Board Agenda

METRO FLOOD DIVERSION AUTHORITY

Diversion Board of Authority

June 23, 2022 @ 3:30 p.m. CST

This meeting will be in-person at Fargo City Hall Commission Chambers (225 4th St N, Fargo, ND 58102) and online.

1. Call to Order
    a. Roll Call of Members

2. Approve minutes from May 26, 2022
   [Attachment 00.01] (Pg. 3)

3. Approve Order of Agenda

CONSENT AGENDA – APPROVE THE FOLLOWING:

a. Finance Report [Attachment 01.00] (Pg. 9)
b. Voucher Approval [Attachment 02.00] (Pg. 30)
c. DA Board Approval Contract Actions [Attachment 03.00] (Pg. 36)
    i. Minnkota Power Cooperative, TO 3, Amendment 0 [Attachment 03.01] (Pg. 38)
    ii. Schmidt and Sons, WP50F, Change Order 01 [Attachment 03.02] (Pg. 40)
d. DA Board Approval MOU and Agreement Actions [Attachment 04.00] (Pg. 42)
    i. Red River Valley Power Coop & MFDA MURA [Attachment 04.01] (Pg. 45)
    ii. SBA & MFDA MOU [Attachment 04.02] (Pg. 86)

REGULAR AGENDA:

4. Executive Director Report
   [Attachment 05.00] (Pg. 153)
5. General Counsel Update
6. USACE Project Update –
7. Public Outreach Update
    a. Public Outreach Update
8. Land Management Update
    a. Property Acquisition Status Report
       [Attachment 06.00] (Pg. 155)

Board Agenda

METRO FLOOD DIVERSION AUTHORITY

9. Finance Update
10. Other Business
    a. Program Information Points
11. Next Meeting: July 28, 2022
12. 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

Metro Flood Diversion Authority Board of Authority Meeting Minutes

3:30 P.M. – May 26, 2022
City of Fargo Commission Chambers

A regular meeting of the Metro Flood Diversion Authority Board of Authority was held on May 26, 2022. The following members were present: Chad Peterson, Cass County Commissioner; Bernie Dardis, Mayor, City of West Fargo; Shelly Carlson, Mayor, City of Moorhead; Dr. Tim Mahoney, Mayor, City of Fargo; Chuck Hendrickson, Moorhead City Council; David Ebinger, Clay County Commissioner; John Strand, Fargo City Commissioner; Kevin Campbell, Clay County Commissioner and Larry Seljevold, Moorhead City Council.

Members absent: Dave Piepkorn, Fargo City Commissioner; Mary Scherling, Cass County Commissioner; Rick Steen, Cass County Commissioner and Rodger Olson, Cass County Joint Water Resource District.

1. CALL TO ORDER
   Mr. Peterson called the meeting to order at 3:30 PM. Roll call was taken, and a quorum was present.

2. APPROVE MINUTES FROM THE APRIL 2022 MEETING
   MOTION PASSED
   Mayor Dardis moved to approve the minutes from the April 2022, meeting and Mr. Ebinger seconded the motion. On a voice vote, the motion carried.

3. APPROVE ORDER OF AGENDA
   MOTION PASSED
   Mr. Strand moved to approve the order of the agenda and Mayor Carlson seconded the motion. On a voice vote, the motion carried.

   CONSENT AGENDA
   MOTION PASSED
   Mr. Ebinger moved to approve the consent agenda and Dr. Mahoney seconded the motion. On a roll call vote, the motion passed.

4. EXECUTIVE DIRECTOR REPORT
   Mr. Nicholson provided the following current events update:
   Happenings Event Highlights
   • Association of State Floodplain Managers Conference – Joel Paulsen and Greg Thompson presented
   • Financing America's Infrastructure Conference – Joel Paulsen, Sam Headon, and Jaime Diaz Perez (Acciona) on panel this week
   Major Project Accomplishments
   • PFI Awards – Commissioner Peterson, Joel Paulsen, and Martin Nicholson accepted America's P3 Deal of the Year Award

P3 Updates
• Groundbreaking and community event planning in progress for Aug. 9, 2022
USACE Updates
• Bids awarded for Drayton Dam, Drain 27, and SE-2A

5. GENERAL COUNSEL UPDATE
Mr. Shockley did not have any updates to report.

6. USACE PROJECT UPDATE
Ms. Williams provided the following USACE project update:
1 Diversion Inlet Structure (DIS) – Construction
Structure includes 3-50 ft. wide Tainter gates. Construction is 79% complete and remains on schedule. Required completion date is 7 June 2023. Schedule for primary features:
2021: Complete dam walls, concrete piers, stilling basin and walls. Complete gate fabrication.
2022: Install bridge deck, gates, and operating machinery.
2023: Paint gates, seed.
2024: Turf established.
2 Wild Rice River Structure (WRRS) – Construction
Structure includes 2-40 ft. wide Tainter gates. Construction is 53% complete and remains on schedule. The required completion date is 20 October 2023. Schedule for primary features:
2021: Approach walls and apron, stilling basin and walls, preloads. Complete gate fabrication.
2022: Control building, dam embankment, gate installation.
2023: Complete excavation, dam embankment, seed.
2024: Turf established.
3 I-29 Raise – Construction
Includes approximately 4 miles of interstate raise between County Roads 16 and 18. Construction is 50% complete and remains on schedule. IBI in process of reconstructing the CR18 interchange. The mainline raise will occur from south to north and be complete Summer 2023. Required completion date NLT 1 January 2024.
4 Southern Embankment – Reach SE-1 (Western Tieback) - Construction
Includes approximately 2 miles of dam embankment, southwest of the Diversion Inlet Structure location. Construction is 80% complete. Anticipated completion date is Sept 2022.
5 Red River Structure (RRS) - Construction
Structure includes 3-50 ft. wide Tainter gates. Construction contract was awarded to Ames Construction, Inc on 14 March 2022 for $114,897,115. Required completion date is 19 March 2026.
6 Drain 27 Wetland Mitigation Project - Construction
The base construction contract (work north of 112th Ave S.) was awarded to HSG Park JV, LLC on 28 April 2022 for $3.9 million. The anticipated construction completion date is November 2022.
7 Drayton Dam Mitigation Project Design - Construction
Construction contract awarded to HSG Park JV, LLC on 19 May 22 for $7.7 million. Anticipated completion is Fall 2023.
8 Southern Embankment – Reach SE-2A - Construction
Construction contract awarded to H.G Construction of Platte City, MO on 12 May 2022 for $6.1 million. Anticipated completion is September 2024.
9 Southern Embankment Design – Reaches SE-1B, 2B, 3, 4 and 5
SE-1B: 95% review complete. Signoff pending SE-2B: 65% review starts July 2022
SE-4: 35% review starts July 2022 SE-3 and 5: Conceptual design continues

10 Additional 2022 Activities

Support P3 design/construction of the diversion channel. Forest and cultural mitigations. Complete pre-project geomorphology surveys. Emergency Action Planning. Water Control Manual.

7. PUBLIC OUTREACH UPDATE

Ms. Willson provided the following update on the public outreach/communications efforts:

Website:

•All updates completed

•Faces of the Diversion section added

•Form for tours will launch soon

•E-newsletter sign-up form coming soon

•Work continues with agency for developing new site

Newsletter:

•The Diversion Current

•Debuts in June

•Two versions initially

•Plan to release monthly

•Required by TRs

Social Media:

•Monitoring new analytics and content that best resonates with audience

•Seeing gradual organic growth

Coming Soon/In Progress:

•Office address change notification and updates

•Faces of the Diversion: Rodger Olson

•Lands Update with Rodger

•Construction Update: Summer Preview

•2022 tour handouts

8. LAND MANAGEMENT UPDATE

a. Recommendation for the Disposal of Organic Farmlands

Ms. Smith provided the following overview of the organic farmlands disposal recommendation and noted that it was unanimously approved at the Finance Committee and asked the Board for final approval.

1. Establish market value.

2. Identify organic farmland owners and producers who are impacted by the comprehensive project. Offer the organic farmland to the impacted organic farmland owners and producers in exchange for necessary land rights.

3. If the impacted organic farmland owners and producers do not accept the exchange of land for necessary land rights, then offer the organic farmland to landowners impacted by the Southern Embankment and Associated Infrastructure component in a land exchange.

4. If the impacted organic farmland owners and producers do not accept the exchange of land for necessary land rights, then offer the organic farmland to landowners impacted by the Southern Embankment and Associated Infrastructure component in a land exchange. If landowners impacted by the Southern Embankment and Associated Infrastructure component are not interested in a land exchange, then the parcels will be reviewed by the Metro Flood Diversion Authority executive director to determine if the parcels should be deemed excess lands.

5. Offer the organic farmland via public sale.

MOTION PASSED

Dr. Mahoney moved to approve the disposal of organic farmlands recommendation and Mr. Campbell seconded the motion. On a roll call vote, the motion carried.

b. Property Acquisition Status Report

Ms. Smith gave the property acquisition status report and indicated that 84 parcels (26 owners) have gone through the LRED process. She also reported the following milestones:

- Parcels acquired within the channel – 98% complete
- Southern Embankment – 77% complete
- Upstream Mitigation Area – 17% complete
- Monitoring Easements – 71% complete

MCCJPA Update

Mr. Campbell reported that one farm lease (organic land) and two contracting actions were approved. The contracting actions that were approved are Crown Appraisals and Compass Land Consultants.

9. FINANCE UPDATE

Mayor Dardis reported that Consent Agenda items a-e were unanimously approved at the Finance Committee meeting and turned it over to Mr. Nicholson for the re-baseline report.

a. Program Budget and Financial Plan Re-Baseline Report

Mr. Nicholson provided the following update on the 2022 financial plan:

Cost and Risk Inputs

- Lands
- Construction
- Mitigation Costs
- Utility relocations
- Non-construction costs
- Contingency

Closing Comments

- Costs through construction completion remain within short-term financing ability
- Long-term debt service and P3 payments remain within affordability limits
- Financed contingency remains about the same as before at ~$160M
- All long-term debt and payments are covered if sales tax receipts grow at 2.9% per year or greater

10. OTHER BUSINESS

a. Jacobs Safety Presentation

Mr. Crisman gave the following safety presentation:

Jacobs has developed a comprehensive Project Health, Safety, and Environmental Plan (PHSEP) to ensure processes leading to project risks are being eliminated or mitigated through the identification of hazards, assessment of risk, and the application of effective control measures, and to achieve a safe and healthy workplace for ourselves and the subconsultants to whom we have a legal and moral duty of care, are established. Jacobs has created an initial Hazard Identification and Risk Assessment (HIIRA) that identifies known hazards and control measures on projects similar to the FargoMoorhead Area Diversion.

StepBack Process

A task level, personal and team risk assessment and hazard identification process developed to help ensure that routine and non-routine tasks are completed without an adverse event occurring. Three (3) Key Processes:

- Identify: identify any new hazards or changes to the work environment
- Evaluate: assess the risk associated with the new hazard or change to the environment to understand the level of risk
- Act: take appropriate action. Identify risk mitigation measures. STOP if necessary and engage with your supervision

BeyondZero

BeyoneZero® is our approach to the health, safety and security or our people, the protection of the environment and the resilience of the project. BeyondZero is the foundation of our company's culture of caring and a core part of our values and who we are at Jacobs. We are proud that in our culture, our people go beyond following rules, procedures, and processes. Our goal is beyond driving statistics to zero. Although we have made significant progress since we commenced our BeyondZero journey in 2007, our performance can always be better. It is imperative that through our common vision and purpose, we continue to improve together.

Our Vision:

- Work must be healthy, safe and secure for our people and our planet. We go beyond our workplace and into our daily lives, creating a safer and healthier future for our families and our communities.

Our Approach to BeyondZero:

- Our BeyondZero to 2025 and Beyond Strategy and programs drive ambitious, sustained and continuous improvements in our HSE and security performance, lift the wellbeing of our employees and our partners, and increase our business resilience.
- We tackle all types of harm at work. This includes continuing our focus on acute harm associated with high-risk activities, while ensuring we are managing wider health risks, including mental health.
- We also focus on achieving better outcomes for our supply partners, especially in industries of greater risk such as construction, work in lesser industrialized nations, or those who are more likely to be engaged in temporary, geographically remote or precarious employment.

- As the future of work becomes a reality and global challenges to our security, wellbeing and ability to operate evolve, we remain focused on managing HSE and security risks effectively and leveraging our culture of caring to deliver the best outcomes for our people, the environment, our company, clients, the community and our partners.

11. NEXT MEETING
The next meeting will be June 23, 2022.

12. ADJOURNMENT
Mr. Campbell moved to adjourn, and Mr. Ebinger seconded the motion. The meeting adjourned at 4:27 PM.

FM Metropolitan Area Flood Risk Management Project
Fiscal Accountability Report Design Phase
As of 05/31/22

							790: FM Diversion Projet Fund	770: Budget Fund			773: Excess Capital Fund			
	2011-2017	2018	2019	2020	2021	2022	Total	2021	2022	Fund	2021	2022	Total	Grand Total
Revenues														
City of Fargo	135,530,327	30,150,091	32,835,957	30,746,840	39,900,525	8,455,563	277,619,302	-	-	-	-	-	-	277,619,302
Cass County	192,414,790	14,305,401	15,637,755	15,716,168	20,605,468	3,360,229	262,039,811	-	-	-	-	-	-	262,039,811
State Water Commission	165,835,767	9,227,010	26,655,616	69,249,584	44,928,872	11,761,987	327,658,836	-	-	-	-	-	-	327,658,836
State of ND - Legacy Fund	-	-	-	-	-	27,390,438	27,390,438	-	-	-	-	-	-	27,390,438
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	1,586,436	-	358,178	878,020	122,038	-	2,944,671	-	-	-	-	-	-	2,944,671
Reimbursements	78,599	27,396	22,600	40,007	52,055	-	220,657	-	-	-	-	-	-	220,657
Lease/Rental Payments	967,151	527,903	653,883	802,745	622,459	38,450	3,612,590	-	-	-	-	-	-	3,612,590
Asset Sales	1,222,335	-	-	13,234	1,802,265	-	3,037,835	-	-	-	-	-	-	3,037,835
Interest Income	505,157	1,246,875	1,885,896	1,152,843	1,011,554	176,633	5,978,958	-	-	-	-	-	-	5,978,958
Miscellaneous	3,879	356	-	651	7,336	1,982	14,205	659,570	550,086	1,209,655	-	-	-	1,223,860
Total Revenues	498,851,246	55,485,032	78,049,884	118,600,091	137,683,563	51,185,282	939,855,099	659,570	550,086	1,209,655	-		-	941,064,754
Expenditures														
7905 Army Corp Payments	53,159,000	-	-	-	-	-	53,159,000	-	-	-	-	-	-	53,159,000
7910 WIK - Administration	2,006,449	849,081	1,201,725	2,068,489	2,650,150	443,543	9,219,437	697,145	255,470	952,615	-	-	-	10,172,052
7915 WIK - Project Design	28,398,585	2,142,880	2,516,133	3,258,835	2,261,337	325,177	38,902,948	-	-	-	-	-	-	38,902,948
7920 WIK - Project Management	45,205,261	6,817,589	8,326,357	10,369,118	13,629,756	3,857,723	88,205,805	-	-	-	-	-	-	88,205,805
7925 WIK - Recreation	163,223	-	40,000	75,000	-	-	278,223	-	-	-	-	-	-	278,223
7930 LERRDS - North Dakota	170,376,168	8,114,895	30,223,861	66,942,804	42,321,398	9,310,794	327,289,921	-	-	-	-	-	-	327,289,921
7931 LERRDS - Minnesota	2,202,937	4,914	5,352	2,769,551	3,832,050	150,906	8,965,711	-	-	-	-	-	-	8,965,711
7940 WIK Mitigation - North Dakota	843,506	69,283	12,357	97,512	35,279,546	7,589	36,309,793	-	-	-	-	-	-	36,309,793
7941 WIK Mitigation - Minnesota	-	-	-	-	112,271	31,834	144,105	-	-	-	-	-	-	144,105
7950 Construction - North Dakota	69,359,502	4,384,090	18,183,794	12,172,911	25,488,649	403,513	129,992,459	-	-	-	-	-	-	129,992,459
7951 Construction - Minnesota	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7952 Construction - O/H/B	28,025,762	4,111,617	369,936	1,104,928	2,070,541	26,340	35,709,123	-	-	-	-	-	-	35,709,123
7955 Construction Management	10,172,430	296,092	685,741	444,536	180,481	60,159	11,839,438	-	-	-	-	-	-	11,839,438
7980 Operations & Maintenance	34,941	41,493	35,328	79,049	2,971	-	193,782	-	-	-	-	-	-	193,782
7990 Project Financing	14,762,103	9,879,405	11,434,046	12,017,311	14,236,187	348,099	62,677,152	-	-	-	-	-	-	62,677,152
7995 Project Eligible - Off Formula Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7999 Non Federal Participating Costs	221,684	-	-	-	-	-	221,684	-	-	-	-	-	-	221,684
Total Expenditures	424,931,551	36,711,339	73,034,630	111,400,046	142,065,336	14,965,678	803,108,580	697,145	255,470	952,615	-	-	-	804,061,196
Other Financing Sources (Uses)														
Transfers From Other Diversion Funds	-	-	-	-	-		-	-	-	-	-	-	-	-
7998 Transfers to Other Diversion Funds	-	-	-	-	659,566	550,000	1,209,566	-	-	-	-	-		1,209,566
Total Other Financing Sources (Uses)	-	-	-	-	659,566	550,000	1,209,566	-	-	-	-	-	-	1,209,566

FM Metropolitan Area Flood Risk Management Project
Statement of Net Position
May 31, 2022

	FM Diversion Project Fund	Budget Fund	Grand Total
Assets			
Cash	$ 111,603,296	$ 257,040	$ 111,860,336
Cash Horace 3.01 MIT	2,500,404	-	2,500,404
Cash Held In Trust at BND			
Excess Revenue Fund	190,722	-	190,722
Temp Debt Obligation Fund	575,970	-	575,970
Authority Loan Fund	15,693	-	15,693
P3 Reserve Fund	16,121,978	-	16,121,978
Revenue Fund	8		8
Receivables			-
State Water Commission *	5,062,880	-	5,062,880
Prepaid Expense	223,728	-	223,728
Total assets	**136,294,679**	**257,040**	**136,551,719**
Liabilities			
Vouchers payable	571,078	-	571,078
Retainage payable	167,048	-	167,048
Rent Deposit	19,600	-	19,600
Total liabilities	**757,725**	**-**	**757,725**
NET POSITION	**$ 135,536,953**	**$ 257,040**	**$ 135,793,993**

* Receivable balance is as of 4/30/2022

METRO FLOOD DIVERSION AUTHORITY

Data Through Date: Friday, May 27, 2022

Tuesday, June 14, 2022

Summary Of Expenses
EXP-2022-05

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
770-7910-429.11-00	5/5/2022	319213	Cass County Government	$54,092.40	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
			Full Time Staff / Salaries	**$54,092.40**			
770-7910-429.20-01	5/5/2022	319213	Cass County Government	$4,274.00	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
			Employee Benefits / Health Insurance	**$4,274.00**			
770-7910-429.20-03	5/5/2022	319213	Cass County Government	$160.00	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
			Employee Benefits / Dental Insurance	**$160.00**			
770-7910-429.21-01	5/5/2022	319213	Cass County Government	$3,273.95	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
			Employee Benefits / Social Security	**$3,273.95**			
770-7910-429.21-02	5/5/2022	319213	Cass County Government	$765.69	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
			Employee Benefits / Medicare	**$765.69**			
770-7910-429.22-07	5/5/2022	319213	Cass County Government	$6,631.74	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
			Pension Benefits / Retirement	**$6,631.74**			
770-7910-429.33-37	5/12/2022	319408	HighRoad Partners, LLC	$400.00	HR SERVICES	V09701	HR SERVICES
			Other Services / HR Services	**$400.00**			
770-7910-429.53-20	5/5/2022	319213	Cass County Government	$263.00	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Communications / Cellular Phone Service	**$263.00**			
770-7910-429.56-60	5/5/2022	319213	Cass County Government	$139.69	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			In State Travel / In State Travel Expenses	**$139.69**			
770-7910-429.57-60	5/5/2022	319213	Cass County Government	$3,213.24	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Out of State Travel / Out of State Travel Exp	**$3,213.24**			
770-7910-429.59-21	5/5/2022	319213	Cass County Government	$650.00	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Education / Seminar & Conf. Outstate	**$650.00**			
770-7910-429.61-10	5/5/2022	319213	Cass County Government	$160.87	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			General Supplies / Office Supplies	**$160.87**			
770-7910-429.68-30	5/5/2022	319213	Cass County Government	$379.21	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Miscellaneous / Meeting Incidentals	**$379.21**			

METRO FLOOD DIVERSION AUTHORITY

Data Through Date: Friday, May 27, 2022

Summary Of Expenses
EXP-2022-05

Tuesday, June 14, 2022

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
770-7910-429.74-11	5/5/2022	319213	Cass County Government	$6,960.00	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Capital Outlay / Computer Equipment	**$6,960.00**			
770-7910-429.74-12	5/5/2022	319213	Cass County Government	$16.11	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
			Capital Outlay / Computer Software	**$16.11**			
			770 Subtotal	**$81,379.90**			
790-7910-429.33-20	5/26/2022	319683	EIDE BAILLY LLP	$9,291.25	DIVERSION AUDIT SERVICES	V06403	2021 AUDIT SERVICES
			Other Services / Accounting Services	**$9,291.25**			
790-7910-429.33-25	6/5/2022	934	OHNSTAD TWICHELL PC	$62,736.70	OHNSTAD TWICHELL PC	V00102	General & Admin. WIK
			Other Services / Legal Services	**$62,736.70**			
790-7910-429.34-20	5/19/2022	319567	Michael H Klein	$3,177.24	PUBLIC OUTREACH/COMMUNICA	V07201	COMMUNICATION CONSULTING
	5/19/2022	319584	Neon Loon Communications, LL	$11,672.50	COMMUNICATIONS SUPPORT	V09601	COMMUNICATIONS SUPPORT
			Technical Services / Marketing / Public Relat.	**$14,849.74**			
790-7910-429.34-40	5/26/2022	319690	Flint Group	$2,275.00	WEBSITE DESIGN	V10201	WEBSITE DESIGN
			Technical Services / Web Site Develop/Maintain	**$2,275.00**			
790-7910-429.34-56	5/25/2022	ES052200	City of Fargo	$16,480.00	FISCAL AGENT FEE - 05/22	V05902	MONTHLY FISCAL AGENT FEE
				$16,480.00			
790-7910-429.38-68	5/12/2022	319392	GA Group, PC	$4,000.00	COVT RELATIONS COUNSEL	V07601	2021 GOVERNMENT RELATIONS
	5/19/2022	319549	GA Group, PC	$229.32	GOVT RELATIONS COUNSEL	V07601	2021 GOVERNMENT RELATIONS
			Other Services / Lobbyist	**$4,229.32**			
790-7915-429.33-05	5/12/2022	319367	MOORE ENGINEERING INC	$190.00	MOORE ENGINEERING, INC.	V01201	Cass Joint Water ROE
	5/12/2022	319367	MOORE ENGINEERING INC	$190.00	MOORE ENGINEERING, INC	V01201	Cass Joint Water ROE
	6/2/2022	319812	HOUSTON-MOORE GROUP L	$88,108.49	PROJECT MANAGEMENT	V01633	DESIGN & CONST. SUPPORT
	6/2/2022	319812	HOUSTON-MOORE GROUP L	$46,594.25	PROJECT MANAGEMENT	V01634	H&H MITIG. & PERMIT SUPPORT
			Other Services / Engineering Services	**$135,082.74**			
790-7920-429.33-05	6/2/2022	319812	HOUSTON-MOORE GROUP L	$287,076.41	PROJECT MANAGEMENT	V01633	DESIGN & CONST. SUPPORT
	6/2/2022	319812	HOUSTON-MOORE GROUP L	$24,240.00	PROJECT MANAGEMENT	V01634	H&H MITIG. & PERMIT SUPPORT
			Other Services / Engineering Services	**$311,316.41**			

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Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7920-429.33-79	5/26/2022	319677	CH2M Hill Engineers Inc	$526,336.96	PROGRAM MGMT & SERVICES	V00211	CH2M HILL-6/2019-12/2021
	5/26/2022	319677	CH2M Hill Engineers Inc	$560,803.96	SUPPORT SERVICES	V00212	P3 PROCUREMENT SUPPORT
			Other Services / Construction Management	**$1,087,140.92**			
790-7930-429.33-05	5/12/2022	319367	HDR Engineering, Inc.	$121,768.66	HDR ENGINEERING INC	V01201	Cass Joint Water ROE
	5/12/2022	319367	Prosource Technologies, Inc	$21,387.22	PROSOURCE TECHNOLOGIES	V01201	Cass Joint Water ROE
	5/12/2022	319367	Prosource Technologies, Inc	$7,627.50	PROSOURCE TECHOLOGIES LLC	V01201	Cass Joint Water ROE
	5/12/2022	319367	SRF Consulting Group	$127,508.24	SRF CONSULTING GROUP INC	V01201	Cass Joint Water ROE
	5/12/2022	319367	ULTEIG ENGINEERS INC	$25,050.70	ULTEIG ENGINEERS	V01201	Cass Joint Water ROE
	6/2/2022	319812	HOUSTON-MOORE GROUP L	$22,062.21	PROJECT MANAGEMENT	V01634	H&H MITIG. & PERMIT SUPPORT
	6/2/2022	319812	HOUSTON-MOORE GROUP L	$3,953.00	PROJECT MANAGEMENT	V01633	DESIGN & CONST. SUPPORT
			Other Services / Engineering Services	**$329,357.53**			
790-7930-429.33-25	5/12/2022	319367	Larkin Hoffman Attorneys	$12,556.00	DORSEY & WHITNEY LLP	V01201	Cass Joint Water ROE
	5/12/2022	319367	Larkin Hoffman Attorneys	$28,700.50	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
	5/12/2022	319367	OHNSTAD TWICHELL PC	$424,475.93	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
	5/12/2022	319367	OHNSTAD TWICHELL PC	$122.00	OHNSTAD TWICHELL, P.C.	V01203	Cass Joint Water OHB
			Other Services / Legal Services	**$465,854.43**			
790-7930-429.33-32	5/12/2022	319367	COMPASS LAND CONSULTA	$3,000.00	COMPASS LAND CONSULTANTS	V01201	Cass Joint Water ROE
	5/12/2022	319367	CROWN APPRAISALS	$23,000.00	CROWN APPAISALS, INC	V01201	Cass Joint Water ROE
			Other Services / Appraisal Services	**$26,000.00**			
790-7930-429.33-79	5/26/2022	319677	CH2M Hill Engineers Inc	$18,574.88	PROPERTY ACQUISITION	V00210	CH2M HILL-LAND ACQUISITON
			Other Services / Construction Management	**$18,574.88**			
790-7930-429.34-65	5/12/2022	319367	1066 - CHESTER WAYNE & I	$1,000.00	INGE FETNER	V01701	ND LAND PURCH-OUT OF TOWN
	5/12/2022	319367	5237 - STEVEN V MCNAMEE	$1,000.00	STEVEN MCNAMEE	V01701	ND LAND PURCH-OUT OF TOWN
			Technical Services / Right of Entry Requests	**$2,000.00**			
790-7930-429.38-99	5/12/2022	319367	ALL AMERICAN PLUMBING	$1,693.94	ALL AMERICAN PLUMBING	V01701	ND LAND PURCH-OUT OF TOWN
	5/12/2022	319367	Title Company	$100.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/26/2022	319695	Grand Farm	$10,000.00	AUTONOMOUS MOWING	V09501	AUTONOMOUS MOWING SOLUTI
			Other Services / Other Services	**$11,793.94**			

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790-7930-429.42-20	5/12/2022	319367	Heartland Excavating, LLC	$255.00	HEARTLAND EXCAVATING	V01701	ND LAND PURCH-OUT OF TOWN
			Cleaning Services / Snow Clearing	**$255.00**			
790-7930-429.54-10	5/12/2022	319367	DAILY NEWS	$1,085.40	WAHPETON DAILY NEWS	V01201	Cass Joint Water ROE
	5/12/2022	319367	FORUM COMMUNICATIONS	$5,348.94	FORUM COMMUNICATIONS	V01201	Cass Joint Water ROE
			Advertising / Legal Publications	**$6,434.34**			
790-7930-429.61-50	5/12/2022	319367	CASS COUNTY JOINT WATE	$7.76	CASS COUNTY JOINT WRD	V01201	Cass Joint Water ROE
	5/12/2022	319367	CASS COUNTY JOINT WATE	$33.27	UPS	V01201	Cass Joint Water ROE
			General Supplies / Postage	**$41.03**			
790-7930-429.62-51	5/12/2022	319367	Cass County Electric Cooperativ	$1,092.32	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
			Energy / Electricity	**$1,092.32**			
790-7930-429.62-52	5/12/2022	319367	Dakota Plains AG	$34.70	CHS DAKOTA PLAINS AG	V01701	ND LAND PURCH-OUT OF TOWN
	5/12/2022	319367	Farmers Union Oil Company of	$1,800.00	PETRO SERVE USA	V01701	ND LAND PURCH-OUT OF TOWN
				$1,834.70			
790-7930-429.67-11	5/12/2022	319367	0731 - MCDOUGALL	$32,000.00	TOM & CHRIS MCDOUGALL	V01701	ND LAND PURCH-OUT OF TOWN
			Relocation / Residential Buildings	**$32,000.00**			
790-7930-429.67-12	5/12/2022	319367	0220 - ANDERSON 2	$77,467.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/12/2022	319367	0220 - ANDERSON 2	$66,586.35	PRAIRIE SCALE SYSTEMS	V01701	ND LAND PURCH-OUT OF TOWN
	5/12/2022	319367	0220 - ANDERSON 2	$80,419.44	PRAIRIE STORAGE	V01701	ND LAND PURCH-OUT OF TOWN
			Relocation / Commercial Buildings	**$224,472.79**			
790-7930-429.71-30	5/12/2022	319367	0213 - VIVIAN E BAILLY RE	($777,975.00)	CLERK OF COURT	V01701	ND LAND PURCH-OUT OF TOWN
	5/12/2022	319367	0214 - ROBERT A BAILLY T	($777,975.00)	CLERK OF COURT	V01701	ND LAND PURCH-OUT OF TOWN
	5/12/2022	319367	1098N - TERRY M & KRISTIE	$538,600.00	CLERK OF COURT	V01701	ND LAND PURCH-OUT OF TOWN
	5/12/2022	319367	1201 - ADAMS 1	$258,265.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/12/2022	319367	5024 - JULIE A OTTIS & NEIL	($42,500.00)	CLERK OF COURT	V01701	ND LAND PURCH-OUT OF TOWN
	5/12/2022	319367	5024N - JULIE A OTTIS REV	$62,521.88	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
			Land / Land Purchases	**($739,063.12)**			

