

Request for Qualifications  
to  
Design, Build, Finance, Operate and Maintain  
the  
Diversion Channel and Associated Infrastructure Work Package  
of the  
Fargo-Moorhead Metropolitan Area Flood Risk Management  
Project



<b>RFQ Issuance:</b>	<b>July 14, 2016</b>
<b>RFQ Comment Deadline:</b>	<b>August 11, 2016 5:00PM (Central Time)</b>
<b>SOQ Due Date:</b>	<b>September 7, 2016 4:00PM (Central Time)</b>

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## SECTION 1

# Introduction

## 1.1 Introduction

- 1.1.1 On July 14, 2016, the Metro Flood Diversion Authority (the "**Authority**") granted authorization for the Diversion Channel and Associated Infrastructure Work Package (the "**Project**"), which is a portion of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the "**Comprehensive Project**"), to be procured as a design, build, finance, operate and maintain ("**DBFOM**") public-private partnership ("**P3**"). Additional information on the Comprehensive Project and the minutes of the July 14, 2016 meeting are available on the Project Website.
- 1.1.2 The Authority invites each Respondent to submit a Statement of Qualifications ("**SOQ**") in response to this Request for Qualifications ("**RFQ**"). See Section 5 (SOQ Content, Submittal and Delivery Requirements) for Submittal Requirements.
- 1.1.3 The Comprehensive Project consists of an embankment (dam), with upstream water staging/storage and a downstream diversion channel. The Comprehensive Project is being delivered using a "Split Delivery Model", with the Authority responsible for delivering the Project and the United States Army Corps of Engineers ("**USACE**") responsible for delivering the Southern Embankment and Associated Infrastructure ("**SEAI**") and Mitigation and Associated Infrastructure ("**MAI**"), either directly or as work-in-kind by the Authority. See Section 1.5 (Split Delivery Model and Role of the USACE) for further information on the Split Delivery Model. Figure B.2 in Appendix B (Project Maps) illustrates the "Split Delivery Model".
- 1.1.4 The Diversion Channel alignment begins west of the intersection of Cass County roads CR 16 and CR 17, and extends west and north around several North Dakota cities, including the City of Horace, the City of Fargo, the City of West Fargo and the City of Harwood. The Diversion Channel discharges into the Red River of the North (the "**Red River**") north of the confluence of the Red River and the Sheyenne River near the City of Georgetown, Minnesota. The Diversion Channel crosses the Sheyenne River, the Maple River, the Lower Rush River and the Rush River, interstates I-94 and I-29, numerous county and township roads and the BNSF Railway ("**BNSF**") in four locations along its 30-mile path. See Figure B.1 in Appendix B (Project Maps) for a map of the Project.
- 1.1.5 The general scope of work for the Project includes the 30-mile Diversion Channel, the Diversion Channel outlet, the Inflow Design Flood Line of Protection ("**IDF Line of Protection**"), two pairs of interstate bridges (east and west-bound I-94 and north and south-bound I-29), 10 to 12 county road bridges or crossings, three or four railroad bridges, two aqueducts (Sheyenne River and Maple River), six drain inlets, and two drop structures that direct the flow of the Lower Rush River and the Rush River into the Diversion Channel, as well as recreation features and mitigation of environmental impacts. The depth and width of the Diversion Channel will depend on the Developer's final design, but the Authority estimates that the Diversion Channel will be approximately 20 feet deep and 200 to 300 feet wide at the bottom.

## 1.2 Definitions

Capitalized terms and acronyms used in this RFQ have the meanings set forth in Appendix A (Definitions).

## 1.3 Comprehensive Project Goals

- 1.3.1 The risk of flooding in the Fargo-Moorhead Metropolitan Area is high. Spring snowmelt causes high river stages, but summer rainfall can also cause significant flooding. Since 1900, the Red River has exceeded "major flood stage" designation 16 times, with eight of those major floods occurring since 2000. The Flood of Record (estimated to be a 50-year event) was recorded in 2009 and required significant emergency measures to prevent widespread damage. Substantial financial and human resources were required to construct emergency levees and other emergency measures, severely disrupting local businesses, traffic and the daily lives of local residents. Although emergency measures have been successful in the past, each major flood involves a high risk of a catastrophic failure, which could result in over \$10 billion in damages and loss of life. Businesses, residents, Federal agencies (such as USACE) and local and state governments each contribute to the flood fight, rescue and clean-up efforts in the Fargo-Moorhead Metropolitan Area.
- 1.3.2 The purpose of the Comprehensive Project is to reduce flood risk, flood damages and emergency flood protection costs related to flooding in the Fargo-Moorhead Metropolitan Area. Specifically, the key goals of the Comprehensive Project are to:
- (a) reduce flood risk associated with local rivers, including the Red River, Sheyenne River, Wild Rice River, Maple River, Rush River and Lower Rush River passing through or into the Fargo-Moorhead Metropolitan Area;
  - (b) reduce flood risk and damages for floods up to and exceeding a 100-year flood; and
  - (c) qualify the portions of the Fargo-Moorhead Metropolitan Area that will be protected by the Comprehensive Project for accreditation by the Federal Emergency Management Agency of the United States Department of Homeland Security ("**FEMA**") and allow removal of local properties from the 100-year (i.e., 1% annual chance) floodplain under the National Flood Insurance Program, reducing local flood insurance premiums by up to \$60 million per year (based on 20,000 homes with an average annual premium of \$3,000 per year).
- 1.3.3 Additional objectives of the Comprehensive Project are to:
- (a) deliver the Comprehensive Project consistent with the Authority's Financial Plan;
  - (b) adhere to the environmental requirements in the FEIS, the Chief of Engineers Report and the Minnesota FEIS;
  - (c) provide recreational opportunities in conjunction with other flood risk management features;
  - (d) minimize adverse impact of construction on the public; and
  - (e) provide a safe environment for the public and workers during construction, operation and maintenance.

- 1.3.4 The Authority anticipates that delivering the Project as a P3 will enable the Authority to benefit from innovative design, construction, maintenance and financing, resulting in cost savings and schedule improvements, as well as favorable risk assignment, including long-term maintenance by the Developer.

## 1.4 Metro Flood Diversion Authority

In 2011, the City of Fargo, City of Moorhead, Cass County, Clay County, the Cass County Joint Water Resource District and the Buffalo-Red River Watershed District entered into a Limited Joint Powers Agreement creating the Authority. On June 13, 2016, a new Joint Powers Agreement (the "**JPA**") was entered into by the City of Fargo, City of Moorhead, Cass County, Clay County and the Cass County Joint Water Resource District to, among other things, continue the existence of the Authority and authorize the Authority to enter into the Project Partnership Agreement with USACE, which is discussed further in [Section 1.5.3 \(\*Split Delivery Model and Role of USACE\*\)](#). A copy of the JPA is available on the Project Website.

## 1.5 Split Delivery Model and Role of USACE

- 1.5.1 USACE has been involved in the Comprehensive Project since the initial stages of its development. Starting in 2008, USACE began liaising with local stakeholders regarding the need for a major flood risk management project. In September 2011, USACE completed an in-depth feasibility study, which included consultation with various Federal, state and local agencies.<sup>1</sup> At that point, the Non-Federal Sponsors and USACE entered into a Design Agreement, which set forth the parties' commitments with respect to initial engineering and design of the Comprehensive Project. On December 19, 2011, USACE submitted a report to the US Congress (the "**Chief of Engineers Report**") in which it officially recommended authorization of the Comprehensive Project (which authorization would later be granted by the US Congress through Section 7002(2) of the Water Resources Reform and Development Act of 2014 (Public Law 113-121) ("**WRRDA**").
- 1.5.2 As further discussed in [Section 3.1 \(\*Federal Authorizations and Appropriations\*\)](#), the Comprehensive Project was one of six "new start" projects to receive construction funding through the USACE 2016 Work Plan, the document which sets forth USACE's planned annual expenditures for funds not specifically identified in the FY 2016 Energy and Water Development and Related Agencies Appropriations Act (Public Law 114-113).
- 1.5.3 On July 11, 2016, the Authority, the City of Fargo and the City of Moorhead (together, the "**Non-Federal Sponsors**") and USACE entered into a Project Partnership Agreement ("**PPA**"), which sets forth the rights and responsibilities of the Non-Federal Sponsors and USACE for implementation of the Comprehensive Project. A copy of the PPA is available on the Project Website. Under the PPA, the Non-Federal Sponsors and USACE agreed to deliver the Comprehensive Project using a "Split Delivery Model", with USACE responsible for the design and construction of the SEAI and MAI, and the Non-Federal Sponsors responsible for the design and construction of the Project, as well as the operation and maintenance of the Comprehensive Project.

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<sup>1</sup> Federal, state and local agencies consulted include the Minnesota Department of Natural Resources, Minnesota Pollution Control Agency, US Fish and Wildlife Service, Environmental Protection Agency, North Dakota Game & Fish Department, Fargo-Moorhead Metropolitan Council of Governments, North Dakota State Water Commission, North Dakota Department of Health, FEMA, North Dakota Wildlife Federation, Buffalo Red River Watershed District, Cass County, Clay County, Southeast Cass Water Resources District, Federal Aviation Administration, Minnesota Natural Resource Conservation Service, North Dakota Natural Resource Conservation Service, National Wildlife Federation, Minnesota Board of Water and Soil Resources, Minnesota Department of Transportation and North Dakota Natural Resources Trust.

- 1.5.4 USACE plans to use a traditional design-bid-build method for delivery of the SEAI, which it intends to procure through multiple work packages. Under the terms of the PPA, USACE has committed to provide \$450 million in Federal funds, subject to appropriations, for construction of the Comprehensive Project, with the Non-Federal Sponsors responsible for all Comprehensive Project costs in excess of such amount.
- 1.5.5 In addition to the PPA, the Non-Federal Sponsors and USACE entered into a P3 memorandum of understanding (the "**P3 MOU**") regarding the Project and are developing and will maintain a project management plan (the "**Project Management Plan**"), as described further below:
- (a) The P3 MOU recognizes that the Non-Federal Sponsors are responsible for and will control the Procurement Process, however, the P3 MOU also makes clear that USACE will play an important role in the Project. USACE's role will involve:
    - (i) agreement of the Technical Requirements to be included in the RFP;
    - (ii) consultation regarding ITCs that affect loss of life or flood damage from uncontrolled release of water upon breach, or that pertain to elements of the Technical Requirements agreed to be "fundamental" by the Non-Federal Sponsors and USACE prior to issuance of the RFP; and
    - (iii) the right to observe meetings regarding the Project and the Procurement Process (including one-on-one meetings with Respondents and Evaluation Team meetings).
  - (b) The Project Management Plan is intended to serve as a guidance document that will provide further clarity regarding the scope and timing for delivery of the various elements of the Comprehensive Project. The Project Management Plan will be updated throughout the life of the Comprehensive Project so it can continue to provide helpful instruction to, and facilitate coordination between, the Non-Federal Sponsors and USACE. Portions of the Project Management Plan related to the SEAI and MAI will be developed and maintained by USACE, while portions related to the Project and associated mitigation work packages will be developed and maintained by the Non-Federal Sponsors.
- 1.5.6 Through its actions and public statements over the past several years, USACE has made clear its support for and dedication to the successful implementation of the Comprehensive Project. USACE has labeled the Comprehensive Project a "demonstration project" through which it hopes to demonstrate publicly its ability to be involved in and contribute to a project involving a P3 element. The Non-Federal Sponsors have established a strong working relationship with USACE, which is expected to result in a cooperative, mutually beneficial relationship over the term of the Project and the Comprehensive Project more broadly.

[End of Section 1]

## SECTION 2

# Project Contractual and Financial Structure; Project Scope

## 2.1 Project Agreement

The Authority intends to enter into a Project Agreement with the Developer that will set forth, among other things, the obligations of the Authority and the Developer with respect to the design, construction, financing, operation and maintenance of the Project. The term of the Project Agreement is anticipated to allow for an operation and maintenance period of approximately 30 years. The proposed term and form of the Project Agreement will be included in the RFP.

## 2.2 Public Funding and Private Financing

### 2.2.1 Sources of Public Funds

The Authority anticipates funding and/or financing its payment obligations under the Project Agreement from one or more of the revenue sources listed below:

- (a) the following state appropriations:
  - (i) \$570 million in North Dakota state appropriations (based on 2013 and 2015 North Dakota legislative commitments) to support the development of the Comprehensive Project; and
  - (i) \$43 million in Minnesota state appropriations (to be requested from the Minnesota state legislature based on proportional Minnesota/North Dakota benefit calculations in the Minnesota FEIS) to support the development of the Comprehensive Project;
- (b) portions of the following, existing, city and county sales and use taxes:
  - (i) Cass County 0.5% sales tax, passed in 2010;<sup>2</sup>
  - (ii) City of Fargo 0.5% dedicated flood control sales tax, passed in 2009;<sup>3</sup>
  - (iii) City of Fargo 0.5% flood and infrastructure sales taxes, passed in 2012;<sup>4</sup> and
  - (iv) 25% of a City of Fargo 1.0% infrastructure sales tax, with the 1.0% tax passed by voters in 2006.<sup>5</sup>

*Note: It is anticipated that there will be a long-term extension of the sales and use taxes, subject to voter approval that is scheduled for November 2016.*

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<sup>2</sup> This tax became effective on April 1, 2011.

<sup>3</sup> This tax became effective on January 1, 2010.

<sup>4</sup> This tax became effective on January 1, 2013.

<sup>5</sup> This tax became effective on January 1, 2009.



- (c) a special assessment levied by the Cass County Joint Water Resource District on properties benefiting from the Comprehensive Project, as approved by voters in May 2015.

### 2.2.2 Private Financing

The Developer will be solely responsible for providing the necessary private financing for the Project. However, the Authority may pursue the potential availability and use of Federal financing programs, which may include a private activity bond allocation, TIFIA, RRIF and/or WIFIA. Approximately \$400 million in long-term private financing is expected to be required for the Project, although such amount may be modified in the RFP. Additional information regarding the Authority's pursuit of Federal financing programs will be provided to Proposers during the RFP stage.

## 2.3 Design and Construction Scope

### 2.3.1 Requirements

The Developer will design and construct the Project in accordance with the Technical Requirements set out in the Project Agreement and in accordance with applicable Federal, state and local laws, regulations and policies. The Technical Requirements will be provided as part of the RFP.

### 2.3.2 Indicative designs and other Project information

The Authority will also make available, concurrent with the release of the RFP, an electronic data room (the "**Data Room**") that will include relevant Project information developed to date. The Authority, together with USACE, has developed varying levels of design for certain elements of the Project. These "indicative designs" will be available in the Data Room and will be provided for informational purposes only. Proposers may use an indicative design, adapt an indicative design, or develop their own design. In any case, the Developer (or its Lead Contractor/Lead Engineer) will be the designer of record and must sign and seal the designs for all elements of the Project. This includes developing a successful letter of map revision (LOMR) application for 100-year flood accreditation from FEMA for applicable portions of the Project.

### 2.3.3 Major elements

The major elements to be designed and constructed as part of the Project include the following (shown on [Figure B.1](#) in [Appendix B \(Project Maps\)](#)):

- (a) Diversion Channel (approximately 30 miles), including a low flow channel, with a design capacity of 20,000 cubic feet per second ("**cfs**") for the 1% annual chance exceedance (i.e., 100-year) flood event at the Diversion Channel inlet and a maximum hydraulic capacity of 60,000 cfs for the Inflow Design Flood ("**IDF**") at the Diversion Channel outlet;
- (b) IDF Line of Protection;
- (c) Diversion Channel outlet;
- (d) Rush River inlet;
- (e) Lower Rush River inlet;
- (f) Maple River aqueduct;
- (g) Sheyenne River aqueduct;
- (h) six drain inlets;

- (i) 10 to 12 county bridges or crossings;
- (j) two pairs of interstate bridges; and
- (k) three or four railroad bridges.<sup>6</sup>

In addition to the major elements specified above, the Project may require the design and construction of associated recreational features (e.g., trails, picnic areas and restrooms) and environmental mitigation as required by the Technical Requirements and applicable requirements of the FEIS, Minnesota FEIS, Chief of Engineers Report and Supplemental Environmental Assessment.

## 2.4 Operation and Maintenance Scope

### 2.4.1 Operation

- (a) The Authority will retain the decision-making authority and the responsibility for (i) operating the flow control structures on the Red River and Wild Rice River, (ii) determining the amount of water stored in the staging area created by the SEAI and the duration the water is retained and (iii) determining the rate of release of water through the diversion inlet gates into the Diversion Channel.
- (b) The Developer will have responsibility for receiving and conveying the flows released through the diversion inlet gates, as well as the flows from other rivers and drains, in accordance with the Project Agreement.
- (c) The Developer may also have responsibility for limited operational services; for example, providing limited services related to recreational features.

### 2.4.2 Maintenance

The Developer will be responsible for the routine and lifecycle maintenance of the Project and will perform such maintenance in accordance with the Technical Requirements and with applicable Federal, state and local laws, regulations and policies. The scope of the maintenance work will include maintenance of all elements constructed by the Developer. Key maintenance obligations will include:

- (a) maintaining the Diversion Channel, aqueducts and drain inlets to convey the required flows;
- (b) maintaining the IDF Line of Protection in accordance with the USACE levee inspection checklist;
- (c) maintaining the road bridges to achieve a specified sufficiency rating based on NDDOT guidelines;<sup>7</sup>
- (d) maintaining environmental mitigation features in accordance with applicable environmental permit and approval requirements; and
- (e) maintaining other key structures and features as required by the Technical Requirements.

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<sup>6</sup> It is anticipated that the Developer will be responsible for design and construction to sub-ballast level only and that BNSF will be responsible for installation of ballast and rail (i.e., track).

<sup>7</sup> It is anticipated that BNSF will be responsible for maintaining the railroad bridges.

## 2.5 Payment Structure

As consideration for the Developer's performance of its obligations under the Project Agreement (including design, construction, financing, operation and maintenance obligations), the Authority will make periodic payments to the Developer. The Authority contemplates that the payment mechanism under the Project Agreement will include the following:

### 2.5.1 Construction Period Payments

The Authority intends to make one or more payments to the Developer during the construction period, upon substantial completion and/or upon final acceptance of construction. The final amount, timing, manner and conditions of payment and the relationship of such payments to the Developer's financing will be set forth in the RFP.

### 2.5.2 Availability Payments

The Authority will make periodic payments (the "**Availability Payments**") following substantial completion of construction of the Project and throughout the remainder of the Project Agreement term, as consideration for the Developer's performance of its obligations under the Project Agreement.

### 2.5.3 Payment Deductions

The Availability Payments will be subject to reduction according to criteria set forth in the Project Agreement for the Developer's failure to meet the specific performance requirements and standards set forth in the Project Agreement.

