

FLOOD DIVERSION AUTHORITY
FINANCE COMMITTEE
AGENDA FOR WEDNESDAY, JANUARY 11, 2017

Fargo City Commission Chambers
4:00 PM

1. Call to order
2. Approval of the minutes from the previous meeting Pages 2-5
3. Approval of bills Pages 6-10
4. Financial report (Costin) Pages 11-23
5. Recommended contracting action (Robert Cowen) Pages 24-30
6. CH2M contract extension (John Shockley)
 - a. Master Services Agreement Pages 31-62
 - b. Task Order Pages 63-
7. Other business
8. Next meeting—January 25, 2017
9. Adjournment

cc: Local Media
Flood Diversion Board of Authority
CH2M
AE2S

**FLOOD DIVERSION FINANCE COMMITTEE
DECEMBER 14, 2016—4:00 PM**

1. MEETING TO ORDER

A meeting of the Flood Diversion Finance Committee was held on Wednesday, December 14, 2016, at 4:00 PM in the Fargo City Commission Chambers, Fargo City Hall, with the following present: Cass County Joint Water Resource District Chairman Mark Brodshaug; Fargo Finance Director Kent Costin; Fargo City Commissioner Tony Gehrig; Fargo City Commissioner Tony Grindberg; Clay County Auditor/Treasurer Lori Johnson; Fargo City Mayor Tim Mahoney; Cass County Auditor Mike Montplaisir; Moorhead City Councilwoman Nancy Otto; Fargo City Assistant Administrator Mike Redlinger; Cass County Commissioner Rick Steen; Cass County Commission Representative Darrell Vanyo; and Moorhead Finance Director Wanda Wagner.

John Shockley, Ohnstad Twichell; Eric Dodds, AE2S; and Robert Cowen, CH2M were also present.

2. APPROVAL OF MINUTES FROM PREVIOUS MEETING

MOTION, passed

Mr. Brodshaug moved and Mr. Gehrig seconded to approve the minutes from the November 29, 2016, meeting as presented.

Motion carried.

3. APPROVAL OF BILLS

Mr. Costin said bills received for the month total around \$2.3 million.

Mr. Costin said a letter was included with a bill from Dorsey & Whitney LLP stating that their rates have increased. Mr. Redlinger said the letter was a disclosure letter, and similar letters have been received in the past.

MOTION, passed

Mr. Montplaisir moved and Mr. Steen seconded to approve the bills in the amount of \$2,340,976.01 and to forward them to the Metro Flood Diversion Authority. On roll call vote, the motion carried unanimously.

Dr. Mahoney arrived to the meeting.

4. FINANCIAL UPDATE

Mr. Costin reviewed the financial statements for November. About \$154 million has been expended from the FY2016 budget, and the total disbursed for the project to date is \$325,666,441.

Mr. Costin said the Diversion Authority's net position is about \$78 million, which includes a cash balance of \$75.9 million.

Mr. Steen asked if the Proceeds from Oxbow Lot Sales line item on the Statement of Net Position is an anticipated asset or money already received. Mr. Costin said it is anticipated future proceeds.

MOTION, passed

Mr. Vanyo moved and Ms. Otto seconded to approve the financial statement for November as presented. On roll call vote, the motion carried unanimously.

5. OXBOW LOT SALES

Mr. Brodshaug said there has been minimal change to the Oxbow Lot Sales Report. The City of Oxbow is postponing the release of additional lots until February or March of next year.

6. PROGRAM MANAGEMENT CONSULTANT REPORT

Robert Cowen of CH2M was present to discuss the Program Management Consultant Report.

Mr. Cowen explained discrepancies between the monthly financial statement and the overall program summary.

Mr. Cowen said about \$72 million remains in the FY2016 budget, which will carry over into the FY2017 budget.

Mr. Grindberg asked if a favorable bid recently received by the US Army Corps of Engineers (USACE) for a portion of the project will directly benefit the Diversion Authority. Attorney John Shockley said USACE is responsible for up to \$450 million of project costs. If bids continue to come back lower than anticipated and the entire amount pledged by USACE is not spent, a portion of the local sponsor match may come back to the Diversion Authority.

7. RECOMMENDED CONTRACTING ACTIONS

Ty Smith of CH2M reviewed the following Change Orders:

Construction Change Orders

- Industrial Builders, Inc. Change Order 5 (2nd Street North, North of Pump Station)—temporary striping and quantity balancing in the amount of \$127,282.10.
- Industrial Builders, Inc. Change Order 15 (2nd Street North, South of Pump Station)—gate contract transfer, quantity balancing, and differing subsurface conditions for a deduction in the amount of \$416,726.77.
- Hough, Inc. Change Order 2 (2nd Street South Levee and Floodwall)—light base removal and time for unsuitable material excavation and stockpiling in the amount of \$650.00.

MOTION, passed

Mr. Vanyo moved and Mr. Steen seconded to approve the appropriation of funds for the outlined Change Orders, and to forward the recommendations to the Metro Flood Diversion Authority. On roll call vote, the motion carried unanimously.

8. LAND ACQUISITION DIRECTIVES

Eric Dodds of AE2S said there are five opportunistic property acquisitions up for approval. All properties are within or adjacent to the upstage staging area.

MOTION, passed

Mr. Montplaisir moved and Ms. Otto seconded to approve Land Acquisition Directive LAD-OPP-01 REV-01 as presented. Discussion: Mr. Gehrig asked if there are appraised values for the properties. Mr. Dodds said this approval will initiate the appraisal process. On roll call vote, the motion carried unanimously.

9. ERNST & YOUNG SCOPE OF SERVICES

Mr. Shockley presented the Ernst & Young contract for calendar year 2017, which is included in the approved FY2017 budget. Once the RFP process has reached financial close, the role of Ernst & Young will be greatly diminished.

MOTION, passed

Mr. Redlinger moved and Ms. Otto seconded to approve Ernst & Young Infrastructure Advisors, LLC Statement of Work No. 3 as presented, and to forward the recommendation to the Metro Flood Diversion Authority. On roll call vote, the motion carried unanimously.

10. RESOLUTION AUTHORIZING RELEASE OF RFP

Mr. Shockley presented the document “Resolution Establishing Procedures and Protocols for the Request for Proposals Phase of the P3 Procurement and Approving, Issuing, and Authorizing Dissemination of the Request for Proposals 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”.

Mr. Steen asked who will comprise the Evaluation Team as described in Article VIII. Mr. Shockley said the team will consist of representatives from each of the member entities. Consultants and advisors will also be available for advice, but the aforementioned team will ultimately make the decisions.

MOTION, passed

Dr. Mahoney moved and Ms. Otto seconded to approve “Resolution Establishing Procedures and Protocols for the Request for Proposals Phase of the P3 Procurement and Approving, Issuing, and Authorizing Dissemination of the Request for Proposals 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” as presented, and to forward the recommendation to the Metro Flood Diversion Authority. Discussion: Mr. Costin thanked Mr. Shockley for the extreme leadership and excellent work he has provided thus far. On roll call vote, the motion carried unanimously.

Dr. Mahoney and Mr. Gehrig left for the remainder of the meeting.

11. APPROPRIATIONS AND FINANCING WHITEPAPER

Mr. Shockley presented the Appropriations and Financing Whitepaper document, which is not a contract or agreement, but the basis of the financial plan for the diversion project.

The document will be released to the P3 proposers to demonstrate the Metro Flood Diversion Authority's ability to finance the project, and it will continue to evolve as the details of future financing aspects emerge.

MOTION, passed

Mr. Vanyo moved and Mr. Steen seconded to approve the Metro Flood Diversion Authority Fargo-Moorhead Metropolitan Area Flood Risk Management Project Appropriations and Financing Whitepaper, and to forward the recommendation to the Metro Flood Diversion Authority. Discussion: Mr. Brodshaug asked for clarification on language referencing improvement warrants. Mr. Shockley said the language provides security to the developer that the Diversion Authority has the funding to make project payments. Ms. Wagner asked why sales tax revenue bonds were included as a permanent financing option. Mr. Shockley said the inclusion of sales tax bonds provides flexibility in financing and also aligns with the wishes of the Diversion Authority that funding from the improvement district be used as little as possible. On roll call vote, the motion carried unanimously.

12. CH2M CONTRACT AMENDMENTS

Mr. Vanyo said there are four contracting amendments to be approved to extend agreements with CH2M from December 16, 2016, to January 13, 2017.

MOTION, passed

Mr. Redlinger moved and Ms. Otto seconded to approve Amendment No. 2 to CH2M HILL Task Order No. 6; Amendment No. 2 to CH2M HILL Task Order No. 7; Amendment No. 10 to CH2M HILL Task Order No. 1; and Amendment No. 2 to CH2M HILL Task Order No. 3, and to forward the recommendations to the Metro Flood Diversion Authority. On roll call vote, the motion carried unanimously.

13. NEXT MEETING

The next meeting will be held on January 11th, at 4:00 PM.

14. ADJOURNMENT

MOTION, passed

On motion by Mr. Steen, seconded by Mr. Montplaisir and all in favor, the meeting was adjourned at 4:57 PM.

Finance Committee Bills through January 4, 2017

Vendor	Description		
Springsted	Professional Services through December 19, 2016	\$	25,064.00
Ohnstad Twichell, P.C.	Professional Services Rendered	\$	107,600.50
Cass County Joint Water Resource District	Metro Flood Diversion Project bills	\$	2,976,309.42
			<hr/>
Total Bills Received through January 4, 2017			<hr/> <u>\$ 3,108,973.92</u>



Springsted Incorporated
 380 Jackson Street, Suite 300
 Saint Paul, MN 55101-4705

Tel: 651-223-3000
 Fax: 651-223-3002
 www.springsted.com

Fargo Moorhead Diversion Authority
 Box 2806
 211 Ninth Street South
 Fargo, ND 58108

December 19, 2016
 Project No: 012265.100
 Invoice No: 4

For Professional Services through December 19, 2016
 Re: Financial Feasibility Analysis (Progress Billing)

Professional Personnel

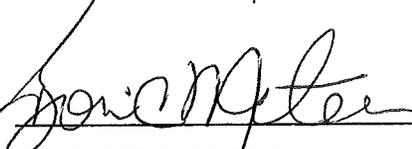
	Hours	Rate	Amount	
Principal, Senior Officer	75.75	260.00	19,695.00	
Officer, Project Manager	21.90	215.00	4,708.50	
Senior Associate	1.50	160.00	240.00	
Support Staff	1.50	75.00	112.50	
Totals	100.65		24,756.00	
Total Labor				24,756.00

Travel			284.60	
Telephone-Audio/Video Conferencing			23.40	
			308.00	308.00
			Total this Invoice	\$25,064.00

	Current	Prior	Total	Received
Billings to Date	25,064.00	74,301.85	99,365.85	74,301.85

I declare under penalty of law that this account is just and correct and that no part of it has been paid.

SPRINGSTED Incorporated

BY: 
 BONNIE C. MATSON

Payment is due on receipt of this billing. After 30 days, interest will be charged on any balance at a rate of 1% per month.



December 29, 2016

Cass County
Joint Water
Resource
District

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

Mark Brodshaug
Chairman
West Fargo, North Dakota

Greetings:

Rodger Olson
Manager
Leonard, North Dakota

RE: Metro Flood Diversion Project
In-Town Levees Project
DPAC
Oxbow-Hickson-Bakke Ring Levee Project
Oxbow Golf and Country Club

Dan Jacobson
Manager
West Fargo, North Dakota

Enclosed please find copies of bills totaling \$2,976,309.42 regarding the above referenced projects. The breakdown is as follows:

Ken Lougheed
Manager
Gardner, North Dakota

Metro Flood Diversion	\$ 76,205.50
In-Town Levees	149,991.16
DPAC	1,038.16
Oxbow-Hickson-Bakke Ring Levee	2,313,228.87
Oxbow Golf and Country Club	435,845.73

Jacob Gust
Manager
Fargo, North Dakota

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

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

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT

Carol Harbeke Lewis
Secretary-Treasurer

Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078-1301

Enclosures

701-298-2381
FAX 701-298-2397
wrđ@casscountynđ.gov
casscountynđ.gov

METRO FLOOD DIVERSION RIGHT OF ENTRY/LAND ACQUISITION COST SHARE INVOICES

Updated 12/29/16

Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description
12/16/2016	12/6/2016			11.50	Dawson Insurance	Added liability for Diversion properties
12/16/2016	11/23/2016	146263	100007	3,275.50	Ohnstad Twichell, P.C.	Legal-FM Diversion -ROE
12/16/2016	11/23/2016	146270	160007	1,764.00	Ohnstad Twichell, P.C.	Legal-Drayton Dam EA Documents
12/16/2016	11/30/2016	146421	160007	1,437.00	Ohnstad Twichell, P.C.	Legal-Eminent Domain - Ulstad
12/16/2016	11/30/2016	146420	160007	4,016.32	Ohnstad Twichell, P.C.	Legal-Eminent Domain - Cossette
12/16/2016	11/23/2016	146269	160007	4,103.50	Ohnstad Twichell, P.C.	Legal-Channel Phase I
12/16/2016	11/23/2016	146265	130007	17,492.47	Ohnstad Twichell, P.C.	Legal-Diversion ROW Acquisition
12/16/2016				50.00	Ohnstad Twichell, P.C.	Legal-Title Insurance for BNSF property
12/16/2016	11/23/2016	146267	160007	1,584.50	Ohnstad Twichell, P.C.	Legal-Basin Project 2009-Inlet structure
12/16/2016	11/23/2016	146262	90007	3,746.41	Ohnstad Twichell, P.C.	Legal-P3
12/16/2016	12/7/2016	702009	38810	132.00	Larkin Hoffman	Legal-Hickson acquisitions
12/16/2016	12/7/2016	702010	38810	165.00	Larkin Hoffman	Legal-Sauvageau acquisition
12/16/2016	12/3/2016	12032016		11,006.59	Steven Herzog	flowage easement consultation
12/16/2016	11/15/2016	1374	2001	3,663.50	Houston-Moore Group	ROE
12/16/2016	11/29/2016	381087177	479407	10,624.56	CH2M	TO 1-Land acquisition management services - 6%
12/16/2016	11/8/2016	61103	R12.00049	6,132.65	Ulteig Engineers	Relocation assistance, land acquisition, project mgmt
12/16/2016	12/5/2016			500.00	Bette J. Deede Trust	Soil borings on 53-0000-09085-000
12/16/2016	12/5/2016			2,250.00	Derek Flaten	Soil borings on 53-0000-09083-020
12/16/2016	12/5/2016			750.00	Steve Loberg	Soil borings on 53-0000-09087-000 and 53-0000-09081-000
12/16/2016	12/5/2016			500.00	Danlel Flaten	Soil borings on 53-0000-09085-000 and 53-0000-09083-010
12/16/2016	12/5/2016			500.00	Jane Clark	Soil borings on 67-0000-12704-000
12/16/2016	12/5/2016			2,500.00	Kenneth Hallestad	Soil borings on 67-0000-12709-000
Total				76,205.50		

IN-TOWN LEVEES INVOICES

Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description
12/16/2016	12/6/2016			4.00	Dawson Insurance	Added liability for properties
12/16/16	11/21/16	146419	160007	311.00	Ohnstad Twichell, P.C.	Legal-Mondragon eminent domain
12/16/16	11/15/16	1375	2002	22,181.46	Houston-Moore Group	TO 2 - Land acquisition services
12/16/2016	11/29/2016	381087177	479407	127,494.70	CH2M	TO 1-Land acquisition management services - 72%
Total				149,991.16		

DIVERSION PROJECT ASSESSMENT DISTRICT (DPAC) INVOICES

Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description
12/16/2016	11/23/2016	146264	120007	1,038.16	Ohnstad Twichell, P.C.	Legal - Assessment district issues
Total				1,038.16		