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Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7930-429.80-17	5/12/2022	319367	CASS COUNTY TREASURER	$106,366.10	CASS COUNTY FINANCE	V01701	ND LAND PURCH-OUT OF TOWN
	5/12/2022	319367	CASS COUNTY TREASURER	$261.87	CASS COUNTY FINANCE	V01702	ND LAND PURCHASE-HARDSHIP
			Debt Service / Property Tax - FMDA	**$106,627.97**			
790-7931-429.33-05	5/19/2022	319524	Prosource Technologies, Inc	$16,943.55	PROSOURCE TECHNOLOGIES	V06201	MCCJPA - MN ROE
	5/19/2022	319524	SRF Consulting Group	$20,097.65	SRF CONSULTING GROUP	V06201	MCCJPA - MN ROE
			Other Services / Engineering Services	**$37,041.20**			
790-7931-429.33-25	5/19/2022	319524	OHNSTAD TWICHELL PC	$46,012.00	OHNSTAD TWICHELL	V06201	MCCJPA - MN ROE
			Other Services / Legal Services	**$46,012.00**			
790-7931-429.34-65	5/19/2022	319524	0477 - GESS ETAL ELAINE F	$370.37	AUDREY ANDERSON	V02301	MN LAND PURCHASES
	5/19/2022	319524	0477 - GESS ETAL ELAINE F	$370.37	CHARLOTTE NELSON	V02301	MN LAND PURCHASES
	5/19/2022	319524	0477 - GESS ETAL ELAINE F	$361.11	CORA FISCHER	V02301	MN LAND PURCHASES
	5/19/2022	319524	0477 - GESS ETAL ELAINE F	$370.38	ELAINE GESS	V02301	MN LAND PURCHASES
	5/19/2022	319524	0477 - GESS ETAL ELAINE F	$92.59	PETER DEMARREAU	V02301	MN LAND PURCHASES
	5/19/2022	319524	0477 - GESS ETAL ELAINE F	$185.18	RENEE LARSON	V02301	MN LAND PURCHASES
			Technical Services / Right of Entry Requests	**$1,750.00**			
790-7931-429.38-99	5/19/2022	319524	Building & Grounds Managemen	$920.00	BUILDING & GROUNDS MANAGE	V02301	MN LAND PURCHASES
			Other Services / Other Services	**$920.00**			
790-7931-429.42-20	5/19/2022	319524	Building & Grounds Managemen	$225.00	BUILDING & GROUNDS MANAGE	V02301	MN LAND PURCHASES
				$225.00			
790-7931-429.54-10	5/19/2022	319524	Clay County Union	$55.00	CLAY COUNTY UNION	V06201	MCCJPA - MN ROE
				$55.00			
790-7931-429.62-51	5/19/2022	319524	LAKE REGION ELECTRIC CO	$1,332.77	LAKE REGION ELECTRIC COOP	V02301	MN LAND PURCHASES
	5/19/2022	319524	RED RIVER VALLEY COOPE	$1,824.76	RED RIVER VALLEY COOP	V02301	MN LAND PURCHASES
			Energy / Electricity	**$3,157.53**			
790-7931-429.80-17	5/19/2022	319524	WILKIN COUNTY AUDITOR	$2,428.00	WILKIN COUNTY AUDITOR	V02301	MN LAND PURCHASES
			Debt Service / Property Tax - FMDA	**$2,428.00**			

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Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7950-429.33-05	6/2/2022	319812	HOUSTON-MOORE GROUP L	$60,515.52	PROJECT MANAGEMENT	V01633	DESIGN & CONST. SUPPORT
			Other Services / Engineering Services	**$60,515.52**			
790-7950-429.33-06	5/12/2022	319344	BRAUN INTERTEC CORP	$1,020.00	MATERIALS TESTING	V00404	TESTING - NUSTAR PIPELINE
			Other Services / Quality Testing	**$1,020.00**			
790-7950-429.73-70	5/19/2022	319520	Cass County Electric Cooperativ	$213,950.00	50%DOWN, DIVERSION INLET	V04705	DRAIN 27 - 3 PHASE WIRE
			Infrastructure / Utilities	**$213,950.00**			
790-7952-429.33-05	6/2/2022	319812	HOUSTON-MOORE GROUP L	$6,926.70	PROJECT MANAGEMENT	V01633	DESIGN & CONST. SUPPORT
			Other Services / Engineering Services	**$6,926.70**			
790-7955-429.33-05	5/26/2022	319703	HOUSTON-MOORE GROUP L	$29,593.41	INTOWN LEVEES	V02827	IN TOWN LEVY MAINTENANCE
	6/2/2022	319812	HOUSTON-MOORE GROUP L	$19,544.03	PROJECT MANAGEMENT	V02827	IN TOWN LEVY MAINTENANCE
			Other Services / Engineering Services	**$49,137.44**			
790-7990-429.33-05	6/2/2022	319812	HOUSTON-MOORE GROUP L	$12,057.25	PROJECT MANAGEMENT	V01633	DESIGN & CONST. SUPPORT
			Other Services / Engineering Services	**$12,057.25**			
790-7990-429.33-25	6/5/2022	934	OHNSTAD TWICHELL PC	$14,771.00	OHNSTAD TWICHELL PC	V00102	General & Admin. WIK
			Other Services / Legal Services	**$14,771.00**			
790-7990-429.34-57	5/25/2022	11798	BANK OF NORTH DAKOTA	$16,480.00	BND TRUSTEE FEE 5/2022	V08502	MONTHLY TRUSTEE FEE
			Technical Services / FMDA Trustee Fees BND	**$16,480.00**			
790-7998-555.90-81	5/25/2022	ES052200	Diversion Admin Budget Transfe	$0.00	ANNUAL ADMIN BDGT TRF-MAY	VADMIN	Diversion Administration
			FMDA Admin. Budget Fund	**$0.00**			
			790 Subtotal	**$2,597,124.53**			

Total Amount Invoiced this period:	**$2,678,504.43**	
	$0.00	**Less Paid Retainage**
	$2,678,504.43	**Total Less Paid Retainage**

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Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
LAND PURCHASE	$259,549,427.07	$259,549,427.07	$0.00	Land Purchase
CH2M HILL ENGINEERS INC	$152,663,307.12	$90,570,452.73	$62,092,854.39	Project & Construction Management
HOUSTON-MOORE GROUP LLC	$86,838,161.73	$62,049,087.02	$24,789,074.71	Engineering Services
INDUSTRIAL BUILDERS INC	$58,129,514.54	$57,513,846.20	$615,668.34	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	$25,193,620.00	$25,193,620.00	$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	$18,303,354.99	$18,303,354.99	$0.00	WP-43CD and Gatewell - PVD & Surcharge Installation
OHNSTAD TWICHELL PC	$15,402,939.72	$15,402,939.72	$0.00	Legal Services
ADVANCED ENGINEERING INC	$14,665,462.81	$7,589,138.07	$7,076,324.74	Lands Management and Public Outreach
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
KEY CONTRACTING INC	$9,659,606.48	$9,659,606.48	$0.00	FM1413 - Oakcreek and Copperfield Court Levee
ASHURST LLP	$7,769,668.21	$6,327,000.61	$1,442,667.60	PPP Legal Counsel
SRF CONSULTING GROUP	$5,952,675.84	$1,626,854.90	$4,325,820.94	Engineering Services
MOORE ENGINEERING INC	$5,474,991.13	$5,407,066.63	$67,924.50	Engineering Services
ERNST & YOUNG	$5,377,000.00	$4,982,146.10	$394,853.90	P3 Financial Advisory Services
CITY OF FARGO	$4,859,826.12	$4,828,326.12	$31,500.00	Utility Relocation, Accounting Svcs, Interest on Deficit Funds
PROSOURCE TECHNOLOGIES, INC	$4,198,291.71	$2,687,874.78	$1,510,416.93	Land Acquisition Services
RILEY BROS	$3,656,841.67	$3,656,841.67	$0.00	Construction - OHB Ring Levee & WP-28A
CENTURYLINK COMMUNICATIONS	$3,568,941.53	$3,484,683.41	$84,258.12	Utility Relocation
PLENARY AMERICAS USA LTD	$3,000,000.00	$3,000,000.00	$0.00	Stipend Payment for P3 RFP
HOUSTON ENGINEERING INC	$2,886,143.94	$2,886,143.94	$0.00	Engineering Services

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MINNESOTA DNR	$2,636,755.60	$2,617,681.40	$19,074.20	EIS Scoping and Permit Application
SELLIN BROS INC	$2,577,216.97	$2,577,216.97	$0.00	Riverwood Flood Risk Project - Construction
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
HDR ENGINEERING, INC.	$2,192,783.68	$1,131,763.76	$1,061,019.92	Engineering Services
HOUGH INC	$2,088,832.83	$2,088,832.83	$0.00	Construction WP-42F.2 and Oxbow River Intake & Pumping Syst
ACONEX (NORTH AMERICA) INC	$1,970,927.50	$928,559.82	$1,042,367.68	Electronic Data Mgmt and Record Storage System
CASS COUNTY GOVERNMENT	$1,882,623.74	$1,882,623.74	$0.00	Gravel on County Rd 17 Bypass
URS CORPORATION	$1,805,670.90	$1,805,670.90	$0.00	Cultural Resources Investigations
ULTEIG ENGINEERS INC	$1,744,157.63	$1,230,360.65	$513,796.98	Land Acquisition Services
CROWN APPRAISALS	$1,689,455.00	$1,546,730.00	$142,725.00	Flowage Easements Valuation and Appraisal Services
REINER CONTRACTING INC	$1,599,646.21	$1,599,646.21	$0.00	El Zagal Flood Risk Management
PROGRAM ADVISOR SERVICES, LLC	$1,505,000.00	$1,126,277.35	$378,722.65	Program Consulting Services
SCHMIDT AND SONS INC.	$1,324,920.61	$1,067,751.86	$257,168.75	Residential Demolition in Oxbow
CASS COUNTY ELECTRIC COOPERATIVE	$1,281,910.06	$1,067,960.06	$213,950.00	Electrical Services
CASS COUNTY TREASURER	$1,223,588.71	$1,223,588.71	$0.00	Property Taxes
US BANK	$1,205,546.13	$1,205,546.13	$0.00	Loan Advance Debt Service Payments
CONSOLIDATED COMMUNICATIONS	$1,073,621.75	$1,073,621.75	$0.00	Utility Relocation
XCEL ENERGY-FARGO	$1,058,209.21	$1,011,609.21	$46,600.00	Utility Relocation
KPH, INC.	$1,048,093.28	$1,025,640.12	$22,453.16	WP-43D5 Construction
AECOM	$1,037,594.64	$432,975.59	$604,619.05	Cultural Resources Investigations
CASS RURAL WATER	$949,908.71	$941,238.71	$8,670.00	Utilities and Utility Relocation
CLERK OF DISTRICT COURT	$939,044.32	$939,044.32	$0.00	FLDBUY - COF Flood Home Buyouts
BRAUN INTERTEC CORP	$914,944.63	$769,441.23	$145,503.40	Materials Testing
TERRACON CONSULTING ENGINEERS	$887,718.41	$887,718.41	$0.00	Materials Testing
RED RIVER VALLEY & WESTERN RAILROAD C	$800,000.00	$800,000.00	$0.00	Railroad Facilities and the Rail Property
DAKOTA CARRIER NETWORK	$727,348.58	$727,348.58	$0.00	Utility Relocation

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Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
UNITED STATES ENVIRONMENTAL PROTECTI	$707,886.35	$707,886.35	$0.00	WIFIA LOAN APPLCATION FEE
ERIK R JOHNSON & ASSOCIATES	$664,472.23	$664,472.23	$0.00	Legal Services
METROPOLITAN COUNCIL OF GOVERNMENTS	$637,390.01	$637,390.01	$0.00	Digital Aerial Photography
MASTER CONSTRUCTION CO INC	$623,953.29	$623,953.29	$0.00	Flood Mitigation - Royal Oaks Area - Construction
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	$534,547.50	$512,007.50	$22,540.00	Property Appraisal Services
RED RIVER BASIN COMMISSION	$501,000.00	$501,000.00	$0.00	Retention Projects - Engineering Services
HOFFMAN & MCNAMARA CO.	$493,179.39	$487,184.67	$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
LARKIN HOFFMAN ATTORNEYS	$431,288.47	$431,288.47	$0.00	Legal Services
NDSU BUSINESS OFFICE-BOX 6050	$391,989.00	$356,145.00	$35,844.00	Ag Risk Study Services
BEAVER CREEK ARCHAEOLOGY	$391,529.14	$341,408.20	$50,120.94	Engineering Services
PATCHIN MESSNER VALUATION COUNSELORS	$390,887.50	$349,925.00	$40,962.50	Property Appraisal Services
MBA	$380,636.36	$380,636.36	$0.00	Golf course and pump house - Oxbow Country Club
MVM CONTRACTING	$339,448.03	$339,448.03	$0.00	Fiber Relocation
AON RISK SERVICES CENTRAL INC	$330,000.00	$246,101.00	$83,899.00	Risk Advisory Services P3 Pre-Award
CASS COUNTY JOINT WATER RESOURCE DI	$320,425.02	$320,425.02	$0.00	O/H/B Ring Levee, DPAC, Postage, Miscellaneous
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

METRO FLOOD DIVERSION AUTHORITY

Tuesday, June 14, 2022

Data Through Date: Friday, May 27, 2022

Cummulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
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
MINNKOTA POWER COOPERATIVE	$268,393.07	$73,393.07	$195,000.00	Utility Relocation
INTEGRA REALTY RESOURCES	$268,062.50	$243,250.00	$24,812.50	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	$172,610.03	$77,389.97	Crop insurance product development services
PR FOR GOOD, INC	$242,482.28	$242,482.28	$0.00	Communications Support Services
FREDRIKSON & BYRON, PA	$241,881.28	$241,881.28	$0.00	Lobbying Services
NEON LOON COMMUNICATIONS, LLC	$236,400.00	$75,433.75	$160,966.25	Communications Support
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	$221,991.96	$221,991.96	$0.00	Advertising Services
BANK OF NORTH DAKOTA	$201,325.04	$201,325.04	$0.00	Legal review fees
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	$196,763.96	$0.00	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
SERKLAND LAW FIRM	$173,826.18	$173,826.18	$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
CLAY COUNTY AUDITOR	$159,645.09	$159,645.09	$0.00	Property Taxes - MN
DAWSON INSURANCE AGENCY	$157,951.15	$157,951.15	$0.00	Property Insurance - Home Buyouts
PLEASANT TOWNSHIP	$157,660.10	$157,660.10	$0.00	Building Permit Application

METRO FLOOD DIVERSION AUTHORITY

Tuesday, June 14, 2022

Data Through Date: Friday, May 27, 2022

Cummulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
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	$143,075.16	$143,075.16	$0.00	Advertising Services
CHAPMAN AND CUTLER	$140,000.00	$140,000.00	$0.00	Legal Services
QUANTUM SPATIAL, INC.	$139,061.35	$139,061.35	$0.00	Digital Aerial Photography
C THREE MEDIA, LLC	$128,910.00	$100,207.36	$28,702.64	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
TINJUM APPRAISAL COMPANY, INC.	$113,450.00	$60,500.00	$52,950.00	Property Appraisal Services
GE BOCK REAL ESTATE, LLC	$112,590.00	$112,590.00	$0.00	Property Appraisal Services
OXBOW COUNTRY CLUB	$110,391.68	$110,391.68	$0.00	Golf Course - Oxbow
EIDE BAILLY LLP	$108,373.00	$67,664.25	$40,708.75	Audit Services
GA GROUP, PC	$108,229.32	$80,229.32	$28,000.00	Government Relations
MAPLETON TOWNSHIP	$108,030.00	$108,030.00	$0.00	Lost tax revenue and attorney fees
DAVID CLARDY	$105,215.05	$105,215.05	$0.00	Home buyouts - easement
124 Vendors	**Report Totals:**	**$909,425,030.76**	**$801,268,166.48**	**$108,156,864.28**

METRO FLOOD DIVERSION AUTHORITY

Tuesday, June 14, 2022

Data Through Date: Friday, May 27, 2022

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**	**212**	**129**	**81%**	**80**	**$1,015,931**
BIOGEO	291	211	0	73%	80	$244,246
HC	130	1	129	100%	0	$771,685
CHANNEL	**682**	**436**	**212**	**95%**	**34**	**$90,906,805**
ENV	2	0	0	0%	2	$1,250
HC	215	3	212	100%	0	$2,402,417
LAP01	131	120	0	92%	11	$6,592,719
LAP02	97	92	0	95%	5	$11,986,306
LAP03	82	66	0	80%	16	$18,573,078
LEGACY	155	155	0	100%	0	$51,351,036
MOBILITY	**123**	**1**	**1**	**2%**	**121**	**$0**
DA_MOB37_MN	51	0	0	0%	51	$0
DA_MOB37_ND	19	0	0	0%	19	$0
DA_MOB38TH	52	1	0	2%	51	$0
HC	1	0	1	100%	0	$0
NA	**7**	**0**	**7**	**100%**	**0**	**$0**
HC	7	0	7	100%	0	$0
SEAILAND	**331**	**258**	**34**	**88%**	**39**	**$43,843,982**
DRAIN 27	37	37	0	100%	0	$10,613,049
HC	35	1	34	100%	0	$195,421
LEGACY	62	62	0	100%	0	$10,166,116
SE_I29	11	11	0	100%	0	$1,961,828
SE-1	43	43	0	100%	0	$2,675,351
SE-2A	13	13	0	100%	0	$3,369,529
SE-2B1	29	19	0	66%	10	$3,014,101
SE-2B2	6	4	0	67%	2	$1,435,370
SE-3	6	5	0	83%	1	$25,000
SE-4	28	11	0	39%	17	$1,789,470
SE-5	7	0	0	0%	7	$2,750
UMA	1	0	0	0%	1	$0
WP26	9	8	0	89%	1	$2,952,107
WP30	8	8	0	100%	0	$0
WP35	36	36	0	100%	0	$5,643,890
WP36	**2**	**0**	**0**	**0%**	**2**	**$2,750**
WRDAM	2	0	0	0%	2	$2,750

METRO FLOOD DIVERSION AUTHORITY

Tuesday, June 14, 2022

Data Through Date: Friday, May 27, 2022

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
WP38	**1,031**	**118**	**358**	**46%**	**555**	**$29,987,080**
BIOGEO	2	2	0	100%	0	$4,500
HC	360	2	358	100%	0	$1,283,123
LEGACY	1	1	0	100%	0	$750
SE-2B2	7	5	0	71%	2	$2,196,918
SE-2B3	3	0	0	0%	3	$0
SE-5	2	0	0	0%	2	$0
UMA	567	108	0	19%	459	$26,501,789
UMA-C	34	0	0	0%	34	$0
UMA-C2	14	0	0	0%	14	$0
UMA-C3	3	0	0	0%	3	$0
UMA-W	24	0	0	0%	24	$0
UMA-W2	7	0	0	0%	7	$0
UMA-W3	7	0	0	0%	7	$0
WP40	**18**	**6**	**10**	**89%**	**2**	**$0**
DRAYTON	7	5	0	71%	2	$0
HC	10	0	10	100%	0	$0
LEGACY	1	1	0	100%	0	$0
WP42	**66**	**51**	**3**	**82%**	**12**	**$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	12	0	92%	1	$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

METRO FLOOD DIVERSION AUTHORITY

Tuesday, June 14, 2022

Data Through Date: Friday, May 27, 2022

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
WP43	**265**	**116**	**146**	**99%**	**3**	**$78,541,365**
Non-OIN Hard Land Cost	0	0	0	0%	0	$22,598,547
HC	146	0	146	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
Totals	**2,946**	**1,198**	**900**	**71%**	**848**	**$282,147,974**

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of May 31, 2022

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	-	595,320.88	-	8,197,919.55
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		259,765.00	-	-	-	259,765.00
Easements - Minesota		1,542,370.79	-	-	-	1,542,370.79
Farmland Purchases		221,462,533.67	-	5,109,571.44	(1,460,296.28)	109,452,436.18
Land Purchases		107,591,882.91	-	2,563,701.41	(730,148.14)	109,452,436.18
North One-half of the SW Quarter of Section 8, Township 137, Range 48	2/3/2022	291,600.62				
East half of the SW Quarter of Section 29, Township 138 Norht of Range 49 West of the Fifth Principal Meridian	2/3/2022	1,412,649.00				

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of May 31, 2022

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
The South Half of Government Lot 2 and all of Government Lots 3 and 5 of Section 18, in Township 137 North of Range 48 West of the Fifth Principal Meridian, Cass County, North Dakota, including all of Paul Bunyan Subdivision, part of Government Lots 2 and 3, Section 18, Township 137 North of Range 48 West AND Lot 5 Block 1, Babes's Addition, part of government lots 2 and 3 Section 18, Township 137 North, Range 48 West AND Lot 4, Block 1 Babe's Addition, part of Government lots 2 and 3, Section 18, Township 137 North, Range 48 West	2/3/2022	1,534,029.19				
The Northeast Quarter of Section Three, in Township One Hundred Thirty-seven North of Range Forty-nine West of the Fifth Principal Meridian	2/3/2022	1,711,111.25				
That part of the East Half of the East Half of the Northwest Quarter of section 32, Township 138 North, Range 49 West of the Fifth Principal Meridian	3/10/2022	646,140.00				
That part of Auditor's Lot No. 1 of the Southeast Quarter of Section 28, Township 138 North, Range 49 West of the Fifth Principal Meridian	3/10/2022	241,950.00				
East half o the NW Quarter Section 11 in Township 137 North of Range 49 West of the Fifth Principal Meridian	3/10/2022	420,165.00				
Part of Section 17, Township 137 North, Range 48 West of the Fifth Principal	3/31/2022	500.00				
North Half of the Southeast Quarter, of Section 32, Township 138, Range 49, Cass County, North Dakota	5/12/2022	538,600.00				
		286,227,307.78	-	39,880,699.23	(1,838,004.15)	324,270,002.86
					Property Management Expense	3,971,279.56
					Grand Total	**$ 328,241,282.42**

FM Metropolitan Area Flood Risk Management Project
In-Town Levee Work
as of May 31, 2022

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	$ 493,179.39	$ 487,184.67
V02824	City of Fargo	COF – In-Town Flood Protection Debt Payments	$ 23,989,850.00	$ 25,193,620.00
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	$ 8,632,103.73
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
			$ 195,220,985.02	$ 195,201,320.79

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: February 1, 2022 - February 28, 2022

Drawdown Request No: 124	
Requested Amount:	**$ 5,062,879.53**
Total Funds Expended This Period:	10,125,759.05
SB 2020 Matching Requirements	50%
Total Funds Requested at 50% Match	5,062,879.53
Total Funds Requested:	**5,062,879.53**

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)
Less: Payment #120 - FM Metro Area Flood Risk Management Project			(5,380,812.43)
Less: Payment #121 - FM Metro Area Flood Risk Management Project			(4,927,025.23)
Less: Payment #122 - FM Metro Area Flood Risk Management Project			(2,753,630.08)
Less: Payment #123 - FM Metro Area Flood Risk Management Project			(3,945,477.58)
Less: Payment #124 - FM Metro Area Flood Risk Management Project			(5,062,879.53)
Total Funds Reimbursed			(405,012,078.29)
Total State Fund Balances Remaining			**9,487,921.72**

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)**

Legacy Bond Fund Balance Report
As of 04/30/2022

Total Authorized	**$ 435,500,000.00**
Current Allocation	**$ 219,000,000.00**
Available funds remaining	**$ 191,609,562.00**

Funds Requested

	2021	2022	Total
January	$ -	$ 3,162,608.21	$ 3,162,608.21
February	$ -	$ 4,564,036.17	$ 4,564,036.17
March	$ -	$ 5,302,899.35	$ 5,302,899.35
April	$ -	$ -	$ -
May	$ -	$ -	$ -
June	$ -	$ -	$ -
July	$ -	$ -	$ -
August	$ 5,059,974.19	$ -	$ 5,059,974.19
September	$ 2,970,327.95	$ -	$ 2,970,327.95
October	$ 6,089,707.34	$ -	$ 6,089,707.34
November	$ 6,415,461.09	$ -	$ 6,415,461.09
December	$ 8,365,936.95	$ -	$ 8,365,936.95
Total	$ 28,901,407.51	$ 13,029,543.72	$ 41,930,951.23

Funds Received

May 2022	$27,390,438	$ -	$ 27,390,438.00
	$ -	$ -	$ -
	$ -	$ -	$ -
	$ -	$ -	$ -
Total	$ 27,390,438.00	$ -	$ 27,390,438.00

Finance Committee Bills from June 2022

Vendor	Description		
Cass County Joint Water Resource District	Diversion bills – Request #97 CCJWRD	$	2,111,247.14
Ohnstad Twichell, P.C.	Legal services rendered through May 21, 2022	$	122,313.74
Cass County	Reimburse misc expenses from Diversion Authority office	$	9,613.50
Total Bills Received through June 14, 2022		$	2,243,174.38

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

June 6, 2022

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

Greetings:

RE: Metro Flood Diversion Project
Oxbow-Hickson-Bakke Ring Levee Project

Enclosed please find copies of bills totaling $2,111,247.14 regarding the above referenced projects. The breakdown is as follows:

Metro Flood Diversion	$2,111,094.64
Oxbow-Hickson-Bakke Ring Levee project	152.50

