable to change, alter, widen, or reconstruct the SWDCAI or other Comprehensive Project components to accommodate a NDDOT project, the cost of such work, if approved by the Authority, including any cost incidental to alteration of a Bridge or Road or flood control facilities, including the SWDCAI, made necessary by any such changes, will be at the expense of NDDOT.

Section 8.02 SWDCAI AND OTHER COMPREHENSIVE PROJECT COMPONENTS.

(a) The Authority retains the ability, at its sole cost and expense, to adjust or alter the SWDCAI and other Comprehensive Project components to the extent such may be accomplished without adversely affecting, changing, or altering a Bridge or Road.

(b) If it becomes necessary or desirable to change, alter, widen, or reconstruct a Bridge or Road to accommodate the SWDCAI or other Comprehensive Project component projects, the cost of such work, if approved by NDDOT, including any incidental costs made necessary by any such changes, will be the expense of the Authority.

Section 8.03 NOTICE AND CONSENT.

(a) In the event either the Authority or NDDOT seeks to change, alter, widen, or reconstruct its respective structures, that Party must provide thirty (30) days advanced written notice of such to the other Party, must provide advanced written notice of any proposed entry on to that Party's property or right-of-way, must obtain any necessary property interests, and must obtain any necessary consent from the other Party.

(b) All non-highway, non-Comprehensive Project uses and occupancies of right-of-way acquired or altered for the purpose of constructing or altering Bridges or Roads pursuant to this Memorandum of Understanding must be approved by NDDOT and the Federal Highway Administration.

Section 8.04 TEMPORARY MEASURES. In the event of a flood event greater than or equal to a one-hundred-year flood event, the Authority may place temporary flood control measures on, over, or across NDDOT property or right-of-way (hereinafter "Temporary Measures"). The construction of Temporary Measures may not begin until NDDOT provides the Authority written approval of proposed Temporary Measures, which shall not be unreasonably withheld. NDDOT shall approve or reject proposed plans for Temporary Measures within five (5) calendar days of receipt of proposed plans from the Authority. Proposed plans for Temporary Measures not accepted or rejected within five (5) calendar days of receipt by NDDOT shall be deemed approved. The Authority shall not be liable to NDDOT for damage to NDDOT property associated with or arising from Temporary Measures approved by NDDOT. Once constructed, Temporary Measures may remain in place for so long as the Authority reasonably deems the Temporary Measures necessary. Temporary Measures shall be constructed and deconstructed by the Authority at its sole expense. NDDOT shall reasonably cooperate with and provide the Authority reasonable assistance in the coordination of construction and deconstruction of Temporary Measures.

ARTICLE IX.
INSURANCE AND LIABILITY

Section 9.01 INSURANCE. The Project Agreement between the Authority and the Developer requires that the Developer, at its sole cost and expense, procure and maintain the following insurance coverage:

(a) Commercial General Liability Insurance and Automobile Liability Insurance including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least $250,000 per person and $1,000,000 per occurrence. The State of North Dakota, its agencies, officers, and employees shall be endorsed as an additional insured on the Commercial General Liability and Automobile Liability Insurance policies. Said endorsements shall contain a waiver of subrogation in favor of the state of North Dakota. The State shall have all the benefits, rights, and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this Memorandum of Understanding or by the contractual indemnity obligations of the Developer.

(b) The Developer shall obtain workers' compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation applicable to performance under this Memorandum of Understanding.

(c) The Developer shall obtain insurance protection (as outlined above) to provide liability coverage to protect the Developer and NDDOT, its officers, and employees as a result of work undertaken by its Subcontractor(s).

(d) The Developer shall ensure that any and all parties performing work as subcontractors are covered by public liability insurance as outlined above. All subcontractors are required to maintain the same scope of insurance required of the Developer. The Developer shall be held responsible for ensuring compliance with those requirements by all subcontractors.

(e) The Developer's insurance shall be primary (i.e., pay first) with respect to any insurance, self-insurance, or self-retention maintained by NDDOT. Any insurance, self-insurance, or self-retention maintained by the State shall be in excess of the Developer's insurance and shall not contribute to it. The insolvency or bankruptcy of the Developer shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Developer from meeting the retention limit under the policy. Any deductible amount or other obligations under the policy(ies) shall be the sole responsibility of the Developer. This insurance may be in a policy or policies of insurance, primary and excess, including any so-called umbrella or catastrophe form and placed with insurers rated "A- "or better by A.M. Best Company, Inc. NDDOT will be indemnified, saved, and held harmless to the full extent of any coverage secured by the Developer in excess of the minimum requirements set forth above

Section 9.02 RELEASE OF LIABILITY AND INDEMNITY.

(a) The Project Agreement between the Authority and the Developer requires the Developer, subject to exclusions from indemnity identified therein, to the fullest extent permitted by applicable law, to release, defend, indemnify and hold NDDOT, as an Authority-related entity and indemnified party, harmless from and against third party claims, loss of or damage to real or personal property owned by or in the possession of NDDOT, and personal injury or death of any NDDOT officers, agents, representatives, or employees. Indemnification in each case shall be to the extent losses arise out of, or as a consequence of, any breach of this Agreement by the Developer or any negligence of the Developer or any Developer-related entity.

Section 9.03 CERTIFICATES OF INSURANCE. Prior to commencing construction work, the Authority will require that the Developer furnish to NDDOT's Authorized Representative certificates of insurance evidencing the coverages, endorsements, and amendments described herein. The Authority will require that the Developer notify NDDOT in writing at least thirty (30) calendar days prior to any cancellation, non-renewal, substitution, or material alteration of insurance. A valid certificate of insurance, naming NDDOT as additionally insured, is required for all work in NDDOT right-of-way.

Section 9.04 LIMITATION ON LIABILITY. Nothing contained in this Memorandum of Understanding shall be deemed a waiver by the Authority of the limitations on liability set forth in N.D.C.C. § 32-12.1-03, as amended from time to time, or a waiver of any available immunities or defenses.

Section 9.05 PERFORMANCE BOND. The Authority, in its sole discretion, shall, either: (i) obtain a performance bond associated with or relating to the Comprehensive Project the scope of which encompasses NDDOT infrastructure impacted by this Memorandum of Understanding; or

(ii) obtain and keep in place for the duration of construction of NDDOT bridges hereunder, a performance bond for an amount no less than the cost constructing a NDDOT bridge.

ARTICLE X.
INVOICING AND AUDIT

Section 10.01 INVOICES. NDDOT will submit a monthly properly certified invoice for reimbursable costs to the Authority's Authorized Representative in such form and reasonable detail as the Authority's Authorized Representative may require. Each invoice will be supported by a statement of the claimed allowable cost for performing under this Memorandum of Understanding.

Section 10.02 OUTSIDE CONSULTANT. If it is necessary for NDDOT to hire outside consultants to assist in review of and commenting on design work, the Authority will reimburse NDDOT for those costs and expenses. NDDOT will notify the Authority in advance of hiring such outside consultants and inform the Authority of the anticipated costs for the reviews. NDDOT will submit an invoice in accordance with this Section for the allowable costs.

Section 10.03 AUDIT AND DISPUTE. All original timecards, payrolls, material records, and other accounts for all charges and expenditures for which reimbursement will be claimed by NDDOT from the Authority will be available at all reasonable times to allow the Authority to check and audit the invoices submitted by NDDOT. The ability of the Authority to audit NDDOT's invoices will extend for a period of three (3) years from the date final payment has been received by NDDOT. Any overpayment or underpayment discovered during the audit will be treated as a dispute under Article XIII. Audits shall occur every five (5) years following Project Substantial Completion. NDDOT shall be released from preserving and storing records subject to an audit after the completion of the audit of those records. The requirements of this Section may be waived by the Authority in writing.

Section 10.04 PAYMENT. Subject to the availability of funds, the Authority will make payments to NDDOT when requested as work progresses, but no more than once a month.

Section 10.05 FINAL ACCOUNTING. NDDOT will provide one final and complete billing of all incurred COSTS within one (1) year following completion of the reimbursable design work and construction work, respectively. The Authority may in good faith, after conducting a final audit, adjust the amount of compensation due to NDDOT under this Memorandum of Understanding.

ARTICLE XI.
CONFORMITY WITH REGULATIONS, CODES, AND SPECIFICATIONS

Section 11.01 CONFORMITY. The Authority shall require the Developer to conform to the following:

(a) Environmental Clearance. Environmental Impact and Related Procedures, as applicable and described in 23 C.F.R.§ 771; and applicable portions of the NDDOT Design Manual.

(b) Historic Property Clearance. Protection of Historic Property standards as found in 36 C.F.R. § 800.

(c) Right-of-Way.

(1) Right-of-way and real estate standards found in 36 C.F.R. § 710.

(2) Standards for Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Program standards found in 49 C.F.R. § 24.

(3) Standards for relinquishment of highway facilities found in 23 C.F.R. § 620.

(4) Right-of-way certification standards found in 23 C.F.R. § 635.

(5) Standards for highway beautification found in 23 C.F.R. § 750.

(6) Standards for junkyard control and acquisition found in 23 C.F.R. § 751.

(7) Standards for Uniform Administrative Grants and Cooperative Agreements to State and Local Governments found in 49 C.F.R. § 18.

(8) Legal descriptions and right-of-way plats must be in accordance with the NDDOT Manual on Procedure for Creating Right-of-Way Plats.

(9) Applicable portions of the NDDOT Right-of-Way Manual.

(d) Survey. Standards described in Chapter 19 of the NDDOT Surveys and Photogrammetry Manual.

(e) Utilities. Utility relocation, adjustment, and accommodation policies as described in section III-08 of the NDDOT Design Manual.

(f) Road Design.

(1) Applicable portions of the NDDOT Design Manual.

(2) Applicable portions of the NDDOT Surveys and Photogrammetry Manual.

(3) Applicable portions of "A Policy on Design Standards – Interstate System," 5th Edition, AASHTO, 2005.

(4) Applicable portions of "A Policy on Geometric Design of Highways and Streets," 7th Edition, AASHTO, 2018.

(5) Applicable portions of "Roadside Design Guide," 4th Edition, 2011.

(6) Applicable portions of the "Manual on Uniform Traffic Control Devices for Streets and Highways," 2009 Edition.

(g) Bridge Design.

(1) Applicable portions of "LRFD Bridge Design Specifications," 9th Edition, AASHTO, 2020, and latest interims.

(2) Applicable portions of "LRFD Bridge Construction Specifications," 4th Edition, AASHTO, 2017;

(3) Applicable portions of the NDDOT Design Manual, Current Edition;

(4) Applicable portions of the NDDOT Load Rating Manual, Current Edition;

(5) Applicable portions of the NDDOT Bridge Inspection Manual, Current Edition;

(6) 23 CFR §650 Subpart C National Bridge Inspection Standards (NBIS);

(7) Manual for Bridge Evaluation (MBE), 3rd Edition, AASHTO, 2020; and latest interims;

(h) Bridge Inspection.

(1) 23 CFR §650 Subpart C National Bridge Inspection Standards (NBIS);

(2) NDDOT Bridge Inspection Manual, Current Edition.

(3) FHWA Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges.

(i) Bridge Load Rating.

(1) Manual for Bridge Evaluation (MBE), 3rd Edition, AASHTO, 2020 and latest interims;

(2) Applicable portions of the NDDOT Load Rating Manual, Current Edition.

(j) Pavement Design. Applicable portions of "Guide for Design of Pavement Structures," 1993 and current supplement; and all applicable portions of the NDDOT Design Manual.

(k) Geotechnical Design. "LRFD Bridge Design Specifications," 9th Edition, AASHTO, 2020 and latest interims; and all applicable portions of the NDDOT Design Manual.

(l) Construction. "NDDOT Construction Specifications" in Exhibit C.

ARTICLE XII.
TERMINATION

Section 12.01 TERMINATION.

(a) Prior to initiation of Construction Work, this Memorandum of Understanding may be terminated for Cause.

(b) Upon receipt or issuance of a notice of termination, and except as directed by the other Party, the Parties shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amount due under this clause:

(1) Stop work as specified in the notice;

(2) Place no further contracts or orders, except as necessary to complete the continued portion of the Memorandum of Understanding;

(3) With approval or ratification of the Authority's Authorized Representative, settle all outstanding liabilities and termination settlement proposals arising from the termination of contracts or responsibilities as provided in this Memorandum of Understanding, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this Section;

(4) Transfer title if not already transferred;

(5) Complete performance of the work not terminated; and

(6) Take any action that may be necessary, or that the Authority's Authorized Representative may direct, for the protection and preservation of the property related to this Memorandum of Understanding that is in the possession of NDDOT and in which the Authority has or may acquire an interest.

(c) After termination, NDDOT will submit a final termination invoice to the Authority in the form and with the certification prescribed by the Authority. NDDOT will submit the invoice promptly, but no later than one (1) year after the effective date of termination, unless extended in writing by the Authority upon written request of NDDOT within this one (1) year period. If the Authority determines, however, that the facts justify it, a termination settlement invoice may be received and acted on after one (1) year or any extension. If NDDOT fails to submit the invoice within the time allowed, the Authority may determine, on the basis of information available, the amount, if any, due to NDDOT because of the termination and will pay the amount determined.

(d) If the Authority and NDDOT fail to agree in whole or in part on the amount of costs and/or fees to be paid because of the termination of work, the failure to agree will be treated as a dispute under Article XIII.

ARTICLE XIII.
DISPUTE RESOLUTION

Section 13.01 INTENT AND PROCEDURE. The Parties will cooperate and use their best efforts to ensure that the various provisions of this Memorandum of Understanding are fulfilled. The Parties agree to act in good faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this Memorandum of Understanding. If disputes cannot be resolved informally by the Parties, the following procedure will be used.

Section 13.02 MEDIATION. If there is a failure between the Parties to resolve a dispute on their own, the Parties may first attempt to mediate the dispute. The Parties will agree upon a single mediator, and the Parties will each pay fifty percent (50%) of any costs for mediation services.

Section 13.03 LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within forty-five (45) calendar days after the end of mediation proceedings, the Parties may litigate the matter.

Section 13.04 LITIGATION; VENUE. All litigation between the Parties arising out of or pertaining to this Memorandum of Understanding or its breach will be filed, heard, and decided in the State District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

ARTICLE XIV.
THIRD PARTY BENEFICIARIES

Section 14.01 DEVELOPER. The Authority and NDDOT specifically agree, acknowledge, and covenant that portions of NDDOT's property or right-of-way will be used by the Developer in order to construct, operate, and maintain the SWDCAI. As a result, the Authority and NDDOT agree and acknowledge that, at any time during which one or more of the Parties is in breach or default of its respective obligations arising out of or related to this Memorandum of Understanding, the Developer, an intended third-party beneficiary, may enforce the terms and conditions of this Memorandum of Understanding including, without limitation, by securing a court order directing the Party to perform its obligations under the Memorandum of Understanding. All rights, responsibilities, and authority granted to the Authority in this Memorandum of Understanding may be assigned to the Developer at the sole discretion of the Authority. In addition to the foregoing, the Developer shall have all other rights available to it at law or in equity, and all of the rights and remedies provided hereunder are deemed cumulative and not exclusive of any rights or remedies provided by law or otherwise available to the Developer. The Authority may assign any right, responsibility, or obligation assigned to it herein, to the Developer. No assignment herein shall release the Authority of any obligation or responsibility in the event of default, breach, or failure on the part of the Developer.

ARTICLE XV.
MISCELLANEOUS

Section 15.01 COMPLETE AGREEMENT. This Memorandum of Understanding, together with the exhibits hereto, contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements,

representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter.

Section 15.02 COUNTERPARTS. This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 15.03 AMENDMENTS. This Memorandum of Understanding may be amended only by written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this Memorandum of Understanding.

Section 15.04 SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this Memorandum of Understanding is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Memorandum of Understanding.

Section 15.05 FORCE MAJEURE. No Party will be liable to another Party during any period in which its performance is delayed or prevented, in whole or in part, by circumstances beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Parties of the same.

Section 15.06 AUTHORIZED REPRESENTATIVES.

(a) Each of the Authority and NDDOT hereby designates the following individuals as its initial Authorized Representatives, respectively, to administer this Memorandum of Understanding on its respective behalf:

(1) For the Authority: Program Management Consultant

(2) For NDDOT: The then serving Fargo District Engineer

Section 15.07 NOTICE.

(a) All notices under the Memorandum of Understanding will be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses.

(b) All notices and invoices to the Authority will be marked as regarding the SWDCAI and will be delivered to the following addresses or as otherwise directed by the Authority's Authorized Representative:

Jacobs Engineering Group, Inc.

64 - 4th Street North, Suite 300
Fargo, North Dakota 58102

and

Executive Director
Metro Flood Diversion Authority
207 4th Street N, Suite A
Fargo, North Dakota 58102

(c) All legal notices to the Metro Flood Diversion Authority, in addition to being provided to the Metro Flood Diversion Authority's representative as provided above, will also be provided to the Executive Director at the following address or as otherwise directed by the Metro Flood Diversion Authority's representative:

Metro Flood Diversion Authority
Attention: Executive Director
207 4th Street N, Suite A
Fargo, North Dakota 58102

and

APInvoicesFMDiv@jacobs.com
PaulsenJ@FMDiversion.gov

(d) All notices to NDDOT will be marked as regarding the SWDCAI and will be delivered to the following address or as otherwise directed by NDDOT's Authorized Representative:

503 38th Street South
Fargo, North Dakota 58103-1198

(e) Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. CST and all other notices received after 5:00 p.m. CST will be deemed received on the first Business Day following delivery.

Section 15.08 GOVERNING LAW. This Memorandum of Understanding will be governed and construed in accordance with the laws of the State of North Dakota.

Section 15.09 OBLIGATION OF AUTHORITY. The Authority, and each Member Entity comprising it, has a continuing obligation to make NDDOT whole in the event of any premature stoppage of work, whether through a lack of funding or for any other reason. This obligation includes either funding and finishing the SWDCAI completely, or, if the SWDCAI is terminated early and will not be fully completed, finishing any partial work in such a manner as to not negatively impact NDDOT operations or the travelling public in any way.

Section 15.10 CONFLICT. This Memorandum of Understanding is not intended to modify, supplement, amend, or otherwise alter the rights and obligations of the Parties under a memorandum of understanding governing the Parties rights and obligations associated with the area known as the Southern Embankment. To the extent any conflict or inconsistencies exist between the terms of this Memorandum of Understanding and any other agreement executed by the Parties, this Memorandum of Understanding shall only bind the Parties in the area of the SWDCAI.

Section 15.11 FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for US EPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, NDDOT shall complete and submit to the Authority the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34, which are attached as Exhibits to this Memorandum of Understanding. NDDOT shall also require all subcontractors and suppliers of any tier awarded a subcontract over $100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

Section 15.12 DEBARMENT AND SUSPENSION. NDDOT certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 CFR Part 32 to participate in the Project. Suspension and debarment information can be accessed at http://www.sam.gov. NDDOT represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Memorandum of Understanding. Upon award of this contract, NDDOT shall complete and submit to the Authority the federal certification form regarding debarment and suspension, which is attached as an Exhibit to this Memorandum of Understanding.

Section 15.13 CIVIL RIGHTS OBLIGATIONS. NDDOT shall comply with the following, federal non-discrimination requirements:

(a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
(b) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
(c) The Age Discrimination Act of 1975, which prohibits age discrimination.
(d) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
(e) 40 CFR Part 7, as it relates to the foregoing.
(f) Executive Order No. 11246.

Section 15.14 AMERICAN IRON AND STEEL. NDDOT acknowledges to and for the benefit of the Metro Flood Diversion Authority and the United States Environmental Protection Agency ("EPA") that it understands the goods and services under this Memorandum of Understanding are being funded with monies made available by the Water Infrastructure Finance and Innovation Act program of the EPA that has statutory requirements commonly known as "American Iron and

Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by NDDOT pursuant to this Memorandum of Understanding. Utility hereby represents, warrants and covenants to and for the benefit of the Metro Flood Diversion Authority and the EPA that (a) NDDOT has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) NDDOT will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Metro Flood Diversion Authority or the EPA. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by NDDOT shall permit the Metro Flood Diversion Authority or the EPA to recover as damages against NDDOT any loss, expense, or cost (including without limitation attorney's fees) incurred by the Metro Flood Diversion Authority or the EPA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EPA or any damages owed to the EPA by the Metro Flood Diversion Authority). While NDDOT has no direct contractual privity with the EPA, as a lender to the Metro Flood Diversion Authority for the funding of its project, the Metro Flood Diversion Authority and NDDOT agree that the EPA is a third-party beneficiary and neither this paragraph (nor any other provision of this Memorandum of Understanding necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the EPA.

Section 15.15 ELECTRONIC SIGNATURES. The parties acknowledge and agree that this Memorandum of Understanding may be executed by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum of Understanding to be duly executed on the dates indicated below.

(Remainder of page intentionally left blank.)

Signature Page for Metro Flood Diversion Authority

The Metro Flood Diversion Authority approved this Memorandum of Understanding on the _____ of _____, 2021.

METRO FLOOD DIVERSION AUTHORITY

By: _____
Michelle (Shelly) A. Carlson, Chair

By: _____
Joel Paulsen, Executive Director

ATTEST:

By: _____
Dawn Lindblom, Secretary

Signature Page for NDDOT, North Dakota

NDDOT, approved this Memorandum of Understanding on the _____ of _____, 2021

NDDOT, NORTH DAKOTA

By: _____
William T. Panos, NDDOT Director

ATTEST:

By: _____

_____ _____
Approved as to Substance by: Date

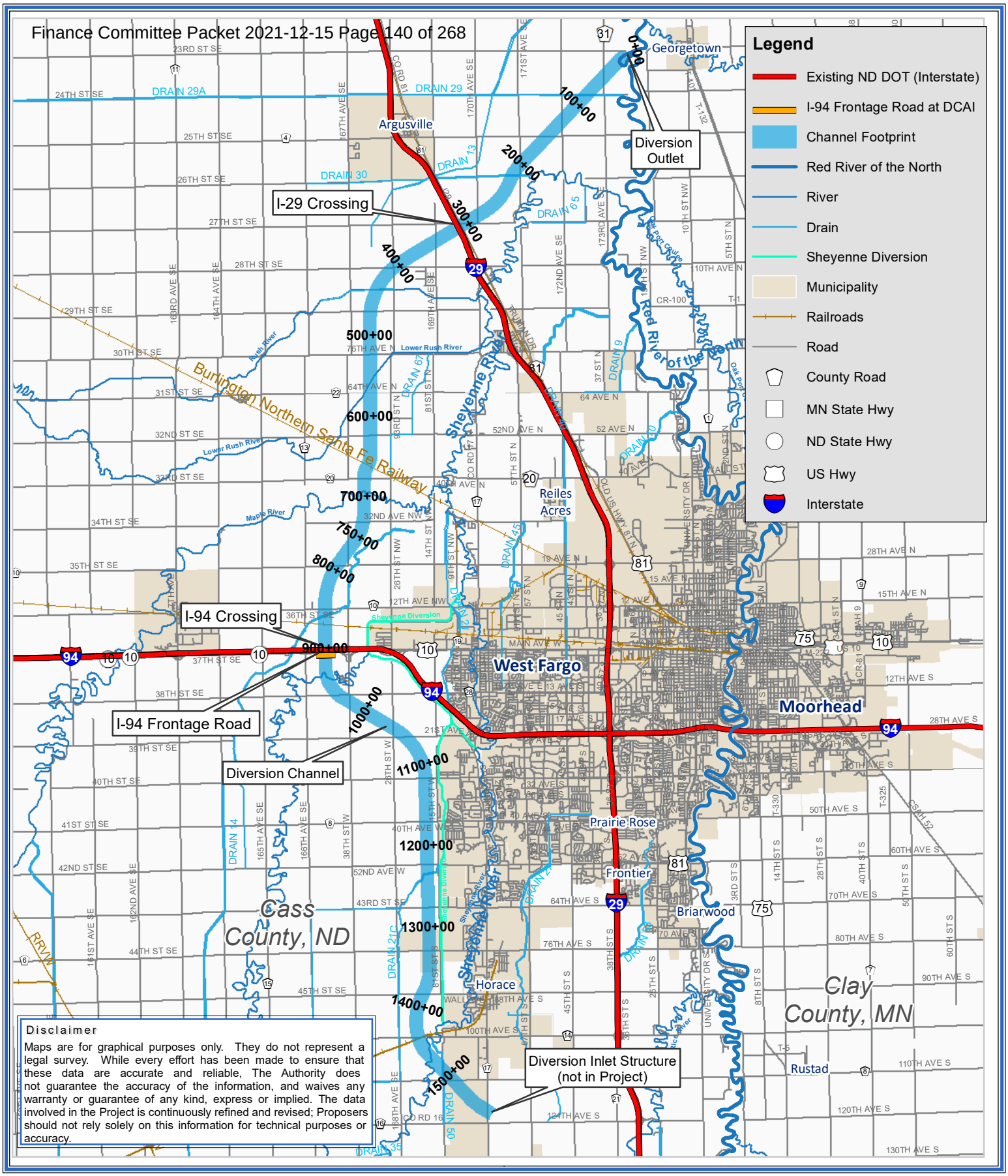
ROBERT WALTON, P.E.

NDDOT Fargo District Engineer

EXHIBIT A

EXISTING ROADS

[See the following 1 page.]



Disclaimer

Maps are for graphical purposes only. They do not represent a legal survey. While every effort has been made to ensure that these data are accurate and reliable, The Authority does not guarantee the accuracy of the information, and waives any warranty or guarantee of any kind, express or implied. The data involved in the Project is continuously refined and revised; Proposers should not rely solely on this information for technical purposes or accuracy.

Request for Proposal - January 15, 2021
Map Drawing Date - January 13, 2021
Page 1 of 1

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0 2

Exhibit A
ND DOT MOU

Existing Roads

FM AREA DIVERSION PROJECT

EXHIBIT B

BASIC DESIGN PARAMETERS

[See the following 2 pages.]

Design Criteria for Diversion Crossings															
Name	**Temp Bypass Design Speed (mph)**	**Temp Crossover Design Speed (mph)**	**Design Speed (mph)**	**Pavement Design Life (years)**	**Pavement Type**	**Bridge Design Life (years)**	**Clear Zone (ft)**	**Inslope**	**Number of Travel Lanes each Direction**	**Minimum Lane Width (ft)**	**Lane Cross Slope (Typical) (%)**	**Maximum Shoulder Cross Slope (%)**	**Maximum Superelevation (e_{max}) (%)**	**Maximum Profile Grade at Bridge (%)**	**Bridge Width (Clear Roadway) (ft)**
I-29	75	45	75	30	PCC in Traveled Way with HBP Outside Shoulder	75	34	6:1	2	12	2.1	6 (5 Max Rollover)	6	+/-1.5	40
I-94	75	45	75	30	PCC in Traveled Way with HBP Outside Shoulder	75	34	6:1	2	12	2.1	6 (5 Max Rollover)	6	+/-1.0	40

Design Criteria for Roadways												
Name	**Pavement Type**			**Concrete Pavement**				**Asphalt Pavement**				**Gravel**
		Design Speed (mph)	**Pavement Design Life (years)**	**Concrete Pavement Thickness (inches)**	**Joint Spacing**	**Dowels-1.25”**	**Dense Graded Base (inches)**	**HMA Pavement Thickness (inches)**	**Aggregate Base Course (inches)**	**HBC Shoulder Thickness (inches)**	**HBC Shoulder Thickness (inches)**	**Gravel Thickness (inches)**
I-29	Permanent Pavement	75	30	9	14’ wide 15’ transverse	yes	8	N/A	N/A	N/A	N/A	N/A
	Temporary Cross Over	45	2	7.5	14’ wide 15’ transverse	no	8	N/A	N/A	N/A	N/A	N/A
	Temporary Detour	75	6	8	14’ wide 15’ transverse	yes	8	8	18	N/A	N/A	N/A
I-94	Permanent Pavement	75	30	9	14’ wide 15’ transverse	yes	8	N/A	N/A	N/A	N/A	N/A
	Temporary Cross Over	45	2	7.5	14’ wide 15’ transverse	no	8	N/A	N/A	N/A	N/A	N/A
	Temporary Detour	75	6	8	13’ wide 15’ transverse	yes	8	8	18	N/A	N/A	N/A

EXHIBIT C

NDDOT CONSTRUCTION SPECIFICATIONS

[See following 443 pages.]