## 2.6 Governmental Requirements

### 2.6.1 Federal

- (a) It is expected that the RFP and the Project Agreement will conform to Federal law, regulations and policies as required by applicable Federal assistance programs (see [Section 2.2.2 \(Private Financing\)](#)). Accordingly, certain Federal procurement requirements may apply, including:
- (i) Equal Opportunity requirements (Title VI of the Civil Rights Act of 1964, as amended);
  - (ii) Disadvantaged Business Enterprises requirements (49 Code of Federal Regulations Part 26, as amended);
  - (iii) Small Business requirements (15 United States Code Section 631 et seq.); and
  - (iv) Davis-Bacon prevailing wage rates.
- (b) The Authority reserves the right to modify the Procurement Process described in this RFQ to address any concerns, conditions or requirements of Federal agencies.

### 2.6.2 State and Local

The RFP will also conform to, and require conformance with, all applicable state and local law, regulations and policies, including that the Developer will be responsible for the design, surveying layout and construction of the Project and will need to be properly licensed to carry out those responsibilities, including complying with:

- (a) N.D.C.C. Chapter 43-19.1, Professional Engineers And Land Surveyors, governing the requirements for engineers and land surveyors; and

(b) N.D.C.C. Chapter 43-07, governing the requirements for contractors.

## 2.7 Post-RFQ Modifications to Contractual and Financial Structure

The information regarding the Project's contractual and financial structure, and Project scope, set forth in this RFQ reflects the Authority's proposed structure and scope as of the date of this RFQ. The Authority reserves the right, in its sole discretion, to modify the proposed contractual and financial structure, or Project scope, based on its on-going analysis of technical, financial, commercial, legal and any other issues relating to the Project. The Authority will communicate any modifications made during the Procurement Process in accordance with Section 4.4 (Questions, Clarifications and Addenda).

[End of Section 2]

## SECTION 3

# Project Status

## 3.1 Federal Authorizations and Appropriations

- 3.1.1 The Comprehensive Project has received the following Federal authorizations and appropriations:
- (a) the authorization for the Comprehensive Project by the US Congress through Section 7002(2) of WRRDA; and
  - (b) the appropriation of funding on February 9, 2016 as authorized by the FY 2016 Energy and Water Development and Related Agencies Appropriations Act (Public Law 114-113).
- 3.1.2 Further details regarding Federal authorizations and appropriations will be set forth in the RFP.

## 3.2 Construction Permit

- 3.2.1 The North Dakota State Water Commission has agreed to a phased approach to providing construction permits (required pursuant to N.D.C.C. § 61-16.1-38) for the Comprehensive Project. The Authority received the first such construction permit on July 8, 2016 with respect to the diversion inlet structure, which is a portion of the SEAI. Plans and specifications must be completed by a professional engineer registered in North Dakota. The Developer will be responsible for preparing and compiling all necessary documentation for construction permit applications with respect to the Project.
- 3.2.2 Further details regarding construction permits will be set forth in the RFP.

## 3.3 Environmental Permitting Status

- 3.3.1 The Authority and USACE have obtained the following major environmental approvals and permits required to enable the Project to achieve Financial Close:
- (a) the FEIS, Chief of Engineers Report and Federal Record of Decision;
  - (b) the Supplemental Environmental Assessment and the Finding of No Significant Impact in respect of the Supplemental Environmental Assessment, issued on September 19, 2013; and
  - (c) the Minnesota FEIS and the Minnesota Record of Decision.
- 3.3.2 Respondents should note that the State of North Dakota does not require a state environmental impact statement because a Federal environmental impact statement has been completed.
- 3.3.3 Further details regarding environmental approvals and permits will be set forth in the RFP.

## 3.4 Land Acquisition Status

- 3.4.1 The proposed Project Site covering the indicative alignment and footprint (as shown in Appendix B (Project Maps)) requires the acquisition of all, or part, of 372 parcels of land. The parcels will be acquired by CCJWRD on behalf of the Authority through a combination of fee

title and temporary construction easements. CCJWRD has the right to acquire land through eminent domain, if necessary, throughout the Project Site area. Further details, including information regarding the Project Site and land acquisition schedule will be set forth in the RFP.

- 3.4.2 It is not currently anticipated that the Developer will be required to acquire or provide any portion of the Project Site, except to the extent the Developer requires access to right-of-way other than the 372 parcels of land identified by the Authority.

## 3.5 Geotechnical Investigation

The Authority's local design consultant, Houston-Moore Group, and USACE have performed geotechnical investigations on the proposed Project Site, including the Diversion Channel alignment and the location of many proposed associated structures. Further details regarding the geotechnical investigations will be set forth in the RFP.

## 3.6 Utility Investigation

The Authority and USACE have identified known utilities crossing the proposed Project Site. These utilities include a gas line, several electrical transmission lines and numerous small water and communication lines. Further details regarding the utility investigations will be set forth in the RFP.

## 3.7 Hazardous Material Investigation

- 3.7.1 USACE conducted Phase 1 Environmental Site Assessments ("ESAs") in 2010, 2012 and 2016 covering the proposed Project Site.
- 3.7.2 The Phase 1 ESAs identified a limited number of recognized environmental conditions ("RECs"), including "junk vehicles", railroad crossings (polyhydroalkanoates, metals), above ground storage tanks and underground storage tanks. The majority of the RECs identified are common to small agricultural and rural residential settings and should not pose a significant risk if handled properly.
- 3.7.3 A limited Phase 2 ESA soil investigation has been recommended for the locations of the RECs to determine if any hazardous, toxic and radioactive waste is present.
- 3.7.4 Further details regarding hazardous material investigations, including regarding the Phase 1 ESA investigations, will be set forth in the RFP.

## 3.8 Cultural Investigation

The Authority and USACE conducted Phase 1 cultural investigations on the proposed Project Site and submitted the resulting cultural investigation reports to the North Dakota State Historic Preservation Office, which has accepted the reports. The Authority and USACE have also conducted Phase 2 investigations, where warranted, based on the Phase 1 investigations. Further details regarding the cultural investigations will be set forth in the RFP.

## 3.9 Third-Party Interfaces

### 3.9.1 NDDOT Coordination

- (a) The proposed Project Site encompasses certain properties on which NDDOT maintains infrastructure, including overpasses, portions of interstates and other related infrastructure. Specifically, the Project will require:
- (i) I-29, which runs south to north from Kansas City, Missouri, to the Canadian border near Pembina, North Dakota, to be altered at approximately mile marker 76; and
  - (ii) I-94, which runs east to west from Port Huron, Michigan to Billings, Montana, to be altered between mile markers 342 and 343.
- (b) The Authority intends to enter into a memorandum of understanding with NDDOT, which will outline the relationship between, and the responsibilities of, the Authority and NDDOT for the Project. Further details regarding these arrangements will be set forth in the RFP.

### 3.9.2 Railroad Coordination

Table 3 identifies the railroad crossings within the proposed Project Site. The Authority intends to enter into a memorandum of understanding with both BNSF and the Red River Valley & Western Railroad Company prior to issuing the RFP, which will outline such parties' responsibilities associated with the Project. Further details regarding these arrangements will be set forth in the RFP.

**Table 3. Railroad Crossings Within Project Limits**

Railroad	Location	Intersects Project Footprint
BNSF	Fargo-Grand Forks Line (BN030)	Harwood Township, ND Sections 17 and 20
BNSF	Fargo-Nolan Line (BN050)	Raymond Township, ND Section 14
BNSF	Fargo-Minot Line (BN0036, BN076, BN0061 & BN059)	Mapleton Township, ND Section 3
BNSF/Red River Valley & Western Railroad Company	Horace-Edgeley Line (RV087, RV055 & RV091)	Warren Township, ND Sections 24 and 25

### 3.9.3 Cass County Joint Water Resource District Coordination

- (a) Construction of the Project will impact real property and water infrastructure (such as ponds, basins and above and below ground drains) owned and operated by the water resource districts that are members of the Cass County Joint Water Resource District. These water resource districts include the Maple River Water Resource District, the North Cass Water Resource District, the Rush River Water Resource District and the Southeast Cass Water Resource District.
- (b) The Authority intends to enter into either one memorandum of understanding with the Cass County Joint Water Resource District or a separate memorandum of understanding with each of the Cass County water resource districts. In each case, the memorandum of understanding will outline the parties' obligations to cooperate regarding the Project's impacts on drainage and existing water infrastructure and future activities. Further details regarding these arrangements will be set forth in the RFP.

**3.9.4 Utilities Coordination**

- (a) The proposed Project Site encompasses properties across which 15 companies or political subdivisions have a total of 101 easements, rights-of-way and other non-fee property interests. The companies holding relevant utility easements include Centurylink, Cass County Electric, Minnkota Power, Cass Rural Water, Magellen, Western Area Power Administration, Midcontinent, Cenex, Dakota Carrier Network, Xcel Energy, Sprint, AT&T, NuStar Energy and Otter Tail Power Co.
- (b) The Authority intends to enter into a memorandum of understanding with each of these utility companies, which will outline the relationship between, and the responsibilities of, the Authority and the respective utility company for the Project. Further details regarding these arrangements will be set forth in the RFP.

[End of Section 3]



## SECTION 4

# Procurement

## 4.1 Statutory Authority

- 4.1.1 The Authority is issuing this RFQ in accordance with the provisions of N.D.C.C. Chapter 48-02.1, which enables a public authority to enter into a project agreement with a private operator for the construction, improvement, rehabilitation, ownership, maintenance or operation of a fee-based facility that will be situated in an area subject to the public authority's jurisdiction.
- 4.1.2 A copy of the Authority's resolution, dated the date hereof, authorizing issuance of this RFQ, will be available on the Project Website.

## 4.2 Overall Process

The Authority intends to follow a two-phase Procurement Process to select a Successful Proposer to deliver the Project.

- (a) The first phase commenced with the issuance of this RFQ to solicit responses, in the form of SOQs, that the Authority will evaluate to identify which Respondents are most qualified to successfully deliver the Project. The Authority will evaluate the SOQs in accordance with the criteria set forth in this RFQ and will select Proposers to be involved in the second phase. The Authority intends to short-list three or four Respondents as Proposers.
- (b) The second phase will commence when the Authority issues a Request for Proposals ("**RFP**") to Proposers, including Instructions to Proposers, Technical Requirements and the proposed Project Agreement. The Authority will evaluate the Proposals submitted in response to the RFP in accordance with the criteria set forth in the RFP and will select the Successful Proposer to be the Developer. Section 4.5 (Overview of RFP Procedure) outlines the general RFP procedure.

## 4.3 Procurement Schedule

Table 4 lists the anticipated Procurement Schedule milestone dates. The Authority reserves the right, in its sole discretion, to revise the Procurement Schedule. The Authority will communicate any revisions to Respondents by issuing addenda to this RFQ in accordance with Section 4.4 (Questions, Clarifications and Addenda).

**Table 4. Procurement Schedule**

Milestone	Date
RFQ issued	July 14, 2016
RFQ Comment Deadline	August 11, 2016
SOQ Due Date	September 7, 2016
Respondent interviews (if held)	September 26-30, 2016
Proposers announced	October 13, 2016

**Table 4. Procurement Schedule**

<b>Milestone</b>	<b>Date</b>
First draft of RFP issued	November/December 2016
Confidential discussions with Proposers	December 2016 – August 2017
Proposals due	August 2017
Successful Proposer announced	September 2017
Financial Close	January 2018

## 4.4 Questions, Clarifications and Addenda

### 4.4.1 RFQ Comments

#### (a) Submission to Authority

- (i) Respondents may submit written comments, questions or requests for clarification relating to this RFQ (collectively, “**RFQ Comments**”) to the Authority.
- (ii) RFQ Comments must be submitted to the Authority through the Aconex Procurement System by no later than **5:00 P.M.** (Central Time) on August 11, 2016 (the “**RFQ Comment Deadline**”) in the form of Form I (RFQ Comments Form) and in accordance with the following:
  - (A) Respondents must submit RFQ Comments in English and in Microsoft® Word format, with the subject line and file name to both begin with “FM Diversion Project - RFQ Comments – [Respondent Name] – Nos. [●] to [●]”;
  - (B) each RFQ Comment should be written so it does not identify the Respondent in the body of the RFQ Comment;
  - (C) the Authority strongly encourages Respondents to consider relevance, brevity and clarity when submitting RFQ Comments. As such:
    - (I) each comment should ideally address a single issue. If it is appropriate for it to address multiple issues, Respondents should consider dividing the comment into sub-comments with appropriate numbering/lettering (e.g., 1(a), 1(b), etc.), with each sub-comment set out in a separate row;
    - (II) each comment should clearly indicate why it has been made; and
    - (III) Respondents should refer to Section 7.6 (Confidential Information) and Section 4.4.1(b)(iv) (Responses from Authority) when considering the drafting and submission of any RFQ Comment.
- (iii) Respondents are encouraged to submit RFQ Comments as and when they are ready for submission. To the extent practical, substantively related comments should be delivered simultaneously.

#### (b) Responses from Authority

- (i) The Authority will endeavor to provide responses to RFQ Comments submitted in accordance with Section 4.4.1(a) (Submission to Authority) within a reasonable period following the RFQ Comment Deadline.

- (ii) In responding to RFQ Comments, the Authority may rephrase them as it deems appropriate and may consolidate similar comments. The Authority may also create and answer questions independent of those submitted by Respondents.
- (iii) The Authority intends to distribute RFQ Comments that are of general application and the Authority's responses to such RFQ Comments through the Aconex Procurement System to all registered potential Respondents.
- (iv) The Authority intends to respond individually (i.e., solely to the relevant Respondent) to those RFQ Comments identified by a Respondent, or deemed by the Authority, to contain Exempt Materials. In regards to any such RFQ Comment, Respondents should note the following:
  - (A) without denying Respondents the opportunity to protect Exempt Materials from any public disclosure, Respondents are encouraged to consider that the Authority is committed to the principle of transparency before identifying an RFQ Comment as containing Exempt Materials; and
  - (B) the Authority reserves the right to disagree with a Respondent's assessment as to whether any RFQ Comment contains Exempt Materials in the interest of maintaining a fair process or complying with Public Disclosure Laws. If the Authority disagrees with a Respondent's assessment, the Authority will inform the relevant Respondent of their determination by email to the Respondent Representative and will either:
    - (I) allow the Respondent to withdraw the relevant RFQ Comment, rephrase it or have it answered non-confidentially (with the understanding that the Authority cannot guarantee that the original RFQ Comment will not still be subject to disclosure under any Public Disclosure Law); or
    - (II) if the Authority determines that it is appropriate to provide a response to the relevant RFQ Comment to all Respondents, the Authority may modify the RFQ Comment to remove information that the Authority determines in its sole discretion constitutes Exempt Materials.
- (v) No oral or written response provided by the Authority in connection with this RFQ will be binding on the Authority, nor will it change, modify or waive the requirements of this RFQ, except to the extent such response is included in an addendum issued in accordance with Section 4.4.2 (Addenda).

#### 4.4.2 **Addenda**

- (a) The Authority reserves the right to revise this RFQ by issuing one or more addenda to this RFQ at any time before the SOQ Submission Deadline.
- (b) If the Authority issues an addendum shortly before the SOQ Submission Deadline, the Authority shall consider whether an extension of the SOQ Submission Deadline is warranted.
- (c) The Authority will distribute addenda to this RFQ through the Aconex Procurement System to all registered potential Respondents.
- (d) Respondents must acknowledge receipt of any addenda issued by the Authority in their Submittal Letter in accordance with the Submittal Requirements set forth in Appendix C (Submittal Requirements).

#### 4.4.3 **Aconex Procurement System**

- (a) Respondents should monitor and note materials posted on or distributed from the Aconex Procurement System (including responses to RFQ Comments, addenda or any other announcements regarding the Procurement Process).
- (b) The Authority will not be responsible for any Respondent's failure to note any announcement or information available on the Aconex Procurement System.

## 4.5 Overview of RFP Procedure

- 4.5.1 Following their short-listing, the Authority anticipates releasing a draft RFP to the Proposers for their review and comment.
- 4.5.2 The Authority intends to issue a final RFP after consideration of the Proposers' input.
- 4.5.3 The Authority anticipates conducting multiple, proprietary one-on-one meetings to discuss innovative technical concepts ("ITCs") that may be proposed by Proposers and clarifications regarding the RFP documents after issuing the final RFP.
- 4.5.4 The RFP evaluation team will evaluate Proposals received in response to the RFP based on the evaluation criteria set forth in the RFP and will recommend a Successful Proposer to the Authority.
- 4.5.5 Once the Authority receives a recommendation regarding the Successful Proposer from the Evaluation Team, the Authority will hold a public hearing<sup>8</sup> to disclose the name of the Successful Proposer. The Authority will then select the Successful Proposer and, thereafter, the Authority and the Developer will execute the Project Agreement.
- 4.5.6 The Authority anticipates making stipend payments to those Proposers not selected as the Successful Proposer, in an amount and on terms to be set forth in the RFP.

[End of Section 4]

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<sup>8</sup> This will be a public hearing for informational purposes only. The public will not have the opportunity to vote.

## SECTION 5

# SOQ Content, Submittal and Delivery Requirements

## 5.1 General

5.1.1 The Authority expects SOQs submitted in response to this RFQ to:

- (a) outline, in general terms, the Respondent's qualifications, experience and understanding required for successful delivery of the Project;
- (b) include all information requested in this RFQ, including with respect to the Respondent's financial and technical capabilities and its ability to deliver the Project, in a coherent and succinct manner; and
- (c) provide enough information about the requested items to allow the Authority to evaluate the Respondents and determine which Respondents are most qualified to submit a Proposal based on the criteria set forth in this RFQ.

5.1.2 The Authority will not be responsible for any errors, omissions, inaccuracies or incomplete statements in an SOQ.

## 5.2 Contents and Organization

### 5.2.1 Contents

- (a) Each Respondent is required to assemble its SOQ in the following Volumes and in accordance with the submittal requirements set forth in Appendix C (Submittal Requirements):
  - (i) Volume 1 – General Submittals
    - (A) Part 1 – Introduction and Administration;
    - (B) Part 2 – Organization and Management;
    - (C) Part 3 – Technical Experience, Capabilities and Project Understanding; and
    - (D) Part 4 – Financial Capabilities and Experience.
  - (ii) Volume 2 – Financial Information
- (b) Each Volume shall be sub-divided and tabbed to correspond to the Parts and section numbering set out in the relevant submittal requirements set forth in Appendix C (Submittal Requirements).
- (c) Relevant Forms are set out in Appendix D (Forms).

### 5.2.2 Placeholders

If a Respondent does not include information or materials in its SOQ that are described in the relevant submittal requirements in Appendix C (Submittal Requirements), such Respondent

shall include in the relevant section in its SOQ a statement to the following effect: "Section[s] [●] of the Volume [1] [2] Submittal Requirement[s] do[es] not apply because [Respondent to insert brief explanation]."