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						6/6/2022
Invoice	Invoice	Invoice		Project				
Paid	Date	No.		No.	Amount		Vendor	Description
5/13/2022	4/29/2022	181880		130007	13,179.50		Ohnstad Twichell, P.C.	Legal-Diversion Right of Way Acquisition
5/13/2022	4/29/2022	181881		160007	989.00		Ohnstad Twichell, P.C.	Legal-Diversion Authority Agreements - Drains
5/13/2022	4/29/2022	181882		160007	1,077.00		Ohnstad Twichell, P.C.	Legal-Channel Phase I
5/13/2022	4/29/2022	181883		160007	1,677.00		Ohnstad Twichell, P.C.	Legal-Channel Phase II
5/13/2022	4/29/2022	181884		160007	65.00		Ohnstad Twichell, P.C.	Legal-Channel Phase III
5/13/2022	4/29/2022	181885		170007	69,169.73		Ohnstad Twichell, P.C.	Legal-Upstream Mitigation Area
5/13/2022	4/29/2022	181886		187007	17,653.00		Ohnstad Twichell, P.C.	Legal-Diversion - Southern Embankment
5/13/2022	4/29/2022	181887		197007	156.00		Ohnstad Twichell, P.C.	Legal-Western Tie Back
5/13/2022	4/29/2022	181888		207007	7,620.56		Ohnstad Twichell, P.C.	Legal-Wetland Mitigation Drain 27
5/31/2022	5/10/2022	182041		187007	221.00		Ohnstad Twichell, P.C.	Legal-Bio/Geo Easements
5/31/2022	5/10/2022	182042		207007	25,724.46		Ohnstad Twichell, P.C.	Legal-Delaney (OIN 1202) Quick Take Eminent Domain
5/31/2022	5/10/2022	182043		207007	592.00		Ohnstad Twichell, P.C.	Legal-Kvalvog/Nyquist (OIN 9400) quick take eminent domain
5/31/2022	5/10/2022	182044		207007	152.50		Ohnstad Twichell, P.C.	Legal-Larson (OIN 1199) QTED
5/31/2022	5/10/2022	182045		207007	7,626.27		Ohnstad Twichell, P.C.	Legal-Gust (OIN 952) quick take eminent domain
5/31/2022	5/10/2022	182046		207007	8,140.40		Ohnstad Twichell, P.C.	Legal-Cossette (OIN 722, 723) quick take eminent domain
5/31/2022	5/10/2022	182047		207007	335.50		Ohnstad Twichell, P.C.	Legal-Loberg (OIN 716) quick take eminent domain
5/31/2022	5/10/2022	182048		207007	3,745.16		Ohnstad Twichell, P.C.	Legal-Thunberg Living Trust (OIN 720) QTED
5/31/2022	5/10/2022	182049		207007	335.50		Ohnstad Twichell, P.C.	Legal-Larry A Brant RLT (OIN 9348) QTED
5/31/2022	5/10/2022	182050		207007	335.50		Ohnstad Twichell, P.C.	Legal-Germanson (OIN 5004/5009-5012/9054-9056) QTED
5/31/2022	5/10/2022	182051		207007	335.50		Ohnstad Twichell, P.C.	Legal-Janet Wanzek Estate (OIN 8672-8675, 9747) QTED
5/31/2022	5/10/2022	182052		207007	3,873.50		Ohnstad Twichell, P.C.	Legal-Libbrecht, Glen (OIN 698, 9756-9759) QTED
5/31/2022	5/10/2022	182053		207007	1,006.50		Ohnstad Twichell, P.C.	Legal-Perhus (OIN 747, 751, 5014-5015, 5277) QTED
5/31/2022	5/10/2022	182054		207007	854.00		Ohnstad Twichell, P.C.	Legal-Thue Living Trust (OIN 1169, 1200) QTED
5/31/2022	5/10/2022	182055		207007	244.00		Ohnstad Twichell, P.C.	Legal-Samuelson RLT (OIN 1181/1182) QTED
5/31/2022	5/10/2022	182056		207007	91.50		Ohnstad Twichell, P.C.	Legal-Jameson (OIN 9749) QTED
5/31/2022	5/10/2022	182057		217007	1,707.50		Ohnstad Twichell, P.C.	Legal-Coster RET (OIN 9736-9737) QTED
5/31/2022	5/10/2022	182058		217007	17,380.47		Ohnstad Twichell, P.C.	Legal-Sauvageau (OIN 1107) QTED
5/31/2022	5/10/2022	182059		217007	701.50		Ohnstad Twichell, P.C.	Legal-Richard (OIN 27 1083) QTED
5/31/2022	5/10/2022	182060		217007	366.00		Ohnstad Twichell, P.C.	Legal-Richard Farm (OIN 1087/1093/1095/5002) QTED
5/31/2022	5/10/2022	182061		217007	213.50		Ohnstad Twichell, P.C.	Legal-Brunelle LE (OIN 1108-1110) QTED
5/31/2022	5/10/2022	182062		227007	2,379.00		Ohnstad Twichell, P.C.	Legal-Roseen QTED (OIN 25)
5/31/2022	5/10/2022	182063		227007	8,855.84		Ohnstad Twichell, P.C.	Legal-Sauvaguea - Relocation appeal (OIN 1107)
5/31/2022	5/10/2022	182064		227007	671.00		Ohnstad Twichell, P.C.	Legal-Brei Estate LLLP (OIN 843) QTED
5/31/2022	4/20/2022	803383		38810.00008	746.00		Larkin Hoffman Attorneys	Legal-CCJT v Mary K Adams
5/31/2022	4/20/2022	803382		38810.00007	1,185.00		Larkin Hoffman Attorneys	Legal-CCJT v Daniel Flaten
5/31/2022	4/20/2022	803377		38810	79.00		Larkin Hoffman Attorneys	Legal-CCJT v Johnson/Monson/Tintes/Anderson
5/31/2022	4/20/2022	803384		38810.00009	790.00		Larkin Hoffman Attorneys	Legal-CCJT v Steve and Lisa Loberg
5/31/2022	4/20/2022	803381		38810.00005	1,027.00		Larkin Hoffman Attorneys	Legal-CCJT v Newman Signs/Newman Trust Condemnation
5/31/2022	4/20/2022	803380		38810.00004	4,700.50		Larkin Hoffman Attorneys	Legal-Richland/Cass Cos/apps for Permit to Enter Land
5/31/2022	4/20/2022	803379		38810.00002	1,659.00		Larkin Hoffman Attorneys	Legal-Richland County ROEs
5/13/2022	5/6/2022	804246		38810.00007	7,465.50		Larkin Hoffman Attorneys	Legal-CCJT v Daniel Flaten
5/13/2022	5/6/2022	804242		38810	869.00		Larkin Hoffman Attorneys	Legal-CCJT v Johnson/Monson/Tintes/Anderson
5/13/2022	5/11/2022	804247		38810.00009	948.00		Larkin Hoffman Attorneys	Legal-CCJT v Steve and Lisa Loberg
5/13/2022	5/11/2022	804245		38810.00005	1,619.50		Larkin Hoffman Attorneys	Legal-CCJT v Newman Signs/Newman Trust Condemnation
5/13/2022	5/6/2022	804244		38810.00004	4,305.50		Larkin Hoffman Attorneys	Legal-Richland/Cass Cos/apps for Permit to Enter Land
5/13/2022	5/6/2022	804243		38810.00001	592.50		Larkin Hoffman Attorneys	Legal-Acquisition of Property from Terry and Kristie Sauvageau
5/31/2022	5/5/2022	1200429700			50,035.78		HDR Engineering Inc	TO 1 Property Acquisition Services
5/31/2022	4/30/2022	13783.00-24			65,810.32		SRF Consulting Group Inc	Task Order No 1 - Amend 1
5/13/2022	5/6/2022	22-2			6,300.00		Tinjum Appraisal Company Inc.	Appraisal on OIN 2039
5/13/2022	5/4/2022	1860431			432.00		Marsh & McLennan Agency	Liability insurance update
5/13/2022					374,865.00		The Title Company	Backlund Flowage Easement
5/13/2022					269,610.00		The Title Company	Backlund etal Flowage Easement
5/13/2022					212,105.10		The Title Company	Newman property purchase
5/13/2022					899,177.58		The Title Company	Kvalvog/Nyquist property purchase
5/16/2022					1,870.00		Joan Chose	Temp Construction Easement
5/31/2022	5/24/2022	29937		19706	665.00		Moore Engineering Inc	FM Diversion Design Coord - technical reviews
5/31/2022	5/12/2022	122704		R12.00049	11,131.50		Ulteig Engineers	Task Order 2 - Proj management and acquisition
5/31/2022	5/9/2022	2236			1,350.00		Karen Klein Mediation	mediation CCJT v Daniel Flaten
5/31/2022	5/13/2022	1135809			130.97		Cass County Electric Cooperative	Service to 4946 170 AV SE OIN 837
5/26/2022					-5,850.00		The Title Company	Reimbursement of legal fees OIN 9400
				Total	**2,111,094.64**			
		OXBOW-HICKSON-BAKKE RING LEVEE INVOICES						
Invoice	Invoice	Invoice	Purchase	Project				
Paid	Date	No.	Order No.	No.	Amount		Vendor	Description
5/31/2022	5/10/2022	182040		160007	152.50		Ohnstad Twichell, P.C.	Legal-Erickson ED
				Total	**152.50**			
				Grand Total	**2,111,247.14**			

OHNSTAD TWICHELL, P.C.

Attorneys at Law

15-1395 JTS Invoice # 182763

Flood Diversion Board
Bond Counsel Work - PPP

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

Date: June 13, 2022

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

PROFESSIONAL SERVICES RENDERED

	Hours	Rate	Totals
JTS	83.6	$375.00	$31,350.00
CMM	5.5	$375.00	$2,062.50
ADC	0.7	$375.00	$262.50
SNW	0.2	$375.00	$75.00
LDA	3.6	$375.00	$1,350.00
KJS	90.6	$375.00	$33,975.00
TJL	46.3	$375.00	$17,362.50
KJD	79.3	$300.00	$23,790.00
DCP	13.8	$320.00	$4,416.00
CAS	1.6	$205.00	$328.00
AJR	30.7	$205.00	$6,293.50
Total Fees:	**355.9**		**$121,265.00**
Westlaw			$132.67
Travel/Mileage			$651.56
Meals			$239.51
Recording Fees			$25.00
Total Expenses:			**$1,048.74**
Grand Total			**$122,313.74**

		Rates
JTS	John T. Shockley, Partner, Supervising Attorney	$375.00
CMM	Christopher M. McShane, Partner	$375.00
ADC	Andrew D. Cook, Partner	$375.00
SNW	Sarah M. Wear, Partner	$375.00
LDA	Lukas D. Andrud, Partner	$375.00
RGH	Robert G. Hoy, Partner	$375.00
KJS	Katie J. Schmidt, Partner	$375.00
MWM	Marshall W. McCullough, Partner	$375.00
TJL	Tyler J. Leverington, Partner	$375.00
LWC	Lukas W. Croaker, Associate	$330.00
ABG	Bo Gruchala, Associate	$320.00
JRS	J.R. Strom, Associate	$310.00
KJD	Kathryn J. DelZoppo, Associate	$300.00
LRC	Leah R. Carlson, Associate	$320.00
BTB	Brent T. Boeddeker, Associate	$330.00
DCP	David C. Piper, Associate	$320.00
JAM	Jenna A. McPherson, Associate	$275.00
SJH	Stephen J. Hilfer, Associate	$225.00
CAS	Carol A. Stillwell, Paralegal	$205.00
AJR	Andrea J. Roman, Paralegal	$205.00
CRD	Christie R. Dettling, Paralegal	$185.00
KK	Kiara J. Klinkhammer, Paralegal	$185.00
TWS	Tim W. Steuber, Paralegal	$190.00
MRH	Meghan R. Hockert, Paralegal	$185.00
ATW	Amy T. White, Paralegal	$185.00
DLR	Dena L. Ranum, Legal Administrative Assistant	$160.00
KMM	Karla M. Maertens, Legal Administrative Assistant	$95.00
SAR	Stephanie A. Ruth, Legal Administrative Assistant	$100.00

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 # 182763	Flood Diversion Board	Bond Counsel Work - PPP
FILE NUMBER	MATTER DESCRIPTION	INVOICE - TOTAL FEES
151395-1	General Topics (Includes General Governance Questions, Notices, etc.)	$42,491.00
151395-4	Public Finance Issues	$5,297.00
151395-5	Consultant Contract Review/Development	$3,739.00
151395-7	Coordination with Member Entities	$61.50
151395-11	Legislative Interface/Lobbying Support	$82.00
151395-12	USACE Interface/Questions	$262.50
151395-13	Third Party Utility MOU's	$48,101.50
151395-17	EPA WIFIA Loan	$75.00
151395-18	SRF Loan Application	$3,838.00
151395-22	SRF Loans	$3,892.00
151395-23	PRAM	$225.50
151395-24	P3 Implementation	$13,200.00
TOTAL		**$121,265.00**

STATEMENT OF ACCOUNT PAGE 1

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

(701) 241-5600

DATE: 6/03/22

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
	5/06/22	BEGINNING BALANCE			177,178.79
** AUDIT	5/06/22	FM DIVERSION PAYROLL EXPENSES			~~70,492.06~~
** AUDIT	5/06/22	FM DIVERSION MISC EXPENSES			~~25,706.83~~
	5/09/22	PAYMENT			80,979.90-
AUDIT	6/03/22	FM DIVERSION PAYROLL EXPENSES			71,036.06
AUDIT	6/03/22	FM DIVERSION MISC EXPENSES			9,613.50

Employee agreements in place

Submitted for approval at June board mtg

Total $80,649.56

** - PREVIOUSLY BILLED - INCLUDED IN BEGINNING BALANCE

Current	30 days	60 days	90 days
176848.45			

DUE DATE: 7/04/22

PAYMENT DUE: 176,848.45
TOTAL DUE: $176,848.45

PLEASE DETACH AND SEND THIS COPY WITH REMITTANCE

DATE: 6/03/22 DUE DATE: 7/04/22 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: $176,848.45

METRO FLOOD DIVERSION AUTHORITY

Diversion Authority Finance Committee Meeting

June 22, 2022

Contracting Actions

Joel Paulsen

DA Board Approval Contract Actions

(ACTION)

Description	Company	Budget/ Estimate ($)
Task Order 03, Amendment 0 – Oxbow Substation Relocation – Land acquisition to relocate Minnkota Power's Oxbow substation that is located approximately one mile north of the town of Oxbow and will be located in the backwater flowage easement area of the Southern Embankment	Minnkota Power Cooperative, Inc.	$275,000.00
Change Order 01, WP50F Property Mitigation – Additional cost due to property OIN 826 and OIN 2185 being demolished due to winterization issues of the structures.	Schmidt and Sons Construction Inc.	$135,000.00

METRO FLOOD DIVERSION PROJECT

Executive Director Contracting Recommendation

Date: 06/03/2022

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 December 16, 2021, the Owner's Program Management Consultant (PMC) or Engineer of Record (EOR) is directed to prepare new Task Order and task Order Amendments and submit them to Member Entity Technical Representatives and the Executive Director. The Member Entity Technical Representative will provide comments which will be consolidated in one form by the PMC and provided to the Director of Engineering. The Director of Engineering shall review the comments and provide recommendations to the Executive Director for review and action.

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

Minnkota Power Cooperative, Inc

Task Order 03 Amendment 0

$275,000.00

- Oxbow Substation Relocation – Land Acquisition

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.

In accordance with Section 2.01 of the Master Utility Relocation Agreement by and between the Metro Flood Diversion Authority (the "Authority") and Minnkota Power Cooperative (the "Utility") dated September 23, 2021 (the "Agreement"), the Authority and the Utility agree to the following:

Services Provided. The Authority hereby agrees to engage Minnkota Power Cooperative, Inc to provide the Authority with the following described list of services (the "Services").

REASON:

New scope of work for land acquisition to relocate Minnkota Power Cooperative Inc's Oxbow Substation. The existing Oxbow Substation is located approximately one mile north of the town of Oxbow and will be located in the backwater flowage easement area of the Southern Embankment.

For further details refer to attached Scope of Work – Fargo Diversion –Southern Embankment – Oxbow Substation Relocation – Land Acquisition dated March 22, 2022

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 ($)	Revised Project Cost ($)	Agreement Date	Project Completion	Comments
TO03-A0	275,000.00	275,000.00	06/01/2022	07/01/2024	Oxbow Substation Relocation – initial scope of work

Summary of Annual Budget Allocation

Year	Original Agreement or Amendment	Cost account code	Estimated cost ($)	Budget Allocated ($)	Actual Paid to date	Budget Remaining ($)	Comments
2022	TO03-A0	CN-4010	95,000.00	95,000.00	0.00	0	
2023	TO03-A0	CN-4010	90,000.00	95,000.00	0.00	0	
2024	TO03-A0	CN-4010	90,000.00	90,000.00	0.00	0	
	Total	CN-4010	275,000.00	275,000.00	0.00	0	Within allocated annual budget.

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

ATTACHMENT(S):

1. Minnkota Power Cooperative Inc - Task Order 03 Amendment 0
2. Minnkota Power Cooperative, Inc – Scope of Work Fargo Diversion – Southern Embankment – Oxbow Substation Relocation – Land Acquistion – March 22, 2022

Prepared by: Program Management Consultant

Ian Joynes

Dated: 06/03/2022

Approved by Joel Paulsen, Diversion Authority Executive Director Via Aconex

Dated:

METRO FLOOD DIVERSION PROJECT

Executive Director Contracting Recommendation

Date: 6/02/2022

RECOMMENDATION FOR ACTION:

The Executive Director has reviewed and recommended 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 December 16, 2021, the Owner's Program Management Consultant (PMC) or Engineer of Record (EOR) shall submit construction Change Order requests that are greater then $50,000 to the Member Entity Technical Representatives for review. Member Entity Representaive shall review and provide comments to the PMC who will provide a single form consolidating comments to the Director of Engineering. The Director of Engineering shall review and provide recommendations to the Executive Director. Recommendations of the Director of Enginering and Executive Director, along with comments of the Member Entity Technical Representative will be provide to the Finance Committee for review then submitted to the Diversion Authority Board for approval,

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

Description	Budget Estimate ($)
WP50F: Schimdt and Sons Construction Inc.	
Change Order #01	*$135,000.00*
• Additional costs due to properties OIN 826 and OIN 2185 being demolished.	

Summary of Contracting History and Current Contract Action:

The Diversion Authority awarded the WP50F construction contract to Schimdt and Sons Construction Inc. (Contractor). The Effective Date of the Contract was January 12, 2022. Since the start of construction, the Contractor and Owner have executed 0 change orders to this Contract.

Reason:

This change order is for the demolition work on OIN 826 and OIN 2185 due to winterization issues.

The following is a summary of contracting history to date along with the current contracting action.

Original Agreement or Amendment	Budget ($) Change	Previous Project Cost	Revised Project Cost	Project Start	Project Completion	Comments
Contract	0.00	0.00	224,900.75	1/12/2022	10/7/2022	Contract award.
Change Order 01	135,000.00	224,900.75	359,900.75	1/12/2022	10/7/2022	Demolish property on OIN 826 and OIN 2185.

Summary of Annual Budget Allocation

Original Agreement or Amendment	Cost account code	Contract value ($)	Budget Allocated ($)	Paid to date ($)	Budget Remaining ($)	Comments
2022	CN-4725	359,900.75	359,900.75	0.00	359,900.75	Within budget.

Financial Considerations:

Attached for your review and action is Change Order No. 01. This change order increases the total Contract Price $135,000.00.

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

ATTACHMENT(S):

1. Change Order No. 01
2. Change Proposal
3. Unit price schedule.

Prepared by: Program Management Consultant

Ian Joynes

Dated: 6/02/2022

Approved by Joel Paulsen, Metro Flood Divertion Authority Executive Director via Aconex.

Dated: 6/14/2022

METRO FLOOD DIVERSION AUTHORITY

Diversion Authority Finance Committee Meeting

June 22, 2022

MOU and Agreement Actions for Consideration

John Shockley

Master Utility Relocation Agreement (MURA)

(ACTION)

MURA Parties	Project	MOU Cost and Summary
Red River Valley Cooperative Power Association (RRVCPA) & 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 the Agreement.

Memorandum of Understanding (MOU)

(ACTION)

MOU Parties	Project	MOU Cost and Summary
SBA Towers X, LLC & MFDA MOU	SWDCAI	The MOU outlines respective roles and responsibilities for the utility relocation work for SBA Tower's facilities that are within the footprint of the SWDCAI within the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. The Authority is NOT transferring the obligations set forth in this MOU to the Developer through the Project Agreement. The MOU addresses design; preliminary planning and engineering activities; property interest acquisition; construction; inspection, ownership and maintenance; etc. The estimated cost to relocate the cell tower to a new easement on CCJWRD property outside the SWDCAI ROW is $1,492,000.

FINAL

MASTER UTILITY RELOCATION AGREEMENT

By and Between

METRO FLOOD DIVERSION AUTHORITY

and

RED RIVER VALLEY COOPERATIVE POWER ASSOCIATION

Dated as of June___, 2022

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 June, 2022 (hereinafter referred to as the "Effective Date"), by and between the Metro Flood Diversion Authority, a North Dakota political subdivision, whose post office address is 4784 Amber Valley Parkway South, Suite 100, Fargo, ND 58104 (the "Authority"), and Red River Valley Cooperative Power Association, whose post office address is 109 2nd Ave. E., Halstad, MN 56548 (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).

"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**.

"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**.

"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, 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 Metro Flood Diversion 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 Red River Valley Cooperative Power Association.

"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 Design Work" means all **Utility Adjustment Work** related to design.

"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 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, North Dakota.

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	Other Attributes	Right-of-Way Document
6-137-48	SE-4 – UMA	Service Lines – OH	Single Phase Line – OH	Not recorded, private easement – 1938(2)
5-137-48	SE-4 – UMA	Services Lines – OH	Single Phase Line	Not recorded, private easement – 1938
17-137-48	SE-4 – UMA	Services Lines -OH	Single Phase Line	Not recorded, private easements, 1939, 1948, 1939, and 1939 (scanned copies)
34-137-48	SE-4 – UMA	N/S Line – OH Single Phase		Private easements, not recorded (scanned)
35-137-48	SE-4 – UMA	N/S Line – OH Single Phase		Private easements, not recorded (scanned)
Various	UMA		Lines throughout the UMA	

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 **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. Reasonable 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 mutually determined by and between the **Utility** and 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**.

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 a reasonable deadline mutually agreed to by and between the **Utility** and 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**, but such work incident to **Utility Adjustment Construction Work** will follow the same reimbursement mechanisms as **Utility Adjustment Construction Work** completed inside the **Project Property**. **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**. The **Utility** is not responsible for any damages related to time delays associated with the acquisition of additional right-of-way needed which was directly or indirectly caused by the **Utility Relocation Project**, so long as the Utility is reasonably diligent in pursuing acquisition of said necessary rights-of-way.

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 the following requirements, if applicable to the **Utility Relocation Project**:

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 DOWN PAYMENT. The **Authority** shall pay fifty percent (50%) of the total estimated cost of the **Utility Relocation Project** approved under Article VII, prior to commencement of the **Utility Adjustment Construction Work**.

Section 8.04 REPORTING OF COSTS. The **Utility** shall submit a detailed, itemized report of the costs and expenses of the **Utility Relocation Project** to the **Authority** for review with each invoice submitted. Upon completion of the **Utility Relocation Project**, the **Utility** shall submit a comprehensive itemized report of costs and expenses of the **Utility Relocation Project** with the final invoice submittal.

Section 8.05 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 8.06 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 8.07 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 8.08 PAYMENT OF MEMBERSHIP INTERRUPTION FEE. The **Authority** shall pay the **Utility** a one-time membership interruption fee in the amount of thirty five thousand dollars ($35,000), within one hundred twenty (120) days of the Effective Date. Within fifteen (15) days of receiving the payment, the **Utility** shall provide the **Authority** with a receipt of such payment. The **Authority** shall pay the **Utility** in accordance with its general accounting practices.

Section 8.09 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 **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**. If the **Utility** deems

access to the **Project Footprint** to be an emergency, it will provide notice as soon as reasonably practicable.

d. Approval for Ground Disturbing Maintenance or Repairs. The **Utility** must submit and obtain approval, except in cases of Utility deemed emergency, 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. Access. The **Authority** shall have unrestricted access in, aside from the existence of **Utility** infrastructure, over, and across the right-of-way.

g. 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.

h. 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, excepting any abandonment requirements set forth in Section 9.01. 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 (as provided in Section 12.03 of this **Agreement**), 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.
4784 Amber Valley Parkway South, Suite 200
Fargo, North Dakota 58104
and
Metro Flood Diversion Authority
Attention: Executive Director
4784 Amber Valley Parkway South, Suite 100
Fargo, North Dakota 58104

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
4784 Amber Valley Parkway South, Suite 100
Fargo, North Dakota 58104

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:
Red River Valley Cooperative Power Association
Attn: Leon Emmil, Engineering Manager

109 2nd Ave. E.
Halstad, MN 56548
218-456-2139

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. The **Authority** shall indemnify and hold harmless the **Utility**, its 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 **Authority** or failure of **Authority'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 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 13.17 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 13.18 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 13.19 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 13.20 CIVIL RIGHTS OBLIGATIONS. 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 13.21 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 13.22 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

_____
Chad Peterson, Chair

ATTEST:

_____
Dawn Lindblom, Secretary

UTILITY:

Red River Valley Power Cooperative Association

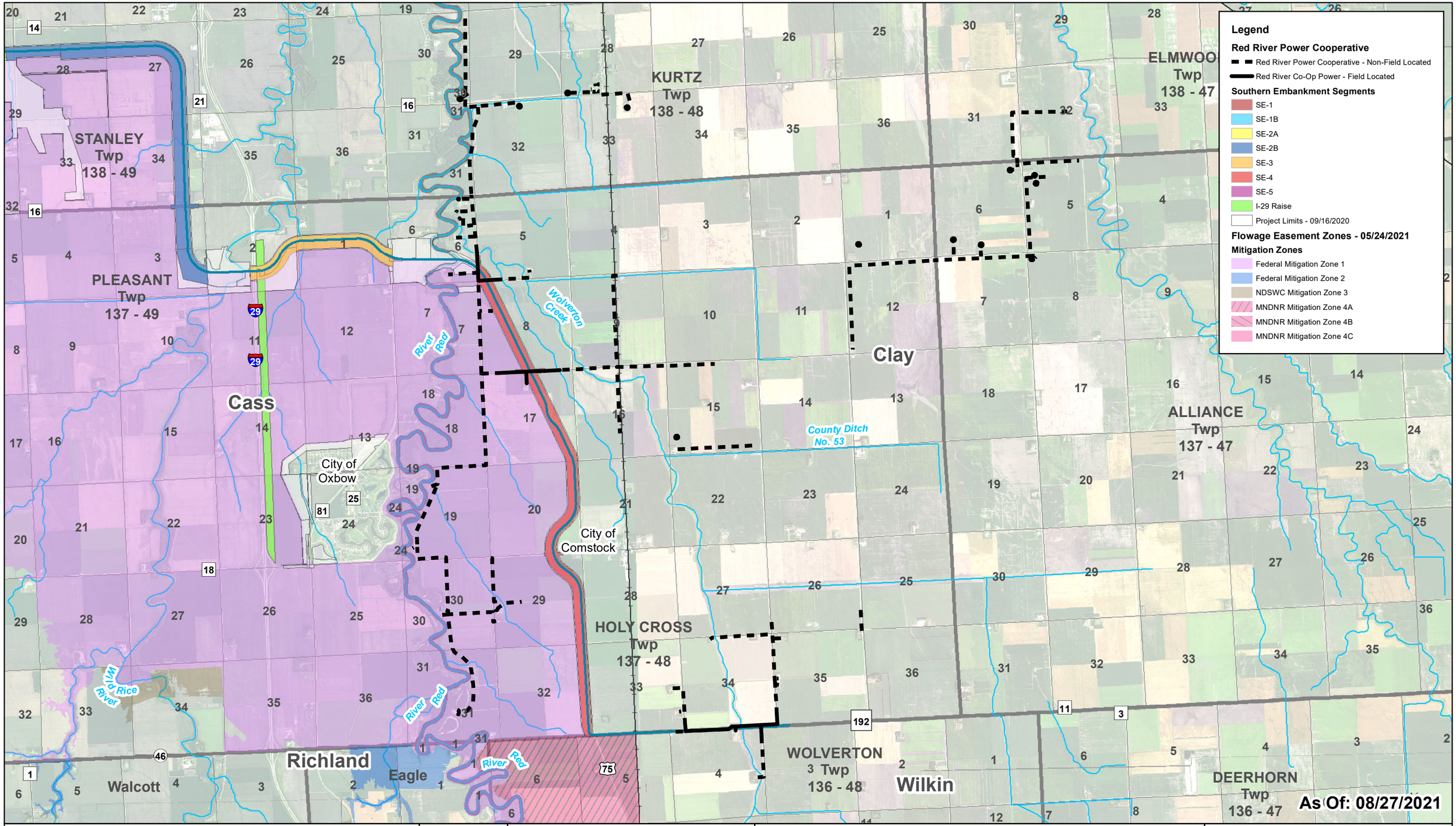
Rich Whitcomb, Chief Executive Officer

ATTEST:

By: _____

Its: Director of Finance

Exhibit A



RED RIVER POWER COOPERATIVE FLOWAGE EASEMENT AREA FM AREA DIVERSION PROJECT

Created By: TJS Date Created: 04/29/21 Date Saved: 08/27/21 Date Plotted: 03/28/16 Date Exported: 08/27/21
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_Red_River_Power_Cooperative_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

RED RIVER VALLEY
CO-OP POWER
Twn: 137N Rng: 49W Sec: 1
Twn: 137N Rng: 48W Sec: 6
Twn: 137N Rng: 48W Sec: 5
Twn: 137N Rng: 49W Sec: 12
Twn: 137N Rng: 48W Sec: 7
Twn: 137N Rng: 48W Sec: 8
Twn: 137N Rng: 48W Sec: 9
Twn: 137N Rng: 48W Sec: 10
Twn: 137N Rng: 48W Sec: 11
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Twn: 136N Rng: 48W Sec: 6
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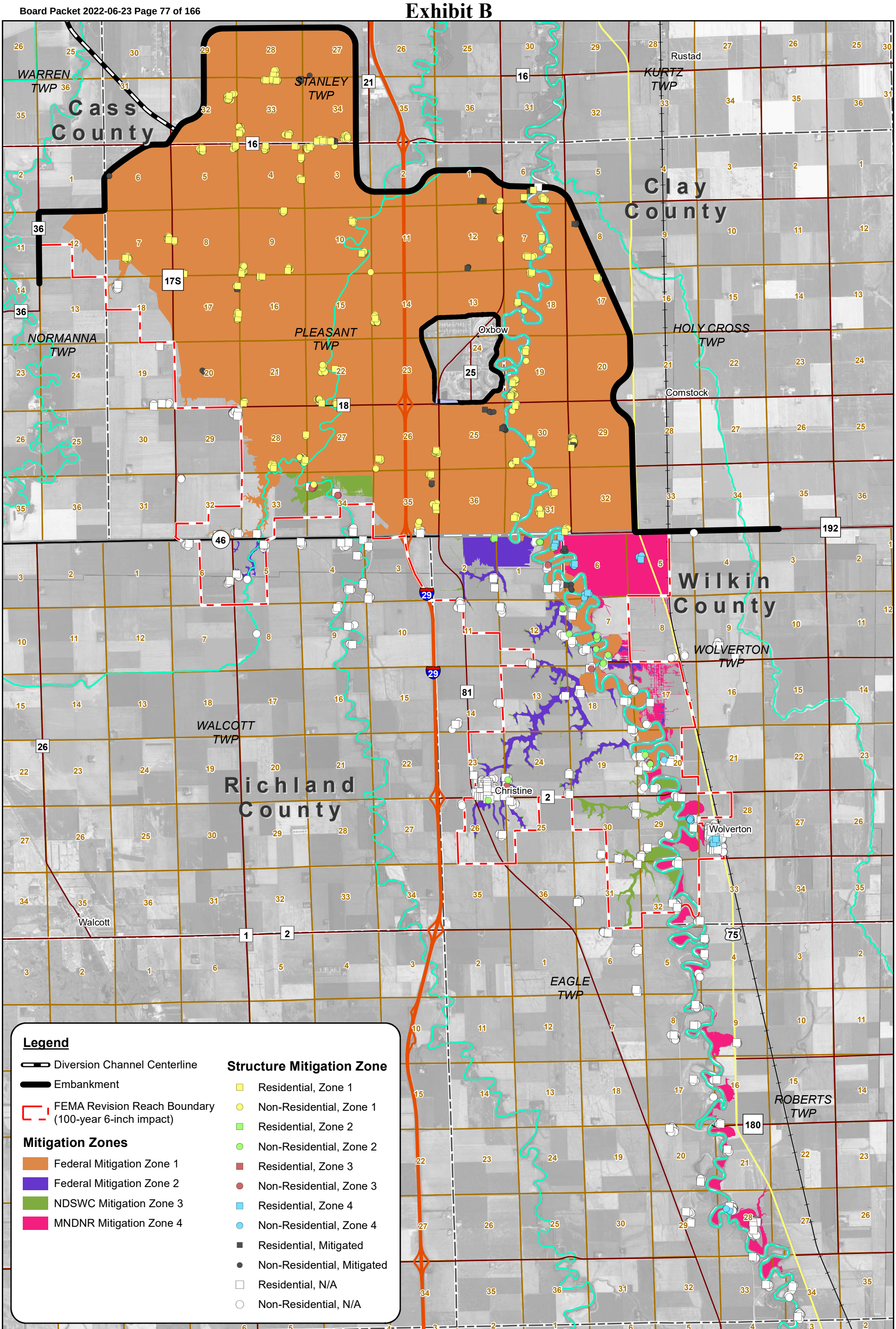
5362
2310

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: RED RIVER VALLEY COOPERATIVE POWER ASSOCIATION

Signed: _____

Its: CEO

Date: 6/13/~~2022~~ 2022

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 Red River Valley Cooperative Power Association

Date: 6/13/2022

By: RICH WHITCOMB, 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
RICH WHITCOMB Print Name	RED RIVER VALLEY COOPERATIVE POWER ASSOCIATION Name of Institution or Agency
6/13/2022 Date	109 2ND ST E Halstad MN 56548 Street

City, State, Zip Code

rwhitcomb@rrvcoop.com
Office Email Address

PLEASE RETURN TO:
Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

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.