EXHIBIT D

PERFORMANCE AND MEASUREMENT TABLE

[See the following 4 pages.]

Project Element	Table Ref	Project Element Constituent	Requirement	Response Time for Nonconformances	Inspection and Measurement Method (Minimum Requirements)	Measurement Record
ROADS AND BRIDGES	3.03.01	Winter Maintenance	Perform annual inspection of roadways and bridges with appropriate AHJ prior to the winter season.	Prior to September 1 each year	Visual inspection	Each failure to perform inspection, unless AHJ declines to participate, is a Nonconformance.
ROADS AND BRIDGES	3.03.02	General	Maintain roadway and bridge areas that are closed by Developer for repair or renewal actions including snow removal and removal of obstructions associated with the closure that can create standing water or hazardous ice buildup in the travel way.	1 day	Visual inspection	Each failure to remove standing water and snow/ice buildup caused by Developer's closure and that poses a hazard to travel way is a Nonconformance.
ROADS AND BRIDGES	3.03.03	General	Be available 24-hours per day for every day of the year to respond to any Incident or emergency causing damage to the Project or requiring immediate action.	2 hours	Telephone Log	Each failure to respond to an Incident or emergency request within the Response Time For Nonconformances and for each subsequent 2 hours is a Nonconformance.
ROADS AND BRIDGES	3.03.04	General	Develop, submit (R&C Submittal) for approval from the AHJ, a TMP for maintaining traffic during the Operating Period and include in the annual O&M Management Plan. Update as needed for compliance. Include roadway and bridge O&M Work, Renewal Work, and Incident management.	Prior to September 30 of the year required.	Review of records	Each failure to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.05	Maintenance of Traffic	Maintain all traffic control devices (including traffic signals) in Like-new condition and located in their required position until roadways and bridges have been restored to their final configuration and traffic control is no longer required. Maintain all traffic control devices to be compliant with the TMP and Work Zone Traffic Control Plan, as applicable.	2 hours	Visual inspection and appropriate testing of systems. Review of records.	Instances of dirty or not Like-new components, instances of systems not compliant with TMP and Work Zone Traffic Control Plans, as applicable, is a Nonconformance.
ROADS AND BRIDGES	3.03.06	Maintenance of Traffic	Maintain all temporary roadways in a condition identical to the requirements for permanent roadways during the Operating Period.	5 days	Visual inspection and review of records	Instances of temporary roadways not in a condition identical to requirements for permanent roadways during Operating Period is a Nonconformance.
ROADS AND BRIDGES	3.03.22	NDDOT I-29 and I-94	Crack seal asphalt pavement joints or pavement cracks every 2 years.	Prior to September 30 of the year crack sealing is required.	Visual inspection and review of records	Each 1000 sf of contiguous area that fails to crack seal to timescale and frequency required is a Nonconformance.
ROADS AND BRIDGES	3.03.23	NDDOT I-29 and I-94	No less than annually, inspect the Project with NDDOT staff and conduct a concrete pavement repair project for concrete pavement within the Project Site to maintain an IRI value of 99 in/mi or lower. The segment length is the lesser of 0.5 miles or length to the Project Site boundary on each side of the bridge structure for each bound of Interstate. The criteria will be an average for each segment of pavement, excluding the bridge decks and as measured through the NDDOT normal pavement management data collection processes.	Inspect prior to July 1 each year and repair within 56 days.	Visual inspection and review of Construction Work records	Each failure to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.24	NDDOT I-29 and I-94	Design, schedule, and construct the concrete pavement repair project as renewal work; include spall repairs, full-depth repairs, stitching, joint sealing, and/or grinding, as necessary. Conduct renewal work in accordance with the following conditions and outcomes: (a) If the IRI value becomes greater than 99 in/mi, take corrective action to return the IRI value to 75 in/mi or lower. (b) If the faulting value reaches a value of 0.15", take corrective action to return the faulting to less than 0.05". (c) If the cracking percent reaches a value of ten percent (10%), take corrective action to return the cracking percent to less than 5 percent.	Initiate renewal work as required prior to September 1 of the same year.	Visual inspection and review of Construction Work records	Each failure to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.25	NDDOT I-29 and I-94	Seal single concrete cracks with crumb rubber. Multiple cracks may require concrete panel replacement.	70 days, or no later than September 30 each year	Visual inspection	Each 1000 sf of contiguous area that fails to meet requirement is a Nonconformance.

Project Element	Table Ref	Project Element Constituent	Requirement	Response Time for Nonconformances	Inspection and Measurement Method (Minimum Requirements)	Measurement Record
ROADS AND BRIDGES	3.03.26	NDDOT I-29 and I-94	Provide temporary repairs to cuts, defects, breaks, or damaged supports to NDDOT fences.	Within 48 Hours of discovery or notification of the need for repair.	Visual inspection	Each failure to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.27	NDDOT I-29 and I-94	Provide permanent repairs to cuts, defects, breaks, or damaged supports to NDDOT fences.	within fourteen (14) days of discovery or notification of the need for repair.	Visual inspection	Each failure to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.28	NDDOT I-29 and I-94	Maintain road signs in a condition conforming to the *Manual for Uniform Traffic Control Devices* as approved by NDDOT.	56 days	Visual inspection and review of maintenance records	Each sign that fails to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.29	NDDOT I-29 and I-94	Maintain bridge and approach guardrails in compliance with the AASHTO *Manual for Assessing Safety Hardware*.	56 days	Visual inspection and review of maintenance records	Instances of bridge and approach guardrails not maintained as required by the AASHTO *Manual for Assessing Safety Hardware* is a Nonconformance.
ROADS AND BRIDGES	3.03.30	NDDOT I-29 and I-94	Maintain approach and bridge pavement to be free from water ponding on driving/passing lanes.	28 days	Visual inspection, measurement and comparison with Record Drawings Deliverables	Each 10 sf of contiguous area of water ponding to a depth greater than 1" on driving or passing lanes is a Nonconformance.
ROADS AND BRIDGES	3.03.31	NDDOT I-29 and I-94	Maintain roadside ditch conveyance area to mitigate drop-offs, free of sediment and debris as required to maintain required flow capacity.	56 days	Visual inspection	Each 100 sf of contiguous area that fails to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.32	NDDOT I-29 and I-94	Establish and maintain uniform vegetative cover in the Vegetation Zone in compliance with the Vegetation Management Plan. Performance goal is uniform coverage with native grass over at least 90 percent of ROW vegetated area, and no contiguous areas without uniform coverage greater than 1000 square feet.	56 days for establishing growth	Visual and Aerial inspection	Each 1000 sf of contiguous area that fails to establish and maintain uniform coverage with native grass over at least 90 percent of ROW vegetated area is a Nonconformance.
ROADS AND BRIDGES	3.03.33	NDDOT I-29 and I-94	Mow vegetated ROW areas as required by NDDOT.	Within 14 days of NDDOT requirement.	Visual inspection and review of records	Each 300 sf of contiguous area that fails to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.34	Bridges	Perform annual bridge inspections by a certified bridge safety inspector. Conduct inspections cooperatively with the Authority and the AHJ. Follow NDDOT procedures and forms. Document Alert Codes by the AHJ in a Maintenance Review Report and submit Report to Authority upon completion of the inspections.	Inspect prior to July 1 each year. Submit Maintenance Review Report within 14 days of inspection completion.	Visual inspection and review of records	Each failure to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.35	Bridges	Develop a corrective action plan to address the following conditions at a minimum: (a) Repair bridge's deck, substructure, and superstructure when condition rating of 7 or greater is not achieved. (b) Repair approach slabs when elevation exceeds two inches from the original plan profile. (c) Fill any voids greater than four inches under bridge approaches	No later than 30 Days following submission of Maintenance Review Report	Review of corrective action plan	Each failure to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.36	Bridges	Maintain roadway signs in a condition conforming to the *Manual of Uniform Traffic Control Devices*, including retro reflectivity requirements.	56 days	Visual inspection	Each failure to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.37	Bridges	Maintain bridge deck, approach slab and expansion joints to be clean and free of debris.	Prior to June 1 each year	Review of maintenance records	Each failure to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.38	Bridges	Maintain bridge drainage system in full working order.	28 days after discovery of malfunctioning system.	Review of maintenance records, appropriate testing of system.	Instances of system failure to operate in accordance with the original constructed capability is a Nonconformance.
ROADS AND BRIDGES	3.03.39	Bridges	Maintain bridges to be free of deck spalls exceeding 1 sf in diameter and ½" maximum depth.	28 days	Visual inspection	Each failure to meet requirement is a Nonconformance.

Project Element	Table Ref	Project Element Constituent	Requirement	Response Time for Nonconformances	Inspection and Measurement Method (Minimum Requirements)	Measurement Record
ROADS AND BRIDGES	3.03.40	Bridges	Perform saline water proofing of the deck, approach slabs and barriers prior to the first winter in service. Reapply every 6 years thereafter and within one year of the end of the Operating Period.	Prior to September 30 of the year required.	Review of maintenance records	Each 1000 sf of contiguous area that fails to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.41	Bridges	Maintain concrete parapet, concrete beams (if applicable), and substructure in accordance with annual Maintenance Review Report.	In accordance with Maintenance Review Report	Visual inspection	Each 10 lf of structure that fails to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.42	Bridges	Seal deck cracks with epoxy after 3 years of use, every 3 years thereafter, and within one year of the end of the Operating Period.	Prior to September 30 of the year required.	Review of maintenance records	Each 10 lf of concrete that fails to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.43	Bridges	Maintain bearings in accordance with Maintenance Review Report.	In accordance with Maintenance Review Report	Visual inspection	Each bearing that fails to meet requirement is a Nonconformance.
ROADS AND BRIDGES	3.03.44	Bridges	Provide temporary repairs or replace damaged guardrail and/or concrete barrier according to NDDOT guidance. Complete final repair to the guardrail and/or concrete barrier in a condition that meets current NDDOT and AASHTO standards.	Provide temporary repair within 12 hours from notification of damage. Complete final repair within 14 days of damage notification.	Visual inspection and review of records	Instances of temporary repairs not carried out within 12 hours of notification of damage is a Nonconformance, and Instances of guardrail and/or concrete barrier not meeting current NDDOT and AASHTO standards within 14 days of notification of damage is a Nonconformance.
ROADS AND BRIDGES	3.03.45	Bridges	Maintain bridge steel, including painting.	In accordance with Maintenance Review Report.	Visual inspection	Each failure to meet requirement is a Nonconformance.
GENERAL REQUIREMENTS AFFECTING MULTIPLE PROJECT ELEMENTS	3.05.01	General	Promptly remove or cover over graffiti throughout the Project.	48 Hours	Visual inspection and review of records	Each failure to meet requirement is a Nonconformance.
GENERAL REQUIREMENTS AFFECTING MULTIPLE PROJECT ELEMENTS	3.05.02	Vegetation	Maintain the vegetation zones in compliance with the Vegetation Management Plan (VMP), Section 3.3.1.7.1, Section 3.3.1.7.2 and Section 4.4.3.2.4 of the P3 Contract Technical Requirements. · In the DCVZ, establish and maintain native grass cover and control woody vegetation to prevent erosion and maintain capacity. · Mow or burn native grass at least annually after properly established. Burning is not allowed in DOT ROW. · Burn vegetation at least once every 5 years · Remove woody vegetation in the DCVZ, the EMVZ, and VFZ by mowing or cutting at least annually. · Remove woody vegetation greater than 2-inch diameter in the DCVZ and the ELVZ. · Remove woody vegetation greater than 1/2-inch diameter in the VFZ. · Remove and replant dead trees and shrubs or vegetation persistently in poor condition. · Trim woody vegetation as needed for proper growth and health where allowed as well as to prevent conflict with trails, roads, the function of the Project Elements, and as required by USACE Technical Letter ETL 1110-2-571. · Do not remove trees greater than 3 inches in diameter at breast height during the months of June or July.	28 days for burning, mowing, removal of weeds, unauthorized vegetation, and woody vegetation.	Visual and Aerial Inspection	Each 400 sf contiguous area that does not comply with the VMP is a Nonconformance.

Project Element	Table Ref	Project Element Constituent	Requirement	Response Time for Nonconformances	Inspection and Measurement Method (Minimum Requirements)	Measurement Record
GENERAL REQUIREMENTS AFFECTING MULTIPLE PROJECT ELEMENTS	3.05.03	Vegetation	Determine the vegetative cover for the Vegetation Zone is established and maintained in accordance with the Vegetation Management Plan (VMP), Section 3.3.1.7.1, Section 3.3.1.7.2 and Section 4.4.3.2.4 of the P3 Contract Technical Requirements.	42 days for establishing growth	Visual and Aerial Inspection	Each 400 sf contiguous area that does not comply with the VMP is a Nonconformance.
GENERAL REQUIREMENTS AFFECTING MULTIPLE PROJECT ELEMENTS	3.05.04	Vegetation	Perform seeding or planting within 30 days of temperatures becoming suitable or snow cover no longer existing, when an Interim Completion for an Interim Completion Element falls within a period not suitable for seeding or planting native grass cover, prairie grass or other vegetation required for the Project due to low temperatures or snow cover.	7 days	Visual inspection	Each 400 sf of contiguous area that does not comply with this requirement is a Nonconformance
GENERAL REQUIREMENTS AFFECTING MULTIPLE PROJECT ELEMENTS	3.05.06	General	Initiate a general cleanup of the Project within 28 days of a large flow event or flood, and make a general inspection of the Project, including interfaces with the Southern Embankment and Associated Infrastructure.	28 days	Visual inspection and review of records	Each failure to initiate general cleanup or perform a general inspection is a Nonconformance.
GENERAL REQUIREMENTS AFFECTING MULTIPLE PROJECT ELEMENTS	3.05.07	General	Remove ice as necessary to prevent flooding, overflows, or malfunction of Project Elements.	1 day	Visual Inspection and review of records	Each instance where ice accumulation may cause flooding, overflows, or malfunction of Project Elements is a Nonconformance

EXHIBIT E

AUTHORITY INVOICING REQUIREMENTS

In addition to any requirements set forth in the Memorandum of Understanding, NDDOT shall submit copies of each invoice to:

PaulsenJ@FMDiversion.gov and APInvoicesFMDiv@jacobs.com

NDDOT's invoices must be detailed and precise, clearly detailing each fee and expense for the amounts due on a line-item basis and include at least the following information:

A. A cover page with information that reflects all costs and expenses incurred for the invoicing period by providing the following at a minimum:

1. Company Name and Address;
2. Company's preferred remittance address, if different from the address on the invoice's coversheet;
3. Company's federal employer identification number;
4. Invoice Number and Date (each invoice, including resubmittals, are to be uniquely numbered);
5. Invoicing Period (month that charges were incurred);
6. Description of each activity performed for each day in which services were performed;
7. Work order number associated with each activity;
8. Name, billing rate, and hours worked by each person involved in each activity;
9. Total amount of Costs "billed to date," include the preceding months;
10. Preferred remittance address, if different from the address on the invoice's coversheet;
11. All of the work performed during that billing period.

Reimbursement does not imply acceptance of services nor that the invoice is accurate. In the event NDDOT discovers an error in the amount of reimbursement following the receipt of payment, NDDOT must provide written notice of the overpayment to Metro Flood Diversion Authority, and credit any payment in error from any reimbursement that is due or that may become due to NDDOT under this Memorandum of Understanding or return the overpayment to Metro Flood Diversion Authority within thirty (30) calendar days of the identification of the error.

And any other information referenced within the Memorandum of Understanding. In the event of a conflict between these invoicing requirements and the Memorandum of Understanding, the Memorandum of Understanding shall control.

EXHIBIT F
FEDERAL CERTIFICATION FORMS

CERTIFICATION REGARDING FEDERAL LOBBYING

The undersigned certifies to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in any award documents for any of its subcontractors at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into a contract with the Authority. By executing this certificate, the undersigned agrees and acknowledges that he/she has been duly authorized to execute this certificate.

Company/
Entity Name: _____

Signed: _____

Its: _____

Date: _____

PLEASE RETURN TO:
Metro Flood Diversion Authority
207 4th St. N, Ste A
Fargo, ND 58102

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)

(1) The official representative of the party contracting with the Metro Flood Diversion Authority certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions, including contracts (Federal, State, or local) terminated for cause or default.

(e) Are not presently debarred, suspended, declared ineligible or voluntarily excluded from performing work for the State of North Dakota, the State of Minnesota, the Metro Flood Diversion Authority or any of its Member Entities.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

(3) The Official signing this certificate has been and is duly authorized to sign this certificate on behalf of the entity or entities which intend to enter into a contract with the Metro Flood Diversion Authority.

Official Business Name _____

Date: _____

By: _____
Name and Title of Authorized Representative

PLEASE RETURN TO:

Metro Flood Diversion Authority
207 4th St. N, Ste A
Fargo, ND 58102

_____
Signature of Authorized Representative

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this certification, the prospective contracting party is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contracting party shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Metro Flood Diversion Authority's (the "Authority") determination whether to enter into this transaction. However, failure of the prospective contracting party to furnish a certification or an explanation shall disqualify such person from entering into contracts with the Authority.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Authority determined to enter into a contract with the prospective contracting party. In order to qualify for participation in the U.S. EPA WIFIA program the Authority is required to obtain this certification. If it is later determined that the prospective contracting party knowingly rendered an erroneous certification, in addition to other remedies available to both the Authority and the Federal Government, the Authority may terminate this transaction for cause or default.
4. The prospective contracting party shall provide immediate written notice to the Authority to which this Certificate is submitted if at any time the prospective contracting party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Authority for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective contracting party agrees by submitting this certification that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Authority.
7. The prospective contracting party further agrees by submitting this certification that it will require a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," from all sub-contractors without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A contracting party in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A contracting party may decide the method and frequency by which it determines the ineligibility of its principals.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a contracting party is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a contracting party in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Authority may terminate this transaction for cause or default.

ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, THE AGE DISCRIMINATION ACT OF 1975, SECTION 13 OF THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972, 40 CFR PART 7, AND EXECUTIVE ORDER NO. 11246

The undersigned provides this assurance for the purpose of entering into a contract with the Metro Flood Diversion Authority (Authority) related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project), which is receiving federal financial assistance. Specifically, the US EPA WIFIA Program requires this assurance of all contractors and subcontractors providing services for the Project.

The undersigned assures that it will comply with:

1. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin including limited English proficiency (LEP);
2. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against persons with disabilities;
3. The Age Discrimination Act of 1975, as amended, which prohibits age discrimination;
4. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex;
5. 40 CFR Part 7, as it relates to the foregoing; and
6. Executive Order No. 11246.

The undersigned understands that this Assurance is binding on the undersigned, its successors, transferees, and assignees at any time during which federal financial assistance is provided to the Project. The undersigned will ensure that all contractors, subcontractors, or others with whom it arranges to provide services or benefits are not discriminating in violation of items 1-6. Otherwise, the contracts for services can be terminated for cause and the undersigned can be declared ineligible to contract for the Project.

By signing this form, the undersigned is agreeing to the above provisions and that he/she is duly authorized to execute this form.

Signature of Authorized Official	Title
Print Name	Name of Institution or Agency
Date	Street
	City, State, Zip Code
PLEASE RETURN TO: Metro Flood Diversion Authority 207 4th St. N, Ste A Fargo, ND 58102	Office Email Address

American Iron and Steel (AIS) Certification

[The following information is provided as a sample letter of certification for AIS compliance. Documentation must be provided on company letterhead.]

Date

[Diversion Authority]

Subject: American Iron and Steel Certification for Project No. _____

Authority Work Package No. _____

To: [Authority Representative]

I, [company representative], certify and warrant that the following products and/or materials shipped/provided to Project No. _____ are in full compliance with the American Iron and Steel requirement as mandated in EPA's Water Infrastructure Finance and Innovation Act (WIFIA) Program.

Item, Products and/or Materials:

1. _____

2. _____

3. _____

Such process took place at the following location:

I understand and agree that EPA is a third party beneficiary to this certification and that I am duly authorized to give this certification on behalf of [Company Name]. If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

_____

Signed [company representative]

PLEASE RETURN TO:

Metro Flood Diversion Authority
207 4th St. N, Ste A
Fargo, ND 58102

EXHIBIT G
EASEMENT

THIS EASEMENT is made this ____ day of _____, 2021, by the North Dakota Department of Transportation, an agency of the state of North Dakota, whose office address is 608 East Boulevard Avenue, Bismarck, North Dakota, 58505-0700 ("Grantor"); and the Cass County Joint Water Resource District, a political subdivision of the State of North Dakota (the "CCJWRD").

RECITALS

A. The United States Army Corps of Engineers (the "Corps") and the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota (the "Authority") entered into a Project Partnership Agreement on July 11, 2016, and amended on March 19, 2019, for construction of the Fargo-Moorhead Metropolitan Area Flood Risk Reduction Project, commonly referred to as the Fargo-Moorhead Area Diversion Project (the "Diversion Project").

B. Pursuant to the Project Partnership Agreement, the Authority is responsible to design, construct, manage, operate, and maintain the Storm Water Diversion Channel and Associated Infrastructure portion of the Diversion Project (the "SWDCAI") which encompasses thirty (30) miles of channel and associated features; the channel outlet; two (2) aqueducts; two (2) hydraulic structures; various local drainage inlets; various levees; four (4) railroad bridges; four (4) interstate bridges; various county bridges, as well as road work and associated environmental mitigation and vegetation features.

D. As a member of the Authority, CCJWRD is authorized to acquire the real property necessary for purposes of constructing, operating, and maintaining the SWDCAI and other aspects of the Diversion Project.

E. Grantor owns certain real property rights necessary for the SWDCAI construction, maintenance, and operations-over which CCJWRD must acquire easement rights. Grantor agrees to convey an Easement to CCJWRD in, on, upon, under, over, across, and through the property described below for purposes of the SWDCAI construction, maintenance and operations, all subject to the terms and conditions contained in this Easement.

F. Pursuant to Section 5.09 of a Memorandum of Understanding between Grantor and the Authority dated _____ ___, 2021, Grantor received ownership Bridges, Roads, and certain property rights.

G. Grantor agreed to convey the appropriate right-of-way and/or easement needed to construct, operate, and maintain the SWDCAI under Section 7.01 of the Memorandum of Understanding between Grantor and the Authority.

In consideration of the mutual covenants contained in this Easement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **Easement Property**. Grantor grants and conveys to CCJWRD an easement, including the easement rights described in this Easement, upon, over, in, under, across, and through the following real property in Cass County, North Dakota:

[insert legal description of the areas where the SWDCAI will cross NDDOT property or right of way]

The property described above is the "Easement Property."

2. **Easement Rights**. Under this Easement, Grantor grants to CCJWRD, and CCJWRD's officers, employees, agents, representatives, contractors, successors, and assigns, and including agents, representatives, and contractors of the Authority, this easement upon, over, in, under, across, and through the Easement Property for the following purposes: constructing, cleaning, inspecting, reconstructing, managing, modifying, operating, maintaining, repairing, and improving the SWDCAI, and all aspects and components of the Diversion Project within the Easement Property, with related appurtenances, including a channel and side slopes with containment berms, retention structures, mobility improvements, recreational facilities, utilities determined in the discretion of the Authority to be necessary as a result of the SWDCAI in order to accommodate the SWDCAI (including the right to grant or permit third party utility providers to utilize the Easement Property for utility purposes), the Diversion Project, and other improvements; excavating, piling, storing, depositing, spoiling, spreading, and removing excavated dirt, soil, clay, silt, and other materials; inundating the Easement Property with water; storing and removing equipment, materials, and supplies; removing trees, underbrush, obstructions, and any other vegetation, structures, or obstacles from the Easement Property; planting vegetation and the right to perform any other work necessary and incident to the construction, cleaning, inspection, reconstruction, modification, operation, management, maintenance, repair, or improvement of the SWDCAI and the Diversion Project, together with all necessary and reasonable rights of ingress and egress to and from the Easement Property. Neither CCJWRD nor its assigns shall locate any utilities on, in, or below the Easement Property without the prior written consent of Grantor, which shall not be unreasonably withheld. NDDOT is not responsible for costs for remediation of pre-existing environmental contamination or hazardous materials disturbed by, arising from, or related to the SWDCAI or any other aspect of the Diversion Project.

3. **Grantor's Use of the Easement Property**. Grantor will not use, or permit use of, the Easement Property in any manner that disrupts or interferes with CCJWRD's use of the Easement Property, any structures erected upon the Easement Property, CCJWRD's rights and privileges under this Easement, or with any aspect of the SWDCAI, or the Diversion Project, including any filter strips and other vegetation seeded, and maintained by CCJWRD. Grantor will promptly cease any activities and remove any structures or obstructions that interfere with CCJWRD's use of the Easement Property, CCJWRD's rights and privileges under this Easement, or with any aspect of the SWDCAI or the Diversion Project, when directed by CCJWRD, at Grantor's sole cost. Grantor will repair or replace any portion or component of the SWDCAI or the Diversion Project or any of CCJWRD's structures, facilities, right-of-way, or any other property owned by CCJWRD damaged by Grantor or as a result of Grantor's use of the Easement Property, at Grantor's sole cost. CCJWRD will not use, or permit use of, the Easement Property

in any manner that unreasonably disrupts or interferes with Grantor's use of the Easement Property. CCJWRD will promptly cease any activities and remove any structures or obstructions that unreasonably interfere with Grantor's use of the Easement Property, and Grantor's rights and privileges under this Easement. CCJWRD will repair or replace any of Grantor's structures, facilities, right-of-way, or any other property owned by Grantor damaged by CCJWRD or as a result of CCJWRD's use of the Easement Property, at CCJWRD's sole cost.

4. **Consideration**. Grantor specifically acknowledges the consideration given represents full and final consideration to Grantor as compensation or damages regarding the Easement Property.

5. **Maintenance**. CCJWRD will be responsible for maintaining any portion of the Easement Property utilized for purposes of constructing, cleaning, inspecting, reconstructing, modifying, operating, maintaining, repairing, or improving the SWDCAI and the Diversion Project. CCJWRD will not be responsible for maintaining portions of the Easement Property not utilized for purposes of constructing, cleaning, inspecting, modifying, operating, maintaining, repairing, or improving the SWDCAI or other aspect of the Diversion Project. CCJWRD will be responsible for any damages to Grantor's property and structures that result from the construction, operation, maintenance, repair, or improvement to the SWDCAI.

6. **Encumbrances**. Grantor will not encumber the Easement Property or enroll the Easement Property in any federal program that would be contrary to, or would in any way disrupt or interfere with CCJWRD's use of the Easement Property, CCJWRD's rights and privileges under this Easement, or with the SWDCAI, or with the Diversion Project. Grantor may mortgage the Easement Property, at Grantor's sole discretion and without first obtaining CCJWRD's consent so long as such mortgage is subordinated to this Easement. If Grantor rents or leases the Easement Property, any lessee's rights and uses are subject to this Easement, including the use restrictions described above; Grantor will be fully responsible to CCJWRD for Grantor's obligations under this Easement, including for any violations by any lessee.

7. **Easement Runs with the Easement Property**. This Easement, and all covenants, terms, conditions, provisions, and undertakings created under this Easement will run with the Easement Property, and will be binding upon Grantor's heirs, successors, and assigns.

8. **Forbearance or Waiver**. The failure or delay of the either Party to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Easement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

9. **Assignment**. CCJWRD may assign any or all of its rights and obligations hereunder to the Authority. In the case of such an assignment, all references to CCJWRD hereunder shall be read and interpreted as references to the Authority.

10. **Governing Law**. This Easement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Easement will be venued in State Court in Burleigh County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

11. **Severability**. If any court of competent jurisdiction finds any provision or part of this Easement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Easement, and all remaining terms and provisions of this Easement will remain binding and enforceable.

12. **Entire Agreement**. This Easement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Easement, and this Easement supersedes all other previous oral or written agreements between the parties.