OXBOW-HICKSON-BAKKE RING LEVEE INVOICES

Invoice Paid	Invoice Date	Invoice No.	Purchase Order No.	Project No.	Amount	Vendor	Description
12/16/2016	12/6/2016				11.50	Dawson Insurance	Added liability for properties
12/16/2016	11/23/2016	146322		140007	14,469.18	Ohnstad Twichell, P.C.	Legal-property acquisition
12/16/2016	11/30/2016	146423		160007	1,702.00	Ohnstad Twichell, P.C.	Legal-Champ relocation appeal
12/16/2016	11/30/2016	146422		160007	2,905.97	Ohnstad Twichell, P.C.	Legal-Eminent Domain - Erickson
12/16/2016					16,500.00	City of Oxbow	auditor services
12/2/2016	11/7/2016				320.00	Dave & Amy Andel	moving costs
12/8/2016	12/8/2016				196,628.63	The Title Company	Kuzas property purchase
12/8/2016	12/8/2016				631,349.83	The Title Company	Kuzas replacement property
12/16/2016	12/1/2016	1642			7,598.00	Karen Klein Mediation, LLC	mediation - Champ appeal
12/16/2016	11/18/2016	00-11734			2,046.39	Evergreen Land Services	Relocation consultant - Champ appeal
12/16/2016	12/5/2016				4,403.78	Marie Talley	moving and closing costs
12/16/16	12/05/16				649.00	Paul and Nancy Kochmann	closing costs
12/16/16	12/07/16				16,118.84	Beth Leake	moving costs
12/16/16	12/05/16				19,168.94	Michael and Alexandria Bindas	moving and closing costs
12/19/16	12/19/16				39,000.00	Michael and Donnie Strel	additional earnest money-landscaping
12/20/16	12/16/16				368,075.19	The Title Company	Benson property purchase
12/20/16	12/16/16				412,331.14	The Title Company	Benson replacement property purchase and escrow
12/22/16					13,090.00	Frank Pearson	moving costs
12/22/16					3,205.00	Gregory and Briena Goldsmith	moving costs
12/27/16	12/21/16				189,987.07	The Title Company	Wold property purchase
12/27/16	12/21/16				272,365.25	The Title Company	Wold replacement property
12/27/16	12/21/16				59,239.20	The Title Company	Wold replacement property to escrow
12/16/16					175.00	Marshall Tangen	mowing Romine property
12/16/16	11/15/16	239201			79.46	Curt's Lock and Key Service	rekey 346 Schnell Drive
12/16/2016	12/6/2016			26 invoices	1,621.03	Cass County Electric Cooperative	Service to various addresses
12/16/2016	11/29/2016	381087177	479407		38,956.71	CH2M	TO 1-Land acquisition management services - 22%
12/16/2016	11/29/2016	381087179			6,700.00	CH2M	TO No 3 - construction management
12/16/2016	11/15/2016	1376	2003		1,088.50	Houston-Moore Group	Services during construction
12/16/2016	11/26/2016	5610			1,442.61	Sentry Security & Investigations	Security patrol services
12/16/2016	12/10/2016	5634			1,639.71	Sentry Security & Investigations	Security patrol services
12/2/2016	11/12/2016	5585			1,360.94	Sentry Security & Investigations	Security patrol services
Total				2,313,228.87			

OXBOW GOLF AND COUNTRY CLUB INVOICES

Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description
12/16/2016	10/30/2016	18		420,945.92	Oxbow Golf & Country Club	Landscapes Unlimited construction payment
12/16/2016	10/21/2016	14051	18229	659.05	Oxbow Golf & Country Club	Construction staking-engineering
12/16/2016	11/20/2016	12		13,000.00	Oxbow Golf & Country Club	Gary Killebrew consultant fees
12/16/2016	11/18/2016			1,240.76	Oxbow Golf & Country Club	architecture expenditures
Total				435,845.73		
Grand Total				2,976,309.42		

FM Metropolitan Area Flood Risk Management Project
Fiscal Accountability Report Design Phase (Fund 790)
As of 12/31/2016

	2011	2012	2013	2014	2015	2016	Cumulative Totals
Revenues							
City of Fargo	443,138	7,652,681	7,072,961	19,373,131	28,310,373	35,212,877	98,065,161
Cass County	443,138	7,652,681	7,072,961	19,373,131	28,310,373	111,715,540	174,567,824
State Water Commission			3,782,215	602,918	31,056,740	101,436,302	136,878,175
Other Agencies	98,475	1,700,595	1,571,769	4,305,140	6,291,194	(13,260,368)	706,805
Reimbursements						33,880	33,880
Lease/Rental Payments			17,358	154,180	180,341	260,806	612,685
Asset Sales				616,774	315,892	175,190	1,107,856
Miscellaneous			226	626	427		1,279
Total Revenues	984,751	17,005,957	19,517,490	44,425,900	94,465,340	235,574,227	411,973,665

Expenditures

7905 Army Corp Payments	-	-	875,000	1,050,000	2,725,000	47,279,000	51,929,000
7910 WIK - Administration	107,301	331,321	77,614	169,019	282,227	545,555	1,513,037
7915 WIK - Project Design	149,632	5,366,147	3,220,859	9,118,723	4,660,226	2,719,505	25,235,092
7920 WIK - Project Management	679,037	7,223,650	4,695,477	3,579,339	4,500,955	8,464,392	29,142,850
7925 WIK - Recreation		163,223					163,223
7930 LERRDS - North Dakota	48,664	3,843,620	2,763,404	17,013,358	55,948,209	46,717,049	126,334,304
7931 LERRDS - Minnesota		27,996	287,907	13,068	32,452	1,815,566	2,176,989
7940 WIK Mitigation - North Dakota				587,180			587,180
7941 WIK Mitigation - Minnesota							-
7950 Construction - North Dakota				1,738,638	19,269,055	42,263,916	63,271,609
7951 Construction - Minnesota							-
7952 Construction - O/H/B				11,282,504	5,044,001	776,720	17,103,225
7955 Construction Management				556,209	2,867,422	5,182,366	8,605,997
7990 Project Financing		50,000	70,000	216,376	566,600	5,435,289	6,338,265
7995 Project Eligible - Off Formula Costs						-	-
7999 Non Federal Participating Costs	116					-	116
Total Expenditures	984,750	17,005,957	11,990,261	45,324,414	95,896,147	161,199,358	332,400,887

**FM Metropolitan Area Flood Risk Management Project
Statement of Net Position
December 31, 2016**

	Amount
Assets	
Cash	\$ 76,396,319
Receivables	
State Water Commission *	4,020,140
Proceeds from Oxbow Lot Sales	2,383,317
Total assets	82,799,776
 Liabilities	
Vouchers payable	-
Retainage payable	3,226,999
Total liabilities	3,226,999
 NET POSITION	
	\$ 79,572,777

* Receivable balance is as of 11.30.2016

FM Metropolitan Area Flood Risk Management Project
FY 2016 Summary Budget Report (In Thousands)
As of 31 December 2016

	FY 2016 Approved Budget	Current Month	Fiscal Year To Date	% Expended	Outstanding Encumbrances	Remaining Budget Balance
Revenue Sources						
City of Fargo	39,375	1,088	35,213			4,162
Cass County	39,375	2,696	111,716			(72,341)
State of ND - 50 % Match	40,100	1,934	42,754			(2,654)
State of ND - 100% Match	109,900	2,086	58,683			51,217
State of Minnesota	-					-
Other Agencies	8,750	77	(13,260)			22,010
Financing Proceeds	-					-
Reimbursements	-		34			(34)
Sales of Assets	-		175			(175)
Property Income	-	-	261			(261)
Miscellaneous	-					-
Total Revenue Sources	237,500	7,881	235,574	-	-	1,926
Funds Appropriated						
Army Corp Local Share	47,279	-	47,279		-	-
Management Oversight	11,340	2,143	14,193	125%	4,267	(7,119)
Technical Activities	7,910	186	2,719	34%	3,066	2,124
Land Acquisitions	81,212	1,905	48,532	60%	19,171	13,509
Construction	85,999	1,871	43,041	50%	10,591	32,367
Mitigation	2,200	-			366	1,834
Other Costs	1,560	630	5,435	348%	2,417	(6,292)
Total Appropriations	237,500	6,734	161,199	68%	39,878	36,423

FM Metropolitan Area Flood Risk Management Project
Summary of Expenses
December 2016

Account_Number	CheckDate	Check_Number	Vendor_Name	Transaction_Amount	Expense_Description	Project_Number	Project_Description
790-0000-206.10-00	12/7/2016	273669	INDUSTRIAL BUILDERS INC	1101.52	Retainage PO 185032	V02819	2ND ST N FLOODWALL
	12/7/2016	273669	INDUSTRIAL BUILDERS INC	1824.6	Retainage PO #174145	V02801	2ND ST NORTH PUMP STATION
	12/14/2016	273907	INDUSTRIAL BUILDERS INC	217091.25	Pay Retainage	V02801	2ND ST NORTH PUMP STATION
Total - Retainage Paid				\$ 220,017.37			
790-7910-429.33-20	12/30/2016	J812160045	CITY OF FARGO-AUDITORS OFFICE	\$ 630.00	CHARGE FOR COF TIME-12/16	V00102	General & Admin. WIK
Total WIK - General and Admin. - Accounting Office				\$ 630.00			
790-7910-429.33-25	12/7/2016	273641	ERIK R JOHNSON & ASSOCIATES	\$ 5,409.45	GENERAL LEGAL MATTERS	V00102	General & Admin. WIK
	12/21/2016	274123	ERIK R JOHNSON & ASSOCIATES	\$ 4,464.99	GENERAL LEGAL MATTERS	V00102	General & Admin. WIK
Total WIK - General and Admin. - Legal Services				\$ 9,874.44			
790-7910-429.38-68	1/4/2017	593	P CARD BMO	\$ 3,759.20	FREDRIKSON AND BYRON P	V00102	General & Admin. WIK
	1/4/2017	593	P CARD BMO	\$ 3,500.00	FREDRIKSON AND BYRON P	V00102	General & Admin. WIK
Total WIK - General and Admin. - Lobbyist				\$ 7,259.20			
790-7910-429.59-10	12/21/2016	274193	ND WATER USERS ASSOCIATN	\$ 5,000.00	2017 DUES	V00102	General & Admin. WIK
Total WIK - General and Admin. - Due & Membership Outstate				\$ 5,000.00			
790-7915-429.33-05	12/7/2016	273665	HOUSTON-MOORE GROUP LLC	\$ 91,190.70	RECREATION & USE PLAN	V01607	RECREATION/USE MASTER PLN
	12/7/2016	273665	HOUSTON-MOORE GROUP LLC	\$ 94,403.82	PERMIT SUBMITTAL PREP	V01616	PERMIT SUBMITTAL PREP
Total WIK - Project Design - Engineering Services				\$ 185,594.52			
790-7920-429.33-05	12/7/2016	273665	HOUSTON-MOORE GROUP LLC	\$ 69,692.94	TASK 1 PROJECT MGMT	V01601	HMG - PROJECT MANAGEMENT
Total WIK - Construction Management - Engineering Services				\$ 69,692.94			
790-7920-429.33-79	12/7/2016	273627	CH2M HILL ENGINEERS INC	\$ 700,000.00	MGMT TECHNICAL OUTREACH	V00206	CH2M HILL-2.27-11.25.16
	12/28/2016	274317	CH2M HILL ENGINEERS INC	\$ 700,000.00	MANAGEMENT-TECHNICAL OUTR	V00206	CH2M HILL-2.27-11.25.16
Total WIK - Construction Management - Construction Management				\$ 1,400,000.00			
790-7930-429.33-05	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 211.50	AE25	V01202	Cass Joint Water DPAC
Total LERRDS - North Dakota - Engineering Services				\$ 211.50			
790-7930-429.33-25	1/4/2017	593	P CARD BMO	\$ 71,057.74	DORSEY WHITNEY LLP	V00101	Dorsey Whitney Legal
Total LERRDS - North Dakota - Legal Services				\$ 71,057.74			
790-7930-429.33-32	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 2,750.00	STEVEN J. HERZOG	V01201	Cass Joint Water ROE
Total LERRDS - North Dakota - Appraisal Services				\$ 2,750.00			
790-7930-429.38-61	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 893.70	SENTRY SECURITY, INC.	V01203	Cass Joint Water OHB
Total LERRDS - North Dakota - Security Services				\$ 893.70			
790-7930-429.38-99	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 9,500.00	AMERICAN ENTERPRISES INC.	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 250.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
Total LERRDS - North Dakota - Other Services				\$ 9,750.00			
790-7930-429.62-51	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 28.22	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 41.55	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 31.91	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 45.52	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 113.56	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 23.53	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 216.49	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 32.08	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 38.35	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 27.57	CASS COUNTY ELECTRIC COOP	V01702	ND LAND PURCHASE-HARDSHIP
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 43.84	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 52.15	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 70.39	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 35.00	CASS COUNTY ELECTRIC COOP	V01702	ND LAND PURCHASE-HARDSHIP
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 34.52	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 41.52	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 27.81	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 70.03	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 46.69	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 88.54	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
Total LERRDS - North Dakota - Electricity				\$ 1,109.27			
790-7930-429.67-11	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 24,536.74	MICHAEL T. BINDAS	V02411	OXBOW MOU-RESIDENT RLCTN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 122,740.00	JERRY & ELLEN KAUTZMAN	V02411	OXBOW MOU-RESIDENT RLCTN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 26,979.10	THE TITLE COMPANY	V02411	OXBOW MOU-RESIDENT RLCTN
Total LERRDS - North Dakota - Residential Buildings				\$ 174,255.84			

FM Metropolitan Area Flood Risk Management Project
Summary of Expenses
December 2016

