
**RESOLUTION ESTABLISHING THE
ALTERNATIVE DISPUTE RESOLUTION BOARD
(Version 2 – 8/26/21)**

of the

METRO FLOOD DIVERSION AUTHORITY

Adopted: August 26, 2021

This instrument was drafted by:
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EXHIBIT A – ALTERNATIVE DISPUTE RESOLUTION FORM CLAIM AFFIDAVIT

EXHIBIT B – DAMAGES AWARD AND RELEASE FORM

Member Dr. Tim Mahoney introduced the following resolution and moved for its adoption:

**RESOLUTION ESTABLISHING THE
ALTERNATIVE DISPUTE RESOLUTION BOARD**

WHEREAS, construction of the Comprehensive Project was authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-121; and

WHEREAS, the Metro Flood Diversion Authority (the “Authority”), the City of Fargo, and the City of Moorhead, as the non-Federal sponsors for the Comprehensive Project, have entered into a Project Partnership Agreement with the United States Army Corps of Engineers for the construction, operation, and maintenance of the Comprehensive Project; and

WHEREAS, the Authority, pursuant to the Joint Powers Agreement, is the entity responsible for the non-Federal sponsors’ obligations under the Project Partnership Agreement; and

WHEREAS, as outlined within the 2011 Final Feasibility Report and Environmental Impact Statement; the 2013 Supplemental Environmental Assessment; and the 2018 Supplemental Environmental Assessment, the Comprehensive Project will have various environmental effects and require various property rights; and

WHEREAS, to document the property rights acquisition and mitigation policies that the Authority will follow for the Comprehensive Project, the Authority prepared the Property Rights Acquisition and Mitigation Plan; and

WHEREAS, the Property Rights Acquisition and Mitigation Plan discusses the establishment of an alternative dispute resolution board as an alternative means for Persons to seek compensation for physical damages caused by Comprehensive Project Operation;

WHEREAS, the establishment of an alternative dispute resolution board is also discussed in the Settlement Agreement; and

WHEREAS, the Diversion Authority Board now desires to adopt this resolution to establish the Alternative Dispute Resolution Board and to set parameters for its operation.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Metro Flood Diversion Authority:

**ARTICLE I.
DEFINITIONS**

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

“2011 Final Feasibility Report and Environmental Impact Statement” means the Final Feasibility Report and Environmental Impact Statement, Fargo Moorhead Metropolitan Area Flood Risk Management, dated July 2011.

“2013 Supplemental Environmental Assessment” means the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013.

“2018 Supplemental Environmental Assessment” means the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA).

“Alternative Dispute Resolution Board” means the independent board created by this resolution.

“Appointing Entity” means an entity identified in Section 3.02 hereof.

“Authority” means the Metro Flood Diversion Authority, a permanent and perpetual North Dakota political subdivision created by the Joint Powers Agreement dated June 1, 2016.

“Claim Fee” means a \$500 fee filed with a claim affidavit to commence a claim before the Alternative Dispute Resolution Board.

“Comprehensive Project” means the LPP Flood Risk Management Features and the Recreation Features as generally described in the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering Documentation Report, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, ND and MN, Modifications Through February 2019, also known as Plan B.

“Comprehensive Project Operation” occurs when the Executive Director of the Authority or his/her designee places the Comprehensive Project in operation in accordance with the Master Water Control Manual, Fargo-Moorhead Metro Area Flood Risk Management Project, MDNR Permit 2018-0819, and applicable federal permits.

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. city average, all items, for the then immediately preceding 12-month period, as published by the U.S. Bureau of Labor Statistics.

“Diversion Authority Board” means the governing body of the Authority.

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

“Finance Committee” means a committee of the Authority created for the purpose of providing policy recommendations regarding the management of the financial aspects of the Authority and financial expenditures for the Comprehensive Project.

“Fiscal Agent” means a third party private financial entity or the Bank of North Dakota or a Member Entity appointed by the Diversion Authority Board pursuant to sections 5.09 and 10.03 of the Joint Powers Agreement to act as Fiscal Agent.

