

## Diversion Board of Authority

March 24, 2022 @ 3:30 p.m. CST

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

1. Call to Order
  - a. Roll Call of Members
2. Approve minutes from February 24, 2022  
[Attachment 00.01] (Pg. 3)
3. Approve Order of Agenda

### CONSENT AGENDA – APPROVE THE FOLLOWING:

- a. Finance Report [Attachment 01.00] (Pg. 7)
- b. Voucher Approval [Attachment 02.00] (Pg. 33)
- c. DA Board Approval Contract Actions [Attachment 03.00] (Pg. 39)
  - i. Marco, New Services Agreement [Attachment 03.01] (Pg. 41)
  - ii. CCEC, Task Order 02 Amendment 0 [Attachment 03.02] (Pg. 84)
  - iii. Flint Communications, New Services Agreement [Attachment 03.03] (Pg. 92)
- d. DA Board Approval 2022 Cash Budget Changes – Nothing for Approval
- e. DA Board Approval MOU and Agreement Actions [Attachment 04.00] (Pg. 125)
  - i. Moorhead Public Services & MFDA MOU for DCAI [Attachment 04.01] (Pg. 128)
  - ii. Dickey Rural Networks & MFDA Utility Installation Agreement [Attachment 04.02] (Pg. 173)
  - iii. Berlin Township & MFDA MOU for DCAI [Attachment 04.03] (Pg. 214)
  - iv. City of Christine & MFDA MOU [Attachment 04.04] (Pg. 247)
  - v. Cass County & MFDA MOU re. Human Resources [Attachment 04.05] (Pg. 283)

### REGULAR AGENDA:

4. Executive Director Report  
[Attachment 05.00] (Pg. 385)
5. General Counsel Update
6. USACE Project Update – No Update

7. Public Outreach Update
    - a. Public Outreach Update  
[Attachment 06.00] (Pg. 387)
  8. Land Management Updates
    - a. Property Acquisition Status Report  
[Attachment 07.00] (Pg. 390)
  9. Finance Update
  10. Other Business
    - a. Program Information Points
  11. Next Meeting: April 28, 2022
  12. Adjournment
- 

## MEDIA AND PUBLIC PARTICIPATION INFORMATION

There are multiple ways to attend or watch this public meeting.

- View the Meeting on Fargo TV or at [www.TVFargo.com](http://www.TVFargo.com)
- View the Meeting on the City of Fargo's Facebook or Twitter feed.
- View the Meeting at [FMDiversion.com/Meeting](http://FMDiversion.com/Meeting)
- View the Meeting at [Twitter.com/FMDiversion](https://twitter.com/FMDiversion)
- Attend the Meeting at the Fargo City Hall Commission Chambers (225 4th St N, Fargo, ND)
- General public can call dial in to listen to the Meeting at 701-298-6904, access code 4378#





A regular meeting of the Metro Flood Diversion Authority Board of Authority was held on February 24, 2022. The following members were present: Bernie Dardis, Mayor, City of West Fargo; Dr. Tim Mahoney, Mayor, City of Fargo; Shelly Carlson, Mayor, City of Moorhead; Chuck Hendrickson, Moorhead City Council; Dave Piepkorn, Fargo City Commissioner; David Ebinger, Clay County Commissioner; Rick Steen, Cass County Commissioner; Rodger Olson, Cass County Joint Water Resource District and Larry Seljevold, Moorhead City Council.

Members absent: Chad Peterson, Cass County Commissioner; John Strand, Fargo City Commissioner; Kevin Campbell, Clay County Commissioner and Mary Scherling, Cass County Commissioner.

**1. CALL TO ORDER**

Mayor Carlson called the meeting to order at 3:30 PM. Roll call was taken, and a quorum was present.

**2. APPROVE MINUTES FROM JANUARY 2022**

**MOTION PASSED**

Mr. Olson moved to approve the minutes from the January 2022 meeting and Mr. Ebinger seconded the motion. On a voice vote, the motion carried.

**3. APPROVE ORDER OF AGENDA**

**MOTION PASSED**

Mayor Dardis moved to approve the order of the agenda as presented and Mr. Piepkorn seconded the motion. On a voice vote, the motion carried.

**CONSENT AGENDA**

**MOTION PASSED**

Dr. Mahoney moved to approve the consent agenda and Mr. Ebinger seconded the motion. On a roll call vote, the motion carried.

**4. EXECUTIVE DIRECTOR REPORT**

Mr. Paulsen provided the following current events update:

**Media Highlights**

- Governor's State of the State Address
- Grand Farms Grant Announcement

**Major Project Accomplishments**

- Flowage Easement Appraisals
- Additional Risk Workshops



- Approval of the Cemetery Protection Plan

### **P3 Coordination**

- Continued Coordination with RRVA
- Partnering workshop with RRVA on February 22, 2022
- NTP1 – Week of February 21, 2022

### **USACE Coordination**

- Meeting held with USACE on February 15, 2022

## **5. GENERAL COUNSEL UPDATE**

### **a. Legacy Bond Proceeds Update**

Mr. Shockley reported that the legislative bond program with the State of North Dakota has authorized the NDPFA to issue the first set of bonds.

Mr. Shockley also reported that a summary of bills vs. individual bills, can now be submitted to the trustee for release of funds. This will eliminate the administrative burden of submitting and waiting for individual payments to be received.

## **6. USACE SAFETY BRIEFING AND PROJECT UPDATE**

Ms. Williams provided an overview of the safety requirements, protocols and procedures that are implemented by the USACE for their staff and on their projects:

### **1 Diversion Inlet Structure (DIS) - Construction**

Structure includes 3-50 ft. wide Tainter gates. Construction is 79% complete and on schedule. Required completion date is 7 June 2023. Schedule for primary features:

2021: Complete dam walls, concrete piers, stilling basin and walls. Complete gate fabrication.

2022: Install bridge deck, gates, and operating machinery.

2023: Paint gates, seed.

2024: Turf established.

### **2 Wild Rice River Structure (WRRS) - Construction**

Structure includes 2-40 ft. wide Tainter gates. Construction is 49% complete and on schedule. The required completion date is 20 October 2023. Schedule for primary features:

2021: Approach walls and apron, stilling basin and walls, preloads. Complete gate fabrication.

2022: Control building, dam embankment, gate installation.

2023: Complete excavation, dam embankment, seed.

2024: Turf established.



### 3 I-29 Raise - Construction

Includes approximately 4 miles of interstate raise between County Roads 16 and 18. Construction is 37% complete and on schedule. The 4-lane bypass was opened on 27 October 2021. The mainline raise will be complete Summer 2023. Required completion date NLT 1 January 2024.

### 4 Southern Embankment – Reach SE-1 (Western Tieback) - Construction

Includes approximately 2 miles of dam embankment construction, southwest of the Diversion Inlet Structure location. Construction is approximately 72% complete and ahead of schedule. Required completion date NLT 30 June 2023.

### 5 Red River Structure (RRS) - Procurement

Structure includes 3-50 ft. wide Tainter gates. The Request for Proposals (RFP) was issued on 12 October. Proposals were due 14 December and evaluations are ongoing.

