
PROFESSIONAL SERVICES AGREEMENT

Related to:

**THE
FARGO-MOORHEAD AREA DIVERSION PROJECT**

BY AND BETWEEN

**METRO FLOOD DIVERSION AUTHORITY
as Diversion Authority**

and

**AON RISK SERVICES CENTRAL, INC.
as Aon**

Dated as of July 1, 2016

This instrument was drafted by:
Ohnstad Twichell, P.C. (JTS)
P.O. Box 458
West Fargo, North Dakota 58078-0458

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (the “Agreement”) is made as of July 1, 2016, by and between the Metro Flood Diversion Authority (“Diversion Authority”) and Aon Risk Services Central, Inc. (“Aon”) (collectively, the “parties”).

WHEREAS, the Diversion Authority and the United States Army Corps of Engineers (“USACE”) have completed significant work in readying the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Project”) for implementation; and

WHEREAS, using a Split Delivery Method, the multiple Project features will be split into those implemented by the Diversion Authority and those implemented by the USACE, with the Diversion Authority delivering the majority of the Diversion Authority’s features through a Public-Private Partnership (“P3”) delivery method; and

WHEREAS, the portions of the Project that the Diversion Authority will implement through a P3 are collectively referred to as the Diversion Channel and Associated Infrastructure Work Package (“DCAI WP”); and

WHEREAS, the Diversion Authority has selected Aon to provide the Diversion Authority advice and support regarding the P3 insurance, performance security, and risk issues related to the Project, including assistance in the drafting and negotiating of agreements for the DCAI WP; and

WHEREAS, the Diversion Authority desires to enter into a professional services agreement with Aon and retain Aon to provide risk management and advisory services to the Diversion Authority commencing on July 1, 2016.

NOW THEREFORE, it is agreed by and between the parties as follows:

1. EMPLOYMENT. The Diversion Authority hires Aon, which accepts the hiring with the Diversion Authority pursuant to this Agreement.
2. SCOPE OF DUTIES. Aon shall provide risk management advisory services to the Diversion Authority for insurance, performance security requirements and risk management services in conjunction with the Diversion Authority’s portion of the Project. Aon shall furnish all services and labor necessary to conduct and complete the services described herein. Aon’s items of work may include, but are not limited to, the following items, as appropriate for the Project:
 - A. Provide insurance, performance security, and risk management advice as requested regarding matters affecting, or that could potentially affect, the Project.
 - B. Participate in presentations, briefings, and reporting to the Diversion Authority Board and other decision making bodies.

- C. Work and liaise with other Diversion Authority service providers and state, local, and federal agencies regarding the Project.
- D. Attend meetings or participate in conference calls with the Diversion Authority's personnel and/or consultants and other interested parties to discuss the details of the Project.
- E. Assist in identification, assessment and allocation of project risks.
- F. Review and comment on insurance, performance security, and risk provisions of the RFP, Project Agreement, and other project documents.
- G. Participate in the procurement process, including workshops, meetings, and evaluations.

The Diversion Authority reserves the right to request similar advisory services on other assignments/projects that are not listed above, under the condition of an "as needed" scope of services.

The Services to be provided by Aon are not of a legal nature, and Aon shall in no event give, or be required to give, any legal opinion or provided any legal representation to the Diversion Authority. Aon recommends that the Diversion Authority seek the review of the Diversion Authority's legal or tax advisors before taking action based upon Aon's statements.

Aon and the Diversion Authority acknowledge that the reliability of our services depends upon the accuracy and completeness of the data supplied to Aon. The Diversion Authority accepts sole responsibility for errors or delays in services solely resulting from inaccurate or incomplete data supplied to Aon, and acknowledges and agrees that any additional services thereby necessitated will result in additional fees payable by the Diversion Authority to Aon. Aon must receive promptly the information to deliver the Services as well as the Diversion Authority's prompt updates to any information where there has been a material change which may affect the scope or delivery of the Services, such as a change in the nature of the Diversion Authority's products or equipment, systems, and/or processes that are the focus of Aon's service(s).