### 5.2.3 Additional Materials

- (a) Respondents are strongly encouraged not to submit information that is not required by this RFQ.
- (b) If a Respondent elects to include material in addition to the information specifically requested, the Respondent shall append that material to the end of the most appropriate defined section of the outline and such additional materials will be included within any applicable page limits for that section.
- (c) Respondents should develop SOQs to address the project-specific submittal requirements and should not submit standard corporate brochures, awards, licenses and marketing materials in an SOQ, although reference can be made to awards and licenses where relevant.

### 5.2.4 Language and Units of Measurement

Respondents must submit SOQs exclusively in the English language, use United States customary units of measurement and specify monetary amounts in US Dollar denominations. Respondents may make references to other customary units of measurement and to monetary amounts in a different base currency, provided that any such amounts are also specified in United States customary units of measurement or US Dollars (e.g., £1,000,000 (\$1,400,000), 1,000 m<sup>3</sup>/s (35,000 cfs)) at the rate of conversion appropriate for the project being referenced.

## 5.3 Delivery

### 5.3.1 Manner of Delivery

Each Respondent must:

- (a) submit:
  - (i) fourteen (14) hard copies of Volume 1 and six (6) hard copies of Volume 2:
    - (A) with each of Volumes 1 and 2 in one or more separate loose-leaf three ring binders; and
    - (B) with the front cover and spine of each ring binder labeled with the following text (as such text may be adjusted by modifying or, if relevant, deleting the bracketed text):

"Fargo-Moorhead Diversion Channel and Associated Infrastructure Work Package  
SOQ: [Respondent's Name] [Copy No. [number]] of Volume [[1]/[2]], [Binder [number] of [total number] (if applicable)]"; and
  - (ii) one USB flash drive marked with the Respondent's name containing a digital copy of the SOQ in PDF (searchable) format, with one file for each of Volumes 1-1, 1-2, 1-3, 1-4 and 2, and with bookmarks for each section within such files;

(b) deliver the SOQ to:

Bruce Spiller, P.E.  
CH2M  
520 Main Avenue  
Suite 601  
Fargo, ND 58103  
(the "**SOQ Submission Location**").

### 5.3.2 Times for Delivery

- (a) The Authority will accept physical submission of SOQs at the applicable SOQ Submission Location during the hours of **9:00 A.M. to 4:00 P.M.** (Central Time) on any Business Day up to and including the SOQ Due Date.
- (b) Any SOQ received after the SOQ Submission Deadline will be rejected and returned unopened to the relevant Respondent.

### 5.3.3 Confirmation of, and Responsibility for, Delivery

- (a) The Authority Representative or his or her designee will issue a physical receipt and issue an electronic receipt through the Aconex Procurement System, each evidencing acknowledgment of receipt of the SOQ package to the relevant Respondent.
- (b) Notwithstanding the provision by the Authority of such a receipt, the Respondent is solely responsible for ensuring that the Authority receives such Respondent's SOQ by the SOQ Submission Deadline at the applicable SOQ Submission Location. The Authority will not be responsible for any delays in delivery, regardless of the cause.

## 5.4 Formatting, Page Limits and Signatures

### 5.4.1 Formatting

- (a) Subject to Section 5.4.1(b), each Respondent must:
  - (i) format its SOQ using:
    - (A) black, 12 point, standard-form Arial, Helvetica or Times New Roman font;
    - (B) "single line" spacing with 6 point line spacing (paragraph formatting) after each line;
    - (C) the format of any text retained from any template Form provided by the Authority; and
    - (D) sequential page numbering;
  - (ii) print its SOQ:
    - (A) on 8-1/2" x 11" sized white paper with at least 1" margins for narrative text (i.e., not tables, graphics or charts);
    - (B) on 11" x 17" sized white paper for Form F1 (Technical Experience – Design and Engineering) and Form F2 (Technical Experience – Construction);
    - (C) on recycled paper to the extent possible (although failure to do so will not be negatively assessed); and

(D) single or double-sided.

- (b) Respondents may:
- (i) use other fonts for text on the cover and spine of binders;
  - (ii) use a different color font for headings, tables and graphics;
  - (iii) use 9 point font in tables, graphics or charts, provided that the tables, graphics and charts are legible;
  - (iv) produce pages of pre-existing or third party materials, such as published financial statements or letters of support, in their original format; and
  - (v) produce forms, organizational charts, schematics, other drawings or schedules, but not narrative text, on 11" x 17" sized white paper.

#### 5.4.2 **Page Limits**

- (a) Respondents are encouraged to be succinct, to the extent possible, and comply with any page limits and other limits, if applicable, set out in Appendix C (Submittal Requirements).
- (b) Page limits and other limits are maximum limits and do not need to be reached for each item indicated, but should not be exceeded.
- (c) For the purposes of any page limit:
  - (i) each printed side of a page shall be considered one page; and
  - (ii) a divider that contains information, other than a title for the section, that should be considered in the review or evaluation as part of the SOQ will be counted as one page.
- (d) The Authority may, in its discretion, reject pages that exceed the page limits or that fail to follow the content or format instructions outlined in this RFQ.

#### 5.4.3 **Signatures**

Respondents may provide either original or electronic signatures in their SOQs.

[End of Section 5]



## SECTION 6

# SOQ Evaluation Process and Criteria

## 6.1 Evaluation and Short-List Notification Procedure

### 6.1.1 SOQ Evaluation Procedure

- (a) The Authority anticipates forming an Evaluation Team with assistance provided by outside consultants and advisors to review and evaluate the SOQs. The Evaluation Team will make recommendations based upon its analysis, but the final decision on each SOQ shall be made by the Authority. The Authority reserves the right to make any evaluations and determinations in its sole discretion.
- (b) The SOQs will be evaluated in accordance with Section 6.2 (Evaluation Criteria and Weighting).
- (c) The Authority may, at any time during the evaluation process for an SOQ, in its sole discretion:
  - (i) submit written questions or requests for clarifications to the Respondent regarding its SOQ or related matters;
  - (ii) contact references included in the SOQ; or
  - (iii) visit facilities and clients associated with a Major Participant that are mentioned in the SOQ.
- (d) The Authority anticipates holding interviews with Respondents to assist the Authority with its evaluation of the SOQs. The expected timing of such interviews is set forth in Section 4.3 (Procurement Schedule).
- (e) Following the evaluation, the Respondents will be ranked based on the evaluation scores. The Evaluation Team will provide the results of its evaluation to the Authority with a recommendation for the short-list of Proposers. Once the Authority receives the recommendation from the Evaluation Team, the Authority will make its findings and conclusions and designate the short-list of Proposers.

### 6.1.2 Short-List Notification Procedure

The Authority will notify the Respondents short-listed as Proposers in writing and invite the Proposers to participate in the RFP stage. The Authority will notify those Respondents not short-listed as Proposers in writing and give those Respondents an opportunity to schedule a debrief meeting with representatives of the Authority. The notice will set forth the process for scheduling a debrief meeting and the procedures to be followed.

## 6.2 Evaluation Criteria and Weighting

### 6.2.1 Evaluation Criteria

Subject to Section 6.2.5 (Discretion to Disqualify Respondent), the Evaluation Team will evaluate and score each SOQ in accordance with the following Evaluation Criteria.

Evaluation Criteria	Percentage of overall score
Organization and Management	20%
Technical Qualifications and Capability	50%
Financial Qualifications and Capability	30%

### 6.2.2 **Organization and Management**

The Evaluation Team will evaluate each Respondent's organization and management based on the extent to which the proposed organization and management structure of the Respondent demonstrates the ability to successfully coordinate and deliver the Project, having regard for its size and complexity. Higher scores will be merited where there is demonstrated experience of the Major Participants working together as part of an integrated team in relation to comparable projects.

### 6.2.3 **Technical Qualifications and Capability**

The Evaluation Team will evaluate each Respondent's technical qualifications and capability in accordance with the criteria set forth in this [Section 6.2.3](#).

#### (a) **Technical experience (30% of Technical Qualifications and Capability Score)**

The extent and depth of the experience of the Respondent and its Major Participants with the delivery of comparable projects (or comparable elements of projects) as set forth on [Form F1 \(Technical Experience – Design and Engineering\)](#) and [Form F2 \(Technical Experience – Construction\)](#) and their respective Technical Narrative Attachments. The Evaluation Team will consider both US and foreign experience provided in each SOQ.

#### (b) **Technical capability (40% of Technical Qualifications and Capability Score)**

The extent and depth of the technical capabilities of the Respondent and its Major Participants in the following areas (with an emphasis on design and construction in cold weather conditions for [clauses \(i\) – \(iv\)](#)):

- (i) Heavy civil earthwork/earth moving;
- (ii) Open channel conveyance;
- (iii) Design, construction and maintenance of road bridges and associated road raises;
- (iv) Design and construction of railroad bridges and associated track raises;
- (v) Geotechnical engineering in the Red River Valley; and
- (vi) Hydraulic modeling using HEC-RAS.

#### (c) **Safety record (5% of Technical Qualifications and Capability Score)**

The safety record and commitment to safety of the Respondent and its Major Participants.

#### (d) **Project understanding (25% of Technical Qualifications and Capability Score)**

The extent to which a Respondent demonstrates a clear understanding of the Project, the major elements and tasks involved in the Project and potential risks and challenges in delivering the Project.

#### 6.2.4 Financial Qualifications and Capability

The Evaluation Team will evaluate each Respondent's financial qualifications and capability in accordance with the criteria set forth in this Section 6.2.4.

##### (a) Equity Members' financing experience

- (i) The extent and depth of Equity Members' experience in investing equity and structuring financing sources to obtain firm financing commitments for proposals for, and achieving financial close on, similar projects using a diverse range of financial products (including bank loans, taxable and tax-exempt bonds, government credit assistance programs, letters of credit and other financing sources).
- (ii) The Equity Members' experience as equity members in successfully bringing comparable projects through construction completion.
- (iii) The Equity Members' track record of submitting proposals on projects for which they have been short-listed.

##### (b) Financial Capability

- (i) The Respondent team has the overall financial strength and capability to carry out the Project responsibilities potentially allocated to it, as evidenced by the financial statements of the Equity Members, Lead Contractor and Lead Contractor Members, the level of support and financial statements of any Guarantor and information contained in the Financial Officer Certificates and Surety Letter provided in accordance with the requirements for Volume 2 in Appendix C (Submittal Requirements).
- (ii) The Equity Members have funding capacity and ability to invest equity capital in a manner that is consistent with the contemplated contractual and financial structure of the Project, as evidenced by the Equity Funding Letters.

##### (c) Notes to the Financial Qualifications and Capability Criteria

- (i) Projects referenced above that evidence Equity Members' financing experience will merit higher scores if they satisfy more than one of the following criteria:
  - (A) the Equity Member held a controlling ownership interest in the project company;
  - (B) the project reached financial close;
  - (C) the financed project was a DBFOM project or a design, build, finance and maintain project; and
  - (D) the financed project used availability payments.
- (ii) The overall financial capability of the Respondent will be assessed based on:
  - (A) the strength of the submitted financial statements and Annex A (Financial Information Summary) to Form GG2 (Financial Information - Financial Officer Certificate);
  - (B) any credit ratings of the debt of the Respondent's Equity Members, Lead Contractor and Lead Contractor Members;

(C) details regarding any bankruptcy/insolvency proceedings provided pursuant to Form B (Certifications); and

(D) other relevant financial information contained in the SOQ.

#### 6.2.5 **Discretion to Disqualify Respondent**

The Evaluation Team may, at any time and in its discretion, cease evaluating an SOQ and remove the applicable Respondent from further consideration in the Procurement Process if any of the following circumstances apply:

- (a) the SOQ does not contain each of the items required by Appendix C (Submittal Requirements) or a relevant placeholder in accordance with Section 5.2.2 (Placeholders); provided that a Respondent shall not be disqualified solely based upon an administrative error;
- (b) the Respondent or any other entity that has submitted Form B (Certifications) as required by this RFQ has been or is currently disqualified, removed, debarred or suspended from performing or bidding on work for the Federal government, either State, any Authority Member or the City of West Fargo; or
- (c) the Respondent does not provide evidence that it can comply with the bonding requirements by providing a letter in accordance with the requirements for Volume 2 in Appendix C (Submittal Requirements).

[End of Section 6]

## SECTION 7

# Conflicts of Interest, Communications and Other Considerations

## 7.1 Conflicts of Interest

7.1.1 For purposes of this RFQ, "**Conflict of Interest**" means:

- (a) any situation or circumstance where a Respondent or any of its Major Participants:
  - (i) has other commitments, relationships, financial interests or involvement in ongoing litigation that:
    - (A) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the Authority's independent judgment; or
    - (B) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Project Agreement;
  - (ii) is under contract with the Authority, the Cass County Joint Water Resource District, Cass County or the City of Fargo to prepare procurement documents for the Project; or
  - (iii) has knowledge of or access to confidential information (other than confidential information disclosed by the Authority in the normal course of the RFQ or RFP) of strategic or material relevance to the RFQ, the RFP or to the Project that is not available to other Respondents and that could or could be seen to give the Respondent an unfair competitive advantage; and
- (b) if Federal funds are to be used, an "organizational conflict of interest" under 23 CFR § 636.103, which is defined as follows:

"Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage."

7.1.2 For purposes of this RFQ, the "**Restricted Contact Period**" commences with the issuance of this RFQ and continues until the earliest of:

- (a) execution of the Project Agreement;
- (b) the Authority notifying each Respondent or each Proposer that it will not accept any of the SOQs or Proposals;
- (c) the Authority notifying each Respondent or each Proposer that it has cancelled the procurement; or
- (d) with respect to a Respondent, such Respondent being informed in writing by the Authority that it:
  - (i) is not a Proposer; or

- (ii) has been disqualified or is otherwise considered removed from further involvement in the Procurement Process as a Respondent.

7.1.3 During the Restricted Contact Period, each Respondent is prohibited from:

- (a) directly or indirectly receiving any advice relating to the Project, this RFQ or the RFP from;  
or
- (b) including as a Major Participant or contractor, subcontractor or consultant to the Respondent or any Major Participant,

any Person with a Conflict of Interest, including:

- (i) Advanced Engineering and Environmental Services, Inc.;
- (ii) Ashurst LLP;
- (iii) Braun Intertec Corporation;
- (iv) CH2M Hill, Inc.;
- (v) Erik R. Johnson & Associates, Ltd.;
- (vi) Ernst & Young Infrastructure Advisors, LLC;
- (vii) Gray Pannell & Woodward LLP;
- (viii) Houston Engineering Inc.;
- (ix) Houston-Moore Group, LLC;
- (x) Jones Lang LaSalle (JLL);
- (xi) Moore Engineering, Inc.;
- (xii) Ohnstad Twichell, P.C.;
- (xiii) Pifer's Auction & Realty (The Pifer Group, Inc.);
- (xiv) ProSource Technologies, LLC;
- (xv) Springsted Incorporated;
- (xvi) SRF Consulting Group, Inc.;
- (xvii) Ultieg Engineers, Inc.; and
- (xviii) subject to Section 7.1.4 in relation to Organizationally Eligible Firms (as defined below), any other Person that, to the best of Respondent's knowledge and belief is engaged by the Authority, the Cass County Joint Water Resource District, Cass County, the City of Fargo, or any of the above listed entities, in connection with the Project or this RFQ.

7.1.4 The following consultants or professional service providers who have provided services in the past on the Project, either to the Authority, the Authority Members or to USACE, but who did not provide services related to the Procurement Process, are permitted to be a member of, or advise, a Respondent or Major Participant:

- (a) AECOM;
- (b) Anderson Engineering of Minnesota, LLC;
- (c) Barr Engineering Co.;
- (d) Battelle Memorial Institute;

- (e) Bear Creek Archeology, Inc.;
  - (f) Bergmann/Hanson/HDR JV;
  - (g) Black & Veatch Corporation;
  - (h) Dorsey & Whitney LLP;<sup>9</sup>
  - (i) Fugro Geospatial, Inc.;
  - (j) Great Lakes Archaeological Research Center, Inc.;
  - (k) HDR, Inc.;
  - (l) Industrial Builders, Inc.;
  - (m) Interstate Drilling Services, LLP;
  - (n) KGS Group (Kontzamanis Graumann Smith MacMillan Inc.);
  - (o) KLJ (Kadmas, Lee & Jackson, Inc.);
  - (p) Midwest Testing Laboratory, Inc.;
  - (q) Public Financial Management, Inc.;
  - (r) SEH/INCA JV;
  - (s) Soil and Environmental Testing Services;
  - (t) Soil Engineering Testing, Inc.;
  - (u) St. Anthony Falls Laboratory at University of Minnesota;
  - (v) Stanley-INCA JV;
  - (w) Strategic Value Solutions, Inc.;
  - (x) Texas Transportation Institute at Texas A&M University;
  - (y) TKDA (Toltz, King, Duvall, Anderson and Associates, Incorporated);
  - (z) URS Corporation;
  - (aa) Wenck Associates, Inc.; and
  - (bb) WEST Consultants, Inc.,
- (each an "**Organizationally Eligible Firm**").

- 7.1.5 If, at any time during the Restricted Contact Period, a Respondent discovers any perceived, potential or actual Conflict of Interest, the Respondent must promptly disclose the same to the Authority in a written statement delivered to the Authority Representative, including:
- (a) the names and contact information of the Persons to which the perceived, potential or actual Conflict of Interest relates;
  - (b) a description of the perceived, potential or actual Conflict of Interest;
  - (c) a description of the steps taken or proposed to be taken to mitigate the perceived, potential or actual Conflict of Interest.

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<sup>9</sup> The ability of Dorsey & Whitney LLP to advise a Respondent or Major Participant on the Project is conditioned upon Dorsey & Whitney LLP entering into an acceptable conflicts agreement with the Authority prior to providing any such advice.

- 7.1.6 If a Conflict of Interest that the Respondent knew, or should have known about, but failed to disclose is determined to exist during the Procurement Process, the Authority may, in its discretion, disqualify such Respondent.
- 7.1.7 The Authority may grant exceptions to the policy set forth in this [Section 7.1](#), upon written request from a Respondent, if it is determined that the relevant party's involvement is in the best interest of the public and does not constitute an unfair advantage. Respondents seeking such exception are advised to submit a written request as soon as possible because the Authority will not extend the SOQ Submission Deadline as a result or be responsible for any failure to respond to any such request prior to the SOQ Submission Deadline.
- 7.1.8 The Authority's guidelines in this RFQ are intended to augment applicable Federal, state and local law and the laws and rules relating to NEPA. Such applicable law will also apply to Respondents and may preclude certain firms and their entities from participating on a Respondent team. Respondents should note that the conflict of interest rules set out in 23 CFR § 636, Subpart A, including 23 CFR § 636.116, are expected to apply to this procurement to the extent Federal funds are assumed to be used.