790-7930-429.71-30	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 469,874.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 177,698.66	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 930,928.53	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 316,599.40	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
Total LERRDS - North Dakota - Land Purchases				\$ 1,895,100.59			
790-7930-429.71-31	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ (250,440.00)	CASS CO CLERK OF DISTRICT	V01701	ND LAND PURCH-OUT OF TOWN
Total LERRDS - North Dakota - Easements				\$ (250,440.00)			
790-7950-429.73-52	12/7/2016	273669	INDUSTRIAL BUILDERS INC	\$ 7,936.00	MICKELSON LEVEE EXTENSION	V02818	MICKELSON LEVEE EXTENSION
	12/7/2016	273669	INDUSTRIAL BUILDERS INC	\$ 943,061.90	NORTH OF PUMP STATION	V02819	2ND ST N FLOODWALL
	12/14/2016	274004	REINER CONTRACTING INC	\$ 37,005.34	EL ZAGAL PHASE 2	V02817	EL ZAGEL - PHASE 2
	12/28/2016	274367	INDUSTRIAL BUILDERS INC	\$ 844,805.26	NORTH OF PUMP STATION	V02819	2ND ST N FLOODWALL
Total ND Construction - Flood Control				\$ 1,832,808.50			
790-7950-429.73-70	12/28/2016	274322	CONSOLIDATED COMMUNICATIONS	\$ 38,511.24	UTILITY RELOCATION	V02803	EVENTIS WP42 UTILITY RLCT
Total ND Construction - Utilities				\$ 38,511.24			
790-7955-429.33-05	12/7/2016	273665	HOUSTON-MOORE GROUP LLC	\$ 337,367.77	WORK PKG 42 SERVICES	V02806	CONSTRUCTION SVCS WP42
Total Construction Management - Engineering Services				\$ 337,367.77			
790-7955-429.33-06	12/7/2016	273766	TERRACON CONSULTING ENGINEERS	\$ 6,903.40	MATERIAL TESTING	V02802	WP-42 MATERIALS TESTING
	12/14/2016	274029	TERRACON CONSULTING ENGINEERS	\$ 47,992.00	MATERIALS TESTING	V02802	WP-42 MATERIALS TESTING
	12/14/2016	274029	TERRACON CONSULTING ENGINEERS	\$ 13,180.75	MATERIAL TESTING	V02802	WP-42 MATERIALS TESTING
	12/14/2016	274029	TERRACON CONSULTING ENGINEERS	\$ 36,805.00	MATERIALS TESTING	V02802	WP-42 MATERIALS TESTING
	12/28/2016	274464	TERRACON CONSULTING ENGINEERS	\$ 4,909.50	MATERIALS TESTING	V02802	WP-42 MATERIALS TESTING
Total Construction Management - Quality Testing				\$ 109,790.65			
790-7955-429.33-79	12/7/2016	273627	CH2M HILL ENGINEERS INC	\$ 107,518.05	CONST MAGMT SERVICES	V02820	WP-42 CONSTRCTN MGMT-CH2M
	12/28/2016	274317	CH2M HILL ENGINEERS INC	\$ 96,131.00	CONSTRUCTION MGMT	V02820	WP-42 CONSTRCTN MGMT-CH2M
Total Construction Management - Construction Management				\$ 203,649.05			
790-7990-429.33-05	12/7/2016	273665	HOUSTON-MOORE GROUP LLC	\$ 95,106.77	DOCUMENT PREP SUPPORT	V01619	PPP DOCUMENT PREP SUPPRT
	12/21/2016	274099	CASS COUNTY JOINT WATER RESOURCE DI	\$ 11,798.20	MOORE ENGINEERING, INC.	V01201	Cass Joint Water ROE
Total Project Financing - Engineering Services				\$ 106,904.97			
790-7990-429.33-25	12/4/2016	590	P CARD BMO	\$ 118,916.24	OHNSTAD TWICHELL ATTOR	V00102	General & Admin. WIK
	12/16/2016	JB12160025	CITY OF FARGO-AUDITORS OFFICE	\$ 87,500.00	GRAY PANNELL & WOODWARD	V00102	General & Admin. WIK
Total Project Financing - Legal Services				\$ 206,416.24			
790-7990-429.34-55	12/28/2016	274384	JP MORGAN CHASE-LOCKBOX PROCESSING	\$ 128,744.86	FINANCIAL ADVISORY SERVIC	V03301	PPP FINANCL ADVISORY SVCS
Total Project Financing - Financial Advisor				\$ 128,744.86			
790-7990-520.80-20	12/7/2016	273624	CASS COUNTY TREASURER	\$ 74,035.40	OCT LOAN INTEREST PMT	V02904	\$100M CASS WELLS FAR ADVN
	12/14/2016	273848	CASS COUNTY TREASURER	\$ 76,905.83	NOV LOAN INTEREST	V02904	\$100M CASS WELLS FAR ADVN
	12/13/2016	JB12160013	CITY OF FARGO-AUDITORS OFFICE	\$ 36,572.27	12.1.16 WF INTEREST PMT	V02903	\$100M COF WELLS FAR ADVNC
Total Project Financing - Interest on Bonds				\$ 187,513.50			
TOTAL EXPENSES				\$ 6,954,463.89			
				\$ 220,017.37	Retainage Paid		
				\$ 6,734,446.52	Total less Retainage Paid		

FM Metropolitan Area Flood Risk Management Project
Cumulative Vendor Payments Since Inception
As of December 31, 2016

Vendor Name	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
CASS COUNTY JOINT WATER RESOUR	\$ 149,188,468.96	\$ 125,646,553.68	\$ 23,541,915.28	Land Purchases, O/H/B Ring Levee, DPAC, & ROE
ARMY CORP OF ENGINEERS	\$ 51,929,000.00	\$ 51,929,000.00	\$ -	Local Share
INDUSTRIAL BUILDERS INC	\$ 39,458,121.21	\$ 37,031,936.05	\$ 2,426,185.16	2nd St North Pump Station Project and 2nd Street Floodwall
HOUSTON-MOORE GROUP LLC	\$ 33,898,042.89	\$ 29,820,964.68	\$ 4,077,078.21	Engineering Services
CH2M HILL ENGINEERS INC	\$ 27,182,819.01	\$ 25,691,780.81	\$ 1,491,038.20	Project & Construction Management
INDUSTRIAL CONTRACT SERVICES I	\$ 17,570,757.39	\$ 16,175,870.20	\$ 1,394,887.19	4th St Pump Station and 2nd Street Floodwall
OXBOW, CITY OF	\$ 15,365,362.68	\$ 14,643,444.45	\$ 721,918.23	(blank)
DORSEY & WHITNEY LLP	\$ 3,474,124.50	\$ 3,474,124.50	\$ -	Legal Services
JP MORGAN CHASE-LOCKBOX PROCES	\$ 3,377,000.00	\$ 1,488,733.26	\$ 1,888,266.74	Financial Advisor
CENTURYLINK	\$ 2,586,742.00	\$ 2,586,742.00	\$ -	Utility Relocation
MINNESOTA DNR	\$ 2,325,472.35	\$ 2,325,472.35	\$ -	EIS Scoping
LANDWEHR CONSTRUCTION INC	\$ 2,079,376.59	\$ 2,048,267.31	\$ 31,109.28	In-Town Demolition Contracts
ASHURST LLP	\$ 1,979,133.70	\$ 1,744,838.81	\$ 234,294.89	PPP Legal Counsel
URS CORPORATION	\$ 1,922,118.42	\$ 1,696,631.02	\$ 225,487.40	Engineering Services
CONSOLIDATED COMMUNICATIONS	\$ 1,732,568.75	\$ 1,063,096.11	\$ 669,472.64	Utility Relocation
KENNELLY & OKEEFFE	\$ 1,729,110.56	\$ 1,729,110.56	\$ -	Home Buyouts
HOUGH INCORPORATED	\$ 1,603,909.25	\$ 1,215,633.53	\$ 388,275.72	2nd Street South Flood Control
REINER CONTRACTING INC	\$ 1,601,366.99	\$ 1,598,471.70	\$ 2,895.29	El Zagal Flood Risk Management
ACONEX (NORTH AMERICA) INC	\$ 1,322,146.00	\$ 306,856.00	\$ 1,015,290.00	Electronic Data Mgmt and Record Storage System
CITY OF FARGO	\$ 1,118,812.45	\$ 1,073,837.56	\$ 44,974.89	Digital Imagery Project, Utility Relocation, Accounting Svcs, and Bank Loan Advance DS Payments
XCEL ENERGY	\$ 908,800.84	\$ 174,255.08	\$ 734,545.76	Utility Relocation
CASS COUNTY TREASURER	\$ 842,387.24	\$ 842,387.24	\$ -	Property Taxes and Bank Loan Advance DS Payments
OHNSTAD TWICHELL PC	\$ 831,681.14	\$ 831,681.14	\$ -	ROE and Bonding Legal Fees
TERRACON CONSULTING ENGINEERS	\$ 774,990.00	\$ 768,603.32	\$ 6,386.68	Materials Testing
MOORE ENGINEERING INC	\$ 662,468.17	\$ 662,468.17	\$ -	Engineering Services
US BANK	\$ 626,849.03	\$ 626,849.03	\$ -	Loan Advance Debt Service Payments
DUCKS UNLIMITED	\$ 587,180.00	\$ 587,180.00	\$ -	Wetland Mitigation Credits
HOUSTON ENGINEERING INC	\$ 576,669.57	\$ 576,669.57	\$ -	Engineering Services
ERIK R JOHNSON & ASSOCIATES	\$ 510,910.79	\$ 510,910.79	\$ -	Legal Services
RED RIVER BASIN COMMISSION	\$ 500,000.00	\$ 500,000.00	\$ -	Retention Projects - Engineering Services
NORTHERN TITLE CO	\$ 484,016.00	\$ 484,016.00	\$ -	Land Purchases
AT & T	\$ 444,166.14	\$ 444,166.14	\$ -	Utility Relocation
702 COMMUNICATIONS	\$ 326,243.91	\$ 266,892.07	\$ 59,351.84	Utility Relocation
BUFFALO-RED RIVER WATERSHED DI	\$ 220,768.00	\$ -	\$ 220,768.00	Retention Projects - Engineering Services
ROBERT TRENT JONES	\$ 200,000.00	\$ 200,000.00	\$ -	Oxbow MOU - Golf Course Consulting Agreement
AON RISK SERVICES CENTRAL, INC	\$ 150,000.00	\$ 37,844.45	\$ 112,155.55	P3 Risk Advisory Services
CABLE ONE (FARGO)	\$ 148,511.37	\$ -	\$ 148,511.37	Utility Relocation
PFM PUBLIC FINANCIAL MANAGEMEN	\$ 146,460.00	\$ 146,460.00	\$ -	Financial Advisor
BOIS DE SIOUX WATERSHED DISTRI	\$ 145,380.00	\$ -	\$ 145,380.00	Retention Projects - Engineering Services
NDSU BUSINESS OFFICE-BOX 6050	\$ 135,167.00	\$ 135,167.00	\$ -	Ag Risk Study Services
AT&T NETWORK OPERATIONS	\$ 125,238.30	\$ 125,238.30	\$ -	Utility Relocation
ENVENTIS	\$ 115,685.62	\$ 115,685.62	\$ -	Utility Relocation

FM Metropolitan Area Flood Risk Management Project
Cumulative Vendor Payments Since Inception
As of December 31, 2016

Vendor Name	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
BEAVER CREEK ARCHAEOLOGY	\$ 111,000.00	\$ 70,438.32	\$ 40,561.68	Engineering Services
FREDRIKSON & BYRON, PA	\$ 105,522.08	\$ 84,522.08	\$ 21,000.00	Lobbying Services
UNITED STATES GEOLOGICAL SURVEY	\$ 104,600.00	\$ 104,600.00	\$ -	Water Level Discharge Collection
PROSOURCE TECHNOLOGIES, INC	\$ 100,000.00	\$ 8,324.94	\$ 91,675.06	Vibrating Wire Piezometer Equipment
ULTEIG ENGINEERS INC	\$ 100,000.00	\$ -	\$ 100,000.00	Engineering Services
SPRINGSTED INCORPORATED	\$ 99,365.85	\$ 74,301.85	\$ 25,064.00	Financial Advisor
BRAUN INTERTEC CORP	\$ 90,210.00	\$ 77,629.00	\$ 12,581.00	Quality Testing
EL ZAGAL TEMPLE HOLDING CO	\$ 76,000.00	\$ 76,000.00	\$ -	Easement Purchase for El Zagal Levee
CENTURYLINK ASSET ACCOUNTING-B	\$ 74,195.92	\$ 74,195.92	\$ -	Utility Relocation
GRAY PANNELL & WOODWARD LLP	\$ 66,300.68	\$ 66,300.68	\$ -	Legal Services
NIXON PEABODY LLC	\$ 60,000.00	\$ 60,000.00	\$ -	Legal Services
IN SITU ENGINEERING	\$ 54,800.00	\$ 47,973.00	\$ 6,827.00	Quality Testing
ADVANCED ENGINEERING INC	\$ 50,000.00	\$ 50,000.00	\$ -	Public Outreach
US GEOLOGICAL SURVEY	\$ 46,920.00	\$ 46,920.00	\$ -	Stage Gage Installation
CLAY COUNTY AUDITOR	\$ 34,180.71	\$ 34,180.71	\$ -	Property Tax, Home Buyout Demo
GEEKON INC	\$ 33,815.36	\$ 33,815.36	\$ -	Vibrating Wire Piezometer Equipment
COLDWELL BANKER	\$ 33,066.02	\$ 33,066.02	\$ -	Property Management Services
WARNER & CO	\$ 24,875.00	\$ 24,875.00	\$ -	General Liability Insurance
XCEL ENERGY-FARGO	\$ 16,275.85	\$ 16,275.85	\$ -	Utility Relocation
PRIMORIS AEVENIA INC	\$ 16,230.00	\$ 16,230.00	\$ -	Utility Relocation
MOORHEAD, CITY OF	\$ 15,062.90	\$ 15,062.90	\$ -	ROE Legal Fees
ND WATER USERS ASSOCIATN	\$ 15,000.00	\$ 15,000.00	\$ -	Membership Dues
BRIGGS & MORGAN PA	\$ 12,727.56	\$ 12,727.56	\$ -	Legal Services
MAP SERVICE CENTER	\$ 7,250.00	\$ 7,250.00	\$ -	Permit fee
ONE	\$ 3,575.00	\$ 3,575.00	\$ -	Legal Services
MCKINZIE METRO APPRAISAL	\$ 3,200.00	\$ 3,200.00	\$ -	Appraisal Services
BNSF RAILWAY CO	\$ 2,925.00	\$ 2,925.00	\$ -	Permits for In-Town Levee Projects
FORUM COMMUNICATIONS (LEGAL)	\$ 2,224.20	\$ 2,224.20	\$ -	Advertising Services
FORUM COMMUNICATIONS (ADVERT)	\$ 1,743.77	\$ 1,743.77	\$ -	Advertising Services
NORTH DAKOTA TELEPHONE CO	\$ 1,697.00	\$ 1,697.00	\$ -	Communication
SEIGEL COMMUNICATIONS SERVICE	\$ 1,490.00	\$ 1,490.00	\$ -	Public Outreach
HUBER, STEVE	\$ 1,056.43	\$ 1,056.43	\$ -	Home Buyouts
DEPT OF NATURAL RESOUR	\$ 1,000.00	\$ 1,000.00	\$ -	DNR Dam Safety Permit Application Fee
TRIO ENVIRONMENTAL CONSULTING	\$ 747.60	\$ 747.60	\$ -	Asbestos and LBP Testing - Home Buyouts
RED RIVER TITLE SERVICES INC	\$ 675.00	\$ 675.00	\$ -	Abstract Updates
RED RIVER VALLEY COOPERATIVE A	\$ 536.96	\$ 536.96	\$ -	Electricity - Home Buyouts
FERRELLGAS	\$ 496.00	\$ 496.00	\$ -	Propane - Home Buyouts
BROKERAGE PRINTING	\$ 473.33	\$ 473.33	\$ -	Custom Printed Forms
DAWSON INSURANCE AGENCY	\$ 388.52	\$ 388.52	\$ -	Property Insurance - Home Buyouts
KOCHMANN, CARTER	\$ 315.00	\$ 315.00	\$ -	Lawn Mowing Services
GALLAGHER BENEFIT SERVICES INC	\$ 250.00	\$ 250.00	\$ -	Job Description Review
DONS PLUMBING	\$ 240.00	\$ 240.00	\$ -	Winterize - Home Buyouts
CURTIS LOCK & KEY SERVICE INC	\$ 138.10	\$ 138.10	\$ -	Service Call - Home Buyouts

FM Metropolitan Area Flood Risk Management Project
 Cumulative Vendor Payments Since Inception
 As of December 31, 2016

Vendor Name	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
GOOGLE LOVEINTHEOVEN	\$ 116.00	\$ 116.00	\$ -	Meeting Incidentals
FEDERAL EXPRESS CORPORATION	\$ 71.89	\$ 71.89	\$ -	Postage
Grand Total	\$ 372,278,784.55	\$ 332,400,887.49	\$ 39,877,897.06	