13. **Modifications**. Any modifications or amendments of this Easement must be in writing and signed by both Grantor and the Authority.

14. **Binding Effect**. The covenants, terms, conditions, provisions, and undertakings in this Easement, or in any amendment, will be binding upon the parties' successors and assigns.

15. **Recording**. Upon execution, this Easement will be recorded in the Cass County Recorder's Office.

16. **Headings**. Headings in this Easement are for convenience only and will not be used to interpret or construe its provisions.

17. **Counterparts**. This Easement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall constitute one and the same instrument. This Easement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

18. **Effective Date**. This Easement becomes effective upon the date of the last party to sign below.

(Signatures appear on following pages.)

IN WITNESS WHEREOF, Grantor executed this Easement on the date written above.

APPROVED as to substance by:

_____

Division Director

_____

Signature

_____

Date

GRANTOR

NDDOT, NORTH DAKOTA

DEPARTMENT OF TRANSPORTATION

_____

By: _____, NDDOT Director

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF _____)

On this ____ day of _____, 2021, before me, a Notary Public, in and for said County and State, personally appeared _____, NDDOT Director, known to me to be the person that is described in, and who executed the within and foregoing instrument, and acknowledged to me that they executed the same.

_____

Notary Public, _____ County, _____

My Commission Expires: _____

(SEAL)

IN WITNESS WHEREOF, the parties executed this Agreement on the date written above.

CASS COUNTY JOINT WATER RESOURCE DISTRICT

By: _____
Dan Jacobson, Chair

ATTEST:

_____
Carol Harbeke Lewis
Secretary-Treasurer

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2021, before me, a Notary Public, in and for said County and State, personally appeared Dan Jacobson and Carol Harbeke Lewis to me known to be the Chair and Secretary-Treasurer, respectively, of the Cass County Joint Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Cass County Joint Water Resource District.

_____
Notary Public, State of North Dakota
My Commission Expires:

(SEAL)

Execution Version

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

METRO FLOOD DIVERSION AUTHORITY

AND

CITY OF HORACE, NORTH DAKOTA

Dated as of _____, 2021

Relating to:

A Memorandum of Understanding outlining the respective roles and responsibilities of the Parties in regard to the impacts resulting from construction of the Diversion Inlet Structure and Reaches SE-1 and SE-2 of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (hereinafter the "MOU") is made and entered into this ___ day of _____, 2021 (the "Effective Date"), by and between METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota, and CITY OF HORACE, NORTH DAKOTA, a political subdivision of the State of North Dakota.

WHEREAS, construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (hereinafter the "Comprehensive Project") in the Fargo, North Dakota, and Moorhead, Minnesota, Metropolitan Area was authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-121; and

WHEREAS, the Authority, the City of Fargo, North Dakota, and the City of Moorhead, Minnesota, are the Non-Federal Sponsors for the Comprehensive Project and have entered into a Project Partnership Agreement (the "PPA") with the United States Army Corps of Engineers ("USACE") for the construction, operation, and maintenance of the Comprehensive Project; and

WHEREAS, the PPA sets forth a split delivery method for the Comprehensive Project, establishing the respective responsibilities of both the Non-Federal Sponsors and USACE; and

WHEREAS, pursuant to the PPA, USACE will be responsible for completing the Southern Embankment and Associated Infrastructure (hereinafter the "SEAI"), which includes the southern embankment in its entirety; the Diversion Inlet Structure; the control structures on the Red River of the North and the Wild Rice River; road and railroad raises associated with the SEAI; and all mitigation features which are not the responsibility of the Non-Federal Sponsors; and

WHEREAS, the City of Fargo, North Dakota, the City of Moorhead, Minnesota, Cass County, North Dakota, Clay County, Minnesota, and the Cass County Joint Water Resource District, North Dakota, formed the Authority by entering into a Joint Powers Agreement, dated June 11, 2016 (the "JPA"); and

WHEREAS, the Authority was created to undertake and fulfill the Non-Federal Sponsors' legal obligations under the PPA; and

WHEREAS, USACE will construct elements of the SEAI, namely Reaches SE-1 and SE-2 and the Diversion Inlet Structure (the "Elements") in the City; and

WHEREAS, the Authority and the City desire to enter into this Agreement to define their respective roles and responsibilities for the design, construction, operation, and maintenance of the Elements.

NOW THEREFORE, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, the Authority and the City agree as follows:

ARTICLE I.
DEFINITIONS AND INTERPRETATION

Section 1.01 DEFINITIONS. All capitalized terms used and not otherwise defined herein shall have the meanings given to them in this MOU and as defined in this Section unless a different meaning clearly applies from the context.

"Applicable Law" means, collectively, the Constitutions of the United States and the State of North Dakota, all common law and principles of equity, and all Federal, State, and local laws including, without limitation, all environmental laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation, or administration thereof, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations, and permits of, and agreements with, any governmental authority, and, with respect to any person, the articles of incorporation, bylaws, or other organizational or governing documents of such person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to the Authority, the City, USACE, or the Comprehensive Project.

"Authority" means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota and permanent joint powers entity, formed through the Joint Powers Agreement to provide the Fargo-Moorhead metropolitan area with permanent and comprehensive flood protection.

"Authority Representative" means the individual set forth in Section 14.06.

"Business Day" means any day that is not a Saturday, a Sunday, or a federal public holiday.

"City" means the City of Horace, North Dakota, a political subdivision of the State of North Dakota.

"City Representative" means the individual set forth in Section 14.06.

"Comprehensive Project" means the Fargo-Moorhead Metropolitan Area Flood Risk Management Project authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo Moorhead Metropolitan Area Flood Risk Management, dated July 2011 and approved in accordance with the Chief's Report, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the U.S. Army Engineer, St. Paul, on September 19, 2013, and as amended by the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering Documentation Report, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, ND and MN, Modifications Through February 2019.

"County" means Cass County, North Dakota, a political subdivision of the State of North Dakota.

"County Engineer" means the Engineer of the County.

"Diversion Inlet Structure" means the hydraulic control structure being constructed by USACE at the confluence of County Road 16 and County Road 17.

"Effective Date" means the date on which both Parties have executed this MOU.

"Element" means Reach SE-1, Reach SE-2, or the Diversion Inlet Structure, as the context requires, and wherever a reference in this MOU is made to Elements, **"Elements"** means Reaches SE-1 and SE-2 and the Diversion Inlet Structure.

"Environmental Law" means any Federal, State, or local law, regulation, code, rule, ordinance, order, judgment, decree, injunction, or common law relating in any way to human health, occupational safety, natural resources, plant or animal life, or the environment, including without limitation, principles of common law and equity, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable State or local law.

"Executive Director" means the chief administrative officer of the Authority as set forth in the Joint Powers Agreement.

"Final Completion" means the time at which the work performed under the construction contract between USACE and its contractor has progressed to the point of being complete, as defined by such contract.

"GAAP" means accounting principles generally accepted in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board, the American Institute of Certified Public Accountants, and the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession as in effect on the date hereof.

"Hazardous Materials" means any hazardous, toxic, radioactive, or infectious substance, material, or waste as defined, listed, or regulated under any Environmental Law.

"Joint Powers Agreement" means the agreement entered by and between the City of Moorhead, Minnesota; the City of Fargo, North Dakota; Clay County, Minnesota; Cass County, North Dakota; and the Cass County Joint Water Resource District, dated as of June 1, 2016, to create the Authority.

"Party" means the Authority or the City, as the context may require, and its respective legal representatives, successors, and permitted assigns, and wherever a reference in this MOU is made to any Parties hereto, **"Parties"** means the Authority and the City, collectively, and their respective legal representatives, successors, and permitted assigns.

"Person" means an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization, or a governmental authority.

"Point of Contact" means the individual appointed by the Authority pursuant to Section 2.02 to act as a liaison between the City, the Authority, and USACE.

"PPA" means the Project Partnership Agreement, dated June 11, 2016, by and between the Department of the Army and the City of Fargo, North Dakota, the City of Moorhead, Minnesota, and the Metro Flood Diversion Authority for construction of the Comprehensive Project, and any amendments thereto.

"Reach SE-1" means that portion of the Southern Embankment and Associated Infrastructure that will be constructed south and west of the Diversion Inlet Structure and includes any subsections into which that portion of the Southern Embankment and Associated Infrastructure may be divided.

"Reach SE-2" means that portion of the Southern Embankment and Associated Infrastructure that will be constructed between the Diversion Inlet Structure and the Wild Rice River Control Structure and includes any subsections in which that portion of the Southern Embankment and Associated Infrastructure may be divided.

"Red River Control Structure" means the control structure on the Red River of the North to be procured by USACE.

"Southern Embankment and Associated Infrastructure" or **"SEAI"** means the Diversion Inlet Structure, the Red River Control Structure, the Wild Rice River Control Structure, and the southern embankment in its entirety (including Reaches SE-1 and SE-2), as more fully described in the PPA.

"State" means the State of North Dakota.

"Substantial Completion" means the time at which the work performed under the construction contract between USACE and its contractor has progressed to the point of being substantially completed, as defined by such contract.

"Uniform Act" means the Relocation Assistance and Real Property Acquisition Policies Act of 1970.

"USACE" means the United States Army Corps of Engineers.

"Utility Relocation" means each relocation (temporary or permanent), abandonment, protection in place, adjust in place, removal, replacement, reinstallation, and/or modification of existing utilities necessary to accommodate construction, operation, maintenance, and/or use of the SEAI.

"Wild Rice River Control Structure" means the control structure on the Wild Rice River to be procured by USACE.

"Work" means design work, construction work, and maintenance work, and all other work, services, and obligations required to be furnished, performed, and provided by the Authority under this MOU.

Section 1.02 TERMS GENERALLY. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (b) any reference herein to any person shall be construed to include such person's permitted successors and assigns, (c) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this MOU in its entirety and not to any particular provision hereof, (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this MOU, and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

ARTICLE II.
INTENT

Section 2.01 INTENT. Pursuant to the terms of the PPA, the Authority is responsible, on behalf of USACE, for obtaining the interests and authorizations necessary for construction, operation, and maintenance of the Elements, which will be designed and constructed by USACE. As a result, the Parties desire to enter this MOU to address the Parties' respective rights and obligations related to the design, construction, obligation, and maintenance of the Elements. A map of the Comprehensive Project impacts for the City is also attached as Exhibit D.

Section 2.02 POINT OF CONTACT. Prior to construction work commencing on an Element, the Authority will assign a point of contact ("Point of Contact") to work with the City Representative. The intended purpose of this Point of Contact is to allow the City Representative to provide information to the Authority and USACE regarding activities that may be occurring on property near active construction that may have an impact on USACE's work, e.g., agricultural spraying on neighboring property, as well as allow the City Representative to inform the Authority and USACE of conflicts or concerns the City may have.

ARTICLE III.
DESIGN

Section 3.01 INTENT. The Parties intend that the Authority will be the lead agency for coordination with USACE for design of the Elements. The Parties understand and agree that the

Elements must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 3.02 ELEMENTS. USACE is responsible for designing the Elements and will submit periodic designs to the Authority and other stakeholders, including the County, for review and comment. The County will review these designs, as set forth in the memorandum of understanding between the County and the Authority for the SEAI, on behalf of the City.

Section 3.03 FINANCING. The City will not be responsible for any costs or expenses associated with the design of the Elements.

ARTICLE IV.
PRELIMINARY PLANNING AND ENGINEERING ACTIVITIES

Section 4.01 INTENT. The Parties intend that the Authority will be the lead agency for coordination with USACE for planning and engineering activities. The Parties understand and agree that the Elements must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 4.02 SITE TESTING. The Authority will coordinate with USACE to ensure all preliminary engineering activities for the Elements, including: (a) technical studies and analyses; (b) geotechnical, seismic, flooding, and biological investigations; (c) right-of-way mapping, surveying, and appraisals; (d) utility subsurface investigations and mapping; (e) Hazardous Materials investigations; and (f) archeological, paleontological, and cultural investigations are completed.

Section 4.03 MITIGATION. The Authority will ensure that remediation and removal of all Hazardous Materials necessary to complete construction of the Elements is completed.

Section 4.04 ENVIRONMENTAL REVIEW. The Authority will ensure that all Work complies with applicable Environmental laws.

Section 4.05 UTILITY RELOCATION. The Authority is responsible for coordinating and/or performing Utility Relocations for the Elements and will be responsible for costs incurred for these relocations.

Section 4.06 PERMITS AND APPROVALS. The Authority is responsible for securing any necessary permits and/or approvals for construction of the Elements and is responsible for carrying out any requirements of those permits and/or approvals, including environmental requirements. The City will cooperate with the Authority in Good Faith regarding permit conditions and implementation. The Authority shall submit any required costs or expenses for any City permit or approval, for which it applies. From the City, the Authority must obtain a floodplain permit and right-of-way permits for locations that are within the City's right-of-way, but no additional permits, except as specifically set forth herein, are required from the City.

ARTICLE V.
PROPERTY INTERESTS

Section 5.01 ACQUISITION FOR ELEMENTS. The Authority is responsible for obtaining any and all necessary property interests for the Elements in accordance with the Uniform Act.

Section 5.02 PLATTING. The Authority intends to plat the footprint of the SEAI to attain ownership which meets requirements put forth by USACE for the SEAI. The Authority shall comply with all platting requirements of the City. The Authority will apply for annexation or approve an annexation agreement related to any parcels in the Extra Territorial Area. The City will cooperate with any and all efforts to plat, including signing a plat if necessary and vacating road right-of-way in locations determined by the designs for the Elements in accordance with the City requirements. On the plat, the Authority will dedicate a turn around on any City road at the limits of the road that is vacated, according to the current ordinances at the time of platting.

Section 5.03 WEED CONTROL. On property in which the Authority has obtained an interest for the development of the Comprehensive Project, the Authority will designate personnel to monitor and maintain control of weeds in accordance with City ordinances.

ARTICLE VI.
CONSTRUCTION

Section 6.01 INTENT. The Parties intend that the Authority will be the lead agency for coordination with USACE for construction. The Parties understand and agree that the Elements must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 6.02 ELEMENTS. USACE will be responsible for constructing the Elements and any other physical alterations necessary for construction, operation, and maintenance of the Elements.

Section 6.03 DESIGN MODIFICATIONS. If USACE submits a design modification for an Element, the County, pursuant to the memorandum of understanding between the County and the Authority for the SEAI, will review the modification and seek input from the City. Any design modifications may alter the floodplain development permit and, as a result, require City review and approval.

Section 6.04 CONSTRUCTION SCHEDULE. The Point of Contact will provide the City Representative a proposed schedule for construction of the Elements and for road closures and at least thirty (30) calendar days' advanced notice of the proposed start date of construction of an Element and of any road closures. During the pendency of construction, while working in the City or its extraterritorial area, the Point of Contact will provide the City a 2-week look ahead and access to an online schedule.

Section 6.05 MAINTENANCE DURING CONSTRUCTION. The construction contractors will be responsible for maintaining haul routes during construction. In the event the City believes maintenance is not being performed or is being underperformed, it will notify the Point of Contact,

and the Authority will coordinate the maintenance, which may include, if agreed upon, the City performing the maintenance and seeking reimbursement from the Authority.

Section 6.06 PROJECT UPDATES AND COMPLETION. The City will interact with the Point of Contact to receive updates on the construction of the Elements. The Authority will coordinate with USACE on when any milestones are reached on the Elements, including Substantial Completion and Final Completion.

Section 6.07 INSPECTION. The County and the Authority will have the ability to conduct inspections of the Elements during construction following protocols established by USACE to ensure it complies with the provisions of this MOU. Upon request, the City shall be allowed to conduct inspections of the Elements.

Section 6.08 FINANCING. The City will not be responsible for any costs or expenses associated with the construction of the Elements.

ARTICLE VII.
MAINTENANCE

Section 7.01 MAINTENANCE. The Authority will be responsible for maintenance, at its sole cost and expense, of the Elements. The City will have no maintenance responsibilities regarding the same.

ARTICLE VIII.
COMPREHENSIVE PROJECT OPERATION AND CLEAN-UP

Section 8.01 NOTICE OF OPERATION. The Point of Contact will provide the City Representative with reasonable advanced notice of the anticipated operation of the Comprehensive Project. The Authority will place and remove road barriers and signage, as necessary.

Section 8.02 POST-OPERATION CLEAN-UP. Following operation of the Comprehensive Project, the Authority and the City will follow Exhibit B, the Post-Operation Public Lands Repair and Clean-Up Plan, which is a portion of the Authority's Property Rights Acquisition and Mitigation Plan.

ARTICLE IX.
INSURANCE

Section 9.01 INSURANCE. In any contracts entered between USACE and a third party for construction of the Elements, the Authority will coordinate with USACE regarding insurance requirements. The Authority will provide a copy all insurance information, including a certificate of insurance, to the City prior to construction.

ARTICLE X.
REIMBURSEMENT AND INVOICING

Section 10.01 CONSTRUCTION COSTS AND EXPENSES. Between the Effective Date and completion of the final Element, in addition to any reimbursable costs or expenses set forth herein, the Authority will reimburse the City for any costs or expenses incurred as a result of work provided under this MOU, in an amount up to $5,000.00 annually. The first annual period shall be from the Effective Date until the date preceding the first anniversary of the Effective Date. Annual periods thereafter shall run from the anniversary of the Effective Date until the earlier of: (i) the date preceding the next anniversary of the Effective Date or (ii) the date of completion of the final Element.

Section 10.02 POST-CONSTRUCTION COSTS AND EXPENSES. Following the completion of the final Element, in addition to any reimbursement costs or expenses set forth herein, the Authority will reimburse the City for any costs or expenses incurred in relation to the Comprehensive Project in an amount up to $2,500.00 annually. The first annual period shall be from the date of the completion of the final Element until the date preceding the first anniversary of such date. Annual periods thereafter shall run from the anniversary of such date to the date preceding the next anniversary of such date.

Section 10.03 EXTRAORDINARY EXPENSES. In addition to the allowable reimbursements set forth in Sections 10.01 and 10.02, the Authority will reimburse the City for extraordinary expenses if prior to incurring the expense, the City receives written authorization from the Authority. The Authority will not unreasonably withhold approval of these requests.

Section 10.04 INVOICING.

(a) The City will remit hard copy invoices to the Authority at the Authority's main office, and the invoices will be processed by the Authority for the following month. The City will also submit copies of the invoices to the Authority electronically at APInvoicesFMDiv@jacobs.com, copied to jpaulsen@fmdiversion.gov. Each invoice should include the identification of the City, a description of the activity included in the invoice, and the address where payment should be remitted. The City may (i) initially pay for work included in an invoice and then seek reimbursement from the Authority for the payment or (ii) submit invoices directly to the Authority for initial payment. In either instance, the Authority will remit payment to the City.

(b) After the Authority receives a City invoice, the Authority will either process the invoice for payment or give the City specific reasons, in writing, within fifteen (15) Business Days, why part or all of the Authority's payment is being withheld and what actions the City must take to receive the withheld payment.

(c) In the event of disputed billing, only the disputed portion will be withheld from payment and the Authority will pay the undisputed portion. The Authority will exercise reasonableness in disputing any bill or portion thereof. Interest will accrue on any disputed portion of the billing determined to be due and owing to the City.

(d) Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, the City must credit

any payment error from any payment that is due or that may become due to the City under this MOU.

(e) The Authority will be charged interest at the rate of one-half percent (1/2%) per month, or the maximum amount permitted by Applicable Law if a lesser amount, on all past-due amounts thirty (30) days after receipt of invoice. Payments will first be credited to interest and then to principal.

ARTICLE XI.
TERM AND TERMINATION

Section 11.01 TERM. This MOU will continue in full force and effect until either (i) the termination of the Original Term or a Renewal Period as provided herein; or (ii) this MOU is terminated or rescinded in accordance with the terms and conditions of this MOU.

Section 11.02 ELEMENT COMPLETION. The original term of this MOU will be from the Effective Date until three (3) years following the completion of the last Element, marked by transfer of that Element to the Authority (the "Original Term"). The MOU will automatically renew following the Original Term for successive ten (10) year periods (a "Renewal Period") unless a Party provides three hundred sixty-five (365) days' prior written notice to the other Party that renewal is not desired.

Section 11.03 TERMINATION. The Parties may mutually agree, in writing, to terminate this MOU. The Parties may not terminate this MOU, however, prior to three (3) years following completion of the final Element.

ARTICLE XII.
DISPUTE RESOLUTION

Section 12.01 INTENT AND PROCEDURE. The Parties will cooperate and use their best efforts to ensure that the various provisions of this MOU are fulfilled. The Parties agree to act in Good Faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this MOU. If disputes cannot be resolved informally by the Parties, the following procedure will be used.

Section 12.02 MEDIATION. If there is a failure between the Parties to resolve a dispute on their own, the Parties will first attempt to mediate the dispute. The Parties must agree on a mediator. The Parties will agree upon a single mediator and will each pay fifty percent (50%) of any costs for mediation services.

Section 12.03 LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within forty-five (45) calendar days after the end of mediation proceedings, the Parties may litigate the matter.

Section 12.04 LITIGATION; VENUE. All litigation between the Parties arising out of or pertaining to this MOU or its breach will be filed, heard, and decided in the State District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

Section 12.05 WAIVER OF JURY TRIAL. The Parties hereby knowingly, irrevocably, voluntarily, and intentionally waive any rights that any may have to a trial by jury with respect to any action, proceeding, counterclaim, or defense based on this MOU, or arising out of, under, or in any connection with this MOU, or with respect to any course of conduct, course of dealing, statements (whether oral or written) or actions of any party hereto relating to this MOU. This provision is a material inducement for all Parties entering into this MOU. This provision applies only to suits between the Parties and does not apply to third party claims or suits.

ARTICLE XIII.
MISCELLANEOUS

Section 13.01 COMPLETE AGREEMENT. This MOU contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter.

Section 13.02 COUNTERPARTS. This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 13.03 AMENDMENTS. This MOU may be amended only by written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this MOU.

Section 13.04 SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this MOU is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this MOU.

Section 13.05 FORCE MAJEURE. No Party will be liable to the other Party during any period in which its performance is delayed or prevented, in whole or in part, by circumstances beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation or an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Party of the same.

Section 13.06 AUTHORIZED REPRESENTATIVES. Each of the Authority and the City hereby designates the following individuals as its initial authorized representatives, respectively, to administer this MOU on its respective behalf:

(a) Authority Representative: Kris Bakkegard, Director of Engineering

(b) City Representative: City Administrator

Section 13.07 NOTICE.

(a) All notices under this MOU will be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) sent by email confirmation followed by a hard copy, to the following addresses.

(b) All notices to the Authority will be marked as regarding the Comprehensive Project and will be delivered to the following addresses or as otherwise directed by the Authority Representative:

Jacobs
64 4th Street North, Suite 300
Fargo, North Dakota 58102

and

Executive Director
P.O. Box 2806
207 4th Street North, Suite A
Fargo, North Dakota 58108-2806

(c) All notices to the City will be marked as regarding the Comprehensive Project and will be delivered to the following address or as otherwise directed by the City Representative:

215 Park Drive East
Horace, North Dakota 58047

(d) Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. CST and all other notices received after 5:00 p.m. CST will be deemed received on the first Business Day following delivery.

Section 13.08 GOVERNING LAW. This MOU will be governed and construed in accordance with the laws of the State of North Dakota.

Section 13.09 CONFLICT WITH MEMORANDUM OF UNDERSTANDING REGARDING OTHER COMPREHENSIVE PROJECT WORK. Nothing in this MOU is intended to supersede, amend, or otherwise modify any other memorandum of understanding or agreement entered by and between the Authority and the City for work regarding other aspects of the Comprehensive Project.

Section 13.10 FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment,

or modification of a federal grant, loan, or contract. These requirements are implemented for the United States Environmental Protection Agency ("EPA") in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. On or prior to the Effective Date, the City will complete and submit to the Authority the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 23, which are attached within Exhibit C to this MOU. In the event the Authority solicits assistance from the City to complete an element of the Comprehensive Project and funds made available to the Authority by the Water Infrastructure Finance and Innovation Act are utilized to finance such element, the City will also require all subcontractors and suppliers of any tier awarded a subcontract over $100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

Section 13.11 DEBARMENT AND SUSPENSION. In the event the Authority solicits assistance from the City to complete an element of the Comprehensive Project and funds made available to the Authority by the Water Infrastructure Finance and Innovation Act are utilized to finance such element, the City certifies it will not knowingly enter into a contract with anyone who is ineligible under 40 CFR Part 32 to participate in the Comprehensive Project. Suspension and debarment information can be accessed at http://www.sam.gov. The City represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this MOU. On or prior to the Effective Date, the City will complete and submit to the Authority the federal certification form regarding debarment and suspension, which is attached within Exhibit C to this MOU.

Section 13.12 CIVIL RIGHTS OBLIGATIONS. In the event the Authority solicits assistance from the City to complete an element of the Comprehensive Project and funds made available to the Authority by the Water Infrastructure Finance and Innovation Act are utilized to finance such element, the City will comply with the following, federal non-discrimination requirements:

(a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).

(b) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.

(c) The Age Discrimination Act of 1975, which prohibits age discrimination.

(d) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.

(e) 40 CFR Part 7, as it relates to the foregoing.

(f) Executive Order No. 11246.

On or prior to the Effective Date, the City will complete and submit to the Authority the federal certification form regarding civil rights, which is attached within Exhibit C to this MOU.

IN WITNESS WHEREOF, the Authority and the City caused this Agreement to be executed.

(Remainder of page intentionally left blank.)

Signature Page for the Metro Flood Diversion Authority

The Metro Flood Diversion Authority approved this Memorandum of Understanding on the ___ of _____, 2021.

METRO FLOOD DIVERSION AUTHORITY

By: _____
Michelle (Shelly) A. Carlson, Chair

By: _____
Joel Paulsen, Executive Director

ATTEST:

_____
Dawn Lindblom, Secretary

Signature Page for the City of Horace, North Dakota

The governing body of the City of Horace, North Dakota, approved this Agreement on the ___ day of _____, 2021.