## 7.2 Participation on Respondent Teams

- 7.2.1 To ensure a fair and competitive procurement process, subject to [Section 7.2.2](#), Major Participants are prohibited from participating, in any capacity, on another Respondent team during the course of the Procurement Process unless otherwise approved by the Authority.
- 7.2.2 If a Respondent is not selected as a Proposer, then following the Authority publicly announcing the identity of the Proposers, the members of such unsuccessful Respondent team will be free to participate on any one Proposer team, subject to compliance with all other requirements of this RFQ, including [Section 7.1 \(Conflicts of Interest\)](#), and of the RFP.

## 7.3 Changes in Organization

- 7.3.1 Subject to [Section 7.3.2](#), Respondents may add, delete or substitute team members and reorganize their teams during the Procurement Process, unless the change would result in a Conflict of Interest.
- 7.3.2 Notwithstanding the foregoing, following submittal of the SOQs, Respondents must not do any of the following without the Authority's prior written consent:
- (a) delete, substitute or change the composition of any Major Participant or any other team member identified in its SOQ or change the role or scope of work of such Major Participant or team member; or
  - (b) otherwise reorganize its team to the extent that such reorganization would render the organizational charts and descriptions provided in their SOQ in accordance with [Appendix C \(Submittal Requirements\)](#) inaccurate or incomplete,
- (each an "**Organizational Change**").
- 7.3.3 If a Proposer wishes to make any such Organizational Change, a Proposer must submit to the Authority a description of the proposed change and any relevant documentation related to the change.
- 7.3.4 While the Authority reserves the right to withhold its consent to any Organizational Change under [Section 7.3.2](#) in its discretion, the Authority expects that it will base its decision as to



whether to accept a proposed Organizational Change on whether the proposed Organizational Change would:

- (a) render the Respondent materially different from or less qualified than the Respondent originally selected as a Proposer in a way that would have had a material adverse effect on the evaluation of the Respondent's SOQ;
- (b) result in any Conflict of Interest; or
- (c) cause the Respondent or Proposer to be in violation of another provision of this RFQ.

## 7.4 Communications

### 7.4.1 Respondent Representative

- (a) As soon as reasonably practicable following issuance of this RFQ, each prospective Respondent must (i) register on the Aconex Procurement System and (ii) notify the Authority by emailing the Authority Representative the name, title, mailing address, phone numbers (work and cell), email address and fax number (if any) of a single contact person for that prospective Respondent (the "**Respondent Representative**").
- (b) Respondents may update the identity or contact information of such Respondent Representative from time to time by notifying the Authority Representative by email.
- (c) Upon submission of an SOQ, all future communications by the Authority will be made to the Respondent Representative whose contact information is included in the SOQ, which may, but is not required to, be the same person as was previously identified to the Authority in accordance with Section 7.4.1(a).

### 7.4.2 Improper Communications

- (a) The rules of communication in this Section 7.4.2 will apply to Respondents, including any Proposers, during the Restricted Contact Period, unless such rules are superseded or modified by the RFP.
- (b) For purposes of this Section 7.4.2:
  - (i) references to Respondents include their team members and representatives; and
  - (ii) communications include face-to-face, telephone, facsimile, email, social media or hard copy written communications, or any other oral or written communications that the Authority, in its sole discretion, concludes were intended to circumvent the restrictions set forth in this Section 7.4.2.
- (c) The Authority will be the sole point of contact for Respondents with respect to the Project, this RFQ and the RFP. Respondents must correspond with the Authority regarding such matters only through the Authority's designated representative, which initially shall be:

Bruce Spiller, P.E.  
CH2M  
520 Main Avenue  
Suite 601  
Fargo, ND 58103  
[FMDiversion@ch2m.com](mailto:FMDiversion@ch2m.com)

(as updated by the Authority from time to time by email to the Respondent Representatives or through the Aconex Procurement System, the "**Authority Representative**").

- (d) Respondents must not have any direct or indirect communications regarding the Project or this RFQ with:
- (i) subject to Section 7.2.1 (Participation on Respondent Teams), another Respondent or its team members;
  - (ii) the Authority or the Authority Members; and
  - (iii) any representatives, employees, advisors, contractors or consultants of the foregoing involved with the procurement of the Project (including those referenced in Section 7.1 (Conflicts of Interest)),
- except for:
- (iv) with respect to Section 7.4.2(d)(i), contacts made prior to SOQ submission that relate solely to bona fide inquiries regarding the formation of potential Respondent teams; and
  - (v) communications expressly permitted by the terms of this RFQ or as approved in writing in advance by the Authority, in its sole discretion.
- (e) Except as expressly permitted by the terms of this RFQ or as approved in writing in advance by the Authority, in its sole discretion, Respondents and their representatives, employees, advisors, contractors or consultants must not communicate with the following stakeholders regarding the Project or this RFQ, including representatives, employees, members, advisors, contractors or consultants of such stakeholders (provided that, with respect to consultants and advisors, such restrictions only apply to the extent any such consultant or advisor provides or has provided services related to the Project, this RFQ or the RFP):
- (i) the States and any divisions or departments of the States to the extent not otherwise subject to restrictions under Section 7.4.2(d);
  - (ii) NDDOT;
  - (iii) USACE;
  - (iv) USDOT;
  - (v) US Federal Highway Administration ("**FHWA**");
  - (vi) any utility that provides service in the Fargo-Moorhead Metropolitan Area; and
  - (vii) relevant environmental, regulatory and permitting agencies.
- (f) The Authority will provide necessary intermediary coordination during the Procurement Process between Respondents, on the one hand, and the stakeholders who are subject to restrictions under Section 7.4.2(e), on the other hand.
- (g) Respondents must not engage in lobbying activities with respect to this RFQ and the Project or attempt to unduly influence the selection process.

## 7.5 Public Disclosure

### 7.5.1 Overview

- (a) Once submitted, the SOQs, any RFQ Comments and any other information or materials provided by Respondents:
  - (i) will become the property of the Authority; and
  - (ii) may be subject to disclosure under applicable Public Disclosure Laws.
- (b) Respondents should furthermore be aware that information and materials submitted by Respondents may be made available to FHWA representatives, as well as to select public authorities that have executed non-disclosure agreements with the Authority. The Authority intends to follow procedures established by the FHWA and to limit sharing of information to public authorities that have executed non-disclosure agreements, in order to limit disclosure of such information and materials, to the extent possible.
- (c) The Authority is subject to the North Dakota Open Records Law and the Minnesota Open Records Law. Relevant provisions are summarized in [Section 7.5.2](#).
- (d) All Respondents should familiarize themselves with the Public Disclosure Laws and all other potentially applicable regulations and statutes related to confidentiality and public disclosure.
- (e) The Public Disclosure Laws provide for certain exemptions where information or materials provided to an agency may not be produced in response to a request. The Authority will not advise a submitting party as to the nature or content of documents entitled to protection under the Public Disclosure Laws or other applicable laws or as to the interpretation of any Public Disclosure Law or other applicable laws. The Authority (for itself and on behalf of the Authority Members) reserves the right to disagree with a Respondent's assessment regarding the confidential nature of any materials in the interest of complying with Public Disclosure Laws or any other applicable law.
- (f) Nothing contained in this Section will modify or amend requirements and obligations imposed on the Authority or Authority Members by Public Disclosure Laws or other applicable laws. The provisions of Public Disclosure Laws or other applicable laws will control in the event of a conflict between the procedures described in this RFQ and applicable law.

### 7.5.2 North Dakota Open Records Law and Minnesota Open Records Law

The Authority and each Authority Member, to the extent that the Authority disseminates any information in connection with this RFQ to any Authority Member, intends to assert applicable exemptions provided by the North Dakota Open Records Law and the Minnesota Open Records Law in response to any third-party request for access to any information in connection with this RFQ, including the following:

- (a) N.D.C.C. § 44-04-18.4, “bids or proposals received by a public entity in response to a request for proposals by the public entity are exempt until all of the proposals have been received and opened by the public entity or until all oral presentations regarding the proposals, if any, have been heard by the public entity”; and
- (b) MSA § 13.591, subd. 3(b), “[d]ata submitted by a business to a government entity in response to a request for proposal . . . are private or nonpublic until the time and date specified in the solicitation that proposals are due, at which time the name of the responder becomes public. All other data in a responder's response to a request for

proposal are private or nonpublic data until . . . the government entity has completed negotiating the contract with the selected vendor”.

### 7.5.3 USACE and FOIA

- (a) Certain information that Respondents provide to the Authority may be disclosed to USACE and, as a result, may be subject to disclosure under FOIA.
- (b) By submitting its SOQ, each Respondent and its Major Participants acknowledge and accept that, to ensure fair competition and preserve the integrity of the Procurement Process, the Authority may disqualify a Respondent if such Respondent, any of its Major Participants or other team members, any of their respective Affiliates, or any other Person on behalf of any of the foregoing, submits a FOIA request to USACE seeking disclosure of information relating to the Procurement Process or the Project during the Restricted Contact Period.

## 7.6 Confidential Information

7.6.1 If a Respondent believes that any portion of its SOQ or any other information or materials that it submits contains information that is Exempt Material, the Respondent must:

- (a) mark each document containing such information or materials "CONFIDENTIAL" in the header of each affected page (or, for partially affected pages, within the page in such a manner that makes clear where such information begins and ends);
- (b) submit an index of such information (a "**Confidential Information Index**") in the form of Form D (Confidential Information Index); and
- (c) to the extent practical and for ease of disclosure, prepare and compile its SOQ such that any information marked as "CONFIDENTIAL" does not appear on the same page as non-confidential information.

7.6.2 Blanket designations that do not identify the specific information the Respondent believes is Exempt Material will not be acceptable and may be cause for the Authority to treat the entire SOQ or other submitted information as public information.

7.6.3 No designation by a Respondent or Proposer of information or materials as "CONFIDENTIAL" will be:

- (a) binding on the Authority or the Authority Members; or
- (b) determinative of any issue relating to the application of, or treatment of such information or materials under, Public Disclosure Laws or any other applicable law.

7.6.4 The relevant Respondent (not the Authority or any Authority Member) will be responsible for the costs associated with defending any request for disclosure of any information or materials claimed by such Respondent to be Exempt Material. In connection with this obligation, such Respondent must:

- (a) at its own cost, use its best efforts to assist the Authority or any Authority Member (as applicable) in such defense;
- (b) at the option of the Authority, defend the Authority or any Authority Member (as applicable) from and against all claims, losses and damages relating thereto; and
- (c) indemnify the Authority or any Authority Member (as applicable) for any claims, costs and expenses incurred by them in such defense.

- 7.6.5 In no event will the Authority or any Authority Member, or any of their respective agents, representatives, consultants, directors, officers or employees be liable to a Respondent, a Major Participant or any other member of a Respondent's team for the disclosure of all or a portion of an SOQ or RFQ Comment submitted under this RFQ.

## 7.7 Disqualification for Non-Compliance

Any violation by a Respondent or any of its Major Participants or other team members of, or failure to comply with, this Section 7 may, in the Authority's sole discretion, result in the relevant Respondent, Major Participant or other applicable team member, being disqualified from further participation in the Procurement Process or the Project.

[End of Section 7]

## SECTION 8

# Protest Procedures

- 8.1.1 Any Respondent submitting an SOQ in response to this RFQ may protest the Authority's decision in short-listing Proposers by first submitting a protest to the Authority setting forth the basis of such protest. The Authority will adopt a resolution outlining the protocol for protest procedures prior to the Evaluation Team reviewing SOQs.
- 8.1.2 N.D.C.C. § 28-34-01 governs appeals of Authority decisions.

[End of Section 8]

## SECTION 9

# Reserved Rights

9.1.1 In connection with the procurement described in this RFQ, the Authority reserves to itself, and on behalf of each of the Authority Members, any and all of the rights available to it under applicable law (which rights shall be exercisable by the Authority (or, on its behalf, by any of the Authority Members) in the Authority's sole discretion). Such rights include the right to, with or without cause and with or without notice:

- (a) modify the Procurement Process or documentation described in this RFQ;
- (b) modify the scope of the Project;
- (c) appoint additional evaluation teams to review SOQs and seek the assistance of outside technical, financial, legal and other experts and consultants;
- (d) waive any deficiency or non-conformance in an SOQ, or permit clarifications or additional information to be submitted with respect to an SOQ;
- (e) make independent calculations with respect to numbers and calculations submitted in an SOQ for purposes of their evaluation;
- (f) require confirmation of information submitted by a Respondent, require additional information from a Respondent concerning its SOQ, or require additional evidence of qualifications to perform the work described in this RFQ;
- (g) seek or obtain data from any source that has the potential to improve the Authority's understanding and evaluation of such SOQ;
- (h) terminate evaluations of SOQs received at any time;
- (i) reject any and all SOQs received at any time;
- (j) not select any Respondent as a Proposer;
- (k) add as a Proposer any Respondent that submitted an SOQ in order to replace a previously selected Proposer that withdraws or is disqualified from participation in this procurement;
- (l) as part of the RFP process, negotiate with a Proposer without being bound by any provision in its SOQ or subsequent Proposal;
- (m) disqualify any Respondent that changes its SOQ without the Authority's approval;
- (n) disqualify any Respondent or Proposer from the Procurement Process for violating any rules or requirements of the procurement specified in (i) this RFQ, (ii) the RFP, (iii) any other communication from the Authority or (iv) applicable law;
- (o) accept, reject or seek additional information regarding a Respondent's request to make any changes to its organization in accordance with Section 7.3 (*Changes in Organization*);
- (p) withdraw or cancel this RFQ or any subsequent RFP, in whole or in part, at any time prior to the execution by the Authority of the Project Agreement, without incurring any cost obligations or liabilities, except to the extent specifically provided in this RFQ or any subsequent RFP;
- (q) revise the evaluation factors or methodology prior to the SOQ Submission Deadline;

- (r) issue addenda, supplements and modifications to this RFQ;
- (s) issue a new request for qualifications or request for proposals after cancellation of this RFQ or any subsequent RFP;
- (t) not issue an RFP;
- (u) not pursue Federal financing programs, or not pursue other financing or public funding for the Project on behalf of the Respondents, or otherwise;
- (v) develop some or all of the Project itself or through another state or local government entity or entities;
- (w) disclose information submitted to the Authority as permitted by applicable law or this RFQ;
- (x) exercise any other right reserved or afforded to the Authority under this RFQ or applicable laws and regulations; and
- (y) exercise its discretion in relation to the matters that are the subject of this RFQ as it considers necessary or expedient in the light of all circumstances prevailing at the time which the Authority considers to be relevant.

9.1.2 This RFQ does not commit or bind the Authority to enter into a contract or proceed with the procurement described in this RFQ. The Authority does not assume any obligation, responsibility or liability, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to or responding to this RFQ or any subsequent RFP, and all such costs shall be borne solely by each Respondent, except to the extent that the RFP expressly provides for the payment of a stipend to a Proposer.

9.1.3 In no event shall the Authority be bound by, or liable for, any obligations with respect to the Project or any portion thereof, except to the extent that (i) any subsequent RFP expressly provides for the payment of a stipend to a Proposer or (ii) the Project Agreement, in form and substance satisfactory to the Authority, has been executed and authorized by the Authority and, then, only to the extent set out in the RFP.

[End of Section 9]



# Appendix A Definitions

# Definitions

Capitalized terms and acronyms used in this RFQ have the meanings set forth in this Appendix A (Definitions).

**"Aconex Procurement System"** means the online document management system being used by the Authority to facilitate the Procurement Process.

**"Affiliate"** means in relation to any Person:

- (a) any other Person having Control of that Person;
- (b) any other Person over whom that Person has Control;
- (c) any Person over whom any other Person referred to in (a) above also has Control; or
- (d) only with respect to the use of the term "Affiliate" in Forms B (Certifications) and C (Legal Disclosures), any consortium, partnership or joint venture involving such Person,

where **"Control"** of a Person by another Person means that other Person (whether alone or with others, and whether directly or indirectly at any tier): (i) holds the majority of voting rights in the controlled Person; (ii) has the right to appoint the majority of the board of directors (or equivalent) of that controlled Person; and/or (iii) exercises control over that controlled Person's affairs.

In the case of an Equity Member, if the Equity Member is an investment fund, **"Affiliate"** includes such Equity Member's general partner and any other investment fund in which its general partner is an equity investor as a general partner.

**"Authority"** means the Metro Flood Diversion Authority, a permanent joint powers entity formed through the Joint Powers Agreement to provide the Fargo-Moorhead Metropolitan Area with permanent and comprehensive flood protection.

**"Authority Members"** means each of the City of Moorhead, the City of Fargo, Clay County, Cass County and the Cass County Joint Water Resource District.

**"Authority Representative"** has the meaning set forth in Section 7.4 (Communications).

**"BNSF"** means the BNSF Railway, a freight railroad network that operates sections of rail on the Project Site.

**"Buffalo-Red River Watershed District"** means the Buffalo-Red River Watershed District, a political subdivision of the State of Minnesota.

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

**"Cass County"** means Cass County, a North Dakota Home Rule County and political subdivision of the State of 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.

**"Chief of Engineers Report"** has the meaning set forth in Section 1.5 (Split Delivery Model and Role of USACE).

**"Chief Financial Officer"** means, with respect to a Person, the chief financial officer of the Person or, if the Person has no chief financial officer, the treasurer, principal accounting officer, controller or other similar financial officer.

**"City of Fargo"** means the City of Fargo, a North Dakota Home Rule City and a political subdivision of the State of North Dakota.

**"City of Moorhead"** means the City of Moorhead, a Minnesota Home Rule Charter City and a political subdivision of the State of Minnesota.

**"Clay County"** means Clay County, a political subdivision of the State of Minnesota.

**"Comprehensive Project"** means the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, which was authorized by Section 7002(2) of WRRDA. The Comprehensive Project is comprised of the Project, associated mitigation work packages undertaken by the Non-Federal Sponsors, and the SEAI and MAI.

**"Confidential Information Index"** has the meaning set forth in Section 7.6 (Confidential Information).

**"Conflict of Interest"** has the meaning set forth in Section 7.1 (Conflicts of Interest).

**"Data Room"** means the electronic data room that will be created by the Authority to give Proposers access to information related to the Project during the RFP phase.

**"Design Agreement"** means the design agreement between the Non-Federal Sponsors and USACE, dated September 12, 2011, as amended on December 19, 2013, and as may be further amended.

**"Developer"** means the entity identified, or otherwise established, by the Successful Proposer to enter into the Project Agreement. The Developer shall develop, design, finance, construct, operate and maintain the Project for the term of the Project Agreement.

**"Diversion Channel"** means the diversion channel to be constructed as part of the Project.

**"Equity Member"** means each member of a Respondent's team that will contribute equity to the Developer as part of such Respondent's financing plan for the Project.