“Flowage Easement” means a permanent and perpetual easement across and over real property by which the Authority and its Member Entities are legally authorized to divert flood water onto and detain water on the property for the operation of the Comprehensive Project.

“Growing Season Supplemental Crop Loss Program” means the growing season supplemental crop loss program set forth and described in section 20.01 of the Settlement Agreement.

“Joint Powers Agreement” means the agreement entered by and between the Member Entities, dated June 1, 2016, to create the Authority.

“Member Entity” means the City of Moorhead, the City of Fargo, Clay County, Cass County, or the Cass County Joint Water Resource District.

“Officer” means an individual who has been appointed by an Appointing Entity to serve as a hearing officer for the Alternative Dispute Resolution Board.

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

“Prevent Plant Crop Insurance Program” means the prevent plant crop insurance program set forth and described in section 20.01 of the Settlement Agreement.

“Property Rights Acquisition and Mitigation Plan” means the Property Rights Acquisition and Mitigation Plan for the Comprehensive Project, as amended from time to time and approved by the North Dakota Office of the State Engineer and the Minnesota Department of Natural Resources.

“Proxy Officer” means an individual appointed by an Appointing Entity to hear a claim in place of an Officer.

“Settlement Agreement” means the Settlement Agreement by and between Metro Flood Diversion Authority and Richland-Wilkin Joint Powers Authority and Buffalo-Red River Watershed District and City of Wolverton, Minnesota, and City of Comstock, Minnesota, dated as of February 1, 2021.

“Substantial Completion” means the Comprehensive Project is functional to its intended use.

ARTICLE II. CREATION AND JURISDICTION

Section 2.01 CREATION. The Authority hereby creates the Alternative Dispute Resolution Board as an independent board to hear claims by Persons against the Authority, its contractors, its officers, its employees, its designees, and its agents alleging their real or personal

property was physically damaged by Comprehensive Project Operation in an amount equal to or less than fifty thousand dollars (\$50,000) in 2022 dollars, with the amount being indexed annually on January 1 in accordance with the CPI. The Authority intends that the Alternative Dispute Resolution Board will provide such Persons with a less formal mechanism, other than resorting to filing an action in a district court, for the consideration of such claims. The Alternative Dispute Resolution Board is not intended as the sole administrative remedy for disputes, and Persons claiming to be affected by Comprehensive Project Operation may utilize other administrative remedies if available. Additionally, as set forth in Section 2.03, Persons are not precluded from bypassing the Alternative Dispute Resolution Board and directly filing a claim with a district court. The Authority intends to work with Persons to resolve disputes prior to the utilization of any administrative or legal remedy, including the Alternative Dispute Resolution Board. If a claim is filed with the Alternative Dispute Resolution Board, it will review each claim, utilize all available data, and determine if actual physical damage was caused by Comprehensive Project Operation. The Alternative Dispute Resolution Board is not intended to address claims relating to alleged negligence of the Authority, its contractors, agents, officers, employees, or designees.

Section 2.02 INITIAL APPOINTMENTS. Since the Alternative Dispute Resolution Board only hears claims based on Comprehensive Project Operation, the initial appointment of Hearing Officers will not be made until the Substantial Completion of the Comprehensive Project. Accordingly, the Alternative Dispute Resolution Board will not be convened and does not have jurisdiction to hear claims arising prior to and during the construction of the Comprehensive Project, including for property valuation disputes, which occur from the effective date of this resolution through Substantial Completion.

Section 2.03 APPLICABILITY. The Alternative Dispute Resolution Board is available to hear claims from any Person that suffers actual real or personal property damage due to Comprehensive Project Operation in an amount equal to or less than the amount set forth in Section 2.01. Nonetheless, the following limitations are placed on the jurisdiction of the Alternative Dispute Resolution Board.