MEMORANDUM OF UNDERSTANDING

By and Between

METRO FLOOD DIVERSION AUTHORITY

and

SBA TOWERS X, LLC

Dated as of March 24, 2022

Relating to:

Diversion Channel and Associated Infrastructure for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project

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

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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 23rd day of June 2022, by and between the Metro Flood Diversion Authority, a North Dakota political subdivision, whose post office address is 4784 Amber Valley Parkway South, Suite 100, Fargo, ND 58104, and SBA Towers X, LLC (hereinafter referred to as the "Tower Owner"). Metro Flood Diversion Authority and the Tower Owner may be referred to collectively as "the Parties."

RECITALS

WHEREAS, the Metro Flood Diversion Authority is undertaking a Private Public Partnership (hereinafter referred to as the "P3") for the construction of the Diversion Channel and Associated Infrastructure; and

WHEREAS, the Tower Owner has real property interests (hereinafter referred to as "Prior Property Interests") within the area generally described in Article III of this Memorandum of Understanding and further described in Exhibits 1 through 4; and

WHEREAS, it will be necessary for the Prior Property Interests of the Tower Owner to be relocated, protected, removed, or adjusted as part of "Tower Relocation Project" in coordination with construction of the Project; and

WHEREAS, the Tower Owner and Metro Flood Diversion Authority, desire to set forth the rights and obligations of the Tower Owner and Metro Flood Diversion Authority with regard to the Tower Relocation Project.

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 **Memorandum of Understanding** and as defined in this Section unless a different meaning clearly applies from the context.

"Best Efforts" means acting in **Good Faith**, in accordance with generally accepted commercial practices and using reasonable due diligence to undertake all action contemplated by this **Memorandum of Understanding** and acting 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.

"Betterment" means any upgrading of **Tower Owner** that is not attributable to or made necessary by the **Project**, made for the benefit of and at the election of the **Tower Owner**. The following are not considered **Betterments**: (a) replacement devices or materials of equivalent standards, though not identical; (b) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size; or (c) any upgrading required by applicable law or regulation.

"Business Day(s)" means any day that is not a Saturday, a Sunday, or a public holiday under the law of North Dakota.

"CCJWRD" means the Cass County Joint Water Resource District, a political subdivision of the State of North Dakota, its successors and assigns.

"Comprehensive Project" means construction of a diversion channel through North Dakota that is designed to convey twenty thousand (20,000) cubic feet per second at the one percent (1%) chance or 100-year event and is approximately thirty (30) miles long, 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 River and Sheyenne River, a drop structure of each of the Rush River and Lower Rush River, four (4) railroad bridges, various in-town levees, 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, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environment 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.

"Construction Documents Submittal" means the design submittal described in Section 7.06(b) of this **Memorandum of Understanding**.

"Effective Date" means the date of the signatures below.

"Excavated Material Berm" or **"EMB"** means a berm constructed from materials that have been excavated from within the **Project Property**.

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

"IDF Line of Protection" means inflow design flood line of protection.

"LFC" means the low-flow channel constructed in the bottom section of the diversion channel from the diversion outlet to the diversion inlet structure designed to convey minimum low flow rates of seven hundred twenty (720) cubic feet per second from the diversion outlet to the Rush River inlet; four hundred seventy (470) cubic feet per second from the Rush River inlet to the Maple River aqueduct; and flow rates determined by the **P3 Developer** from the Maple River aqueduct to the diversion inlet structure.

"Memorandum of Understanding" means this **Memorandum of Understanding** by and between the **Metro Flood Diversion Authority** and the **Tower Owner**.

"Metro Flood Diversion Authority" means the political subdivision created by the Joint Powers Agreement, effective June 1, 2016, by and between the City of Moorhead, a political subdivision of the State of Minnesota; the City of Fargo, a political subdivision of the State of North Dakota; Clay County, a political subdivision of the State of Minnesota; Cass County, a

political subdivision of the State of North Dakota; and Cass County Joint Water Resource District, a political subdivision of the State of North Dakota and vested with the powers therein.

"Other Approvals" means all approvals and permits legally required to complete approved **Tower Adjustment Construction Work** on the **Tower Relocation Project**, including, but not limited to, construction permits and permits from the applicable water resource district.

"P3 Developer" means Red River Valley Alliance, LLC, its successors or assigns, or a new P3 Developer if applicable in the future, which entered into the Project Agreement with the **Metro Flood Diversion Authority** to design, finance, build, operate, and maintain the SWDCAI.

"Prior Property Interest(s)" means any property interest(s) owned by the **Tower Owner** that **Metro Flood Diversion Authority** deems necessary to **Relocate** identified in Section 3.02 of this **Memorandum of Understanding**.

"Project" means the design, construction, financing, operations, and maintenance of the **SWDCAI**.

"Project Agreement" means a Public-Private Partnership Agreement 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 **P3 Developer** for design, construction, financing, operation, and maintenance of the **Project**.

"Project Property" means real property acquired for the **Project**, including, but not limited to, land, rights-of-way, easements, licenses, and leases.

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

"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.

"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 **Tower Adjustment Construction Work** is being done, has been done, or will be done as part of the **Tower Relocation Project**.

"Supplemental Plan" means a plan submitted for approval pursuant to Article VII, in the event that **Undisclosed Prior Property Interests** are identified after one or more plans have already been approved pursuant to Article VII.

"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 thirty (30) mile channel, outlet, river and drain inlets, road bridges, railroad bridges, aqueducts, utility relocations, and recreational features.

"Tower 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 **Tower Adjustment Work** for each crossing of the **Project** right-of-way by a tower that crosses the **Project** right-of-way more than once will be considered a separate **Tower Adjustment**. For any tower installed longitudinally within the **Project** right-of-way, the **Tower Adjustment Work** for each continuous segment of that tower located within the **Project** right-of-way will be considered a separate **Tower Adjustment**.

"Tower Adjustment Completion" means that the **Tower Adjustment Construction Work** for a **Tower Adjustment** is sufficiently complete in the opinion of the **Metro Flood Diversion Authority** and the **Tower Owner**.

"Tower Adjustment Construction Work" means all **Tower Adjustment Work** related to construction.

"Tower Adjustment Design Work" means all **Tower Adjustment Work** related to design.

"Tower Adjustment Work" means all efforts and costs necessary to accomplish the required **Tower Adjustments**, including all coordination, **Tower Adjustment Design Work**, design review, permitting, **Tower Adjustment Construction Work**, inspection and maintenance of records, whether provided by **Metro Flood Diversion Authority** or by the **Tower Owner**.

"Tower Relocation Project" means the process of **Relocating** any **Prior Property Interests**, and all other steps necessary, as determined by the **Metro Flood Diversion Authority**, to prepare the **Project Property** for construction of the **Project**.

"Tower Owner" means SBA Towers X, LLC.

"Undisclosed Prior Property Interests" mean **Prior Property Interests** not disclosed in Section 3.02 of this **Memorandum of Understanding**.

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

"Water Resource District Infrastructure" means any infrastructure or property right of any kind owned by or attributable to the Maple River Water Resource District, Southeast Cass Water Resource District, Rush River Water Resource District, North Cass Water Resource District, or the Cass County Joint Water Resource District.

Section 1.02 TERMS GENERALLY. The definitions of terms herein apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun includes the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" are deemed to be followed by the phrase "without limitation." The

word "will" is 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 is 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 is construed to include any person's permitted successors and assigns,

(c) the words "herein," "hereof," and "hereunder," and words of similar import, is construed to refer to this **Memorandum of Understanding** in its entirety and not to any particular provision hereof, and

(d) all references herein to articles, sections, exhibits, and schedules are construed to refer to articles and sections of, and exhibits and schedules to, this **Memorandum of Understanding**.

Section 1.03 SURVIVAL OF TERMS. Upon the expiration or other termination of this **Memorandum of Understanding**, the respective rights and obligations of the **Parties** shall survive such expiration or other termination to the extent necessary to carry out the intentions of the **Parties** under this **Memorandum of Understanding**, for a period ending no earlier than the thirty (30) year operating and maintenance period following **Project Substantial Completion**.

Section 1.04 INTENT TO ASSIGN. **Tower Owner** acknowledges the **Metro Flood Diversion Authority's** intent to assign certain rights and obligations under this **Memorandum of Understanding** to the **P3 Developer**, and hereby irrevocably waives any right to object to any such assignment.

ARTICLE II.
PURPOSE OF MEMORANDUM OF UNDERSTANDING

Section 2.01 PURPOSE. The purpose of this **Memorandum of Understanding** is to ensure a coordinated, time-efficient, and cost-effective process for completing the **Tower Relocation Project** and coordination of the operations and maintenance activities after completion of the **Tower Relocation Project**.

Section 2.02 COORDINATION BETWEEN ENGINEERS. The **Parties** are likely to employ the use of professional engineers in the completion of **Tower Adjustment Construction 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. **Tower Owner** 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 **Memorandum of Understanding**, without the prior written authorization of the **Metro Flood Diversion Authority**.

ARTICLE III.
REAL PROPERTY INTERESTS

Section 3.01 INTENT. It is the intent of the **Parties** hereto that all **Prior Property Interests** are identified herein. Specifically, **Prior Property Interests** are detailed in the table contained in Section 3.02 and further documented in the Exhibits to this **Memorandum of Understanding**.

Section 3.02 IDENTIFICATION OF PRIOR PROPERTY INTERESTS. The **Prior Property Interests** to be **Relocated** pursuant to the terms and conditions of this **Memorandum of Understanding** include, the **Prior Property Interests** described in the table below:

Exhibit No.	Section	Town-ship	Range	Type	Preliminary Diversion Channel Station	Right of Way Documents
1	25	139	50	Cell Tower	1164+50	1275988
2	25	139	50	Cell Tower	1164+50	1275989
3	25	139	50	Cell Tower	1164+50	1464075
4	25	139	50	Cell Tower	1164+50	1396808

Section 3.03 UNDISCLOSED PRIOR PROPERTY INTERESTS. If the **Metro Flood Diversion Authority**, for any reason, determines **Undisclosed Prior Property Interests** should be **Relocated**, such **Relocation** shall occur pursuant to the terms of this **Memorandum of Understanding**.

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 **Tower Owner** 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**. If the **Tower Owner** fails to submit a **Supplemental Plan** for approval within sixty (60) days, **Owner** shall be responsible for a fee in the amount of five hundred dollars ($500) for each day after the deadline **Tower Owner** has not satisfied its obligation. 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.

Section 3.05 COOPERATION IN PLATTING. **Metro Flood Diversion Authority** intends to plat right-of-way acquired for **Project** purposes. **Tower Owner** shall reasonably cooperate with said platting efforts if requested to do so by **Metro Flood Diversion Authority**.

ARTICLE IV.
RESPONSIBILITY FOR UNDISCLOSED PRIOR PROPERTY INTERESTS

Section 4.01 TOWER OWNER RESPONSIBILITY. The **Tower Owner** shall be responsible for the cost of **Relocating Undisclosed Prior Property Interests**, unless provided otherwise herein.

Section 4.02 REQUESTS FOR RELIEF. Within thirty (30) calendar days of **Tower Adjustment Completion**, the **Tower Owner** may file a written request for relief with the **Metro Flood Diversion Authority** requesting payment or partial payment for the costs of **Relocating Undisclosed Prior Property Interests,** which such relief will not be unreasonably withheld. This request for relief shall be a separate document from the cost report required by Article VII but shall be submitted to the **Metro Flood Diversion Authority** in conjunction with the cost report required by Article VII. All requests for relief shall include an itemized list of costs, the total amount requested, and justification for **Tower Owner'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 **Metro Flood Diversion Authority** is able to proceed with construction of the **Project** in a timely and efficient manner, as well as to properly monitor and ensure proper completion of the **Tower Relocation Project**, the **Tower Owner** shall, to the extent the **Metro Flood Diversion Authority** requires a grant of access, grant the **Metro Flood Diversion Authority** right-of-way in, on, over, and across any and all **Sites** as well as the right to access, enter, and inspect any **Site,** with prior written notice at least three (3) business days before **Metro Flood Diversion Authority**'s initial date of access.

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 **Metro Flood Diversion Authority**.

Section 5.03 NOTICE REQUIRED. Prior to exercising rights of **Site** access, the **Metro Flood Diversion Authority** shall provide the **Tower Owner** with at least three (3) **business days**' notice if it intends to access a **Site** on which **Tower Adjustment Construction Work** is currently and actively being completed.

Section 5.04 DELAY FOR SAFETY PURPOSES. If the **Metro Flood Diversion Authority** attempts to exercise the rights described in this Article, but doing so would pose a safety hazard, the **Metro Flood Diversion Authority** shall be kept from accessing, entering, or inspecting the **Site** in question, only for as long as is reasonably required to make the **Site** safe for access, entry, and inspection.

Section 5.05 FAILURE TO ALLOW ACCESS, ENTRY, AND INSPECTION. Should the **Metro Flood Diversion Authority** be denied access by **Tower Owner** after reasonable notice and opportunity has been provided to **Tower Owner**, other than when **Metro Flood Diversion Authority** deems such a delay appropriate under Section 5.04, the **Tower Owner** shall be responsible for liquidated damages in the same manner described in Section 6.03.

ARTICLE VI.
REQUIRED REPORTS

Section 6.01 REQUIRED REPORTS. The **Tower Owner** will cooperate with **Metro Flood Diversion Authority** to identify and supply required reports, analysis, or other information and materials relevant to the **Project**, to which it can access without undue burden to its business or employees**.**

Section 6.02 DEADLINES. All reports, engineering analysis, and other information and materials requested by the **Metro Flood Diversion Authority** shall be provided before the expiration of a reasonable deadline determined by the **Metro Flood Diversion Authority**.

Section 6.03 FAILURE TO TIMELY PRODUCE. Should the **Tower Owner** fail to produce any reports, analysis, or other information and materials requested of them by the **Metro Flood Diversion Authority**, in a timely manner the **Tower Owner**, except in circumstances where delays are caused by third parties, as well as all circumstances generally beyond its control, the party shall be assessed a fee of five hundred dollars ($500) for each day the requested information is past due.

ARTICLE VII.
PERFORMANCE AND CONSTRUCTION

Section 7.01 DESIGN. The **Tower Owner** shall be responsible for coordinating and retaining parties to do the **Tower Adjustment Design Work**, including the development and submission of the submittals described in this **Memorandum of Understanding**. The cost of the services noted in this Section shall be the sole responsibility of the **Metro Flood Diversion Authority**, subject to the review and approval cost requirements contained in this **Memorandum of Understanding**.

Section 7.02 CONSTRUCTION. The **Tower Owner** shall be responsible for all **Tower Adjustment Construction Work**. The cost of the services noted in this Section shall be the sole responsibility of the **Metro Flood Diversion Authority**, subject to the review and approval cost requirements contained in this **Memorandum of Understanding**.

Section 7.03 LOCATION. The **Metro Flood Diversion Authority** has acquired the parcel of land identified in Exhibit 5 and intends for **Tower Owner** to relocate its **Prior Property Interests** on said parcel of land.

Section 7.04 OVERHEAD TOWER TECHNICAL SPECIFICATIONS. Any overhead **Tower Adjustments** shall meet the following requirements:

(a) Towers located within the **Project Property** shall be constructed with steel.

(b) Towers may not be located within fifteen (15) feet of the **IDF Line of Protection**.

(c) Guy wire may not be placed within fifteen (15) feet of the **IDF Line of Protection**.

(d) Towers located within the **Project Property** shall be constructed and contained entirely within the parcel of land identified in Exhibit 5 hereto.

Infrastructure abandoned by the **Tower Owner** as part of the **Tower Relocation Project** will be removed by the **Tower Owner** at the expense of the **Metro Flood Diversion Authority**. Any foundation or footings will be removed to one foot (1') below grade.

Section 7.05 WATER RESOURCE DISTRICT CROSSINGS. The relocation of **Tower Owner** property and infrastructure pursuant to this **Memorandum of Understanding** shall also be subject to the approval by the applicable Water Resource District if said **Relocation** includes locating **Tower Owner** property or infrastructure above, beneath, or through **Water Resource District Infrastructure.** The **Tower Owner** and **Metro Flood Diversion Authority** shall work together and obtain a utility permit from the appropriate Water Resource District before final review and approval of the **Tower Adjustment Design Work**.

Section 7.06 PROPOSAL AND PLANS FOR COMMUNICATIONS TOWER. The following proposals and plans shall be submitted for the Tower Adjustment.

(a) Any time following the execution of this **Memorandum of Understanding**, the **Metro Flood Diversion Authority** may provide the **Tower Owner** written notice of the technical specifications for the diversion channel, any setback distances for structures from the channel centerline and ROW limits. Within sixty (60) days of receiving such written notice, the **Tower Owner** shall develop and present for approval plans for the proposed tower location for review, comment, and approval by the **Metro Flood Diversion Authority**.

(b) Following approval of the tower location the **Tower Owner** shall develop a **Construction Document Submittal** for the completion of the **Tower Adjustment Construction Work** for review and approval by the **Metro Flood Diversion Authority** within sixty (60) days. The **Construction Document Submittal** shall include a complete cost estimate and a schedule with work breakdown structure that identifies utility outages and other critical dates. Upon completion of the **Construction Documents Submittal**, the **Tower Owner** shall sign and seal the contents of the **Construction Documents Submittal**.

(c) The tower location approved by the **Metro Flood Diversion Authority** under Section 7.03 will form a clear space outside the channel that will not be impinged upon by modification to existing facilities or new construction without the approval of the **Metro Flood Diversion Authority**.

Section 7.07 REVIEW. The Metro Flood Diversion Authority shall complete a full review of each submittal and provide comments and/or approval.

(a) The **Metro Flood Diversion 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 **Memorandum of Understanding** and the performance specifications provided in the **Tower Owner's** design submittal.

(b) The **Metro Flood Diversion Authority** shall complete a full review and provide comments on submittals within twenty (20) **Business Days** of the date on which the **Metro Flood Diversion Authority** receives a full and complete submittal. Should the **Metro Flood Diversion Authority** determine that a submittal is not in

compliance with the terms and specifications provided in this **Memorandum of Understanding**, the **Tower Owner** will be notified of the reason for non-compliance and may resubmit with corrections, amendments and/or addendums before a reasonable timeline to be determined by the **Metro Flood Diversion Authority** after conferring with the **Tower Owner**. The **Metro Flood Diversion Authority** shall review the submittal and respond within ten (10) **Business Days**. The **Metro Flood Diversion 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.

Section 7.08 REQUIREMENT OF APPROVAL. No **Tower Adjustment Construction Work** may begin until the **Metro Flood Diversion Authority** approves the final design and the **Metro Flood Diversion Authority** approves the cost estimate required by this **Memorandum of Understanding**.

Section 7.09 APPROVAL WITHHELD. In the event the **Metro Flood Diversion Authority** withholds approval as to any proposed **Tower Adjustment Construction Work**, written notice of, and reasons for, withholding shall be provided to the **Tower Owner**. Where approval is withheld, the **Tower Owner** shall prepare and submit to the **Metro Flood Diversion Authority** a corrected submittal within sixty (60) days.

Section 7.10 FAILURE TO SUBMIT PLANS IN A TIMELY MANNER. Should **Tower Owner** fail to produce a submittal required by this **Memorandum of Understanding** before the applicable deadline as provided for herein except in circumstances regarding delays by third parties as well as all circumstances generally beyond its control, **Tower Owner** shall be responsible for a fee of five hundred dollars ($500) for each day **Tower Owner** has not satisfied its obligation.

Section 7.11 OTHER APPROVALS. The **Tower Owner** shall promptly apply for and obtain all **Other Approvals** necessary for the **Tower Relocation Project** at **Metro Flood Diversion Authority's** cost or to be reimbursed to **Tower Owner** upon presentation supporting proof of payment.

Section 7.12 INITIATION OF WORK. After the **Construction Documents Submittal** has been approved as to the Tower to be **Relocated** hereunder, the **Metro Flood Diversion Authority** may give the **Tower Owner** written notice that **Tower Adjustment Construction Work** on the facility relocation shall begin within one hundred eighty (180) calendar days of notice date unless (i) notice is submitted within non-construction period of November through April in which case, construction shall begin on or before the 90th day after notice, but no later than May 15th; (ii) for safety purposes construction cannot commence, in which case construction shall commence as soon as the safety threat has been mitigated or subsided; or (iii) the **Tower Owner** and **Metro Flood Diversion Authority** agree to a different date based on material procurement lead times and outage constraints; therefore, construction shall commence within ninety (90) days of end of said period.

Section 7.13 SHOP DRAWING AND SAMPLE SUBMITTALS. The **Tower Owner** shall submit **Shop Drawings and Samples** that detail the **Tower Adjustment Construction Work**. The **Metro Flood Diversion Authority** shall review the **Shop Drawings and Samples** in accordance with the procedure and timelines in Section 7.07 for the review of design submittals.

Section 7.14 ADJUSTMENTS TO THE PROJECT. Should the planned route of the **SWDCAI** change in a material manner, the **Tower Owner** and **Metro Flood Diversion Authority** shall interface to adjust plans for the **Tower Relocation Project** as necessary. The Tower Owner shall be reimbursed for any costs associated with such change in accordance with the terms of this **Memorandum of Understanding**.

Section 7.15 ADJUSTMENT TO THE TOWER ADJUSTMENT WORK. Any changes or modifications to the **Construction Documents Submittal** during construction that materially affect the performance or construction of the **Tower Adjustment Work** will be subject to written approval by the **Metro Flood Diversion Authority**. The **Metro Flood Diversion Authority** shall provide approval or a written explanation of its specific objections to the changes or modifications in accordance with the procedures and timelines set forth in Section 7.07. **Tower Owner** facilities not required to be moved prior to the adjustment of **Construction Documents Submittal**, which need to be **Relocated** after changes are made to **Construction Documents Submittal** shall not be treated as **Undisclosed Prior Property Interests** for purposes of assigning responsibility for costs.

Section 7.16 INSPECTION. The **Tower Owner** shall be responsible for inspection of the **Tower Adjustment Construction Work**. However, the **Metro Flood Diversion Authority** shall have a concurrent right to inspect **Tower Adjustment Construction Work**.

Section 7.17 TOWER COMPLETION. The **Tower Owner** will provide the **Metro Flood Diversion Authority** with written notice of any anticipated **Tower Adjustment Completion** for the **Tower Adjustment Construction Work** at least sixty (60) calendar days and fifteen (15) Business Days prior to the anticipated date for **Tower Adjustment Completion**. Within ten (10) Business Days of the anticipated date for **Tower Adjustment Completion**, the **Tower Owner** will notify the **Metro Flood Diversion Authority** to schedule a final inspection of the **Tower Adjustment Construction Work** to determine whether the Tower Adjustment meets the final design and any material changes or modifications made pursuant to Sections 7.14 and 7.15. If the **Metro Flood Diversion Authority** finds the construction is not in conformance with the **Construction Documents Submittal** or any approved material changes or modifications, the **Metro Flood Diversion Authority** will notify the **Tower Owner** of such fact and the **Tower Owner** will correct such nonconformance in the construction work and re-notify for inspection. If **Tower Completion** acceptance has not been reached by the date the **Metro Flood Diversion Authority** approved pursuant to this Article, except in circumstances regarding unavailability or delays in delivery of labor and supplies, as well as all circumstances generally beyond its control, **Tower Owner** shall be responsible for a fee of five hundred dollars ($500) per day until **Tower Owner** has fulfilled its obligation hereunder.

Section 7.18 DAMAGE CAUSED BY TOWER OWNER. The **Tower Owner** shall be responsible for the correction of any damage to the **SWDCAI** which resulted from the negligence of the **Tower Owner**.

ARTICLE VIII.
PAYMENT OF COSTS

Section 8.01 NECESSITY TO KEEP COSTS LOW. The **Tower Owner** and **Metro Flood Diversion Authority** each recognize the need to minimize the cost of the **Tower Relocation Project**, while seeking to maintain the same quality of service to the **Tower Owner's** customers.

The **Tower Owner** and **Metro Flood Diversion Authority** shall be diligent in keeping costs as low as reasonably possible.

Section 8.02 SUBMITTAL OF COST ESTIMATE. Following the submittal of a **Construction Documents Submittal**, the **Tower Owner** shall submit a cost estimate for the **Tower Owner's** portion of the **Tower Adjustment Construction Work** in the **Construction Documents Submittal**. The **Metro Flood Diversion Authority** shall review and approve the cost estimate under the terms identified in Section 7.07.

Section 8.03 GENERALLY. The **Metro Flood Diversion Authority** shall pay all reasonable costs of the **Tower Relocation Project** approved under Section 8.02 and any other reasonably necessary costs incurred to complete the Tower Relocation Project, whether those costs are incurred by the **Tower Owner** or the **Metro Flood Diversion Authority**. **Tower Owner** shall provide invoices to the **Metro Flood Diversion Authority** consistent with the requirements of Exhibit 7 to this **Memorandum of Understanding.**

Section 8.04 WHEN REPORTED COSTS EXCEED ESTIMATES. If the costs reported pursuant to this Article exceed the aggregate cost approved pursuant to Article VII or appear to be unreasonable, the **Metro Flood Diversion Authority** may, within thirty (30) days of receipt of the itemized report, provide the **Tower Owner** with written notice requesting clarification of specific line items as excessive or unreasonable in relation to the costs approved pursuant to Article VII and the **Tower Owner** will provide within thirty (30) days proper justification. Following clarification by the **Tower Owner** or the expiration of thirty (30) days, the **Metro Flood Diversion Authority** shall accept or reject the costs in question. Acceptance of costs shall not be unreasonably withheld. Should the **Metro Flood Diversion Authority** reject any costs, it shall provide the **Tower Owner** with an explanation of the reasons for said rejection.

Section 8.05 APPEAL OF A DECISION TO REJECT COSTS. The **Tower Owner** may appeal a decision rejecting any cost by providing the **Metro Flood Diversion 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 WRITTEN JUSTIFICATION OF COSTS. Within twenty (20) days of receipt of the written notice described in Section 8.04, the **Metro Flood Diversion Authority** shall determine which **Party** will bear the rejected costs.

Section 8.07 PAYMENT OF ACCEPTED COSTS. Within thirty (30) days of the determination of the **Metro Flood Diversion Authority's** liability, the **Metro Flood Diversion Authority** shall issue payment of the amount owed to the **Tower Owner**.

Section 8.08 BETTERMENTS. In no situation shall any **Party** other than the **Tower Owner** be responsible for the costs and expenses of **Betterments** to the **Tower Owner** facilities installed during the **Tower Relocation Project.**

Section 8.09 PAYMENT AFTER TERMINATION. Should **Metro Flood Diversion Authority** terminate this **Memorandum of Understanding**, all costs incurred by the **Tower Owner** shall be paid by **Metro Flood Diversion Authority** within thirty (30) days of invoicing, pursuant to the review and acceptance provisions detailed in this Article.

ARTICLE IX.
ASSIGNMENT OF RESPONSIBILITIES

Section 9.01 ASSIGNMENT BY THE METRO FLOOD DIVERSION AUTHORITY. The Metro Flood Diversion Authority may, in its sole discretion, assign all or any of its rights, responsibilities, authority, or obligations under this **Memorandum of Understanding**, so long as said assignment does not frustrate the purpose of this **Memorandum of Understanding** or the **Project**.

Section 9.02 ASSIGNMENT BY THE TOWER OWNER. The **Tower Owner** may assign any or all of its rights, responsibilities, authority, or obligations under the terms of this **Memorandum of Understanding**, so long as said assignment does not frustrate the purpose of this **Memorandum of Understanding** or the **Project**.

ARTICLE X.
FUTURE RIGHTS AND RESPONSIBILITIES

Section 10.01 PERPETUAL EASEMENT. The **Metro Flood Diversion Authority** shall grant the **Tower Owner** a perpetual easement to below, above, and across the parcel identified in Exhibit 5 so the **Tower Owner** can properly maintain its facilities in the right-of-way. The easement shall be subject to the following restrictions:

(a) Maintenance of Tower Property. Following completion of the **Tower Relocation Project**, the **Tower Owner** shall be responsible for all maintenance of **Tower Owner** property and associated infrastructure.

(b) Post-Construction Access. Following completion of the **Tower Relocation Project**, the **Tower Owner** shall provide the **Metro Flood Diversion Authority** with seven (7) days' written notice of any maintenance it intends to do within the **Project Property**, unless said maintenance is previously unplanned, but necessary due to an emergency situation.

(c) Approval for Ground Disturbing Maintenance or Repairs. The **Tower Owner** must submit and obtain approval for any and all plans for maintenance or repair, other than in emergency situations as determined by the **Tower Owner**, which requires the ground with the **Project Property** to be disturbed, from the **Metro Flood Diversion Authority** on the same schedule described for submittals in Article VII. Approval shall not be unreasonably withheld by the **Metro Flood Diversion Authority**.

(d) Clean Up. The **Tower Owner** shall ensure that, after any maintenance or repairs to **Tower Owner** property, the ground within the **Project Property** is returned to the state in which it existed prior to the maintenance or repair that caused the ground within the **Project Property** to be disturbed, less normal wear and tear.

(f) Access. The **Metro Flood Diversion Authority** shall have unrestricted access in, over, and across the easement. The **Metro Flood Diversion Authority** shall not construct any buildings or structures over the easement granted pursuant to this Article that will permanently and/or entirely limit **Tower Owner's** access to its facilities.