CITY OF HORACE, NORTH DAKOTA

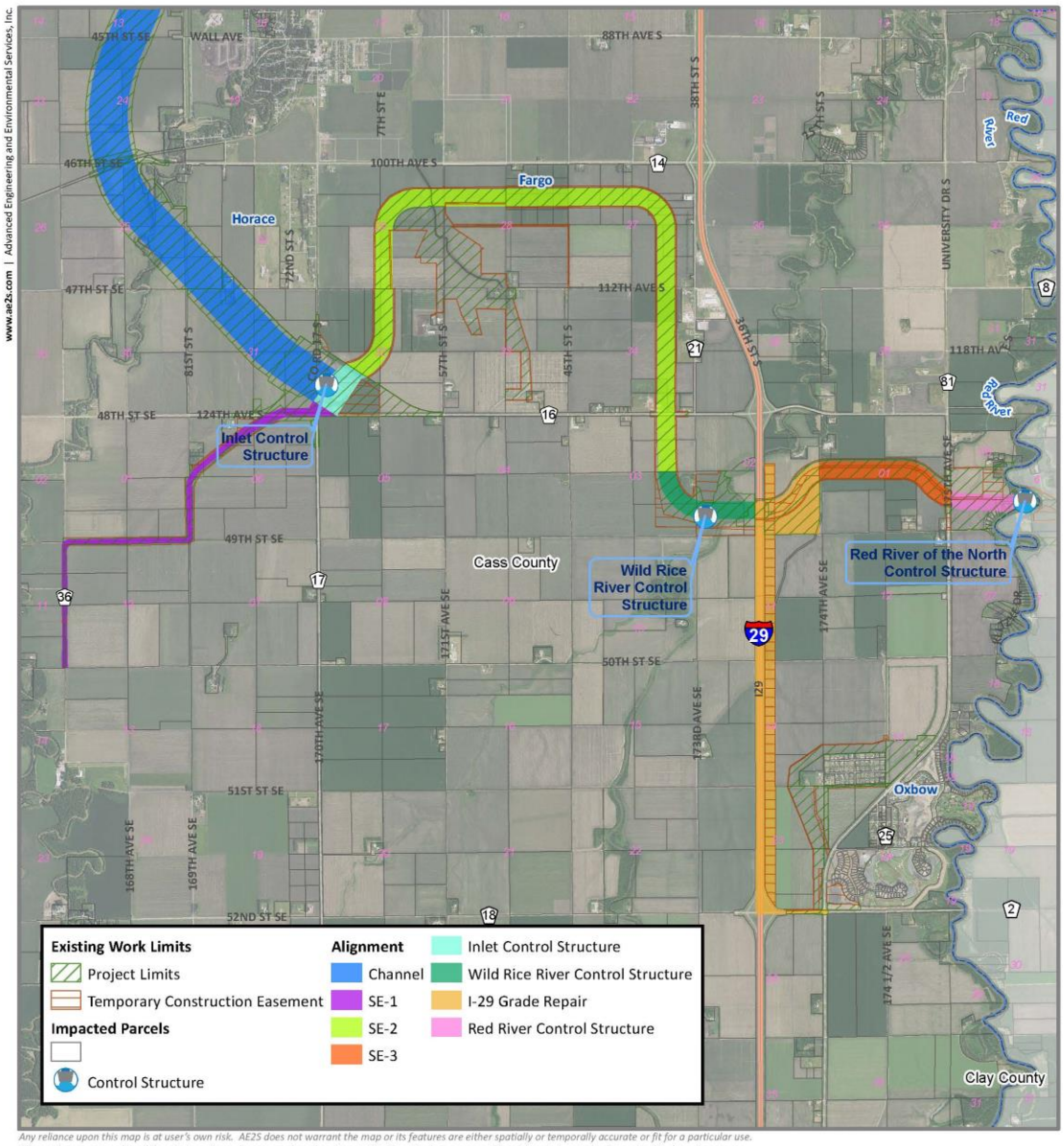
By: _____
Kory Peterson, Mayor

ATTEST:

_____
Brenton Holper, City Administrator

EXHIBIT A –

MAP OF ELEMENTS



Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use.
All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.
Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced by: dlee, AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\WP27-Red River West Embankment\SEAI_ND_overall.mxd

N

0 0.2 0.4 0.8
Miles

SOUTHERN EMBANKMENT (ND)
AND ASSOCIATED INFRASTRUCTURE

FM AREA DIVERSION
Map Date: 9/30/2020

FM AREA DIVERSION PROJECT

EXHIBIT B –

POST OPERATION PUBLIC LANDS REPAIR AND CLEAN-UP POLICY

Post-Operation Repair and Clean-Up Plan: Public Lands

Introduction

Operation of the Project will result in the staging and retention of flood waters upstream of the Southern Embankment. The upstream retention of flood waters will impact a different amount of acres for each flood event depending on the magnitude of the flood and a variety of other factors. There are a variety of "public lands" in the upstream mitigation area such as township and county roads, drainage ditches, cemeteries, and parks. In recognition that operation of the upstream retention area may cause some damage to these public lands as well as the accumulation of debris (logs, straw, trash, etc.), the Diversion Authority has developed the following post-operation public lands repair and clean-up plan.

Post-Operation Public Lands Repair and Clean-Up Plan

If the Project operates, the Diversion Authority will enact the following post-operation public lands repair and clean-up plan. The plan is specific to repair and clean-up of public lands in the upstream mitigation area from operation of the Project. Public lands include township and county roads, drainage ditches, cemeteries, and parks. This plan will allow local government entities (townships, water boards, etc.) to contract for the repair and clean-up work on the public lands, and then submit for reimbursement to the Diversion Authority. This plan allows the local government entities the ability to contract for the work as they prefer.

- The plan will pattern the approach that FEMA uses for post-disaster damage assessment and reimbursements.
- The Diversion Authority will declare the Project operated.
- The Diversion Authority will define the boundary of the upstream mitigation cleanup area based on the actual flood event.
- The Diversion Authority will distribute an annual newsletter that will include information related to post-operation mitigation programs.
- The Diversion Authority will notify public entities of eligible areas and request that the public entity identify any damage that may have been caused by the Project operation, including debris removal.
- The Diversion Authority will send a representative to meet with the public entities to verify damage on a site by site basis.
- The public entities shall solicit quotes (in conformance with procurement, legal, and regulatory requirements) for the repairs or clean-up work at each site, and submit the quotes for each site to the Diversion Authority for review.
- The Diversion Authority shall review the quotes for reasonableness, and either approve, request additional details, or deny the quote.
- The Diversion Authority will confirm the work was completed in accordance with the quote, and then reimburse the public entity.

- The Diversion Authority will also consider reimbursement of emergency repairs that may be needed in advance of following this process.
- The Diversion Authority will establish a reasonable deadline for submission of damage claims.

EXHIBIT C
FEDERAL CERTIFICATION FORMS
CERTIFICATION REGARDING FEDERAL LOBBYING

The undersigned certifies to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in any award documents for any of its subcontractors at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into a contract with the Authority. By executing this certificate the undersigned agrees and acknowledges that he/she has been duly authorized to execute this certificate.

Company/
Entity Name: _____

Signed: _____

Its: _____

Date: _____

PLEASE RETURN TO:
Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)

(1) The official representative of the party contracting with the Metro Flood Diversion Authority certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions, including contracts (Federal, State, or local) terminated for cause or default.

(e) Are not presently debarred, suspended, declared ineligible or voluntarily excluded from performing work for the State of North Dakota, the State of Minnesota, the Metro Flood Diversion Authority or any of its Member Entities.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

(3) The Official signing this certificate has been and is duly authorized to sign this certificate on behalf of the entity or entities which intend to enter into a contract with the Metro Flood Diversion Authority.

Official Business Name _____

Date: _____

By: _____
Name and Title of Authorized Representative

PLEASE RETURN TO:

Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

_____
Signature of Authorized Representative

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this certification, the prospective contracting party is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contracting party shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Metro Flood Diversion Authority's (the "Authority") determination whether to enter into this transaction. However, failure of the prospective contracting party to furnish a certification or an explanation shall disqualify such person from entering into contracts with the Authority.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the Authority determined to enter into a contract with the prospective contracting party. In order to qualify for participation in the U.S. EPA WIFIA program the Authority is required to obtain this certification. If it is later determined that the prospective contracting party knowingly rendered an erroneous certification, in addition to other remedies available to both the Authority and the Federal Government, the Authority may terminate this transaction for cause or default.

4. The prospective contracting party shall provide immediate written notice to the Authority to which this Certificate is submitted if at any time the prospective contracting party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Authority for assistance in obtaining a copy of those regulations (13 CFR Part 145).

6. The prospective contracting party agrees by submitting this certification that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Authority.

7. The prospective contracting party further agrees by submitting this certification that it will require a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," from all sub-contractors without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A contracting party in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A contracting party may decide the method and frequency by which it determines the ineligibility of its principals.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a contracting party is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a contracting party in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Authority may terminate this transaction for cause or default.

ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, THE AGE DISCRIMINATION ACT OF 1975, SECTION 13 OF THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972, 40 CFR PART 7, AND EXECUTIVE ORDER NO. 11246

The undersigned provides this assurance for the purpose of entering into a contract with the Metro Flood Diversion Authority (Authority) related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project), which is receiving federal financial assistance. Specifically, the US EPA WIFIA Program requires this assurance of all contractors and subcontractors providing services for the Project.

The undersigned assures that it will comply with:

1. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin including limited English proficiency (LEP);
2. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against persons with disabilities;
3. The Age Discrimination Act of 1975, as amended, which prohibits age discrimination;
4. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex;
5. 40 CFR Part 7, as it relates to the foregoing; and
6. Executive Order No. 11246.

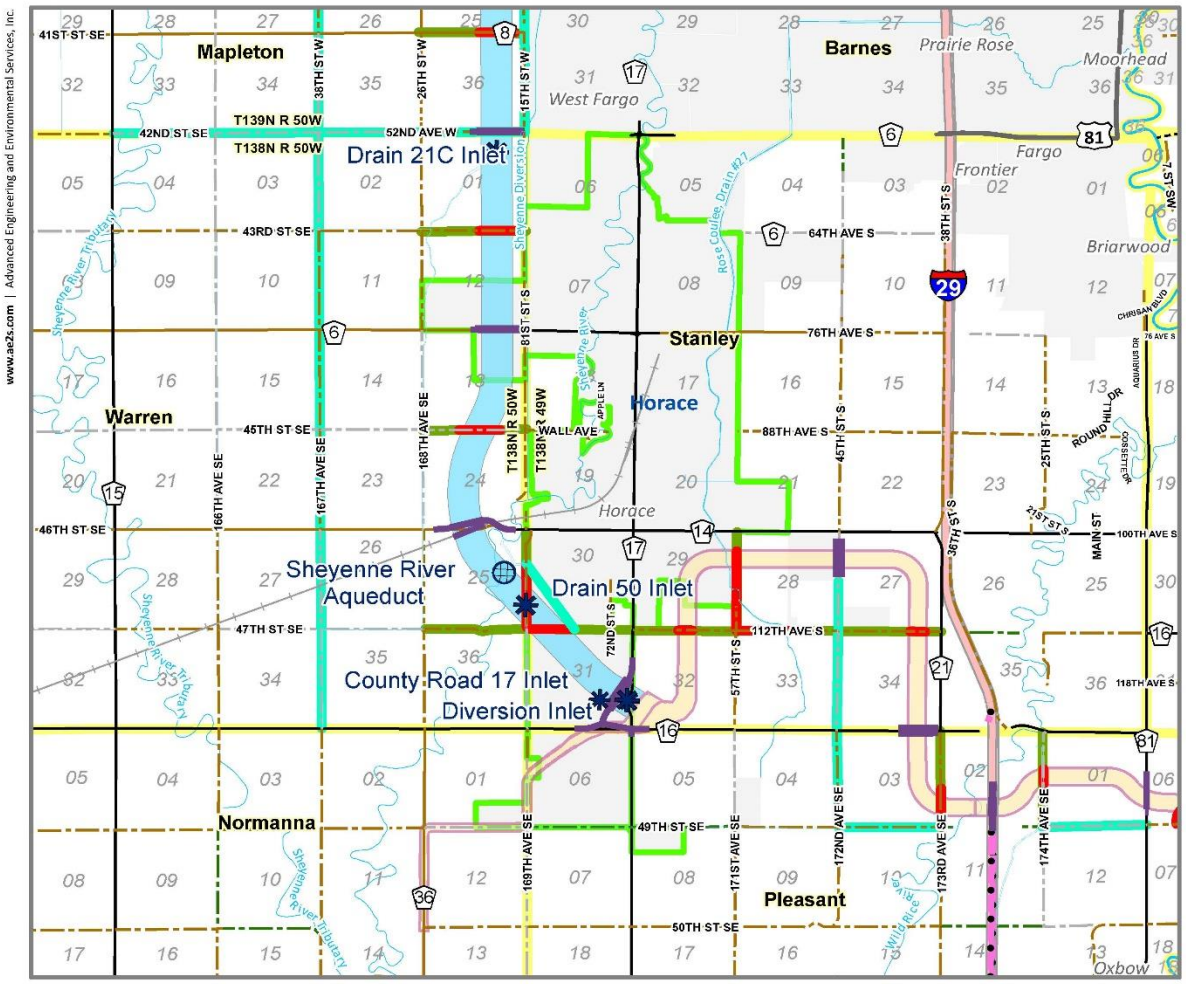
The undersigned understands that this Assurance is binding on the undersigned, its successors, transferees, and assignees at any time during which federal financial assistance is provided to the Project. The undersigned will ensure that all contractors, subcontractors, or others with whom it arranges to provide services or benefits are not discriminating in violation of items 1-6. Otherwise, the contracts for services can be terminated for cause and the undersigned can be declared ineligible to contract for the Project.

By signing this form, the undersigned is agreeing to the above provisions and that he/she is duly authorized to execute this form.

Signature of Authorized Official	Title
Print Name	Name of Institution or Agency
Date	Street
	City, State, Zip Code
PLEASE RETURN TO: Metro Flood Diversion Authority P.O. Box 2806 Fargo, ND 58108-2806	Office Email Address

EXHIBIT D

PROJECT IMPACTS MAP



Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.
Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. |
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City of Horace

FM Area Diversion
Map Date: 9/27/2021

FM AREA DIVERSION

Execution Version

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

METRO FLOOD DIVERSION AUTHORITY

AND

THE CITY OF HORACE, NORTH DAKOTA

Dated as of _____, 2021

Relating to:

A Memorandum of Understanding outlining the respective roles and responsibilities of the Parties in regard to the impacts resulting from construction of the Storm Water Diversion Channel and Associated Infrastructure of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (hereinafter the "MOU") is made and entered into this _____ day of _____, 2021 (the "Effective Date"), by and between by and between the METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota, and the CITY OF HORACE, NORTH DAKOTA, a Home Rule City and municipal corporation of the State of North Dakota.

WHEREAS, construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (hereinafter the "Comprehensive Project") at the Fargo, North Dakota, and Moorhead, Minnesota, metropolitan area was authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-121; and

WHEREAS, the Authority, the City of Fargo, North Dakota, and the City of Moorhead, Minnesota, are the Non-Federal Sponsors for the Comprehensive Project and have entered into a Project Partnership Agreement (the "PPA") with the United States Army Corps of Engineers (hereinafter "USACE") for the construction, operation, and maintenance of the Comprehensive Project; and

WHEREAS, the PPA sets forth a split delivery method for the Comprehensive Project, establishing the respective responsibilities of both the Non-Federal Sponsors and USACE; and

WHEREAS, pursuant to the PPA, USACE will be responsible for completing the Diversion Inlet Structure; the approximately six (6) mile connecting channel; the Red River Control Structure and the Wild Rice River Control Structure; the SEAI; the overflow embankment; construction of road and railroad raises associated with the staging area; and all mitigation features that are not the responsibility of the Non-Federal Sponsors; and

WHEREAS, pursuant to the PPA, part of the Non-Federal Sponsors' responsibility will be to design, construct, manage, operate, and maintain the Storm Water Diversion Channel and Associated Infrastructure (hereinafter "SWDCAI"); and

WHEREAS, the Non-Federal Sponsors' responsibilities under the PPA also include the acquisition of real estate interests necessary for the SWDCAI and the operation and maintenance of the SWDCAI when constructed; and

WHEREAS, the Authority, pursuant to the Joint Powers Agreement, is the entity responsible for the Non-Federal Sponsors' obligations under the PPA; and

WHEREAS, to facilitate the design, construction, operation, and maintenance of the SWDCAI, on September 2, 2015, the Authority approved a Notice of Intent to develop a Public-Private Partnership ("P3") with a Developer pursuant to North Dakota Century Code chapter 48-02.1; and

WHEREAS, on July 14, 2016, the Authority authorized the release of a Request for Qualifications for the P3 Procurement, and on December 15, 2016, the Authority authorized the release of a draft Request for Proposals for the P3 Procurement; and

WHEREAS, the Authority anticipates the Developer will operate and maintain the SWDCAI for an approximately thirty (30) year term following completion; and

WHEREAS, Horace is the holder of certain rights-of-way that will be affected by the construction, operation, and maintenance of the SWDCAI; and

WHEREAS, it is necessary for the construction, operation, and maintenance of the SWDCAI that the Authority acquire rights and privileges from Horace; and

WHEREAS, Horace was invited to participate in a study to develop the South Red River Master Diversion Transportation Plan that lays out the effects of the SWDCAI on roads and rights-of-way and provides a response thereto; and

WHEREAS, Horace is willing to cooperate with the Authority in regard to said rights-of-way for construction, development, and use of the SWDCAI as provided by this MOU.

NOW THEREFORE in consideration of the faithful performance of each Party of the mutual covenants and agreements herein set forth, it is mutually agreed as follows:

ARTICLE I.
DEFINITIONS AND INTERPRETATION

Section 1.01 DEFINITIONS. All capitalized terms used and not otherwise defined herein shall have the meanings given to them in this MOU and as defined in this Section unless a different meaning clearly applies from the context.

"Applicable Law" means, collectively, the Constitutions of the United States and of the State, all common law and principles of equity, and all Federal, State, and local laws including, without limitation, all environmental laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation, or administration thereof, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations, and permits of, and agreements with, any governmental authority, and, with respect to any Person, the articles of incorporation, bylaws, or other organizational or governing documents of such Person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to the Authority, Horace, or the SWDCAI.

"Authority" means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota and permanent joint powers entity, formed through the Joint Powers Agreement to provide the Fargo-Moorhead metropolitan area with permanent and comprehensive flood protection. References to the Authority throughout this MOU include references to other entities engaged by the Authority, including the Developer, to complete such work.

"Authority Representative" has the meaning set forth in Section 14.06.

"Authority-Retained Responsibilities" has the meaning set forth in Section 9.02.

"Buildable Unit" means discrete and/or identifiable portions of the SWDCAI, as determined in the discretion of the Authority, that will be designed and constructed individually, and that when completed, make up the Mobility Improvement, or another SWDCAI element, and ultimately the entire SWDCAI.

"Business Day" means any day that is not a Saturday, a Sunday, or a federal public holiday.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601-9675).

"City Council" means the governing body of Horace.

"Compensation Event" means as defined in the Project Agreement.

"Comprehensive Project" means the Fargo-Moorhead Metropolitan Area Flood Risk Management Project authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo Moorhead Metropolitan Area Flood Risk Management, dated July 2011 and approved in accordance with the Chief's Report, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the U.S. Army Engineer, St. Paul, on September 19, 2013, and amended by the Final Supplemental Environmental Assessment #2, Modifications to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated February 2019.

"Construction Work" means all labor, materials, equipment, and incidentals necessary to complete the Mobility Improvement in accordance with the Project Agreement.

"County" means Cass County, North Dakota, a political subdivision of the State of North Dakota.

"County Engineer" means the Engineer of Cass County, North Dakota.

"Design Documents" means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details, and diagrams), specifications, reports, studies, working drawings, shop drawings, calculations, electronic files, records, and submittals necessary for, or related to, the design of the SWDCAI.

"Design Work" means all Work related to design, redesign, engineering, or architecture.

"Developer" means the individual, partnership, corporation, or joint venture that enters the Project Agreement with the Authority to design, finance, build, operate, and maintain the SWDCAI. References to the Developer throughout this MOU include references to other entities engaged by the Developer to complete such work.

"Diversion Inlet Structure" means the hydraulic structures being constructed by USACE at the confluence of County Road 16 and County Road 17.

"Effective Date" means the date on which all Parties have executed this MOU.

"Engineer of Record" means an individual or individuals, properly registered as an engineer, responsible for preparing the design for the SWDCAI.

"Environment" or **"Environmental"** means air, soils, surface waters (including wetlands), groundwater, land, stream sediments, surface and subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, and cultural, historic, archaeological and paleontological resources.

"Executive Director" means the chief administrative officer of the Authority as set forth in the Joint Powers Agreement.

"Final Design Submittal" means the design for a Buildable Unit has reached ninety-five percent (95%) completion, as determined by the Authority.

"Force Majeure Flood Event" means (i) until Project Substantial Completion, the gauge height for USGS gauge 05054000 (Red River) meets or exceeds 43 feet; and (ii) on or after Project Substantial Completion, more than 46,600 cfs is permitted to flow through the Diversion Inlet Structure.

"Good Faith" means the observance of reasonable commercial standards of fair dealing in a given trade or business.

"Good Industry Practice" means the industry practices and standards that would be exercised by a prudent and experienced developer, designer, engineer, contractor, operator, or maintenance provider engaged in the same kind of undertakings and under similar circumstances as those applying to the work.

"Hazardous Materials" means any element, chemical, compound, mixture, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Applicable Law (including CERCLA), or any other substances or conditions (including mold or other mycotoxins, fungi or fecal material) which may create any unsafe or hazardous condition or pose any threat or harm to the Environment or human health or safety.

"Horace" means Horace, North Dakota, a Home Rule City and political subdivision of the State of North Dakota.

"Indemnified Party" means a party identified by the Project Agreement as such.

"Initial Design Submittal" means the design for a Buildable Unit that has reach sixty percent (60%) completion, as determined by the Authority.

"Insurance Policies" means the insurance policies the Authority is required to carry or ensure are carried by the Developer.

"Intellectual Property" means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United States or any part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used, or intended to be used by the Authority for the purposes of carrying out the Work or otherwise for the purposes of this MOU.

"Joint Powers Agreement" means the agreement entered into by and between the City of Moorhead, Minnesota; the City of Fargo, North Dakota; Clay County, Minnesota; Cass County, North Dakota, and the Cass County Joint Water Resource District, dated as of June 1, 2016, to create the Authority.

"Losses" means any loss, damage, injury, liability, obligation, costs, response cost, expense, fee, charge, judgment, penalty, or fine. Losses include injury to or death of Persons, damage or loss of property, and harm or damage to natural resources.

"MAI" means mitigation and associated infrastructure.

"Material Change or Modification" means a change or modification affecting the operation or performance of a New Street or the Mobility Improvement.

"Mobility Improvement" means the rerouting and reconstruction of 112th Avenue South to connect to 81st Street South on the east side of the SWDCAI, as shown on Exhibit E.

"New Street" means a road within the incorporated city limits of Horace that will be opened and constructed to provide access to a Parcel Without Access.

"Parcel Without Access" means a parcel of land that, as a result of the construction of the SWDCAI, will be left without an access point or whose access will be severed, excluding property that can be accessed by adjoining parcels with a matching owner.

"Party" means the Authority or Horace, as the context may require, and their respective legal representatives, successors, and permitted assigns, and wherever a reference in this MOU is made to any Parties hereto, **"Parties"** means the Authority and Horace, collectively, and their respective legal representatives, successors, and permitted assigns.

"Person" means an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization, or a governmental authority.

"Point of Contact" means the individual appointed and selected pursuant to Section 2.02 to as a liaison between Horace, the Authority, and the Developer.

"Preliminary Design" means a preliminary design for a Buildable Unit, designed to an extent as determined by the Authority.

"Project Agreement" means the contract to design, build, finance, operate, and maintain the SWDCAI that the Authority will enter with the Developer.

"Project Data" means:

(a) Design Documents; and

(b) Any other information, documents, or data acquired or brought into existence or used in relation to the Work or this MOU,

in each case, that is used by or on behalf of the Authority in connection with the provision of the Work or the performance of the Authority's obligations under this MOU.

"Project Limits" means the approximate footprint for the SWDCAI, as currently projected in Exhibit A.

"Project Substantial Completion" means the completion of all substantial completion conditions as outlined in the Project Agreement for the substantial completion of the SWDCAI.

"P3 Procurement" means the public-private-partnership solicitation process, including the Request for Qualifications and the Request for Proposals, undertaken by the Authority to select and retain a Developer as defined herein.

"Red River Control Structure" means the control structure on the Red River of the North to be procured by USACE.

"Released for Construction Documents" means all drawings, specifications, revisions thereto, and any other items necessary to construct the work, signed and sealed by the Engineer of Record.

"Relief Event" means as defined in the Project Agreement.

"Request for Proposals" means the solicitation that will be issued by the Authority as part of the P3 Procurement which will outline proposal requirements and seek proposals to design, finance, build, operate, and maintain the SWDCAI, and all applicable addenda. The Authority released the draft RFP on December 16, 2016, and will continue to finalize the RFP until a final RFP is released. The Authority released the final RFP in January 2021.

"Request for Qualifications" means the solicitation that was issued by the Authority as part of the P3 Procurement seeking statements of qualifications to design, finance, build, operate, and maintain the SWDCAI, and all applicable addenda.

"Road Completion Acceptance" means an agreement between Horace and the Authority that a New Street or the Mobility Improvement is substantially complete.

"Routine Maintenance" means re-striping, snow plowing, and ice and snow control (e.g., application of salts, chlorides, or sand).

"SEAI" means the southern embankment and associated infrastructure portion of the Comprehensive Project, to be procured by USACE.

"Shop Drawings and Samples" means shop drawings, laying drawings, erection drawings, fabrication drawings, product information, catalog information, samples, mock-ups, plans (e.g., traffic management and dewatering), test procedures and results, descriptions of services, descriptions of specific means and methods, and related documentation prepared for the Mobility Improvement.

"State" means the State of North Dakota.

"Storm Water Diversion Channel and Associated Infrastructure" or **"SWDCAI"** means the approximately thirty (30) mile, 20,000 cubic feet per second (cfs) during a 100-year event channel and associated features, including the outlet, river and drain inlets, road bridges, railroad bridges, aqueducts, and recreational features, to be constructed as part of the Comprehensive Project.

"Substantial Completion" means a New Street or the Mobility Improvement is functional to its intended use.

"Third Party Claims" means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, investigations or administrative proceedings brought by a Person that is not an Indemnified Party, including Horace and the Townships, with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines, or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

"Traffic Mitigation Route" means an existing road that may be used as a detour route during construction of the SWDCAI.

"Turnover" means the transfer of ownership and control of a New Street or the Mobility Improvement from the Authority to the authorities having jurisdiction over that element as provided in Section 6.10.

"USACE" means the United States Army Corps of Engineers.

"Utility Relocation" means each relocation (temporary or permanent), abandonment, protection in place, removal, replacement, reinstallation, and/or modification of existing utilities necessary to accommodate construction, operation, maintenance, and/or use of the SWDCAI.

"Work" means design work, construction work, and maintenance, and all other work, services, and obligations required to be furnished, performed, and provided by the Authority under this MOU.

Section 1.02 TERMS GENERALLY. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (b) any reference herein to any person shall be construed to include such person's permitted successors and assigns, (c) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this MOU in its entirety and not to any particular provision hereof, (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this MOU, and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

ARTICLE II.
INTENT

Section 2.01 INTENT. The Authority, in conjunction with USACE, is designing, constructing, operating, and maintaining the Comprehensive Project. One element of the Comprehensive Project is the SWDCAI, with the Authority intends to deliver through a public-private partnership with a Developer. The Authority intends to transfer the majority of the obligations set forth in this MOU to the Developer through the entrance of the Project Agreement. If an obligation is not transferred to the Developer, the Authority will undertake such obligation itself or assign the same to a third party.

Section 2.02 DEVELOPER AND AUTHORITY CONTACT. Following the selection of the Developer, an Authority appointed and Developer selected contact within the agency and prime contractor ("Point of Contact") will be assigned to the Horace Representative. The intended purpose of this appointed and selected Point of Contract is to allow the Horace Representative is to provide information to the Authority and the Developer regarding activities that may be occurring near the Project Limits that may have an impact on the Developer's work, as well as to allow the Horace Representative to inform the Authority and the Developer of conflicts or concerns Horace may have.

ARTICLE III.
SWDCAI AND DESIGN

Section 3.01 DESIGN AND CONSTRUCTION. The Authority is responsible for designing and constructing the SWDCAI, and the Parties intend that the Authority will be the lead agency for coordination with USACE for design. Once the Authority has prepared plans and

specifications for the SWDCAI with the assistance of an Engineer of Record, or in conjunction therewith, the Authority, as necessary under Applicable Law, will seek approval from Horace for opening New Streets as set forth in the following section and for the design of the Mobility Improvement. The Parties understand and agree that the SWDCAI and the components described herein must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 3.02 NEW STREET. In the event the Authority's design creates a Parcel Without Access within the incorporated city limits of Horace, the Authority will be responsible for establishing a New Street to provide access to that parcel. The Authority, utilizing an Engineer of Record, will conduct an accurate survey and draft a right-of-way plat of the property. The Authority will file such information, along with a design and an estimate of the probable cost of the improvement, with the City Auditor of Horace. The Authority and Horace will thereafter work together to approve the right-of-way plat and the design in accordance with Applicable Law. A New Street will be constructed in accordance with Horace standards as set forth on Exhibit B. The Authority will be responsible for all costs associated with establishing a New Street.

Section 3.03 MOBILITY IMPROVEMENT. The Authority, using the Engineer of Record, will design the Mobility Improvement in accordance with the standards set forth in Exhibit B and will submit designs, as Buildable Units, to Horace for review in accordance with the following:

(a) Horace will complete four (4) reviews of the design for each Buildable Unit comprising the Mobility Improvement: (i) a review of the Preliminary Design; (ii) a review of the Initial Design Submittal; (iii) a review of the Final Design Submittal; and (iv) a review of Shop Drawings and Samples, if any. Horace's review is limited to whether the design complies with this MOU.