The Diversion Authority agrees to provide its project data in the form agreed upon. The Diversion Authority understands and agrees that if data is submitted in a form other than agreed upon, the Diversion Authority shall pay Aon, in addition to the fees set forth in the Agreement the reasonable expenses incurred to merge/convert the data to the agreed upon form so long as Aon has informed the Diversion Authority of such additional expenses and the Diversion Authority has consented in writing to those additional expenses prior to Aon incurring such.

3. TASK ORDERS. Aon shall receive assignments for work under this Agreement through Task Orders authorized and provided by the Diversion Authority. The Diversion Authority shall compensate Aon only for work contained with the Task Orders. If Aon engages in work beyond the scope of a Task Orders, the Diversion Authority shall not compensate Aon for that work, unless agreed to in writing by the Diversion Authority prior to the work being completed. All amendments to Task Orders must be authorized and provided by the Diversion Authority in writing. A sample Task Order is attached to this Agreement as Exhibit A.

4. PERSONNEL. Aon must provide the services of a “Project Lead” and designated Aon associates and employees under his or her management. All persons assigned by Aon to perform services under this Agreement shall be fully qualified to perform the work assigned to them. Aon shall devote such personnel and resources, time, attention and energies to the Diversion Authority’s business as are necessary to fulfill the duties and responsibilities required by the Diversion Authority. Aon must endeavor to minimize turnover of personnel performing services under this Agreement. If the Diversion Authority is dissatisfied with any of Aon’s personnel, the Diversion Authority reserves the right to require removal of those personnel from the Task Order. The Diversion Authority shall provide Aon with a written statement, including reasonable detail, outlining its reasons for desiring removal. Replacement personnel for the removed person shall be fully qualified for the position.

5. TERM. The term of this Agreement shall begin on *July 1, 2016, and continue through July 1, 2018*, except that this Agreement may be terminated prior to July 1, 2018, pursuant to the conditions outlined in Section 20 of this Agreement.

6. EXTENSION OF TERM. The parties shall have the right to extend this Agreement for two (2) additional one year periods upon mutual agreement not less than two (2) months prior to the expiration of the initial two (2) year term, which agreement may include revised rates.

7. COMPENSATION. For all services rendered by Aon, the Diversion Authority will pay Aon based on the time spent by those Aon team members working on the Project and the hourly charging rates applicable to those Aon team members. Time will be tracked and billed in fifteen (15) minute increments for each Aon team member. Aon’s standard rates are as follows:

Team Member	Hourly Rate
Chris McEvoy	\$425
Brian De Bruin	\$375
Eric Sullivan	\$375
Mike DeLio	\$250
David Roth	\$350

Any increase in Aon’s hourly rates under this Agreement will be agreed to in advance by the Diversion Authority in writing. The compensation is payable following the end of

each month upon submission by Aon of an invoice setting forth the services performed in that month on behalf of the Diversion Authority. If a work order issued under this Agreement contains a not-to-exceed compensation amount, the Diversion Authority will only pay compensation to Aon for fees and/or expenses that are less than or equal to the not-to-exceed amount stated on the work order, unless the work order has been amended pursuant to Section 3 of this Agreement.

8. REIMBURSABLE TRAVEL EXPENSES. The Diversion Authority will be responsible for reimbursing Aon for itemized travel expenses Aon reasonably incurs while performing services under this Agreement.

A. **Allowed Expenses**. Specifically, the Diversion Authority will reimburse Aon for:

- (1) Reasonable and necessary transportation (including airfare) at Aon's actual cost. All air transportation is limited to coach fares. Contractor must book all air transportation at least fourteen (14) days prior to travel, unless the Diversion Authority agrees otherwise in writing. Private vehicle ground transportation is limited to \$0.54 per mile or the IRS standard mileage rate for business miles driven.
- (2) Meals associated with overnight travel, as Aon's actual cost. Meal costs may not exceed \$100.00 per person per day, unless the Diversion Authority agrees otherwise in writing.
- (3) Incidental expenses incurred while traveling: up to \$25.00 per person for each full 24-hour period. The Diversion Authority will not reimburse incidental expenses incurred in connection with travel less than 24 hours or for fractional days.
- (4) Lodging expenses incurred while traveling, at Aon's actual cost. Lodging costs may not exceed \$150.00 (per day per person), plus tax, unless the Diversion Authority agrees otherwise in writing.