**"ESA"** means any Environmental Site Assessments.

**"Evaluation Criteria"** means the criteria set forth in Section 6.2 (Evaluation Criteria and Weighting) that will be used by the Evaluation Team to evaluate and rank the SOQs.

**"Evaluation Team"** means the team established by the Authority to evaluate and rank the SOQs in accordance with Section 6 (SOQ Evaluation Process and Criteria).

**"Exempt Materials"** means information exempt from public disclosure under the Public Disclosure Laws.

**"Fargo-Moorhead Metropolitan Area"** means the major health, educational, cultural and commercial center serving southeastern North Dakota and west-central Minnesota located within the Red River Basin.

**"Federal Record of Decision"** means the Record of Decision signed by the Assistant Secretary of the Army (Civil Works), dated April 3, 2012, which formalizes the outcome of the FEIS.

**"FEIS"** means the Final Feasibility Report and Environmental Impact Statement – Fargo-Moorhead Metropolitan Area Flood Risk Management, completed by USACE in July 2011.

**"FEMA"** means the Federal Emergency Management Agency of the United States Department of Homeland Security.

**"Financial Plan"** means the Authority's Financial Plan, a copy of which will be made available in the Data Room during the RFP phase.

**"Flood of Record"** means the highest observed river stage at a given location during the period of record keeping.

**"FOIA"** means the Freedom of Information Act (5 U.S.C. § 552).

**"Guarantor"** means each parent company or other entity (in either case, if any) that is nominated by the Respondent that would support and guarantee the obligations of an Equity Member, Lead Contractor or Lead Contractor Member.

**"IDF"** means the Inflow Design Flood.

**"IDF Line of Protection"** means the line of protection consisting of flood protection elements (such as floodwalls or levees) that provide certifiable protection for the 1% annual chance (i.e., 100-year) flood and a top elevation equal to or greater than the water surface resulting from the IDF flow.

**"Innovative Technical Concept"** or **"ITC"** means a technical, financial or other concept that deviates from the requirements of the RFP and, in the discretion of the Authority, provides equal or better value.

**"Joint Powers Agreement"** or **"JPA"** means the Joint Powers Agreement among the Authority Members, dated June 13, 2016.

**"Lead Contractor"** means the entity (whether a single incorporated entity or an incorporated or unincorporated joint venture) with primary responsibility for the performance of construction work for the Project.

**"Lead Contractor Member"** means, where the Lead Contractor is an incorporated or unincorporated joint venture, each member or joint venturer in the Lead Contractor.

**"Lead Engineer"** means the entity (whether a single incorporated entity or an incorporated or unincorporated joint venture) with primary responsibility for preparation of the detailed plans and specifications for construction of the Project.

**"Lead Engineer Member"** means, where the Lead Engineer is an incorporated or unincorporated joint venture, each member or joint venturer in the Lead Engineer.

**"MAI"** means Mitigation and Associated Infrastructure.

**"Major Participant"** means each of the following:

- (a) each Equity Member;
- (b) if an Equity Member is an investment fund, the fund's general partner(s);
- (c) the Lead Engineer;
- (d) each Lead Engineer Member (if any);
- (e) the Lead Contractor;
- (f) each Lead Contractor Member (if any); and
- (g) each Guarantor.

**"Minnesota FEIS"** means the Final Environmental Impact Statement issued by the Minnesota Department of Natural Resources, dated May 2016.

**"Minnesota Open Records Law"** means the Minnesota Government Data Practices Act, MSA Chapter 13.

**"Minnesota Record of Decision"** means the Record of Decision of the Minnesota Department of Natural Resources, dated June 29, 2016, which determines that the Minnesota FEIS is adequate in accordance with Minnesota law.

"**NDDOT**" means the North Dakota Department of Transportation.

"**NEPA**" means the National Environmental Policy Act of 1969.

"**Non-Federal Sponsors**" means the City of Fargo, the City of Moorhead and the Authority.

"**North Dakota Open Records Law**" means NDCC Chapter 44-04.

"**Organizational Changes**" has the meaning set forth in Section 7.3.2 (*Changes in Organization*).

"**Organizationally Eligible Firms**" means those firms listed in Section 7.1.4 (*Conflicts of Interest*), each of which has been identified as eligible to pursue the Project.

"**OSHA**" means the Occupational Safety and Health Administration, an agency of the US Department of Labor.

"**P3 MOU**" means the public-private partnership memorandum of understanding between the Non-Federal Sponsors and USACE, dated July 11, 2016.

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

"**Procurement Process**" means the procurement process to select a Successful Proposer to deliver the Project, as outlined in Section 4.2 (*Overall Process*).

"**Procurement Schedule**" means the anticipated schedule for the Procurement Process, as outlined in Section 4.3 (*Procurement Schedule*).

"**Project**" means the Diversion Channel and Associated Infrastructure Work Package of the Comprehensive Project.

"**Project Agreement**" means the contract to design, build, finance, operate and maintain the Project that the Authority will enter into with the Developer upon successful completion of the Procurement Process.

"**Project Management Plan**" has the meaning set forth in Section 1.5.5 (*Split Delivery Model and Role of USACE*).

"**Project Partnership Agreement**" or "**PPA**" means the project partnership agreement between the Non-Federal Sponsors and USACE, dated July 11, 2016.

"**Project Site**" means the full site on which the Project will be undertaken, reflected in Figure B.1 in Appendix B (*Project Maps*).

"**Project Website**" means <http://www.fmdiversion.com>.

"**Proposal**" means a proposal submitted by a Proposer in response to the RFP.

"**Proposer**" means a Respondent selected by the Authority pursuant to this RFQ to submit a Proposal in response to the RFP.

"**Public Disclosure Laws**" means FOIA, the North Dakota Open Records Law and the Minnesota Open Records Law.

"**REC**" means any recognized environmental condition.

"**Red River**" means the Red River of the North.

"**Reference Project**" means those projects identified by the Respondent in either or both of Form F-1 or Form F-2.

"**Request for Proposals**" or "**RFP**" means the solicitation that may be issued by the Authority to Proposers, and all applicable addenda.

"**Request for Qualifications**" or "**RFQ**" means this Request for Qualifications and all applicable addenda.

"**Respondent**" means any company, team or joint venture which submits an SOQ in accordance with this RFQ.

"**Respondent Representative**" has the meaning set forth in Section 7.4.1 (Respondent Representative).

"**Restricted Contact Period**" has the meaning set forth in Section 7.1.2 (Conflicts of Interest).

"**RFQ Comment**" has the meaning set forth in Section 4.4.1 (RFQ Comments).

"**RFQ Comment Deadline**" has the meaning set forth in Section 4.4.1 (RFQ Comments).

"**RRIF**" means the Railroad Rehabilitation & Improvement Financing program, established TEA-21 and amended by SAFETEA-LU.

"**SEAI**" means the Southern Embankment and Associated Infrastructure portion of the Comprehensive Project, to be procured by USACE.

"**SOQ Due Date**" means September 7, 2016.

"**SOQ Submission Deadline**" means 4:00PM (Central Time) on the SOQ Due Date.

"**SOQ Submission Location**" has the meaning set forth in Section 5.3.1 (Manner of Delivery).

"**Statement of Qualifications**" or "**SOQ**" means a qualifications package submitted to the Authority by a Respondent in response to this RFQ.

"**States**" means the State of North Dakota and the State of Minnesota collectively, and each individually, a "**State**".

"**Submittal Letter**" means the letter, in the form of Form A (Submittal Letter), to be delivered by each Respondent as part of its SOQ in accordance with Appendix C (Submittal Requirements).

"**Successful Proposer**" means the Proposer selected by the Authority, in accordance with the RFP, to deliver the Project.

"**Supplemental Environmental Assessment**" means the Supplemental Environmental Assessment modifying the FEIS, dated September 2013.

"**Technical Requirements**" means the technical requirements for the Project to be determined by the Authority and included in the RFP.

"**TIFIA**" means the Transportation Infrastructure Finance and Innovation Act of 1998, §1501 et. Seq. of Public Law 105-178, as amended.

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

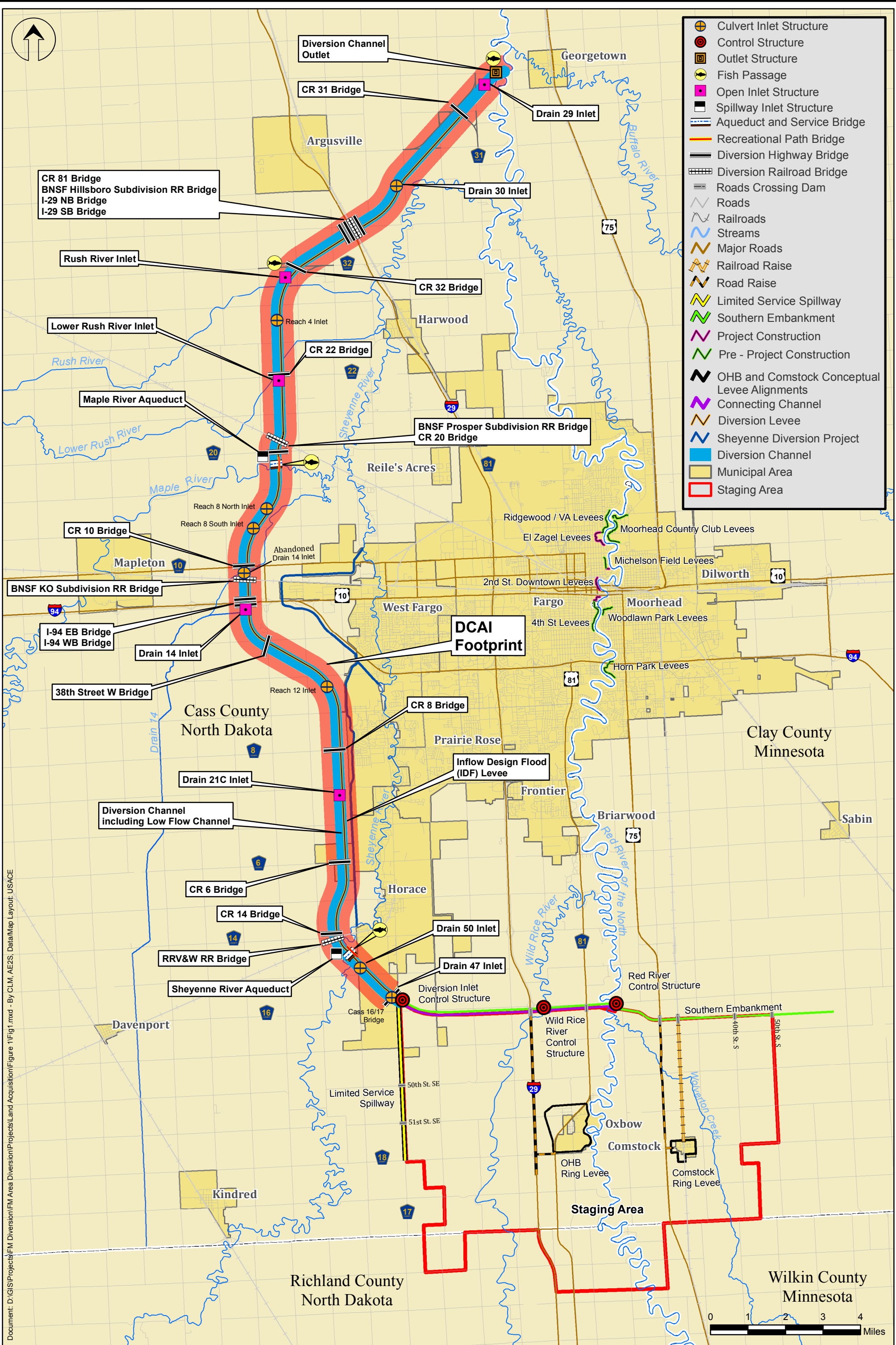
"**USDOT**" means the United States Department of Transportation.

"**WIFIA**" means the Water Infrastructure Finance and Innovation Act, included in WRRDA.

"**WRRDA**" means the Water Resources Reform and Development Act of 2014, Public Law 113-121.

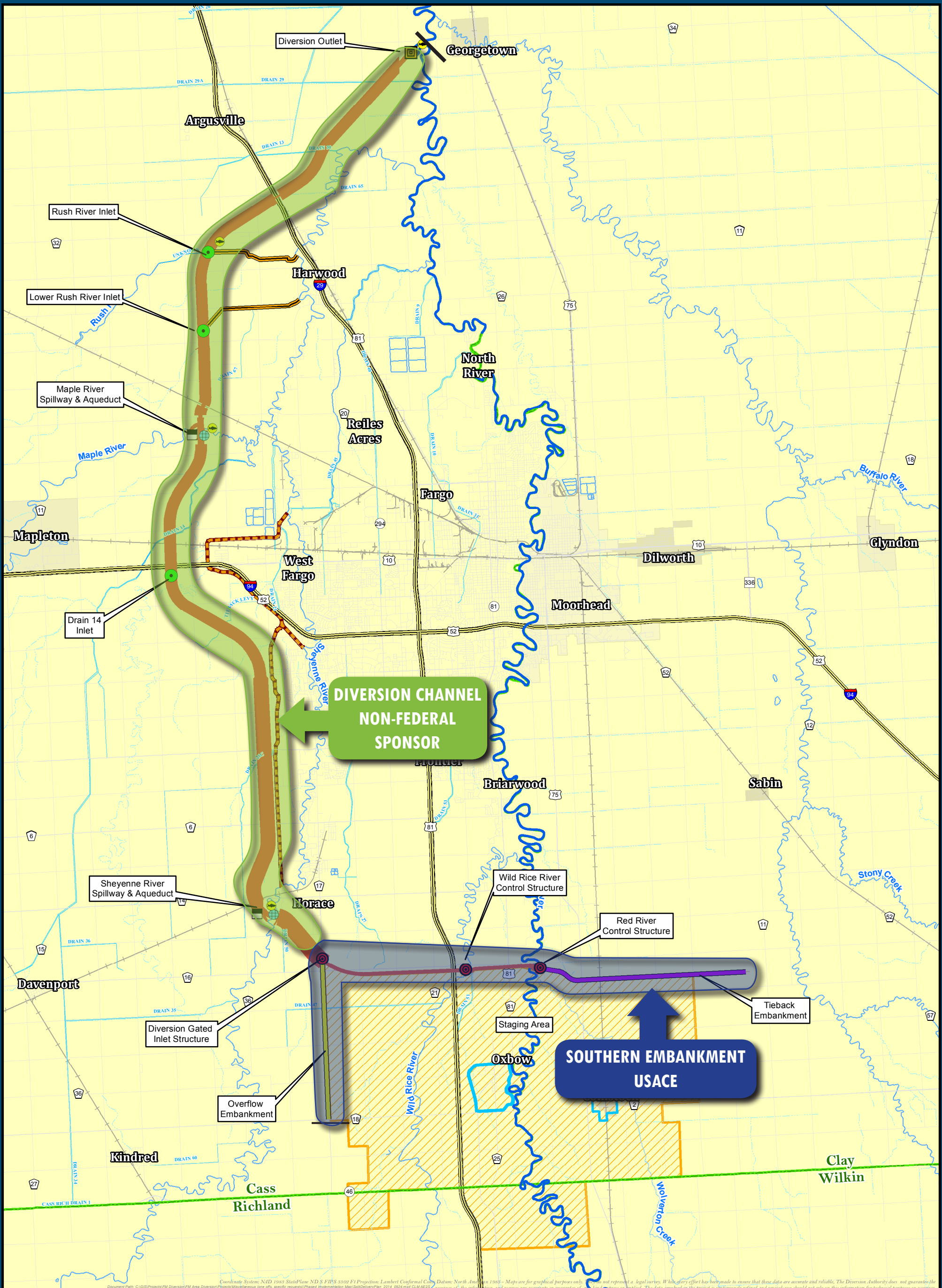
[End of Appendix A]

# Appendix B Project Maps



Document: D:\GIS\Projects\FM Area Diversion\Projects\Land Acquisition\Figure 1\Fig1.mxd - By CLM, AE2S, Data/Map Layout: USACE





**Figure B.2 - Split Delivery Model**  
**SPLIT DELIVERY PLAN**

FARGO-MOORHEAD METRO FLOOD  
 RISK MANAGEMENT PROJECT

- |  |                     |  |                         |
|--|---------------------|--|-------------------------|
|  | Aqueduct            |  | Abandoned River Channel |
|  | Control Structure   |  | Sheyenne Diversion      |
|  | Fish Passage        |  | Diversion Channel       |
|  | Inlet               |  | County Boundary         |
|  | Diversion Outlet    |  | Proposed Levees         |
|  | Spillway            |  | Staging Area            |
|  | Overflow Embankment |  |                         |
|  | Tieback Embankment  |  |                         |

As Of: 9/24/2014

0 0.5 1 2 3 Miles

Coordinate System: NAD 1983 StatePlane ND S FIPS 3309 F1 Projection: Lambert Conformal Conic Datum: North American 1983 - Maps are for graphical purposes only and do not represent a legal survey. While every effort has been made to ensure that these data are accurate and reliable, the Division Authority does not guarantee the accuracy of the information, and assumes no liability or warranty of accuracy. The data involved in this project is continually refined and revised; you should not rely on this information for technical purposes or accuracy.