(b) When the design of the Mobility Improvement has reached its Preliminary Design, Initial Design Submittal, or Final Design Submittal, or Shop Drawings and Samples have been prepared, the Authority will submit the documents or the design to the Horace Representative for review and concurrence. Horace will complete its review within twenty-one (21) calendar days after receipt by the Horace Representative. If Horace finds the document or the design does not comply with this MOU, the Horace Representative will notify the Authority of such fact within the 21-day period and the Authority will promptly correct such deficiency in the document or the design and resubmit for review and concurrence. Horace will have seven (7) calendar days to review a submittal, and review is limited to the matters necessitating the resubmittal.

(c) In the event Horace fails to respond to a design or Shop Drawing or Sample within the time periods specified in this Section, the Authority will provide written notice to the Horace Representative of the failure to respond. Within five (5) Business Days of the Horace Representative receiving this written notice and a failure of Horace to respond, the Authority may treat Horace's failure to respond as concurrence in the design, Shop Drawing, or Sample and may commence further Design Work or Construction Work as applicable.

(d) Once the Authority has prepared Released for Construction Documents, it will provide copies to the Horace Representative.

(e) The Authority will reimburse Horace for costs incurred in connection with review of the Shop Drawings and Samples and designs. Horace will submit an invoice in accordance with Article XII.

(f) Horace has the ability, in its sole discretion, to waive any of the design reviews afforded by this Section.

ARTICLE IV.
PROPERTY INTEREST ACQUISITIONS

Section 4.01 ACQUISITION. The Authority will, at its sole cost and expense, obtain all easements, rights-of-way, or other interests in real property necessary for the opening of New Streets and for the Mobility Improvement.

Section 4.02 TRANSFER OF INTEREST. For those portions of New Streets and the Mobility Improvement located outside of the Project Limits, the Authority will convey to Horace the necessary right-of-way and/or easement interests needed to operate and maintain the New Streets. The Authority will maintain ownership of those portions of New Streets and the Mobility Improvement located within the Project Limits.

Section 4.03 WEED CONTROL. On property in which the Authority has obtained an interest for the development of the Comprehensive Project, the Authority will designate personnel to monitor and maintain control of weeds in accordance with Horace ordinances.

Section 4.04 PLATTING. The Authority intends to plat the Project Limits and will file the necessary documentation with Horace as required under Applicable Law. The Authority shall comply with all platting requirements of Horace. The Authority will apply for annexation or approve an annexation agreement related to any parcels utilized by the Comprehensive Project that are located in the City's extraterritorial area. Horace will cooperate with any and all efforts to plat, including signing a plat if necessary and vacating road right-of-way in locations determined by the designs for the Elements in accordance with Horace requirements. On the plat, the Authority will dedicate the turn around described in Section 6.03.

ARTICLE V.
PRELIMINARY PLANNING AND ENGINEERING ACTIVITIES

Section 5.01 INTENT. The Parties intend that the Authority will be the lead agency for coordination with USACE for planning and engineering activities. The Parties understand and agree that the SWDCAI and the components described herein must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 5.02 SITE TESTING. The Authority will perform all preliminary engineering activities for New Streets and the Mobility Improvement, including: (a) technical studies and analyses; (b) geotechnical, seismic, flooding, and biological investigations; (c) right-of-way mapping, surveying, and appraisals; (d) utility subsurface investigations and mapping; (e) Hazardous Materials investigations; and (f) archeological, paleontological, and cultural investigations.

Section 5.03 MITIGATION. The Authority is responsible, at its sole cost and expense, for the remediation and removal of all Hazardous Materials unearthed as a result of the SWDCAI, the Mobility Improvement, and New Streets.

Section 5.04 ENVIRONMENTAL REVIEWS. The Authority will coordinate with USACE to ensure that all Work complies with applicable Environmental laws and regulations and receives all necessary environmental clearances.

Section 5.05 UTILITY RELOCATION. The Authority is responsible for coordinating and/or performing Utility Relocations at its sole cost and expense.

Section 5.06 PERMITS AND APPROVALS. The Authority will secure any necessary permits and/or approvals for construction of the SWDCAI and is responsible for carrying out any requirements of those permits and/or approvals, including environmental requirements. Horace will cooperate with the Authority in Good Faith regarding permit conditions and implementation. From Horace, the Authority must obtain a floodplain permit and right-of-way permits for locations that are within the City's right-of-way, but not additional permits, except as specifically set forth herein, are required from Horace.

ARTICLE VI.
CONSTRUCTION

Section 6.01 INTENT. The Parties intend that the Authority will be the lead agency for coordination with USACE for construction. The Parties understand and agree that the SWDCAI and the components described herein must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 6.02 CONSTRUCTION. The Authority will be responsible for constructing New Streets, the Mobility Improvement, and any other physical alterations necessary for construction, operation, and maintenance of the SWDCAI. Construction of a New Street will be in accordance with the plat approved by Horace.

Section 6.03 CREATION OF DEAD ENDS. At each location where construction of the SWDCAI creates a dead-end of a section line road, the Authority will construct a cul-de-sac according to Horace standards, as set forth in Exhibit D, and at a mutually agreed upon location. The Authority, however, will not be required to acquire additional property interests solely for the construction of a cul-de-sac. The cul-de-sac will be constructed in the Project Limits, at the section line intersection nearest to the dead-end, or between the two locations as the design for the SWDCAI allows in the discretion of the Authority.

Section 6.04 TRAFFIC MITIGATION ROUTES. The Authority will utilize Traffic Mitigation Routes to maintain adequate mobility and construction access to the SWDCAI during construction. Once the Authority has identified Traffic Mitigation Routes, it will inform Horace. The use of Traffic Mitigation Routes may entail upgrading an existing earthen or dirt road to a gravel road. During the time that traffic is detoured on a Traffic Mitigation Route, the Authority will maintain the Traffic Mitigation Route in a condition that is smooth and free from holes, ruts,

ridges, bumps, and standing water. Horace will be responsible for Routine Maintenance on Traffic Mitigation Routes. Once the detour along the Traffic Mitigation Route is terminated, the Authority will either remove the road for construction of the SWDCAI or will restore the detour route to a condition that is equivalent to that which existed prior to its use.

Section 6.05 HAUL ROUTES. Prior to beginning construction, the Authority will identify existing public roads that it may utilize as haul routes. Such routes are subject to review and approval of Horace, which will not be unreasonably withheld. The Authority will use its best efforts to utilize County roads, in lieu of Horace roads, as haul routes and will work with the County Engineer in doing so. The Authority will operate and maintain the condition of these roads during construction and make any necessary adjustments to the existing public roads to accommodate the vehicles hauling construction material. Horace will provide Routine Maintenance on haul routes. The Authority will comply with seasonal and other load restrictions on existing public roads and apply for and receive all appropriate permits (e.g., over dimensional, over-weight, etc.). After construction of the SWDCAI is complete, the Authority shall restore those roads used as haul routes to a condition equivalent to that which existed prior to their use. Any changes to haul routes will be forwarded to Horace for review and approval, which will not be unreasonably withheld.

Section 6.06 SIGNATURE AND LANE CLOSURES. The Authority will be responsible for traffic flow impacted by its construction and will place and maintain appropriate signage during construction of New Streets, the Mobility Improvement, and the SWDCAI, as necessary. The Authority will maintain traffic control devices in like new condition and located in positions required by the Manual on Uniform Traffic Control Devices. Additionally, the Authority will provide advanced notification to Horace and the public of road closures, lane closures, and/or traffic switches.

Section 6.07 CHANGES AND MODIFICATIONS. Any Material Change or Modification to the location of a New Street or the Mobility Improvement or the Released for Construction Documents of a New Street or the Mobility Improvement will be subject to approval by Horace.

Section 6.08 CONSTRUCTION SCHEDULE. To facilitate scheduling for construction work of the New Streets and the Mobility Improvement, the Authority will provide the Horace Representative, as applicable, a proposed construction schedule for New Streets and the Mobility Improvement and thirty (30) calendar days advanced written notice of the proposed start date for each New Street and the Mobility Improvement. During the pendency of construction, while working in Horace or its extraterritorial area, the Point of Contact will provide Horace a 2-week look ahead and access to an online schedule.

Section 6.09 SUBSTANTIAL COMPLETION. The Authority will provide the Horace Representative with written notice of any anticipated Substantial Completion of a New Street and the Mobility Improvement: no later than sixty (60) calendar days and (ii) no later than fifteen (15) Business Days prior to the anticipated date for Substantial Completion. Ten (10) calendar days prior to the anticipated date for Substantial Completion, Horace and the Authority will conduct an inspection of the New Street or the Mobility Improvement to determine whether the New Street or the Mobility Improvement, as applicable, meets the requirements of this MOU. Upon request by Horace, the Authority will provide any desired testing results from construction to Horace. If

Horace finds the construction is insufficient, whether due to it being incomplete or non-compliant with the requirements of this MOU, as applicable, Horace will notify the Authority of such fact and the Authority will correct such deficiency in the construction work and re-notify for inspection. Once Horace finds a New Street or the Mobility Improvement has reached Substantial Completion, the Authority will provide documentation to Horace indicating that construction was performed in conformance with intended plans and specifications and Horace will provide a certificate of Road Completion Acceptance to the Authority.

Section 6.10 OWNERSHIP.

(a) Upon Project Substantial Completion, the Authority will transfer ownership and control of a New Street and the Mobility Improvement outside of the Project Limits to Horace ("Turnover"). The Authority will maintain ownership and control of a New Street or the Mobility Improvement within the Project Limits. The Authority will provide all appropriate as-builts and test results with respect to New Streets and the Mobility Improvement to Horace.

(b) The Authority will warrant that the work on New Streets and the Mobility Improvement is complete and conforms to Good Industry Practice and that all material and equipment furnished as a part of the work are of good quality and free of defects in materials and workmanship. This warranty will be effective for a period of one (1) year beginning on the date of Project Substantial Completion.

Section 6.11 INSPECTION AND ACCEPTANCE. Horace will have the right to inspect the construction work to be performed hereunder on their respective projects at any time during its progress and to make final inspection upon notification of anticipated Substantial Completion. The Authority will permit and facilitate reasonable access for Horace for the reasonable inspection of the New Streets and the Mobility Improvement and shall cooperate fully with Horace inspection personnel. Inspections may only be made upon reasonable notice to the Authority and during business hours, and Horace must comply with the Authority's site safety requirements. In an emergency, Horace may access the site as needed and provide notice as soon as reasonably possible to the Authority. The presence or absence of a Horace inspector does not relieve the Authority from any requirement in this MOU, nor is any Horace inspector authorized to issue instructions to the Developer or change any term or condition of this MOU.

ARTICLE VII.
MAINTENANCE

Section 7.01 NEW STREETS. Between completion of a New Street and Turnover, the Authority will perform maintenance, aside from Routine Maintenance, on the New Street, whether located inside or outside the Project Limits, in good condition. At all times following Turnover of a New Street, Horace, at its sole cost and expense, will maintain the New Street that is located outside of the Project Limits and the Authority, at its sole cost and expense, will perform maintenance, aside from Routine Maintenance, on the New Street that is located within the Project Limits. Horace will be responsible for Routine Maintenance of a New Street at all times, whether located inside or outside the Project Limits.

Section 7.02 MOBILITY IMPROVEMENT. Between completion of the Mobility Improvement and Turnover, the Authority will perform maintenance, aside from Routine Maintenance, on the Mobility Improvement, whether located inside or outside the Project Limits, in good condition. At all times following Turnover of the Mobility Improvement, Horace, at its sole cost and expense, will maintain the Mobility Improvement whether located inside or outside of the Project Limits. Horace will be responsible for Routine Maintenance of the Mobility Improvement at all times, whether located inside or outside the Project Limits.

Section 7.03 SIGNAGE. During construction of the SWDCAI, a New Street, or the Mobility Improvement, the Authority will be responsible for maintaining appropriate signage both inside and outside of the Project Limits. Following Turnover, Horace will be responsible for the repair or replacement of any permanent signage installed outside of the Project Limits. Horace may, however, seek reimbursement from the Authority for such repair and replacement. The Authority will be responsible for the repair or replacement of any permanent signage installed inside of the Project Limits.

Section 7.04 SWDCAI. Horace will not have any responsibilities for maintenance associated with the SWDCAI.

Section 7.05 GARBAGE DUMPING. In the event the dumping of garbage on roads that have been dead ended due to the construction of the SWDCAI becomes an issue, the Point of Contact and Horace will work in Good Faith to arrive at a mutually agreed upon solution to remedy the issue.

ARTICLE VIII.
FUTURE CHANGES OR ADDITIONS

Section 8.01 STREETS. In the event Horace desires to add a crossing of the SWDCAI, Horace must secure written approval from the Authority. Low water crossings of the SWDCAI will neither be considered nor allowed by the Authority.

Section 8.02 SANITARY SEWER CROSSINGS. The Authority will install, at its own cost and expense, up to three (3) sanitary sewer crossings under the SWDCAI at the request of Horace. Horace will not make these requests until a developer has applied for a plat approval for property west of the SWDCAI. The sizing of the crossings will be discussed by the Authority and Horace at the time the requests are made and will be dependent upon not only the proposed development, but projected future capacity needs that would be serviced by that crossing.

Section 8.03 SWDCAI.

(a) The Authority retains the ability, at its sole cost and expense, to adjust or alter the SWDCAI to the extent such may be accomplished without adversely affecting, changing, or altering any opened section lines or other streets of Horace.

(b) If it becomes necessary or desirable to discontinue, close, or open a section line or other road to accommodate the SWDCAI, the cost of such work, including any incidental costs made necessary by any such changes, will be the expense of the Authority.

Section 8.04 COORDINATION. In the event the Authority desires to discontinue, close, or open a road to accommodate future changes or additions of the SWDCAI, the Authority and Horace will work in Good Faith, with the understanding that time is of the essence, to agree to terms regarding the accommodation of a future change or addition of the SWDCAI through an addendum to this MOU.

ARTICLE IX.
INSURANCE AND LIABILITY

Section 9.01 INSURANCE.

(a) The Authority will procure and maintain the following insurance coverage until Turnover of all New Streets and the Mobility Improvement, which occurs later:

(1) Commercial General Liability Insurance including coverage for premises and operations, bodily injury (including death), personal injury, property damage (including loss of use), product and completed operations, explosion, collapse and underground, and contractual liability of limits of at least $1,000,000 per occurrence and $2,000,000 annual aggregate. Horace is to be named as additional insureds on a primary, non-contributory basis.

(2) Workers' Compensation and Employer's Liability Insurance including coverage for, but not limited to, the statutory liability under the State of North Dakota's workers' compensation laws and employer's liability with limits of at least $500,000 each accident, $500,000 by disease policy limit, and $500,000 by disease each employee.

(3) Claims Made Project Specific Errors & Omissions (Professional Liability) Insurance in connection with design and construction with a minimum combined total period of ten (10) years for design, construction, and extended reporting with limits of at least $2,000,000 per claim and in the aggregate.

(4) All Risk Insurance in completed value form including coverage for permanent and/or temporary works executed and in the course of execution, materials, supplies, equipment, and other goods of at least $10,000,000.

(b) The Authority will procure and maintain the following insurance coverage after Turnover of all New Streets and the Mobility Improvement for the warranty term provided in Section 6.10(b) of this MOU:

(1) Commercial General Liability Insurance including coverage for premises and operations, bodily injury (including death), personal injury, property damage (including loss of use), product and completed operations, explosion, collapse and underground, and contractual liability of limits of at least $1,000,000 per occurrence and $2,000,000 annual aggregate. Horace is to be named as additional insured on a primary, non-contributory basis.

(2) Workers' Compensation and Employer's Liability Insurance including coverage for, but not limited to, the statutory liability under the State of North Dakota's workers' compensation laws and employer's liability with limits of at least $500,000 each accident, $500,000 by disease policy limit, and $500,000 by disease each employee.

Section 9.02 RELEASE OF LIABILITY AND INDEMNITY.

(a) Except as set forth in the following Section, to the fullest extent permitted by Applicable Law, the Authority will require that the Developer release, defend, indemnify, and hold harmless Horace on demand from and against any and all liability for Losses arising from Third Party Claims, in each case, to the extent such Losses arise out of, or as a consequence of, any breach of the MOU by the Developer or any negligence of the Developer. Additionally, the Authority will hold Horace harmless, to the extent allowed under Applicable Law, on demand from and against any and all liability for Losses arising from Third Party Claims for the following key decisions and matters relating to the scope of the SWDCAI and the Comprehensive Project and the interaction of the SWDCAI with the SEAI and MAI over which the Authority is retaining responsibility ("Authority-Retained Responsibilities"):

(1) The decision to undertake the SWDCAI and the Comprehensive Project;

(2) The decision to deliver the Comprehensive Project through a split procurement model with the Authority procuring the SWDCAI and USACE procuring the SEAI and the MAI;

(3) The decision as to the location and alignment of the Project Limits;

(4) The decision as to the form of the flood management system and the level of flood protection to be delivered through the SWDCAI and the Comprehensive Project;

(5) The design, construction, operation, and maintenance of the SEAI and the MAI; and

(6) From time to time, the decision as to whether or not to operate the Red River Control Structure, the Wild Rice River Control Structure, or the Diversion Inlet Structure.

Section 9.03 EXCLUSIONS FROM INDEMNIFICATION. The Authority will not require the Developer to be responsible or to be obliged to release, defend, indemnify, or hold harmless Horace with respect to any liability or Losses to the extent that the same arise as a direct result of:

(a) The Authority-Retained Responsibilities;

(b) A Compensation Event or Relief Event;

(c) The presence of Hazardous Materials for which the Authority is responsible under the terms of the Project Agreement;

(d) The fraud, negligence, recklessness, bad faith, or willful misconduct of Horace;

(e) Any Losses suffered by Horace under a contract with a third party;

(f) Any breach of the MOU by the Authority; or

(g) Any Losses suffered by Horace or a Township with respect to use of the Project Data, or any Intellectual Property related to the Project Data, other than any use specifically for the SWDCAI.

For the actions in the above-described subsections, with the exception of any damages caused by the fraud, negligence, recklessness, bad faith, or willful misconduct of Horace, the Authority will release, defend, indemnify, and hold harmless Horace and its officers, employees, and agents with respect to any Losses arising out of or regarding any acts or omissions of the Authority or its agents to the extent allowed under Applicable Law.

Section 9.04 CONDUCT ON THIRD PARTY CLAIMS.

(a) Where Horace is entitled to make a claim under this MOU against the Developer in relation to a Third Party Claim, Horace shall give notice of the relevant claim to the Developer promptly, setting out the full particulars of the claim.

(b) Subject to the rights of the insurers under the Insurance Policies, the Developer may at its own expense, and with the assistance and cooperation of Horace, conduct and control the Third Party Claim including its settlement and Horace shall not, to the extent that the Developer has elected to conduct and control the relevant Third Party Claim, take any action to settle or prosecute the Third Party Claim.

(c) The Developer shall, if it wishes to have conduct and control of any Third Party Claim, reimburse Horace for any cost or liability arising out of the conduct and control of the Third Party Claim by the Developer within thirty (30) calendar days of receiving an invoice from Horace with respect to such costs.

(d) Horace shall at all times take all reasonable steps to minimize and mitigate any loss for which Horace is entitled to bring a claim against the Developer pursuant to this MOU.

Section 9.05 CERTIFICATES OF INSURANCE. Prior to commencing construction work under this MOU, the Authority will furnish to the Horace Representative certificates of insurance evidencing the coverages, endorsements, and amendments described herein. The Authority will notify Horace in writing at least five (5) Business Days prior to any cancellation, non-renewal, substitution, or material alteration of insurance.

Section 9.06 NO WAIVER OF LIMITATION ON LIABILITY. The indemnity and hold harmless provisions herein shall not be deemed as a waiver by the Authority of the limits of liability set forth in N.D.C.C. § 32-12.1-03, as amended from time to time, or a waiver of any available immunities or defenses.

ARTICLE X.
TERM AND TERMINATION

Section 10.01 TERM. This MOU will continue in full force and effect until either (i) the termination of the Original Term or a Renewal Period as provided herein; or (ii) this MOU is terminated or rescinded in accordance with the terms and conditions of this MOU.

Section 10.02 PROJECT SUBSTANTIAL COMPLETION. The original term of this MOU be from the Effective Date until three (3) years following Project Substantial Completion (the "Original Term"). The MOU will automatically renew following the Original Term for successive ten (10) year periods (a "Renewal Period") unless a Party provides three hundred sixty-five (365) days' prior written notice to the other Party that renewal is not desired.

Section 10.03 TERMINATION. The Parties may mutually agree, in writing, to terminate this MOU. The Parties may not terminate this MOU, however, prior to three (3) years following Project Substantial Completion.

ARTICLE XI.
DISPUTE RESOLUTION

Section 11.01 INTENT AND PROCEDURE. The Parties will cooperate and use their best efforts to ensure that the various provisions of this MOU are fulfilled. The Parties agree to act in Good Faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this MOU. If disputes cannot be resolved informally by the Parties, the following procedure will be used.

Section 11.02 MEDIATION. If there is a failure between any of the Parties to resolve a dispute on their own, those Parties will first attempt to mediate the dispute. Those Parties will agree upon a single mediator or, if an agreement cannot be reached within ten (10) calendar days, the mediator shall be selected by the American Arbitration Association ("AAA") in accordance with its Commercial Industry Mediation Rules and Procedures then in effect. Any mediator selected by mutual agreement of those Parties or through the AAA selection process must have no current or on-going relationship with either Party. Those Parties agree that only one (1) mediator shall be selected as the AAA mediator, and the Parties will equally split any costs for mediation services.

Section 11.03 LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within forty-five (45) calendar days after selection of the mediator pursuant to Section 11.02, the Parties may litigate the matter.

Section 11.04 LITIGATION; VENUE. All litigation between the Parties arising out of or pertaining to this MOU or its breach will be filed, heard, and decided in the District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

Section 11.05 WAIVER OF JURY TRIAL. The Parties hereby knowingly, irrevocably, voluntarily, and intentionally waive any rights that any may have to a trial by jury with respect to any action, proceeding, counterclaim, or defense based on this MOU, or arising out of, under, or

in any connection with this MOU, or with respect to any course of conduct, course of dealing, statements (whether oral or written) or actions of any party hereto relating to this MOU. This provision is a material inducement for all Parties entering into this MOU. This provision applies only to suits between the Parties and does not apply to third party claims or suits.

ARTICLE XII.
REIMBURSEMENT AND INVOICING

Section 12.01 CONSTRUCTION COSTS AND EXPENSES. Between the Effective Date and Project Substantial Completion, the Authority will reimburse Horace for any costs or expenses incurred as a result of work provided under this MOU, in an amount up to $5,000.00 annually. The first annual period shall run from the Effective Date until the date preceding the first anniversary of the Effective Date. Annual periods thereafter shall run from the anniversary of the Effective Date until the earlier of: (i) the date preceding the next anniversary of the Effective Date or (ii) Project Substantial Completion. Horace will submit an invoice for such costs and expenses in accordance with the procedure outlined in Exhibit C attached hereto or as otherwise instructed by the Point of Contact.

Section 12.02 POST-CONSTRUCTION COSTS AND EXPENSES. Following Project Substantial Completion, in addition to any reimbursable costs and expenses set forth herein, the Authority will reimburse Horace for any costs or expenses incurred in relation to the Comprehensive Project in an amount up to $2,500.00 annually. The first annual period shall run from the date of Project Substantial Completion until the date preceding the first anniversary of the date of Project Substantial Completion until the date preceding the first anniversary of the date of Project Substantial Completion. Annual periods thereafter shall run from the anniversary of the date of Project Substantial Completion until the date preceding the next anniversary of the date of Project Substantial Completion. Horace will submit an invoice for such costs and expenses in accordance with the procedure outlined in Exhibit C attached hereto or as otherwise instructed by the Point of Contact.

Section 12.03 EXTRAORDINARY EXPENSES. In addition to the allowable reimbursements set forth in Sections 12.01 and 12.02, the Authority will reimburse Horace for extraordinary expenses if prior to incurring the expense, Horace receives written authorization from the Authority. The Authority will not unreasonably withhold approval of these requests.

ARTICLE XIII.
MISCELLANEOUS

Section 13.01 COMPLETE AGREEMENT. This MOU contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter.

Section 13.02 COUNTERPARTS. This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 13.03 AMENDMENTS. This MOU may be amended only by written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this MOU.

Section 13.04 SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this MOU is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this MOU.

Section 13.05 FORCE MAJEURE. Neither the Authority nor Horace will be liable to the other during any period in which its performance is delayed or prevented, in whole or in part, by any of the following circumstances: war, civil war, invasion, violent act of foreign enemy, or armed conflict; nuclear, chemical, or biological contamination; ionizing radiation; a Force Majeure Flood Event; or any act of terrorism. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Parties of the same.

Section 13.06 AUTHORIZED REPRESENTATIVES. Each of the Authority and Horace, hereby designates the following individuals as its initial authorized representatives, respectively, to administer this MOU on its respective behalf:

(a) Authority Representative: Kris Bakkegard, Director of Engineering

(b) Horace Representative: City Administrator

Section 13.07 NOTICE.

(a) All notices under the MOU will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by email communication followed by a hard copy, to the following addresses.

(b) All notices to the Authority will be marked as regarding the SWDCAI and will be delivered to the following address or as otherwise directed by the Authority Representative:

Jacobs
64 4th Street North, Suite 300
Fargo, North Dakota 58102

and

Executive Director
P.O. Box 2806
207 4th Street North, Suite A
Fargo, North Dakota 58108-2806

(c) All notices to Horace will be marked as regarding the SWDCAI and will be delivered to the following address or as otherwise directed by Horace Representative:

215 Park Drive East
Horace, North Dakota 58047

(d) Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. CST and all other notices received after 5:00 p.m. CST will be deemed received on the first Business Day following delivery.

Section 13.08 GOVERNING LAW. This MOU will be governed and construed in accordance with the laws of the State of North Dakota.

Section 13.09 CONFLICT WITH MOU REGARDING OTHER COMPREHENSIVE PROJECT WORK. Nothing in this MOU is intended to supersede, amend, or otherwise modify any other memorandum of understanding or agreement entered by and between the Authority and Horace for work regarding other aspects of the Comprehensive Project.

Section 13.10 FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for the United States Environmental Protection Agency ("EPA") in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. On or prior to the Effective Date, Horace will complete and submit to the Authority the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 23, which are attached within Exhibit F to this MOU. In the event the Authority solicits assistance from Horace to complete an element of the Comprehensive Project and funds made available to the Authority by the Water Infrastructure Finance and Innovation Act are utilized to finance such element, Horace will also require all subcontractors and suppliers of any tier awarded a subcontract over $100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

Section 13.11 DEBARMENT AND SUSPENSION. In the event the Authority solicits assistance from Horace to complete an element of the Comprehensive Project and funds made available to the Authority by the Water Infrastructure Finance and Innovation Act are utilized to finance such element, Horace certifies it will not knowingly enter into a contract with anyone who is ineligible under 40 CFR Part 32 to participate in the Comprehensive Project. Suspension and debarment information can be accessed at http://www.sam.gov. Horace represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts described by this Section. On or prior to the Effective Date, Horace will complete and submit to the Authority the federal certification form regarding debarment and suspension, which is attached within Exhibit F to this MOU.

Section 13.12 CIVIL RIGHTS OBLIGATIONS. In the event the Authority solicits assistance from Horace to complete an element of the Comprehensive Project and funds made available to the Authority by the Water Infrastructure Finance and Innovation Act are utilized to finance such element, Horace will comply with the following, federal non-discrimination requirements:

(a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).

(b) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.

(c) The Age Discrimination Act of 1975, which prohibits age discrimination.

(d) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.

(e) 40 CFR Part 7, as it relates to the foregoing.

(f) Executive Order No. 11246.

On or prior to the Effective Date, Horace will complete and submit to the Authority the federal certification form regarding civil rights, which is attached within Exhibit F to this MOU.