B. **Non-allowed Expenses**. The Diversion Authority will not reimburse Aon for:

- (1) Meals not associated with overnight travel;
- (2) Any travel expense not listed in Section 8(A) of this Agreement; or
- (3) Use of Aon's office for meetings related to work pursuant to the Agreement.

C. **Requirements**. Except as otherwise directed by the Diversion Authority, Aon must submit a written travel plan to the Diversion Authority prior to incurring travel expenses. The written travel plan must include the reason for the trip, the number of persons traveling, the types of expenses Aon expects to incur, and the estimated costs. Except as otherwise directed by the Diversion Authority, the Diversion Authority must approve the written travel plan prior to the travel or the Diversion Authority will not reimburse Aon for the expense.

D. **Limitations**. The Diversion Authority will not pay Aon for more than one employee to attend Project-related workshops, meetings, evaluations, presentations, briefings, negotiations, etc., unless the Diversion Authority approves, in writing, the attendance of multiple individuals.

9. REIMBURSABLE OTHER EXPENSES. The Diversion Authority will be responsible for reimbursing Aon for itemized other expenses Aon reasonably incurs while performing services under this Agreement.

- A. **Allowed Expenses.** Specifically, the Diversion Authority will reimburse Aon for:
- (1) Postage, overnight delivery, or courier services at Aon's actual costs.
 - (2) Facsimile transmissions and long-distance telephone charges at Aon's actual cost.
 - (3) Copies at \$0.10 per page.

Aon shall be responsible for the payment of all other expenses, including travel expenses, in any way associated with the duties to be discharged by it under the terms of this Agreement, and the Diversion Authority has no responsibility whatsoever for additional payments for services rendered, costs, fees or expenses incurred in the rendering of those duties. All expense reimbursement requests by Aon shall be set out specifically in the invoicing to the Diversion Authority.

10. INVOICING AND PAYMENT.

A. Aon must submit invoices to the Diversion Authority no more often than once per month, for services provided and allowed expenses incurred during the preceding month. Aon's Project Lead must personally review each invoice before it is sent to the Diversion Authority to determine its accuracy and fairness, and to ensure the invoice complies with the requirements in this Agreement.

B. Aon must submit each original invoice to:

Metro Flood Diversion Authority
APInvoicesFMDiv@ch2m.com

C. Aon's invoices must be detailed and precise. Aon's invoices must clearly indicate fees and expenses incurred for the current billing period month and include at least the following information:

- (1) Aon's name and address;
- (2) Aon's federal employer identification number;
- (3) Unique invoice number;
- (4) Billing period;
- (5) Description of each activity performed for each day in which services were performed;
- (6) Work order number associated with each activity;
- (7) Name, billing rate, and hours worked by each person involved in each activity;
- (8) Breakdown of allowed expenses, identified by billing period;
- (9) Total amount of fees and costs "billed to date," including the preceding month; and