(g) Damage to the SWDCAI. Should **Tower Owner** property malfunction, deconstruct, or otherwise cause damage to the **SWDCAI**, the **Tower Owner** shall take immediate action to stop on-going damage to the **SWDCAI** and repair all damage that occurs. Costs for said repairs are to be paid by the responsible party.

Section 10.02 USE OF EXISTING EASEMENT. So long as **Tower Owner's** facilities are located within **Tower Owner's** easement, the **Tower Owner** shall be bound and exercise its rights under said easement subject to requirements and obligations contained in Section 10.01. The requirements of this Article shall survive so long as the **Tower Owner** has property located within the **Project Property**.

Section 10.03 RECORD KEEPING. The **Tower Owner** 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 **Tower Relocation Project**, in accordance with the recordkeeping and audit requirements of this **Memorandum of Understanding** and the laws of North Dakota.

Section 10.04 FUTURE PERMITS. Should the **Tower Owner** file a formal permit application pertaining to the utility line **Relocated** pursuant to this **Memorandum of Understanding**, with the **Metro Flood Diversion Authority** after the **Effective Date**, the **Metro Flood Diversion Authority** shall grant, at no cost to the **Tower Owner**, 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 **SWDCAI** or interfere with other facilities already contained within the **Project Property,** as determined by the **Metro Flood Diversion Authority**. Should an existing **Tower Owner** line be modified in the future, the **Metro Flood Diversion 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 **Tower Owner** to apply for a new permit. The term "modifications" as used in this Section, include changes that bring new or existing conductors below the height elevation approved pursuant to Article VII, changes that would move tower locations approved pursuant to Article VII, or any other changes that would impinge upon the clear space between the inner edges of the towers located immediately adjacent to either side of the channel or the conductor elevations and the ground approved pursuant to Article VII.

ARTICLE XI.
DISPUTES WITH CONTRACTORS AND OTHER THIRD PARTIES

Section 11.01 COORDINATION. The **Parties** shall coordinate with respect to any dispute with third parties. Such coordination shall include any potential or ongoing litigation.

ARTICLE XII.
DISPUTES AMONG THE TOWER OWNER, AND METRO FLOOD DIVERSION AUTHORITY

Section 12.01 INTENT AND PROCEDURE. The **Parties** shall cooperate and use their **Best Efforts** to ensure that the provisions of this **Memorandum of Understanding** are fulfilled. The aforementioned **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** or under other, situation-specific dispute resolution mechanisms contained herein, the following procedure shall be used.

Section 12.02 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 each contribute three names to a list of mediators and select a mediator by alternately striking names until one remains. The **Metro Flood Diversion Authority** shall strike the first name, followed by the **Tower Owner**, until one name remains.

Section 12.03 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 12.04 LEGAL FEES. Each **Party** will be responsible for their own attorney's fees in connection with a dispute under this Article.

ARTICLE XIII.
USE OF EMINENT DOMAIN

Section 13.01 EMINENT DOMAIN. Nothing in this **Memorandum of Understanding** shall be construed as limiting the **Metro Flood Diversion Authority's**, or one of its member entities', ability to exercise its powers of eminent domain.

Section 13.02 NULLIFICATION BY EMINENT DOMAIN. Should the **Metro Flood Diversion Authority** initiate eminent domain proceedings to accomplish the goals of the **Tower Relocation Project**, any term or terms of this **Memorandum of Understanding** may be deemed null and void at the sole discretion of the **Metro Flood Diversion Authority**.

Section 13.03 NULLIFICATION AFTER COSTS INCURRED. Should the terms of this **Memorandum of Understanding** be nullified under Section 13.02, after plans and proposals described in Sections 7.06 and 7.07 have been approved as required by Article VII, the **Tower Owner** shall, within thirty (30) days of being served with notice of the eminent domain proceeding, submit a report of its costs to the **Metro Flood Diversion Authority** in the same manner it would have submitted a report of costs to the had the **Tower Relocation Project** been completed. The **Tower Owner** and **Metro Flood Diversion Authority** shall have all of the rights and obligations created by Article VII.

ARTICLE XIV.
MISCELLANEOUS

Section 14.01 NOTICE. 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:

(a) All notices to the **Metro Flood Diversion 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 **Metro Flood Diversion Authority's** authorized representative:

Jacobs Engineering Group, Inc.
4784 Amber Valley Parkway South, Suite 200
Fargo, North Dakota 58104

(b) 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
4784 Amber Valley Parkway South, Suite 100
Fargo, North Dakota 58104

And

APInvoicesFMDiv@jacobs.com; and
PaulsenJ@FMDiversion.gov

(c) All notices to the **Tower Owner** will be marked as regarding the **Project** and will be delivered to the following addresses or as otherwise directed by the **Tower Owner's** authorized representatives:

SBA Communications Corporation
8051 Congress Avenue
Boca Raton, FL 33487-1307
Attn: Jessica Ross
JRoss@sbasite.com

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 14.02 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 **Memorandum of Understanding**. 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 14.03 INSURANCE. The **Tower Owner** shall list the **Metro Flood Diversion Authority** (including its agents and contractors), **P3 Developer**, and **CCJWRD**, as additional insured on any insurance policy obtained in connection with the **Tower Relocation Project**. No **Tower Adjustment Work** may be done until a certificate of insurance listing as the then required additionally 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. The **Tower Owner** shall obtain a general liability insurance policy providing no less than two million dollars ($2,000,000) of coverage in connection with the **Tower Relocation Project**.

Section 14.04 INDEMNIFICATION. The **Tower Owner** shall indemnify, save and hold the **Metro Flood Diversion Authority**, its member entities, directors, officers, employees, and agents harmless from any liability, loss, damage, or expense, including legal fees, arising out of the negligent performance of their respective obligations under this **Memorandum of Understanding** or by anyone for whom they are in law responsible. The **Parties** agree that they shall cooperate with each other in the defense of any such action, including providing each other with prompt notice of any such action and the provision of all material documentation. The **Parties** further agree that they have a right to retain their own counsel to conduct a full defense of any such action.

Section 14.05 CONFLICT. In the event of a conflict between this **Memorandum of Understanding** and any other agreement, this **Memorandum of Understanding** shall control and govern the relocation of **Tower Owner** infrastructure, lines, and property for purposes of the **SWDCAI**.

Section 14.06 FEES. The fees provided for herein shall not be interpreted or deemed to be the **Metro Flood Diversion Authority**'s sole source of recovery for damages in any way arising from or related to **Tower Owner**'s delay, actions, or failure to act. The **Metro Flood Diversion Authority** shall have all remedies available to it at law in addition to any fees paid to the **Metro Flood Diversion Authority** by **Tower Owner** pursuant to this **Memorandum of Understanding**. **Metro Flood Diversion Authority's** liability hereunder shall be strictly limited as set forth by the laws of the State of North Dakota and the State of Minnesota. Nothing herein, including this Section, shall be deemed a waiver of any available immunities or defenses.

Section 14.07 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.

Section 14.08 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, **Tower Owner** shall complete and submit to the **Metro Flood Diversion 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**. **Tower Owner** shall also require all subcontractors and suppliers of any tier awarded a subcontract over one hundred thousand dollars ($100,000) to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

Section 14.09 DEBARMENT AND SUSPENSION. **Tower Owner** 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. **Tower Owner** 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, **Tower Owner** shall complete and submit to the **Metro Flood Diversion Authority** the federal certification form regarding debarment and suspension, which is attached as an Exhibit to this **Memorandum of Understanding**.

Section 14.10 CIVIL RIGHTS OBLIGATIONS. **Tower Owner** 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 14.11 AMERICAN IRON AND STEEL. **Tower Owner** 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 the **Tower Owner** pursuant to this **Memorandum of Understanding. Tower Owner** hereby represents, warrants and covenants to and for the benefit of the **Metro Flood Diversion Authority** and the EPA that (a) the **Tower Owner** 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) the **Tower Owner** 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 the **Tower Owner** shall permit the **Metro Flood Diversion Authority** or the EPA to recover as damages against the **Tower Owner** 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 the **Tower Owner** 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 the **Tower Owner** 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 14.12 RELATIONSHIPS CREATED. The **Parties** agree this **Memorandum of Understanding** does not create any agency, partnership, joint venture, or any other relationship between the **Parties** and that **Tower Owner** is solely responsible for its own actions or omissions.

Section 14.13 GOVERNING LAW. This **Memorandum of Understanding** 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 **Memorandum of Understanding** shall be venued in Cass County in the State of North Dakota, and the **Parties** waive any objection to personal jurisdiction.

Section 14.14 SEVERABILITY. 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, 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 **Memorandum of Understanding**.

Section 14.15 MODIFICATIONS. Any modifications or amendments to this **Memorandum of Understanding** must be in writing and signed by both **Parties** to this **Memorandum of Understanding**.

Section 14.16 BINDING EFFECT. This **Memorandum of Understanding** shall be for the benefit of, and may be enforced only by the **Parties,** and is not for the benefit of, and may not be enforced by any third party.

Section 14.17 REPRESENTATION. The **Parties**, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this **Memorandum of Understanding**, and agree they have not been influenced by any representations or statements made by any other parties.

Section 14.18 HEADINGS. Headings in this **Memorandum of Understanding** are for convenience only and will not be used to interpret or construe its provisions.

Section 14.19 COUNTERPARTS. This **Memorandum of Understanding** 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 14.20 REPRESENTATION OF AUTHORITY. Each **Party** signing this **Memorandum of Understanding** represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this **Memorandum of Understanding** and that the **Memorandum of Understanding** is a valid and legal agreement binding on such **Party** and enforceable in accordance with its terms.

Section 14.21 TERMINATION. This **Memorandum of Understanding** may be terminated by the **Metro Flood Diversion Authority** at any time and for any reason, except as otherwise provided herein, by providing three (3) days written notice of termination. The **Tower Owner** may terminate this **Memorandum of Understanding** if it first obtains written approval, which will not be unreasonably withheld, of the termination from the **Metro Flood Diversion Authority**. So long as **Tower Owner** is not in material breach of its obligations hereunder and failed to cure any notice of default resulting therefrom, **Metro Flood Diversion Authority** may not terminate this **Memorandum of Understanding** during the period between the completion of **Tower Owner's** new tower, and the decommissioning of **Tower Owner's Prior Property Interests**.

Section 14.22 FORCE MAJEURE. Neither the **Tower Owner** nor **Metro Flood Diversion Authority** shall be held responsible for any delay or failure in performance of any part of this **Memorandum of Understanding** to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party. The affected party will notify the other party in writing within ten (10) days after the beginning of any such cause that would affect its performance. Notwithstanding, if a party's performance is delayed for a period exceeding thirty (30) days from the date the other party receives notice under this section, the non-affected party will have the right, without any liability to the other party, to terminate this Memorandum of Understanding.

(Signatures appear on the following pages.)

IN WITNESS WHEREOF, the Parties executed this Memorandum of Understanding on the date first written above.

METRO FLOOD DIVERSION AUTHORITY

BY: _____
Chad Peterson, Chair

BY: _____
Joel Paulsen, Executive Director

SBA TOWERS X, LLC

By: _____
Signature

Name: _____
Printed

Title: _____

By: _____
Signature

Name: _____
Printed

Title: _____

EXHIBIT 1-4

RIGHT-OF-WAY DOCUMENTS

STROUP AND RINDY LAW OFFICE

1275988
Page: 1 of 13
9/11/2009 11:46 AM
EASE $46.00

RECORDER'S OFFICE, CASS COUNTY, ND 9/11/2009 11:46 AM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER
by Teresa A. Kirby, Dep 1275988

EXHIBIT
1

RECORDER OF CASS COUNTY
OFFICIAL
SEAL
STATE OF NORTH DAKOTA

SPACE ABOVE RESERVED FOR RECORDER

Prepared by and return to:
Matthew Massarelli, Esq. @ TowerCo
5000 Valleystone Dr, Cary, NC 27519
(919) 469-5559

TowerCo Site ID:
ND2003

Tax Parcel ID:
53-0300-00010-000

Instrument:
Easement Agreement

Grantor (Seller):
Tom McDougall (aka Thomas R. McDougall) and Chris McDougall (aka Christine M. McDougall), with an address of 1724 40th Avenue West, West Fargo, ND 58078

Grantee (Buyer):
TCO Assets Land LLC, a DE limited liability company, with an address of 5000 Valleystone Dr, Attn: Legal Dept, Cary, NC 27519

THIS EASEMENT AGREEMENT (this "Agreement") is made effective as of the latter signature date hereof (the "Effective Date"), by and between Grantor and Grantee.

BACKGROUND:
Grantor is the owner of the real property described on Exhibit A hereto (the "Premises"). Grantor desires to grant to Grantee certain easement rights with respect to the Premises, as more particularly described below, and subject to the terms and conditions of this Agreement. Each of the parties hereto hereby agrees and acknowledges that this Easement Agreement amends and restates in its entirety the unrecorded Easement Agreement dated as of June 9, 2009 by and between Grantor and Grantee the terms and conditions of which shall be of no further force or effect.

1275988
Page: 2 of 13
9/11/2009 11:46 AM
STROUP AND RINDY LAW OFFICE
EASE $46.00

AGREEMENTS:

For and in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easements. Grantor, for itself and its heirs, personal representatives, successors and assigns, hereby grants and conveys unto Grantee, its tenants, lessees, sublessees, licensees, agents, successors and assigns: (i) a perpetual, exclusive easement (the "Exclusive Easement") in and to that portion of the Premises more particularly described on **Exhibit B** hereto; and (ii) a perpetual, non-exclusive easement in and to that portion of the Premises more particularly described on **Exhibit C** hereto (the "Access and Utility Easement) (the Exclusive Easement and the Access and Utility Easement being collectively referred to herein as the "Easements"). The Easements shall be used for the purposes set forth in Section 6 hereof.

2. Private Easement. Nothing in this Agreement shall be deemed to be a dedication of any area for public use. All rights, easements and interests herein created are private and do not constitute a grant for public use or benefit.

3. Successors Bound. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, lessees, successors and assigns. It is the intention of the parties hereto that all of the various rights, obligations, restrictions and easements created in this Agreement shall run with the affected lands and shall inure to the benefit of and be binding upon all future owners and lessees of the affected lands and all persons claiming under them.

4. Duration. The duration of the Easements granted herein (the "Term") shall be perpetual, unless Grantee provides written, recordable notice of its intent to terminate this Agreement, in which event this Agreement and all obligations of Grantee hereunder shall terminate upon Grantee's recordation of any such notice. In the event that the use of the Easements is abandoned by Grantee, or its successors, then Grantor, or its successors, may terminate the Easements by providing legally sufficient evidence of such abandonment, and following such termination all right and title to the land constituting the Easements shall revert back to Grantor. Abandonment shall be deemed to have occurred if neither Grantee nor any of its affiliates, customers, tenants, subtenants, employees or agents utilize (such use shall be construed broadly to include, but not be limited to, use of the tower for the broadcast and receipt of telecommunications signals, maintenance of the tower or the equipment located on the Exclusive Easement, or maintenance and/or upkeep of the Easements) the tower site or facilities in any manner for a consecutive period of two (2) years, and, following the expiration of such 2 year period, do not respond within forty-five (45) days of Grantor's written notice to Grantee, which notice shall assert that non-response will result in termination of the Easements.

5. Easement Consideration. Grantor hereby acknowledges the receipt, contemporaneous with the execution hereof, of all consideration due hereunder. Accordingly, no additional consideration shall be due during the Term of this Agreement.

6. Use of Easement Areas.

(a) Exclusive Easement. Grantee and its designated customers, lessees, sublessees, licensees, agents, successors and assigns shall have the unrestricted right to use the Exclusive Easement for installing, constructing, maintaining, operating, modifying, repairing and replacing improvements and equipment, which may be located on the Exclusive Easement from time to time, for the facilitation of communications and related uses in connection therewith. Grantee may make any improvements, alterations or modifications on or to the Easements as are deemed appropriate by Grantee, in its sole discretion. At all times during the term of this Agreement, Grantee shall have the exclusive right to use,

and shall have free access to, the Easements seven (7) days a week, twenty-four (24) hours a day. Grantee shall have the unrestricted and exclusive right to lease, sublease, license, or sublicense any structure or equipment on the Exclusive Easement and shall also have the right to license, lease or sublease to third parties any portion of the Exclusive Easement, but no such lease, sublease or license shall relieve or release Grantee from its obligations under this Agreement. Grantor shall not have the right to use the Exclusive Easement for any reason and shall not disturb Grantee's right to use the Exclusive Easement in any manner. Grantor and Grantee acknowledge that Grantee shall have the right to construct a fence around all or part of the Exclusive Easement, and shall have the right to prohibit anyone, including Grantor, from entry into such Exclusive Easement.

(b) Access and Utility Easement. The Access and Utility Easement shall be used by Grantee, its tenants, lessees, sublessees, licensees, agents, successors and assigns for ingress and egress from and to the Exclusive Easement, as well as the construction, installation, operation and maintenance of overhead and underground electric, water, gas, sewer, telephone, data transmission and other utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment) with the right to construct, reconstruct, improve, add to, enlarge, change and remove such facilities, and to connect the same to utility lines located in a publicly dedicated right of way. Grantor shall not in any manner prevent access to, and use of, the Access and Utility Easement by Grantee or its tenants, lessees, sublessees, licensees, agents, successors and assigns and Grantor shall not utilize the Access and Utility Easement in any manner that interferes with Grantee's or its tenants', lessees', sublessees', licensees', agents', successors' and assigns' use of such area. If the Access and Utility Easement is currently used by Grantor or its tenants, then Grantee shall not in any manner prevent access to, and use of, the Access and Utility Easement by Grantor or its tenants.

7. Equipment and Fixtures. Grantee's equipment, structures, fixtures and other personal property now or in the future on the Easements shall not be deemed to be part of the Premises, but shall remain the property of Grantee or its licensees and customers. At any time during the Term and within 90 days after termination hereof, Grantee or its customers shall have the right to remove their equipment, structures, fixtures and other personal property from the Easements. Within twelve (12) months following the expiration or earlier termination of this Easement, at the request of Grantor, Grantee shall remove all physical material related to the improvements placed upon the Premises by Grantee and restore the Premises to substantially the same condition as existed prior to the improvements by Grantee.

8. Assignment. Grantee may freely assign this Agreement, including the Exclusive Easement and the Access and Utility Easement and the rights granted herein, in whole or in part, to any person or entity (including but not limited to an affiliate of Grantee) at any time without the prior written consent of Grantor. If any such assignee agrees to assume all of the obligations of Grantee under this Agreement, then Grantee will be relieved of all responsibility hereunder.

9. Covenants and Agreements.

(a) Grantor represents and warrants that it is the owner in fee simple of the Premises, free and clear of all liens and encumbrances other than liens and encumbrances which are recorded in the public records, and that it alone has full right to grant the Easements and assign the Lease (as such term is defined in Section 25 hereof). Grantor further represents and warrants that Grantee shall peaceably and quietly hold and enjoy the Easements for the Term.

(b) During the Term, Grantor shall pay when due all real property taxes and all other fees and assessments attributable to the Premises. Grantee hereby agrees to pay any increase in real property taxes levied against the Premises which are directly attributable to Grantee's use of the Easements (but not, however, taxes attributable to periods prior to the date of this Agreement such as roll-back or greenbelt assessments) if Grantor furnishes proof of such increase to Grantee. If Grantor fails to pay when due any taxes affecting the Premises, Grantee shall have the right but not the obligation to pay such taxes and demand payment therefore from Grantor, which payment Grantor shall make within ten (10)

days of such demand by Grantee. Taxes other charges payable under this Agreement shall be billed by Grantor within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Grantor, and shall not be payable by Grantee. The provisions of the foregoing sentence shall survive the termination or expiration of this Agreement.

(c) Grantor shall not cause the area comprising the Exclusive Easementto be legally or otherwise subdivided from any master tract of which it is a part, nor shall Grantor cause the area comprising the Easements to be separately assessed for tax purposes. If it is determined by Grantee that the transfer of the Exclusive Easements set forth herein requires or shall require the subdivision of the Premises, and if Grantee, in its sole judgment, determines that it desires to seek subdivision approval, then Grantor agrees to cooperate with Grantee, at Grantee's expense, in obtaining all necessary approvals for such subdivision.

(d) Grantor shall not grant, create, or suffer any claim, lien, encumbrance, easement, restriction or other charge or exception to title to the Premises that would adversely affect Grantee's use of the Easements. Grantor has granted no outstanding options to purchase or rights of first refusal with respect to all or any part of the Premises and has entered into no outstanding contracts with others for the sale, mortgage, pledge, hypothecation, assignment, lease or other transfer of all or any part of the Premises and there are no leases, written or oral, affecting the lands underlying the Easements except for the Lease.

(e) Grantor and Grantee have and will comply with all environmental, health and safety laws with respect to the Premises.

(f) Grantor has not received notice of condemnation of all or any part of the Premises, notice of any assessment for public improvements, or notices with respect to any zoning ordinance or other law, order, regulation or requirement relating to the use or ownership of such lands and there exists no violation of any such governmental law, order, regulation or requirement and there is no litigation pending or threatened, which in any manner affects the Easements.

(g) Grantor reaffirms and restates the representations contained in the Lease (as defined in Section 25) as though they were set forth in this Agreement. Grantor agrees to indemnify, defend and hold harmless Grantee and its officers, directors, shareholders, agents and attorneys for, from, and against all damages asserted against or incurred by any of them by reason of or resulting from a breach by Grantor of any representation, warranty or covenant of Grantor contained herein, in the Lease, or in any agreement executed in connection herewith. Grantee agrees to indemnify, defend and hold harmless Grantor and its agents and attorneys for, from, and against all damages asserted against or incurred by any of them by reason of or resulting from a breach by Grantee of any misrepresentation, warranty or covenant of Grantee contained herein, in the Lease, or in any agreement executed in connection herewith.

10. Non-Disturbance. During the Term, Grantor will not improve or grant any other easement, ground lease, lease, license, sale or other similar interest of or upon the Premises if such improvement or interest would interfere with Grantee's use of the Easements nor shall Grantor during the Term enter into any other lease, license, or other agreement for a similar purpose as set forth herein, on or adjacent to the Premises. Grantee and its tenants, lessees, sublessees, licensees, agents, successors and assigns are currently utilizing the Exclusive Easement for the non-exclusive purpose of transmitting and receiving telecommunication signals. Grantor and Grantee recognize that Grantee's use of the easement rights set forth in this Agreement would be frustrated if the telecommunications signals were blocked, if an obstruction were built that would cause interference with such transmission, if access and/or utilities to and from the Exclusive Easement were partially and/or completely inhibited, or if Grantee's use was otherwise materially interfered with or prevented. Grantor, for itself, its successors and assigns, hereby agrees to use its best efforts to prevent the occurrence of any of the foregoing, and shall promptly undertake any remedial action necessary to do so. Grantee shall have the express right to seek an injunction to prevent any of the activity prohibited by this Section 10.

STROUP AND RINDY LAW OFFICE

11. Access and Utilities. To the extent not otherwise addressed herein, (or to the extent any access and utility easement specifically referenced herein, including but not limited to the Access and Utility Easement or the Exclusive Easement, if applicable, cannot, does not, or will not fully accommodate the access and utility needs of the Exclusive Easement at any time), Grantor hereby grants and conveys unto Grantee, its tenants, lessees, sublessees, licensees, agents, successors and assigns, full, complete, uninterrupted and unconditional access to and from the Exclusive Easement, seven days a week, 24 hours a day, over and across any adjacent property now or hereafter owned by Grantor, for, without limitation, ingress and egress to and from the Exclusive Easement, as well as the construction, installation, location, maintenance, relocation and repair of overhead and/or underground utility connections, including electric, telephone, gas, water, sewer, and any other utility connection, provided that Grantee shall repair any damages to the Premises caused by such access. This easement, and the rights granted herein, shall be assignable by Grantee to any public or private utility company to further effect this provision. Grantor agrees to maintain all access roadways from the nearest public right of way to the Exclusive Easement in a manner sufficient to allow for pedestrian and vehicular access to the Exclusive Easement at all times. If it is reasonably determined by Grantor or Grantee that any utilities that currently serve the Exclusive Easement are not encompassed within the description of the Access and Utility Easement set forth herein, then Grantor and Grantee agree to amend the description of the Access and Utility Easement set forth herein to include the description of such areas. If it becomes necessary to relocate any of the utility lines that serve the Exclusive Easement, Grantor hereby consents to the reasonable relocation of such utility lines upon the Premises for no additional consideration, and hereby agrees to reasonably cooperate with Grantee to create a revised legal description for Access and Utility Easement that will reflect such relocation.

12. Mortgagees' Continuation Rights and Notice and Cure. Grantor consents to the granting by Grantee of a lien and security interest in Grantee's interest in this Agreement and all of Grantee's property and fixtures attached to the Exclusive Easement described herein, and furthermore consents to the exercise by Grantee's mortgagee ("Grantee's Mortgagee") of its rights of foreclosure with respect to its lien and security interest. Provided that Grantee gives Grantor written notice of any such mortgagee, Grantor agrees to recognize Grantee's Mortgagee as Grantee hereunder upon any such exercise by Grantee's Mortgagee of its rights of foreclosure. Grantor hereby agrees to give Grantee and Grantee's Mortgagee written notice of any breach or default of the terms of this Agreement within fifteen (15) days after the occurrence thereof at such address as is specified by Grantee in its notice to Grantor of the existence of such Grantee's Mortgagee. Grantor further agrees that no default under this Agreement shall be deemed to have occurred unless such notice to Grantee's Mortgagee is also given and that, in the event of any such breach or default under the terms of this Agreement, Grantee and Grantee's Mortgagee shall have the right for a period of 90 days after receipt of written notice from Grantor to cure or correct any such default, and Grantor agrees to accept such payment or performance on the part of the Grantee's Mortgagee as though the same had been made or performed by the Grantee. Grantor agrees that it shall enter into any reasonable amendment hereto requested by Grantee's mortgagee.

13. Notices. All notices required to be given by any of the provisions of this Agreement, unless otherwise stated, shall be in writing and delivered in person, certified or registered mail, or by a national overnight delivery service (and shall be effective when received, when refused or when the same cannot be delivered) to the appropriate party at the address set forth below (or at such other address designated in writing pursuant to the terms hereof):

STROUP AND RINDY LAW OFFICE

To Grantor:
1724 40th Ave W
West Fargo, ND 58078

To Grantor:
5000 Valleystone Drive
Cary, NC 27519
Attn: Legal Department

14. Force Majeure. The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor or Grantee, as the case may be.

15. Recording. This Agreement shall be recorded at either Grantor's or Grantee's option.

16. Miscellaneous. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the state or commonwealth where the Premises are located.

17. Captions and Headings. The captions and headings in this Agreement are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of or the scope or intent of this Agreement.

18. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to Grantor or Grantee by this Agreement, or by any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity to Grantee.

19. Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

20. Severability. If any provision of this Agreement is deemed unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if such provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any laws, rules or regulations promulgated by any state, county or local jurisdiction, including without limitation those concerning zoning, subdivision or land use, or should any court of competent jurisdiction, make the sale of the Easements herein either void or voidable, Grantor agrees that upon the written request of Grantee, the grant of the Easements shall convert to a ground lease between Grantor, as lessor, and Grantee, as lessee, (with the Exclusive Easement area being the leased premises therein, and the Access and Utility Easement area remaining a non-exclusive easement for access and utility purposes) for uses consistent with those set forth in Section 6 hereof, and containing other terms and conditions acceptable to both parties; provided that Grantee shall not be required to obtain the consent of Grantor to enter into any sublease or license of any portion of the Exclusive Easement or to permit sublessees or licensees to utilize the Access and Utility Easement; nor shall Grantor be entitled to any additional consideration in connection with such subleases and licenses; and provided that that the delivery of the consideration paid by Grantee to Grantor for the Easements at the execution of this Agreement shall constitute the prepayment of rent under such ground lease for an extended term of 99 years, or as long as permitted by applicable law.

STROUP AND RINDY LAW OFFICE

21. Attorney's Fees. If there is any legal action or proceeding between Grantor or Grantee arising from or based on this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and disbursements incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorney's fees and disbursements shall be included in and as a part of such judgment.

22. Entire Understanding and Amendment. This Agreement and the closing documents executed in connection therewith, constitute the entire understanding between the parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressed herein. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement and signed by each of the parties hereto.

23. Zoning. To the extent any improvements, whether now or in the future existing, upon the Exclusive Easement do not meet zoning or other land-use requirements, or to the extent such improvements may otherwise have to be constructed and/or relocated, Grantor hereby consents to the reasonable construction and/or relocation of such improvements to accommodate such requirements and agrees to reasonably cooperate with Grantee to create a revised legal description for the Exclusive Easement and the Access and Utility Easement. Grantor hereby covenants and agrees that neither Grantor nor an affiliate of Grantor shall at any time file an opposition to a zoning or land use application of Grantee or in any way publicly oppose Grantee at a zoning hearing or other land use proceedings in connection with the Premises and the Easements; and that Grantor shall promptly cooperate with Grantee in making application for obtaining all licenses, permits, and any other necessary approvals that may be required for Grantee's intended use of the Easements.

24. Rule Against Perpetuities. If the rule against perpetuities or any other rule of law would invalidate the Easements or any portion or provision hereof or would limit the time during which the Easements or any portion or provision hereof shall be effective due to the potential failure of an interest in property created herein to vest within a particular time, then each such interest in property shall be effective only from the date hereof until the passing of twenty (20) years after the death of the last survivor of the members of Congress of the United States of America (including the House of Representatives and the Senate) representing the state in which the Premises is located who are serving on the date hereof, but each such interest in property shall be extinguished after such time, and all other interests in property created herein and all other provisions hereof shall remain valid and effective without modification.