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed on the dates indicated below.

(Remainder of page intentionally left blank.)

Signature Page for Metro Flood Diversion Authority

The Governing Body of the Metro Flood Diversion Authority approved this MOU on the _____ of _____, 2021.

METRO FLOOD DIVERSION AUTHORITY

By:_____
Michelle (Shelly) A. Carlson, Chair

By:_____
Joel Paulsen, Executive Director

ATTEST:

By: _____
Dawn Lindblom, Secretary

Signature Page for the City of Horace

The City Council of the City of Horace approved this Agreement on the ___ of _____, 2021.

CITY OF HORACE, NORTH DAKOTA,
a municipal corporation

By: _____
Kory Peterson, Mayor

ATTEST:

_____
Brenton Holper, City Auditor

EXHIBIT A

PROJECT LIMITS

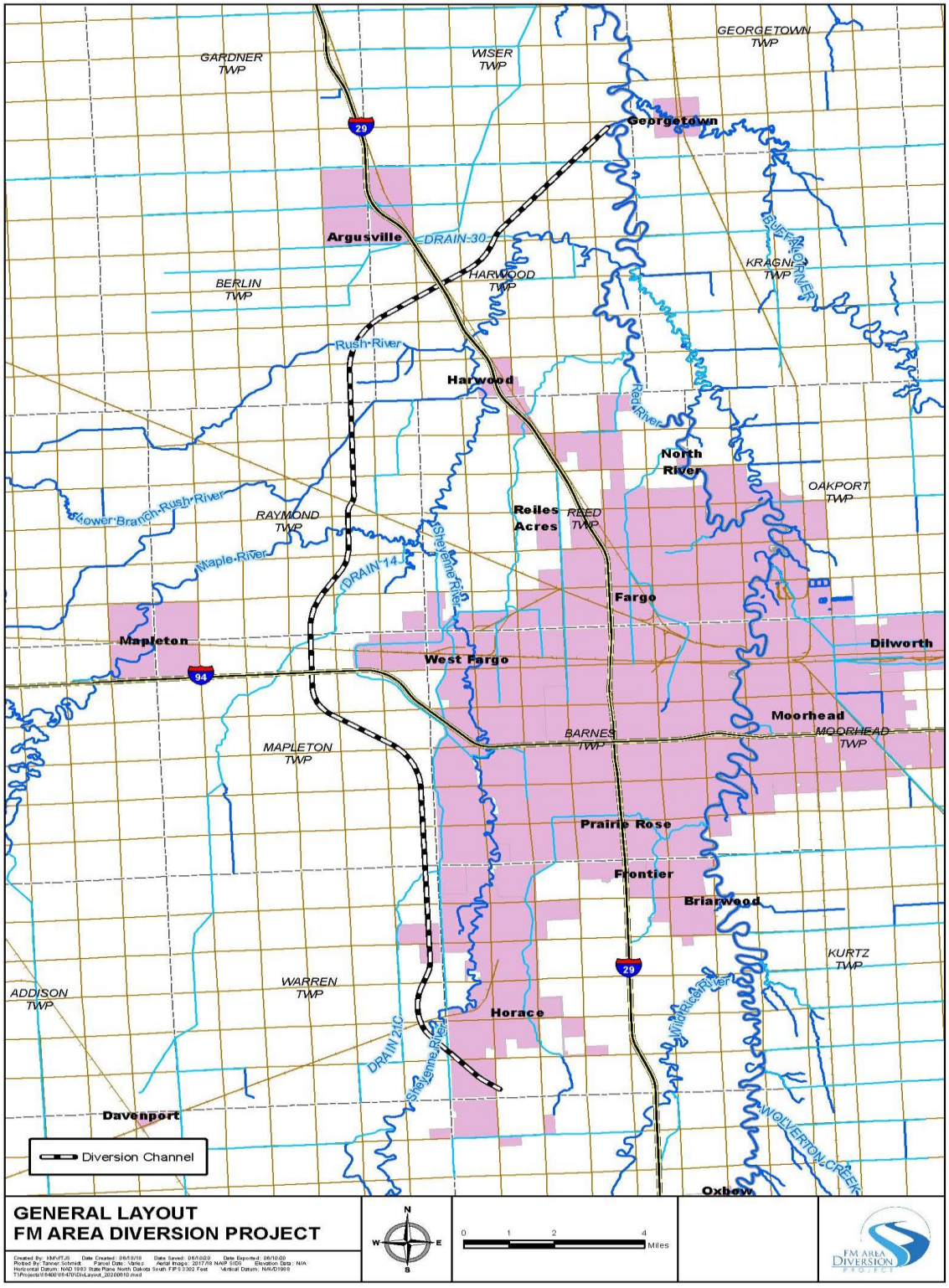


EXHIBIT B

MINIMUM DESIGN STANDARDS

Two-Lane Township Gravel Section Road

Minimum Design Standards for New or Reconstruction of Existing Infrastructure							
Typical Section	**Design Speed**	**Right of Way**	**Roadway Width**	**Turn Lanes**	**Minimum Section Thickness**	**Access Controls**	**Bike/Ped Facilities**
Two-Lane Township Gravel Section	55 mph	100 feet	24 feet	No	4 inches gravel	¼ mile spacing	Not Applicable

EXHIBIT C

AUTHORITY INVOICING REQUIREMENTS

(a) Horace will remit hard copy invoices to the Authority at the Authority's main office, and the invoices will be processed by the Authority for the following month. Horace will also submit copies of the invoices to the Authority electronically at APInvoicesFMDiv@jacobs.com, copied to jpaulsen@fmdiversion.gov. Each invoice should include the identification of Horace, a description of the activity involved in the invoice, and the address where payment should be remitted. Horace may (i) initially pay for the work included in an invoice and then seek reimbursement from the Authority for the payment or (ii) submit invoices directly to the Authority for initial payment. In either instance, the Authority will remit payment to Horace.

(b) After the Authority receives a Horace invoice, the Authority will either process the invoice for payment or give Horace specific reasons, in writing, within fifteen (15) calendar days, why part or all of the Authority's payment is being withheld and what actions Horace must take to receive the withheld payment.

(c) In the event of disputed billing, only the disputed portion will be withheld from payment and the Authority will pay the undisputed portion. The Authority will exercise reasonableness in disputing any bill or portion thereof. Interest will accrue on any disputed portion of the billing determined to be due and owing to the Township.

(d) Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, Horace must credit any payment error from any payment that is due or that may become due to Horace under this MOU.

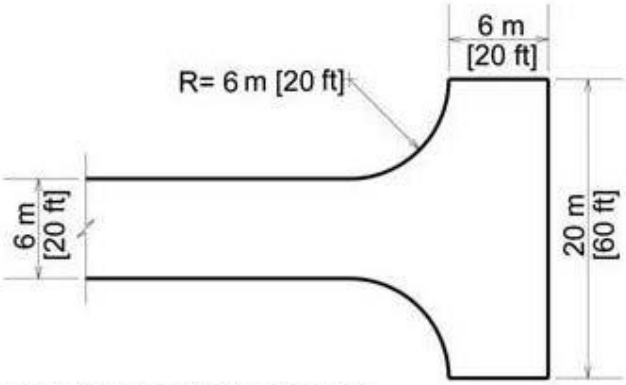
(e) The Authority will be charged interest at the rate of one-half percent (1/2%) per month, or the maximum amount permitted by North Dakota law if a lesser amount, on all past-due amounts thirty (30) days after receipt of invoice. Payments will first be credited to interest and then to principal.

(*Remainder of page intentionally left blank.*)

EXHIBIT D

CUL-DE-SAC DESIGN

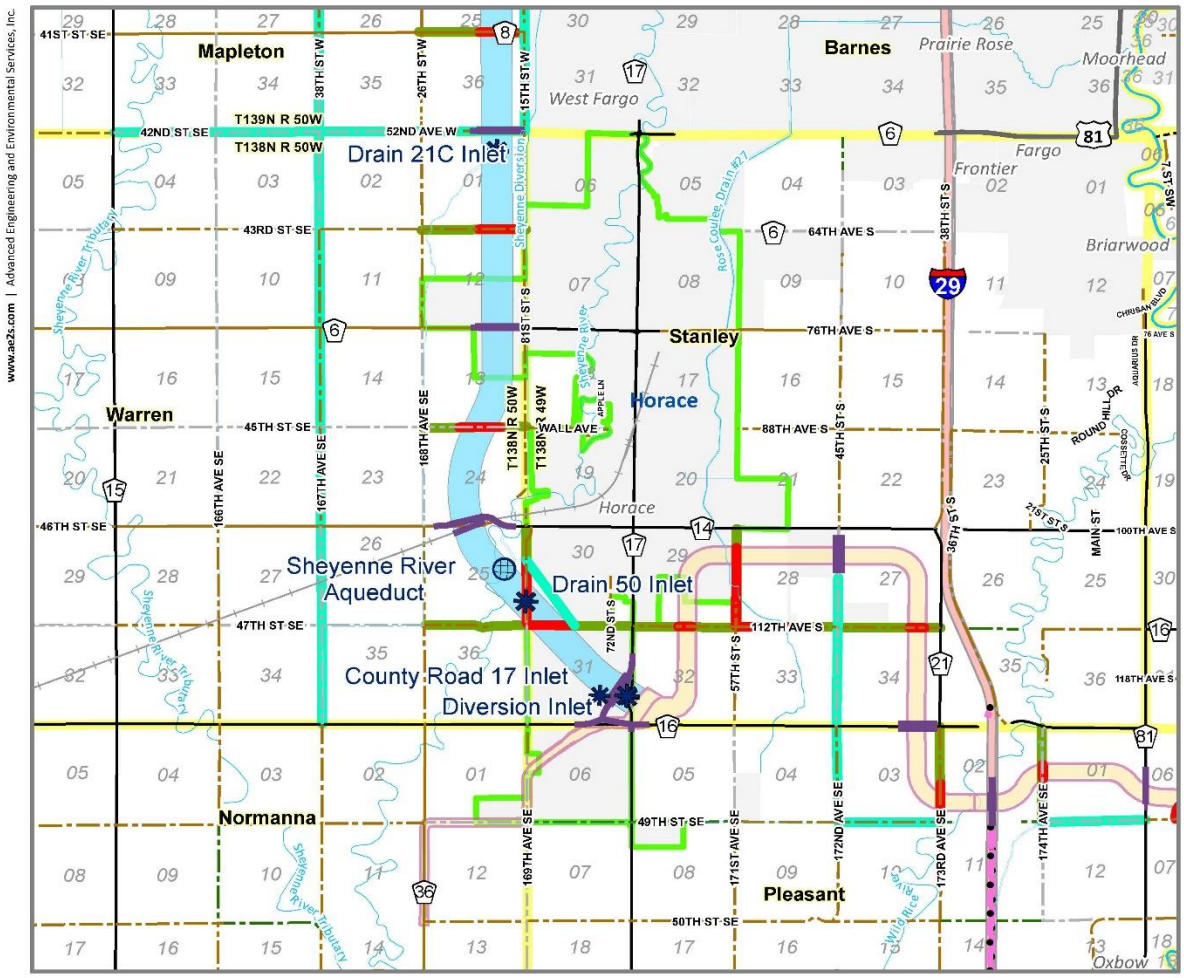
-G-
T - TYPE



STANDARD TURNING AREA

EXHIBIT E

PROJECT IMPACTS MAP



Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use.
All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.
Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. |
C:\Data\Projects\GIS Projects\FM Area Diversion\012 Lands Program\Property Acquisition\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd

N

0 0.45 0.9 1.8
Miles

City of Horace

FM Area Diversion
Map Date: 9/27/2021

FM AREA DIVERSION

EXHIBIT F
FEDERAL CERTIFICATION FORMS
CERTIFICATION REGARDING FEDERAL LOBBYING

The undersigned certifies to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in any award documents for any of its subcontractors at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into a contract with the Authority. By executing this certificate the undersigned agrees and acknowledges that he/she has been duly authorized to execute this certificate.

Company/
Entity Name: _____

Signed: _____

Its: _____

Date: _____

PLEASE RETURN TO:
Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)

(1) The official representative of the party contracting with the Metro Flood Diversion Authority certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions, including contracts (Federal, State, or local) terminated for cause or default.

(e) Are not presently debarred, suspended, declared ineligible or voluntarily excluded from performing work for the State of North Dakota, the State of Minnesota, the Metro Flood Diversion Authority or any of its Member Entities.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

(3) The Official signing this certificate has been and is duly authorized to sign this certificate on behalf of the entity or entities which intend to enter into a contract with the Metro Flood Diversion Authority.

Official Business Name _____

Date: _____

By: _____
Name and Title of Authorized Representative

PLEASE RETURN TO:

Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

_____
Signature of Authorized Representative

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this certification, the prospective contracting party is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contracting party shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Metro Flood Diversion Authority's (the "Authority") determination whether to enter into this transaction. However, failure of the prospective contracting party to furnish a certification or an explanation shall disqualify such person from entering into contracts with the Authority.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the Authority determined to enter into a contract with the prospective contracting party. In order to qualify for participation in the U.S. EPA WIFIA program the Authority is required to obtain this certification. If it is later determined that the prospective contracting party knowingly rendered an erroneous certification, in addition to other remedies available to both the Authority and the Federal Government, the Authority may terminate this transaction for cause or default.

4. The prospective contracting party shall provide immediate written notice to the Authority to which this Certificate is submitted if at any time the prospective contracting party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Authority for assistance in obtaining a copy of those regulations (13 CFR Part 145).

6. The prospective contracting party agrees by submitting this certification that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Authority.

7. The prospective contracting party further agrees by submitting this certification that it will require a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," from all sub-contractors without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A contracting party in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A contracting party may decide the method and frequency by which it determines the ineligibility of its principals.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a contracting party is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a contracting party in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Authority may terminate this transaction for cause or default.

ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, THE AGE DISCRIMINATION ACT OF 1975, SECTION 13 OF THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972, 40 CFR PART 7, AND EXECUTIVE ORDER NO. 11246

The undersigned provides this assurance for the purpose of entering into a contract with the Metro Flood Diversion Authority (Authority) related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project), which is receiving federal financial assistance. Specifically, the US EPA WIFIA Program requires this assurance of all contractors and subcontractors providing services for the Project.

The undersigned assures that it will comply with:

1. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin including limited English proficiency (LEP);
2. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against persons with disabilities;
3. The Age Discrimination Act of 1975, as amended, which prohibits age discrimination;
4. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex;
5. 40 CFR Part 7, as it relates to the foregoing; and
6. Executive Order No. 11246.

The undersigned understands that this Assurance is binding on the undersigned, its successors, transferees, and assignees at any time during which federal financial assistance is provided to the Project. The undersigned will ensure that all contractors, subcontractors, or others with whom it arranges to provide services or benefits are not discriminating in violation of items 1-6. Otherwise, the contracts for services can be terminated for cause and the undersigned can be declared ineligible to contract for the Project.

By signing this form, the undersigned is agreeing to the above provisions and that he/she is duly authorized to execute this form.

Signature of Authorized Official	Title
Print Name	Name of Institution or Agency
Date	Street
	City, State, Zip Code
PLEASE RETURN TO: Metro Flood Diversion Authority P.O. Box 2806 Fargo, ND 58108-2806	Office Email Address

FINAL

MASTER UTILITY RELOCATION AGREEMENT

By and Between

METRO FLOOD DIVERSION AUTHORITY

and

POLAR COMMUNICATIONS MUTUAL AID CORPORATION

Dated as of _____, 2021

Relating to:

Utility Relocation in the Southern Embankment and Associated Infrastructure and the Upstream Mitigation Area for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project

This instrument was drafted by:
Ohnstad Twichell, P.C.
John T. Shockley
P.O. Box 458
West Fargo, North Dakota 58078

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MASTER UTILITY RELOCATION AGREEMENT

THIS MASTER UTILITY RELOCATION AGREEMENT (the "Agreement") is made and entered into this __ day of _____, 2021 (the "Effective Date"), by and between the Metro Flood Diversion Authority, a North Dakota political subdivision, whose post office address is 207 4th St. N., Suite A, Fargo, ND 58102 (the "Authority"), and Polar Communications Mutual Aid Corporation, whose post office address is 110 4th St. E., P.O. Box 270, Park River, ND 58270 (the "Utility") (collectively, the Authority and the Utility are referred to as the "Parties").

RECITALS

WHEREAS, construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the "Comprehensive Project") in the Fargo, North Dakota, and Moorhead, Minnesota, Metropolitan Area was authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-121; and

WHEREAS, the Authority, the City of Fargo, North Dakota, and the City of Moorhead, Minnesota, are the Non-Federal Sponsors ("NFS") for the Comprehensive Project and have entered into a Project Partnership Agreement ("PPA") on July 11, 2016, and amended as of March 19, 2019, with the United States Army Corps of Engineers ("USACE") for the construction, operation, and maintenance of the Comprehensive Project; and

WHEREAS, the PPA sets forth a split delivery method for the Comprehensive Project, establishing the respective responsibilities of both the NFS and the USACE; and

WHEREAS, the Authority was created to undertake and fulfill the NFS' obligations under the PPA; and

WHEREAS, pursuant to the PPA, the NFS will be responsible for completing the Upstream Mitigation Area ("UMA"), the area where the Authority is required to obtain property rights as mitigation for the temporary storage of floodwaters during Comprehensive Project operations; and all mitigation features that are not the responsibility of the USACE; and

WHEREAS, pursuant to Article II of the PPA, the NFS shall be responsible for all real property interests and relocations required for construction, operation, and maintenance of the Comprehensive Project; and

WHEREAS, the Utility has real property interests (hereinafter referred to as "Prior Property Interests") within the area generally described in Article III of this Agreement and further described in **Exhibit A**; and

WHEREAS, it will be necessary for the Prior Property Interests to be relocated, protected, removed, or adjusted (hereinafter referred to as the "Utility Relocation Project") by either the Authority or Utility in coordination with construction of the Comprehensive Project; and

WHEREAS, the Authority and the Utility desire to set forth in writing their mutual understandings and to define the terms and conditions and each Party's rights and obligations in connection with the Utility Relocation Project; and

WHEREAS, this Agreement is only intended to bind the parties in regard to the portion of the Comprehensive Project south of the Storm Water Diversion Channel and Associated Infrastructure ("SWDCAI") and shall have no implications for or binding power in regard to the Parties work, efforts, or relations in the SWDCAI. The Parties interactions with one another in the SWDCAI shall be governed by a separate agreement between the Parties.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby state as follows:

ARTICLE I.
DEFINITIONS AND INTERPRETATION

Section 1.01 DEFINITIONS. All capitalized and bolded terms used and not otherwise defined herein shall have the meanings given to them in this Agreement and as defined in this Section unless a different meaning clearly applies from the context.

"Age Discrimination Act of 1975" means the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-6107).

"Agreement" means this **Master Utility Relocation Agreement**.

"Authority" means the **Metro Flood Diversion Authority**, a **North Dakota** political subdivision created by the **Joint Powers Agreement** dated June 1, 2016.

"Best Efforts" means acting in **Good Faith** and in accordance with generally accepted commercial practices and using reasonable due diligence to undertake all action contemplated by this **Agreement**, in accordance with applicable federal and state laws, regulations, and rules; however, the obligation to use **Best Efforts** does not mean a duty to take action that would be in violation of applicable federal or state law.

"Business Day(s)" means any day that is not a Saturday, a Sunday, or a public holiday under the laws of **North Dakota**.

"Cass County" means **Cass County**, **North Dakota**.

"Cass County Joint Water Resource District" or **"CCJWRD"** means the **Cass County Joint Water Resource District**, a political subdivision of the **State of North Dakota**, its successors, and assigns.

"CFR" means the Code of Federal Regulations.

"Civil Rights Act of 1964" means the Civil Rights Act of 1964 (Pub.L. 88-352, 78 Stat. 241, enacted July 2, 1964).

"Clay County" means **Clay County**, **Minnesota**.

"Certificate of Comprehensive Project Substantial Completion" means a written certificate issued by the **Director of Engineering** indicating that the **Comprehensive Project** has been completed and no elements remain to be completed.

"Comprehensive Project" means the **Fargo-Moorhead Metropolitan Area Flood Risk Management Project** authorized by Section 7002(2) of the **Water Resources Reform and Development Act of 2014**, as generally described in the **Final Feasibility Report and Environmental Impact Statement**, Fargo-Moorhead Metropolitan Area Flood Risk Management, dated July 2011 and approved in accordance with the Chief's Report, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the U.S. Army Engineer, St. Paul, on September 19, 2013, and as amended by the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering Documentation Report, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, ND and MN, Modifications Through February 2019.

"Congress" means the **Congress** of the United States of America.

"Contract Work Hours and Safety Standards Act" means the **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701 et seq.).

"Copeland (Anti-Kickback) Act" means the **Copeland Act** (18 U.S.C. 874 and 40 U.S.C. 3145).

"**Costs**" means all costs, expenses, and fees of whatever nature and kind, excluding internal costs that would have been incurred by the **Utility** regardless of the existence of the **Comprehensive Project**.

"Davis-Bacon Act" means the **Davis-Bacon Act** of 1931 (40 U.S.C. 3141 et seq.).

"Diversion Inlet Structure" means the hydraulic control structure to control the flow of water entering the **SWDCAI** north of the **SEAI** as detailed in the documented entitled the "FMM Diversion Inlet Structure Red River of the North River Basin Fargo, ND."

"Dilworth" means **Dilworth**, **Minnesota**.

"Director of Engineering" means the individual or his/her designee who is officially appointed by the **Executive Director** as the **Director of Engineering** for the **Authority**.

"Effective Date" means the date on which both **Parties** have executed this **Agreement**.

"Executive Director" means the chief administrative officer of the **Metro Flood Diversion Authority**.

"Executive Order No. 11246" means **Executive Order No. 11246**, dated September 24, 1965.

"Fargo" or **"City of Fargo"** means **Fargo**, **North Dakota**.

"Fargo-Moorhead Metropolitan Area" means **Fargo**, **North Dakota**, **Moorhead**, **Minnesota**, and surrounding communities; it is further defined by the United States Census Bureau as comprising all of **Cass County**, **North Dakota**, and **Clay County**, **Minnesota**, which includes the cities of **Dilworth**, **Minnesota**, **West Fargo**, **North Dakota**, and numerous other towns and developments from which commuters travel daily for work, education, and regular activities.

"Fargo-Moorhead Metropolitan Area Flood Risk Management Project" has the same definition as "**Comprehensive Project**."

"Fargo-Moorhead Metropolitan Area Southern Embankment – MFR-023, Utility Guidelines and References" or **"MFR-023"** means the **Fargo-Moorhead Metropolitan Area Southern Embankment – MFR-023, Utility Guidelines and References** drafted by the **USACE** for the relocation of components in the **SEAI**.

"Federal Water Pollution Control Act Amendments of 1972" means the **Federal Water Pollution Control Act Amendments of 1972** (Pub.L. 92-500, 86 Stat. 816, enacted October 18, 1972).

"Final Design Submittal" means the design submittal described in Article VII of this **Agreement**.

"Final Feasibility Report and Environmental Impact Statement" or **"FEIS"** means the **Final Feasibility Report and Environmental Impact Statement**, **Fargo-Moorhead Metropolitan Area Flood Risk Management Project**, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, **Fargo-Moorhead Metropolitan Area Flood Risk Management Project**, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013, as amended by the Final Supplemental Environmental Assessment #2, Modifications to the **Fargo-Moorhead Metropolitan Area Flood Risk Management Project**, dated February 2019, approved by the District Engineer, St. Paul District on February 28, 2019, and which may be further amended by future supplemental environmental assessments.

"Frontier" or **"City of Frontier"** means **Frontier**, **North Dakota**.

"Good Faith" means observance of reasonable commercial standards of fair dealing in a given trade of business.

"Harwood" or **"City of Harwood"** means **Harwood**, **North Dakota**.

"Horace" or the **"City of Horace"** means **Horace**, **North Dakota**.

"Joint Powers Agreement" or **"JPA"** means the **Joint Powers Agreement** dated as of June 1, 2016, by and between the **Member Entities**, as amended from time to time, which created and continued the **Authority**.

"Master Utility Relocation Agreement" or **"Agreement"** means this **Master Utility Relocation Agreement** by and between the **Authority** and **Utility**.

"Member Entities" shall mean **Moorhead**, **Fargo**, **Clay County**, **Cass County**, and **CCJWRD**.

"Metro Flood Diversion Authority" has the same definition as "**Authority**."

"Minnesota" means the **State of Minnesota**.

"Moorhead" or **"City of Moorhead"** means **Moorhead**, **Minnesota**.

"Non-Federal Project Costs" means the local cost share of the total cost of the **Comprehensive Project** not provided by the U.S. Government.

"Non-Federal Sponsors" or **"NFS"** means the entities providing the **Non-Federal Project Costs** for the **Comprehensive Project**, which includes the **City of Fargo**, the **City of Moorhead**, and the **Authority** created pursuant to the **JPA.**

"North Dakota" means the **State of North Dakota**.

"Parties" means the entities to this **Agreement**, specifically the **Authority** and the **Utility**.

"Polar Communications Mutual Aid Corporation" has the same meaning as the **Utility.**

"Post Construction Submittal" means the design submittal described in Article VII of this **Agreement**.

"PPA" means the **Project Partnership Agreement** executed by and between the Department of the Army and the **City of Fargo**, **North Dakota**, the **City of Moorhead**, **Minnesota** and the **Metro Flood Diversion Authority** for construction of the **Fargo-Moorhead Metropolitan Area Flood Risk Management Project**, dated July 11, 2016.

"Preliminary Design Submittal" means the design submittal described in Section 7.05(a) of this **Agreement**.

"Prior Property Interest(s)" means any property interest(s) owned by the **Utility** that the **Authority** deems necessary to **Relocate**.

"Project" means the design, construction, finance, operations, and maintenance of the **SEAI** and the **UMA**.

"Project Footprint" means the physical area within which the **SEAI** and the **UMA** will be contained.

"Project Property" means real property acquired for the **Project**, including, but not limited to, land, rights-of-way, easements, licenses, and leases.

"Protected Area" means generally the area north of the **SEAI** and east of the **Project** including the communities of **Moorhead**, **Minnesota**, **Frontier**, **North Dakota**, **Horace**, **North Dakota**, **Fargo**, **North Dakota**, **West Fargo**, **North Dakota**, **Reile's Acres**, **North Dakota**, and **Harwood**, **North Dakota**.

"Red River" means the **Red River of the North**.

"Red River Control Structure" means the hydraulic control structure to be procured by **USACE**, and located within the **SEAI**, designed to control and/or meter the flow of the **Red River** through the **Protected Area**.

"Reile's Acres" or **"City of Reile's Acres"** means **Reile's Acres**, **North Dakota**.

"Rehabilitation Act of 1973" means the **Rehabilitation Act of 1973** (Pub.L. 93-112, 87 Stat. 355, enacted September 26, 1973).

"Relocate" means providing a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding railroad bridges and approaches thereto required for construction of the **Comprehensive Project**), or public facility when such action is authorized in accordance with applicable legal principles of just compensation; or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a **Relocation** in the authorizing legislation for the **Project** or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, rising, or replacement and attendant demolition of the affected facility or part thereof.

"Richland County" means **Richland County**, **North Dakota**.

"Shop Drawings and Samples" means shop drawings, laying drawings, erection drawings, fabrication drawings, product information, catalog information, samples, mock-ups, plans, test procedures and results, descriptions of services, descriptions of specific means and methods and related documentation.

"Site" means the physical location at which any **Utility Adjustment Construction Work** is being done, has been done, or will be done as part of the **Utility Relocation Project**.

"**Southern Embankment and Associated Infrastructure"** or **"SEAI"** consisting of the **Diversion Inlet Structure**, **Wild Rice** and **Red River Control Structure**, associated road raises, and earthen dam embankment reaches.

"Substantial Completion Date of the Comprehensive Project" means the date on which the **Director of Engineering** issues a **Certificate of Comprehensive Project Substantial Completion**.

"Supplemental Plan" means a plan submitted for approval pursuant to Article III, in the event that **Undisclosed Prior Property Interests** are identified after one or more plans have already been approved pursuant to Article III.