(a) Flowage Easements. In the event the Authority secured a Flowage Easement from the Person, the Alternative Dispute Resolution Board may only hear claims related to Comprehensive Project Operation for damages occurring outside the scope of the terms, conditions, obligations, and rights provided for under the Flowage Easement. The Person may, however, subject to other limitations set forth herein, bring claims before the Alternative Dispute Resolution Board that are not covered by the Flowage Easement.

(b) Crop Damage. In the event a Person has opted into the Growing Season Supplemental Crop Loss Program or the Prevent Plant Crop Insurance Program, the Alternative Dispute Resolution Board may not hear claims for damages that are covered by such programs. The Person may, however, subject to other limitations set forth herein, bring claims before the Alternative Dispute Resolution Board that are not covered by such programs.

Section 2.04 JUDICIAL REVIEW. Persons who seek resolution of claims by the Alternative Dispute Resolution Board are not precluded from seeking a determination of their

claims in a district court. The use of the Alternative Resolution Dispute Board, however, is not intended to toll or restart any applicable statute of limitations found under state law.

ARTICLE III. COMPOSITION

Section 3.01 OFFICERS. Claims brought before the Alternative Dispute Resolution Board will be heard by three (3) independent review officers who are appointed and assigned from a compiled list as set forth herein. Officers will serve 2-year terms, commencing on January 1 of the applicable year, and there is no limit on the number of appointments that an Officer may receive from its Appointing Entity.

Section 3.02 APPOINTMENT OF OFFICERS.

(a) The following are the entities responsible for appointing individuals who would be able to serve without a conflict of interest as Officers for the Alternative Dispute Resolution Board (each, an “Appointing Entity”):

- (1) Clay County, Minnesota;
- (2) Wilkin County, Minnesota;
- (3) Norman County, Minnesota;
- (4) Polk County, Minnesota;
- (5) Marshall County, Minnesota;
- (6) Kittson County, Minnesota;
- (7) Cass County, North Dakota;
- (8) Richland County, North Dakota;
- (9) Traill County, North Dakota;
- (10) Grand Forks County, North Dakota;
- (11) Walsh County, North Dakota;
- (12) Pembina County, North Dakota; and
- (13) North Dakota Office of State Engineer.

(b) Each Appointing Entity will be eligible to appoint one (1) individual to serve as an Officer for each 2-year term. The Executive Director will provide notification to Appointing Entities upon completion of the Comprehensive Project and the eligibility to make the first

appointment of Officers. Appointing Entities are not required to appoint individuals to serve as Officers, and there is no recourse against them for the failure to make an appointment. Each Appointing Entity must have its appointment to the Authority by November 30 of the calendar year prior to the start of the Officer's 2-year term. The Authority will review the qualifications of incoming Officers to serve on the Alternative Dispute Resolution Board and may reject the appointment of an individual if the Authority believes the individual is not qualified. If the Authority rejects an appointment, it will notify the respective Appointing Entity of the rejection and ask that the Appointing Entity submit an alternative individual for consideration.

Section 3.03 PROXY OFFICER. If an Appointing Entity chooses to appoint an Officer to the Alternative Dispute Resolution Board, the Appointing Entity will also appoint a Proxy Officer to serve in place of the Officer in the event the Officer is unable to attend a hearing on a claim due to an emergency, determined in the discretion of the Officer and the Executive Director. The use of Proxy Officers is intended to be limited, and the Officer will be responsible for coordinating with the Proxy Officer to appear at the hearing. Appointing Entities must submit the name and qualifications of Proxy Officers to the Authority with their submittal of Officers pursuant to the prior Section. The Authority will review the qualifications of Proxy Officers and may reject the appointment of an individual if the Authority believes the individuals is not qualified. If the Authority rejects an appoint, it will notify the respective Appoint Entity of the rejection and ask that the Appointing Entity submit an alternative individual for consideration.

Section 3.04 MEMBER QUALIFICATIONS. The Authority intends that individuals who serve as Officers will have real estate, legal, financial, technical, engineering, and/or appraisal experience. When submitting an appointment, an Appointing Entity will include a synopsis of the qualifications of the individual being appointed.