25. Assignment of Ground Lease. The parties hereby recognize and agree that the Premises is currently subject to that certain lease, dated June 6, 2005 by and between Grantor and TowerCo Asssets LLC, as successor in interest to Northern PCS Services, LLC., as amended from time to time (collectively, the "Lease"). Grantor and Grantee hereby acknowledge that there currently exists no default under the Lease, and no conditions that, with the passage of time, would constitute defaults under the Lease. Grantor hereby assigns, transfers, sets over and delivers to Grantee, all of its rights, title and interests under the Lease arising or accruing on or after the date of this Agreement and Grantee hereby accepts, assumes and agrees to be bound by all the terms and conditions which are the responsibility of the landlord under the Lease. Grantor hereby releases and forever discharges Grantee from all claims arising under the Lease. Grantor hereby agrees to indemnify and agrees to hold Grantee harmless with respect to any demands, claims, actions, causes of action, assessments, expenses, costs, damages, losses, and liabilities (including reasonable attorneys' fees and costs) under the Lease which relate to costs or actions first arising on or before the date of this Agreement. Grantee hereby agrees to indemnify and agrees to hold Grantor harmless with respect to any demands, claims, actions, causes of action, assessments, expenses, costs, damages, losses, and liabilities (including reasonable attorneys' fees and costs) under the Lease which relate to costs or actions first arising after the date of this Agreement.

STROUP AND RINDY LAW OFFICE

26. Further Acts; Attorney-In-Fact. Grantor shall cooperate with Grantee in executing any documents necessary to protect Grantee's rights under this Agreement or Grantee's use of the Easements and to take such action as Grantee may reasonably require to effect the intent of this Agreement. Grantor hereby irrevocably appoints Grantee as Grantor attorney-in-fact coupled with an interest to prepare, execute and deliver land-use and zoning applications that concern the tower or the tower facilities, on behalf of Grantor with federal, state and local governmental authorities.

27. Indemnity. Except for intentional acts or willful negligence and the provisions of Section 9(g), Grantor and Grantee shall have no obligation to indemnify, defend, protect and hold the other party harmless from and against losses, costs, damages, liability or expenses for physical damage to property and for physical injuries to any person.

28. Easement Rights. Grantor reserves the right to enter the Access and Utility Easement Premises for purposes of adding utility services as long as it does not interfere with Grantee's use of this Access and Utility Easement. Furthermore, Grantor may request that the Access and Utility Easement be relocated to another portion of Grantor's property. Such request shall require the consent of Grantee which shall not be unreasonably withheld. Grantor shall be responsible for all costs and expenses related to relocating the Access and Utility Easement.

29. Insurance. Grantee shall procure and keep in effect, prior to entering the Premises, and during the term of Agreement insurance with terms and coverage equal to or exceeding insurance which is currently required pursuant to the Lease.

STROUP AND RINDY LAW OFFICE

GRANTEE (LLC) EXECUTION & ACKNOWLEDGMENT AS OF 8 /26 /09:

In witness whereof:

The undersigned, pursuant to proper authority, has duly executed, acknowledged and delivered this instrument as of the day and year first above written.

TCO Assets Land LLC, a DE limited liability company

By: _____

Richard Byrne, its duly authorized CEO

County of Wake, State of NC:

Multi-State LLC Acknowledgment:

On 8 / 26 /09, before me, the undersigned officer, personally appeared Richard Byrne personally known and acknowledged himself / herself to me (or proved to me on the basis of satisfactory evidence) to be the CEO of the foregoing executing entity (the "Entity"), and that as such officer, being duly sworn, and being authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed, subscribed and acknowledged the due execution of the foregoing instrument for the purposes therein contained, by signing the name of the Entity by himself / herself in his / her authorized capacity as such officer as his / her free and voluntary act and deed and the free and voluntary act and deed of said Entity. *** Witness my hand and official seal.

Uniform Acknowledgement which is supplemental to the foregoing acknowledgment:

On 8 / 26 /09, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard Byrne, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his / her / their authorized capacity(ies), and that by his / her / their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument. *** Witness my hand and official seal.

_____

Notary Public

Commission expires: 3/23/14

DEBORAH CAMPBELL
NOTARY PUBLIC
WAKE COUNTY, NC

ND2003
DM734051

1275988
Page: 10 of 13
9/11/2009 11:46 AM
EASE $46.00

STROUP AND RINDY LAW OFFICE

GRANTOR (INDIV) EXECUTION & ACKNOWLEDGMENT AS OF 08/28/09:

In witness whereof:

The undersigned, pursuant to proper authority, has duly executed, acknowledged and delivered this instrument as of the day and year first above written.

Tom McDougall Name: Tom McDougall (aka Thomas R. McDougall)	
Chris McDougall Name: Chris McDougall (aka Christine M. McDougall)	

County of Cass, **State of** North Dakota:

On 08/28/09, before me, the undersigned, a Notary Public in and for said State, personally appeared Tom McDougall aka Thomas R. McDougall and Chris McDougall aka Christine M. McDougall, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his / her / their authorized capacity(ies), and that by his / her / their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument. *** Witness my hand and official seal.

Debra L Olson
Notary Public

DEBRA L. OLSON
Notary Public
State of North Dakota
My Commission Expires December 24, 2010

ND2003
DM734051

1275988
Page: 11 of 13
9/11/2009 11:46 AM
EASE $46.00

STROUP AND RINDY LAW OFFICE

Exhibit A
Premises

Lot One, Block One, McDougall First Subdivision, situate in the County of Cass and the State of North Dakota.

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Note:
The legal descriptions may be replaced by a new land survey of the Easements at the option of Grantee.

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EASE $46.00

STROUP AND RINDY LAW OFFICE

Exhibit B
Exclusive Easement

That part of Lot One, Block One, McDougall First Subdivision of the Southeast Quarter of Section Twenty-Five in Township One Hundred Thirty-nine North of Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota. Being further described as follows:

Commencing at the Northeast Corner of Said Lot One; thence South 02 degrees 42 minutes 10 seconds East on the East line of said Lot One for a distance of 84.08 feet; thence South 87 degrees 17 minutes 50 seconds West for a distance of 244.83 feet to the point of beginning; thence South 87 degrees 17 minutes 50 seconds West for a distance of 60.00 feet; thence South 02 degrees, 42 minutes 10 seconds East for a distance of 60.00 feet; thence North 87 degrees 17 minutes 50 seconds East for a Distance of 60.00 feet; thence North 02 degrees 42 minutes 10 seconds West for a distance of 60.00 feet to the point of beginning.

Containing 3,600 square feet, more or less.

Note:
The legal descriptions may be replaced by a new land survey of the Easements at the option of Grantee.

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Page: 13 of 13
9/11/2009 11:46 AM
EASE $46.00

STROUP AND RINDY LAW OFFICE

Exhibit C

Access and Utility Easement

A tract of Land located in part of Lot One, Block One, McDougall First Subdivision of the Southeast Quarter of Section Twenty-five, in Township One Hundred Thirty-Nine North of Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, said tact being 12.00 feet wide, with 6.00 feet: being on each side of the follow described centerline:

Commencing at the Southeast Corner of said Lot One; Thence South 89 degrees 17 minutes 50 seconds West on the South line of Said Lot One for a distance of 363.23 feet to the point of beginning; thence North 00 degrees 22 minutes 50 seconds West for a distance of 149.74; thence North 13 degrees 48 minutes 05 seconds East for a distance 85.50 feet; thence North 02 degrees 32 minutes 57 seconds West for a distance of 90.42 feet; thence North 15 degrees 31 minutes 28 seconds East for a distance of 85.06 feet; thence North 05 degrees 15 minutes 39 seconds East for a distance of 227.31 feet and there terminating.

Containing 7656 square feet, more or less. The sidelines of the above described tract to be shortened or lengthened to meet are all property lines and angle points.

Note:

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Page: 1 of 6
9/11/2009 11:46 AM
ASSTL $25.00

STROUP AND RINDY LAW OFFICE

RECORDER'S OFFICE, CASS COUNTY, ND
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE. 9/11/2009 11:46 AM
JEWEL A. SPIES, COUNTY RECORDER
by Teresa A. Kirby, Dep 1275989

RECORDER OF CASS COUNTY OFFICIAL SEAL STATE OF NORTH DAKOTA

EXHIBIT 2

SPACE ABOVE RESERVED FOR RECORDER

Prepared by and return to:
Matthew Massarelli, Esq. @ TowerCo
5000 Valleystone Dr, Cary, NC 27519
(919) 469-5559

TowerCo Site ID:
ND2003

Tax Parcel ID:
53-0300-00010-000

Instrument:
Assignment and Assumption of Ground Lease

Assignor:
Tom McDougall aka Thomas R. McDougall and Chris McDougall aka Christine M. McDougall, with an address of 1724 40th Avenue West, West Fargo, ND 58078

Assignee:
TCO Assets Land LLC, a DE limited liability company, with an address of 5000 Valleystone Dr, Attn: Legal Dept, Cary, NC 27519

THIS ASSIGNMENT AND ASSUMPTION OF GROUND LEASE ("Assignment") is made and entered into as of the latter of the signature dates below ("Transfer Date") by Assignor to Assignee.

Preliminary Statement:

A. Seller owns the real property described on Exhibit A hereto (the "Premises").

B. Pursuant to that certain Purchase Agreement dated as of June 9, 2009 by and between Assignor and Assignee ("Purchase Agreement"), Assignor is granting to Assignee (i) a perpetual, exclusive easement in and to a portion of the Premises more particularly described in the Purchase Agreement and (ii) a perpetual, non-exclusive easement in and to portions of the Premises more particularly described in the Purchase Agreement (collectively, the "Easements").

C. In connection with the Purchase Agreement, Assignor is assigning to Assignee all of Assignor's right, title, claim and interest in, to and under the Ground Lease more particularly described on Exhibit B attached hereto (the "Ground Lease") with respect to the Premises.

In consideration of the mutual covenants contained in this Assignment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee

STROUP AND RINDY LAW OFFICE

hereby agree as follows:

1. ASSIGNMENT.
Assignor hereby assigns, sells, transfers, conveys, grants and delivers to Assignee and Assignee's successors and assigns, all of Assignor's right, title, claim and interest in, to and under: (a) the Ground Lease; (b) any and all easements and appurtenant rights with respect to the property encumbered by the Ground Lease; and (c) any and all security deposits retained by the landlord under the Ground Lease, (collectively, the "Assigned Lease Interests"). Assignor will indemnify, defend and hold harmless Assignee, its successors and assigns and their respective agents, employees, directors, officers and the Assigned Lease Interests from and against any and all claims, damages, losses, liabilities, obligations, demands, defenses, judgments, suits, proceedings, disbursements and expenses, including reasonable attorneys' fees and costs (including those related to appeals) of any nature whatsoever (collectively, "Losses and Liabilities"), arising out of or in any way related to the Assigned Lease.
2. INTERESTS PRIOR/AFTER TO THE TRANSFER DATE.
Interests prior to the Transfer Date or which arise out of or are in any way related to the Assigned Lease Interests on or after the Transfer Date on account of any fact or circumstance occurring or existing prior to the Transfer Date.
3. ACCEPTANCE OF ASSIGNMENT.
Assignee hereby accepts the foregoing assignment, sale, transfer, conveyance, grant and delivery of the Assigned Lease Interests and assumes all of Assignor's obligations under the Assigned Lease Interests which arise or relate to the period on or after the Transfer Date. Assignee will indemnify, defend and hold harmless Assignor, its successors and assigns and their respective agents, employees, directors and officers from and against any and all Losses and Liabilities arising out of or in any way related to the Assigned Lease Interests on and after the Transfer Date, except for Losses and Liabilities which arise out of or are in any way related to the Assigned Lease Interests on or after the Transfer Date on account of any fact or circumstance occurring or existing prior to the Transfer Date.
4. BINDING EFFECT.
This Assignment will be binding upon, and will inure to the benefit of, Assignor, Assignee and their respective successors and assigns.
5. GOVERNING LAW.
This Assignment will be governed by and construed and enforced in accordance with the internal laws of the State where the Premises are located.
6. COUNTERPARTS.
This Assignment may be executed by original signature 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.
7. PURCHASE AGREEMENT.
Nothing contained in this Assignment will be deemed or construed as relieving Assignor or Assignee of their respective duties and obligations under the Purchase Agreement.
8. NOTICES AND CONSENTS.
Each party shall sign and give such notices and consents as shall be necessary to confirm the provisions of this Assignment to any other persons having rights or obligations under the Ground Lease, as the other may request from time to time, and each party shall execute and deliver to the other such agreements as the other may reasonably require to make this Assignment effective.
9. RECORDING.
This Assignment may be filed and/or recorded in the appropriate public record.
10. Additional Provisions.
See annexed Addendum for additional provisions, if any.

STROUP AND RINDY LAW OFFICE

THIS ASSIGNMENT has been executed by Assignor and Assignee on the Transfer Date.

ASSIGNEE (LLC) EXECUTION & ACKNOWLEDGMENT AS OF 8 / 26 /09:

In witness whereof:

The undersigned, pursuant to proper authority, has duly executed, sealed, acknowledged and delivered this instrument as of the day and year first above written.

TCO Assets Land LLC, a DE limited liability company

By: _____

Richard Byrne, its duly authorized CEO

County of Wake, State of NC:

Multi-State LLC Acknowledgment:

On 8 / 26 /09, before me, the undersigned officer, personally appeared Richard Byrne personally known and acknowledged himself / herself to me (or proved to me on the basis of satisfactory evidence) to be the CEO of the foregoing executing entity (the "Entity"), and that as such officer, being duly sworn, and being authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed, subscribed and acknowledged the due execution of the foregoing instrument for the purposes therein contained, by signing the name of the Entity by himself / herself in his / her authorized capacity as such officer as his / her free and voluntary act and deed and the free and voluntary act and deed of said Entity. *** Witness my hand and official seal.

Uniform Acknowledgement which is supplemental to the foregoing acknowledgment:

On 8 / 26 /09, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard Byrne, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his / her / their authorized capacity(ies), and that by his / her / their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument. *** Witness my hand and official seal.

_____

Notary Public

Commission expires: 3/23/14

DEBORAH CAMPBELL
NOTARY PUBLIC
WAKE COUNTY, NC

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Page: 4 of 6
9/11/2009 11:46 AM
ASSTL $25.00

STROUP AND RINDY LAW OFFICE

ASSIGNOR (INDIV) EXECUTION & ACKNOWLEDGMENT AS OF 08 / 28 /09:

In witness whereof:

The undersigned, pursuant to proper authority, has duly executed, sealed, acknowledged and delivered this instrument as of the day and year first above written.

Name: Tom McDougall (aka Thomas R. McDougall)	
Name: Chris McDougall aka (Christine M. McDougall)	

County of Cass, **State of** North Dakota:

On 08 / 28 /09, before me, the undersigned, a Notary Public in and for said State, personally appeared Tom McDougall aka Thomas R. McDougall and Chris McDougall aka Christine M. McDougall, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his / her / their authorized capacity(ies), and that by his / her / their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument. *** Witness my hand and official seal.

Debra L Olson
Notary Public

DEBRA L. OLSON
Notary Public
State of North Dakota
My Commission Expires December 24, 2010

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Page: 5 of 6
9/11/2009 11:46 AM
ASSTL $25.00

STROUP AND RINDY LAW OFFICE

Exhibit A

Premises

Lot One, Block One, McDougall First Subdivision, situate in the County of Cass and the State of North Dakota.

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Page: 6 of 6
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ASSTL $25.00

STROUP AND RINDY LAW OFFICE

Exhibit B
Ground Lease

That certain Option and Land Lease Agreement ("Agreement") dated June 6, 2005 between Thomas R. McDougall ("Landlord") and TowerCo Assets LLC, a DE limited liability company (in its own right or as successor in interest to Nextel West Corp., a DE corporation, d/b/a Nextel Communications) ("Tenant") and for the portion of property known as the "Premises" and further described in Exhibit A above.

PAGE: 1 of 5 MEMOR 1464075
Davis & Kuelthau - Brookfield 11/20/2015 11:09 AM
Recorded Electronically $22.00

EXHIBIT 3

Site ID: ND47163-A-02
Site Name: Fargo Eagle Run

Tenant Site ID:
Tenant Site Name: FAR Shyenne Land

After recording return to:

Rodney W. Carter
Davis & Kuelthau, s.c.
300 N. Corporate Drive, Suite 300
Brookfield, WI 53045

STATE OF NORTH DAKOTA

COUNTY OF CASS

MEMORANDUM OF ANTENNA SITE AGREEMENT

This Memorandum made this 2nd day of June, 2015, between **SBA 2012 TC ASSETS, LLC,** a limited liability company of the State of Delaware, with its principal offices located at 5900 Broken Sound Parkway N.W., 2nd Floor, Boca Raton, Florida 33487-2797, Tax ID# 26-3416564, hereinafter designated Owner, and **VERIZON WIRELESS (VAW), LLC,** a Delaware limited liability company d/b/a Verizon Wireless, with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, NJ 07920, hereinafter designated Tenant.

1. Owner and Tenant entered into an Antenna Site Agreement on 6-2-15, 2015 for a term of five (5) years with the right to automatically renew for four (4) additional five (5) year terms unless terminated in accordance with the terms of the Antenna Site Agreement.

2. In consideration of the rental set forth in the Agreement, Owner hereby leases to Tenant a ground space area consisting of approximately 360 square feet, at that certain Property located in Cass County, State of North Dakota, and being described as a parcel containing 3,600 square feet as legally described on Exhibit A attached hereto and made a part hereof, as shown on the tax map of Cass County, together with the non-exclusive right for ingress and egress. Being the same premises leased to Owner from Ground Lessor as reflected in Memorandum of Lease in Document Number 1188793.

3. The Antenna Site Agreement commences on the earlier of the date that Tenant begins installation of its Equipment at the Site or May 1, 2015 and a copy of the Antenna Site Agreement is on file in the office of the Owner and Tenant.

4. The terms, covenants and provisions of the Agreement of which this is a Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Owner and Tenant.

PAGE: 2 of 5 MEMOR 1464075
Davis & Kuelthau - Brookfield 11/20/2015 11:09 AM
Recorded Electronically $22.00

Site ID: ND47163-A-02
Site Name: Fargo Eagle Run

Tenant Site ID:
Tenant Site Name: FAR Shyenne Land

MEMORANDUM OF ANTENNA SITE AGREEMENT CONTINUED

IN WITNESS WHEREOF, hereunto and to a duplicate hereof, Owner and Tenant have caused this Memorandum to be duly executed on May 21, 2015.

TENANT: VERIZON WIRELESS (VAW) LLC d/b/a Verizon Wireless

By: Aaron Glass
Title: **Regional Network Executive Director**
Address: One Verizon Way, Mail Stop 4AW100
Basking Ridge, NJ 07920
Date: 5/21/15

Witness: Marie Wine Paine
Print Name: Marie Wine Paine
Witness: Jill S. Jones
Print Name: Jill S. Jones

TENANT NOTARY BLOCK:

STATE OF Minnesota COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 21st day of May, 2015, by **Aaron Glass** **Regional Network Executive Director** of **Verizon Wireless (VAW) LLC**, a Delaware limited liability company d/b/a Verizon Wireless, who is personally known to me or produced _____ as identification.

SUSAN BLIXRUD
NOTARY PUBLIC
MINNESOTA
My Commission Expires January 31, 2020

OFFICIAL SEAL

Susan Blixrud
(OFFICIAL NOTARY SIGNATURE)
NOTARY PUBLIC—STATE OF Minnesota

Susan Blixrud
(NAME OF NOTARY)
COMMISSION NUMBER: 31066131

My commission expires: 1/31/2020

OWNER: SBA 2012 TC ASSETS, LLC

By: Jason Silberstein
Title: Executive Vice President, Site Leasing
Tax No: 26-3416564
Address: 5900 Broken Sound Parkway N.W.
2nd Floor
Boca Raton, FL 33487
Date: 6.2.15

Witness: [illegible]
Print Name: Anthony Garcia
Witness: Vicki Schaffer
Print Name: Vicki Schaffer

OWNER NOTARY BLOCK:

STATE OF FLORIDA COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 2nd day of June, 2015, by Jason Silberstein, Executive Vice President, Site Leasing of **SBA 2012 TC Assets, LLC**, a Delaware limited liability company, who is personally known to me.

Dorothy Wylene O'Connell
NOTARY PUBLIC - STATE OF FLORIDA
Printed Name of Notary DOROTHY Wylene O'Connell

My commission expires: MARCH 10, 2018

DOROTHY WYLENE OCONNELL
MY COMMISSION #FF100208
EXPIRES March 10, 2018
(407) 398-0153 FloridaNotaryService.com

EXHIBIT A

PROPERTY DESCRIPTION:

That part of Lot One, Block One, McDougall First Subdivision of the Southeast Quarter of Section Twenty-five in Township One Hundred Thirty-nine North of Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, being further described as follows: Commencing at the Northeast Corner of said Lot One; thence South 02°42'10" East on the East line of said Lot One for a distance of 84.08 feet; thence South 87°17'50" West for a distance of 244.83 feet to the point of beginning; thence South 87°17'50" West for a distance of 60.00 feet; thence South 02°42'10" East for a distance of 60.00 feet; thence North 87°17'50" East for a distance of 60.00 feet; thence North 02°42'10" West for a distance of 60.00 feet to the point of beginning. Containing 3,600 square feet, more or less.

TOGETHER WITH

Access & Utility Easement:

A tract of land located in part of Lot One, Block One, McDougall First Subdivision of the Southeast Quarter of Section Twenty-five, in Township One Hundred Thirty-nine North of Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, said tract being 12.00 feet wide, with 6.00 feet on each side of the following described centerline: Commencing at the Southeast Corner of said Lot One; thence South 89°17'50" West on the South line of said Lot One for a distance of 363.23 feet to the point of beginning; thence North 00°22'50" West for a distance of 149.74 feet; thence North 13°48'05" East for a distance of 85.50 feet; thence North 02°32'57" West for a distance of 90.42 feet; thence North 15°31'28" East for a distance of 85.06 feet; thence North 05°15'39" East for a distance of 227.31 feet and there terminating. Containing 7656 square feet, more or less. The sidelines of the above described tract to be shortened or lengthened to meet all property lines and angle points.

ACCESS & UTILITY EASEMENT DESCRIPTION:

An easement for ingress, egress and utility purposes over, under and across Lot 1, Block 1, MCDOUGALL FIRST SUBDIVISION, according to the recorded plat thereof, Cass County, North Dakota, described as follows:

> Commencing at the northeast corner of said Lot 1; thence South 2 degrees 42 minutes 10 seconds East along the East line of said Lot 1, a distance of 84.08 feet; thence South 87 degrees 17 minutes 50 seconds West, a distance of 304.83 feet; thence South 2 degrees 42 minutes 10 seconds East, a distance of 60.00 feet; thence North 87 degrees 17 minutes 50 seconds East, a distance of 16.00 feet; thence South 2 degrees 42 minutes 10 seconds East, a distance of 34.74 feet; thence South 5 degrees 15 minutes 15 seconds West, a distance of 271.51 feet; thence South 11 degrees 50 minutes 54 seconds West, a distance of 152.64 feet to the Point of Beginning of the easement to be described; thence reverse North 11 degrees 50 minutes 54

seconds East, a distance of 152.64 feet; thence North 5 degrees 15 minutes 51 seconds East, a distance of 271.51 feet; thence North 2 degrees 42 minutes 10 seconds West, a distance of 34.74 feet; thence North 87 degrees 17 minutes 50 seconds East, a distance of 44.00 feet; thence South 2 degrees 42 minutes 10 seconds East, a distance of 30.00 feet; thence South 87 degrees 17 minutes 50 seconds West, a distance of 23.15 feet; thence South 5 degrees 15 minutes 51 seconds West, a distance of 280.25 feet; thence South 11 degrees 50 minutes 54 seconds West, a distance of 152.03 feet; thence South 1 degree 45 minutes 13 seconds West, a distance of 98.52 feet to the South line of said Lot 1; thence South 87 degrees 17 minutes 50 seconds West, along said South line of Lot 1, a distance of 20.06 feet to a line bearing South 1 degree 45 minutes 13 seconds West from the Point of Beginning; thence North 1 degree 45 minutes 13 seconds East, a distance of 101.85 feet to the Point of Beginning.

Containing 11,937 Sq. Ft. or 0.27 Acres.

UTILITY EASEMENT DESCRIPTION:

An easement for utility purposes over, under and across Lot 1, Block 1, MCDOUGALL FIRST SUBDIVISION, according to the recorded plat thereof, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Lot 1; thence South 2 degrees 42 minutes 10 seconds East along the East line of said Lot 1, a distance of 84.08 feet; thence South 87 degrees 17 minutes 50 seconds West, a distance of 304.83 feet; thence South 2 degrees 42 minutes 10 seconds East, a distance of 60.00 feet; thence North 87 degrees 17 minutes 50 seconds East, a distance of 60.00 feet; thence South 2 degrees 42 minutes 10 seconds East, a distance of 30.00 feet; thence South 87 degrees 17 minutes 50 seconds West, a distance of 13.05 feet; thence South 5 degrees 15 minutes 51 seconds West, a distance of 67.43 feet; thence South 4 degrees 41 minutes 55 seconds East, a distance of 40.58 feet; thence South 6 degrees 01 minutes 19 seconds West, a distance of 61.30 feet; thence South 13 degrees 50 minutes 04 seconds West, a distance of 41.67 feet; thence South 5 degrees 15 minutes 51 seconds West, a distance of 72.32 feet; thence South 11 degrees 50 minutes 54 seconds West, a distance of 129.10 feet to the Point of Beginning of the easement to be described; thence reverse North 11 degrees 50 minutes 54 seconds East, a distance of 129.10 feet; thence North 5 degrees 15 minutes 51 seconds East, a distance of 72.32 feet; thence North 13 degrees 50 minutes 04 seconds East, a distance of 41.67 feet; thence North 6 degrees 01 minutes 19 seconds East, a distance of 61.30 feet; thence North 4 degrees 41 minutes 55 seconds West, a distance of 40.58 feet; thence North 5 degrees 15 minutes 51 seconds East, a distance of 67.43 feet; thence South 87 degrees 17 minutes 50 seconds West, a distance of 10.10 feet; thence South 5 degrees 15 minutes 51 seconds West, a distance of 66.90 feet; thence South 4 degrees 41 minutes 55 seconds East, a distance of 40.51 feet; thence South 6 degrees 01 minutes 19 seconds West, a distance of 59.68 feet; thence South 13 degrees 50 minutes 04 seconds West, a distance of 41.74 feet; thence South 5 degrees 15 minutes 51 seconds West, a distance of 72.50 feet; thence South 11 degrees 50 minutes 54 seconds West, a distance of 129.91 feet; thence South 4 degrees 35 minutes 20 seconds East, a distance of 119.64 feet to the South line of said Lot 1; thence North 87 degrees 17 minutes 50 seconds East, along said South line of Lot 1, a distance of 10.01 feet to a line bearing South 4 degrees 35 minutes 20 seconds East from the Point of Beginning; thence North 4 degrees 35 minutes 20 seconds West, a distance of 118.53 feet to the Point of Beginning.

Containing 5,309 Sq. Ft. or 0.12 Acres.

PAGE: 5 of 5 MEMOR 1464075

Davis & Kuelthau - Brookfield 11/20/2015 11:09 AM

Recorded Electronically $22.00

RECORDER'S OFFICE, CASS COUNTY, ND 11/20/2015 11:09 AM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER

by Teresa A. Kirby ,Dep. **1464075**

Recorded Electronically

RECORDER OF CASS COUNTY
OFFICIAL
SEAL
STATE OF NORTH DAKOTA

SBA NETWORK SERVICES LLC

1396808
Page: 1 of 5
8/16/2013 1:59 PM
MEMOR $22.00

RECORDER'S OFFICE, CASS COUNTY, ND 8/16/2013 1:59 PM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER
by Teresa A. Kirby, Dep 1396808

EXHIBIT
4

RECORDER OF CASS COUNTY
OFFICIAL SEAL
STATE OF NORTH DAKOTA

Prepared by, Record and Return to:
J. Coleman Prewitt, Esq
SBA Network Services, LLC
5900 Broken Sound Parkway, NW
Boca Raton, FL 33487
561.226.9365
Site ID: ND47163-A

MEMORANDUM OF ASSIGNMENT

THIS MEMORANDUM OF ASSIGNMENT ("Memorandum") is made and entered into as of the date written below and effective as of April 18, 2013, ("Effective Date") by and between SBA 2012 TC ASSETS LAND, LLC, f/k/a TCO ASSETS LAND LLC, a Delaware limited liability company ("Assignor") and SBA 2012 TC ASSETS, LLC, f/k/a TOWERCO ASSETS LLC, a Delaware limited liability company ("Assignee").

WITNESSETH:

WHEREAS, pursuant to that certain Master Assignment and Assumption Agreement ("Master Assignment") Assignor assigned to Assignee all its interest in, among other things, the agreement(s) described on **Exhibit B-1** (the "Assigned Agreements") encumbering the real property described on **Exhibit B-2**, both attached hereto. Assignor and Assignee now desire to enter into this Memorandum to give notice of the assignment of the Assigned Agreements.

NOW, THEREFORE, for and in consideration of the foregoing and the consideration recited in the Master Assignment, receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignment and Assumption. Pursuant to the Master Assignment, as of the Effective Date, Assignor has assigned, transferred, set over and delivered to Assignee and its successors and assigns all of Assignor's rights, title and interests in and to the Assigned Interests. Assignee has accepted, assumed and agreed to be bound by all of terms and conditions of the Assigned Interests arising after the Effective Date.

2. Miscellaneous. The purpose of this Memorandum is to give notice of the Master Assignment and all its terms, covenants and conditions to the same extent as if the same were fully set forth herein. To the extent that more than one (1) agreement or interest is being transferred from Assignor to Assignee as shown on **Exhibit B-1** attached hereto, it is the intention of the parties hereto that such interests shall not merge but shall remain separate and distinct interests in the underlying real property. This Memorandum shall be governed and construed in accordance with the laws of the state in which the real property subject to the Assigned Interests are located without reference to its conflicts of laws principles.

[SIGNATURES ON FOLLOWING PAGE]

SBA NETWORK SERVICES LLC

IN WITNESS WHEREOF, the parties have caused thus Memorandum to be duly executed pursuant to due and property authority as of the date indicated below.