Contract Award: NLT than 31 March 2022 Contract Completion: April 2026

### 6 Drain 27 Wetland Mitigation Project - Procurement

Bids Due: 1 March 22. Contract Award: 31 March 2022.

### 7 Drayton Dam Mitigation Project Design - Procurement

Pending issuance of permit by the NDDWR, current plan:

Solicitation for bids: 15 February 22 (delayed) Contract Award: 29 April 22

### 8 Southern Embankment – Reach SE-2A - Procurement

Solicitation for bids: 30 March 22 Contract Award: 31 May 22

### 9 Southern Embankment Design – Reaches SE-1B, 2B, 4 and 5

SE-1B: 95% review starts 9 March 2022 SE-2B: 35% review starts March 2022

SE-4: Detailed design began mid-February 2022 SE-5: Conceptual design continues

### 10 Additional 2022 Activities

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

## 7. PUBLIC OUTREACH UPDATE

Mr. Paulsen provided an update on the public outreach 2022 current events and media highlights:

- ND Transportation Conference Presentation – March 1-2
- IJGlobal Awards – March 13
- NDSU Class Presentations
  - Contracts & Specs – March 21
  - Agricultural and Biosystems Engineering – March 25
- WTOC Update – March 22
- P3 Water Summit Presentation – April 7-8



## **MEDIA HIGHLIGHTS**

- The Forum: Editorial –IJA Funding
- The Forum: Article on land acquisition and compensation
- Governor Burgum's State of the State: MFDA mention
- Grand Farm Grant Announcement: MFDA mention
- News & Views with Joel Heitkamp –Lands Program
- Down the Road with Joel Heitkamp –Lands Program (2 shows)
- What's On Your Mind? with Scott Hennen –IJA Funding

## **8. LAND MANAGEMENT UPDATES**

### **a. Property Acquisition Report & b. Flowage Easement Update**

Mr. Dodds reported that over 750 parcels have been acquired to date. Flowage easement letters will go out to approximately 500 property owners next week. The design for Reach 2B is restarting in April and Reach 4 will begin this summer.

### **c. Land Exchange Recommendation Letter**

Mr. Dodds provided an overview of the Blilie land exchange. The exchange is a counteroffer to their counteroffer and has been approved by the MCCJPA after weighing many variables. Approval of this exchange will eliminate three pending LRED actions.

#### **MOTION PASSED**

**Dr. Mahoney moved to approve the Blilie land exchange and Mr. Ebinger seconded the motion. On a roll call vote, the recommendation passed.**

## **9. FINANCE UPDATE**

Mayor Dardis reported that our net position is \$101,139,233. There was discussion surrounding the flowage easement appraisal process and the potential effect it may have on the 2022 budget.

## **10. OTHER BUSINESS**

There was no other business.

## **11. NEXT MEETING**

The next meeting will March 24, 2022.

## **12. ADJOURNMENT**

#### **MOTION PASSED**

**Mr. Piepkorn moved to adjourn, and Mr. Seljevold seconded the motion. The meeting adjourned at 4:23 PM.**



**FM Metropolitan Area Flood Risk Management Project**  
**Statement of Net Position**  
**February 28, 2022**

|                           | <b>FM Diversion<br/>Project Fund</b> | <b>Budget Fund</b> | <b>Grand Total</b>    |
|---------------------------|--------------------------------------|--------------------|-----------------------|
| <b>Assets</b>             |                                      |                    |                       |
| Cash                      | \$ 75,858,779                        | \$ 211,531         | \$ 76,070,310         |
| Cash Horace 3.01 MIT      | 2,500,199                            | -                  | 2,500,199             |
| Cash Held In Trust at BND |                                      |                    |                       |
| Excess Revenue Fund       | 215,658                              | -                  | 215,658               |
| Temp Debt Obligation Fund | 360,050                              | -                  | 360,050               |
| Authority Loan Fund       | 8,968                                | -                  | 8,968                 |
| P3 Reserve Fund           | 16,124,763                           | -                  | 16,124,763            |
| Revenue Fund              | 8                                    | -                  | 8                     |
| Receivables               |                                      |                    | -                     |
| State Water Commission *  | 7,680,655                            | -                  | 7,680,655             |
| Prepaid Expense           | 95,934                               | -                  | 95,934                |
| <b>Total assets</b>       | <b>102,845,015</b>                   | <b>211,531</b>     | <b>103,056,546</b>    |
| <b>Liabilities</b>        |                                      |                    |                       |
| Vouchers payable          | -                                    | -                  | -                     |
| Retainage payable         | 167,048                              | -                  | 167,048               |
| Rent Deposit              | 19,600                               | -                  | 19,600                |
| <b>Total liabilities</b>  | <b>186,648</b>                       | <b>-</b>           | <b>186,648</b>        |
| <b>NET POSITION</b>       | <b>\$ 102,658,368</b>                | <b>\$ 211,531</b>  | <b>\$ 102,869,898</b> |