Section 3.05 LIMITATION ON APPOINTMENTS. Neither employees of the Authority nor employees of a Member Entity may serve as Officers. In the event an individual is currently serving as an Officer and accepts employment with either the Authority or a Member Entity, the individual must notify its Appointing Entity as soon as possible so that the Appointing Entity may make a replacement appointment to fulfill the remainder of the Officer's term.

Section 3.06 COMPENSATION AND BENEFITS. Officers will be compensated by the Authority, as independent hearing officers, for time spent serving on the Alternative Dispute Resolution Board. Compensation will be based on the number of claims finalized by the Officer, and annually, the Diversion Authority Board will establish a flat rate for each claim finalized. Claims are considered finalized once a determination on the claim has been issued by the Alternative Dispute Resolution Board. The Authority will remit compensation to Officers on a monthly basis based on the number of claims finalized the prior month. At no time shall the Officers be deemed employees of the Authority, and the Officers are entitled to no other benefits from the Authority.

Section 3.07 REMOVAL OF OFFICERS. An individual may only be removed from the list of Officers by that individual's respective Appointing Entity. If an individual is removed, the Appointing Entity will notify the Executive Director in writing.

Section 3.08 OFFICER TRAINING. Following the initial selection of Officers and every two (2) years thereafter, the Authority will provide training for Officers, outlining the roles and responsibilities of serving on the Alternative Dispute Resolution Board. Training will be provided by a retired judge or a representative from the Minnesota Bureau of Mediation Services or by someone with like qualifications. Attendance at the training is mandatory, and if an Officer is unable to attend a training session, he or she will be responsible for coordinating with Authority personnel to make alternative arrangements to participate in the training, such as watching a recorded session. Individuals who do not attend the live training session or participate in an alternative means within thirty (30) calendar days following the live training session will be ineligible to serve as Officers. Individuals who are appointed as Officers during a 2-year period between training sessions must attend a training session, whether in person or through a recorded means, (i) within thirty (30) calendar days following appointment or (ii) prior to hearing any claim, whichever occurs first.

ARTICLE IV. ADMINISTRATION

Section 4.01 AUTHORITY SECRETARY. The Secretary of the Authority will be responsible for performing all administrative duties, such as scheduling, recordkeeping, and mailings, for the Alternative Dispute Resolution Board. The Secretary will also be responsible for recording each hearing and keeping copies of all exhibits used during the hearing.

Section 4.02 AUTHORITY WEBSITE. The Authority will dedicate a portion of its website to the Alternative Dispute Resolution Board. At a minimum, this portion of the website will include template claims affidavits for claimants to access, the list of current Officers, the Officers assigned to a claim, and a schedule of upcoming hearings on claims. The Secretary of the Authority will be responsible for the administration of the Alternative Dispute Resolution Board portion of the website.

ARTICLE V. CLAIMS PROCESSING

Section 5.01 CLAIMS. Actions before the Alternative Dispute Resolution Board will commence upon the filing of a Claim Fee and a claim affidavit by a Person with the Executive Director in the form prescribed by the Authority. A template claim affidavit form is attached to this resolution as Exhibit A. Persons may file claims through hand delivery, email, fax, or mail. The Alternative Dispute Resolution Board will not process claims until a claimant files, or claimants file, a Claim Fee. The Claim Fee will be refunded to the claimant or claimants if the Alternative Dispute Resolution Board determines an award of damages for the claim is appropriate, regardless of whether the claimant or claimants accept or reject the award of damages. If an award of damages for the claim is not made by the Alternative Dispute Resolution Board, then the Claim Fee is non-refundable.

Section 5.02 ASSIGNMENT OF OFFICERS. Upon the receipt of a claim form, the Executive Director will assign three (3) Officers in the following manner to determine the claim:

(a) The first Officer selected will be from the county in which the damages are alleged to have occurred. This Officer will be the presiding Officer over a claim. If there is no Officer from such county or such Officer has recused himself/herself as set forth in the following Section, then the Executive Director will follow the procedure set forth in the following subsection to select three (3) Officers. The presiding Officer under these circumstances will be the first name selected by the Executive Director.