"SWDCAI" means the approximately thirty (30) mile, twenty thousand (20,000) cubic feet per second (cfs) channel and associated features, including the outlet, river and drain inlets, road bridges, railroad bridges, aqueducts, and recreational features, to be constructed as part of the **Comprehensive Project**.

"Task Order" means a document executed by the **Authority** and **Utility**, including any amendments, stating the scope of services, times for performance of services, compensation, and any other relevant information for a specific project.

"Undisclosed Prior Property Interests" mean **Prior Property Interests** not disclosed in Section 3.02 of this **Agreement**.

"United States Army Corps of Engineers" or **"USACE"** means the **United States Army Corps of Engineers**.

"Upstream Mitigation Area" or **"UMA"** means the area where the **Authority** is required to obtain property rights as mitigation for the temporary storage of floodwaters during **Comprehensive Project** operations, as shown in **Exhibit B**.

"U.S. EPA" means the United States Environmental Protection Agency.

"Utility" means **Polar Communications Mutual Aid Corporation**.

"Utility Adjustment" means each **Relocation** (temporary or permanent), abandonment, protection in place, removal (of previously abandoned utilities as well as of newly abandoned utilities), replacement, reinstallation, or modification of existing utilities necessary to accommodate construction, operation, maintenance or use of the **Project**. The **Utility Adjustment Work** for each crossing of the **Project** right-of-way by a utility that crosses the **Project** right-of-way more than once will be considered a separate **Utility Adjustment**. For any utility installed longitudinally within the **Project** right-of-way, the **Utility Adjustment Work** for each continuous segment of that utility located within the **Project** right-of-way will be considered a separate **Utility Adjustment**.

"Utility Adjustment Completion" means that the **Utility Adjustment Construction Work** for a **Utility Adjustment** is sufficiently complete in the opinion of the **Authority** and the **Utility**.

"Utility Adjustment Construction Work" means all **Utility Adjustment Work** related to construction.

"Utility Adjustment Work" means all efforts and **Costs** necessary to accomplish the required **Utility Adjustments**, including all coordination, **Utility Adjustment Design Work**, design review, permitting, **Utility Adjustment Construction Work**, inspection and maintenance of records, whether provided by the **Authority** or by the **Utility**.

"Utility Relocation Project" means the process of acquiring **Project Property**, **Relocating** any **Prior Property Interests**, and all other steps necessary, as determined by the **Authority**, to prepare the **Project Property** for construction of the **Project**.

"Water Resources Reform and Development Act" means the Water Resources Reform and Development Act of 2014, Public Law 113-121.

"West Fargo" means **West Fargo**, **North Dakota**.

"Wild Rice River" means the river of the same name located in the **State of North Dakota**.

"Wild Rice River Control Structure" means the control structure for the **Wild Rice River** located southeast of the **City of Horace**, **North Dakota**.

"Wilkin County" means **Wilkin County**, **Minnesota**.

Section 1.02 TERMS GENERALLY. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications set forth herein), (b) any reference herein to any person shall be construed to include any person's permitted successors and assigns, (c) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this **Agreement** in its entirety and not to any particular provision hereof, and (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this **Agreement**.

Section 1.03 SURVIVAL OF TERMS. The terms of this **Agreement** shall survive through the **Substantial Completion Date of the Comprehensive Project** and for successive ten-year terms until one of the **Parties** hereto terminates this **Agreement** as provided for herein.

ARTICLE II.
PURPOSE OF MASTER UTILITY RELOCATION AGREEMENT

Section 2.01 PURPOSE. The purpose of this **Agreement** is to ensure a coordinated, time-efficient, and cost-effective process for completing the **Utility Relocation Project**, for coordinating operations and maintenance activities after completion of the **Utility Relocation**

Project, and for the development of individual **Task Orders** issued in conjunction with, and subject to, the terms and conditions of this **Agreement**.

Section 2.02 COORDINATION BETWEEN ENGINEERS. The **Authority** and **Utility** are likely to employ the use of professional engineers in the analysis, design, and completion of designs, plans, and completion of work. Engineers employed by the **Parties** shall maintain open lines of communication, coordinate, and collaborate with engineers employed by other parties described herein.

Section 2.03 COORDINATION WITH USACE. **Utility** shall not communicate directly with the **USACE** regarding any aspect of the **Comprehensive Project** or any other subject-matter referenced in, related to, or arising from this **Agreement**, without the prior written authorization of the **Authority**, except as required by Section 9.01 (a) of this **Agreement**.

ARTICLE III.
REAL PROPERTY INTERESTS

Section 3.01 INTENT. It is the intent of the **Parties** hereto that all **Prior Property Interests** shall be identified herein. Specifically, **Prior Property Interests** shall be detailed in the table contained in Section 3.02 and further documented in **Exhibit A** to this **Agreement**.

Section 3.02 ACQUISITION OF PRIOR PROPERTY INTERESTS. The **Prior Property Interests** to be **Relocated** pursuant to the terms and conditions of this **Agreement** include, but are not limited to, the **Prior Property Interests** documented in **Exhibit A** and described in the table below:

Location (Section-Township-Range)	Location	Existing Crossing Type/Info	Right-of-Way Document
29-137-48	SE-4	288 Count Fiber – south of County Road 2	
Various	Upstream Mitigation Area	288 Count Fiber – South of County Road 2	

Section 3.03 UNDISCLOSED PRIOR PROPERTY INTERESTS. If the **Authority**, for any reason, determines **Undisclosed Prior Property Interests** should be **Relocated**, such **Relocation** shall occur pursuant to the terms of this **Agreement**.

Section 3.04 DISCOVERY OF UNDISCLOSED PRIOR PROPERTY INTERESTS. **Undisclosed Prior Property Interests** identified for **Relocation** prior to request for submission of the first submittal required by Article VII shall be **Relocated** through the same process as if the **Undisclosed Prior Property Interests** were disclosed herein. A separate accounting and recording of costs shall be maintained for **Undisclosed Prior Property Interests** and **Prior Property Interests** disclosed herein. Should **Undisclosed Prior Property Interests** be identified after the submission of one or more submittals pursuant to Article VII the **Utility** shall, within sixty (60) days of written notification of identifying **Undisclosed Prior Property Interests** to be **Relocated**, submit a **Supplemental Plan** meeting the requirements of Article VII, for the

Relocation of **Undisclosed Prior Property Interests**. Each **Party** shall have the same rights and responsibilities as they would have if the **Supplemental Plan** were included in previously approved plans, as detailed in Article VII, unless explicitly provided otherwise herein. The **Utility** shall endeavor to submit a **Supplemental Plan** for approval within sixty (60) days. Should the **Utility** fail to submit a **Supplemental Plan** by the applicable deadline, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall follow the dispute resolution process pursuant to Article XI of this **Agreement**.

Section 3.05 COOPERATION IN PLATTING. The **Authority** intends to plat right-of-way acquired for **Project** purposes. **Utility** shall reasonably cooperate with said platting efforts if requested to do so by the **Authority**.

ARTICLE IV.
RESPONSIBILITY FOR UNDISCLOSED PRIOR PROPERTY INTERESTS

Section 4.01 UTILITY RESPONSIBILITY. The **Utility** shall bear the costs of **Relocating** all **Undisclosed Prior Property Interests**.

Section 4.02 REQUESTS FOR RELIEF. Within thirty (30) calendar days of **Utility Adjustment Completion**, the **Utility** may file a written request for relief with the **Authority** to request payment or partial payment for costs of the **Relocating Undisclosed Property Interests**. This request for relief shall be a separate document from the reports required by Article VII but shall be submitted to the **Authority** in conjunction with the reports required by Article VII. All requests for relief shall include an itemized list of costs, the total amount requested, and justification for **Utility's** failure to identify the **Undisclosed Prior Property Interest**. Requests for relief may be approved, approved in part and denied in part, or denied.

ARTICLE V.
RIGHT OF SITE ACCESS

Section 5.01 RIGHT OF SITE ACCESS. To ensure the **Authority** is able to proceed with construction of the **Project** in a timely and efficient manner, as well as to properly monitor and ensure completion of the **Utility Relocation Project**, the **Authority** shall have a right-of-way in, on, over, and across any and all **Sites** as well as the right to access, enter, and inspect any **Site**.

Section 5.02 NON-REVOCABLE RIGHT OF THE METRO FLOOD DIVERSION AUTHORITY. Nothing herein shall be construed as limiting or providing for the termination of the rights described herein as it pertains to the **Authority**.

Section 5.03 NO NOTICE REQUIRED. No notice shall be required for the **Authority** to exercise the rights described in this Article.

Section 5.04 DELAY FOR SAFETY PURPOSES. If the **Authority** attempts to exercise the rights described in this Article, but doing so would pose a safety hazard, the **Party** shall be kept from accessing, entering, or inspecting the **Site** in question only for as long as is reasonably required to make the **Site** safety for access, entry, and inspection, as determined by the **Party** desiring to access, enter, and inspect the **Site**.

Section 5.05 FAILURE TO ALLOW ACCESS, ENTRY, AND INSPECTION. Should any **Party** having authority to access, enter, and inspect a **Site** be denied access for more than twenty-four (24) hours, other than when the same **Party** deems such a delay appropriate under Section 5.04, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall follow the dispute resolution process pursuant to Article XI of this **Agreement**.

ARTICLE VI.
REQUIRED REPORTS

Section 6.01 REQUIRED REPORTS. The **Utility** shall prepare any reports, analysis, plans, cost estimates, or other information and materials within the scope identified in a **Task Order** pertaining to the utility infrastructure, the **Utility Relocation Project**, or the **Project**, as requested by the **Authority**.

Section 6.02 DEADLINES. All reports, analysis, plans, cost estimates, and other information and materials requested by the **Authority** shall be provided before the expiration of a reasonable deadline determined by the **Authority** and/or identified in a **Task Order** pertaining to the utility infrastructure, the **Utility Relocation Project**, or the **Project**.

Section 6.03 FAILURE TO TIMELY PRODUCE. Should the **Utility** fail to produce any reports, analysis, plans, cost estimates, or other information and materials requested of them by the **Authority**, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall follow the dispute resolution process pursuant to Article XI of this **Agreement**.

Section 6.04 APPEAL OF FEES ASSESSED. Within thirty (30) days of submitting requested information after the due date, the **Utility** may appeal the assessment of fees provided for in Section 6.03, by submitting a written appeal to the **Authority**. Within thirty (30) days of submission of a written appeal of assessed fees explaining the reasons for failure and other mitigating factors which the board should consider when deciding whether to waive the fee, the **Authority** shall, at its own discretion, approve or deny the appeal of assessed fees.

ARTICLE VII.
PERFORMANCE AND CONSTRUCTION

Section 7.01 UTILITY ADJUSTMENT DESIGN WORK. The **Utility** shall be responsible for the completion of all **Utility Adjustment Design Work**. The **Utility** shall complete all **Utility Adjustment Design Work** prior to reasonable deadline identified in a **Task Order** pertaining to the utility infrastructure, the **Utility Relocation Project**, or the **Project**, provided to **Utility** by the **Authority**.

Section 7.02 UTILITY ADJUSTMENT CONSTRUCTION WORK. The **Utility Adjustment Construction Work** shall be as follows:

a. The **Utility** shall be responsible for the completion of all **Utility Adjustment Construction Work**. The **Utility** shall complete all **Utility Adjustment**

Construction Work prior to reasonable deadline provided to **Utility** by the **Authority**.

b. If a portion of the **Utility Adjustment Construction Work** is outside of the **Project Property**, the **Utility** shall be responsible for that portion of the **Utility Adjustment Construction Work**. The **Utility** shall meet the requirements of federal law in regard to any **Work** contracted out to third parties, for which the **Authority** will reimburse the **Utility**.

Section 7.03 ADDITIONAL RIGHT-OF-WAY OUTSIDE THE PROJECT FOOTPRINT. Should the **Utility** require additional right-of-way to complete the **Utility Relocation Project**, the **Utility** shall notify the **Authority** of said needs as soon as reasonably possible after discovering the need. The **Authority** shall use its **Best Efforts** to acquire the necessary right-of-way but shall not be responsible for any damages related to time delays associated with the acquisition of additional right-of-way needed to accommodate betterments. In the event the **Utility Relocation Project** directly or indirectly causes the **Utility** to acquire additional property interests, the **Utility** shall consult with the **Authority** prior to determining the price at which they will offer to purchase said property interests. The **Utility** will only offer to purchase additional property interests at a price consented to by the **Authority**.

Section 7.04 TECHNICAL SPECIFICATIONS. The **Utility Relocation Project** must be designed in accordance with the **Fargo-Moorhead Metropolitan ("FMM") Area Southern Embankment – MFR-023, Utility Guidelines for the Southern Embankment and References ("MFR-023")** which is hereby incorporated by reference and attached as **Exhibit C** to this **Agreement**. The requirements set forth in **MFR-023** shall only apply to **Utility Adjustment Work** within the **SEAI**. All **Utility Adjustment Work** in the **UMA** shall be conducted in accordance with Section 7.05 of this **Agreement**.

Section 7.05 COORDINATION FOR UTILITY ADJUSTMENT IN THE UMA. All **Utility Adjustment Work** in the **UMA** shall be designed, constructed, and completed in accordance with federal, state, and local regulations and guidelines. In the event **Utility Adjustment Work** shall be completed in the **UMA**, the **Utility** will work in conjunction with the **Authority**, in **Good Faith**, to design and submit a **Utility Adjustment** plan for the **Authority** to review, comment and approve.

Section 7.06 PROPOSALS AND PLANS. Anytime following execution of this **Agreement**, the **Utility** may submit to the **Authority**, for each **Utility Adjustment**, a **Preliminary Design Submittal**, a **Final Design Submittal**, and a Post **Construction Submittal** for review, comment, and approval by the **Authority** as defined and at the specific timelines specified in **MFR-023**.

(a) Preliminary Design Submittal. The **Utility** shall complete a **Preliminary Design Submittal** to a minimum of approximately thirty-five percent (35%) level of design completion and define the basis of design for all aspects of each **Utility Adjustment** of the **Utility Relocation Project**. The **Preliminary Design Submittal** shall include calculations demonstrating that the proposed configuration meets and satisfies the technical requirements contained herein. The **Preliminary Design Submittal** shall also provide sufficient detail to demonstrate compliance

with all design and construction requirements as described in **MFR-023**. The **Preliminary Design Submittal** shall include, at a minimum, sketches and/or relocation plans, text defining the general proposed plan, and a scoping estimate of construction costs.

(b) Final Design Submittal. The **Utility** shall complete a **Final Design Submittal** including, but not limited to, fully developed design and relocation plan, drawings, specifications, and all other supporting information, design documentation, etc. The **Final Design Submittal** shall also contain complete applicable technical specifications. In addition to the aforementioned information, the **Final Design Submittal** shall include fully developed design and relocation plans, drawings, specifications, design documentation including calculations for the expected volume of grout needed to fill the annular spaces and all other supporting information, design documentation, and a final estimate of construction costs. The **Final Design Submittal** shall be utilized to develop individual **Task Orders** for consideration and approval by the **Authority** prior to completion of the **Utility Adjustment Work**.

(c) Post Construction Submittal. The **Utility**, in coordination with the **NFS** shall complete and provide a **Post Construction Submittal**. The **Utility** acknowledges and agrees that **Post Construction Submittals** shall be conducted in accordance with the **MFR-023**. The **Post Construction Submittal** shall include, but is not limited to:

1. Acceptance testing documentation and inspection records, including standard proctor and field moisture density results.

2. Pipe inspection schedule and maintenance plan for future recurring inspections.

3. Design documentation that includes calculations for the expected volume of grout needed to fill the annular space.

4. Post-Construction Report that includes the amount that the expected amount of grout was used for filling the annular space.

5. As-Built Drawings: Submit As-Built drawings for the complete utility line relocation showing complete detail, including trench dimensions, pipe profile, pipe alignment, valve locations, connection box locations, manholes and all other pertinent as-built information.

6. As-Built Surveys

(d) Review. The **Authority** shall complete a full review of each submittal and provide comments and/or approval.

1. The **Authority's** review of submittals shall be restricted to a determination of whether the submittal complies with the specifications and requirements set forth in this **Agreement**.

2. The **Authority** shall complete a full review and provide comments on submittals within twenty (20) **Business Days** of the date on which the **Authority** receives a full and complete submittal. Should the **Authority** determine that a submittal is not in compliance with the terms and specifications provided in this **Agreement**, and the **Utility** resubmits a previously submitted submittal, the **Authority** shall review the submittal and respond within ten (10) **Business Days**. The **Authority's** review of the re-submittal shall be limited to the portions of the initial submittal deemed insufficient as well as any other portions of the submittal which have been amended or added since the initial submission. In the event that the **Authority** does not provide comments within the period prescribed by this **Agreement**, the **Utility** shall provide written notice of the failure to respond. If the **Authority** does not respond within five (5) **Business Days** of receiving written notification, the submittal shall be deemed approved.

Section 7.07 REQUIREMENT OF APPROVAL. No **Utility Adjustment Construction Work** may begin until the **Authority** approves the **Final Design Submittal**.

Section 7.08 SHOP DRAWING AND SAMPLE SUBMITTALS. The **Utility** shall submit **Shop Drawings and Samples** that detail the **Utility Adjustment Construction Work** to be performed by the **Utility** on the **Utility Relocation Project** within the **Project Footprint**. The **Authority** shall review the **Shop Drawings and Samples** in accordance with the procedure and timelines in Section 7.06 for the review of submittals.

Section 7.09 ADJUSTMENTS TO THE PROJECT. Should the planned route of the **SEAI** change in a material manner, the **Utility** and the **Authority** shall immediately interface to adjust plans for the **Utility Relocation Project**, as necessary.

Section 7.10 ADJUSTMENTS TO THE UTILITY ADJUSTMENT WORK. Any changes or modifications to the **Post Construction Submittal** during construction that materially affect the performance or construction of the **Utility Adjustment Work** will be subject to written approval by the **Authority**. The **Utility** will submit the proposed changes or modifications to the **Authority** for review and approval. The **Authority** shall review the submittals in accordance with procedure and timelines in Section 7.06. **Authority** lines not required to be moved prior to the adjustment of **Post Construction Submittal**, which need to be **Relocated** after changes are made to **Post Construction Submittal** shall not be treated as **Undisclosed Prior Property Interests** for purposes of assigning responsibility for costs.

Section 7.11 INSPECTION. The **Utility** shall be responsible for inspection of all **Utility Adjustment Construction Work**.

Section 7.12 UTILITY COMPLETION. Within ten (10) **Business Days** of the anticipated date for **Utility Adjustment Completion**, the **Utility** and the **Authority** will schedule a final

inspection, whereby the **Utility** shall be responsible for holding an inspection of the **Utility's** portion of **Utility Adjustment Construction Work** to determine whether the **Utility Adjustment** meets the **Post Construction Submittal** and any material changes or modifications made per Section 7.09 and 7.10. If the **Authority** finds the construction is not in conformance with the **Post Construction Submittal** or any approved material changes or modifications, the **Authority** will notify the **Utility** of such fact and the **Utility** will correct such nonconformance in the construction work and re-notify for inspection. Once the **Authority** finds the **Utility Adjustment** has reached **Utility Adjustment Completion**, the **Authority** will provide a certificate of **Utility Adjustment Completion**.

Section 7.13 THIRD PARTY CONTRACTORS. Should the **Utility** engage any third-party contractor to fulfill, contribute to, or otherwise act in regard to an obligation assigned to **Utility** in this **Agreement**, the **Utility** shall abide by all restrictions and requirements provided for in Article XIII and as provided in the federal lobbying restrictions which is attached as **Exhibit D** to this **Agreement**.

Section 7.14 INVOICING REQUIREMENTS. All invoices provided to the **Authority** pursuant to or arising from this **Agreement** shall comply with invoicing requirements provided in the **Authority** invoicing requirements which is as attached as **Exhibit E** to this **Agreement**.

ARTICLE VIII.
PAYMENT OF COSTS

Section 8.01 NECESSITY TO KEEP COSTS LOW. The **Utility** and the **Authority** each recognize the need to minimize the cost of the **Utility Relocation Project**, while seeking to maintain the same quality of service to the **Utility's** customer. The **Utility** and the **Authority** shall be diligent in keeping costs as low as reasonably possible.

Section 8.02 GENERALLY. The **Authority** shall pay all reasonable costs of the **Utility Relocation Project** approved under Section VII and actually incurred, whether those costs are incurred by the **Utility** or the **Authority**, excluding the **Utility's** internal costs.

Section 8.03 REPORTING OF COSTS. Upon completion of the **Utility Relocation Project**, the **Utility** shall submit a detailed, itemized report of the costs and expenses of the **Utility Relocation Project** to the **Authority** for review.

Section 8.04 REJECTION OF COSTS. The **Authority** may reject reported costs and expenses to the extent that it deems any specific costs or expenses are unreasonable. Notice of rejection of any costs or expenses must be provided to the **Utility** in writing.

Section 8.05 APPEAL OF A DECISION TO REJECT COSTS. The **Utility** may appeal a decision rejecting any cost by providing the **Authority** written notice of the appeal and justification for its expenses within twenty (20) days of its receipt of the rejection notice.

Section 8.06 PAYMENT OF ACCEPTED COSTS. Within thirty (30) days of the determination of the **Authority's** full liability to the **Utility**, the **Authority** shall issue a single, full payment of the amount owed to the **Utility**.

Section 8.07 BETTERMENTS. In no situation shall any **Party** other than the **Utility** be responsible for costs and expenses of betterments installed during the **Utility Relocation Project**.

ARTICLE IX.
FUTURE RIGHTS AND RESPONSIBILITIES

Section 9.01 RIGHT OF WAY. Should the **Authority** deem it necessary for the purpose of the **Utility Relocation Project**, the **Authority** shall grant the **Utility** a right-of-way below, above, and across the **Project Footprint** so the **Utility** can properly maintain its facilities in the right-of-way, subject to the following restrictions and obligations:

a. Coordination with USACE. In the event the **Utility** deems it necessary to perform **Utility Adjustment Work**, within the right-of-way, beyond operation and maintenance for the **Utility Relocation Project**, **Utility** shall be responsible for coordination with the **USACE** to obtain appropriate review and approval.

b. Maintenance of Utility Property. Following completion of the **Utility Relocation Project**, the **Utility** shall be responsible for all maintenance of **Utility** property and associated infrastructure. The **NFS** and **Utility** shall be responsible for preparing an operation and maintenance agreement that sets forth the roles and responsibility of each **Party**. The **Utility** shall be responsible for preparing a maintenance and abandonment plan for all utilities located within the work limits of the **SEAI** and/or **UMA**. The **Utility** acknowledges and agrees that all maintenance of the **Utility** property and associated infrastructure shall be conducted in accordance with the **MFR-023**.

c. Post Construction Access. Following completion of the **Utility Relocation Project**, the **Utility** shall provide the **Authority** with seven (7) days' written notice of any maintenance it intends to do within the **Project Footprint**.

d. Approval for Ground Disturbing Maintenance or Repairs. The **Utility** must submit and obtain approval for any and all plans for maintenance or repair that requires the ground within the **Project Footprint** to be disturbed, from the **Authority**.

e. Clean Up. The **Utility** shall ensure that after any maintenance or repairs to **Utility** Property, the ground within the **Project Footprint** is returned to the state in which it existed prior to the maintenance or repair that caused the ground within the **Project Footprint** to be disturbed.

f. Metro Flood Diversion Authority Access. In the event that **Utility** property malfunctions, destructs, or otherwise begins to cause on-going damage to the **SEAI** and/or the **UMA**, the **Authority** shall have the authority to access the damage-causing **Utility** property and take any action necessary to stop on-going damage to the **SEAI**.

g. Access. The **Authority** shall have unrestricted access in, over, and across the right-of-way.

h. Damage to the SEAI or UMA. Should **Utility** property malfunction, deconstruct, or otherwise cause damage to the **SEAI** and/or the **UMA**, the **Utility** shall take immediate action to stop on-going damage to the **SEAI** and/or the **UMA** and will consult with the **Authority** on how to repair all damage that occurs.

i. Abandonment. Should the **Utility** abandon or remove a utility line within the easement and fail to replace the line within three (3) years of removal, the **Utility** shall forfeit and extinguish said easement.

Section 9.02 USE OF EXISTING EASEMENT. In the event **Utility** property is **Relocated** within the **Utility's** currently existing easement or right-of-way, the **Utility** shall be bound to exercise its rights under said easement, subject to the requirements and obligations contained in this Article. The requirements of this Article shall survive so long as the **Utility** has property located within the **Project Footprint**.

Section 9.03 RECORD KEEPING. The **Utility** shall maintain or cause to be maintained (by way of contract and enforcement of such contract) a complete set of records detailing all costs it incurs in the **Utility Relocation Project**, in accordance with the recordkeeping and audit requirements of this **Agreement** and the laws of **North Dakota**.

Section 9.04 FUTURE PERMITS. Should the **Utility** file a formal permit application with the **Authority**, pertaining to the **Utility** line **Relocated** pursuant to this **Agreement**, with the **Authority** after the **Effective Date**, the **Authority** shall grant, at no cost to the **Utility**, the permit application so long as the permit application meets all reasonable requirements listed in the instructions to said permit application and the proposed crossing would not unreasonably risk harm to the **SEAI** or the **UMA** or interfere with other facilities already contained within the **Project Footprint**, as determined by the **Authority**. In addition to the permit application granted by the **Authority**, **Utility** shall be responsible for obtaining all other permits necessary and required by the **USACE**. Should an existing **Utility** line be modified in the future, the **Authority**, in its sole discretion, shall determine whether the modification is allowable under a previously existing permit or whether the modification is significant enough in its nature or effect to require the **Utility** to apply for a new permit.

ARTICLE X.
DISPUTES WITH CONTRACTORS AND OTHER THIRD PARTIES

Section 10.01 COORDINATION. The **Parties** shall coordinate with respect to any dispute with third parties. Such coordination shall include any potential or ongoing litigation.

ARTICLE XI.
DISPUTES AMONG THE UTILITY AND THE METRO FLOOD DIVERSION AUTHORITY

Section 11.01 INTENT AND PROCEDURE. The **Utility** and the **Authority** shall use their **Best Efforts** to ensure that the provisions of this **Agreement** are fulfilled. The **Parties** agree to act in **Good Faith** to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this **Agreement**. If disputes cannot be resolved informally by the **Parties** or under other, situation-specific dispute resolution mechanisms contained herein, the following procedure shall be used.

Section 11.02 PROCEDURE TO COMMENCE DISPUTE RESOLUTION PROCESS. The **Parties** agree that in the event of an alleged breach of any of the terms of this **Agreement**, the **Parties** making such allegation shall, except as provided in Section 13.01 (Notices) of this **Agreement**, provide thirty (30) days written notice to the other **Party** of the alleged breach. The written notice shall contain reasonable description of the underlying facts and an explanation of why the **Party** providing notice believe those facts constitute a breach. Following transmittal of the notice, the **Party** alleged to have caused the breach shall be given a reasonable time, not less than ten (10) days to correct or remedy the alleged breach, to meet and confer with the other **Party**, and/or to participate in mediation with the other **Party** prior to initiating any litigation, arbitration, or any administrative proceeding, unless the alleged breach has the potential to cause immediate and irreparable harm, in which case the **Party** alleging the harm may initiate litigation prior to complying with the provisions of this Section 11.02 while, at the same time, following the procedures set forth in Sections 11.01, 11.02, and 13.01 of this **Agreement** as applicable.

Section 11.03 TIME TO CORRECT. The reasonableness of the time afforded to the **Party** alleged to have breached this **Agreement** pursuant to Section 11.02 of this **Agreement** to cure the alleged breach and engage in dispute resolution processes shall be determined by considering the circumstances, including the potential harm, injury, or damages that are or may result from the alleged breach and the extent to which the harm, injury, or damages may worsen with the passage of time.