\* Receivable balance is as of 1/31/2022

**Summary Of Expenses**  
**EXP-2022-02**

| Account Number  | Check Date | Check Number | Vendor Name            | Transaction Amount | Description                | Project Number | Project Description     |
|---|------------|--------------|------------------------|--------------------|----------------------------|----------------|-------------------------|
| 770-7910-429.11-00                                    | 2/3/2022   | 317378       | Cass County Government | \$71,924.78        | SALARY REIMB               | V00106         | ED & STAFF-PR/ADMIN EXP |
|   | 2/4/2022   | WP14210      | Cass County Government | \$85,726.62        | 12.31.21 AP-02.03.22 CK    | V00106         | ED & STAFF-PR/ADMIN EXP |
|   | 2/4/2022   | WP14210      | Cass County Government | (\$85,726.62)      | REV 12.31.21 AP-02.03.22   | V00106         | ED & STAFF-PR/ADMIN EXP |
| <b>Full Time Staff / Salaries</b>                     |            |              |                        | <b>\$71,924.78</b> |                            |                |                         |
| 770-7910-429.20-01                                    | 2/3/2022   | 317378       | Cass County Government | \$4,274.00         | SALARY REIMB               | V00106         | ED & STAFF-PR/ADMIN EXP |
| <b>Employee Benefits / Health Insurance</b>           |            |              |                        | <b>\$4,274.00</b>  |                            |                |                         |
| 770-7910-429.20-03                                    | 2/3/2022   | 317378       | Cass County Government | \$160.00           | SALARY REIMB               | V00106         | ED & STAFF-PR/ADMIN EXP |
| <b>Employee Benefits / Dental Insurance</b>           |            |              |                        | <b>\$160.00</b>    |                            |                |                         |
| 770-7910-429.21-01                                    | 2/3/2022   | 317378       | Cass County Government | \$1,181.19         | SALARY REIMB               | V00106         | ED & STAFF-PR/ADMIN EXP |
| <b>Employee Benefits / Social Security</b>            |            |              |                        | <b>\$1,181.19</b>  |                            |                |                         |
| 770-7910-429.21-02                                    | 2/3/2022   | 317378       | Cass County Government | \$1,027.15         | SALARY REIMB               | V00106         | ED & STAFF-PR/ADMIN EXP |
| <b>Employee Benefits / Medicare</b>                   |            |              |                        | <b>\$1,027.15</b>  |                            |                |                         |
| 770-7910-429.22-07                                    | 2/3/2022   | 317378       | Cass County Government | \$7,159.50         | SALARY REIMB               | V00106         | ED & STAFF-PR/ADMIN EXP |
| <b>Pension Benefits / Retirement</b>                  |            |              |                        | <b>\$7,159.50</b>  |                            |                |                         |
| 770-7910-429.33-37                                    | 2/10/2022  | 317578       | HighRoad Partners, LLC | \$400.00           | HIGHROAD PARTNERS HR SERVI | V09701         | HR SERVICES             |
| <b>Other Services / HR Services</b>                   |            |              |                        | <b>\$400.00</b>    |                            |                |                         |
| 770-7910-429.33-98                                    | 2/3/2022   | 317378       | Cass County Government | \$3,300.00         | DIVERSION EXPENSES         | V00106         | ED & STAFF-PR/ADMIN EXP |
|   | 2/4/2022   | WP14210      | Cass County Government | \$40,455.63        | 12.31.21 AP-02.03.22 CK    | V00106         | ED & STAFF-PR/ADMIN EXP |
|   | 2/4/2022   | WP14210      | Cass County Government | (\$40,455.63)      | REV 12.31.21 AP-02.03.22   | V00106         | ED & STAFF-PR/ADMIN EXP |
| <b>Other Services / Personnel Recruitment</b>         |            |              |                        | <b>\$3,300.00</b>  |                            |                |                         |
| 770-7910-429.34-20                                    | 2/3/2022   | 317378       | Cass County Government | \$14,066.44        | DIVERSION EXPENSES         | V00106         | ED & STAFF-PR/ADMIN EXP |
| <b>Technical Services / Marketing / Public Relat.</b> |            |              |                        | <b>\$14,066.44</b> |                            |                |                         |
| 770-7910-429.53-20                                    | 2/3/2022   | 317378       | Cass County Government | \$443.40           | DIVERSION EXPENSES         | V00106         | ED & STAFF-PR/ADMIN EXP |
| <b>Communications / Cellular Phone Service</b>        |            |              |                        | <b>\$443.40</b>    |                            |                |                         |
| 770-7910-429.54-10                                    | 2/3/2022   | 317378       | Cass County Government | \$76.14            | DIVERSION EXPENSES         | V00106         | ED & STAFF-PR/ADMIN EXP |
| <b>Advertising / Legal Publications</b>               |            |              |                        | <b>\$76.14</b>     |                            |                |                         |

Summary Of Expenses  
 EXP-2022-02

| Account Number  | Check Date | Check Number | Vendor Name            | Transaction Amount  | Description               | Project Number | Project Description      |
|---|------------|--------------|------------------------|---------------------|---------------------------|----------------|--------------------------|
| 770-7910-429.56-60                                    | 2/3/2022   | 317378       | Cass County Government | \$643.16            | DIVERSION EXPENSES        | V00106         | ED & STAFF-PR/ADMIN EXP  |
| <b>In State Travel / In State Travel Expenses</b>     |            |              |                        | <b>\$643.16</b>     |                           |                |                          |
| 770-7910-429.57-60                                    | 2/3/2022   | 317378       | Cass County Government | \$1,385.98          | DIVERSION EXPENSES        | V00106         | ED & STAFF-PR/ADMIN EXP  |
| <b>Out of State Travel / Out of State Travel Exp</b>  |            |              |                        | <b>\$1,385.98</b>   |                           |                |                          |
| 770-7910-429.59-10                                    | 2/3/2022   | 317378       | Cass County Government | \$6,250.00          | ND WATER USERS MEMBERSHIP | V00106         | ED & STAFF-PR/ADMIN EXP  |
|   | 2/4/2022   | WP14210      | Cass County Government | \$6,250.00          | 12.31.21 AP-02.03.22 CK   | V00106         | ED & STAFF-PR/ADMIN EXP  |
|   | 2/4/2022   | WP14210      | Cass County Government | (\$6,250.00)        | REV 12.31.21 AP-02.03.22  | V00106         | ED & STAFF-PR/ADMIN EXP  |
| <b>Education / Due &amp; Membership Instate</b>       |            |              |                        | <b>\$6,250.00</b>   |                           |                |                          |
| 770-7910-429.61-10                                    | 2/3/2022   | 317378       | Cass County Government | \$343.63            | DIVERSION EXPENSES        | V00106         | ED & STAFF-PR/ADMIN EXP  |
| <b>General Supplies / Office Supplies</b>             |            |              |                        | <b>\$343.63</b>     |                           |                |                          |
| 770-7910-429.68-30                                    | 2/3/2022   | 317378       | Cass County Government | \$330.12            | DIVERSION EXPENSES        | V00106         | ED & STAFF-PR/ADMIN EXP  |
| <b>Miscellaneous / Meeting Incidentals</b>            |            |              |                        | <b>\$330.12</b>     |                           |                |                          |
| 770-7910-429.74-11                                    | 2/3/2022   | 317378       | Cass County Government | \$19,850.65         | DIVERSION EXPENSES        | V00106         | ED & STAFF-PR/ADMIN EXP  |
| <b>Capital Outlay / Computer Equipment</b>            |            |              |                        | <b>\$19,850.65</b>  |                           |                |                          |
| 770-7910-429.74-12                                    | 2/3/2022   | 317378       | Cass County Government | \$16.11             | DIVERSION EXPENSES        | V00106         | ED & STAFF-PR/ADMIN EXP  |
| <b>Capital Outlay / Computer Software</b>             |            |              |                        | <b>\$16.11</b>      |                           |                |                          |
| <b>770 Subtotal</b>                                   |            |              |                        | <b>\$132,832.25</b> |                           |                |                          |
| 790-7910-429.33-25                                    | 3/5/2022   | 913          | OHNSTAD TWICHELL PC    | \$106,150.94        | OHNSTAD TWICHELL PC       | V00102         | General & Admin. WIK     |
| <b>Other Services / Legal Services</b>                |            |              |                        | <b>\$106,150.94</b> |                           |                |                          |
| 790-7910-429.34-20                                    | 2/17/2022  | 317757       | Michael H Klein        | \$4,188.18          | PUBLIC OUTREACH/COMM      | V07201         | COMMUNICATION CONSULTING |
| <b>Technical Services / Marketing / Public Relat.</b> |            |              |                        | <b>\$4,188.18</b>   |                           |                |                          |
| 790-7910-429.34-56                                    | 2/28/2022  | ES022200     | City of Fargo          | \$16,480.00         | FISCAL AGENT FEE - 02/22  | V05902         | MONTHLY FISCAL AGENT FEE |
|   |            |              |                        | <b>\$16,480.00</b>  |                           |                |                          |