(b) The other two (2) Officers will be selected based on the organization of the list of Officers. The Executive Director will organize the list of Officers alphabetically based on the last name of the Officers. When the first claim is filed with the Executive Director, the Executive Director will select the first two (2) names from the list to determine the claim, along with the Officer from the applicable county selected under the preceding subsection. When the second claim is filed, the Executive Director will select the next two (2) names from the list to determine the claim, along with the Officer from the applicable county selected under the preceding subsection and so on and so forth when subsequent claims that are filed. If one (1) of the next (2) names on the list is the Officer from the applicable county selected pursuant to the preceding section, the Executive Director will move to the subsequent name on the list.

Section 5.03 CONFLICTS OF INTEREST; RECUSAL. Once the Executive Director has made the initial assignment of Officers to determine a claim, the Executive Director shall notify the Officers, and each Officer shall assess whether he/she is able to hear the claim or whether he/she has a conflict of interest. Conflicts of interest include, but are not limited to, all conflicts of interest provided under North Dakota and/or Minnesota law including in any judicial code of conduct. If an Officer determines he/she has a conflict of interest, he/she shall recuse himself/herself from hearing the claim and shall notify the Executive Director of the same. The Executive Director will then appoint an alternative Officer pursuant to the preceding Section. If an Officer is subject to a circumstance that is similar to a conflict of interest, but the Officer does not believe it rises to the level of a conflict of interest, he/she shall notify the Executive Director of the same and provide a written statement explaining the circumstance and offering why he/she believes he/she can remain impartial when hearing the claim. The Executive Director shall keep a copy of the written statement of the Officer with the record for the claim and provide the written statement to the other two (2) hearing Officers prior to the hearing date to give them notice.

Section 5.04 NOTICE OF HEARING DATE. Following the assignment of the Officers to determine a claim, the Executive Director will set a hearing date for the claim, not less than thirty (30) calendar days following the filing of the claim, and direct the Secretary to mail and email, if an email address is known, notice to all claimants and to the Authority of the date set for the hearing and of the identification of the Officers. All hearing dates and the identification of assigned Officers will be posted on the Authority's website.

Section 5.05 REQUESTS TO CHANGE.

(a) A claimant will have the right to request, not less than fifteen (15) calendar days before the date of the scheduled hearing, that (i) an assigned Officer be removed from consideration of the claim, and/or (ii) that the hearing be rescheduled. A claimant will be

allowed one (1) request to reschedule a hearing. Requests must be made in writing and may be hand delivered, emailed, faxed, or mailed.

(b) If the claimant requests the removal of an assigned Officer, the request will be directed to the Officer, who will decide whether he or she can fairly or objectively review the claim. If an assigned Officer believes he or she cannot fairly or objectively review a claim, then he or she will recuse himself or herself and notify the Executive Director. The Executive Director will replace the recused Officer with the next Officer to be assigned to a claim on the list of Officers.

(c) The Authority can also request the removal of an assigned Officer. In the event the Authority requests such a removal, the Officer will decide whether he or she can fairly or objectively review the claim. If an assigned Officer believes he or she cannot fairly or objectively review a claim, then he or she will recuse himself or herself and notify the Executive Director. The Executive Director will replace the recused Officer with the next Officer to be assigned to a claim on the list of Officers.

Section 5.06 EXCHANGE OF HEARING DOCUMENTS AND WITNESSES. A claimant must provide (i) any pictures, maps, documents, etc., that it intends to utilize and (ii) the names of any witnesses it intends to call during the hearing to the Authority at least seven (7) calendar days prior to the date of the hearing. The Authority must provide any pictures, maps, documents, etc., that it intends to utilize and the names of any witnesses it intends to call during the hearing to the claimant at least three (3) calendar days prior to the date of the hearing. If a document or witness name is not exchanged between the claimant and the Authority as provided in this Section prior to the hearing and either the claimant or the Authority desires to introduce the document or the witness during the hearing, the Alternative Dispute Resolution Board may decide, in its discretion, to adjourn and reschedule the hearing to allow the non-submitting party to prepare for the introduction of the document or witness during the hearing.