Section 11.04 MEDIATION. If there is a failure between the **Parties** to resolve a dispute on their own, the **Parties** shall first attempt to mediate the dispute. The **Parties** shall agree upon a single mediator or, if they cannot agree, shall obtain a list of court-appointed mediators from the Cass County District Court Administrator, and select a mediator by alternately striking names until one remains. The **Authority** shall strike the first name, followed by the **Utility**, in that recurring order until one name remains.

Section 11.05 ARBITRATION. If there is a failure between the **Parties** to resolve a dispute on their own, the **Parties** shall first attempt to arbitrate the dispute. The **Parties** shall agree upon a single arbitrator, that is mutually agreeable to the **Parties**. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Section 11.06 RIGHT OF SETOFF. If there is a failure between the **Parties** to resolve a dispute on their own, and the **Parties** have attempted to utilize the dispute resolution process pursuant to Article XI of this **Agreement**, and such dispute, including but not limited to those

identified in Sections 3.04, 5.05, and 6.03, results in the unreasonable delay of the **Utility Relocation Project**, the **Authority** is hereby authorized, to the fullest extent permitted by law to setoff, and may apply any and all deposits at any time held and owing to or for the credit of any **Party** to this **Agreement** against any and all obligations existing under this **Agreement**.

Section 11.07 LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within thirty (30) days after the end of mediation proceedings, the **Parties** may litigate the matter.

Section 11.08 LEGAL FEES. Each **Party** will be responsible for their own attorney's fees in connection with a dispute under this Article.

Section 11.09 WAIVER OF JURY TRIAL. THE **PARTIES** HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS **AGREEMENT** , OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS **AGREEMENT**, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS **AGREEMENT**. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL MEMBER ENTITIES ENTERING INTO THIS **AGREEMENT**. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE **UTILITY** AND THE **AUTHORITY** ARISING OUT OF OR RELATED TO THIS **AGREEMENT** AND DOES NOT APPLY TO THIRD-PARTY CLAIMS OR SUITS BY OR ON BEHALF OF THE **PARTIES** FOR **PROJECT PROPERTY** ACQUISITION AND/OR CONSTRUCTION CONTRACT CLAIMS AND DEFENSES.

ARTICLE XII.
USE OF EMINENT DOMAIN

Section 12.01 EMINENT DOMAIN. Nothing in this **Agreement** shall be construed as limiting the **Authority's**, or its **Member Entities'**, ability to exercise its powers of eminent domain.

Section 12.02 NULLIFICATION BY EMINENT DOMAIN. Should the **Authority** initiate eminent domain proceedings to accomplish the goals of the **Utility Relocation Project**, the terms of the **Agreement** shall be null and void at the option of the **Authority**.

Section 12.03 NULLIFICATION AFTER COSTS INCURRED. Should the terms of this **Agreement** be nullified under Section 12.02, after plans and proposals described in Section VII have been approved as required by Article VII, the **Utility** shall, within thirty (30) days of being served with notice of the eminent domain proceeding, submit a report of its costs to the **Authority** in the same manner it would have submitted a report of costs pursuant to Article VII had the **Utility Relocation Project** been completed.

ARTICLE XIII.
MISCELLANEOUS

Section 13.01 NOTICE. All notices under the **Agreement** will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with deliver receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses:

a. All notices to the **Authority**, including **Project** correspondence, submittals, and samples, will be marked as regarding the **Project** and will be delivered to the following address or as otherwise directed by the **Authority's** authorized representative:

Jacobs Engineering Group, Inc.
64 4th Street North, Suite 300
Fargo, North Dakota 58102
and

Metro Flood Diversion Authority
Attn: Director of Engineering
207 4th Street North, Suite A
Fargo, North Dakota 58102

b. All legal notices to the **Authority**, in addition to being provided to the **Authority's** representative as provided above, will also be provided to the **Executive Director** at the following address or as otherwise directed by the **Authority's** representative:

Metro Flood Diversion Authority
Attn: Executive Director
207 4th Street North, Suite A
Fargo, North Dakota 58102

c. All notices to the **Utility** will be marked as regarding the **Project** and will be delivered to the following address or as otherwise directed by the **Utility's** authorized representative:

Polar Communications Mutual Aid Corporation
Attn: Tim Olson, COO
110 4th St. E.
Park River, ND 58270
(701) 284-7221

Polar Communications Mutual Aid Corporation
Attn: Mike Otto, Outside Plant Supervisor
110 4th St. E.
Park River, ND 58270
(701) 284-7221

d. Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central Time and all other notices received after 5:00 p.m. Central Time will be deemed received on the first **Business Day** following delivery.

Section 13.02 ASSIGNMENT. Neither **Party** may transfer or assign this **Agreement**, nor any rights or obligations under this **Agreement**, without the express written consent of the other **Party**. Each **Party** shall only be permitted to transfer or assign rights or obligations under this **Agreement** by giving thirty (30) days' written notice pursuant to Section 13.01 to the other **Party** of its intent to transfer or assign.

Section 13.03 WORKERS' COMPENSATION. Each **Party** shall be responsible for injuries or deaths of its own personnel. Each **Party** will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are providing assistance pursuant to this **Agreement**. Notwithstanding any other provision of this **Agreement**, each **Party** waives the right to pursue a legal action against one of the other **Parties** for any workers' compensation benefits paid to its own employee or volunteer or their dependents, even if the injuries are caused wholly or partially by the negligence of any other **Party** or its officers, employees, or volunteers.

Section 13.04 INSURANCE. The **Utility** shall list the **Authority** as additional insureds on any insurance policy obtained in connection with the **Utility Relocation Project**. No **Utility Adjustment Work** may be done until a certificate of insurance listing the aforementioned entities as additional insureds is produced. An additional insured shall be given notice at least thirty (30) days before an insurance policy on which it is an additional insured is canceled or allowed to expire. In the event that the policy is terminated for any reason and notice has not been previously given to the additional insureds, the formerly insured shall give notice to the additional insureds as soon as is reasonably possible.

Section 13.05 INDEMNIFICATION. The **Utility** shall indemnify and hold harmless the **Authority**, its **Member Entities**, and directors, officers, employees, and agents harmless against any and all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including attorney's fees), which arise out of, relate to or result from any act or omission of the **Utility** or failure of **Utility's** facilities or property.

Section 13.06 RELATIONSHIPS CREATED. The **Parties** agree this **Agreement** does not create any agency, partnership, joint venture, or any other relationship between the **Parties** and that the **Utility** is solely responsible for its own actions or omissions.

Section 13.07 GOVERNING LAW. This **Agreement** shall be controlled by the laws of the **State of North Dakota**. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this **Agreement** shall be venued in **Cass County** in the **State of North Dakota**, and the **Parties** waive any objection to personal jurisdiction.

Section 13.08 CONFLICT. In the event of a conflict between the **Parties** pertaining to the terms and conditions of this **Agreement**, this **Agreement** shall control and govern the relocation of **Utility** infrastructure, lines, and property for purposes of the **SEAI** and the **UMA**, but not the relocation of **Utility** infrastructure, lines, and property for purposes of the **SWDCAI**.

Section 13.09 SEVERABILITY. Each provision, section, sentence, clause, phrase, and word of this **Agreement** is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this **Agreement**.

Section 13.10 MODIFICATIONS. Any modifications or amendments to this **Agreement** must be in writing and signed by both **Parties** to this **Agreement**.

Section 13.11 BINDING EFFECT. This **Agreement** shall be binding upon and inure to the benefit of the **Parties** hereto and their respective personal representatives, successors, and assigns.

Section 13.12 REPRESENTATION. The **Parties**, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this **Agreement**, and agree they have not been influenced by any representations or statements made by any other parties.

Section 13.13 HEADINGS. Headings in this **Agreement** are for convenience only and will not be used to interpret or construe its provisions.

Section 13.14 COUNTERPARTS. This **Agreement** may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the **Parties** and delivered to the other **Party**.

Section 13.15 REPRESENTATION OF AUTHORITY. Each **Party** signing this **Agreement** represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this **Agreement** and that the **Agreement** is a valid and legal agreement binding on such **Party** and enforceable in accordance with its terms.

Section 13.16 FEES. The fees provided for herein shall not be interpreted or deemed to be the **Authority's** sole source of recovery for damages in any way arising from or related to **Utility's** delay, actions, or failure to act. The **Authority** shall have all remedies available to it at law in addition to any fees paid to the **Authority** by **Utility** pursuant to this **Agreement**.

Section 13.17 ELECTRONIC SIGNATURES. The **Parties** acknowledge and agree that this **Agreement** may be executed by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature.

Section 13.18 FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, member of **Congress**, an officer or employee of **Congress**, or any employee of a member of **Congress** with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for **U.S. EPA** in 40 **CFR** Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, **Utility** shall complete and submit to the **Authority** the certification and disclosure forms in Appendix A and Appendix B to 40 **CFR** Part 34, which are attached as **Exhibit D** to this **Agreement**. **Utility** shall also require all subcontractors and suppliers of any tier awarded a subcontract over $100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 **CFR** 34.110.

Section 13.19 DEBARMENT AND SUSPENSION. **Utility** certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 **CFR** Part 32 to participate in the **Project**. Suspension and debarment information can be accessed at http://www.sam.gov. **Utility** represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this **Agreement**. Upon award of this contract, **Utility** shall complete and submit to the **Authority**, the federal certification form regarding debarment and suspension, which is attached as **Exhibit D** to this **Agreement**.

Section 13.20 DAVIS-BACON ACT AND OTHER LABOR LAWS. **Utility** shall comply with the following federal labor requirements:

a. **Davis-Bacon Act**, which requires the payment of prevailing wage rates to all laborers and mechanics on construction projects in excess of $2,000. **Utility** and the **Authority** acknowledge and agree that the **Davis-Bacon Act** shall apply if **the Authority** is performing **Utility Adjustment Construction Work**. **Utility** and the **Authority** acknowledge and agree that the **Davis-Bacon Act** shall not apply if any party other than the **Authority** is performing **Utility Adjustment Construction Work**.

b. The **Contract Work Hours and Safety Standards Act**, which requires time and one-half pay for overtime hours worked in excess of forty hours in any workweek.

c. The **Copeland Act** (Anti-Kickback Act), which prohibits employers from inducing an employee to give up any part of compensation to which he or she is entitled.

Section 13.21 CIVIL RIGHTS OBLIGATIONS. The **Utility** shall comply with the following, federal non-discrimination requirements:

a. Title VI of the **Civil Rights Act of 1964**, which prohibits discrimination based on race, color, and national origin, including Limited English Proficiency ("LEP").

b. Section 504 of the **Rehabilitation Act of 1973**, which prohibits discrimination against persons with disabilities.

c. The **Age Discrimination Act of 1975**, which prohibits age discrimination.

d. Section 13 of the **Federal Water Pollution Control Act Amendments of 1972**, which prohibits discrimination on the basis of sex.

e. 40 **CFR** Part 7, as it relates to the foregoing.

f. **Executive Order No. 11246**.

Section 13.22 CERTIFICATION. **Utility** shall complete and submit to the **Authority**, the federal certification form regarding civil rights, which is attached as **Exhibit D** to this **Agreement**.

Section 13.23 TERMINATION. This **Agreement** may be terminated by the **Authority**, at any time and for any reason with three (3) calendar days written notice to the **Utility**.

(Signatures appear on the following pages.)

IN WITNESS WHEREOF, the **Parties** executed this **Agreement** on the date first written above.

AUTHORITY:

Metro Flood Diversion Authority

_____
Joel Paulsen, Executive Director

_____
Michelle (Shelly) Carlson, Chair

ATTEST:

_____
Dawn Lindblom, Secretary

UTILITY:

Polar Communications Mutual Aid Corporation

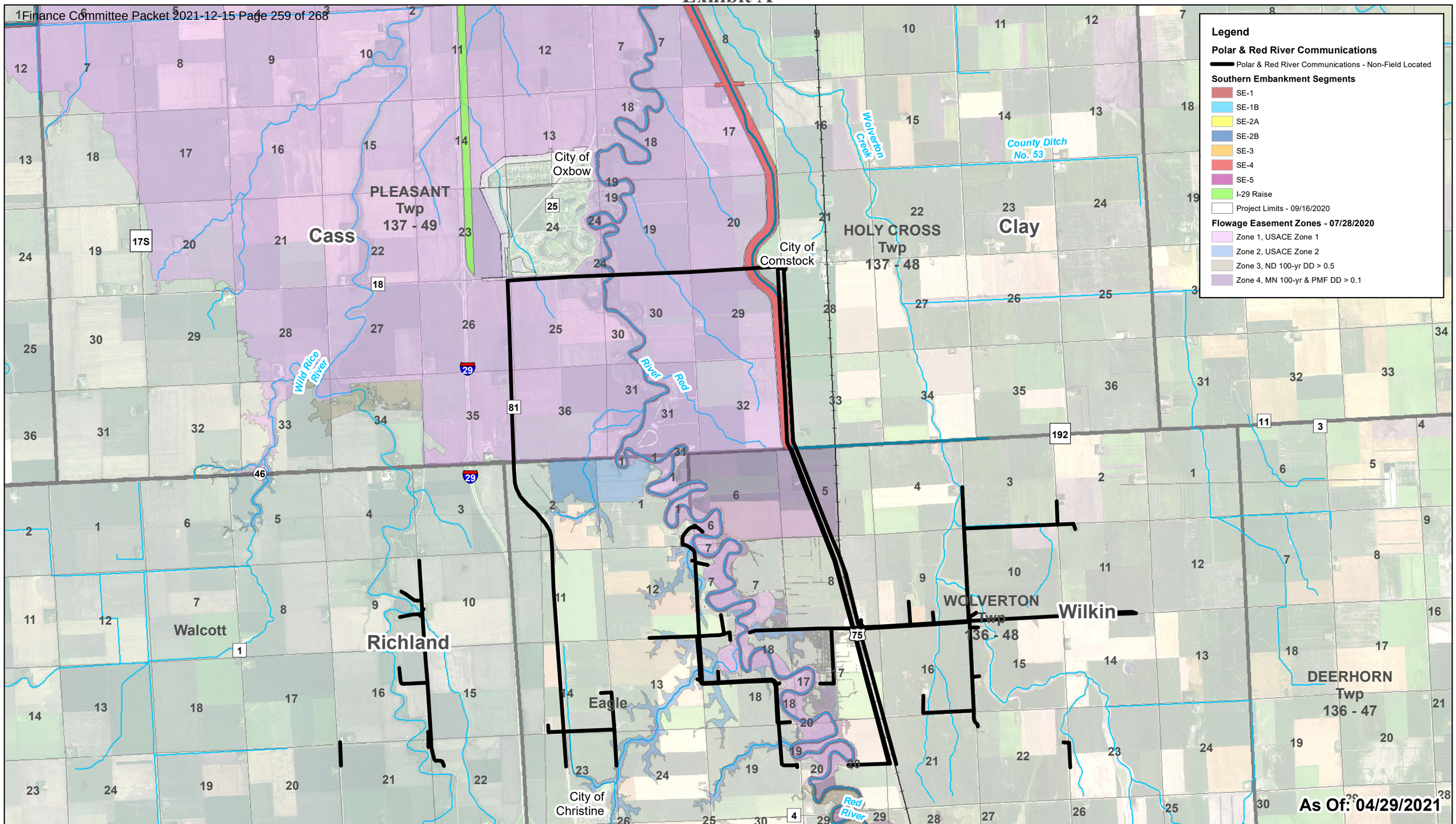
Karl Blake, CEO

ATTEST:

By: _____

Its: COO

Exhibit A



POLAR & RED RIVER COMMUNICATIONS FLOWAGE EASEMENT AREA FM AREA DIVERSION PROJECT

Created By: TJS Date Created: 04/29/21 Date Saved: 04/30/21 Date Plotted: 03/28/16 Date Exported: 04/30/21
Plotted By: Tanner.Schmidt Parcel Date: N/A Aerial Image: 2019 County NAIP SIDS Elevation Data: Lidar
Horizontal Datum: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet Vertical Datum: NAVD1988
T:\Projects\16400\16478\Flowage_Easement_Map_Book\Utility_Specific\16478_Polar_Communications_And_RCC_SP.mxd

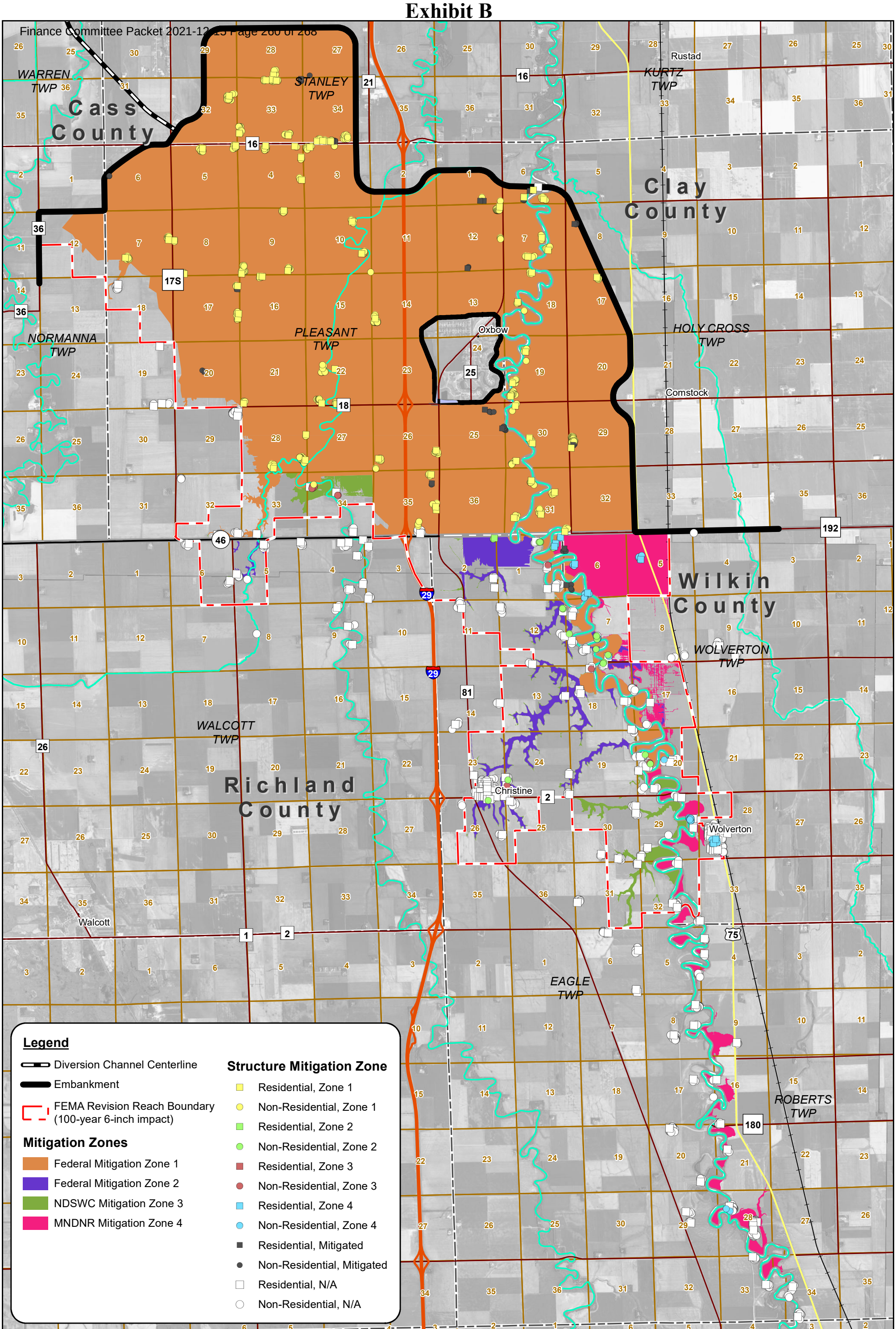
N W E S

0 0.5 1 2 Miles
1 in = 1 miles

Data Collection & Field Locates
Diversion Channel – 2016 & Prior
ND Southern Embankment – 2019
MN Southern Embankment – Not Field Located
I-29 Corridor - 2016 & Prior

FM AREA DIVERSION PROJECT

Exhibit B



FM AREA DIVERSION PROJECT
UPSTREAM MITIGATION AREA & MITIGATION ZONES

Created By: KMV Date Created: 06/18/18 Date Saved: 09/15/20 Date Exported: 09/15/20
Plotted By: kyle.volk Parcel Date: Varies Aerial Image: N/A Elevation Data: 2008 Lidar
Horizontal Datum: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet Vertical Datum: NAVD1988
T:\Projects\19100\19116\2020 Mitigation Plan Maps\2020_06_17\CLOMR5_UMA_Zones_Map_2020_09_15_Revision_Reach.mxd

N W E S

0 0.65 1.3 2.6 Miles

Source: CLOMR FEMA Case Number 19-08-0683R

FM AREA DIVERSION PROJECT

Exhibit D

FEDERAL CERTIFICATION FORMS
CERTIFICATION REGARDING FEDERAL LOBBYING

The undersigned certifies to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in any award documents for any of its subcontractors at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into a contract with the Authority. By executing this certificate the undersigned agrees and acknowledges that he/she has been duly authorized to execute this certificate.

Company/
Entity Name: Polar Communications

Signed: _____

Its: CEO

Date: 10-4-2021

PLEASE RETURN TO:
Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)

(1) The official representative of the party contracting with the Metro Flood Diversion Authority certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions, including contracts (Federal, State, or local) terminated for cause or default.

(e) Are not presently debarred, suspended, declared ineligible or voluntarily excluded from performing work for the State of North Dakota, the State of Minnesota, the Metro Flood Diversion Authority or any of its Member Entities.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

(3) The Official signing this certificate has been and is duly authorized to sign this certificate on behalf of the entity or entities which intend to enter into a contract with the Metro Flood Diversion Authority.

Official Business Name Polar Communications

Date: 10-4-2021

By: Karl Blake CEO

Name and Title of Authorized Representative

Signature of Authorized Representative

PLEASE RETURN TO:
Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this certification, the prospective contracting party is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contracting party shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Metro Flood Diversion Authority's (the "Authority") determination whether to enter into this transaction. However, failure of the prospective contracting party to furnish a certification or an explanation shall disqualify such person from entering into contracts with the Authority.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the Authority determined to enter into a contract with the prospective contracting party. In order to qualify for participation in the U.S. EPA WIFIA program the Authority is required to obtain this certification. If it is later determined that the prospective contracting party knowingly rendered an erroneous certification, in addition to other remedies available to both the Authority and the Federal Government, the Authority may terminate this transaction for cause or default.

4. The prospective contracting party shall provide immediate written notice to the Authority to which this Certificate is submitted if at any time the prospective contracting party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Authority for assistance in obtaining a copy of those regulations (13 CFR Part 145).

6. The prospective contracting party agrees by submitting this certification that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Authority.

7. The prospective contracting party further agrees by submitting this certification that it will require a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," from all sub-contractors without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A contracting party in a covered transaction may rely upon a certification of a prospective

participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A contracting party may decide the method and frequency by which it determines the ineligibility of its principals.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a contracting party is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a contracting party in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Authority may terminate this transaction for cause or default.

ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, THE AGE DISCRIMINATION ACT OF 1975, SECTION 13 OF THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972, 40 CFR PART 7, AND EXECUTIVE ORDER NO. 11246

The undersigned provides this assurance for the purpose of entering into a contract with the Metro Flood Diversion Authority (Authority) related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project), which is receiving federal financial assistance. Specifically, the US EPA WIFIA Program requires this assurance of all contractors and subcontractors providing services for the Project.

The undersigned assures that it will comply with:

1. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin including limited English proficiency (LEP);
2. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against persons with disabilities;
3. The Age Discrimination Act of 1975, as amended, which prohibits age discrimination;
4. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex;
5. 40 CFR Part 7, as it relates to the foregoing; and
6. Executive Order No. 11246.

The undersigned understands that this Assurance is binding on the undersigned, its successors, transferees, and assignees at any time during which federal financial assistance is provided to the Project. The undersigned will ensure that all contractors, subcontractors, or others with whom it arranges to provide services or benefits are not discriminating in violation of items 1-6. Otherwise, the contracts for services can be terminated for cause and the undersigned can be declared ineligible to contract for the Project.

By signing this form, the undersigned is agreeing to the above provisions and that he/she is duly authorized to execute this form.

Signature of Authorized Official	CEO Title
Karl Blake Print Name	Polar Communications Name of Institution or Agency
10-4-2021 Date	110 4th St East Street

Exhibit E

AUTHORITY INVOICING REQUIREMENTS

Utility will submit copies of the invoice to:

Bakkegardk@FMDiversion.gov and APInvoicesFMDiv@jacobs.com

Utility's invoices must be detailed and precise. Utility's invoices must clearly indicate fees and expenses for the current billing period month and include at least the following information:

i. Utility's name and address;

ii. Utility's federal employer identification number;

iii. Unique invoice number;

iv. Billing period;

v. Description of each activity performed for each day in which services were performed;

vi. Work order number associated with each activity;

vii. Name, billing rate, and hours worked by each person involved in each activity;

viii. Total amount of fees and costs "billed to date," including the preceding months;

ix. Preferred remittance address, if different from the address on the invoice's coversheet; and

x. All of the work performed during that billing period.

After the Authority receives Utility's invoice, the Authority will either process the invoice for payment or give Utility specific reasons, in writing within fifteen (15) business days, why part of all of the Authority's payment is being withheld and what actions Utility must take to receive the withheld amount. In the event of disputed billing, only the disputed portion will be withheld from payment and the Authority shall pay the undisputed portion. Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified following the receipt of payment, Utility must credit any payment in error from any payment that is due or that may become due to Utility under this Agreement or return the overpayment to the Authority within thirty (30) calendar days of the identification of the error.

And any other information referenced within this Agreement.

METRO FLOOD DIVERSION AUTHORITY

2022 Public Meeting Calendar

January

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1 ●
2	3	4	5	6	7	8
9	10	11	12	13 CCJWRD	14	15
16	17 ●	18	19	20	21	22
23	24	25	26	27 C MCCJPA CCJWRD B	28	29
30	31					

February

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10 CCJWRD	11	12
13	14	15	16	17	18	19
20	21 ●	22	23	24 C MCCJPA CCJWRD B	25	26
27	28					

March

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10 CCJWRD	11	12
13	14	15	16	17	18	19
20	21	22	23	24 C MCCJPA CCJWRD B	25	26
27	28	29	30	31		

April

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14 CCJWRD	15	16
17	18	19	20	21	22	23
24	25	26	27	28 C MCCJPA CCJWRD B	29	30

May

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12 CCJWRD	13	14
15	16	17	18	19	20	21
22	23	24	25	26 C MCCJPA CCJWRD B	27	28
29	30 ●	31				

June

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9 CCJWRD	10	11
12	13	14	15	16	17	18
19	20 ●	21	22	23 C MCCJPA CCJWRD B	24	25
26	27	28	29	30		

July

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4 ●	5	6	7	8	9
10	11	12	13	14 CCJWRD	15	16
17	18	19	20	21	22	23
24	25	26	27	28 C MCCJPA CCJWRD B	29	30
31						

August

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11 CCJWRD	12	13
14	15	16	17	18	19	20
21	22	23	24	25 C MCCJPA CCJWRD B	26	27
28	29	30	31			

September

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5 ●	6	7	8 CCJWRD	9	10
11	12	13	14	15	16	17
18	19	20	21	22 C MCCJPA CCJWRD B	23	24
25	26	27	28	29	30	

October

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10 ●	11	12	13 CCJWRD	14	15
16	17	18	19	20	21	22
23	24	25	26	27 C MCCJPA CCJWRD B	28	29
30	31					

November

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11 ●	12
13	14	15	16	17 C MCCJPA CCJWRD B	18	19
20	21	22	23	24 ●	25	26
27	28	29	30			

December

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15 C MCCJPA CCJWRD B	16	17
18	19	20	21	22	23	24
25	26 ●	27	28	29	30	31

Committee Meetings

Public Outreach | 2:00 p.m.
Land Management | 3:00 p.m.
Finance | 4:00 p.m.

Diversion Board of Authority | 3:30 p.m.

MCCJPA Board | 1:00 p.m.
CCJWRD Board | 8:00 a.m.

● Federal Holiday