**Summary Of Expenses**  
**EXP-2022-02**

| Account Number                                  | Check Date | Check Number | Vendor Name             | Transaction Amount    | Description               | Project Number | Project Description      |
|---|------------|--------------|-------------------------|-----------------------|---------------------------|----------------|--------------------------|
| 790-7915-429.33-05                              | 2/3/2022   | 317420       | HOUSTON-MOORE GROUP L   | \$58,970.81           | DIVERSION PROJECT         | V01633         | DESIGN & CONST. SUPPORT  |
|   | 2/17/2022  | 317696       | AECOM                   | \$18,370.75           | CULTURAL RESOURCES INVEST | V01004         | SEAI CULTURAL RES INVEST |
|   | 2/7/2022   | ES142100     | ADVANCED ENGINEERING I  | \$0.00                | REC WW1902 REIMBURSEMENT  | V05901         | SW INFRASTRUCTURE STUDY  |
|   | 2/4/2022   | WP14210      | HOUSTON-MOORE GROUP L   | \$126,651.16          | 12.31.21 AP-02.03.22 CK   | V01633         | DESIGN & CONST. SUPPORT  |
|   | 2/4/2022   | WP14210      | HOUSTON-MOORE GROUP L   | (\$126,651.16)        | REV 12.31.21 AP-02.03.22  | V01633         | DESIGN & CONST. SUPPORT  |
| <b>Other Services / Engineering Services</b>    |            |              |                         | <b>\$77,341.56</b>    |                           |                |                          |
| 790-7920-429.33-05                              | 2/3/2022   | 317420       | HOUSTON-MOORE GROUP L   | \$25,156.37           | DIVERSION PROJECT         | V01633         | DESIGN & CONST. SUPPORT  |
| <b>Other Services / Engineering Services</b>    |            |              |                         | <b>\$25,156.37</b>    |                           |                |                          |
| 790-7920-429.33-79                              | 2/10/2022  | 317539       | CH2M Hill Engineers Inc | \$489,353.28          | PROGRAM MGMT & SERVICES   | V00211         | CH2M HILL-6/2019-12/2021 |
|   | 2/10/2022  | 317539       | CH2M Hill Engineers Inc | \$650,980.63          | SUPPORT SERVICES          | V00212         | P3 PROCUREMENT SUPPORT   |
|   | 2/16/2022  | WP14210      | CH2M Hill Engineers Inc | \$489,353.28          | 12.31.21 AP-02.10.22 CK   | V00211         | CH2M HILL-6/2019-12/2021 |
|   | 2/16/2022  | WP14210      | CH2M Hill Engineers Inc | (\$489,353.28)        | REV 12.31.21 AP-02.10.22  | V00211         | CH2M HILL-6/2019-12/2021 |
|   | 2/16/2022  | WP14210      | CH2M Hill Engineers Inc | \$650,980.63          | 12.31.21 AP-02.10.22 CK   | V00212         | P3 PROCUREMENT SUPPORT   |
|   | 2/16/2022  | WP14210      | CH2M Hill Engineers Inc | (\$650,980.63)        | REV 12.31.21 AP-02.10.22  | V00212         | P3 PROCUREMENT SUPPORT   |
| <b>Other Services / Construction Management</b> |            |              |                         | <b>\$1,140,333.91</b> |                           |                |                          |

**Summary Of Expenses**  
**EXP-2022-02**

| Account Number                               | Check Date | Check Number | Vendor Name                 | Transaction Amount  | Description              | Project Number | Project Description     |
|--|------------|--------------|-----------------------------|---------------------|--------------------------|----------------|-------------------------|
| 790-7930-429.33-05                           | 2/3/2022   | 317383       | HDR Engineering, Inc.       | \$41,732.49         | HDR ENGINEERING INC      | V01201         | Cass Joint Water ROE    |
|  | 2/3/2022   | 317383       | Prosource Technologies, Inc | \$58,389.15         | PROSOURCE TECHNOLOGIES   | V01201         | Cass Joint Water ROE    |
|  | 2/3/2022   | 317383       | SRF Consulting Group        | \$47,153.13         | SRF CONSULTING GROUP INC | V01201         | Cass Joint Water ROE    |
|  | 2/3/2022   | 317383       | ULTEIG ENGINEERS INC        | \$11,433.97         | ULTEIG ENGINEERS         | V01201         | Cass Joint Water ROE    |
|  | 2/3/2022   | 317420       | HOUSTON-MOORE GROUP L       | \$7,886.14          | DIVERSION PROJECT        | V01633         | DESIGN & CONST. SUPPORT |
|  | 2/10/2022  | 317512       | ADVANCED ENGINEERING I      | \$115,469.56        | DIVERSION PROJECT        | V00302         | PROGRAM MGMT SERVICES   |
|  | 2/4/2022   | WP14210      | ADVANCED ENGINEERING I      | \$112,822.00        | 12.31.21 AP-02.03.22 CK  | V00302         | PROGRAM MGMT SERVICES   |
|  | 2/4/2022   | WP14210      | ADVANCED ENGINEERING I      | (\$112,822.00)      | REV 12.31.21 AP-02.03.22 | V00302         | PROGRAM MGMT SERVICES   |
|  | 2/4/2022   | WP14210      | HDR Engineering, Inc.       | \$41,732.49         | 12.31.21 AP-02.03.22 CK  | V01201         | Cass Joint Water ROE    |
|  | 2/4/2022   | WP14210      | HDR Engineering, Inc.       | (\$41,732.49)       | REV 12.31.21 AP-02.03.22 | V01201         | Cass Joint Water ROE    |
|  | 2/4/2022   | WP14210      | Prosource Technologies, Inc | \$58,389.15         | 12.31.21 AP-02.03.22 CK  | V01201         | Cass Joint Water ROE    |
|  | 2/4/2022   | WP14210      | Prosource Technologies, Inc | (\$58,389.15)       | REV 12.31.21 AP-02.03.22 | V01201         | Cass Joint Water ROE    |
|  | 2/4/2022   | WP14210      | SRF Consulting Group        | \$47,153.13         | 12.31.21 AP-02.03.22 CK  | V01201         | Cass Joint Water ROE    |
|  | 2/4/2022   | WP14210      | SRF Consulting Group        | (\$47,153.13)       | REV 12.31.21 AP-02.03.22 | V01201         | Cass Joint Water ROE    |
|  | 2/4/2022   | WP14210      | ULTEIG ENGINEERS INC        | \$11,433.97         | 12.31.21 AP-02.03.22 CK  | V01201         | Cass Joint Water ROE    |
|  | 2/4/2022   | WP14210      | ULTEIG ENGINEERS INC        | (\$11,433.97)       | REV 12.31.21 AP-02.03.22 | V01201         | Cass Joint Water ROE    |
| <b>Other Services / Engineering Services</b> |            |              |                             | <b>\$282,064.44</b> |                          |                |                         |
| 790-7930-429.33-25                           | 2/3/2022   | 317383       | Larkin Hoffman Attorneys    | \$9,402.50          | LARKIN HOFFMAN ATTORNEYS | V01201         | Cass Joint Water ROE    |
|  | 2/3/2022   | 317383       | OHNSTAD TWICHELL PC         | \$95,078.56         | OHNSTAD TWICHELL, P.C.   | V01201         | Cass Joint Water ROE    |
|  | 2/17/2022  | 317773       | Mapleton Township           | \$18,000.00         | ATTORNERY FEES           | V10001         | MAPLETON TWP MOU        |
|  | 3/5/2022   | 913          | OHNSTAD TWICHELL PC         | \$102.00            | OHNSTAD TWICHELL PC      | V00103         | General & Admin. LERRDS |
|  | 2/4/2022   | WP14210      | Larkin Hoffman Attorneys    | \$9,402.50          | 12.31.21 AP-02.03.22 CK  | V01201         | Cass Joint Water ROE    |
|  | 2/4/2022   | WP14210      | Larkin Hoffman Attorneys    | (\$9,402.50)        | REV 12.31.21 AP-02.03.22 | V01201         | Cass Joint Water ROE    |
|  | 2/4/2022   | WP14210      | OHNSTAD TWICHELL PC         | \$95,078.56         | 12.31.21 AP-02.03.22 CK  | V01201         | Cass Joint Water ROE    |
|  | 2/4/2022   | WP14210      | OHNSTAD TWICHELL PC         | (\$95,078.56)       | REV 12.31.21 AP-02.03.22 | V01201         | Cass Joint Water ROE    |
| <b>Other Services / Legal Services</b>       |            |              |                             | <b>\$122,583.06</b> |                          |                |                         |