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of December 31, 2016

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
Commercial Relocations - Fargo						
Park East Apartments - 1 2nd St S	6/23/2015	9,002,442.20	-	1,376,106.04	-	10,378,548.24
Howard Johnson - 301 3rd Ave N	11/2/2015	3,266,079.60	-	3,322,432.41	(1,100.00)	6,587,412.01
Fargo Public School District - 419 3rd St N	3/16/2016	1,903,475.78	-	7,550,036.23	-	9,453,512.01
Mid America Steel - NP Ave, North	6/21/2016	437,371.41	-	5,370,000.00	-	5,807,371.41
Home Buyouts - Fargo						
1322 Elm St N	11/19/2014	347,270.27	-	47,168.14	-	394,438.41
1326 Elm St N	12/23/2014	230,196.41	-	8,001.02	-	238,197.43
1341 N Oak St	1/29/2015	309,888.24	-	78,889.24	-	388,777.48
1330 Elm St N	2/12/2015	229,982.44	-	62,362.63	-	292,345.07
18 North Terrace N	4/2/2015	129,698.25	-	44,688.72	-	174,386.97
1318 Elm St N	5/29/2015	229,012.67	-	55,452.01	-	284,464.68
724 North River Road	6/8/2015	204,457.83	-	35,615.30	(10,000.00)	230,073.13
1333 Oak Street N	6/24/2015	238,513.23	-	5,249.00	-	243,762.23
26 North Terrace N	9/11/2015	138,619.58	-	12,620.00	-	151,239.58
16 North Terrace N	9/24/2015	227,987.50	-	96,717.14	-	324,704.64
24 North Terrace N	11/25/2015	182,437.38	-	29,269.60	-	211,706.98
1314 Elm Street N	12/18/2015	225,800.09	-	42,025.00	-	267,825.09
12 North Terrace N	2/9/2016	10,191.00	-	-	-	10,191.00
1313 Elm Street N		350,000.00	-	3,360.00	-	353,360.00
Home Buyouts - Moorhead						
387 170th Ave SW	11/1/2013	281,809.91	-	-	(8,440.00)	273,369.91
16678 3rd St S		-	192,600.00	80,210.80	-	272,810.80
Home Buyouts - Oxbow						
105 Oxbow Drive	11/28/2012	216,651.85	-	-	(181,249.54)	35,402.31
744 Riverbend Rd	12/3/2012	343,828.30	-	2,435.00	-	346,263.30
121 Oxbow Drive	7/31/2013	375,581.20	-	-	(186,918.33)	188,662.87
333 Schnell Drive	9/20/2013	104,087.79	-	-	-	104,087.79
346 Schnell Drive	2/13/2014	512,970.73	-	7,200.00	-	520,170.73
345 Schnell Drive	10/24/2014	478,702.98	-	6,869.44	-	485,572.42
336 Schnell Drive	1/29/2015	310,888.51	-	185,620.00	-	496,508.51
5059 Makenzie Circle	5/21/2015	2,698,226.97	-	10,549.70	-	2,708,776.67
357 Schnell Dr / 760 River Bend Rd	6/18/2015	466,720.80	-	176,524.79	-	643,245.59
349 Schnell Dr / 761 River Bend Rd	6/26/2015	306,725.20	-	309,992.53	-	616,717.73
748 Riverbend Rd / 755 River Bend Rd	9/1/2015	480,784.30	-	205,699.82	-	686,484.12
361 Schnell Dr / 764 River Bend Rd	9/2/2015	490,091.32	-	267,757.65	-	757,848.97
752 Riverbend Rd / 768 River Bend Rd	9/4/2015	469,078.13	-	507,103.56	-	976,181.69
353 Schnell Dr / 772 River Bend Rd	9/11/2015	494,342.87	-	312,212.95	-	806,555.82
SE 1/4-23-137-49 & NW 1/4 SW 1/4 24-137-49 - Heitman	9/30/2015	1,328,151.00	-	-	-	1,328,151.00
350 Schnell Dr / 769 River Bend Rd	12/15/2015	491,024.01	-	279,237.35	-	770,261.36
365 Schnell Drive	1/7/2016	125,077.88	-	-	-	125,077.88
852 Riverbend Rd	1/11/2016	1,222,608.19	-	10,891.60	-	1,233,499.79
334 Schnell Dr / 751 River Bend Rd	1/15/2016	321,089.77	-	284,349.88	-	605,439.65
749 Riverbend Rd / 433 Trent Jones Dr	2/1/2016	598,885.43	-	469,875.64	-	1,068,761.07
326 Schnell Drive	2/19/2016	326,842.17	-	225,073.09	-	551,915.26
309 Schnell Dr / 325 Trent Jones Dr	5/12/2016	539,895.97	-	561,322.28	-	1,101,218.25
810 Riverbend Rd / 787 River Bend Rd	6/6/2016	672,125.84	-	640,305.43	-	1,312,431.27
833 Riverbend Rd / 446 Trent Jones Dr	7/14/2016	801,671.69	-	579,388.16	-	1,381,059.85
328 Schnell Dr / 347 Trent Jones Dr	7/14/2016	320,803.64	-	329,117.70	-	649,921.34
839 Riverbend Road	7/20/2016	1,775,311.60	-	10,631.50	-	1,785,943.10
332 Schnell Dr / 335 Trent Jones Dr	8/2/2016	328,639.47	-	353,321.19	-	681,960.66
317 Schnell Dr / 409 Trent Jones Dr	9/7/2016	548,393.52	-	558,413.52	-	1,106,807.04
330 Schnell Drive	10/4/2016	328,134.82	-	122,740.00	-	450,874.82
329 Schnell Dr / 417 Trent Jones Dr	10/4/2016	549,277.00	-	497,952.00	-	1,047,229.00
321 Schnell Dr / 410 Trent Jones Dr	10/7/2016	462,334.69	9,200.00	510,523.70	-	982,058.39
813 Riverbend Rd / 449 Trent Jones Dr	10/14/2016	660,997.62	-	778,768.71	-	1,439,766.33
325 Schnell Drive / 426 Trent Jones Dr	11/3/2016	403,498.66	-	395,400.30	-	798,898.96
844 Riverbend Road	11/11/2016	716,599.40	-	-	-	716,599.40
828 Riverbend Rd	11/30/2016	955,928.53	-	-	-	955,928.53
817 Riverbend Road / 421 Trent Jones Dr	In Escrow	-	448,300.00	453,212.00	-	901,512.00
848 Riverbend Rd / 783 River Bend Rd	In Escrow	-	306,000.00	1,340,781.00	-	1,646,781.00
843 Riverbend Rd / 445 Trent Jones Dr	In Escrow	-	700,000.00	1,163,752.00	-	1,863,752.00
829 Riverbend Rd / 788 River Bend Rd	-	-	-	8,000.00	-	8,000.00
338 Schnell Dr / 775 River Bend Rd	-	-	222,500.00	-	-	222,500.00
341 Schnell Dr / 343 Trent Jones Dr	-	-	284,292.89	19,889.45	-	304,182.34

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of December 31, 2016

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
805 Riverbend Rd / 776 River Bend Rd		-	220,855.00	-	-	220,855.00
821 Riverbend Rd / 438 Trent Jones Dr		-	185,000.00	-	-	185,000.00
337 Schnell Dr / 353 Trent Jones Dr		-	222,021.00	-	-	222,021.00
840 Riverbend Rd / 442 Trent Jones Dr		-	189,000.00	-	-	189,000.00
816 Riverbend Rd / 441 Trent Jones Dr		-	377,426.00	-	-	377,426.00
808 Riverbend Road / 254 South Schnell Dr		-	196,211.25	-	-	196,211.25
313 Schnell Drive/ 413 Trent Jones Dr		-	197,243.00	-	-	197,243.00
Home Buyouts - Hickson						
17495 52nd St SE	4/28/2015	785,747.66	-	27,604.74	-	813,352.40
4989 Klitzke Drive, Pleasant Twp	7/20/2016	245,926.71	-	92,817.44	-	338,744.15
Easements - Fargo						
Part of Lot 5 El Zagal Park	10/9/2014	76,000.00	-	-	-	76,000.00
72 2nd St N	4/13/2016	37,020.00	-	-	-	37,020.00
Easements - Oxbow						
Oxbow Parcel 57-0000-10356-070 - Pearson	10/13/2014	55,500.00	-	-	-	55,500.00
Easements - Diversion Inlet Control Structure						
15-0000-02690-020 - Cossette		476,040.00	-	-	-	476,040.00
64-0000-02730-000 - Sauvageau		268,020.00	-	-	-	268,020.00
64-0000-02720-000 - Ulstad		469,874.00	-	-	-	469,874.00
64-0000-027400-000 - Duboard	9/15/2016	177,399.29	-	-	-	177,399.29
Easements - Minnesota						
Askegaard Hope Partnership	10/14/2016	1,542,370.79	-	-	-	1,542,370.79
Farmland Purchases						
SE 1/4 11-140-50 (Raymond Twp) - Ueland	1/20/2014	959,840.00	-	-	-	959,840.00
2 Tracts in the E 1/2-2-137-49 - Sorby/Maier	1/24/2014	1,636,230.00	-	-	-	1,636,230.00
3 Tracts NW1/4 1-140-50, NW1/4 11-140-50, & S1/2 25-141-50 - Rust	2/18/2014	3,458,980.70	-	-	-	3,458,980.70
11-140-50 NE1/4 (Raymond Twp) - Diekrager	4/15/2014	991,128.19	-	-	-	991,128.19
NW 1/4 36-141-50 - Monson	5/7/2014	943,560.05	-	-	-	943,560.05
W 1/2 SE 1/4 SW 1/4 & SW 1/4 SW 1/4 2-137-49 - Gorder	5/13/2014	321,386.00	-	-	-	321,386.00
SW 1/4-11-140-50 - Hoglund	7/21/2014	989,706.03	-	-	-	989,706.03
NW 1/4 14-140-50 - Hoglund	10/23/2014	948,782.22	-	-	-	948,782.22
SW 1/4 2-140-50 -Rust	10/29/2014	955,901.00	-	-	-	955,901.00
2-140-50 S 1/2 of NW 1/4 & Lot 4A - Pile	3/4/2015	594,108.00	-	-	-	594,108.00
Fercho Family Farms,	3/25/2015	464,600.00	-	-	-	464,600.00
W 1/2 NW 1/4 2-141-49 - Heiden	4/24/2015	433,409.00	-	-	-	433,409.00
(Raymond Twp) - Henke	6/17/2015	1,196,215.00	-	-	-	1,196,215.00
Land Purchases						
Hayden Heights Land, West Fargo ND	10/12/2012	484,016.00	-	-	(730,148.14)	(246,132.14)
Lot 4, Block 4, ND R-2 Urban Renewal Addition, Fargo ND - Professional Associates	5/14/2015	39,900.00	-	-	-	39,900.00
BNSF Railway Company		-	27,000.00	-	-	27,000.00
		57,722,866.28	3,777,649.14	29,925,537.40	(1,117,856.01)	90,308,196.81
						Property Management Expense
						821,583.26
						Property Management Income
						(622,728.27)
					Grand Total	\$ 90,507,051.80

**FM Metropolitan Area Flood Risk Management Project
In-Town Levee Work
as of December 31, 2016**

Vcode #	Vendor Name	Descriptions	Contract Amount	Amount Paid
V02801	Industrial Builders	WP42.A2 - 2nd Street North Pump Station	\$ 8,683,649.98	\$ 8,683,649.98
V02802	Terracon Consulting	WP-42 (In Town Levees) Materials Testing	\$ 774,990.00	\$ 768,603.32
V02803	Consolidated Communications	2nd Street Utility Relocation	\$ 1,848,254.37	\$ 1,178,781.73
V02804	702 Communications	2nd Street Utility Relocation	\$ 326,243.91	\$ 266,892.07
V02805	ICS	WP-42A.1/A.3 - 4th St Pump Station & Gatewell and 2nd St Floodwall S	\$ 17,571,357.39	\$ 16,176,470.20
V02806	HMG	WP42 - Services During Construction	\$ 4,932,000.00	\$ 3,723,285.72
V02807	CCJWRD	In-Town Levee Work	\$ 6,634,496.01	\$ 5,074,749.20
V02808	City of Fargo	Relocation of fiber optic along 2nd Street North	\$ 360,702.75	\$ 315,727.86
V02809	AT & T	2nd Street Utility Relocation	\$ 569,404.44	\$ 569,404.44
V02810	Cable One	2nd Street Utility Relocation	\$ 148,511.37	\$ -
V02811	Xcel Energy	2nd Street & 4th Street Utility Relocations	\$ 925,076.69	\$ 190,530.93
V02812	Industrial Builders	WP-42F.1S - 2nd Street North Floodwall, South of Pump Station	\$ 16,737,490.08	\$ 15,564,927.34
V02813	Landwehr Construction	Park East Apartments Demolition	\$ 1,177,151.74	\$ 1,169,651.74
V02814	Primoris Aevenia	2nd Street Utility Relocation	\$ 16,230.00	\$ 16,230.00
V02815	Centurylink Communications	2nd Street Utility Relocation	\$ 2,660,937.92	\$ 2,660,937.92
V02816	Landwehr Construction	WP-42C.1 - In-Town Levees 2nd Street/Downtown Area Demo	\$ 902,224.85	\$ 878,615.57
V02817	Reiner Contracting, Inc	WP-42H.2 - El Zagal Area Flood Risk Management	\$ 1,601,366.99	\$ 1,598,471.70
V02818	Industrial Builders	WP-42I.1 - Mickelson Levee Extension	\$ 738,880.50	\$ 738,880.50
V02819	Industrial Builders	WP42F.1N - 2nd Street North	\$ 13,300,425.65	\$ 12,046,803.23
V02820	CH2M Hill	WP42 - Construction Management Services	\$ 1,020,000.00	\$ 725,961.80
V02821	Hough Incorporated	WP42F.2 - 2nd Street South	\$ 1,603,909.25	\$ 1,215,633.53
V01703	Various	In-Town Property Purchases	\$ 39,003,065.54	\$ 36,276,553.52
			\$ 121,536,369.43	\$ 109,840,762.30

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

Time Period for This Request: November 1, 2016 - November 30, 2016

Drawdown Request No: 37	
Requested Amount:	\$ 4,676,079
Total Funds Expended This Period:	\$ 6,610,174
Total Funds Requested at 100% Match	2,741,983
Remaining Funds Requested at 50% Match	3,868,192
SB 2020 Matching Requirements	50%
Total Funds Requested at 50% Match	1,934,096
Total Funds Requested:	\$ 4,676,079

STATE AID SUMMARY:		
Summary of State Funds Appropriated		
Appropriations from 2009 Legislative Session	\$	45,000,000
Appropriations from 2011 Legislative Session		30,000,000
Appropriations from 2013 Legislative Session		100,000,000
Appropriations from 2015 Legislative Session		69,000,000
Appropriations to be funded in 2017 Legislative Session - Available 7/1/2017	51,500,000	
Appropriations to be funded in 2019 Legislative Session - Available 7/1/2019	51,500,000	
Appropriations to be funded in 2021 Legislative Session - Available 7/1/2021	51,500,000	
Appropriations to be funded in 2023 Legislative Session - Available 7/1/2023	51,500,000	
Total State Funds	206,000,000	244,000,000
Less: Payment #1 through #35 - City of Fargo		(55,510,209)
Less: Payment #1 - Cass County		(136,039)
Less: Payment #1 through #20 - FM Diversion Authority		(28,862,208)
Less: Payment #21 - FM Diversion Authority		(2,580,786)
Less: Payment #22 - FM Diversion Authority		(3,998,879)
Less: Payment #23 - FM Diversion Authority		(1,985,040)
Less: Payment #24 - FM Diversion Authority		(2,752,283)
Less: Payment #25 - FM Diversion Authority		(10,000,000)
Less: Payment #26 - FM Diversion Authority		(1,021,657)
Less: Payment #27 - FM Diversion Authority		(4,940,909)
Less: Payment #28 - FM Diversion Authority		(2,209,200)
Less: Costs Moved from Fargo Flood Control (Diversion) to Interior Flood Control		20,301,855
Less: Payment #29 - FM Metro Area Flood Risk Management Project		(2,900,000)
Less: Payment #30 - FM Metro Area Flood Risk Management Project		(3,681,747)
Less: Payment #31 - FM Metro Area Flood Risk Management Project		(6,900,000)
Less: Payment #32 - FM Metro Area Flood Risk Management Project		(3,725,044)
Less: Payment #33 - FM Metro Area Flood Risk Management Project		(4,655,547)
Less: Payment #34 - FM Metro Area Flood Risk Management Project		(22,500,000)
Less: Payment #35 - FM Metro Area Flood Risk Management Project		(6,062,680)
Less: Payment #36 - FM Metro Area Flood Risk Management Project		(3,506,589)
Less: Payment #37 - FM Metro Area Flood Risk Management Project		(4,676,079)
Total Funds Reimbursed		(152,303,041)
Total State Fund Balances Remaining	\$	91,696,959