- (10) Preferred remittance address, if different from the address on the invoice's coversheet.
 - D. Aon's invoice must be printed on a printed bill head and signed by the Project Lead or other authorized signatory.
 - E. Aon must keep copies of invoices and receipts and provide copies for the Diversion Authority's review upon request.
 - F. After the Diversion Authority receives Aon's invoice, the Diversion Authority will either process the invoice for payment or give Aon specific reasons, in writing, why part or all of the Diversion Authority's payment is being withheld and what actions Aon must take to receive the withheld amount.
 - G. Payment does not imply acceptance of services, that expenses are allowable, or that the invoice is accurate. In the event an error is identified within three months of receipt of payment, Aon must credit any payment in error from any payment that is due or that may become due to Aon under this Agreement.
 - H. Aon must pay all fees, fines, taxes, or other costs of doing business related to the services, except for the expenses allowed under Section 8 and Section 9 of this Agreement.
11. RELATIONSHIP BETWEEN PARTIES. Aon is retained by the Diversion Authority only for the purposes and to the extent set forth in this Agreement, and its relationship to the Diversion Authority shall, during the period or periods of services under this Agreement, be that of an independent contractor. Aon shall be free to use such portion of Aon's entire time, energy and skill during the course of this Agreement to meet its contractual obligation to the Diversion Authority. Neither Aon, nor its personnel, shall be considered to be employed by the Diversion Authority or entitled to participate in any plans, arrangements or distributions by the Diversion Authority pertaining to or in connection with any benefits accorded the Diversion Authority's regular employees. The Diversion Authority shall not be financially responsible to Aon except for the payment of compensation and expenses specifically set forth in this Agreement, and shall not be responsible for the payment of any cost of living allowances, merit increases, medical insurance, public employee's retirement, life or disability coverage, sick leave or holiday pay or vacation pay or any benefit of any kind not specifically set forth in this Agreement. Likewise, the Diversion Authority shall not be responsible for wage or salary withholding to the federal or any state government.
12. REPRESENTATIONS AND WARRANTIES. Aon represents and warrants that the following statements are true:
- A. Aon has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any member of the Diversion Authority with a

view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.

- B. The Team Members performing the work hereunder have no interest that would constitute a conflict of interest with the Diversion Authority during the term of the Project. This does not preclude or prohibit other Aon employees or representatives from working with other parties who may participate on the Project and have potential or actual adverse interest to the Diversion Authority.
 - C. This Agreement does not constitute a conflict of interest or default under any of Aon's other agreements.
 - D. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Aon's ability to perform under this Agreement.
 - E. Aon is in compliance with all laws, rules, and regulations applicable to its business, including rules of professional conduct.
 - F. During the term of this Agreement, Aon must not take any action, or omit to perform any act, that may result in a representation and warranty becoming untrue. Aon must immediately notify the Diversion Authority if any representation and warranty becomes untrue.
 - G. THIS WARRANTY SHALL BE IN LIEU OF AND EXCLUDES ALL OTHER IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.
13. OFFICE SPACE. Aon shall be responsible for provision of all office space necessary to complete its work under the terms of this Agreement.
14. WORKING RELATIONSHIP. Aon's Project Lead shall report to the Diversion Authority's, Executive Director(s) and Program Management Consultant, CH2M. Aon shall work in close cooperation and coordinate with Diversion Authority's advisors: John T. Shockley, local counsel; Ashurst, LLP, P3 legal advisor; and Ernst & Young Infrastructure Advisors, financial advisor, under such terms and conditions as may be set from time to time by the Diversion Authority.
15. INDEPENDENT PROFESSIONAL JUDGMENT. Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by Aon in accordance with the independent professional judgment of each of its employees. Aon shall require its personnel to perform the services rendered in accordance with accepted principals of its industry in the State of North Dakota. Aon personnel are subject to the rules and regulations of any and all licensing and professional organizations or associations to which those personnel may from time to time belong, and the laws and regulations in the State of North Dakota.

16. PROFESSIONAL AND GENERAL LIABILITY INSURANCE, AND WORKER'S COMPENSATION. Aon shall have the responsibility to provide and pay for professional liability insurance covering Aon and its employees under a policy of insurance having minimum coverage limits of One Million Dollars (\$1,000,000.00) per claim. The Diversion Authority shall have no specific responsibility to provide any general liability coverage or worker's compensation coverage for the benefit of Aon's employees during the terms of this Agreement.