**Summary Of Expenses**  
**EXP-2022-02**

| Account Number                                      | Check Date | Check Number | Vendor Name                    | Transaction Amount | Description               | Project Number | Project Description       |
|---|------------|--------------|--------------------------------|--------------------|---------------------------|----------------|---------------------------|
| 790-7930-429.33-32                                  | 2/3/2022   | 317383       | COMPASS LAND CONSULTA          | \$7,900.00         | COMPASS LAND CONSULTANTS  | V01201         | Cass Joint Water ROE      |
|   | 2/3/2022   | 317383       | CROWN APPRAISALS               | \$7,000.00         | CROWN APPRAISALS, INC.    | V01201         | Cass Joint Water ROE      |
|   | 2/3/2022   | 317383       | Patchin Messner Valuation Coun | \$6,000.00         | PATCHIN MESSNER VALUATION | V01201         | Cass Joint Water ROE      |
|   | 2/4/2022   | WP14210      | COMPASS LAND CONSULTA          | (\$7,900.00)       | REV 12.31.21 AP-02.03.22  | V01201         | Cass Joint Water ROE      |
|   | 2/4/2022   | WP14210      | COMPASS LAND CONSULTA          | \$7,900.00         | 12.31.21 AP-02.03.22 CK   | V01201         | Cass Joint Water ROE      |
|   | 2/4/2022   | WP14210      | CROWN APPRAISALS               | \$7,000.00         | 12.31.21 AP-02.03.22 CK   | V01201         | Cass Joint Water ROE      |
|   | 2/4/2022   | WP14210      | CROWN APPRAISALS               | (\$7,000.00)       | REV 12.31.21 AP-02.03.22  | V01201         | Cass Joint Water ROE      |
|   | 2/4/2022   | WP14210      | Patchin Messner Valuation Coun | \$6,000.00         | 12.31.21 AP-02.03.22 CK   | V01201         | Cass Joint Water ROE      |
|   | 2/4/2022   | WP14210      | Patchin Messner Valuation Coun | (\$6,000.00)       | REV 12.31.21 AP-02.03.22  | V01201         | Cass Joint Water ROE      |
| <b>Other Services / Appraisal Services</b>          |            |              |                                | <b>\$20,900.00</b> |                           |                |                           |
| 790-7930-429.33-79                                  | 2/10/2022  | 317539       | CH2M Hill Engineers Inc        | \$21,979.89        | PROPERTY ACQUISITION MGMT | V00210         | CH2M HILL-LAND ACQUISITON |
|   | 2/16/2022  | WP14210      | CH2M Hill Engineers Inc        | \$21,979.89        | 12.31.21 AP-02.10.22 CK   | V00210         | CH2M HILL-LAND ACQUISITON |
|   | 2/16/2022  | WP14210      | CH2M Hill Engineers Inc        | (\$21,979.89)      | REV 12.31.21 AP-02.10.22  | V00210         | CH2M HILL-LAND ACQUISITON |
| <b>Other Services / Construction Management</b>     |            |              |                                | <b>\$21,979.89</b> |                           |                |                           |
| 790-7930-429.34-65                                  | 2/3/2022   | 317383       | 9102 - KELLER, GERALD F        | \$2,125.00         | GERALD KELLER             | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/3/2022   | 317383       | 9103 - KELLER, GERALD & C      | \$2,125.00         | GERALD KELLER             | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | 9102 - KELLER, GERALD F        | \$2,125.00         | 12.31.21 AP-02.03.22 CK   | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | 9102 - KELLER, GERALD F        | (\$2,125.00)       | REV 12.31.21 AP-02.03.22  | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | 9103 - KELLER, GERALD & C      | \$2,125.00         | 12.31.21 AP-02.03.22 CK   | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | 9103 - KELLER, GERALD & C      | (\$2,125.00)       | REV 12.31.21 AP-02.03.22  | V01701         | ND LAND PURCH-OUT OF TOWN |
| <b>Technical Services / Right of Entry Requests</b> |            |              |                                | <b>\$4,250.00</b>  |                           |                |                           |
| 790-7930-429.38-99                                  | 2/3/2022   | 317383       | Title Company                  | \$50.00            | THE TITLE COMPANY         | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | Title Company                  | (\$50.00)          | REV 12.31.21 AP-02.03.22  | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | Title Company                  | \$50.00            | 12.31.21 AP-02.03.22 CK   | V01701         | ND LAND PURCH-OUT OF TOWN |
| <b>Other Services / Other Services</b>              |            |              |                                | <b>\$50.00</b>     |                           |                |                           |
| 790-7930-429.41-05                                  | 2/3/2022   | 317383       | Cass Rural Water               | \$27.00            | CASS RURAL WATER USERS    | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | Cass Rural Water               | \$27.00            | 12.31.21 AP-02.03.22 CK   | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | Cass Rural Water               | (\$27.00)          | REV 12.31.21 AP-02.03.22  | V01701         | ND LAND PURCH-OUT OF TOWN |
| <b>Utility Services / Water and Sewer</b>           |            |              |                                | <b>\$27.00</b>     |                           |                |                           |