Section 5.07 HEARING LOCATION AND RECORDING. The Alternative Dispute Resolution Board will hold hearings at Fargo City Hall, and hearings will be recorded by the Secretary in accordance with Section 4.01.

Section 5.08 FAILURE TO APPEAR. If a claimant fails to appear for a hearing, the Alternative Dispute Resolution Board will dismiss the claimant's claim. If a claim is dismissed, a claimant is not precluded from refileing the claim with the Alternative Dispute Resolution Board.

Section 5.09 HEARING PROCEDURE. The Alternative Dispute Resolution Board will generally abide by the following procedure during hearings:

(a) The presiding Officer will call a claim before the Alternative Dispute Resolution Board.

(b) The claimants, bearing the burden of proof on their claim, will have the first opportunity to present exhibits and witnesses. The Authority and the Officers will be provided the opportunity to review all exhibits and ask questions of witnesses.

(c) The Authority will then have an opportunity to present exhibits and witnesses. The claimants and the Officers will be provided the opportunity to review all exhibits and ask questions of witnesses.

(d) Following the Authority's presentation, the claimants will have the opportunity to present any rebuttal exhibits and/or witnesses to the Authority's presentation. The Authority and the Officers will be provided the opportunity to review all rebuttal exhibits and ask questions of rebuttal witnesses.

(e) The presiding Officer will close the hearing, and the Alternative Dispute Resolution Board will take the claim under advisement.

Section 5.10 DETERMINATION. Strict rules of evidence will not apply, and the intent of a hearing will be to provide more of an informal discussion between the Officers, the claimant, and the Authority. The Officers must receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs, to determine whether the claimants have proven (i) the Authority damaged the claimants' property for the Comprehensive Project and (ii) Comprehensive Project Operation was the cause of the damage. The Officers must meet following the hearing and provide a written determination on the claim and an award of damages, if applicable, with thirty (30) calendar days of the date of the closure of the hearing. The decision of the Officers must be by a majority. If there are multiple claimants, any damages award will be jointly made.

Section 5.11 REFILING DETERMINED CLAIMS. When a claim is determined by the Alternative Dispute Resolution Board, a claimant may not refile the same claim with the Alternative Dispute Resolution Board in the event the Alternative Dispute Resolution Board determines a damages award is not appropriate or when a damages award is made by the Alternative Dispute Resolution Board but rejected by the claimant.

Section 5.12 JUDICIAL REVIEW. A claimant's use of the Alternative Dispute Resolution Board will not preclude a claimant from filing a separate action seeking compensation for damages in a district court. A claimant may also appeal the decision of the Alternative Dispute Resolution Board if allowed under applicable state law. If a claimant files a separate action, the claimant and the Authority may utilize the records of the Alternative Dispute Resolution Board in the action as allowed under applicable state law.

ARTICLE VI. AWARD OF DAMAGES

Section 6.01 COMPENSATION FOR DAMAGES. If the Alternative Dispute Resolution Board recommends an award of damages for a claimant, the claimant will have the option to either accept or reject the award of damages. If there are multiple claimants, the decision to accept a damages award must be unanimous, and if not, the claimants will be deemed to have rejected the damages award. In the event the claimant or claimants choose to accept the award of damages, prior to the payment of such award, all claimants must execute a settlement and release of all claims relating to the actual, physical damage included in the claim. A template damages award and release form is attached as Exhibit B. If all claimants do not return an executed damages

award and release form to the Secretary of the Authority within thirty (30) calendar days of the date of the damages award and release form, all claimants will be deemed to have rejected the damages award.