ASSIGNOR:

SBA 2012 TC ASSETS LAND, LLC

By: _____
J. Coleman Prewitt
Vice President

State of Florida
County of Palm Beach

The foregoing instrument was acknowledged before me this 18th day of April, 2013, by J. Coleman Prewitt, Vice President of SBA 2012 TC ASSETS LAND, LLC, on behalf of the company. The above-named individual is personally known to me.

DENESE MCALISTER-OTT
MY COMMISSION # DD995419
EXPIRES May 25, 2014
(407) 398-0153 FloridaNoteryService.com

_____
Notary Public
Print Name: _____
My Commission Expires: _____

ASSIGNEE:

SBA 2012 TC ASSETS, LLC

By: _____
J. Coleman Prewitt
Vice President

State of Florida
County of Palm Beach

The foregoing instrument was acknowledged before me this 18th day of April, 2013, by J. Coleman Prewitt, Vice President of SBA 2012 TC ASSETS, LLC, on behalf of the company. The above-named individual is personally known to me.

DENESE MCALISTER-OTT
MY COMMISSION # DD995419
EXPIRES May 25, 2014
(407) 398-0153 FloridaNotaryService.com

_____
Notary Public
Print Name: _____
My Commission Expires: _____

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Page: 3 of 5
8/16/2013 1:59 PM
MEMOR $22.00

SBA NETWORK SERVICES LLC

Schedule B-1

Description of the Mortgaged Lease(s)

Option and Land Lease Agreement dated June 6, 2005, by and between Thomas R. McDougall, as lessor, and St Cloud Wireless Holdings, LLC, a North Dakota limited liability company, as lessee.

As evidenced by that certain Memorandum of Lease, dated June 6, 2005, by and between Thomas R. McDougall, as lessor, and St Cloud Wireless Holdings, LLC, a North Dakota limited liability company, as lessee, and recorded in the Cass County, North Dakota Land Records, on December 4, 2006, in Instrument No. 1188793.

As assigned and further evidenced by an Assignment and Assumption of Ground Lease, dated as of August 28, 2008, by Tom McDougall a/k/a Thomas R. McDougall and Chris McDougall a/k/a Christine M. McDougall, as assignor, to TCO Assets Land LLC, a Delaware limited liability company, as assignee and recorded in the Cass County, North Dakota Land Records, on September 11, 2009 in Instrument No. 1275989, as may have been, or may hereafter be assigned or amended.

As assigned and further evidenced by an Assignment and Assumption of Lease, dated as of September 23, 2008, by Northern PCS Services, LLC, a North Dakota limited liability company, successor in interest to St Cloud Wireless Holdings, LLC, a North Dakota limited liability company, as assignor, to Tower Entity 2 LLC, a Delaware limited liability company, predecessor in interest to TowerCo Assets, LLC, as assignee and recorded in the Cass County, North Dakota Land Records, on October 6, 2008, in Instrument No. 1247059, as may have been, or may hereafter be assigned or amended.

TowerCo Assets LLC has changed its name to SBA 2012 TC Assets, LLC, a Delaware limited liability company.

Easement

Easement Agreement dated as of August 28, 2008, by and between Tom McDougall a/k/a Thomas R. McDougall and Chris McDougall a/k/a Christine M. McDougall, as grantor, and TCO Assets Land LLC, a Delaware limited liability company, as grantee, as evidenced and recorded in the Cass County, North Dakota Land Records, on September 11, 2009, in Instrument No. 1275988.

TCO Assets Land LLC has changed its name to SBA 2012 TC Assets Land, LLC, a Delaware limited liability company.

As assigned to SBA 2012 TC Assets, LLC, a Delaware limited liability company, pursuant to that certain Assignment and Assumption Agreement dated on or about the date hereof, as evidenced by that certain Memorandum of Assignment to be recorded.

SBA NETWORK SERVICES LLC

1396808
Page: 4 of 5
8/16/2013 1:59 PM
MEMOR $22.00

Schedule B-2

Leasehold Interest

DESCRIPTION OF LEASED PREMISES

A parcel of real property, together with the improvements thereupon, if any, briefly described as located at 1724 40TH Ave W and containing approximately 60' X 60', located in the City of West Fargo, County of Cass, State of North Dakota.

Legal Description:

Auditor's Lot Two of the Southeast Quarter of Section Twenty-Five in Township One Hundred Thirty-nine North of Range Fifty West of the Fifth Principal Meridian, situate in the County of Cass and the State of North Dakota.

That part of the Auditor's Lot Two of the Southeast Quarter of Section Twenty-Five in Township One Hundred Thirty-nine North of Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota being further described as follows:

Commencing at the Northeast Corner of Said Auditor's Lot Two; thence South 02 degrees 42 minutes 10 seconds East on the east line of said Auditor's Lot Two for a distance of 84.08 feet; thence South 87 degrees 17 minutes 50 seconds West for a Distance of 244.53 feet to the point of beginning; thence South 87 degrees 17 minutes 50 seconds West for a distance of 60.00 feet; thence North 02 degrees, 42 minutes 10 seconds West for a distance of 60.00 feet; thence North 87 degrees 17 minutes 50 seconds East for a Distance of 60.00 feet to the point of beginning.

Containing 3,600 square feet, more or less.

ACCESS EASEMENT and UTILITY EASEMENT

As defined in Section 5 of this Lease and as depicted by the sketch or drawing attached hereto and incorporated herein.

A tract of Land located in part of Auditor's Lot Two of the Southeast Quarter of Section Twenty-five, in Township One Hundred Thirty-Nine North of Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, said tract being 12.00 feet wide, with 6.00 feet being on each side of the follow described centerline:

Commencing at the Southeast Corner of said Auditor's Lot Two; Thence South 897 degrees 17 minutes 50 seconds West on the south line of Said Auditor's Lot Two for a distance of 363.23 feet to the West for a distance of 149.74; thence North 13 degrees 48 minutes 05 seconds East for a distance 85.50 feet; thence North 02 degrees 32 minutes 57 seconds West for a distance of 90.42 feet; thence North 15 degrees 31 minutes 28 seconds Esat for a distance of 85.06 feet; thence North 05 degrees 15 minutes 39 seconds East for a distance of 227.31 feet and there terminating.

Containing 7656 square feet, more or less. The sidelines of the above described tract to be shortened or lengthened to meet are all property lines and angle points.

SBA NETWORK SERVICES LLC

1396808
Page: 5 of 5
8/16/2013 1:59 PM
MEMOR $22.00

Easement

Exclusive Easement

That part of Lot One, Block One, McDougall First Subdivision of the Southeast Quarter of Section Twenty-Five in Township One Hundred Thirty-nine North of Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota. Being further described as follows:

Commencing at the Northeast Corner of Said Lot One; thence South 02 degrees 42 minutes 10 seconds East on the East line of said Lot One for a distance of 84.08 feet; thence South 87 degrees 17 minutes 50 seconds West for a distance of 244.83 feet to the point of beginning; thence South 87 degrees 17 minutes 50 seconds West for a distance of 60.00 feet; thence South 02 degrees, 42 minutes 10 seconds East for a distance of 60.00 feet; thence North 87 degrees 17 minutes 50 seconds East for a Distance of 60.00 feet; thence North 02 degrees 42 minutes 10 seconds West for a distance of 60.00 feet to the point of beginning.

Containing 3,600 square feet, more or less.

Access and Utility Easement

A tract of Land located in part of Lot One, Block One, McDougall First Subdivision of the Southeast Quarter of Section Twenty-five, in Township One Hundred Thirty-Nine North of Range Fifty West of the Fifth Principal Meridian, Cass County, North Dakota, said tact being 12.00 feet wide, with 6.00 feet: being on each side of the follow described centerline:

Commencing at the Southeast Corner of said Lot One; Thence South 89 degrees 17 minutes 50 seconds West on the South line of Said Lot One for a distance of 363.23 feet to the point of beginning; thence North 00 degrees 22 minutes 50 seconds West for a distance of 149.74; thence North 13 degrees 48 minutes 05 seconds East for a distance 85.50 feet; thence North 02 degrees 32 minutes 57 seconds West for a distance of 90.42 feet; thence North 15 degrees 31 minutes 28 seconds East for a distance of 85.06 feet; thence North 05 degrees 15 minutes 39 seconds East for a distance of 227.31 feet and there terminating.

Containing 7656 square feet, more or less. The sidelines of the above described tract to be shortened or lengthened to meet are all property lines and angle points.

EXHIBIT 5

CERTIFICATE OF SURVEY

PRELIMINARY SURVEY

CERTIFICATION:

To: SBA Towers X, LLC, a Delaware Limited Liability Company and Fidelity National Title Insurance Company Order No. 34926864, effective date December 16, 2021.)

PARENT PARCEL LEGAL DESCRIPTION:

An interest in land, said interest being over a portion of the following described parent parcel:

The Northeast Quarter of Section Thirty–six, in Township One Hundred Thirty–nine North of Range Fifty West of the Fifth Principal Meridian, situate in the County of Cass and the State of North Dakota.

Said parcel contains 160 acres, more or less.

AND BEING the same property conveyed to Cass County Joint Water Resource District, a North Dakota political subdivision from JMD Legacy Investments, LLLP, a North Dakota limited liability limited partnership by Warranty Deed dated October 9, 2020 and recorded October 12, 2020 in Instrument No. 1608234.

Tax Parcel No. 53–0000–09177–000

SCHEDULE "B" EXCEPTIONS:

1–7.) General Exceptions.

8.) Right of First Offer contained in the Warranty Deed, dated October 9, 2020, between Cass County Joint Water Resource District, a North Dakota political subdivision, and JMD Legacy Investments, LLLP, a North Dakota Limited Liability Limited Partnership, with respect to the Northeast Quarter of Section 36, in Township 139 North of Range 50 West, currently owned by Cass County Joint Water Resource District, and containing a provision that if Cass County Joint Water Resource District shall desire to sell, transfer or assign any of its title in such property within five (5) years of the date of the Warranty Deed, then Cass County Joint Water Resource District shall give JMD Legacy Investments, LLLP, a North Dakota Limited Liability Limited Partnership, the right of first offer, as more fully set forth at Entry No. 36 of the Abstract. The Warranty Deed containing the Right of First Offer was recorded in the office of the County Recorder on October 23, 2020, as Document No. 1608234. Notice should be taken of the terms and conditions of the above–described Right of First Offer.

Not a plottable matter of survey.

9.) County Road Easement dated June 12, 1946, to Cass County, North Dakota, for public highway purposes over and across the South 7 feet of the North 40 feet of the NE¼ of Section 36, Township 139, Range 50, as more fully set forth at Entry No. 16 of the Abstract. This County Road Easement was recorded in the office of the County Recorder on June 13, 1947, in Book W–1 of Miscellaneous, at Page 404, as Document No. 262540.

This document describes a 7' wide easement for roadway purposes. Said easement affects the exclusive easement area and is shown on the survey.

10.) Right of Way Easement dated May 25, 1956, to Otter Tail Power Company, Fergus Falls, Minnesota, for the construction, operation and maintenance of an electric transmission line across the S1/2 of NE1/4 of Section 36, Township 139, Range 50, as more fully set forth at Entry No. 21 of the Abstract. This Right of Way Easement was recorded in the office of the County Recorder on June 14, 1956, in Book T–2 of Miscellaneous, Page 554, as Document No. 330350.

This document describes an easement for electric transmission line purposes in the S1/2 of the NE1/4. Said easement does not affect the exclusive easement area and is not shown on the survey.

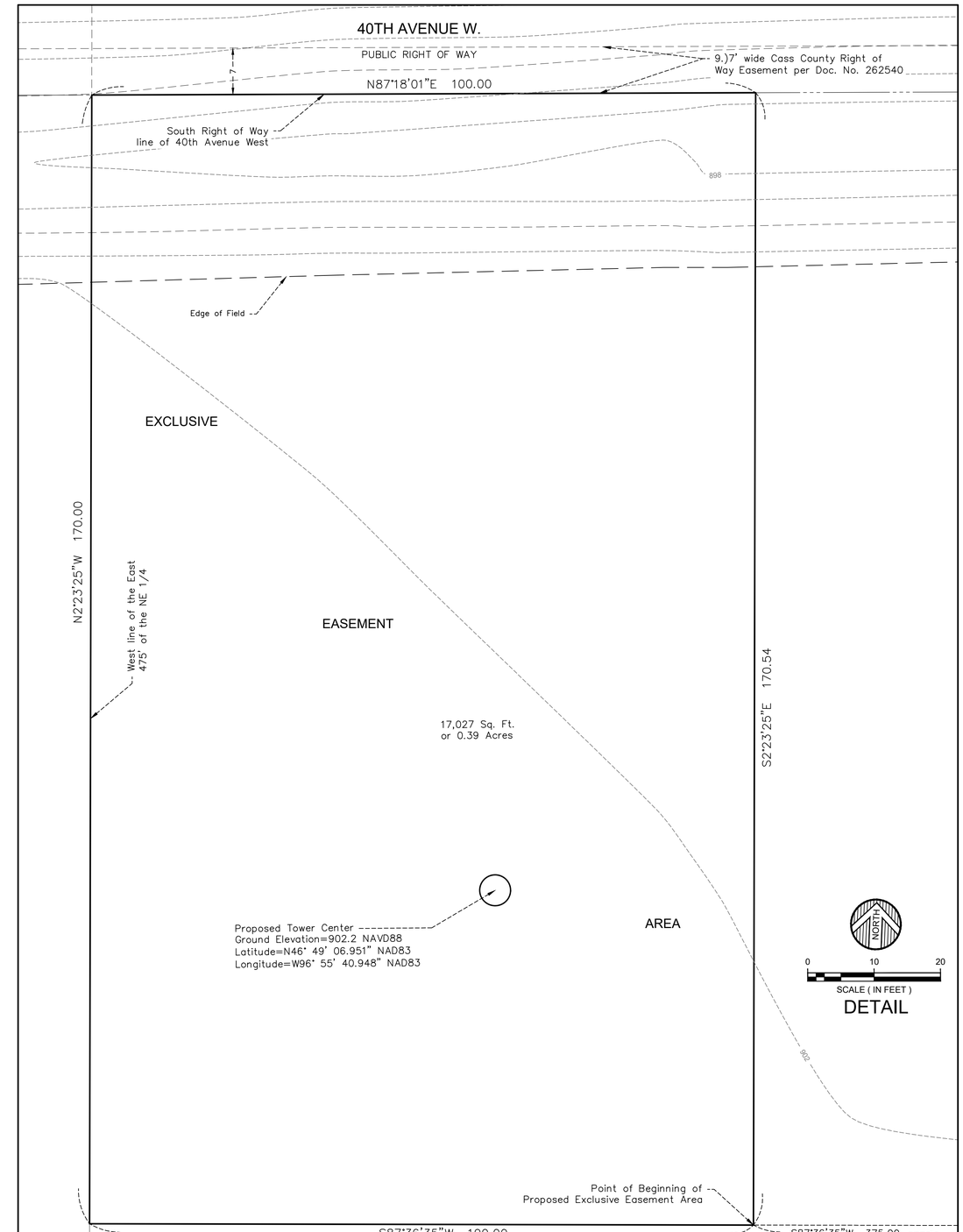
REGISTERED PROFESSIONAL LAND SURVEYOR
BRYAN T. BALCOME
LS-4897
DATE 5/13/22
NORTH DAKOTA

PROPOSED EXCLUSIVE EASEMENT AREA LEGAL DESCRIPTION:

That part of the Northeast Quarter of Section 36, Township 139 North, Range 50 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Northeast Quarter; thence South 2 degrees 23 minutes 25 seconds East along the East line of said Northeast Quarter, a distance of 212.57 feet; thence South 87 degrees 36 minutes 35 seconds West, a distance of 375.00 feet to the Point of Beginning of the lease area to be described; thence continue South 87 degrees 36 minutes 35 seconds West, a distance of 100.00 feet to the West line of the East 475.00 feet of said Northeast Quarter; thence North 2 degrees 23 minutes 25 seconds West along said West line of the East 475.00 feet, a distance of 170.00 feet to the South right of way line of 40th Avenue West; thence North 87 degrees 18 minutes 01 seconds East along said South right of way line of 40th Avenue West, a distance of 100.00 feet to a line bearing North 2 degrees 23 minutes 25 seconds West from the Point of Beginning; thence South 2 degrees 23 minutes 25 seconds East, a distance of 170.54 feet to the Point of Beginning.

Containing 17,027 Sq. Ft. or 0.39 Acres



SHEET 1 OF 2 SHEETS

SBA

DESIGN 1

SBA SITE NUMBER: ND23293-S
SBA SITE NAME:
FARGO EAGLE RUN RELO
40th Avenue West
West Fargo, ND 58078
SBA Towers X, LLC, A Delaware Limited Liability Company

No.	Date	REVISIONS	By	CHK	APP'D
4	4/27/22	REMOVED UTILITY EASEMENT	JMB	BTB	BTB
3	2/18/22	CLIENT COMMENTS	JMB	BTB	BTB
2	12/14/21	REVISED LEASE AREA, REMOVED ACCESS AND UTILITY EASEMENT	JMB	JBr	BTB
1	11/23/21	CLIENT COMMENTS	JMB	BTB	BTB

FIELD WORK: 7/7/21&11/4/21 CHECKED BY: JBr DRAWN BY: JMB/NTG

I HEREBY CERTIFY THAT THIS DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA.

SIGNATURE: Bryan T. Balcome
DATE: 11/16/21 LICENSE # 4897

FULL SCALE ON 22"x34"
HALF SCALE ON 11"x17"
2021-11142

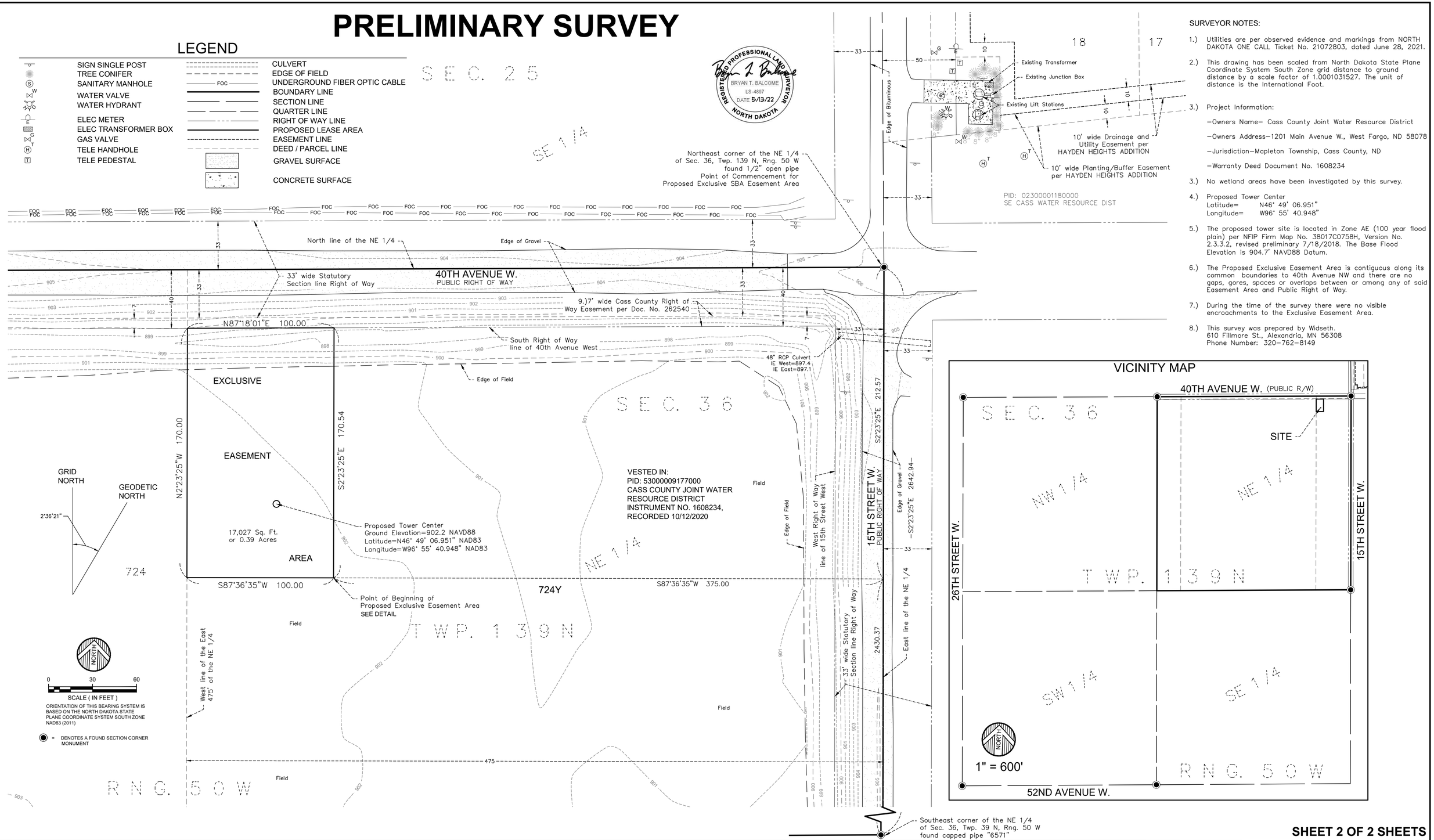
© 2022 WIDSETH

WIDSETH
ARCHITECTS ▪ ENGINEERS ▪ SCIENTISTS ▪ SURVEYORS

PRELIMINARY SURVEY

LEGEND

- SIGN SINGLE POST
- TREE CONIFER
- SANITARY MANHOLE
- WATER VALVE
- WATER HYDRANT
- ELEC METER
- ELEC TRANSFORMER BOX
- GAS VALVE
- TELE HANDHOLE
- TELE PEDESTAL
- CULVERT
- EDGE OF FIELD
- UNDERGROUND FIBER OPTIC CABLE
- BOUNDARY LINE
- SECTION LINE
- QUARTER LINE
- RIGHT OF WAY LINE
- PROPOSED LEASE AREA
- EASEMENT LINE
- DEED / PARCEL LINE
- GRAVEL SURFACE
- CONCRETE SURFACE



SURVEYOR NOTES:

1.) Utilities are per observed evidence and markings from NORTH DAKOTA ONE CALL Ticket No. 21072803, dated June 28, 2021.

2.) This drawing has been scaled from North Dakota State Plane Coordinate System South Zone grid distance to ground distance by a scale factor of 1.0001031527. The unit of distance is the International Foot.

3.) Project Information:

–Owners Name– Cass County Joint Water Resource District

–Owners Address–1201 Main Avenue W., West Fargo, ND 58078

–Jurisdiction–Mapleton Township, Cass County, ND

–Warranty Deed Document No. 1608234

3.) No wetland areas have been investigated by this survey.

4.) Proposed Tower Center
Latitude= N46° 49' 06.951"
Longitude= W96° 55' 40.948"

5.) The proposed tower site is located in Zone AE (100 year flood plain) per NFIP Firm Map No. 38017C0758H, Version No. 2.3.3.2, revised preliminary 7/18/2018. The Base Flood Elevation is 904.7' NAVD88 Datum.

6.) The Proposed Exclusive Easement Area is contiguous along its common boundaries to 40th Avenue NW and there are no gaps, gores, spaces or overlaps between or among any of said Easement Area and Public Right of Way.

7.) During the time of the survey there were no visible encroachments to the Exclusive Easement Area.

8.) This survey was prepared by Widseth.
610 Fillmore St., Alexandria, MN 56308
Phone Number: 320–762–8149

SHEET 2 OF 2 SHEETS

SBA

DESIGN 1

SBA SITE NUMBER: ND23293-S
SBA SITE NAME:
FARGO EAGLE RUN RELO
40th Avenue West
West Fargo, ND 58078
SBA Towers X, LLC, A Delaware Limited Liability Company

No.	Date	REVISIONS	By	CHK	APP'D
5	5/13/22	CLIENT COMMENTS	JMB	BTB	BTB
4	4/27/22	REMOVED UTILITY EASEMENT	JMB	BTB	BTB
3	2/18/22	CLIENT COMMENTS	JMB	BTB	BTB
2	12/14/21	REVISED LEASE AREA, REMOVED ACCESS AND UTILITY EASEMENT	JMB	JBr	BTB
1	11/23/21	CLIENT COMMENTS	JMB	BTB	BTB

FIELD WORK: 7/7/21&11/4/21 | CHECKED BY: JBr | DRAWN BY: JMB

I HEREBY CERTIFY THAT THIS DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA.

SIGNATURE: Bryan T. Balcome
DATE: 11/16/21 LICENSE # 4897

FULL SCALE ON 22"x34"
HALF SCALE ON 11"x17"
2021-11142

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WIDSETH
ARCHITECTS ▪ ENGINEERS ▪ SCIENTISTS ▪ SURVEYORS

EXHIBIT 6

PROJECT MAP

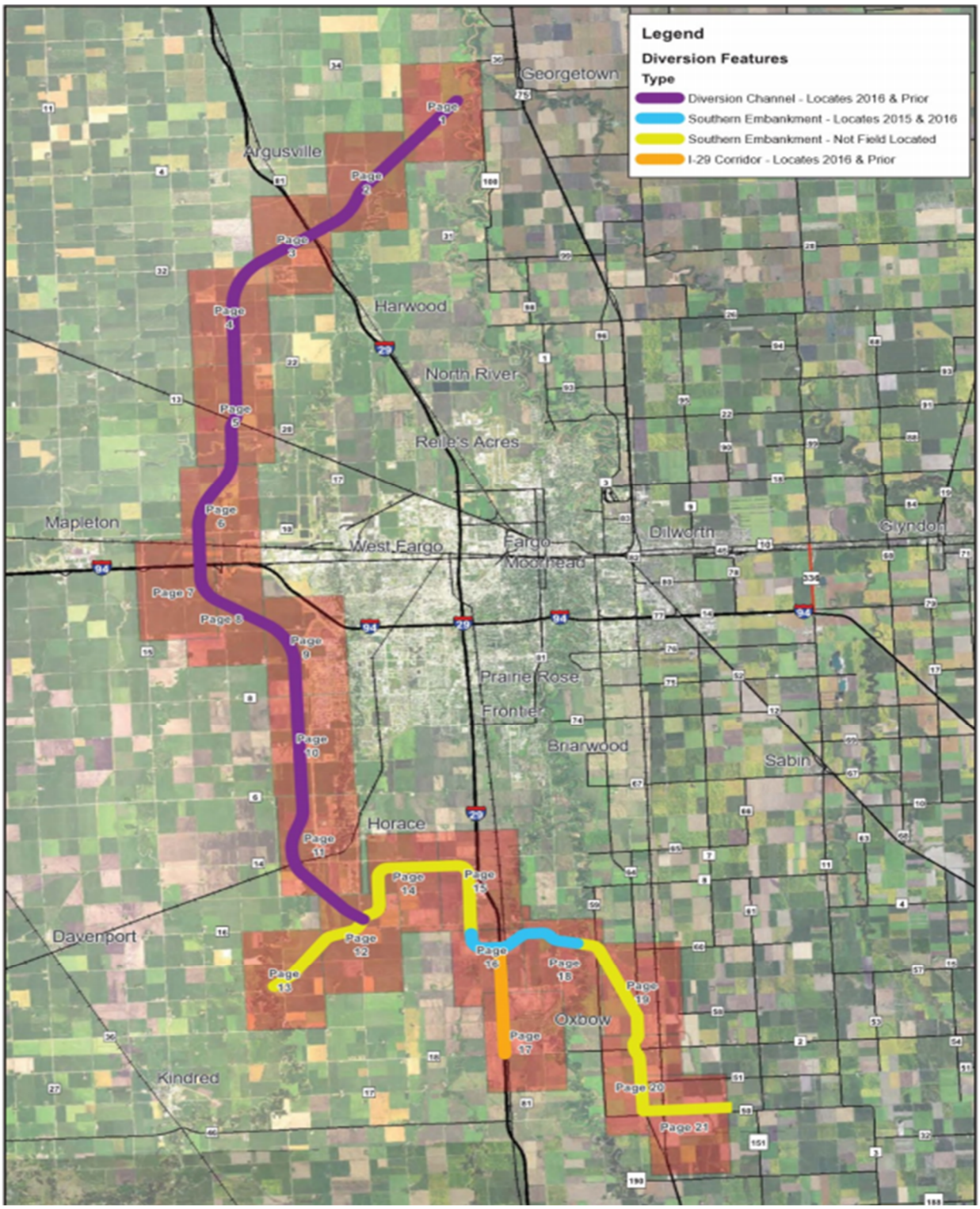


EXHIBIT 7

AUTHORITY INVOICING REQUIREMENTS

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

PaulsenJ@FMDiversion.gov and APInvoicesFMDiv@jacobs.com

Tower Owner'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:

i. **Tower Owner**'s name and address;

ii. **Tower Owner**'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," include 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.

Payment does not imply acceptance of services nor that the invoice is accurate. In the event **Tower Owner** discovers an error in the amount of payment following the receipt of payment, **Tower Owner** must provide written notice of the overpayment to **Metro Flood Diversion Authority,** and credit any payment in error from any payment that is due or that may become due to **Tower Owner** 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.