- A. If any required policy is written on a "claims made" form, Aon must maintain the coverage continuously throughout the term of this Agreement, and, without lapse, for three (3) years beyond the termination or expiration of this Agreement and the Diversion Authority's acceptance of all services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that services commence under this Agreement.
- B. Before Aon begins performing services, Aon must send the Diversion Authority certificates of insurance and any applicable endorsements attesting to the existence of coverage. Aon will not allow its policies to be cancelled, lapse, terminate or be amended to reduce coverage below the minimums called for in this Agreement without thirty (30) days' notice to the Diversion Authority. The certificates of insurance issued to confirm Aon's compliance must reference this Agreement.
- C. For insurance to satisfy the requirements of this section, all required insurance must be issued by a carrier with an A.M. Best rating of A-/VII or better that is authorized to transact business in the State of North Dakota.
- D. If required insurance lapses during the term of this Agreement, the Diversion Authority is not required to process invoices after such lapse until Aon provides evidence of reinstatement that is effective as of the lapse date.

17. INDEMNITY AND INDEMNIFICATION.

- A. Aon must hold harmless and indemnify the Diversion Authority from all third party claims, losses, and expenses, including attorney's fees and costs, resulting from: (1) a matter or event related to Aon's acts or omissions related to the performance of this Agreement; or (2) Aon's breach under this Agreement, except to the extent a claim or loss is due to the active negligence or willful misconduct of an indemnified party.
- B. The Diversion Authority agrees to defend, indemnify and hold Aon, its directors, officers and employees, harmless from and against any and all third party claims, suits, and demands, and the liabilities, costs and expenses resulting therefrom ("Claims"), that Aon may incur relating to the Services under this Agreement, except to the extent such Claims are fully and finally determined by a court of

competent jurisdiction to have resulted from willful misconduct or fraudulent acts or omissions of Aon in connection with such services.

- C. In no event shall Aon be liable to the Diversion Authority, whether in tort (including negligence), contract or otherwise for any amount, in the aggregate, in excess of one million dollars (\$1,000,000) under this Agreement, except to the extent fully and finally determined by a court of competent jurisdiction to have resulted from the willful misconduct or fraudulent behavior of Aon, and neither Aon nor the Diversion Authority shall be liable to the other for any consequential, indirect, lost profit, lost opportunity or similar damages relating to Aon's services provided under this Agreement.
18. ADDITIONAL PAYMENT. Nothing contained in this Agreement shall obligate the Diversion Authority to make any payment for services rendered in any period after the termination of Aon's retention by the Diversion Authority.
19. BREACH AND REMEDIES.
- A. A breach exists under this Agreement if Aon:
- (1) Makes a material misrepresentation in writing; or
 - (2) Fails or is unable to meet or perform any material promise in this Agreement, and
 - (a) Is incapable of curing the failure, or
 - (b) Does not cure the failure within ten (10) days following notice (or within a longer period if specified in the notice).
- B. Aon must give the Diversion Authority notice immediately if Aon breaches, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a breach under this Agreement.
- C. If a breach exists under this Agreement, the Diversion Authority may do any of the following:
- (1) Require Aon to enter into non-binding mediation;
 - (2) Terminate this Agreement, in whole or in part; and
 - (3) Seek any other available remedy at law or in equity.
- D. All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.
20. TERMINATION.
- A. The Diversion Authority may terminate this Agreement, in whole or in part, for cause if Aon is in breach and Aon has not cured such breach within 10 days, or such longer period as allowed by the Diversion Authority.