Section 6.02 PAYMENT OF DAMAGES. If claimants accept a damages award as set forth in the preceding Section, the Secretary will file the executed damages award and release form with the Fiscal Agent. The Fiscal Agent will process the form, and the Authority will pay the damages award within forty-five (45) calendar days of the receipt of the form from the Secretary. If there are multiple claimants, the Authority will divide the damages award equally among the claimants. A damages award that remains unpaid after said 45-day period will bear interest at the rate set by the State Court Administrator pursuant to North Dakota Century Code § 28-20-34. The applicable year for the interest rate will be determined by the date the claimant executed the damages award and release form.

Section 6.03 FUND FOR DAMAGES. The Fiscal Agent will pay damages awards from the Non-P3 Operations and Maintenance Expenses Account in the Operations and Maintenance Fund created by section 10.04(g) of the Joint Powers Agreement. If the Fiscal Agent makes a damages award payment, it will include the payment in its presentations to the Finance Committee and the Diversion Authority Board in the month following payment.

ARTICLE VII. MISCELLANEOUS

Section 7.01 GOVERNING LAW. This Resolution will be controlled by the laws of the State of North Dakota.

Section 7.02 EFFECTIVE DATE. This Resolution will take effect immediately upon adoption.

(Remainder of page intentionally left blank.)

Dated August 26, 2021

METRO FLOOD DIVERSION AUTHORITY

APPROVED:

Shelly Carlson
Michelle (Shelly) Carlson, Chair

ATTEST:

Dawn Lindblom
Dawn Lindblom, Secretary

The motion for adoption of the foregoing resolution was duly seconded by Member Steen and upon roll call vote, the following Members voted in favor thereof: Carlson, Mahoney, Dardis, Peterson, Hendrickson, Piepkorn, Ebinger, Campbell, Scherling, Steen and Olson. The following were absent and not voting: Seljevold. The following voted against the same: Strand. A majority of the Members having voted aye, the resolution was declared duly passed and adopted.

EXHIBIT A
ALTERNATIVE DISPUTE RESOLUTION FORM
CLAIM AFFIDAVIT

OFFICE USE ONLY:

Date Filed: _____

Claim No.: _____

<u>Full Name of Person(s) Filing Claim (CLAIMANT(S))</u>			
<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
<u>Telephone Number</u>		<u>Email Address</u>	

CLAIMANT(S) claim the following damages from the Metro Flood Diversion Authority:

1. Date of damage¹: _____
2. Legal Description of Property Damaged: _____

3. Description of Damage: _____

4. Estimated Amount of Damage: _____
5. Statement of How Comprehensive Project Operation Caused the Damage:

6. Any Other Relevant Information: _____

¹Filing a claim with the Alternative Dispute Resolution Board does not toll or restart the statute of limitations that may be applicable to your claim under state law.

LOCATION WHERE DAMAGES OCCURRED (Please circle one of the following):

Clay County, MN

Wilkin County, MN

Norman County, MN

Polk County, MN

Marshall County, MN

Kittson County, ND

Cass County, ND

Richland County, ND

Traill County, ND

Grand Forks County, ND

Walsh County, ND

Pembina County, ND

Other: _____

Claimant Signature(s)

Claimant Signature(s)

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20____, before me, a Notary Public, in
and for said County and State, personally appeared
_____, known to
me to be the person(s) described in and who executed the within and foregoing instrument, and
acknowledged to me that _____ executed the same.

(SEAL)

Notary Public

EXHIBIT B

**ALTERNATIVE DISPUTE RESOLUTION BOARD
DAMAGES AWARD AND RELEASE FORM**

Date: _____

Claim No.: _____

Claimant(s): _____

Amount of Damages Award: _____

Acceptance or Rejection of Amount of Damages Award (please select one):

Acceptance of Amount of Damages Award

Rejection of Amount of Damages Award

1. IF YOU SELECTED THE BOX FOR “REJECTION OF AMOUNT OF DAMAGES AWARD,” PLEASE SKIP THE FOLLOWING FOR SETTLEMENT AND RELEASE OF ALL CLAIMS AND SIGN AND DATE THE FORM IN THE FINAL SECTION OF THE FORM.