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

LOCAL MATCHING FUNDS SUMMARY:	
Matching Funds Expended To Date - FM Metro Area Flood Risk Management Project	\$ 69,048,218
Less: Match Used on Payment #1 through #35 - City of Fargo	(41,506,620)
Less: Match used on Payment #1 - Cass County	(136,039)
Less: Match Used on Payment #1 - FM Diversion Authority	(18,600)
Less: Match Used on Payment #2 - FM Diversion Authority	(66,888)
Less: Match Used on Payment #6 - FM Diversion Authority	(238,241)
Less: Match Used on Payment #8 - FM Diversion Authority	(346,664)
Less: Match Used on Payment #11 - FM Diversion Authority	(470,398)
Less: Match Used on Payment #12 - FM Diversion Authority	(237,286)
Less: Match Used on Payment #16 - FM Diversion Authority	(3,018,978)
Less: Match Used on Payment #17 - FM Diversion Authority	(1,374,624)
Less: Match Used on Payment #20 - FM Diversion Authority	(1,427,344)
Less: Match Used on Payment #22 - FM Diversion Authority	(116,437)
Less: Match Used on Payment #23 - FM Diversion Authority	(487,124)
Less: Match Used on Payment #24 - FM Diversion Authority	(1,688,474)
Less: Match Used on Payment #26 - FM Diversion Authority	(445,642)
Less: Match Used on Payment #28 - FM Diversion Authority	(1,116,010)
Less: Match Used on Payment #30 - FM Metro Area Flood Risk Management Project	(1,581,147)
Less: Match Used on Payment #32 - FM Metro Area Flood Risk Management Project	(1,215,895)
Less: Match Used on Payment #33 - FM Metro Area Flood Risk Management Project	(2,785,070)
Less: Match Used on Payment #35 - FM Metro Area Flood Risk Management Project	(1,292,963)
Less: Match Used on Payment #36 - FM Metro Area Flood Risk Management Project	(509,507)
Less: Match Used on Payment #37 - FM Metro Area Flood Risk Management Project	(2,741,983)
Balance of Local Matching Funds Available	\$ 6,226,284



Recommending Contracting Actions.

Date: January 11, 2017

Description	Company	Budget Estimate (\$)
<i>Reimbursement Agreement– Diversion Authority</i>		
RA-CF-002 – Utility Relocation <ul style="list-style-type: none"> • Relocate fiber communication cable; Final Payment 	City of Fargo	37,526.38
Total		37,526.38

Executive Director Contracting Recommendation

Date: 12/20/2016

RECOMMENDATION FOR ACTION:

Per the contract review and approval procedures, Section 5.F, that were adopted by the Diversion Authority on November 10, 2016, the Owner’s Program Management Consultant (PMC) or Engineer of Record (EOR) is directed to prepare task orders and task order amendments for existing Master Services Agreements (MSA) and submit them to the Co-Executive Directors for review and action. The Co-Executive Directors have reviewed and recommended approval of the following Contract Action(s).

SUMMARY OF CONTRACTING ACTION:

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

City of Fargo

\$37,526.38

Reimbursement Agreement RA-CF-002 – Final Payment

- Relocate fiber communication cable located along 2nd Street N – Final Payment

BACKGROUND AND DISCUSSION:

This action is the final accounting of the work done under the utility relocation agreement RA-CF-002 to relocate the City of Fargo’s fiber optic lines from underneath the WP42F.1S floodwall. The budget approved for RA-CF-002 was based on an estimated cost of the work. Actual costs were higher than estimated.

RA-COF-002 Agreement, Item 5. Final Accounting, states the following: “...City of Fargo shall make a final accounting of costs and expenses for the Work and provide Reimbursers an invoice of the same. Reimbursers shall pay City of Fargo for such balance due ...”

SUMMARY OF CONTRACTING HISTORY AND CURRENT CONTRACT ACTION:

Original Agreement or Amendment	Budget (\$) Change	Original Project Cost	Revised Project Cost	Project Start	Project Completion	Comments
RA-CF-001		11,618.88	11,618.88	13 May 2016		Lowering of City of Fargo fiber optic cable under the 2 nd St. N floodwall
RA-CF-002	307,983.70	11,618.88	319,602.58	29-May-2015		Relocation of the City of Fargo fiber optic cable that was located along 2 nd Street, North of 1 st Avenue North, for the 2 nd Street North Floodwall Project (WP42F.1S)
RA-CF-002 Final Accounting	37,526.38	11,618.88	357,128.98	29-May-2015	18-Aug-2016	Final accounting of actual costs to complete the City of Fargo fiber optic cable relocation.

FINANCIAL CONSIDERATIONS:

The City of Fargo’s letter, dated October 28, 2016, provides an explanation and documentation of the final costs to pull their fiber optic line through the new duct bank along 1st Ave N and 4th St N. The letter includes the purchase order and contractor invoice for the work, line item number 1 in the amount of \$37,526.38, that is requested for reimbursement by the Diversion Authority. The PMC has reviewed this contracting action and feels it is appropriate for the scope of work.

This change amount of \$37,526.38 is included in the FY-2016 FMDA budget.

ATTACHMENT(S):

1. City of Fargo letter dated 10/28/2016 with contractor invoice

Prepared by: Program Management Consultant



John Glatzmaier, P.E.
CH2M

December 20, 2016
Date

Submitted by: Co-Executive Directors

Michael J. Redlinger
Fargo Assistant City Administrator

Concur: December 21, 2016 Non-Concur: _____

Darrell Vanyo, Chair

Concur: December 22, 2016 Non-Concur: _____

Cc: Technical Advisory Group

- April Walker, Fargo City Engineer
- David Overbo, Clay County Engineer
- Jason Benson, Cass County Engineer
- Mark Bittner, Fargo Director of Engineering
- Nathan Boerboom, City of Fargo/Diversion Authority Project Manager
- Robert Zimmerman, Moorhead City Engineer



Information Services Department

200 Third St North
Fargo, North Dakota 58102
Phone: (701) 476-6700 • Fax: (701) 241-8253
helpdesk@cityoffargo.com

Kent Costin
Finance Director
City of Fargo
10-28-2016

Re. 2nd St Fiber Relocation Project / Arvig expenses.

Kent,

At the beginning of the construction of the 2nd St flood wall, a couple of years ago, the fiber runs that I had to Moorhead and to the Fargo Public Schools Administration Building were identified as fiber routes that I needed to move.

As many organizations were going in similar routes, it was determined that everyone should work together in getting the conduit placed along the routes needed. That conduit placement was done last summer with a duct bank along 1st Ave N and 4th St.

After the conduit placement was finished, I put out an RFP to have my connections to Moorhead and FPS installed, so that I could remove the fiber I had blocking the 2nd St Floodwall. Unfortunately, it was later in the year, and I did not get anyone that was interested in placing my fiber. I had a deadline to get out of the 2nd St Floodwall work area, so I scaled back my RFP to the minimum I could, which was to only get my Moorhead connection replaced, with the intent to complete the FPS connection the following year, which was this year. I received a couple of proposals in response to that scaled back RFP and had the work for the Moorhead connection done that fall. I was done in time to vacate the fiber that was blocking the 2nd St floodwall. This spring, I issued an RFP to complete the connection to the FPS Admin Building location, which would reinstate me to where we were before vacating the 2nd St Fiber blocking the 2nd St floodwall work.

In that RFP, I did a base bid that would make us whole again regarding the fiber I had blocking the 2nd St Floodwall. In addition to that base bid, I included 4 Alternates. These alternates are for capabilities beyond what the Diversion Authority would cover. These include connecting to the Police Building, the new Assessor's Building location, etc. This additional work was included to take advantage of the new conduit route along 4th St.

The base bid for this project was \$37,526.38. Which should all be reimbursable Diversion Authority funds. The additional \$12,698.20 are due to the Alternates selected and a Change Order. None of these costs are reimbursable expenses.

This project would complete the City of Fargo IS Departments 2nd St Fiber relocation project.

A handwritten signature in blue ink, appearing to read "Ron Gronneberg", with a long, sweeping underline.

Ron Gronneberg
CIO
City of Fargo
701.241.1312

P.O. #: 186384

DATE: 07/12/16

CHANGE #: 3

DATE CHG: 08/18/16

ARVIG
ATTN:ACCOUNTING
150 SECOND STREET SW
PERHAM, MN 56573

SHIP TO:
CITY OF FARGO
200 3RD STREET NORTH
PC/LAN DIVISION
FARGO, ND 58102

VENDOR #
22322

DELIVER BYSHIP VIA:
06/01/16

TERMS
NET

CONFIRM BY

CONFIRM TO
MELISSA KRITZBERGER

REQUISITIONED BY
CAROL S 476-4046

FREIGHT

CONTRACT NO. ACCOUNT NO.
10185525107622

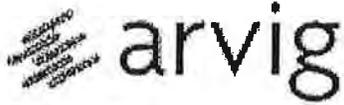
PROJECT REQ. NO. REQ. DAT
PC0520 208051 04/28/16

LINE#	QUANTITUOM	ITEM NO. AND DESCRIPTION	UNIT COST	EXTENDED COST
		***** * * CHANGE ORDER * * *****		
1	37526.3EA	REPLACEMENT 2ND STREET FIBER	1.0000	37526.38
2	1603.3EA	ADDITIONAL COSTS FIBER TO PD	1.0000	1603.32
			SUB-TOTAL	39129.70
			TOTAL	39129.70

REMARKS:
Per Carol, added line 2 to PO / MK
Per Carol, removed \$3973.68 from line 2 / MK
Per Carol, chg'd description on line 2 / MK

received
11/28/16 cjs

186381
186384



Arvig Construction
150 2nd Street SW
Perham, MN 56573
218-346-5500 fax 218-346-8450

Invoice No. 252382

INVOICE

Customer

Name City of Fargo
 Address 200 3rd St N
 City Fargo State ND ZIP 58102
 Attn: Ron Gronneberg

Date 8/23/2016
 Order No. CON179
 Rep SM/BS
 FOB _____

Qty	Description	Unit Price	TOTAL
1	Base Bid	\$37,526.38	\$37,526.38
1	Alt 2 & 3	\$11,298.20	\$11,298.20
	L & M to pull fiber into the Police station (Per Ron)		
8	Operator Hours	\$65.00	\$520.00
16	Laborer Hours	\$55.00	\$880.00
	Materials		
442	12 Fiber	\$0.46	\$203.32
	CON179.1310.100		
	CON179.1315.100		

Payment Details

Cash
 Check
 Credit Card

Name _____
 CC # _____
 Expires _____

SubTotal	\$50,427.90
Retainage	\$0.00
Taxes State	\$0.00
TOTAL	\$50,427.90

Office Use Only



Thank You

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Related to:

**THE
FARGO-MOORHEAD AREA DIVERSION PROJECT**

BY AND BETWEEN

**METRO FLOOD DIVERSION AUTHORITY
as Diversion Authority**

and

**CH2M HILL ENGINEERS, INC.
as CH2M**

Dated as of January 13, 2017

This instrument was drafted by:
Ohnstad Twichell, P.C.
John T. Shockley
P.O. Box 458
West Fargo, North Dakota 58078-0458

Table of Contents

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MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES (the “Agreement”) is made as of January 13, 2017, by and between the Metro Flood Diversion Authority (“Diversion Authority”) and CH2M HILL Engineers, Inc. (“CH2M”) (collectively, the “parties”).

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

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

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

WHEREAS, the Diversion Authority has selected CH2M to provide the Diversion Authority with program management services, subject to the oversight of the Co-Executive Directors, Executive Director, and the Diversion Authority Board; and

WHEREAS, the Diversion Authority desires to enter into a master agreement for professional services with CH2M and retain CH2M to provide program management services for the Fargo-Moorhead (FM) Area Diversion Project, commencing on January 13, 2017.

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

1. **EMPLOYMENT**. The Diversion Authority hires CH2M, which accepts the hiring with the Diversion Authority pursuant to this Agreement. CH2M is an independent contractor under this Agreement. Nothing in this Agreement shall be construed to create an employer-employee relationship between the parties.
2. **DEFINITIONS**. All capitalized terms used and not otherwise defined herein shall have the meanings given to them in this Agreement as defined in this Section, unless a different meaning clearly applies from the context.

“Agreement” means this Master Agreement for Professional Services by and between the Metro Flood Diversion Authority and CH2M Hill, Inc.

“Best Efforts” means that the parties to this Agreement will act in Good Faith, act in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this Agreement, in accordance with applicable federal and state laws, regulations, and rules; however, the obligation to use Best Efforts does not mean a duty to take action that would be in violation of applicable federal or state law.

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

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

“Consultant” means the individual or entity with which the Owner has contracted for performance of the services as set forth in this Agreement.

“Diversion Authority Board” means the Governing Body of the Metro Flood Diversion Authority.

“Effective Date” means January 13, 2017.

“Executive Director” means the Chief Administrative Officer of the Metro Flood Diversion Authority. The term also includes Co-Executive Director.

“Fargo-Moorhead Metropolitan Area” means Fargo, North Dakota, Moorhead, Minnesota, and surrounding communities; it is further defined by the United States Census Bureau as comprising all of Cass County, North Dakota, and Clay County, Minnesota, which includes the cities of Dilworth, Minnesota, West Fargo, North Dakota, and numerous other towns and developments from which commuters travel daily for work, education, and regular activities.

“Fargo-Moorhead Metropolitan Area Flood Risk Management Project” has the same definition as “Project” in this Agreement and is the name given to the Project by the USACE.

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

“Governing Body” means the body which performs the legislative and governmental functions of a political subdivision, including but not limited to, a board, council, or commission. For example, the Cass County Commission, the Clay County Commission, the Moorhead City Council and the Fargo City Commission are the Governing Body of each of said entities as the board for the CCJWRD is the Governing Body for that entity.

“JPA” or “Joint Powers Agreement” means the agreement dated as of June 1, 2016, by and between the Member Entities.

“LJPA” or “Limited Joint Powers Agreement” means the agreement dated July 11, 2011, and subsequently amended, which was entered into between the City of Moorhead, the City of Fargo, Clay County, Cass County, the Buffalo-Red River Watershed District and the Cass County Joint Water Resource District in order to cooperate in the planning and design phase of the Locally Preferred Plan.

“Member Entities” shall mean the City of Moorhead, the City of Fargo, Clay County, Cass County, and Cass County Joint Water Resource District.

“Metro Flood Diversion Authority” means the political subdivision created by the LJPA and continued through and vested with the powers set forth in the JPA.

“Owner” means the individual or entity with which the Consultant has contracted regarding the services set forth herein, and which has agreed to pay Consultant for the performance of the services, pursuant to the terms of this Agreement.

“Person” means any natural or legal person, county, city, municipality, political subdivision, public benefit corporation, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority, or other entity.

“Project” means the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013.