# Appendix C Submittal Requirements

## Volume 1 General Submittals

- Part 1 Introduction and Administrative
- Part 2 Organization and Management
- Part 3 Technical Experience, Capabilities and Project Understanding
- Part 4 Financial Capabilities and Experience

## Volume 2 Financial Information

# Volume 1

## Part 1- Introduction and Administrative

### Contents of Part 1

Part 1 of Volume 1 shall contain the following:

Section	Submittal Requirement	Page limit
1.1	<p><b>Completed Form A (<i>Submittal Letter</i>)</b></p> <p>Provide a completed Submittal Letter in the form of <u>Form A (<i>Submittal Letter</i>)</u> in accordance with the instructions on the Form.</p> <p>The Submittal Letter must be signed by a representative of the Respondent and by a representative of each Major Participant. Each signatory must be authorized to sign such material and to commit the Respondent or Major Participant (as applicable) to the Project obligations.</p>	n/a
1.2	<p><b>Executive Summary</b></p> <p>A written narrative that should:</p> <ul style="list-style-type: none"> <li>(a) be written in a non-technical style;</li> <li>(b) contain sufficient information for reviewers with technical and non-technical backgrounds to become familiar with the key elements of the Respondent's SOQ;</li> <li>(c) identify each Major Participant and briefly describe the role, headquarter office location and qualifications of each Major Participant, and its experience in performing comparable projects; and</li> <li>(d) explain why the Respondent's team should be selected to receive an RFP.</li> </ul>	10
1.3	<p><b>Completed Form B (<i>Certifications</i>)</b></p> <p><b>For each Major Participant</b>, provide a completed <u>Form B (<i>Certifications</i>)</u> in accordance with the instructions on the Form.</p>	n/a
1.4	<p><b>Completed Form C (<i>Legal Disclosures</i>)</b></p> <p><b>For each Major Participant</b>, provide a completed <u>Form C (<i>Legal Disclosures</i>)</u> in accordance with the instructions on the Form.</p>	n/a
1.5	<p><b>Completed Form D (<i>Confidential Information Index</i>)</b></p> <p>Provide a completed <u>Form D (<i>Confidential Information Index</i>)</u> in accordance with the instructions on the Form.</p>	n/a

[End of Submittal Requirements for Part 1 of Volume 1]

# Volume 1

## Part 2 - Organization and Management

### Contents of Part 2

Part 2 of Volume 1 shall contain the following:

Section	Submittal Requirement	Page limit
2.1	<p><b>Legal Structure</b></p> <p>Explain the proposed legal structure of the Developer and the role of each key entity. Provide a legal structure chart identifying the Respondent's organization and key entities, including each Equity Member, the Lead Contractor, each Lead Contractor Member, the Lead Engineer and each Lead Engineer Member. For each Equity Member, the Lead Contractor and each Lead Contractor Member, identify the respective parent company(ies).</p>	2
2.2	<p><b>Completed Form E (<i>Major Participant Information</i>)</b></p> <p><i>For each Major Participant</i>, provide a completed <u>Form E (<i>Major Participant Information</i>)</u> in accordance with the instructions on the Form.</p>	n/a
2.3	<p><b>Organizational Charts</b></p> <p>Provide organizational charts (one for each significant phase of the Project) showing the flow of the "chain of command" with lines identifying participants who are responsible for major functions to be performed and their reporting relationships in managing, designing, building, financing, operating and maintaining the Project.</p> <p>The charts must show the functional structure of the organization down to the design discipline leader or construction superintendent level. Identify the critical support elements and relationships of project management, project administration, construction management, operation and maintenance management, quality control, safety, environmental compliance and subcontractor administration.</p>	n/a
2.4	<p><b>Organizational Narrative Report</b></p> <p>Provide:</p> <ul style="list-style-type: none"> <li>(a) a description of significant functional relationships among Major Participants and how the proposed organization will function as an integrated team for the term of the Project Agreement;</li> <li>b) a description of where and in what capacity any of the Major Participants have worked together;</li> <li>(c) a description of the Respondent's intended approach to providing the maintenance required as part of the Project;</li> </ul>	10

Section	Submittal Requirement	Page limit
	<p>(d) a description of the Respondent's approach and philosophy towards achieving a cooperative, partnership environment among the Respondent team members and the Respondent team's ability to interface successfully with the Authority and the Authority's consultants; and</p> <p>(e) a description of the benefits and value the Respondent's proposed organizational structure and approach provides to the Authority, and how similar structures and approaches have resulted in successful delivery of comparable projects.</p>	
2.5	<p><b>Key Personnel Information</b></p> <p>Identify and provide resumes for:</p> <p>(a) a "principal in charge" who will be the Respondent's executive level contact for the Authority; and</p> <p>(b) the person who will lead the negotiations for the Respondent during the RFP phase of the Procurement Process.</p>	2 (per resume)

[End of Submittal Requirements for Part 2 of Volume 1]

# Volume 1

## Part 3 - Technical Experience, Capabilities and Project Understanding

### Contents of Part 3

Part 3 of Volume 1 shall contain the following:

Section	Submittal Requirement	Page limit
3.1	<p><b>Completed Form F1 (<i>Technical Experience - Design and Engineering</i>)</b></p> <p>Provide a completed <u>Form F1 (<i>Technical Experience - Design and Engineering</i>)</u> in accordance with the instructions on the Form.</p>	2 (11"x17")
3.2	<p><b>Technical Narrative Attachment for Form F1</b></p> <p>Provide a technical narrative attachment for <u>Form F1 (<i>Technical Experience - Design and Engineering</i>)</u> describing five selected Reference Projects from the Form in greater detail.</p> <p>The narrative description should clearly explain how such Reference Projects are comparable and relevant in terms of the delivery methods, size, nature of works (e.g., major earth works), conditions (e.g., climate) and challenges faced, and how such experience is relevant and will be utilized to deliver this Project.</p>	5 (1 page per project)
3.3	<p><b>Completed Form F2 (<i>Technical Experience - Construction</i>)</b></p> <p>Provide a completed <u>Form F2 (<i>Technical Experience - Construction</i>)</u> in accordance with the instructions on the Form.</p>	2 (11"x17")
3.4	<p><b>Technical Narrative Attachment for Form F2</b></p> <p>Provide a technical narrative attachment for <u>Form F2 (<i>Technical Experience - Construction</i>)</u> describing five selected Reference Projects from the Form in greater detail.</p> <p>The narrative description should clearly explain how such Reference Projects are comparable and relevant in terms of the delivery methods, size, nature of works (e.g., major earth works), conditions (e.g., climate) and challenges faced, and how such experience is relevant and will be utilized to deliver this Project.</p>	5 (1 page per project)
3.5	<p><b>Technical Capabilities Narrative and Resumes</b></p> <p>Provide a narrative describing the Respondent's technical capabilities in the areas listed in <u>Section 6.2.3(b) (<i>Technical Qualifications and Capability</i>)</u>.</p>	10 (narrative) and

Section	Submittal Requirement	Page limit
	<p>Explain how the experience presented in <u>Sections 3.1 – 3.4 of this Part 3</u> will provide value to the Authority in the context of the Project.<sup>10</sup></p> <p>Provide resumes of up to 10 key personnel with respect to the areas listed in <u>Section 6.2.3(b) (Technical Qualifications and Capability)</u> that would lead conceptual design and ITC development during the RFP phase.</p>	2 (per resume)
3.6	<p><b>Completed Form H (Safety Performance Questionnaire)</b></p> <p><i>For each of the Lead Contractor and each Lead Contractor Member (if any),</i> provide a completed <u>Form H (Safety Performance Questionnaire)</u> in accordance with the instructions on the Form.</p>	n/a
3.7	<p><b>Safety Narrative Attachment for Form H</b></p> <p>Provide a description of the occupational health and safety program for the Lead Contractor and each Lead Contractor Member.</p>	2
3.8	<p><b>Construction Delay Attachment</b></p> <p>Provide an attachment that lists projects with a contract price of \$250 million or more that were completed within the past five years, or that remain under construction, in either case, by the Lead Contractor or a Lead Contractor Member (whether as a single contractor or part of a joint venture) for which there was, or is, a delay in completion of 6 months or more.</p> <p>For each such project, the attachment must identify:</p> <ul style="list-style-type: none"> <li>(a) the applicable Lead Contractor or Lead Contractor Member;</li> <li>(b) the name and location of the project;</li> <li>(c) a description of the project (including contract price);</li> <li>(d) the contact information (project manager name, phone number, e-mail address) of the owner or developer;</li> <li>(e) the construction start date;</li> <li>(f) the original scheduled date for completion;</li> <li>(g) the actual date of completion (or if completion has not yet been achieved, the anticipated date of completion); and</li> <li>(h) an explanation of the cause of the delay and steps taken to mitigate the delay.</li> </ul>	n/a
3.9	<p><b>Maintenance Approach</b></p> <p>Provide a narrative description of the Respondent's intended approach to maintaining the major elements of the Project. The narrative should briefly describe the Respondent's proposed methods for management, staffing and, more generally, undertaking the requisite maintenance.</p>	5

<sup>10</sup> Do not provide proposed technical solutions or ITCs.



Section	Submittal Requirement	Page limit
3.10	<b>Project Understanding</b> Provide a narrative description of the Respondent's understanding of the Project. The narrative should briefly describe the major elements of the Project and the potential risks and challenges in delivering the Project.	7

[End of Submittal Requirements for Part 3 of Volume 1]

# Volume 1

## Part 4 - Financial Capabilities and Experience

### Contents of Part 4

Part 4 of Volume 1 shall contain the following:

Section	Submittal Requirement	Page limit
4.1	<p><b>Completed Form G1 (<i>Financial Information - Equity Member Experience</i>)</b></p> <p>Provide a completed <u>Form G1 (<i>Financial Information - Equity Member Experience</i>)</u> in accordance with the instructions on the Form.</p>	n/a
4.2	<p><b>Attachment to Form G1 (<i>Financial Information - Equity Member Experience</i>)</b></p> <p>Provide a financial experience attachment that provides narrative descriptions of the four most relevant private financing experiences listed on <u>Form G1 (<i>Financial Information - Equity Member Experience</i>)</u>.</p> <p>For each such experience, the attachment must identify the name of the project, the owner's contact information (project manager name, phone number, e-mail address), and an explanation of the relevance and comparability to this Project. If the owner's project manager is no longer with the owner, provide an alternate contact at the agency who is familiar with the project and the financing. The Respondent should include more detailed information about these projects' debt facilities/structures than the information contained in <u>Form G1 (<i>Financial Information - Equity Member Experience</i>)</u>.</p>	4 (1 page per experience)
4.3	<p><b>Completed Form G2 (<i>Financial Information - Equity Member Track Record</i>)</b></p> <p>Provide a completed <u>Form G2 (<i>Financial Information - Equity Member Track Record</i>)</u> in accordance with the instructions on the Form.</p>	n/a
4.4	<p><b>Completed Form GG1 (<i>Financial Information - Information Regarding Equity Members</i>)</b></p> <p>Provide a completed <u>Form GG1 (<i>Financial Information - Information Regarding Equity Members</i>)</u> in accordance with the instructions on the Form.</p>	n/a

### Notes to Part 4

#### Section 4.1 (Form G1) and Section 4.3 (Form G2)

Respondents may list on Form G1 (*Financial Information - Equity Member Experience*) and Form G2 (*Financial Information - Equity Member Track Record*) the experience of any Equity Member who will directly or indirectly be an equity owner of the Developer. Project

experience from Affiliates of Equity Members is acceptable, if a direct or indirect common parent entity is a Guarantor of the Equity Member.

Form G2 (Financial Information - Equity Member Track Record) should demonstrate:

- (a) Respondent's ability to structure, negotiate and successfully obtain financing for comparable infrastructure projects; and
- (b) Respondent's familiarity with the types of financing structures and instruments potentially available.

[End of Submittal Requirements for Part 4 of Volume 1]

# Volume 2 - Financial Information

## Contents of Volume 2

Volume 2 shall contain the following:

Section	Submittal Requirement	Page limit
5.1	<p><b>Completed Form GG2 (<i>Financial Information - Financial Officer Certificate</i>)</b></p> <p>Provide a completed <u>Form GG2 (<i>Financial Information - Financial Officer Certificate</i>)</u> in accordance with the instructions on the Form, <b>for each of the following:</b></p> <p>(a) each Equity Member;</p> <p>(b) the Lead Contractor;</p> <p>(c) each Lead Contractor Member (if applicable); and</p> <p>(d) each Guarantor (if applicable).</p>	n/a
5.2	<p><b>Financial Statements</b></p> <p>Provide financial statements for the last three fiscal years <b>for each of the following:</b></p> <p>(a) each Equity Member;</p> <p>(b) the Lead Contractor;</p> <p>(c) each Lead Contractor Member (if applicable); and</p> <p>(d) each Guarantor (if applicable).</p>	n/a
5.3	<p><b>Equity Funding Letter</b></p> <p><b>For each Equity Member</b>, provide an Equity Funding Letter.</p>	n/a
5.4	<p><b>Surety Letter and/or Letter of Credit</b></p> <p>Provide a letter from a surety duly authorized to issue surety bonds in each State, stating without conditions or qualifications that the Respondent or applicable member of the Respondent team is capable at the time of its SOQ submission of obtaining a performance bond and payment bond, each in an amount of at least \$900 million for the Project.</p>	n/a

## Notes to Volume 2

### Section 5.1 (Form GG2)

Each Financial Officer Certificate must be executed by the Chief Financial Officer or equivalent of the relevant submitting party and be dated not earlier than seven calendar days prior to the SOQ Due Date. This document will provide relevant information about the submitting party that is not typically available from such party's audited financial statements in order to support the Authority's assessment of the Respondent's financial strength, including:

- (a) credit rating;

- (b) Guarantor support;
- (c) financial information summary;
- (d) bankruptcy/insolvency proceedings;
- (e) material changes in financial condition; and
- (f) off-balance sheet liabilities.

To the extent that a Form GG2 (Financial Information – Financial Officer Certificate) is from a Guarantor, it shall include confirmation of such Guarantor's intention to support the Equity Member, Lead Contractor or Lead Contractor Member, as applicable, with the financial and human resources, and other support needed by such entity to successfully satisfy its obligations with respect to the Project.

### Section 5.2 (Financial Statements)

- (a) If the Respondent has provided a completed Form GG2 (Financial Information - Financial Officer Certificate) from any Guarantors, provide financial statements, on a consolidated basis, only for each Guarantor (not for both the Guarantor and its subsidiary).
- (b) As referred to in this RFQ, "**financial statements**" include the following:
  - (i) opinion letter (auditor's report);
  - (ii) balance sheet;
  - (iii) income statement;
  - (iv) statement of cash flow; and
  - (v) footnotes.
- (c) Submissions of financial statements must comply with the following requirements:
  - (i) **Audited Financial Statements:** Financial statements must be audited by a certified public accountant or equivalent for foreign entities. If audited financial statements are not available for any entity, provide unaudited financial statements for such entity, certified as true, correct and complete by its Chief Financial Officer or equivalent for that entity;
  - (ii) **GAAP/IFRS:** Financial statements must be prepared in accordance with generally accepted accounting principles used in the United States ("**GAAP**") or International Financial Reporting Standards ("**IFRS**"). If any entity provides financial statements that are prepared in accordance with principles other than GAAP or IFRS, a letter must be provided from a certified public accountant, or equivalent, discussing the areas of the financial statements that would be affected by a conversion to GAAP or IFRS. The Authority reserves the right to request clarification or additional information, as needed, in order to facilitate its review of those financial statements;
  - (iii) **New Entities:** If any entity required to submit financial statements is a newly formed entity and does not have independent financial statements, such entity shall expressly state that it is a newly formed entity and does not have independent financial statements meeting the requirements above and shall provide financial statements otherwise consistent with those required hereby for each of its shareholders/equity members;

- (iv) **SEC Filings:** If any entity for whom financial statements are submitted files reports with the US Securities and Exchange Commission, then such entity must provide electronic links to the most recently filed Forms 10-K, 10-Q and 8-K for all such reporting entities in lieu of hard copies;
- (v) **English language and US Dollars:** Information in the financial statements must be provided in the English language and specify all amounts in US Dollars. If financial statements are prepared in a language other than English, an English translation must be provided. If financial statements are converted from a foreign currency into US Dollars, the conversion method(s) must be explained in an attachment and must be reasonable. Translation at the average period rate for income statements and cashflow statements and period end rate for balance sheet statements shall be appropriate; and
- (vi) **Format:** In addition to all other electronic information requested in this RFQ, and in accordance with Section 5.3.1 (Manner of Delivery) of this RFQ, each Respondent must submit a copy of all financial statements electronically in searchable PDF format on a USB flash drive. Respondents must also submit standard unlocked and unprotected Microsoft Excel workbooks containing the balance sheet, income statement and statement of cash flows as disclosed in each set of the audited financial statements. For each entity providing financial statements, one worksheet should be used for each of the balance sheet, income statement and statement of cash flows, with figures for each of the three most recent years in separate columns, in chronological order, from left to right.

### Section 5.3 (Equity Funding Letter)

Equity Funding Letters will be used as supporting evidence of each Equity Member's capacity to fund its portion of the equity capital that may be required for the Project. Each Equity Funding Letter must comply with the following:

- (d) If the Equity Member is an investment fund or intends to source its equity commitment through an investment fund, then the letter must be signed by the fund's general partner(s), and at a minimum must include the following items:
  - (i) **Approval Process:** Provide an overview of the completed to-date and remaining approval process (along with an indicative schedule) required to commit to and fund the required equity commitment for the Project;
  - (ii) **Funding Vehicle:** All anticipated sources of equity investment for the Project investment (e.g., life insurance companies, private sector, public sector and labor-sponsored pension funds, private equity funds, minority-owned investment funds, construction companies and facilities management providers) and their anticipated involvement (approximate in percentage terms). Provide the name and structure (including details on the relationship to the Equity Member, if applicable) of the investment fund(s) that will ultimately carry this investment. Investment funds that have not achieved an initial closing will not be considered;
  - (iii) **Investment Capacity:** Provide supplemental information to the financial statements (as necessary) of the investment funds cited in paragraph (ii) to demonstrate the existence of existing and/or committed capital capacity for the Project, consistent with the likely total equity investment and the Equity Member's responsibility to provide the equity share percentage in the Respondent shown on Form GG2

(Financial Information – Financial Officer Certificate). Relevant information may include capital amounts already committed or subscribed, remaining commitments yet to be called and an anticipated call schedule, an allocation process for uncommitted funds, fundraising, etc., as well as whether a reserved allocation for the Project has been established; and

- (iv) **Investment Criteria:** Provide (i) an explanation of why the Project is consistent with the Equity Member's investment policy, goals and requirements, and an acknowledgement that based on a preliminary review, the Project is more than likely to meet the investment policy requirements for the Equity Member and (ii) confirmation that the Equity Member is able to hold its investment in the Project without sale, securitization or other transfer until a date no earlier than two years following substantial completion of the Project's construction.
- (e) If the Equity Member intends to fund its equity commitment through use of internal resources (e.g., a corporate entity supplying its own capital), the letter must be signed by the chief investment officer, the Chief Financial Officer or the chief executive officer, and at a minimum shall include the following items:
  - (i) **Approval Process:** Provide an overview of the approval process required to commit to and fund the required equity commitment. This section should include an identification and description of any required board, investment committee or other formal approvals needed, as well as an indicative schedule for securing those approvals and countries of the investment fund advisor;
  - (ii) **Sourcing Commitment:** Identify where and how the equity commitment (consistent with the likely Project total equity investment and the Equity Member's responsibility to provide the percentage shown on Form GG2 (Financial Information – Financial Officer Certificate)) will be sourced and provide a narrative description of how competing allocation and capacity issues are considered among several project opportunities the Equity Member pursues simultaneously;
  - (iii) **Investment Capacity:** Provide supplemental information to the financial statements (as necessary) of the Equity Member to demonstrate the existence of existing and/or committed capital capacity for the Project, consistent with the likely total equity investment and the Equity Member's responsibility to provide the percentage shown on Form GG2 (Financial Information – Financial Officer Certificate). Relevant information may include capital amounts already committed or subscribed, remaining commitments yet to be called and an anticipated call schedule, an allocation process for uncommitted funds, fundraising, etc., as well as whether a reserved allocation for the Project has been established; and
  - (iv) **Investment Criteria:** Provide (i) an explanation of why this Project is consistent with the Equity Member's investment policy, goals and requirements, and an acknowledgement that based on a preliminary review, the Project is more than likely to meet the investment policy requirements for the Equity Member, if any, and (ii) confirmation that the Equity Member is able to hold its investment in the Project without sale, securitization or other transfer until a date no earlier than two years following substantial completion of the Project's construction.