**Summary Of Expenses**  
**EXP-2022-02**

| Account Number                            | Check Date | Check Number | Vendor Name                     | Transaction Amount | Description                | Project Number | Project Description       |
|---|------------|--------------|---------------------------------|--------------------|----------------------------|----------------|---------------------------|
| 790-7930-429.52-70                        | 2/10/2022  | 317667       | Watts and Associates, Inc.      | \$10,709.75        | CROP INS PRODUCT DEVELOPME | V06901         | CROP INSURANCE DEVELOPMN  |
|   | 2/16/2022  | WP14210      | Watts and Associates, Inc.      | \$10,709.75        | 12.31.21 AP-02.10.22 CK    | V06901         | CROP INSURANCE DEVELOPMN  |
|   | 2/16/2022  | WP14210      | Watts and Associates, Inc.      | (\$10,709.75)      | REV 12.31.21 AP-02.10.22   | V06901         | CROP INSURANCE DEVELOPMN  |
| <b>Insurance / Crop Insurance</b>         |            |              |                                 | <b>\$10,709.75</b> |                            |                |                           |
| 790-7930-429.61-50                        | 2/3/2022   | 317383       | CASS COUNTY JOINT WATE          | \$29.52            | USPS                       | V01201         | Cass Joint Water ROE      |
|   | 2/4/2022   | WP14210      | CASS COUNTY JOINT WATE          | \$29.52            | 12.31.21 AP-02.03.22 CK    | V01201         | Cass Joint Water ROE      |
|   | 2/4/2022   | WP14210      | CASS COUNTY JOINT WATE          | (\$29.52)          | REV 12.31.21 AP-02.03.22   | V01201         | Cass Joint Water ROE      |
| <b>General Supplies / Postage</b>         |            |              |                                 | <b>\$29.52</b>     |                            |                |                           |
| 790-7930-429.62-51                        | 2/3/2022   | 317383       | Cass County Electric Cooperativ | \$96.87            | CASS COUNTY ELECTRIC COOP  | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | Cass County Electric Cooperativ | (\$96.87)          | REV 12.31.21 AP-02.03.22   | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | Cass County Electric Cooperativ | \$96.87            | 12.31.21 AP-02.03.22 CK    | V01701         | ND LAND PURCH-OUT OF TOWN |
| <b>Energy / Electricity</b>               |            |              |                                 | <b>\$96.87</b>     |                            |                |                           |
| 790-7930-429.67-11                        | 2/3/2022   | 317383       | 0837 - HANSON 1                 | \$3,150.00         | MARY HANSON                | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/3/2022   | 317383       | 1101 - WALTER E RASMUSS         | \$15,255.00        | W RASMUSSEN & J STONE      | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | 0837 - HANSON 1                 | \$3,150.00         | 12.31.21 AP-02.03.22 CK    | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | 0837 - HANSON 1                 | (\$3,150.00)       | REV 12.31.21 AP-02.03.22   | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | 1101 - WALTER E RASMUSS         | \$15,255.00        | 12.31.21 AP-02.03.22 CK    | V01701         | ND LAND PURCH-OUT OF TOWN |
|   | 2/4/2022   | WP14210      | 1101 - WALTER E RASMUSS         | (\$15,255.00)      | REV 12.31.21 AP-02.03.22   | V01701         | ND LAND PURCH-OUT OF TOWN |
| <b>Relocation / Residential Buildings</b> |            |              |                                 | <b>\$18,405.00</b> |                            |                |                           |
| 790-7930-429.68-22                        | 2/17/2022  | 317773       | Mapleton Township               | \$90,030.00        | LOST TAX REVENUE           | V10001         | MAPLETON TWP MOU          |
| <b>Miscellaneous / Lost Tax Revenue</b>   |            |              |                                 | <b>\$90,030.00</b> |                            |                |                           |

**Summary Of Expenses**  
**EXP-2022-02**

| Account Number     | Check Date | Check Number | Vendor Name              | Transaction Amount | Description              | Project Number | Project Description       |
|--------------------|------------|--------------|--------------------------|--------------------|--------------------------|----------------|---------------------------|
| 790-7930-429.71-30 | 2/3/2022   | 317383       | 0816N - CASS COUNTY JOIN | \$855,555.62       | THE TITLE COMPANY        | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/3/2022   | 317383       | 0817N - CASS COUNTY JOIN | \$855,555.63       | THE TITLE COMPANY        | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/3/2022   | 317383       | 1088N - CASS COUNTY JOIN | \$1,412,649.00     | THE TITLE COMPANY        | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/3/2022   | 317383       | 1893 - JDCBABES          | \$191,753.64       | THE TITLE COMPANY        | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/3/2022   | 317383       | 8385 - ERIC J SCORE      | (\$30,200.00)      | CLERK OF DISTRICT COURT  | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/3/2022   | 317383       | 8385 - ERIC J SCORE      | \$498,009.81       | THE TITLE COMPANY        | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/3/2022   | 317383       | 9417 - JDCBABES          | \$191,753.65       | THE TITLE COMPANY        | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/3/2022   | 317383       | 9419 - JDCBABES          | \$191,753.65       | THE TITLE COMPANY        | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/3/2022   | 317383       | 9420 - JDCBABES          | \$191,753.65       | THE TITLE COMPANY        | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/3/2022   | 317383       | 9422 - JDCBABES          | \$191,753.65       | THE TITLE COMPANY        | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/3/2022   | 317383       | 9462 - JDCBABES          | \$191,753.65       | THE TITLE COMPANY        | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/3/2022   | 317383       | 9670 - JDCBABES          | \$191,753.65       | THE TITLE COMPANY        | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/3/2022   | 317383       | 9671 - JDCBABES          | \$191,753.65       | THE TITLE COMPANY        | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 0816N - CASS COUNTY JOIN | \$855,555.62       | 12.31.21 AP-02.03.22 CK  | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 0816N - CASS COUNTY JOIN | (\$855,555.62)     | REV 12.31.21 AP-02.03.22 | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 0817N - CASS COUNTY JOIN | \$855,555.63       | 12.31.21 AP-02.03.22 CK  | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 0817N - CASS COUNTY JOIN | (\$855,555.63)     | REV 12.31.21 AP-02.03.22 | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 1088N - CASS COUNTY JOIN | \$1,412,649.00     | 12.31.21 AP-02.03.22 CK  | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 1088N - CASS COUNTY JOIN | (\$1,412,649.00)   | REV 12.31.21 AP-02.03.22 | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 1893 - JDCBABES          | \$191,753.64       | 12.31.21 AP-02.03.22 CK  | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 1893 - JDCBABES          | (\$191,753.64)     | REV 12.31.21 AP-02.03.22 | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 8385 - ERIC J SCORE      | (\$467,809.81)     | REV 12.31.21 AP-02.03.22 | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 8385 - ERIC J SCORE      | \$467,809.81       | 12.31.21 AP-02.03.22 CK  | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 9417 - JDCBABES          | \$191,753.65       | 12.31.21 AP-02.03.22 CK  | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 9417 - JDCBABES          | (\$191,753.65)     | REV 12.31.21 AP-02.03.22 | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 9419 - JDCBABES          | \$191,753.65       | 12.31.21 AP-02.03.22 CK  | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 9419 - JDCBABES          | (\$191,753.65)     | REV 12.31.21 AP-02.03.22 | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 9420 - JDCBABES          | \$191,753.65       | 12.31.21 AP-02.03.22 CK  | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 9420 - JDCBABES          | (\$191,753.65)     | REV 12.31.21 AP-02.03.22 | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 9422 - JDCBABES          | \$191,753.65       | 12.31.21 AP-02.03.22 CK  | V01701         | ND LAND PURCH-OUT OF TOWN |
|                    | 2/4/2022   | WP14210      | 9422 - JDCBABES          | (\$191,753.65)     | REV 12.31.21 AP-02.03.22 | V01701         | ND LAND PURCH-OUT OF TOWN |