- B. The Diversion Authority may terminate this Agreement, in whole or in part, or modify or limit Aon's services, and proportionately, Aon's compensation, if:
 - (1) The Diversion Authority determines that having Aon provide services has become infeasible due to changes in applicable laws or regulations, or
 - (2) Expected or actual funding to compensate Aon is withdrawn, reduced, or limited.
- C. Either party may terminate this Agreement, in whole or in part, for any or no reason upon ten (10) days' written notice.
- D. In the event a federal or state tax or employment agency concludes that an independent contractor relationship does not exist, either Aon or the Diversion Authority may terminate this Agreement immediately upon written notice.
- E. Aon may withdraw from representing the Diversion Authority:
 - (1) With the Diversion Authority's consent;
 - (2) Without the Diversion Authority's consent if the Diversion Authority fails to pay Aon any undisputed amount; or
 - (3) Without the Diversion Authority's consent if continuing Aon's representation would be unlawful or unethical.
- F. Upon receipt of any termination notice from the Diversion Authority, Aon must promptly discontinue all affected services unless the parties mutually agree otherwise.
- G. Upon the end date of the Agreement, which is the date when this Agreement as a whole expires or is terminated pursuant to its terms:
 - (1) The Diversion Authority will be released from compensating Aon for services other than those Aon satisfactorily performed prior to the end date.
 - (2) Aon must submit Aon's final invoice for payment within sixty (60) days of the end date. The Diversion Authority will not pay any Aon invoice received after this period.
 - (3) Aon will be released from performing services, except for services in any non-terminated portion of the Agreement.
- H. All rights and duties with respect to services performed prior to the expiration or termination of this Agreement, and continuing obligations specified in this Agreement to be performed following expiration or termination of this Agreement, will survive the expiration or termination of this Agreement.
- I. In the event of termination, expiration, or removal/withdrawal, Aon must withdraw as parties mutually agree to the Diversion Authority (and any person represented on the Diversion Authority's behalf) as soon as it is reasonably possible to do so without (1) prejudice to the Diversion Authority's interests (or the interest of any person represented on the Diversion Authority's behalf) or (2) violation of Aon's statutory or ethical duties. Aon must notify the Diversion Authority of any further

- B. Within sixty (60) days after the date of the Notice of Audit Results, Aon will respond, in writing, to the Diversion Authority indicating (a) whether it concurs with the audit report, (b) clearly explaining the nature and basis for any disagreement as to a disallowed item of expense, and (c) providing a written explanation as to any questioned or no opinion expressed item of expense (“Response”). The Response will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, Aon may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the Diversion Authority. The Response will refer to and apply the language of this Agreement. Aon agrees that failure to submit a Response within the sixty (60) day period constitutes agreement with any disallowance of an item or expense and authorizes the Diversion Authority to finally disallow any items of questioned or no opinion expressed cost.
- C. The Diversion Authority will make its decision with regard to any Notice of Audit Results and Response within one hundred twenty (120) days after the date of the Notice of Audit Results. If the Diversion Authority determines that an overpayment has been made to Aon, Aon will repay the amount to the Diversion Authority or reach an agreement with the Diversion Authority on a repayment schedule within thirty (30) days after the date of an invoice from the Diversion Authority. If Aon fails to repay the overpayment or reach an agreement with the Diversion Authority on a repayment schedule within the thirty (30) day period, Aon agrees that the Diversion Authority will deduct all or a portion of the overpayment from any funds then or thereafter payable by the Diversion Authority to Aon for this project. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be the interest rate on judgments in North Dakota as calculated by the state court administrator pursuant to N.D.C.C. § 28-20-34. The rate of interest will be reviewed annually by the Diversion Authority and adjusted as necessary. Aon expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit to contest the Diversion Authority’s decision only as to any item of expense the disallowance of which was disputed by Aon in a timely-filed Response.
24. OWNERSHIP. As between the parties, the Diversion Authority is the exclusive owner of all material Aon collects from the Diversion Authority in connection with the services under this Agreement, including copyrights. Within thirty (30) days of the end date of the Agreement, or upon the Diversion Authority’s notice at any time, Aon must give all materials collected to the Diversion Authority (or to another party at the Diversion Authority’s direction). Unless the Diversion Authority specifies otherwise, all files must be saved in Microsoft Word and Excel formats, as applicable. Aon must maintain Aon’s records relating to services under this Agreement and Aon’s invoices, and all other

materials, in an accessible location and condition for a period of not less than four (4) years after the later of:

- A. The date when Aon receives final payment under this Agreement; or
- B. The date when the Diversion Authority resolves with Aon the findings of any final audit.

Aon may retain copies of any original documents Aon provides to the Diversion Authority and a copy of any material collected from the Diversion Authority in Aon's confidential files for the purpose of complying with applicable laws or established company procedure regarding the preservation of business records.