**Section 5.4 (Surety Letter and/or Letter of Credit)**

Letters stating that the Respondent has "unlimited" bonding capacity are not acceptable. The letter must specify any assumptions regarding the provision of support from a parent company of a Respondent team member. Any surety company providing a letter must be rated at least "A" or better and "Class VIII" or better by A.M. Best and Company, and must be listed on Treasury Department Circular 570. Evidence of the surety's rating shall be attached to the letter. The letter must specifically state that the surety has reviewed this RFQ and is familiar with the contractual structure and financial structure described in Section 2 (Project Contractual and Financial Structure; Project Scope), and has evaluated the Respondent's backlog and work-in-progress in determining its bonding capacity.

The requirement to provide the Surety Letter and the bond amounts referenced above are solely for the purposes of evaluating the Respondent's financial qualifications and should not be construed as an indication of the ultimate security requirements for the Project.

[End of Submittal Requirements for Volume 2]



# Appendix D Forms

# Form A - Submittal Letter

## 1.1 Instructions

Please generally see Appendix C (Submittal Requirements). In addition:

- (a) The Respondent Representative must sign the Submittal Letter on behalf of the Respondent.
- (b) An authorized representative of each Major Participant must sign the certification set out at the end of the Submittal Letter.
- (c) All signature blocks on this Form may be modified to properly reflect the authority of the person signing.

## 1.2 Submittal Letter

**Respondent Name:** [●]

[Respondent business address]

SOQ Submission Date: [●], 2016

CH2M

520 Main Avenue

Suite 601

Fargo, ND 58103

Attn: Bruce Spiller, P.E.

Re: Statement of Qualifications for Design, Build, Finance, Operate and Maintain Services for the Diversion Channel and Associated Infrastructure Work Package of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project

### 1.2.1 Introduction

[Respondent name] (the "**Respondent**") submits this statement of qualifications (this "**SOQ**") in response to the Request for Qualifications dated July 14, 2016 ([as amended by addenda [●]]<sup>11</sup> the "**RFQ**") issued by the Metro Flood Diversion Authority ("**Authority**"), in relation to the Project.

Capitalized terms not otherwise defined in this letter have the meanings given to them in the RFQ.

### 1.2.2 Enclosures

Enclosed are the following:

- (a) Volume 1 – General Submittals:
  - (i) Part 1 – Introduction and Administrative;

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<sup>11</sup> The "as amended . . ." language should only be included if there have been addenda to the RFQ which have made amendments. Otherwise, delete bracketed language.

- (ii) Part 2 – Organization and Management;
  - (iii) Part 3 – Technical Experience, Capabilities and Project Understanding;
  - (iv) Part 4 – Financial Capabilities and Experience; and
- (b) Volume 2 – Financial Information,  
as required to be submitted in accordance with the RFQ.

### 1.2.3 **Representations and Warranties; Acknowledgments and Agreements**

- (a) The Respondent represents and warrants to the Authority that it:
- (i) has read the RFQ [(including all addenda)]<sup>12</sup>; and
  - (ii) agrees to abide by the contents and terms of the RFQ and the statements and commitments in this SOQ.
- (b) The Respondent acknowledges receipt of, or access to, and understanding and consideration of:
- (i) all information and materials posted on the Aconex Procurement System<sup>13</sup>;
  - (ii) all written information and materials provided directly to it through the Authority Representative; and
  - (iii) the following [addenda and ]sets of RFQ Comments and answers: [*Respondent to list any addenda to the RFQ and sets of RFQ Comments and answers by dates and numbers prior to executing this Form A.*].
- (c) The Respondent acknowledges and understands that, under the terms of the RFQ, the Authority has reserved to itself a number of rights related to the selection of Proposers and the procurement of the Project, including as set out in Section 9 (Reserved Rights) of the RFQ.
- (d) The Respondent further understands that all costs and expenses incurred by it in preparing this SOQ and participating in the Procurement Process will be borne solely by the Respondent, other than as may be expressly provided for in the RFP.
- (e) The Respondent agrees that the Authority will not be responsible for any errors, omissions, inaccuracies or incomplete statements in this SOQ.
- (f) The Respondent acknowledges and agrees to the protest provisions (as set out in Section 8 (Protest Procedures) of the RFQ) and understands that such provisions limit the Respondent's rights and remedies to protest or challenge any aspect of the RFQ process or any determination or short-listing thereunder.
- (g) The Respondent and its Major Participants acknowledge and accept that, to ensure fair competition and preserve the integrity of the Procurement Process, the Authority may disqualify a Respondent, if such Respondent, any of its Major Participants or other team members, any of their respective Affiliates, or any other Person on behalf of any of the

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<sup>12</sup> Delete if not applicable.

<sup>13</sup> The Authority anticipates posting all addenda, certain questions and answers, and other relevant information and materials, on the Aconex Procurement System. If this is not the case, an addendum to this RFQ will modify this provision.

foregoing, submits a FOIA request to USACE seeking disclosure of information relating to the Procurement Process or the Project during the Restricted Contact Period.

#### 1.2.4 Respondent Representative

For the purpose of any future communications, the "**Respondent Representative**" for the Respondent is:

Name: [●]

Title: [●]<sup>14</sup>

Employer: [●]

Address: [●]

Phone (office): [●]

Phone (mobile): [●]

Email: [●]

Fax (if any): [●]

#### 1.2.5 Governing law

This letter will be governed by and construed in all respects according to the law of the State of North Dakota.

Under penalty of perjury, I hereby swear and affirm that I am authorized to act on behalf of the Respondent in signing and delivering this letter, and acknowledge that the Authority is relying on my representation to this effect.

Respondent: [*Respondent name*]

By: \_\_\_\_\_

Printed Name: [*Respondent Representative name*]

Title: Respondent Representative

#### 1.2.6 Major Participants

Under penalty of perjury, each of the undersigned, certifies on behalf of the entity for which he or she signs that:

- (a) the Respondent Representative named above is authorized by the relevant entity to sign this Submittal Letter on behalf of the Respondent; and
- (b) the representations, certifications, statements, disclosures, authorizations and commitments made, and information contained, in the SOQ (including, for the avoidance of doubt, in Form B (Certifications) and Form C (Legal Disclosures)) in respect of such entity have been authorized by such entity, and is or are correct, complete and not materially misleading; and
- (c) he or she is authorized to act on behalf of the entity for which he or she signs and acknowledges that the Authority is relying on his or her representation to this effect:<sup>15</sup>

[*Role of team member*]:<sup>16</sup>

<sup>14</sup> List individual's current job title, other than "Respondent Representative".

<sup>15</sup> Signature block below to be repeated for each Major Participant.

<sup>16</sup> For any Major Participant that is a joint venture, include signature by each joint venture member or partner.

*[insert entity name]*

By: \_\_\_\_\_

Printed Name: *[insert name]*

Title: *[insert title]*

[End of Form A]

# Form B - Certifications

## 2.1 Instructions

**2.1.1 Please generally see Appendix C (Submittal Requirements). In addition:**

- (a) In Section 2.2.1 of this Form B, the relevant experience of an entity is deemed to include the relevant experience of any entity to which it is a successor or assign (but only to the extent the experience is legally deemed to be that of the firm as a result of the relevant succession or assignment).
- (b) An authorized representative of each Major Participant is required to sign the certification set out at the end of the form of certifications in Section 2.2.2 of this Form B.
- (c) If a response to any question is limited by a confidentiality agreement, protective order or similar document, indicate this in the response.
- (d) The signature block on this Form B may be modified as needed to properly reflect the authority of the person signing.

**2.1.2 For the purposes of this Form B, "Affiliate" means an Affiliate that:**

- (a) within the past five years, has been engaged in business or investment in North America; or
- (b) has been involved, directly or indirectly, in the debt or equity financing, credit assistance, design, construction, management, operation or maintenance for any project listed in Form F1 (Technical Experience - Design and Engineering), Form F2 (Technical Experience - Construction), Form G1 (Equity Member Experience) or Form G2 (Equity Member Track Record).

## 2.2 Certifications

**Respondent Name:** *[Respondent to provide]*

**2.2.1 Summary of Certifications**

Table B1. Summary of Certifications

No	Entity providing a completed <u>Section 2.2.2 of Form B</u>	Role of such Entity <sup>17</sup>	Answered Yes to One or More Certifications	
			<input type="checkbox"/> Yes	<input type="checkbox"/> No
			<input type="checkbox"/> Yes	<input type="checkbox"/> No
			<input type="checkbox"/> Yes	<input type="checkbox"/> No
			<input type="checkbox"/> Yes	<input type="checkbox"/> No
			<input type="checkbox"/> Yes	<input type="checkbox"/> No
			<input type="checkbox"/> Yes	<input type="checkbox"/> No

<sup>17</sup> I.e., Equity Member, Lead Contractor, Lead Contractor Member, Lead Engineer, Lead Engineer Member or Guarantor.

**2.2.2 Certifications****Respondent Name:** *[Respondent to provide]***Name of Team Member:** *[Respondent to provide]*

- Role on Respondent:**
- Equity Member
  - Lead Contractor
  - Lead Contractor Member
  - Lead Engineer
  - Lead Engineer Member
  - Guarantor for *[Respondent to provide relevant entity]*

**Table B1. Certifications**

No.	Certification Questions	Yes	No
(1)	<p>Has the entity or any Affiliate or any current officer thereof, been indicted or convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, state or local) transaction; violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or material misrepresentations, or receiving stolen property, collusion, conspiracy or other contract-related crimes or violations or any other felony or serious misdemeanor within the past ten years?</p> <p><i>If yes, please explain, including the name of the relevant prosecuting agency, the applicable law(s) and the status of any appeal(s).</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<p>Has the entity or any Affiliate ever sought protection under any provision of any bankruptcy act, law or regulation in any jurisdiction within the past ten years?</p> <p><i>If yes, please explain, including identification of the relevant jurisdiction(s) and applicable laws, and the status or outcome of any resulting bankruptcy process.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
(3)	<p>Has the entity or any Affiliate ever been disqualified, removed, debarred, suspended or voluntarily excluded from performing work for the US Federal government, any US state or local government, or any foreign governmental entity within the past ten years?</p> <p><i>If yes, please explain, including the name of the relevant public agency, the date, grounds and results of any such action.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
(4)	<p>Has the entity or any Affiliate ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or other material misrepresentation to a public entity (Federal, state or local) within the past ten years?</p> <p><i>If yes, as to each such inquiry, state the name of the public agency, the date of the inquiry, the grounds on which the public agency based the inquiry, and the result of the inquiry.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
(5)	<p>Has any construction or project or operations and maintenance contract performed or managed by the entity or, to the knowledge of the undersigned, any Affiliate involved repeated or multiple failures to comply with safety rules, regulations or requirements within the past ten years?</p> <p><i>If yes, please explain, and provide owner contact information, including current telephone number and email addresses.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

**Table B1. Certifications**

No.	Certification Questions	Yes	No
(6)	Has the entity or any Affiliate been found, adjudicated or determined by any Federal or state court or agency (including OSHA) to have violated any laws or regulations relating to worker safety within the past ten years? <i>If yes, please explain.</i>	<input type="checkbox"/>	<input type="checkbox"/>
(7)	Has the entity or any Affiliate been found, adjudicated or determined by any Federal or state court or agency (including the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs) to have violated any law or executive order relating to employment discrimination or affirmative action within the past ten years (including Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000 et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar state law)? <i>If yes, please explain.</i>	<input type="checkbox"/>	<input type="checkbox"/>
(8)	Has the entity or any Affiliate been found, adjudicated or determined by any Federal or state court or agency to have violated or failed to comply with any law or regulation of the United States or any state within the past ten years governing prevailing wages (including to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation? <i>If yes, please explain.</i>	<input type="checkbox"/>	<input type="checkbox"/>
(9)	Has the entity or any Affiliate been found, adjudicated or determined by any Federal or state court or agency (including the Environmental Protection Agency) to have violated any laws or regulations relating to protecting the environment? <i>If yes, please explain.</i>	<input type="checkbox"/>	<input type="checkbox"/>
(10)	With respect to each of Questions 1-9 above, if not previously answered or included in a prior response on this Form, is any notice, warning, investigation, proceeding, claim, matter, suit, indictment, etc. currently pending against the entity that could (assuming subsequent necessary actions are taken) result in the entity being found liable, guilty or in violation of any of laws or regulations referenced in Questions 1-9 above and/or being subject to debarment, suspension, removal or disqualification by the Federal government, any state or local government, or any foreign governmental entity? <i>If yes, please explain and submit the information requested as to such similar items set out in Questions 1-9 above.</i>	<input type="checkbox"/>	<input type="checkbox"/>

Under penalty of perjury, the undersigned certifies on behalf of the entity for which he or she signs that each of the foregoing representations, certifications, statements and disclosures is correct, complete and not materially misleading:

**[Role of team member]:** *[insert entity name]*

By: \_\_\_\_\_

Printed Name: *[insert name]*

Title: *[insert title]*

[End of Form B]



# Form C - Legal Disclosures

## 3.1 Instructions

3.1.1 Please generally see Appendix C (Submittal Requirements). In addition:

- (a) For purposes of this Form C, the relevant experience of an entity is deemed to include experience on any Reference Project in which its level of involvement was at least equivalent to the relevant threshold set out Form F (Technical Experience).
- (b) For the relevant project owner's ("**Owner**") or contract counterparty's ("**Counterparty**") contact information, please submit a current name, title, phone number and email address of an individual employed by the Owner or Counterparty involved in the relevant dispute, breach of contract or termination.
- (c) If the relevant circumstances described in either question do not apply to any of the Respondent's Major Participants, or any Affiliate of any of them, replace the relevant table with "None applicable".

3.1.2 For the purposes of this Form C, "**Affiliate**" means an Affiliate that:

- (a) within the past five years, has been engaged in business or investment in North America; or
- (b) has been involved, directly or indirectly, in the debt or equity financing, credit assistance, design, construction, management, operation or maintenance for any project listed in Form F1 (Technical Experience - Design and Engineering), Form F2 (Technical Experience - Construction), Form G1 (Equity Member Experience) or Form G2 (Equity Member Track Record).

## 3.2 Summary of Legal Liabilities and Proceedings

**Respondent Name:** *[Respondent to provide]*

List and briefly describe all instances (including any resolution) during the last ten years involving Reference Projects, or any other project with a contract price of \$250 million or more, in relation to which any Major Participant or any Affiliate of any of them:

- (a) was determined by a court of law or in an arbitration proceeding, a dispute review board proceeding or any other dispute resolution proceeding to be liable for a material breach of contract; or
- (b) had a contract terminated for cause; or
- (c) was involved in a claim or dispute with the project owner(s) (or any public-private partnership project company, concessionaire, developer or the equivalent) in an amount in excess of \$5,000,000.

**Table C1. Response**

<b><i>[Role of Entity in Respondent]: [Entity Name]</i></b>	
(1)	Description:
	Owner's or Counterparty's Representative:
<b><i>[Role of Entity in Respondent]: [Entity Name]</i></b>	
(2)	Description:
	Owner's or Counterparty's Representative:

[End of Form C]

# Form D - Confidential Information Index

## 4.1 Instructions

- 4.1.1 Please generally see Section 7.6 (Confidential Information). In addition, include a brief explanation of the relevant exemption under the Public Disclosure Laws for each item.
- 4.1.2 Note that the Authority will not accept blanket designations that do not clearly identify information and materials that are "CONFIDENTIAL". The Authority may, in its sole discretion, and subject to compliance with the Public Disclosure Laws and other applicable law, treat the whole of the relevant section(s)/document(s) that are subject to such a blanket designation as subject to disclosure pursuant to the Public Disclosure Laws.

## 4.2 Confidential Information

**Respondent's Name:** *[Respondent to provide]*

Table D1. Confidential Information Index

No.	SOQ Heading(s)	SOQ Volume and Section(s)	SOQ Page(s)	Relevant Public Disclosure Law Exemption(s)

[End of Form D]

# Form E - Major Participant Information

## 5.1 Instructions

Please generally see Appendix C (Submittal Requirements). In addition, if information requested in relation to an entity is not relevant to such entity, state "Not Applicable".

## 5.2 Major Participant Information

**Respondent Name:** *[Respondent to provide]*

**Table E1. Team Member and Role**

**(1) Name of Team Member:** *[Respondent to provide]*

- (2) Role:**
- Equity Member
  - Lead Contractor
  - Lead Contractor Member
  - Lead Engineer
  - Lead Engineer Member
  - Guarantor for *[Respondent to provide]*

**Table E2. Legal Information**

- (1) Type of Legal Entity:**
- Corporation
  - Limited liability company
  - Joint venture
  - Partnership
  - Other: *[Respondent to provide]*

If the entity is a limited liability company, joint venture or partnership, indicate the name of each member firm in the space below. Complete a separate Form E (Major Participant Information) for each member firm and include it with this SOQ.

Names of member firms:

1. \_\_\_\_\_
2. \_\_\_\_\_

**(2) Year Established:** *[Respondent to provide]*

**(3) Country (and where applicable State/Province) of Organization or Formation:** *[Respondent to provide]*

**Table E3. Corporate Information**

---

**(1) Business Address:**

---

**(2) Headquarters:**

---

**(3) Office Performing  
Work:**

---

**(4) Contact  
Telephone Number:**

---

**(5) Contact Person:**

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**AUTHORIZED REPRESENTATIVE:**

Under penalty of perjury, I certify that the foregoing is true and correct, and that I am the authorized representative of the entity to which this form relates:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

[End of Form E]

# Form F - Technical Experience

Form F1    Technical Experience - Design and  
                 Engineering

Form F2    Technical Experience - Construction

## 6.1 Form F1. Technical Experience - Design and Engineering

Table F1. Experience of the Lead Engineer and Lead Engineer Members in Design/Engineering on Reference Projects <sup>18</sup>									
Lead Engineer/Lead Engineer Member	Client Organization and Contact Name, Email and Phone Number	Project Name and Location <sup>19 20</sup>	Project Description <sup>21</sup>	Initial and Final Project Cost <sup>22</sup>	Construction Start Date	Scheduled and Actual Completion Dates	Project Type (D-B-B, DB, DBF, DBFOM)	Level of Lead Engineer's/Lead Engineer Member's Participation <sup>23</sup>	Role of the Lead Engineer/Lead Engineer Member on the Project <sup>24</sup>

<sup>18</sup> Limit the information provided with respect to projects/contracts for design firms that were alternative delivery (e.g., design-build) to only design/engineering services, rather than including construction services.