**Summary Of Expenses**  
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| Account Number                               | Check Date | Check Number | Vendor Name            | Transaction Amount    | Description              | Project Number | Project Description       |
|--|------------|--------------|------------------------|-----------------------|--------------------------|----------------|---------------------------|
| 790-7930-429.71-30                           | 2/4/2022   | WP14210      | 9462 - JDCBABES        | \$191,753.65          | 12.31.21 AP-02.03.22 CK  | V01701         | ND LAND PURCH-OUT OF TOWN |
|  | 2/4/2022   | WP14210      | 9462 - JDCBABES        | (\$191,753.65)        | REV 12.31.21 AP-02.03.22 | V01701         | ND LAND PURCH-OUT OF TOWN |
|  | 2/4/2022   | WP14210      | 9670 - JDCBABES        | \$191,753.65          | 12.31.21 AP-02.03.22 CK  | V01701         | ND LAND PURCH-OUT OF TOWN |
|  | 2/4/2022   | WP14210      | 9670 - JDCBABES        | (\$191,753.65)        | REV 12.31.21 AP-02.03.22 | V01701         | ND LAND PURCH-OUT OF TOWN |
|  | 2/4/2022   | WP14210      | 9671 - JDCBABES        | \$191,753.65          | 12.31.21 AP-02.03.22 CK  | V01701         | ND LAND PURCH-OUT OF TOWN |
|  | 2/4/2022   | WP14210      | 9671 - JDCBABES        | (\$191,753.65)        | REV 12.31.21 AP-02.03.22 | V01701         | ND LAND PURCH-OUT OF TOWN |
| <b>Land / Land Purchases</b>                 |            |              |                        | <b>\$5,125,599.25</b> |                          |                |                           |
| 790-7931-429.33-05                           | 2/3/2022   | 317388       | SRF Consulting Group   | \$6,155.05            | SRF CONSULTING GROUP     | V06201         | MCCJPA - MN ROE           |
|  | 2/4/2022   | WP14210      | SRF Consulting Group   | \$6,155.05            | 12.31.21 AP-02.03.22 CK  | V06201         | MCCJPA - MN ROE           |
|  | 2/4/2022   | WP14210      | SRF Consulting Group   | (\$6,155.05)          | REV 12.31.21 AP-02.03.22 | V06201         | MCCJPA - MN ROE           |
| <b>Other Services / Engineering Services</b> |            |              |                        | <b>\$6,155.05</b>     |                          |                |                           |
| 790-7931-429.33-25                           | 2/3/2022   | 317388       | OHNSTAD TWICHELL PC    | \$49,406.87           | OHNSTAD TWICHELL         | V06201         | MCCJPA - MN ROE           |
|  | 2/4/2022   | WP14210      | OHNSTAD TWICHELL PC    | \$43,416.87           | 12.31.21 AP-02.03.22 CK  | V06201         | MCCJPA - MN ROE           |
|  | 2/4/2022   | WP14210      | OHNSTAD TWICHELL PC    | (\$43,416.87)         | REV 12.31.21 AP-02.03.22 | V06201         | MCCJPA - MN ROE           |
| <b>Other Services / Legal Services</b>       |            |              |                        | <b>\$49,406.87</b>    |                          |                |                           |
| 790-7931-429.33-32                           | 2/3/2022   | 317388       | CROWN APPRAISALS       | \$7,000.00            | CROWN APPRAISALS, INC.   | V06201         | MCCJPA - MN ROE           |
|  | 2/3/2022   | 317388       | INTEGRA REALTY RESOURC | \$4,500.00            | INTEGRA REALTY RESOURCES | V06201         | MCCJPA - MN ROE           |
|  | 2/4/2022   | WP14210      | CROWN APPRAISALS       | \$7,000.00            | 12.31.21 AP-02.03.22 CK  | V06201         | MCCJPA - MN ROE           |
|  | 2/4/2022   | WP14210      | CROWN APPRAISALS       | (\$7,000.00)          | REV 12.31.21 AP-02.03.22 | V06201         | MCCJPA - MN ROE           |
|  | 2/4/2022   | WP14210      | INTEGRA REALTY RESOURC | \$4,500.00            | 12.31.21 AP-02.03.22 CK  | V06201         | MCCJPA - MN ROE           |
|  | 2/4/2022   | WP14210      | INTEGRA REALTY RESOURC | (\$4,500.00)          | REV 12.31.21 AP-02.03.22 | V06201         | MCCJPA - MN ROE           |
| <b>Other Services / Appraisal Services</b>   |            |              |                        | <b>\$11,500.00</b>    |                          |                |                           |
| 790-7931-429.38-99                           | 2/3/2022   | 317388       | Midwest Pest Control   | \$544.93              | MIDWEST PEST CONTROL     | V02301         | MN LAND PURCHASES         |
|  | 2/4/2022   | WP14210      | Midwest Pest Control   | \$544.93              | 12.31.21 AP-02.03.22 CK  | V02301         | MN LAND PURCHASES         |
|  | 2/4/2022   | WP14210      | Midwest Pest Control   | (\$544.93)            | REV 12.31.21 AP-02.03.22 | V02301         | MN LAND PURCHASES         |
| <b>Other Services / Other Services</b>       |            |              |                        | <b>\$544.93</b>       |                          |                |                           |



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**EXP-2022-02**

| Account Number     | Check Date | Check Number | Vendor Name             | Transaction Amount  | Description                               | Project Number | Project Description |
|--------------------|------------|--------------|-------------------------|---------------------|---|----------------|---------------------|
| 790-7931-429.54-10 | 2/3/2022   | 317388       | New Century Press       | \$9.28              | NEW CENTURY PRESS                         | V06201         | MCCJPA - MN ROE     |
|                    | 2/4/2022   | WP14210      | New Century Press       | \$9.28              | 12.31.21 AP-02.03.22 CK                   | V06201         | MCCJPA - MN ROE     |
|                    | 2/4/2022   | WP14210      | New Century Press       | (\$9.28)            | REV 12.31.21 AP-02.03.22                  | V06201         | MCCJPA - MN ROE     |
|                    |            |              |                         | <b>\$9.28</b>       |   |                |                     |
| 790-7931-429.62-51 | 2/3/2022   | 317388       | LAKE REGION ELECTRIC CO | \$123.16            | LAKE REGION ELECTRIC COOP                 | V02301         | MN LAND PURCHASES   |
|                    | 2/3/2022   | 317388       | RED RIVER VALLEY COOPE  | \$179.71            | RED RIVER VALLEY COOP                     | V02301         | MN LAND PURCHASES   |
|                    | 2/4/2022   | WP14210      | LAKE REGION ELECTRIC CO | \$123.16            | 12.31.21 AP-02.03.22 CK                   | V02301         | MN LAND PURCHASES   |
|                    | 2/4/2022   | WP14210      | LAKE REGION ELECTRIC CO | (\$123.16)          | REV 12.31.21 AP-02.03.22                  | V02301         | MN LAND PURCHASES   |
|                    | 2/4/2022   | WP14210      | RED RIVER VALLEY COOPE  | \$179.71            | 12.31.21 AP-02.03.22 CK                   | V02301         | MN LAND PURCHASES   |
|                    | 2/4/2022   | WP14210      | RED RIVER VALLEY COOPE  | (\$179.71)          | REV 12.31.21 AP-02.03.22                  | V02301         | MN LAND PURCHASES   |
|                    |            |              |                         | <b>\$302.87</b>     | <b>Energy / Electricity</b>               |                |                     |
| 790-7931-429.67-11 | 2/3/2022   | 317388       | 1834 - NESS 7           | \$14,449.95         | MIDWEST MOVING COMPANY                    | V02301         | MN LAND PURCHASES   |
|                    | 2/3/2022   | 317388       | 1847 - HANDLOS          | \$3,325.00          | MICHAEL & CAROLYN HANDLOS                 | V02301         | MN LAND PURCHASES   |
|                    | 2/4/2022   | WP14210      | 1834 - NESS 7           | \$14,449.95         | 12.31.21 AP-02.03.22 CK                   | V02301         | MN LAND PURCHASES   |
|                    | 2/4/2022   | WP14210      | 1834 - NESS 7           | (\$14,449.95)       | REV 12.31.21 AP-02.03.22                  | V02301         | MN LAND PURCHASES   |
|                    | 2/4/2022   | WP14210      | 1847 - HANDLOS          | \$3,325.00          | 12.31.21 AP-02.03.22 CK                   | V02301         | MN LAND PURCHASES   |
|                    | 2/4/2022   | WP14210      | 1847 - HANDLOS          | (\$3,325.00)        | REV 12.31.21 AP-02.03.22                  | V02301         | MN LAND PURCHASES   |
|                    |            |              |                         | <b>\$17,774.95</b>  | <b>Relocation / Residential Buildings</b> |                |                     |
| 790-7931-429.71-30 | 2/3/2022   | 317388       | 1638N - MOORHEAD CLAY C | \$291,600.62        | THE TITLE CO                              | V02301         | MN LAND PURCHASES   |
|                    | 2/4/2022   | WP14210      | 1638N - MOORHEAD CLAY C | (\$291,600.62)      | REV 12.31.21 AP-02.03.22                  | V02301         | MN LAND PURCHASES   |
|                    | 2/4/2022   | WP14210      | 1638N - MOORHEAD CLAY C | \$291,600.62        | 12.31.21 AP-02.03.22 CK                   | V02301         | MN LAND PURCHASES   |
|                    |            |              |                         | <b>\$291,600.62</b> | <b>Land / Land Purchases</b>              |                |                     |