3. AUTHORIZATION TO PROCEED. Execution of this Agreement by the Diversion Authority will be authorization for CH2M to proceed with the work, unless otherwise provided for in this Agreement.
4. PRIOR AGREEMENTS. Any prior agreements between the Diversion Authority or its Member Entities and CH2M shall, upon execution of this Agreement, be terminated and have no further force and effect. This Agreement shall supersede the prior agreement, dated August 22, 2013, between the Cass County Joint Water Resource District (“CCJWRD”) (a Diversion Authority Member Entity) and CH2M. Upon execution of this Agreement, the August 22, 2013 agreement between the CCJWRD and CH2M shall terminate and have no further force and effect. CH2M shall send the final invoice pursuant to the CCJWRD and CH2M agreement no later than January 31, 2017. If CH2M fails to send the final invoice by such date, the Diversion Authority and/or the CCJWRD reserves the right to withhold payment for the services reflected in the final invoice.
5. REQUIRED MEETINGS. On the first Tuesday of every month during the term of this Agreement, CH2M’s Program Director and Program Manager will meet with the Diversion Authority Executive Director and/or Co-deputy Executive Directors to discuss, coordinate, and build a consensus around the intended services to be performed during that month. CH2M will also be responsible for attending and providing a programmatic update at the first Diversion Authority Board meeting of each and every month.
6. SCOPE OF SERVICES. CH2M’s detailed scope of services, work schedule, and cost budget will be mutually agreed upon in writing and set forth in Task Orders issued by the Diversion Authority under this Agreement. Each Task Order will specifically refer to and incorporate this Agreement by reference, and the provisions of this Agreement shall apply to all Task Orders. In general, CH2M’s services will include services in support of the Fargo-Moorhead Area Diversion Project as mutually agreed upon between the parties.

The Diversion Authority reserves the right to request similar advisory services on other assignments/projects that are not listed in Exhibit A-Scope of Services under the condition of an “as needed” scope of services.

7. CHANGES TO SCOPE OF SERVICES. The Diversion Authority may make or approve changes within the general scope of services in this Agreement. If such changes affect CH2M’s cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this Agreement.
8. RESPONSIBILITY FOR ERRORS OR DELAYS FROM INACCURATE DATA. CH2M and the Diversion Authority acknowledge that the reliability of CH2M’s services depends upon the accuracy and completeness of the data supplied to CH2M. The Diversion Authority accepts sole responsibility for errors or delays in services resulting from inaccurate or incomplete data supplied to CH2M, and the Diversion Authority acknowledges and agrees that any additional services thereby necessitated will result in additional fees payable by the Diversion Authority to CH2M. CH2M must receive promptly the information to deliver the Services as well as the Diversion Authority’s prompt updates to any information where there has been a material change which may affect the scope or delivery of the Services, such as a change in the nature of the Diversion Authority’s products or equipment, systems, and/or processes that are the focus of CH2M’s service(s).
9. TASK ORDERS. CH2M shall receive assignments for work under this Agreement through Task Orders authorized and provided by the Diversion Authority. The Diversion Authority shall compensate CH2M only for work contained within the Task Orders. If CH2M engages in work beyond the scope of a Task Order, the Diversion Authority shall not compensate CH2M for that work, unless agreed to in writing by the Diversion Authority prior to the work being completed. All amendments to Task Orders must be authorized and provided by the Diversion Authority in writing.
10. PERSONNEL. CH2M must provide the services of a “Program Manager” and designated CH2M associates and employees under his or her management. All persons assigned by CH2M to perform services under this Agreement shall be fully qualified to perform the work assigned to them. CH2M shall devote such personnel and resources, time, attention and energies to the Diversion Authority’s business as are necessary to fulfill the duties and responsibilities required by the Diversion Authority. CH2M must endeavor to minimize turnover of personnel performing services under this Agreement. If the Diversion Authority is dissatisfied with any of CH2M’s personnel, the Diversion Authority reserves the right to require removal of those personnel from the Task Order. The Diversion Authority shall provide CH2M with a written statement, including reasonable detail, outlining its reasons for desiring removal. Replacement personnel for the removed person shall be fully qualified for the position.
11. PERSONNEL IDENTIFIED FOR PROJECT DELIVERY. CH2M agrees and acknowledges that the following specifically identified individuals shall be assigned the following roles for this Agreement (hereinafter “Key Personnel”):

Individual	Position	Compensation Position	Hourly Rate	Email
Martin Nicholson	Program Director	Principal-in-Charge	\$416	Martin.Nicholson@CH2M.com
Randy Richardson	Program Manager	Program Manager	\$386	Randy.Richardson@CH2M.com
Andrew Dobson	Principal P3 Specialist	Principal P3 Specialist	\$431	Andrew.Dobson@CH2M.com
John Glatzmaier	Technical Lead	Task Manager	\$291	John.Glatzmaier@CH2M.com

CH2M shall use its Best Efforts to assure that Key Personnel are available to provide services to the Project and as points of contact for the Co-Executive Directors and General Counsel of the Diversion Authority. In the event that any of the Key Personnel are not available for the Project, CH2M shall notify the Co-Executive Directors of the Diversion Authority within ten (10) days of the Key Personnel's non-availability. CH2M shall provide the resumes of the individual(s) it is proposing to replace the non-available Key Personnel and the Diversion Authority will review the resume and may approve the new Key Personnel. The Diversion Authority will act in Good Faith and in a reasonable manner when reviewing and approving new Key Personnel. In the event that the Diversion Authority determines that the new Key Personnel are not acceptable, CH2M will propose new Key Personnel.

12. SUBCONTRACTORS. CH2M may enter into agreements with subcontractors in furtherance of their services under this Agreement, as approved by the Co-Executive Directors.
13. TERM. Unless terminated under Section Forty-Three (43), Termination, this Agreement shall remain in full force and effect for a period of approximately three (3) years from the date of execution on January 13, 2017, through December 31, 2019. Task Order 1-Scope of Services, attached hereto as Exhibit A, shall become effective on January 13, 2017, and will expire on April 1, 2018. This Agreement shall take full force and effect on January 13, 2017, upon approval and execution by the Diversion Authority Board. Upon expiration of the initial term of this Agreement, this contract may be renewed by mutual agreement of the parties.
14. EXTENSION OF TERM. This Agreement may be extended by written Amendment. If this Agreement expires before the completion of a Task Order, the Agreement shall be deemed to have been extended until the completion of services under the applicable Task Order.
15. COMPENSATION. For all services rendered by CH2M, the Diversion Authority will pay CH2M based on the time spent by those CH2M team members working on the Project and the hourly charging rates applicable to those CH2M team members, plus office space costs as set forth in Article 19 of this Agreement, plus subcontracts with non CH2M-affiliated Companies and Outside Services, plus a service charge of ten percent (10%) on Subcontracts and Outside Services, plus applicable sales, use, value added, business transfer, gross receipts, or other similar taxes. Time will be tracked and billed in one (1) hour

increments for each CH2M team member. CH2M’s Hourly Rates for services rendered through December 31, 2018, are listed below. Beginning January 1, 2019, Hourly Rates may be increased based on mutual agreement, but will not be increased by an amount exceeding three percent (3%) of the 2017 and 2018 rates. (For example, the 2019 rate of an office assistant cannot exceed \$86.52 per hour).

2017-2018 Rates	
Labor Classification	Hourly Rate
Principal P3 Specialist	\$431
Principal in Charge/Senior Advisor	\$416
Program Manager	\$386
Dep. Program Manager	\$362
P3 Specialist	\$330
PM/Sr. Task Manager	\$315
Task Manager	\$291
Senior Engineer/ Sr. Scientist	\$232
Assoc. Engineer/ Scientist	\$178
Sr. Tech/Procurement	\$166
Staff Engineer/Scientist	\$148
Staff Technician	\$137
Jr. Technician/Accounting	\$113
Administrative	\$101
Office Assistant	\$84

The Diversion Authority will compensate CH2M as set forth above and in accordance with each Task Order. Work performed under this Agreement may be performed using labor from affiliated companies of CH2M. Such labor will be billed to the Diversion Authority under the same billing terms applicable to CH2M’s employees.

The compensation is payable following the end of each month upon submission by CH2M of a monthly invoice setting forth the services performed in that month on behalf of the Diversion Authority. Invoices shall be sent as required in Section 16 of this Agreement. Invoices are due and payable within thirty (30) days of receipt. If a work order issued under this Agreement contains a not-to-exceed compensation amount, the Diversion Authority will only pay compensation to CH2M for fees and/or expenses that are less than or equal to the not-to-exceed amount stated on the work order, unless the work order has been amended pursuant to Section Seven (7) of this Agreement.

A. **Budget.** Budgetary amounts, excluding taxes, will be established for each Task Order executed under the Agreement. CH2M will make reasonable efforts to complete the work within the budget and will keep the Diversion Authority informed of progress toward that end so that the budget or work effort can be adjusted if found necessary. CH2M is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is the Diversion Authority obligated to pay CH2M beyond these limits. When any budget has been increased, CH2M’s costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.

- B. **Hourly Rates.** Hourly rates are those hourly rates charged for work performed on the Project by CH2M’s employees of the indicated classifications. These rates include all allowances for salaries, overhead, fees, and all expenses, but do not include allowances for subcontracts, outside services, or office space costs allowed by this Agreement.

16. INVOICING AND PAYMENT.

- A. CH2M must submit invoices to the Diversion Authority on the fifteenth (15th) day of each month for all services provided and allowed expenses incurred during the preceding month. CH2M’s Program Manager must personally review each invoice before it is sent to the Diversion Authority to determine its accuracy and fairness, and to ensure the invoice complies with the requirements in this Agreement. Each invoice will be processed by the Diversion Authority for the following month.

- B. CH2M must submit each original invoice to:

Metro Flood Diversion Authority
APIInvoicesFMDiv@ch2m.com
c/o Nathan Boerboom
N.Boerboom@cityoffargo.com

- C. CH2M’s invoices must be detailed and precise. CH2M’s invoices must clearly indicate fees and expenses incurred for the current billing period month and include at least the following information:

- (1) CH2M’s name and address;
- (2) CH2M’s federal employer identification number;
- (3) Unique invoice number;
- (4) Billing period;
- (5) Description of each activity performed for each day in which services were performed;
- (6) Work order number associated with each activity, in accordance with the Task Order Budgetary Breakdown;
- (7) Name, billing rate, and hours worked by each person involved in each activity, in accordance with the Task Order Budgetary Breakdown;
- (8) Total amount of fees and costs “billed to date,” including the preceding month; and
- (9) Preferred remittance address, if different from the address on the invoice’s coversheet
- (10) All of the work performed during that billing period, in accordance with the Task Order Budgetary Breakdown.

- D. CH2M’s invoice must be printed on a printed bill head and signed by the Program Manager or other authorized signatory.

- E. CH2M must keep copies of invoices and receipts and provide copies for the Diversion Authority’s review upon request.

- F. After the Diversion Authority receives CH2M's invoice, the Diversion Authority will either process the invoice for payment or give CH2M specific reasons, in writing within fifteen (15) business days, why part or all of the Diversion Authority's payment is being withheld and what actions CH2M must take to receive the withheld amount.
 - G. In the event of a disputed billing, only the disputed portion will be withheld from payment, and the Diversion Authority shall pay the undisputed portion. The Diversion Authority will exercise reasonableness in disputing any bill or portion thereof. No interest will accrue on any disputed portion of the billing until mutually resolved.
 - H. Payment does not imply acceptance of services, that expenses are allowable, or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, CH2M must credit any payment in error from any payment that is due or that may become due to CH2M under this Agreement.
 - I. The Diversion Authority will be charged interest at the rate of one-half percent (1/2%) per month, or that permitted by law if lesser, on all past-due amounts starting thirty (30) days after receipt of invoice. Payments will be first credited to interest and then to principal.
 - J. If the Diversion Authority fails to make payment in full within thirty (30) days of the date due for any undisputed billing, CH2M may, after giving seven (7) days' written notice to the Diversion Authority, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, CH2M will have no liability to the Diversion Authority for delays or damages caused by the Diversion Authority because of such suspension.
 - K. CH2M must pay all fees, fines, taxes, or other costs of doing business related to the services, except for the expenses allowed under Section Fifteen (15) of this Agreement.
17. RELATIONSHIP BETWEEN PARTIES. CH2M is retained by the Diversion Authority only for the purposes and to the extent set forth in this Agreement, and its relationship to the Diversion Authority shall, during the period or periods of services under this Agreement, be that of an independent contractor. CH2M shall be free to use such portion of CH2M's entire time, energy and skill during the course of this Agreement to meet its contractual obligation to the Diversion Authority. Neither CH2M, nor its personnel, shall be considered to be employed by the Diversion Authority or entitled to participate in any plans, arrangements or distributions by the Diversion Authority pertaining to or in connection with any benefits accorded the Diversion Authority's regular employees. The Diversion Authority shall not be financially responsible to CH2M except for the payment of compensation and expenses specifically set forth in this Agreement, and shall not be responsible for the payment of any cost of living allowances, merit increases, medical insurance, public employee's retirement, life or disability coverage, sick leave or holiday pay or vacation pay or any benefit of any kind not specifically set forth in this Agreement. Likewise, the Diversion Authority shall not be responsible for wage or salary withholding to the federal or any state government.
18. REPRESENTATIONS AND WARRANTIES. CH2M represents and warrants that the following statements are true:

- A. CH2M has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any member of the Diversion Authority with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
 - B. The Team Members performing the work hereunder have no interest that would constitute a conflict of interest with the Diversion Authority during the term of the Project. This does not preclude or prohibit other CH2M employees or representatives from working with other parties who may participate on the Project and have potential or actual adverse interest to the Diversion Authority.
 - C. This Agreement does not constitute a conflict of interest or default under any of CH2M's other agreements.
 - D. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect CH2M's ability to perform under this Agreement.
 - E. CH2M is in compliance with all laws, rules, and regulations applicable to its business, including rules of professional conduct.
 - F. During the term of this Agreement, CH2M must not take any action, or omit to perform any act, that may result in a representation and warranty becoming untrue. CH2M must immediately notify the Diversion Authority if any representation and warranty becomes untrue.
 - G. THIS WARRANTY SHALL BE IN LIEU OF AND EXCLUDES ALL OTHER IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.
19. OFFICE SPACE. CH2M shall be responsible for the provision of all office space necessary to complete its work under the terms of this Agreement. Commencing on January 1, 2017 and extending through the Term of this Agreement, CH2M will invoice the Diversion Authority the following amounts:

<u>Month</u>	<u>Amount</u>
January 2017	\$21,238
February 2017	\$21,238
March 2017	\$21,238
April 2017	\$21,238
May 2017	\$21,238
June 2017	\$21,238
July 2017	\$21,238
August 2017	\$21,682
September 2017	\$21,682

October 2017	\$21,682
November 2017	\$21,682
December 2017	\$21,682
January 2018	\$21,682
February 2018	\$21,682
March 2018	\$21,682
April 2018	\$21,682
May 2018	\$21,682
June 2018	\$21,682
July 2018	\$21,682
August 2018	\$22,134
September 2018	\$22,134
October 2018	\$22,134
November 2018	\$22,134
December 2018	\$22,134
January 2019	\$22,134
February 2019	\$22,134
March 2019	\$22,134
April 2019	\$22,134
May 2019	\$22,134
June 2019	\$22,134
July 2019	\$22,134
August 2019	\$22,599
September 2019	\$22,599
October 2019	\$22,599
November 2019	\$22,599
December 2019	\$22,599

The Diversion Authority will only be responsible for such payments for months included in the period of performance in an approved Task Order.

20. WORKING RELATIONSHIP. CH2M’s Program Director and Program Manager shall be the individuals that will engage with the Diversion Authority Board and the Diversion Authority’s Executive Director(s). CH2M shall work in close cooperation and coordinate with the Diversion Authority’s advisors: John T. Shockley, local counsel; Ashurst, LLP, P3 legal advisor; and Ernst & Young Infrastructure Advisors, financial advisor, under such terms and conditions as may be set from time to time by the Diversion Authority.

CH2M recognizes that the Diversion Authority has assigned to the CCJWRD the tasks of acquiring property rights in North Dakota and contracting for the Oxbow-Hickson-Bakke Ring Levee project. Under this Agreement, CH2M shall answer to and comply with all CCJWRD work directives in furtherance those responsibilities of the CCJWRD which are in accordance with CH2M’s scope of work under Exhibit A.