<sup>19</sup> For the Lead Engineer or each Lead Engineer Member (as applicable), provide information for two to five projects on which such party has worked over the past 10 years. The page limit for this Form F1 is two pages. Provide additional information on five selected projects in the Technical Narrative Attachment to this Form F1. See the requirements for Part 3 of Volume 1 in Appendix C (Submittal Requirements).

<sup>20</sup> Only include projects on which the Lead Engineer/Lead Engineer Member was at least 30% responsible for the design and engineering work.

<sup>21</sup> The description should give an overview of the project.

<sup>22</sup> Provide the total construction cost budgeted and the total completed construction cost or the current estimate at completion (EAC). Respondents should specify amounts in units of 1000 US Dollars or where appropriate Respondents may make references to a different base currency, provided that any such amounts are also specified in US Dollars (e.g., £1,000,000 (\$1,400,000)) at the rate of conversion appropriate for the project being referenced.

<sup>23</sup> Quantify the Lead Engineer/Lead Engineer Member's participation in monetary terms and as percentage of the design and engineering work.

<sup>24</sup> Provide a brief summary of the role that the Lead Engineer/Lead Engineer Member played in the listed project (scope of work).

## 6.2 Form F2. Technical Experience - Construction

Table F2. Experience of the Lead Contractor and Lead Contractor Members in Construction on Reference Projects <sup>25</sup>									
Lead Contractor/ Lead Contractor Member	Client Organization and Contact Name, Email and Phone Number	Project Name and Location <sup>26 27</sup>	Project Description <sup>28</sup>	Initial and Final Project Cost <sup>29</sup>	Construction Start Date	Scheduled and Actual Completion Dates	Project Type (D-B-B, DB, DBF, DBFO&M)	Level of Lead Contractor's/Lead Contractor Member's Participation <sup>30</sup>	Role of the Lead Contractor/Lead Contractor Member on the Project <sup>31</sup>

[End of Form F]

<sup>25</sup> Limit the information provided with respect to projects/contracts for construction firms that were alternative delivery (e.g., design-build) to only construction services, rather than including design/engineering services.

<sup>26</sup> For the Lead Contractor or each Lead Contractor Member (as applicable), provide information for two to five projects on which such party has worked over the past 10 years. The page limit for this Form F2 is two pages. Provide additional information on five selected projects in the Technical Narrative Attachment to this Form F2. See the requirements for Part 3 of Volume 1 in Appendix C (Submittal Requirements).

<sup>27</sup> Only include projects on which the Lead Contractor/Lead Contractor Member was at least 30% responsible for the construction work.

<sup>28</sup> The description should give an overview of the project.

<sup>29</sup> Provide the total construction cost budgeted and the total completed construction cost or the current estimate at completion (EAC). Respondents should specify amounts in units of 1000 US Dollars or where appropriate Respondents may make references to a different base currency, provided that any such amounts are also specified in US Dollars (e.g., £1,000,000 (\$1,400,000)) at the rate of conversion appropriate for the project being referenced.

<sup>30</sup> Quantify the Lead Contractor/Lead Contractor Member's participation in monetary terms and as a percentage of the construction work.

<sup>31</sup> Provide a brief summary of the role that the Lead Contractor/Lead Contractor Member played in the listed project (scope of work).



## Form G - Financial Information

Form G1. Financial Information - Equity Member Experience

Form G2. Financial Information - Equity Member Track Record

Form GG1. Financial Information - Information Regarding Equity Members

Form GG2. Financial Information - Financial Officer Certificate

## 7.1 Form G1. Financial Information - Equity Member Experience

Table G1. Equity Member Experience								
Equity Member	Project Name and Location <sup>32</sup> 33	Project Size <sup>34</sup>	Debt Amount & Source <sup>35 36</sup>	Date of Financial Close	Construction Start Date	Percentage of Works Completed as of July 2016	Level of Equity Member's Participation <sup>37</sup>	Type of Payment Mechanism <sup>38</sup>

<sup>32</sup> Provide information for a maximum of six projects in which any Equity Member has been involved over the past seven years. If any Equity Member is a fund, the experience of other funds and vehicles under common management may also be included.

<sup>33</sup> Only include projects in which an Equity Member held at least 20% equity ownership.

<sup>34</sup> Provide the total amount of the project financed under a private finance / project finance scheme (i.e., do not include public debt, public equity or capital grants).

<sup>35</sup> Specify amounts in units of 1000 US Dollars and identify any exchange rates applied to convert amounts in other currencies using the exchange rate prevailing as of July 2016, including the benchmark on which the exchange rate is based.

<sup>36</sup> Specify the type of debt in brackets (e.g., TIFIA, bonds unwrapped or wrapped, bank debt).

<sup>37</sup> Specify the amount of equity invested by the Equity Member as a shareholder in US Dollars. The equity investment may take the form of either (i) shareholders' equity or (ii) shareholder subordinated debt. Separately specify the total amount of all private shareholders' equity investments for the listed project in US Dollars and the percentage that the Equity Member's equity investment bears to that total.

<sup>38</sup> Specify the type of payment mechanism used for the project (e.g., availability payment, revenue concession, or combinations of these mechanisms).

## 7.2 Form G2. Financial Information - Equity Member Track Record

Table G2. Equity Member Track Record <sup>39</sup>			
	North American Procurements in Past Five Years	Global Portfolio of Investments in Projects with Public Owners in Past Five Years	Identification & Explanation of Changes in Equity Participation
Notes [Respondent to delete in SOQ submission]	<p>(i) Specify the number of times that the Equity Member has been either short-listed in a public-sector procurement involving private financing, or otherwise invited to submit a proposal (individually or as a member of a team), for a North American project involving more than \$250 million of capital works in the last five years;</p> <p>(ii) with respect to the procurements cited pursuant to clause (i), specify the number projects that have not yet required final proposals to be submitted; and</p> <p>(iii) with respect to the procurements cited pursuant to clause (i), specify the number of times that the Equity Member (individually or as a member of a team) has submitted a compliant, final proposal as an equity investor.</p>	Specify the number of times that the Equity Member was an equity investor in a project with public sector owners that involved more than \$250 million of capital works at the time of financial close.	Identify the project name and public-sector owner of those procurements listed in column 2 (North American Procurements in Past Five Years) and provide a brief explanation for not submitting a compliant final proposal or for not remaining as an equity investor in a team that submitted a compliant final proposal (as applicable). Explanations may be attached in a separate sheet if necessary.
<b>Equity Member 1</b>			
<b>Equity Member 2</b>			

<sup>39</sup> Adjust the number of rows as applicable to list the track record for each Equity Member. If any Equity Member is an investment fund, include the track record of funds under common management.

## 7.3 Form GG1. Financial Information - Information Regarding Equity Members

### 7.3.1 Instructions

Please generally see Appendix C (Submittal Requirements). In addition:

- (a) If an Equity Member identified in Table GG1 is a joint venture, consortium, partnership or limited liability company, complete a separate row for each member firm of the joint venture, consortium, partnership or limited liability company.
- (b) Indicate whether an Equity Member is also the Lead Contractor, a Lead Contractor Member, the Lead Engineer or a Lead Engineer Member.

Table GG1. Information Regarding Equity Members			
Equity Member name, address, legal entity type and state of organization	Planned equity share percentage in the Respondent (sum total should be 100%)	Guarantor name and address (if applicable)	Other roles (if applicable) (i.e., Lead Contractor, Lead Contractor Member, Lead Engineer, Lead Engineer Member)

## 7.4 Form GG2. Financial Information - Financial Officer Certificate

### 7.4.1 Instructions

Please generally see Appendix C (Submittal Requirements).

### 7.4.2 Financial Officer's Certificate

I, [Name], the [Title]<sup>40</sup> of [Name of Equity Member, Lead Contractor or Lead Contractor Member] (the "Company") [and the [Title] of [Name of Guarantor Entity] (the "Guarantor")]<sup>41</sup>, do hereby certify as of [Date]<sup>42</sup> that:

- (a) This Certificate is being executed and delivered in connection with the Statement of Qualifications submitted by [Respondent] (the "SOQ") in response to the Request for Qualifications to Design, Build, Finance, Operate and Maintain the Diversion Channel and Associated Infrastructure Work Package of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the "Project") dated July 14, 2016 (the "RFQ") issued by the Metro Flood Diversion Authority ("Authority").
- (b) As to the matters set forth below, I either have personal knowledge or have obtained information from officers or employees of the Company [and the Guarantor] in whom I have confidence and whose duties require them to have personal knowledge thereof. I make the certifications herein to the Authority pursuant to the requirements of Appendix C (Submittal Requirements) of the RFQ with the intent and understanding that they will be relied upon by the Authority as a basis for the evaluation of the SOQ as contemplated by the RFQ.
- (c) **[Guarantor Support:** It is the intention of the Guarantor to support the Company with the financial and human resources, and other support needed by the Company, to successfully satisfy its obligations in respect of the Project if the Respondent were to become the developer.]<sup>43</sup>
- (d) **Audited Financial Statements:** The audited financial statements provided by [the Company] [the Guarantor] in the SOQ pursuant to the requirements for Volume 2 in Appendix C (Submittal Requirements) of the RFQ for the fiscal years ended [●], [●] and [●] are complete and correct copies thereof. Where [the Company] [the Guarantor] has provided unaudited financial results, such financial results present fairly, in all material respects, the financial position and results of operations and cash flows of [the Company] [the Guarantor and its consolidated subsidiaries, including the Company,] as of such dates

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<sup>40</sup> This Certificate should be provided by the Company's Chief Financial Officer or other similar financial officer. If the Company does not have this type of corporate officer internally and will rely on the financial officer of an Affiliated or unAffiliated entity, such as an investment advisor or financial manager, both the financial officer delivering this certificate and a duly authorized signatory of the Company must sign this certificate.

<sup>41</sup> Each Equity Member, the Lead Contractor and each Lead Contractor Member of the Respondent should provide its own separate Certificate. However, if any such company is proposing a Guarantor, only one consolidated Certificate is required for the Guarantor and its guaranteed entity. If a company has no Guarantor, all references to "Guarantor" should be deleted from this Certificate.

<sup>42</sup> The date must not be earlier than seven (7) calendar days prior to the SOQ Due Date.

<sup>43</sup> Delete if there is no Guarantor and this is not applicable.

and for such periods. [The Company] [The Guarantor] has no material contingent liabilities or unusual forward or long-term commitments not disclosed therein.<sup>44</sup>

- (e) **Off-Balance Sheet Liabilities:** The [Company][Guarantor] does not have any material off-balance sheet liabilities [other than the following: [●]].
- (f) **Financial Information Summary:** Attached hereto as Annex A is a completed financial information summary relating to [the Company] [the Guarantor and its consolidated subsidiaries, including the Company], which has been prepared based on the information from its audited financial statements and other sources, if not included in its audited financial statements. All the information provided in the attached Annex A is complete and correct to the best of my knowledge.
- (g) **Bankruptcy/Insolvency Proceedings:** [There has been no Insolvency Event relating to the Company [or Guarantor] or any of its Affiliates which has occurred within the most recent three fiscal years (whether or not such proceeding was ultimately dismissed).] [Attached hereto as Annex B is a detailed description of all Insolvency Events relating to [Entity Name].]<sup>45</sup>

For the purposes of this certification, "**Insolvency Event**" means any voluntary or involuntary bankruptcy, insolvency, liquidation, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution or petition for winding-up or similar proceeding, under any applicable law, in any jurisdiction.

- (h) **Material Changes in Financial Condition:** [No material change in the financial condition of the Company [or Guarantor] has occurred or is projected to occur, as applicable:
- (i) within the most recently completed three fiscal years that is not reflected in its audited financial statements;
- (ii) since the date of its audited financial statements for its most recently completed fiscal year; or
- (iii) during the next fiscal quarter following the date of the SOQ.]

[Attached hereto as Annex C is a detailed description of material changes in the financial condition of [the Company][the Guarantor].]<sup>46</sup>

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate as of the date first written above.

\_\_\_\_\_

Name:

Title:

<sup>44</sup> Submit an RFQ Comment to the Authority outlining proposed information that would provide similar support to audited financial statements if there are any entities that do not prepare audited financial statements, to seek confirmation from the Authority that it is appropriate.

<sup>45</sup> Complete the appropriate certification and delete the sentence that is not applicable. Do not provide an Annex B if there is no Insolvency Event to disclose.

<sup>46</sup> Complete the appropriate certification and delete the sentence that is not applicable. Do not provide an Annex C if there is no material change in financial condition to disclose. Further instructions regarding material changes are provided in Annex C.

### Annex A to Financial Officer Certificate: Financial Information Summary<sup>47</sup>

Entity Name: \_\_\_\_\_

Role of Entity in Respondent: \_\_\_\_\_

FY End	Total Revenues	Pre-Tax Profit	Fixed Assets	Total Assets <sup>48</sup>	Contingent Liabilities	Long-Term Liabilities	Short-Term Liabilities	Net Assets	Tangible Net Worth	Long-Term Gearing <sup>49</sup>	Local Currency and FX Rate

Rating Agency <sup>50</sup>	Rating
[Rating agency name]	
[Debt of the [Company][Guarantor] is not rated by any major rating agency.]	
[[Company][Guarantor] has no debt]	

<sup>47</sup> Specify amounts in units of 100,000 US Dollars and identify any exchange rates applied to convert amounts in other currencies using the exchange rate prevailing as of July 2016, including the benchmark on which the exchange rate is based.

<sup>48</sup> Exclude goodwill and intangibles.

<sup>49</sup> Calculate Long-Term Gearing as Long-Term Liabilities / Net Assets.

<sup>50</sup> If applicable, each Equity Member, Lead Contractor, Lead Contractor Member and Guarantor, if any, should provide a copy of their most recent credit report up to the SOQ Due Date.

## Annex B to Financial Officer Certificate: Insolvency Event

***[Relevant Respondent entity to provide details]***



## Annex C to Financial Officer Certificate: Material Change in Financial Condition

### ***[Relevant Respondent entity to provide details]***

#### **7.4.3 Instructions**

If applicable, this Annex C should include the following details regarding material changes in the Company or Guarantor's financial condition:

- (a) a description of each material change, actual and projected, and any related changes or disruptions in executive management;
- (b) actual and projected impacts on the affected entity's organizational and financial capacity and its ability to remain engaged in this procurement and submit a responsive proposal; and
- (c) a detailed description of any other projected impacts, positive and negative, of the changes experienced and anticipated to be experienced in the periods ahead, including the likelihood that the circumstances of the change or impacts thereof will continue during the Project term.

Estimates of the impact on revenues, expenses and the change in equity must be provided separately for each material change. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes. Where a material change will have a negative financial impact, the affected entity must describe measures that would be undertaken to insulate the Project from any recent material changes and those currently in progress or reasonably anticipated in the future. If its financial statements indicate that expenses and losses exceed income in each of the three completed fiscal years (even if there has not been a material change), the affected entity must describe measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

Set forth below is a list of examples of what the Authority considers to be a material change in financial condition:

- (a) a change in the tangible net worth of 10% or more of net assets;
- (b) a sale, merger or acquisition exceeding 10% of the value of net assets prior to the sale, merger or acquisition which in any way involves the affected entity or its parent company or Guarantor;
- (c) a change in credit rating for the affected entity or its parent company or Guarantor;
- (d) inability to meet material conditions of loan or debt covenants by the affected entity or its parent company or Guarantor that has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations or additional credit support from shareholders or other third parties;
- (e) in the current and three most recently completed fiscal years, the affected entity or its parent company or Guarantor either:
  - (i) incurred a net operating loss;

- (ii) sustained charges exceeding 5% of the then net assets due to claims, changes in accounting, write-offs or business restructuring; or
- (iii) implemented a restructuring/reduction in labor force exceeding 5% of employees or which involved the disposition of assets exceeding 10% of the then net assets); and
- (f) other events known to the affected entity which represent a material change in financial condition over the past three years, or which may be pending for the next reporting period.

The Authority may, in its sole discretion, disqualify any Respondent who fails to disclose a prior or pending material change in financial condition.

[End of Form G]

# Form H - Safety Performance Questionnaire

## 8.1 Instructions

Please generally see Appendix C (Submittal Requirements). In addition, if information requested in relation to an entity is not relevant to such entity, state "Not Applicable".

## 8.2 Safety Performance Questionnaire

<b>FORM H - SAFETY PERFORMANCE QUESTIONNAIRE</b>			
<b>Respondent Name:</b> <span style="float: right;"><i>[Respondent to provide]</i></span>			
<b>(1) Name of Team Member:</b>			
<b>(2) Role:</b>			
	<input type="checkbox"/>	Lead Contractor	
	<input type="checkbox"/>	Lead Contractor Member	
1. Provide the number of injuries and illnesses for the last three years:			
<b><u>YEAR</u></b>	<b>2015</b>	<b>2014</b>	<b>2013</b>
a. Number of Fatalities	_____	_____	_____
b. Lost Work Day Incident Rate <sup>1</sup>	_____	_____	_____
c. OSHA Recordable Incident Rate <sup>2</sup>	_____	_____	_____
d. Number of Hours Worked	_____	_____	_____
e. Total Number of Employees on your Payroll	_____	_____	_____
<sup>1</sup> Use the following formula for calculating the <b>Lost Work Day Incident Rate:</b> = $\frac{\text{Number of Lost Work Day Cases} \times 200,000}{\text{Number of Hours Worked}}$			
<sup>2</sup> Use the following formula for calculating the <b>OSHA Recordable Incident Rate:</b> = $\frac{\text{Number of OSHA Recordable Cases} \times 200,000}{\text{Number of Hours Worked}}$			
2. List your company's Worker's Compensation ("WC") Experience Modification Rate ("EMR") for the last three years:			
<b>Year</b>	<b>EMR</b>		
a. 2015	_____		
b. 2014	_____		
c. 2013	_____		
d. Provide a letter from your WC insurance carrier certifying the above EMRs.			

**FORM H - SAFETY PERFORMANCE QUESTIONNAIRE**

3. Has your company received an OSHA (or State OSHA) citation within the last five years? Yes \_\_\_ No \_\_\_

If yes, provide the following information:

- a. The number and type of violations: \_\_\_\_\_
- b. The penalties assessed by OSHA: \_\_\_\_\_
- c. Were the citations contested/vacated? \_\_\_\_\_

4. Have there been any incidents or trends in 2016 in relation to your Company's safety performance that are of particular significance or that diverge materially from the information provided in this Form H for prior years?

[End of Form H]

# Form I - RFQ Comments Form

**Respondent Name:** *[Respondent to provide]*

**Date:** *[Respondent to provide]*

Table I1. RFQ Comment Submission

No.	Issue	RFQ Section	RFQ Comments

[End of Form I]