2. IF YOU SELECTED THE BOX FOR “ACCEPTANCE OF AMOUNT OF DAMAGES AWARD,” PLEASE REVIEW THE BELOW SETTLEMENT AND RELEASE LANGUAGE. YOU MUST SIGN IN THE DESIGNATED SPACE BELOW SETTLING AND RELEASING ALL CLAIMS PRIOR TO RECEIVING YOUR DAMAGES AWARD. IF YOU DO NOT SIGN IN THE DESIGNATED SPACE SETTLING AND RELEASING ALL CLAIMS, YOU WILL BE DEEMED TO HAVE REJECTED THE DAMAGES AWARD. IF THERE ARE MULTIPLE CLAIMANTS, EACH CLAIMANT MUST SELECT “ACCEPTANCE OF AMOUNT OF DAMAGES AWARD” AND SIGN AND RETURN A SETTLEMENT AND RELEASE OF ALL CLAIMS IN ORDER FOR ANY DAMAGES TO BE PAID TO ANY CLAIMANTS. THE METRO FLOOD DIVERSION AUTHORITY WILL DIVIDE AN AWARD OF DAMAGES EQUALLY AMONG ALL CLAIMANTS. ONCE YOU HAVE SIGNED FOR THE SETTLEMENT AND RELEASE OF ALL CLAIMS SECTION, PLEASE SIGN AND DATE THE FORM IN THE FINAL SECTION OF THE FORM.

SETTLEMENT AND RELEASE OF ALL CLAIMS

In consideration for settlement of all claims arising from the facts and circumstances outlined in the above-described Claim, the Claimant will accept monetary compensation in the amount set forth in this Damages Award and Release Form. The amount set forth herein constitutes full and complete payment and compensation for the damages derived from the Comprehensive Project Operation described in the Claim and anything arising out of the Claim or in any way related to the Comprehensive Project Operation described in the Claim.

For and in consideration of the mutual covenants for utilizing the Alternative Dispute Resolution Board, the Claimant hereby releases, acquits, and forever discharges the Metro Flood Diversion Authority, its officers, employees, agents, and assigns, against whom any liability, direct or indirect might be asserted, of and from any and all known and unknown, foreseen and unforeseen, disputed and undisputed, direct and indirect, actions, causes of action, claims, demands, damages, costs, loss of services, expenses, compensation, rights of contribution, and all consequential damage on account of, or in any way arising out of the Comprehensive Project Operation described in the Claim or any actions performed pursuant to the Comprehensive Project Operation described in the Claim.

The Claimant hereby declares and represents that in making this settlement and release, the Claimant relied wholly on its own judgment, belief, and knowledge, and that it has not been influenced to any extent whatsoever in making this settlement and release by any representations or statements regarding said claims or regarding any other matters made by the Metro Flood Diversion Authority, its officers, employees, agents, or assigns.

The Claimant further declares and represents that he/she/it understands this settlement and release is a complete compromise of a disputed matter, and that the parties' mutual covenants set forth in this Damages Award and Release Form are not to be construed as an admission of liability on the part of the Metro Flood Diversion Authority, its officers, employees, agents, and assigns, hereby released, by whom liability is expressly denied.

The Claimant understands and acknowledges the significance of such settlement and release, has carefully read the foregoing and knows the content thereof, and is executing this Settlement and Release of All Claims on his/her/its own free will.

SIGNATURE: _____

Date: _____

If you would like the damages award mailed to an address different from the address included on the first page of this Damages Award and Release Form, please enter it in the below lines:

Please execute the below signature line and return the completed Damages Award and Release Form in the provided envelope. You must return the Damages Award and Release Form within thirty (30) calendar days of the date of this Damages Award and Release Form or all Claimants will be deemed to have rejected the damages award.

SIGNATURE: _____
PRINTED NAME: _____

Date: _____