EXHIBIT 8

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
4784 Amber Valley Parkway South, Suite 100
Fargo, ND 58104

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
4784 Amber Valley Parkway South, Suite 100
Fargo, ND 58104

_____

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 4784 Amber Valley Parkway South, Suite 100 Fargo, ND 58104	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
4784 Amber Valley Parkway South, Suite 100
Fargo, ND 58104

METRO FLOOD DIVERSION AUTHORITY

Diversion Authority Board Meeting

June 23, 2022

Executive Director Report

Joel Paulsen

Happenings

METRO FLOOD DIVERSION AUTHORITY

Major Project Accomplishments

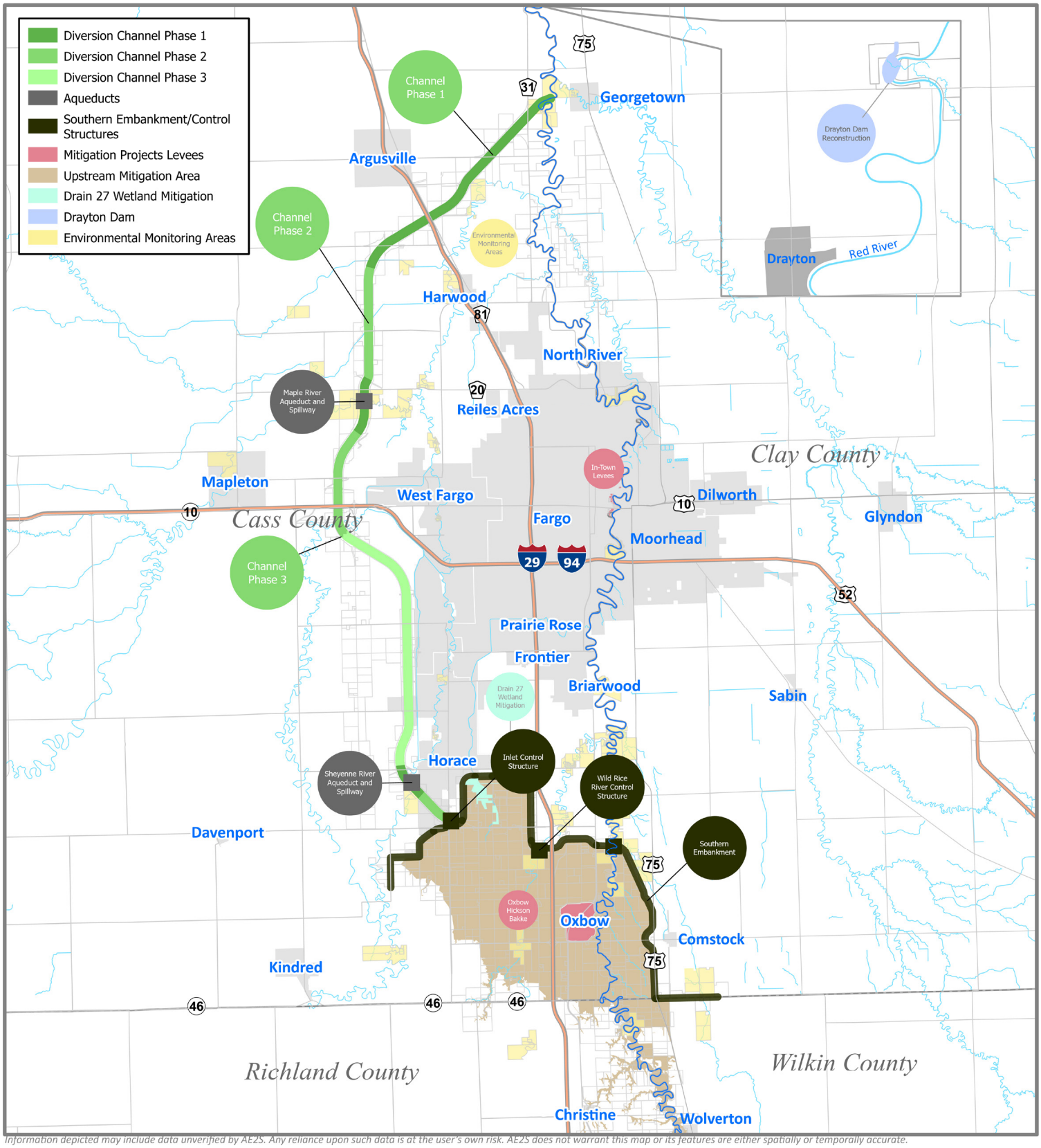
- Gates being fitted at Diversion Inlet Structure

P3 Updates

- Working toward requirements for NTP2
- 70+ pieces of equipment ready to go

USACE Updates

- Prep work started at Red River Structure site
- Gates arrived at Wild Rice Structure



Information depicted may include data unverified by AE2S. Any reliance upon such data is at the user's own risk. AE2S does not warrant this map or its features are either spatially or temporally accurate.

C:\Data\Projects\GIS Projects\FM Area Diversion\FMDiversionParcelStatus.aprx, Layout: Key Property Acquisition Areas 8x11

N

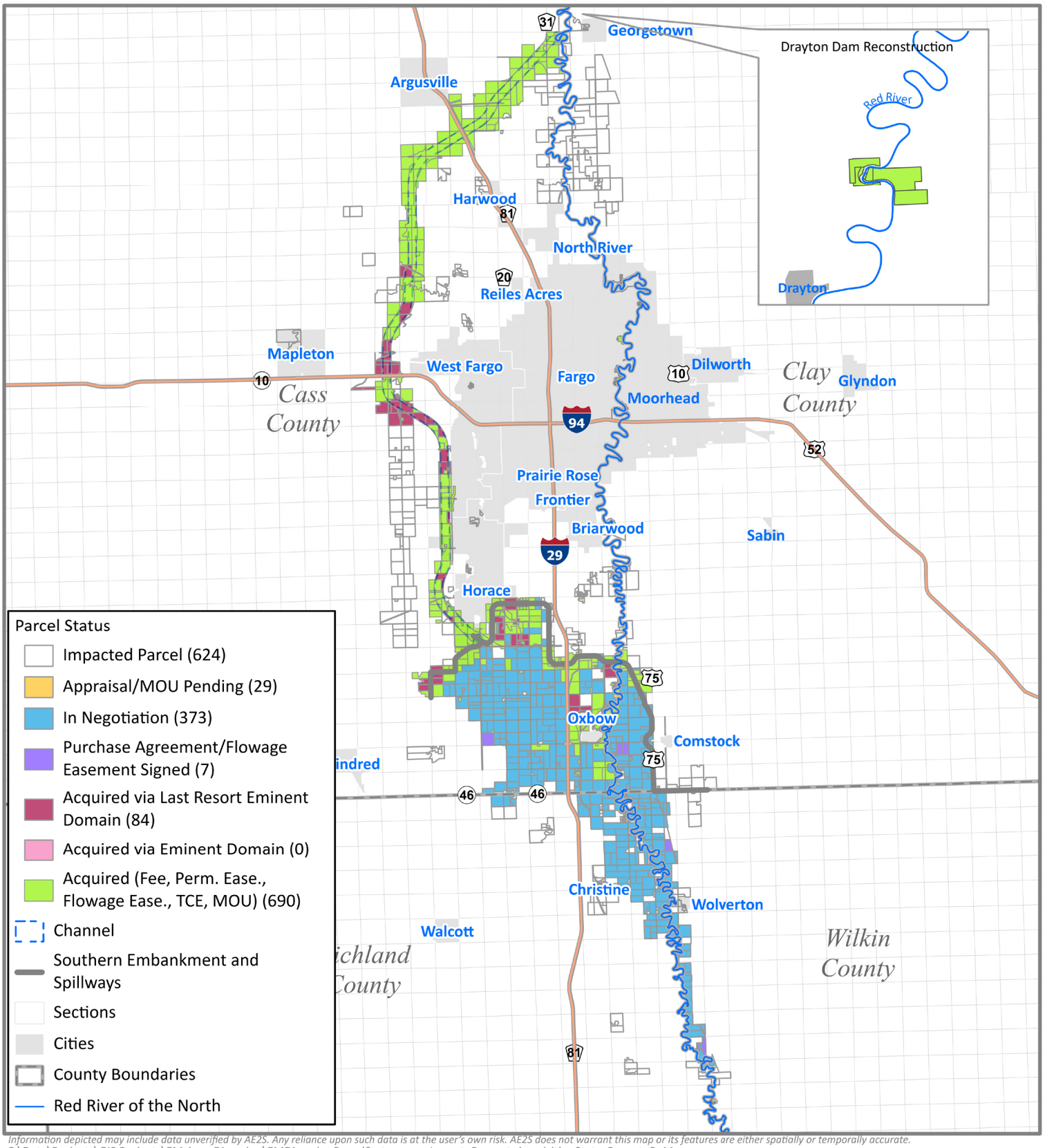
0 2.75 5.5
Miles

FM AREA DIVERSION

KEY ACQUISITION AREAS

Date: 6/10/2022

METRO FLOOD DIVERSION AUTHORITY



Information depicted may include data unverified by AE2S. Any reliance upon such data is at the user's own risk. AE2S does not warrant this map or its features are either spatially or temporally accurate.
C:\Data\Projects\GIS Projects\FM Area Diversion\FMDiversionParcelStatus.aprx, Layout: PropertyAcquisitionStatusReport_8x11

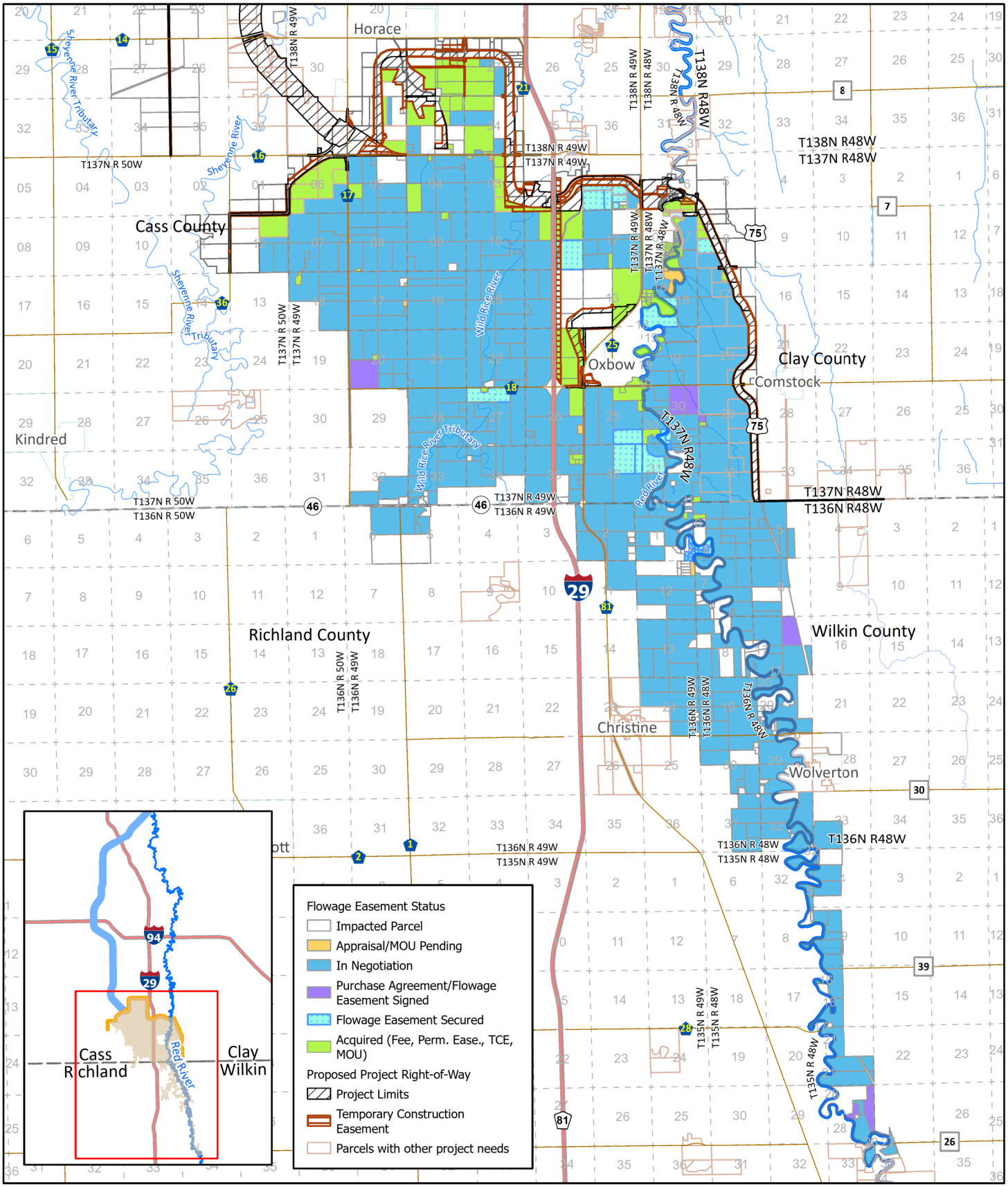
N

0 2.75 5.5
Miles

PROPERTY ACQUISITION STATUS REPORT

Date: 06/08/2022

METRO FLOOD DIVERSION AUTHORITY



Information depicted may include data unverified by AE2S. Any reliance upon such data is at the user's own risk. AE2S does not warrant this map or its features are either spatially or temporally accurate.

Edited by cwickenheiser | C:\Data\Projects\GIS Projects\FM Area Diversion\FMDiversionParcelStatus.aprx| Layout: UMA Status_Flowage Easement_8x11

N

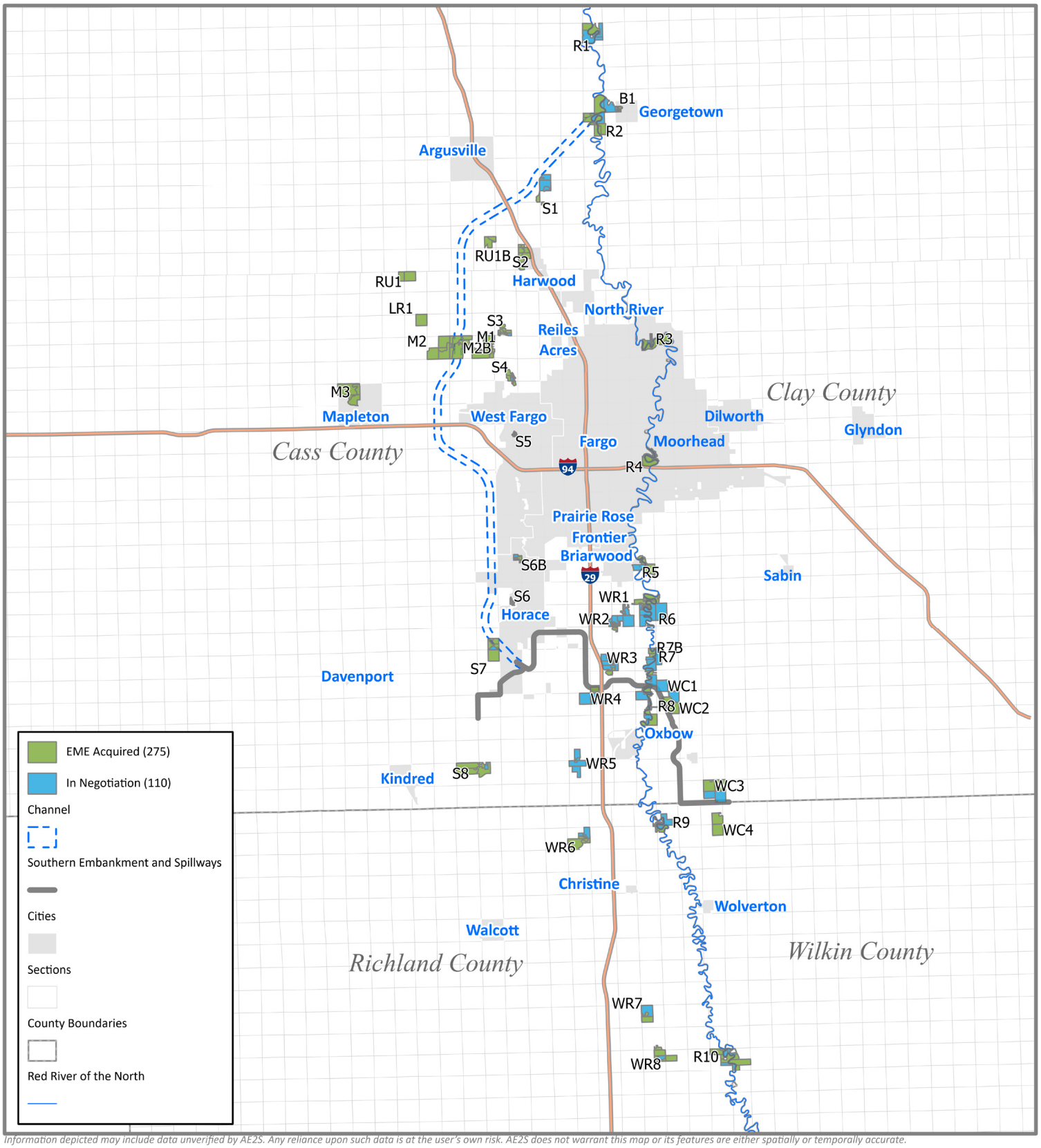
0 0.25 0.5 1
Miles

FLOWAGE EASEMENT

ACQUISITION STATUS REPORT

Date: 06/08/2022

METRO FLOOD DIVERSION AUTHORITY



Information depicted may include data unverified by AE2S. Any reliance upon such data is at the user's own risk. AE2S does not warrant this map or its features are either spatially or temporally accurate.

C:\Data\Projects\GIS Projects\FM Area Diversion\FMDiversionParcelStatus.aprx, Layout: EME Acquisition Status Report 8x11

N

0 3.25 6.5

Miles

ENVIRONMENTAL MONITORING EASEMENT

ACQUISITION STATUS REPORT

Date: 06/08/2022

METRO FLOOD DIVERSION AUTHORITY

Property Status Report

Southern Embankment

METRO FLOOD DIVERSION AUTHORITY

As of June 8, 2022

Southern Embankment

(WP Reach SE-1 to SE-5 and I29)

113 parcels total

SE-1 Complete Total Parcels: 36

SE-2A Target Completion: April 2022
Total Parcels: 6

SE-2B Target Completion: March 2023
Total Parcels: 29

SE-3 Target Completion: December 2024
Total Parcels: 5

I29 Completed
Total Parcels: 11

ND

MN

SE-4 Target Completion: January 2024
Total Parcels: 22

SE-5 Target Completion: January 2024
Total Parcels: 9

- 9 Appraisal/ MOU Pending
- 24 In Negotiation
- 0 Agreement Signed
- 59 Acquired/ TCE Secured
- 15 Condemnation
- Change from last report

Property Status Report

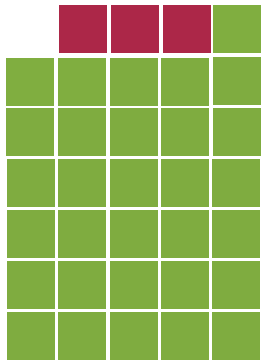
Southern Embankment Control Structures

METRO FLOOD DIVERSION AUTHORITY

As of June 8, 2022

Red River Control Structure

(WP 35)
Project Status:
Complete

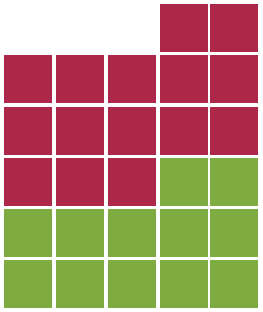


34 parcels total

- 0 Appraisal Pending
- 0 In Negotiation
- 0 Agreement Signed
- 31 Acquired/ TCE Secured
- 3 Condemnation
- Changed from last report

Drain 27 Wetland Project

Targeted Completion:
Part 1 - Complete
Part 2 - TBD



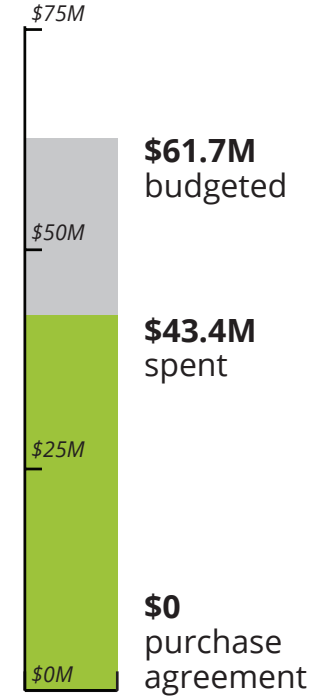
27 parcels total

- 0 Appraisal Pending/ MOU
- 0 In Negotiation
- 0 Agreement Signed
- 12 Acquired/ TCE Secured
- 15 Condemnation
- Changed from last report

Southern Embankment Control Structures, & Drain 27

Hard Costs paid to Property Owners

Note: Based on financial data through May



- Budgeted
- Purchase Agreement
- Spent

Property Status Report

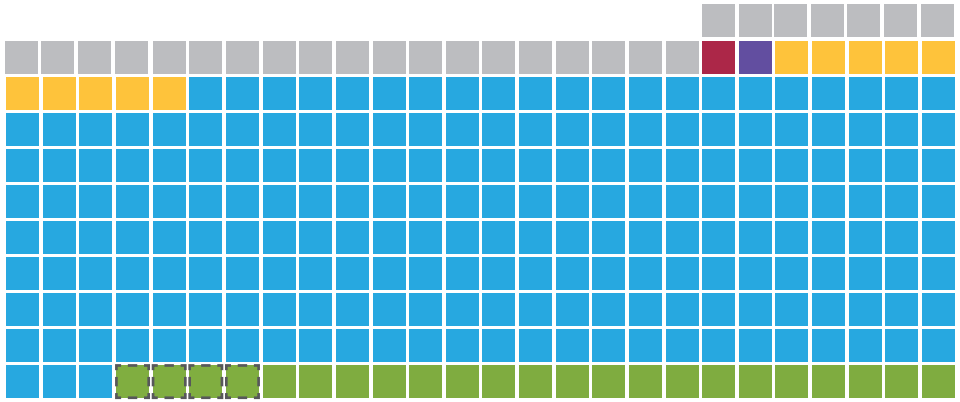
Upstream Mitigation Area - ND (UMA)

METRO FLOOD DIVERSION AUTHORITY

As of June 8, 2022

Flowage Easements without structures (ND)

Approximately 267 parcels in ND



- 10 Appraisal/MOU Pending
- 206 In Negotiation
- 1 Agreement Signed
- 23 Acquired
- 1 Condemnation
- Changed

Note: Excludes parcels in City of Christine

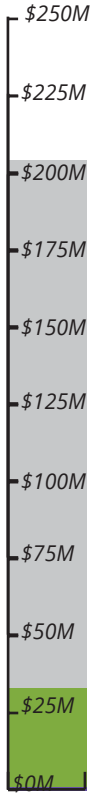
Parcels with Structures (ND)

Approximately 99 parcels in ND

- 11 Appraisal/MOU Pending
- 39 In Negotiation
- 0 Agreement Signed
- 4 Acquired
- Condemnation
- Changed

ND + MN UMA Hard Costs paid to Property Owners

Note: Based on financial data through May



$203.7 M budgeted

$29.9M spent

$72.0K purchase agreement

- Budgeted
- Purchase Agreement
- Spent

Property Status Report

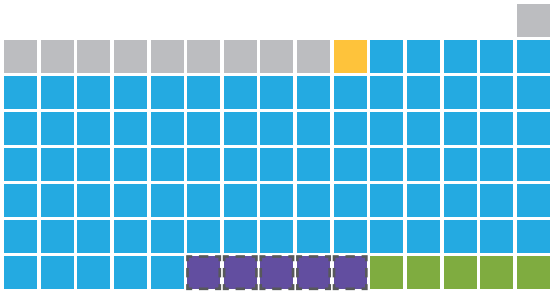
Upstream Mitigation Area - MN (UMA)

METRO FLOOD DIVERSION AUTHORITY

As of June 8, 2022

Flowage Easements without structures (MN)

Approximately 106 parcels in MN



- 1 Appraisal/MOU Pending
- 85 In Negotiation
- 5 Agreement Signed
- 5 Acquired
- 0 Condemnation
- Changed

Note: Excludes parcels in the City of Wolverton

Parcels with Structures (MN)

Approximately 28 parcels in MN

- 0 Appraisal/MOU Pending
- 14 In Negotiation
- 1 Agreement Signed
- 0 Acquired
- Condemnation
- Changed

Property Status Report

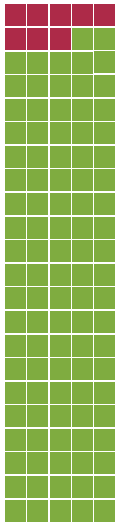
Diversion Channel

METRO FLOOD DIVERSION AUTHORITY

As of June 8, 2022

Phase 1

(WP LAP01)

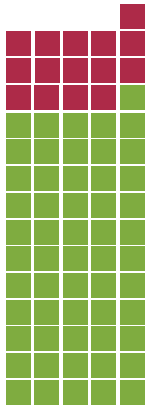


110 parcels total

- *0 MOU Pending*
- *0 In Negotiation*
- *0 Agreement Signed*
- *102 Acquired MOU/TCE/FEE*
- *8 Condemnation*
- *Change from last report*

Phase 2

(WP LAP02)

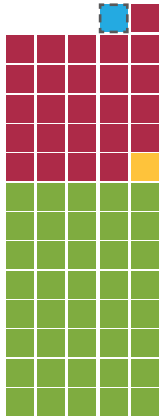


71 parcels total

- *0 MOU Pending*
- *0 In Negotiation*
- *0 Agreement Signed*
- *56 Acquired MOU/TCE/FEE*
- *15 Condemnation*
- *Change from last report*

Phase 3

(WP LAP03)

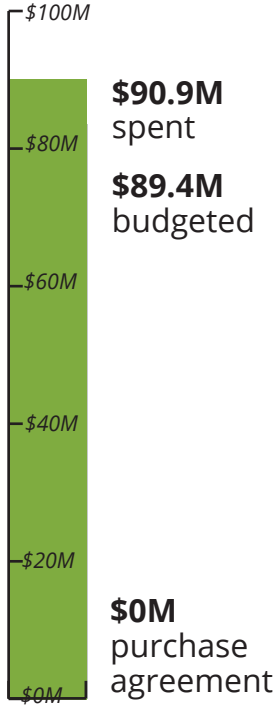


67 parcels total

- 1 MOU Pending
- 1 In Negotiation
- 0 Agreement Signed
- 40 Acquired MOU/TCE/FEE
- 25 Condemnation
- Change from last report

Hard Costs paid to Property Owners

Note: Based on Financial data through May



- *Budgeted*
- *Purchase Agreement*
- *Spent*

Property Status Report

OHB Projects

METRO FLOOD DIVERSION AUTHORITY

As of June 8, 2022

OHB Ring Levee

WP 43

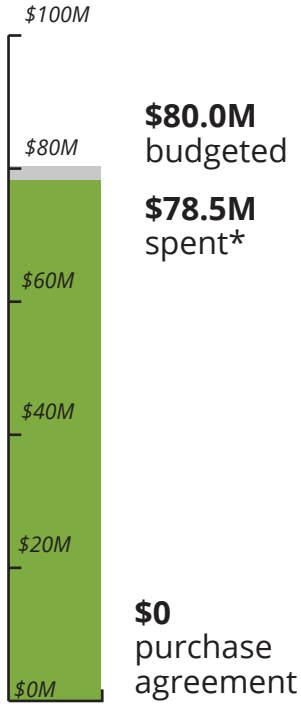
Parcels needed for remaining portion of OHB Project.

6 parcels remaining

- 0 Appraisal Pending
- 3 In Negotiation
- 0 Agreement Signed
- 0 Condemnation
- 3 Condemnation
- Changed from last report

Hard Costs paid to Property Owners

NOTE: Based on Financial data through May



* Includes parcels purchased outside the OHB Ring Levee

- Budgeted
- Purchase Agreement
- Spent

Property Status Report

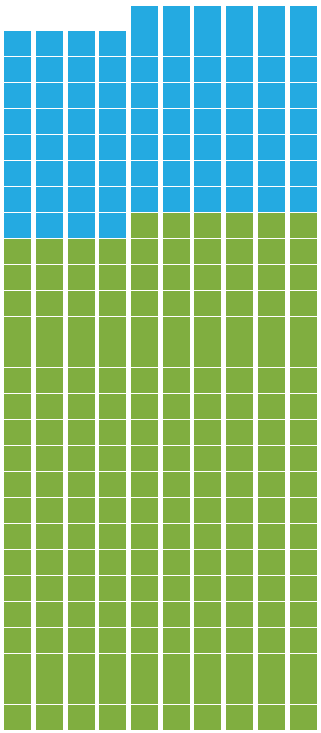
Environmental Monitoring Areas (BIOGEO)

METRO FLOOD DIVERSION AUTHORITY

As of June 8, 2022

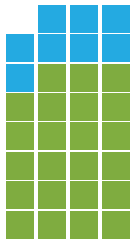
North Dakota | Minnesota

Cass County



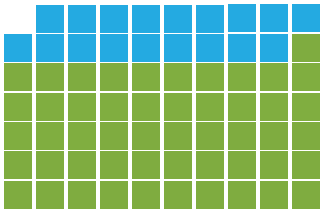
276 parcels total

Richland County



31 parcels total

Clay County



69 parcels total

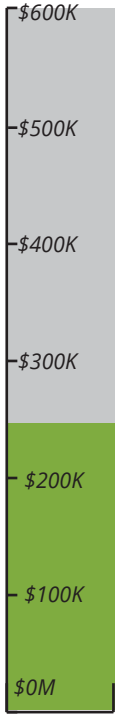
Wilkin County

9 parcels total

110 In Negotiations
275 Environmental Monitoring
Change from last report

Hard Costs paid to Property Owners

Note: Based on financial data through May



$600K budgeted

$244.7K* spent

*includes payments for monuments and easements.

Budgeted
Spent

Property Status Report

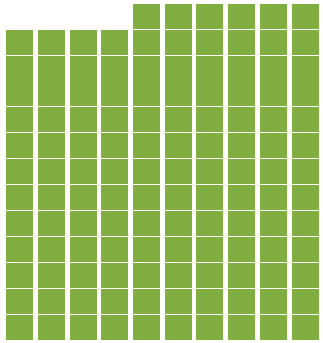
Asset Lands

METRO FLOOD DIVERSION AUTHORITY

As of June 8, 2022

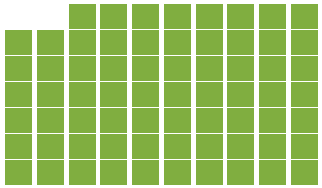
Non-UMA

Parcels in MN & ND



UMA

Parcels in MN & ND



126 Acquired Non-UMA

68 Acquired UMA

Change from last report