21. INDEPENDENT PROFESSIONAL JUDGMENT. Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by CH2M in

accordance with the independent professional judgment of each of its employees. CH2M shall require its personnel to perform the services rendered in accordance with accepted principals of its industry in the State of North Dakota. CH2M personnel are subject to the rules and regulations of any and all licensing and professional organizations or associations to which those personnel may from time to time belong, and the laws and regulations in the State of North Dakota.

22. STANDARD OF CARE. The standard of care applicable to CH2M's services will be the degree of skill and diligence normally employed by professional consultants or consultants performing the same or similar Services at the time said services are performed. CH2M will re-perform any services not meeting this standard without additional compensation.
23. SUBSURFACE INVESTIGATIONS. In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of CH2M.
24. CH2M'S PERSONNEL AT CONSTRUCTION SITE.
 - A. The presence or duties of CH2M's personnel at a construction site, whether as onsite representatives or otherwise, do not make CH2M or CH2M's personnel in any way responsible for those duties that belong to the Diversion Authority and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction contract documents and any health or safety precautions required by such construction work.
 - B. CH2M and CH2M's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except CH2M's own personnel.
 - C. The presence of CH2M's personnel at a construction site is for the purpose of providing to the Diversion Authority a greater degree of confidence that the completed construction work will conform generally to the construction documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the construction contractor(s). CH2M neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents.

- D. For this Agreement only, construction sites include places of manufacture for materials incorporated into the construction work, and construction contractors include manufacturers of materials incorporated into the construction work.
25. OPINIONS OF COST, FINANCIAL CONSIDERATIONS, AND SCHEDULES.
- A. In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, CH2M has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, CH2M makes no warranty that the Diversion Authority's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from CH2M's opinions, analyses, projections, or estimates.
- B. If the Diversion Authority wishes greater assurance as to any element of Project cost, feasibility, or schedule, the Diversion Authority will employ an independent cost estimator, contractor, or other appropriate advisor.
26. CONSTRUCTION PROGRESS PAYMENTS. Recommendations by CH2M to the Diversion Authority for periodic construction progress payments to the construction contractor(s) will be based on CH2M's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by CH2M to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that CH2M has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to the Diversion Authority free and clear of liens, claims, security interests, or encumbrances; or that there are no other matters at issue between the Diversion Authority and the construction contractors that affect the amount that should be paid.
27. RECORD DRAWINGS. Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. CH2M is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.
28. CONSULTANT'S INSURANCE. CH2M shall maintain throughout this Agreement the following insurance:
- A. CH2M shall purchase and maintain throughout this Agreement such insurance as is appropriate for the work being performed and as will provide protection from claims set forth below which may arise out of or result from CH2M's performance of the work and CH2M's other obligations under the Contract Documents, whether it is to be performed by CH2M, any subcontractor or supplier, or by anyone directly or indirectly employed

by any of them to perform any of the work, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefits, and other similar employee benefit acts;
- (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of CH2M's employees;
- (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than CH2M's employees;
- (4) Claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - (a) by any person as a result of an offense directly or indirectly related to the employment of such person by CH2M, or
 - (b) by any other person for any other reason;
- (5) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
- (6) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.

B. The policies of insurance required by this Section Twenty-Eight (28) will:

- (1) With respect to insurance required by above paragraphs 28(A)(3) through 28(A)(6) inclusive, be written on an occurrence basis, included as additional insureds (subject to any customary exclusion regarding Professional liability and Workers Compensation) the Diversion Authority, the State of North Dakota, and any other individuals or entities identified, all of whom will be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insured, and the insurance afforded to these additional insureds will provide primary coverage for all claims covered in the General Liability and Automobile Liability Policies;
 - (a) All insurance policies required under this Agreement, including the Excess or Umbrella Liability policies, must be from insurers rated "A-" or better by the A.M. Best Company, Inc.
- (2) Include at least the specific coverages and be written for not less than the limits of liability specified or required by Laws or Regulations, whichever is greater;
- (3) Contain a provision or endorsement that the coverage afforded will not be canceled or renewal refused until at least thirty (30) days prior written notice has been given

to the Diversion Authority and to each other additional insured identified to whom a certificate of insurance has been issued (and the certificates of insurance furnished by CH2M pursuant to this section will so provide);

- (4) Remain in effect at least until final payment and at all times thereafter when CH2M may be correcting, removing, or replacing defective work;
- (5) Include completed operations coverage:
 - (a) Such insurance will remain in effect for two (2) years after final payment.
 - (b) CH2M will furnish the Diversion Authority and each other additional insured identified, to whom a certificate of insurance has been issued, evidence satisfactory to the Diversion Authority and any such additional insured of continuation of such insurance at final payment and one year thereafter.
- (6) Not limit in any way CH2M's duties to defend, indemnify, and hold harmless the Diversion Authority and the State of North Dakota, and those parties' officers, employees, agents, consultants, subcontractors, and representatives in accordance with Section Forty (40);
- (7) Either in the policies or in endorsements, contain a "waiver of subrogation" (except for in the Professional Liability Policy) that waives any right to recovery any of CH2M's insurance companies might have against the Diversion Authority or the State of North Dakota.
- (8) Either in the policies or in endorsements, contain a provision that CH2M's insolvency or bankruptcy will not release the insurers from payment under the policies, even when CH2M's insolvency or bankruptcy prevents CH2M from meeting the retention limits under the policies;
- (9) Either in the policies or in endorsements, contain cross liability/severability of interests, to ensure that all additional parties are covered as if they were all separately covered (with the exception of Workers Compensation and Professional liability policies);
- (10) Either in the policies or in endorsements, contain a provision that the legal defense provided to the Diversion Authority and the State of North Dakota must be free of any conflict of interest, even if retention of separate legal counsel is necessary;
- (11) Either in the policies or in endorsements, contain a provision that any attorney who represents the State of North Dakota must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C § 54-12-08;
- (12) Either in the policies or in endorsements, contain a provision that CH2M's policies will be primary and noncontributory regarding any other insurance maintained by or available to the Diversion Authority or the State of North Dakota, and that any

insurance maintained by those parties will be in excess of CH2M's insurance and will not contribute with it (except for Worker's Compensation and Professional Liability Policies).

C. The limits of liability for the insurance required by this Section Twenty-Eight (28) will provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

(1) Worker's Compensation, and related coverages under Paragraphs 28(A)(1) and 28(A)(2):

- | | |
|---|--------------|
| (a) State: | Statutory; |
| (b) Applicable Federal (e.g. Longshoreman's): | Statutory; |
| (c) Employer's Liability: | \$1,000,000. |

(2) CH2M's General Liability under Paragraphs 28(A)(3) through 28(A)(6) which will include premises or operations coverage, completed operations and product liability coverages, and will eliminate the exclusion with respect to property under the care, custody, and control of CH2M:

- | | |
|--|--------------|
| (a) General Aggregate: | \$10,000,000 |
| (b) Products- Completed Operations Aggregate: | \$2,000,000 |
| (c) Personal and Advertising Injury: | \$2,000,000 |
| (d) Each Occurrence (Bodily Injury and Property Damage): | \$2,000,000 |
| (e) Property damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable. | |
| (f) Excess or Umbrella liability: | |
| i. General Aggregate: | \$10,000,000 |
| ii. Each Occurrence: | \$10,000,000 |

(3) Automobile Liability under Paragraph 28(A)(6) (which will include coverage for any auto, including owned, non-owned, and hired):

- | | |
|----------------------|-------------|
| (a) Bodily injury: | |
| i. Each person: | \$2,000,000 |
| ii. Each accident: | \$2,000,000 |
| (b) Property Damage: | |
| i. Each accident: | \$2,000,000 |
| OR | |
| (c) Combined Single | |
| i. Limit of: | \$2,000,000 |

(4) Professional Liability coverage will provide coverage for not less than the following amounts:

- | | |
|-----------------------|-------------|
| (a) Each claim made: | \$3,000,000 |
| (b) Annual Aggregate: | \$3,000,000 |

- (5) The following will be included as additional insured on all of CH2M's insurance policies required under this Agreement:
 - (a) Cass County Joint Water Resource District;
 - (b) Diversion Authority; and
 - (c) State of North Dakota.
 - (6) If CH2M is domiciled outside of the State of North Dakota, CH2M will purchase and maintain employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on CH2M's Workers' Compensation and General Liability Policies.
- D. CH2M will ensure that any Subcontractor purchases and maintains the same insurance policies and endorsements required of CH2M under the Contract Documents, with the same conditions and terms required of CH2M and its insurers.
- E. If any required policy is written on a "claims made" form, CH2M must maintain the coverage continuously throughout the term of this Agreement, and, without lapse, for three (3) years beyond the termination or expiration of this Agreement and the Diversion Authority's acceptance of all services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that services commence under this Agreement.
- F. Before CH2M begins performing services, CH2M must send the Diversion Authority certificates of insurance and any applicable endorsements attesting to the existence of coverage. CH2M will not allow its policies to be cancelled, lapse, terminate or be amended to reduce coverage below the minimums called for in this Agreement without thirty (30) days' notice to the Diversion Authority. The certificates of insurance issued to confirm CH2M's compliance must reference this Agreement.
- G. If required insurance lapses during the term of this Agreement, the Diversion Authority is not required to process invoices after such lapse until CH2M provides evidence of reinstatement that is effective as of the lapse date.
- H. The Diversion Authority shall have no specific responsibility to provide any general liability coverage or worker's compensation coverage for the benefit of CH2M's employees during the terms of this Agreement.
29. THIRD PARTY DESIGNERS. The Diversion Authority and CH2M acknowledge and agree that some of the Design Services for the Project will be separately engaged by the Diversion Authority through retention of separate design professionals or provided by the USACE. Notwithstanding any provision to the contrary, CH2M shall have no responsibility for the accuracy or sufficiency of documentation prepared by those design professionals. CH2M will notify the Diversion Authority of errors, discrepancies and inconsistencies it may discover in such documents. If such errors, discrepancies or inconsistencies cause an increase in cost or the time for performance, CH2M shall be entitled to an equitable adjustment. In the event CH2M performs constructability reviews, value engineering or any

other reviews or tasks involving the design for the Work contemplated by the Project, it is understood that such reviews will not render CH2M liable in any manner for the duties of the Diversion Authority's separately-retained design professionals or the USACE.

30. OPEN RECORDS. CH2M will cooperate with the Diversion Authority in responding to any request for documents by any third party to the extent such documents may be required to be disclosed under Chapter 44-04 of North Dakota Century Code regarding open records laws.
31. DATA FURNISHED BY THE DIVERSION AUTHORITY. The Diversion Authority will provide to CH2M all data in the Diversion Authority's possession relating to CH2M's services on the Project. CH2M will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the Diversion Authority.
32. ACCESS TO FACILITIES AND PROPERTY. The Diversion Authority will make its facilities accessible to CH2M as required for CH2M's performance of its services and will provide labor and safety equipment as required by CH2M for such access. The Diversion Authority will perform, at no cost to CH2M, such tests of equipment, machinery, pipelines, and other components of the Diversion Authority's facilities as may be required in connection with CH2M's services.
33. ADVERTISEMENTS, PERMITS, AND ACCESS. Unless otherwise agreed to in the Scope of Services, the Diversion Authority will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for CH2M's services or Project construction.
34. TIMELY REVIEW. The Diversion Authority will examine CH2M's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the Diversion Authority deems appropriate; and render in writing decisions required by the Diversion Authority in a timely manner.
35. PROMPT NOTICE. The Diversion Authority will give prompt written notice to CH2M whenever the Diversion Authority observes or becomes aware of any development that affects the scope or timing of CH2M's Services, or of any defect in the work of CH2M or their third party designers or construction contractors.
36. ASBESTOS OR HAZARDOUS SUBSTANCES. If asbestos or hazardous substances in any form are encountered or suspected, CH2M will stop its own work in the affected portions of the Project to permit testing and evaluation. If asbestos is suspected, CH2M will, if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated. If hazardous substances other than asbestos are suspected, CH2M will, if requested, conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary remedial measures at an additional fee and contract terms to be negotiated. Client recognizes that CH2M assumes no risk and/or liability for a waste or hazardous waste site originated by other than CH2M.

37. CONTRACTOR INDEMNIFICATION AND CLAIMS.

- A. The Diversion Authority agrees to include in all construction contracts the provisions of Section Twenty-Four (24), CH2M's Personnel at Construction Site, and provisions providing contractor indemnification of the Diversion Authority and CH2M for contractor's negligence.
- B. The Diversion Authority shall require construction contractor(s) to name the Diversion Authority, CH2M, and its subcontractors as additional insureds on the contractor's general liability insurance policy.
- C. The Diversion Authority agrees to include the following clause in all contracts with construction contractors, and equipment or materials suppliers: "Contractors, subcontractors, and equipment and material suppliers on the Project, or their sureties, shall maintain no direct action against CH2M, CH2M's officers, employees, affiliated corporations, and subcontractors for any claim arising out of, in connection with, or resulting from the consulting services performed. The Diversion Authority will be the only beneficiary of any undertaking by CH2M."

38. OWNER'S INSURANCE.

- A. The Diversion Authority will maintain property insurance on all pre-existing physical facilities associated in any way with the Project.
- B. The Diversion Authority will provide for a waiver of subrogation as to all Owner-carried property damage insurance, during construction and thereafter, in favor of CH2M, CH2M's officers, employees, affiliates, and subcontractors.
- C. The Diversion Authority is not responsible for the payment of deductibles owed under CH2M's insurance policies.
- D. The Diversion Authority will provide (or have the construction contractor(s) provide) a Builders Risk All Risk insurance policy for the full replacement value of all Project work including the value of all onsite Owner-furnished equipment and/or materials associated with CH2M's services. Such policy will include coverage for loss due to defects in materials and workmanship and errors in design, and will provide a waiver of subrogation as to CH2M and the construction contractor(s) (or the Diversion Authority), and their respective officers, employees, agents, affiliates, and subcontractors. The Diversion Authority will provide CH2M a copy of such policy.
- E. The Diversion Authority reserves the right to enter into a program-wide insurance plan at its expense. CH2M agrees to participate in such a program if named as an insured party.

39. LITIGATION ASSISTANCE. Services required or requested of CH2M by the Diversion Authority to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the Diversion Authority, except for suits or claims between the parties to this Agreement, will be defined in an authorized Task Order and reimbursed as mutually agreed.

40. INDEMNIFICATION. CH2M will defend, indemnify, and hold harmless the Diversion Authority and the State of North Dakota, and those parties' officers, employees, agents, consultants, subcontractors, and representatives, from and against any and all claims, losses, liabilities, damages, expenses, demands, suits, fines, judgments, costs, expenses, and fees (including all fees and charges of attorneys, engineers, architects, and other professionals and all court, arbitration, mediation, or other resolution costs) arising out of or relating to claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by any negligent act or omission of CH2M, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, and including all costs, expenses, and fees incurred by the Diversion Authority or the State of North Dakota in establishing and litigating the existence, scope, or any other matters relating to CH2M's obligations to defend, indemnify, and hold harmless. CH2M's obligations to defend will be free of any conflicts of interest, even if retention of separate legal counsel is necessary. CH2M's duties to defend, indemnify, and hold harmless include anything in excess of any minimum insurance requirements described in the Contract Documents, and anything in excess of any of CH2M's insurance policy limits. CH2M's obligations to defend, indemnify, and hold harmless will continue for a period of not less than six (6) years following completion of the Project or any termination or expiration of the Contract Documents.

The indemnified party shall provide notice to CH2M after obtaining knowledge of any claim that it may have pursuant to this Section Forty (40). In the event the indemnified party pursues a claim pursuant to this Section Forty (40), the indemnified party will also provide relevant information and assistance to CH2M.