Services and Deliverables are for the exclusive use of the Diversion Authority and are not to be relied upon by third parties.

25. CONFIDENTIAL INFORMATION AND PUBLICITY.

- A. Aon agrees to hold in confidence the following confidential information:
 - (1) All information that the Diversion Authority discloses to Aon; and
 - (2) All information to which Aon gains access while providing services under this Agreement.
- B. Confidential information does not include any information that Aon can demonstrate has been made available to the public (other than through a breach of this Agreement). As between Aon and the Diversion Authority, the Diversion Authority owns the confidential information, and the Diversion Authority authorizes Aon to use it only for purposes of performing this Agreement. Aon may also disclose the Diversion Authority's confidential information to the extent necessary to comply with law, provided Aon gives the Diversion Authority prior written notice. Upon the end date of this Agreement, Aon must destroy or return all confidential information to the Diversion Authority, at the Diversion Authority's discretion, and certify to the Diversion Authority, in writing, that it has done so; provided, however, such destruction shall include, without limitation, the process of expunging, to the extent reasonably practicable, all such confidential information from any computer, hard drive, word processor, server, backup tape, or other electronic device containing such confidential information. Notwithstanding the foregoing, Aon may retain one archival copy of the confidential information in its confidential files for the purpose of complying with applicable laws or established company procedure regarding the preservation of business records.
- C. Aon must not make any public announcement, press release, or other writing relating to the services under this Agreement without the Diversion Authority's prior written approval.

- D. Aon understands a breach under this section may result in irreparable damage for which no adequate remedy may be available. Accordingly, injunctive relief and other equitable relief are remedies available to the Diversion Authority.
26. MODIFICATION. This Agreement contains the entire understanding of the parties. It may not be changed orally, but only upon an agreement in writing approved by the Diversion Authority and signed by the Chair of the Diversion Authority. It may be modified as to terms and conditions from time to time upon the mutual consent of the parties; however, such modification shall be reduced to writing, signed by the parties and the document appended to and made a part of this Agreement. In the event the Diversion Authority either appoints or engages Aon as its Broker of Record or in another similar relationship, the parties shall enter into a separate service agreement.
27. WAIVER. A party's waiver of enforcement of any of this Agreement's terms or conditions will be effective only if it is in writing. A party's specific waiver will not constitute a waiver by that party of any earlier, concurrent, or later breach or default.
28. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Diversion Authority, its successors and assigns, and any such successor shall be deemed substituted for the Diversion Authority under the terms of this Agreement. This Agreement shall likewise be binding upon Aon, its successors and assigns. As used in this Agreement, the term "successor" shall include any person, firm, corporation or other business entity which at any time whether by merger, purchase or otherwise acquires all or substantially all of the assets or business of the corporation.
29. NEGOTIATED AGREEMENT. This Agreement has been arrived at through negotiation between the parties.
30. SEVERABILITY. If any court of competent jurisdiction declares any provision or part of this Agreement to be invalid or unenforceable, all remaining terms and provisions of this Agreement will remain binding and enforceable.
31. CONTROLLING LAW AND VENUE. This Agreement shall be controlled by the laws of the State of North Dakota, and any action brought as a result of any claim, demand or cause of action arising under the terms of this Agreement shall be brought in an appropriate venue in the State of North Dakota. Each party agrees to waive its right to a trial by jury in any lawsuit or other legal proceeding against the other party and/or its parent(s), affiliates, or subsidiaries, in connection with, arising out of or relating to this proposal or any services provided to the Diversion Authority by Aon or its affiliates. In any such action or legal proceeding, neither party shall name, as a defendant any individual employee, officer or director of the other party or its parent(s), affiliates or subsidiaries.

This Agreement is executed the day and year above noted.

DIVERSION AUTHORITY:

Metro Flood Diversion Authority

By: _____
Chair

AON:

Aon Risk Services Central, Inc.

By: _____
Name:
Title:

EXHIBIT A