41. LIMITATION OF LIABILITY. To the maximum extent permitted by law, CH2M's liability for the Diversion Authority's damages will not, in the aggregate, exceed twenty million dollars (\$20,000,000). This article takes precedence over any conflicting article of this Agreement or any document incorporated into it or referenced by it. This limitation of liability will apply whether CH2M's liability arises under breach of contract or warranty; tort, including negligence, strict liability, statutory liability, or any other cause of action, and shall include CH2M's officers, affiliated corporations, employees, and subcontractors.

42. BREACH AND REMEDIES.

A. A breach exists under this Agreement if either party:

- (1) Makes a material misrepresentation in writing; or
- (2) Fails or is unable to meet or perform any material promise in this Agreement, and
 - (a) Is incapable of curing the failure, or
 - (b) Does not cure the failure within twenty (20) days following notice (or within a longer period if specified in the notice).

- B. CH2M must give the Diversion Authority notice immediately if CH2M breaches, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a breach under this Agreement.
- C. The parties will use their Best Efforts to resolve amicably any dispute, including use of alternative dispute resolution options.
- D. All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

43. TERMINATION.

- A. Either party may terminate this Agreement, in whole or in part, for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within twenty (20) days of written notice and diligently complete the correction thereafter.
- B. The Diversion Authority may terminate this Agreement, in whole or in part, or modify or limit CH2M's services, and proportionately, CH2M's compensation, if:
 - (1) The Diversion Authority determines that having CH2M provide services has become infeasible due to changes in applicable laws or regulations, or
 - (2) Expected or actual funding to compensate CH2M is withdrawn, reduced, or limited.
- C. Either party may terminate this Agreement, in whole or in part, for any or no reason upon thirty (30) days' written notice.
- D. On termination, CH2M will be paid for all authorized services performed up to the termination date plus termination expenses, such as, but not limited to, reassignment of personnel, subcontract termination costs, and related closeout costs.
- E. In the event a federal or state tax or employment agency concludes that an independent contractor relationship does not exist, either CH2M or the Diversion Authority may terminate this Agreement immediately upon written notice.
- F. Upon receipt of any termination notice from the Diversion Authority, CH2M must promptly discontinue all affected services unless the parties mutually agree otherwise.
- G. Upon the end date of the Agreement, which is the date when this Agreement as a whole expires or is terminated pursuant to its terms:
 - (1) The Diversion Authority will be released from compensating CH2M for services other than those CH2M satisfactorily performed prior to the end date.

Each such mailed notice or communication will be deemed to have been given on the date that is three days after the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this Agreement.

47. PROHIBITION AGAINST ASSIGNMENT. This is a bilateral personal services Agreement. Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable.
48. NO THIRD PARTY BENEFICIARIES. This Agreement gives no rights or benefits to anyone other than the Diversion Authority and CH2M and has no third-party beneficiaries.
49. CONSEQUENTIAL DAMAGES. To the maximum extent permitted by law, CH2M and CH2M's affiliated corporations, officers, employees, and subcontractors shall not be liable for the Diversion Authority's special, indirect, or consequential damages, whether such damages arise out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action. In order to protect CH2M against indirect liability or third-party proceedings, the Diversion Authority will indemnify CH2M for any such damages.
50. MATERIALS AND SAMPLES. Any items, substances, materials, or samples removed from the Project site for testing, analysis, or other evaluation will be returned to the Project site within sixty (60) days of Project close-out unless agreed to otherwise. The Diversion Authority recognizes and agrees that CH2M is acting as a bailee and at no time assumes title to said items, substances, materials, or samples.
51. CONSULTANT'S DELIVERABLES. A party may rely on data or information that the party receives from the other party by hard copy or electronic media. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents. CH2M's deliverables are for the Diversion Authority or others' convenience. Any conclusions or information derived or obtained from these files will be at user's sole risk.
52. ACCESS TO CH2M'S ACCOUNTING RECORDS AND AUDIT RIGHTS.
 - A. CH2M must allow the Diversion Authority and its designees to review and audit CH2M's financial documents and records relating to this Agreement. CH2M will maintain accounting records, in accordance with generally accepted accounting principles. These records will be available to the Diversion Authority for a period of one (1) year after CH2M's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The Diversion Authority may only audit accounting records applicable to a cost-reimbursable type compensation. Upon finalization of the audit, the Diversion Authority will submit to CH2M a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to CH2M at the completion of an audit.

- B. Within sixty (60) days after the date of the Notice of Audit Results, CH2M will respond, in writing, to the Diversion Authority indicating (a) whether it concurs with the audit report, (b) clearly explaining the nature and basis for any disagreement as to a disallowed item of expense, and (c) providing a written explanation as to any questioned or no opinion expressed item of expense (“Response”). The Response will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, CH2M may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the Diversion Authority. The Response will refer to and apply the language of this Agreement. CH2M agrees that failure to submit a Response within the sixty (60) day period constitutes agreement with any disallowance of an item or expense and authorizes the Diversion Authority to finally disallow any items of questioned or no opinion expressed cost.
- C. The Diversion Authority will make its decision with regard to any Notice of Audit Results and Response within one hundred twenty (120) days after the date of the Notice of Audit Results. If the Diversion Authority determines that an overpayment has been made to CH2M, CH2M will repay the amount to the Diversion Authority or reach an agreement with the Diversion Authority on a repayment schedule within thirty (30) days after the date of an invoice from the Diversion Authority. If CH2M fails to repay the overpayment or reach an agreement with the Diversion Authority on a repayment schedule within the thirty (30) day period, CH2M agrees that the Diversion Authority will deduct all or a portion of the overpayment from any funds then or thereafter payable by the Diversion Authority to CH2M for this project. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be the interest rate on judgments in North Dakota as calculated by the state court administrator pursuant to N.D.C.C. § 28-20-34. The rate of interest will be reviewed annually by the Diversion Authority and adjusted as necessary. CH2M expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit to contest the Diversion Authority’s decision only as to any item of expense the disallowance of which was disputed by CH2M in a timely-filed Response.
53. OWNERSHIP. Ownership of work product and inventions created by CH2M shall be as follows:
- A. **Pre-Existing Consultant Materials.** The Diversion Authority acknowledges and agrees that in the performance of the services, CH2M will utilize its proprietary data, concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software, works of authorship, software and hardware architecture, databases, tools, other background technologies and standards of judgment that developed or licensed from third parties prior to the effective date of this Agreement (the “Pre-Existing Consultant Materials”) and that CH2M shall retain all right, title and interest, including intellectual property rights in the Pre-existing Consultant Materials. Subject to

the terms and conditions of this Agreement, CH2M hereby grants to the Diversion Authority a non-exclusive, non-transferable, royalty-free license, fully assignable to the Diversion Authority's member entities, to utilize the Pre-Existing Consultant Materials for the purpose of the Diversion Authority's Project.

- B. **Derivative Consultant Materials.** The Diversion Authority acknowledges and agrees that in the performance of the services, Consultant will utilize and develop customization, enhancements, improvements, modifications and adaptations of and to the Pre-Existing Consultant Materials (the "Derivative Consultant Materials"). CH2M shall retain all right, title and interest, including intellectual property rights in the Derivative Consultant Materials. Subject to the terms and conditions of this Agreement, CH2M hereby grants to the Diversion Authority a non-exclusive, non-transferable, royalty-free license, fully assignable to the Diversion Authority's member entities, to utilize the Derivative Consultant Materials.
- C. **New Consultant Materials.** The Diversion Authority acknowledges and agrees that in the performance of the services, CH2M may utilize and develop new software, hardware and other technology or processes that do not utilize or incorporate, or are not based upon, the Pre-Existing Consultant Materials ("New Consultant Materials"). Between the parties, subject to the license grant-back set forth below, the Diversion Authority will retain all right, title and interest, including without limitation intellectual property rights, in and to the New Consultant Materials. The Diversion Authority shall have the full ownership of such New Consultant Materials without any limitation or restriction.
- D. **License Grant Back.** Subject to the terms and conditions of the Agreement, the Diversion Authority hereby grants to CH2M a non-exclusive, transferable, royalty-free license to utilize the concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software and hardware architecture, and other background technologies that are newly developed by CH2M under the Agreement and assigned to the Diversion Authority under this Agreement, to make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, import, and otherwise disposed of any products, technologies, and services and for any purposes without restriction.
- E. **License Restrictions.** Except as otherwise permitted above, the Diversion Authority and its member entities shall not, and shall not allow any third party to: (i) modify or otherwise create derivative works of the Pre-Existing Consultant Materials; (ii) use the Pre-Existing Consultant Materials for any other purpose, other than the Diversion Authority's Project; (iii) make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, or import any product that incorporates, embodies and/or is based upon the Pre-Existing Consultant Materials; (iv) sublicense, distribute or otherwise transfer to a third party any of the Pre-Existing Consultant Materials by itself or as incorporated in the services; or (v) reverse engineer, disassemble, decompile or attempt to derive the source code or underlying ideas or algorithms of the Pre-Existing Consultant Materials. Any additional use of the Pre-Existing Consultant Materials shall require a separate written license agreement.

F. **Miscellaneous.** Nothing contained in this Agreement shall be construed as conferring to the Diversion Authority or any third party any license or right by implication, estoppel or otherwise to any intellectual property rights of CH2M, other than the rights expressly granted under this Agreement. The Diversion Authority and its Member Entities may use said work products for the specific purpose for which the work product was intended. Any other use or reuse, without written verification or adaptation by CH2M will be at the user's sole risk.

G. **Diversion Authority Material.** As between the parties, the Diversion Authority is the exclusive owner of all material CH2M collects from the Diversion Authority in connection with the services under this Agreement, including copyrights. Within thirty (30) days of the end date of the Agreement, or upon the Diversion Authority's notice at any time, CH2M must give all materials collected to the Diversion Authority (or to another party at the Diversion Authority's direction). Unless the Diversion Authority specifies otherwise, all files must be saved in Microsoft Word and Excel formats, as applicable. CH2M must maintain CH2M's records relating to services under this Agreement and CH2M's invoices, and all other materials, in an accessible location and condition for a period of not less than one (1) year after the later of:

- (1) The date when CH2M receives final payment under this Agreement; or
- (2) The date when the Diversion Authority resolves with CH2M the findings of any final audit.

CH2M may retain copies of any original documents CH2M provides to the Diversion Authority and a copy of any material collected from the Diversion Authority in CH2M's confidential files for the purpose of complying with applicable laws or established company procedure regarding the preservation of business records.

54. REUSE OF PROJECT DOCUMENTS. Services and deliverables are for the exclusive use of the Diversion Authority and are not to be relied upon by third parties. All reports, drawings, specifications, documents, and other deliverables of CH2M, whether in hard copy or in electronic form, are instruments of service for this Project, whether the Project is completed or not. The Diversion Authority agrees to indemnify CH2M and CH2M's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to the Diversion Authority's related entities' unauthorized reuse, change or alteration of these Project documents. Nothing in this Agreement shall constitute a waiver of the statutory limits of liability set forth in N.D.C.C. § 32-12.1-03 or a waiver of any available immunities or defenses.

55. CONFIDENTIAL INFORMATION AND PUBLICITY.

A. CH2M agrees to hold in confidence the following confidential information:

- (1) All information that the Diversion Authority discloses to CH2M; and

- (2) All information to which CH2M gains access while providing services under this Agreement.
- B. Confidential information does not include any information that CH2M can demonstrate has been made available to the public (other than through a breach of this Agreement). As between CH2M and the Diversion Authority, the Diversion Authority owns the confidential information, and the Diversion Authority authorizes CH2M to use it only for purposes of performing this Agreement. CH2M may also disclose the Diversion Authority's confidential information to the extent necessary to comply with law, provided CH2M gives the Diversion Authority prior written notice. Upon the end date of this Agreement, CH2M must destroy or return all confidential information to the Diversion Authority, at the Diversion Authority's discretion, and certify to the Diversion Authority, in writing, that it has done so; provided, however, such destruction shall include, without limitation, the process of expunging, to the extent reasonably practicable, all such confidential information from any computer, hard drive, word processor, server, backup tape, or other electronic device containing such confidential information. Notwithstanding the foregoing, CH2M may retain one archival copy of the confidential information in its confidential files for the purpose of complying with applicable laws or established company procedure regarding the preservation of business records.
- C. CH2M must not make any public announcement, press release, or other writing relating to the services under this Agreement without the Diversion Authority's prior written approval.
- D. CH2M understands a breach under this section may result in irreparable damage for which no adequate remedy may be available. Accordingly, injunctive relief and other equitable relief are remedies available to the Diversion Authority.
56. MODIFICATION. This Agreement, including its attachments and schedules, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment approved by the Diversion Authority and executed by CH2M and the Chair of the Diversion Authority on behalf of the Diversion Authority. The following attachment and schedules are hereby made a part of this Agreement: (1) Exhibit A- Scope of Services. It may be modified as to terms and conditions from time to time upon the mutual consent of the parties; however, such modification shall be reduced to writing, signed by the parties and the document appended to and made a part of this Agreement. In the event the Diversion Authority either appoints or engages CH2M as its Broker of Record or in another similar relationship, the parties shall enter into a separate service agreement.
57. FORCE MAJEURE. CH2M is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of CH2M. In any such event, CH2M's contract price and schedule shall be equitably adjusted.
58. WAIVER. A party's waiver of enforcement of any of this Agreement's terms or conditions will be effective only if it is in writing. A party's specific waiver will not constitute a waiver by that party of any earlier, concurrent, or later breach or default.

The Diversion Authority waives all claims against CH2M, including those for latent defects, that are not brought within six (6) years of substantial completion of the facility designed or final payment to CH2M, whichever is earlier.

59. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Diversion Authority, its successors and assigns, and any such successor shall be deemed substituted for the Diversion Authority under the terms of this Agreement. This Agreement shall likewise be binding upon CH2M, its successors and assigns. As used in this Agreement, the term “successor” shall include any person, firm, corporation or other business entity which at any time whether by merger, purchase or otherwise acquires all or substantially all of the assets or business of the corporation.
60. NEGOTIATED AGREEMENT. This Agreement has been arrived at through negotiation between the parties.
61. INTEGRATED SERVICES. Notwithstanding anything in the Agreement to the contrary, the parties recognize and support the integrated nature of the Project team in the performance and delivery of the Program Management Services. This Agreement, and particularly the contractual risk allocation and liability provisions, shall be interpreted and applied, and the professional accountability determined in such a manner that the integrated nature, shared control of the service performance, and joint decision making roles of the parties and CH2M’s role as agent for the Diversion Authority shall be given due and full consideration. Further, the Parties agree to re-visit this Agreement, if necessary, to better reflect the Parties' changing roles on the Project, and any changes in CH2M’s role as the Program Manager as the Project proceeds.
62. SEVERABILITY AND SURVIVAL. If any court of competent jurisdiction declares, for any reason, any provision or part of this Agreement to be invalid, illegal, or unenforceable, all remaining terms and provisions of this Agreement will remain binding and enforceable. Limitations of liability, indemnities, and other express representations shall survive termination of this Agreement for any cause.
63. WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THAT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS AGREEMENT AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS BY OR ON BEHALF OF THE PARTIES FOR PROJECT PROPERTY ACQUISITION AND/OR CONSTRUCTION CONTRACT CLAIMS AND DEFENSES.

64. CONTROLLING LAW AND VENUE. This Agreement, its interpretation and performance, and any other claims related to it shall be controlled by the laws of the State of North Dakota, and any action brought as a result of any claim, demand or cause of action arising under the terms of this Agreement shall be brought in an appropriate venue in the State of North Dakota.

This Agreement is executed the day and year above noted.

DIVERSION AUTHORITY:

Metro Flood Diversion Authority

By: _____
Timothy Mahoney, Chair
Diversion Authority Board

By: _____
Michael J. Redlinger, Co-Executive Director
Metro Flood Diversion Authority

(Additional signature contained on the following page.)

CH2M:

CH2M HILL Engineers, Inc.

By: _____
Sherrill Doran, Vice President