**Summary Of Expenses**  
**EXP-2022-02**

| Account Number                               | Check Date | Check Number | Vendor Name             | Transaction Amount  | Description                | Project Number | Project Description       |
|--|------------|--------------|-------------------------|---------------------|----------------------------|----------------|---------------------------|
| 790-7950-429.33-05                           | 2/3/2022   | 317420       | HOUSTON-MOORE GROUP L   | \$18,218.21         | DIVERSION PROJECT          | V01633         | DESIGN & CONST. SUPPORT   |
|  | 3/1/2022   | ES142100     | MOORE ENGINEERING INC   | \$13,827.78         | MOORE ENGINEERING INC      | V05422         | FLOOD MIT - NORTH SIDE    |
|  | 3/1/2022   | ES142100     | SRF Consulting Group    | \$12.17             | SRF CONSULTING GROUP, INC  | V05407         | FLOOD MIT-RIVERWOOD ADDTN |
|  | 3/10/2022  | ES152100     | City of Fargo           | \$181,175.67        | RCLS Capital Admin Expense | V05411         | FLOOD MIT-OAK GROVE AREA  |
|  | 3/10/2022  | ES152100     | City of Fargo           | \$150,785.93        | RCLS Capital Admin Expense | V05422         | FLOOD MIT - NORTH SIDE    |
|  | 3/10/2022  | ES152100     | City of Fargo           | \$22,096.73         | RCLS Capital Admin Expense | V05419         | STORM LIFT STATION #24    |
|  | 3/10/2022  | ES152100     | City of Fargo           | \$10,409.08         | RCLS Capital Admin Expense | V05412         | DEMO - CITY WIDE          |
|  | 3/10/2022  | ES152100     | City of Fargo           | \$13,302.34         | RCLS Capital Admin Expense | V05405         | LEVEE/FLOODWALL - BELMONT |
|  | 3/10/2022  | ES152100     | City of Fargo           | \$30,345.91         | RCLS Capital Admin Expense | V05410         | FLOOD MIT-ELM CIRCLE AREA |
|  | 3/10/2022  | ES152100     | City of Fargo           | \$106,686.91        | RCLS Capital Admin Expense | V05407         | FLOOD MIT-RIVERWOOD ADDTN |
|  | 3/10/2022  | ES152100     | City of Fargo           | \$21,859.75         | RCLS Capital Admin Expense | V05401         | DEMOLITION/LEVEE-HARWOOD  |
|  | 3/10/2022  | ES152100     | City of Fargo           | \$13,919.07         | RCLS Capital Admin Expense | V05408         | FLOOD MIT-ROYAL OAKS AREA |
| <b>Other Services / Engineering Services</b> |            |              |                         | <b>\$582,639.55</b> |                            |                |                           |
| 790-7950-429.33-25                           | 3/1/2022   | ES142100     | ERIK R JOHNSON & ASSOCI | \$3,000.00          | ERIK R JOHNSON & ASSOCIAT  | V05418         | FLOOD ACQUISITIONS        |
| <b>Other Services / Legal Services</b>       |            |              |                         | <b>\$3,000.00</b>   |                            |                |                           |
| 790-7950-429.38-99                           | 3/1/2022   | ES142100     | City of Fargo           | \$187.11            | City of Fargo              | V05410         | FLOOD MIT-ELM CIRCLE AREA |
| <b>Other Services / Other Services</b>       |            |              |                         | <b>\$187.11</b>     |                            |                |                           |
| 790-7950-429.41-05                           | 3/1/2022   | ES142100     | City of Fargo           | \$122.38            | City of Fargo              | V05418         | FLOOD ACQUISITIONS        |
| <b>Other Services / Other Services</b>       |            |              |                         | <b>\$122.38</b>     |                            |                |                           |
| 790-7950-429.62-50                           | 2/18/2022  | ES022200     | XCEL ENERGY-FARGO       | (\$0.01)            | TO CORRECT JE GR 1084      | V05418         | FLOOD ACQUISITIONS        |
|  | 2/22/2022  | ES022200     | XCEL ENERGY-FARGO       | \$0.02              | CORRECT JE GR 1280         | V05418         | FLOOD ACQUISITIONS        |
|  | 3/1/2022   | ES142100     | XCEL ENERGY-FARGO       | \$39.73             | XCEL ENERGY                | V05418         | FLOOD ACQUISITIONS        |
| <b>Other Services / Other Services</b>       |            |              |                         | <b>\$39.74</b>      |                            |                |                           |
| 790-7950-429.62-51                           | 3/1/2022   | ES142100     | XCEL ENERGY-FARGO       | \$196.19            | XCEL ENERGY                | V05418         | FLOOD ACQUISITIONS        |
| <b>Other Services / Other Services</b>       |            |              |                         | <b>\$196.19</b>     |                            |                |                           |



**Summary Of Expenses**  
**EXP-2022-02**

| Account Number     | Check Date | Check Number | Vendor Name                     | Transaction Amount   | Description                                  | Project Number | Project Description       |
|--------------------|------------|--------------|---------------------------------|----------------------|--|----------------|---------------------------|
| 790-7950-429.67-11 | 2/15/2022  | ES142100     | Ellen Sondreal                  | \$10,644.11          | RECLASS RELOCATION EXPENS                    | V05407         | FLOOD MIT-RIVERWOOD ADDTN |
|                    | 2/15/2022  | ES142100     | Susan Montplaisir               | \$2,048.00           | RECLASS RELOCATION EXPENS                    | V05408         | FLOOD MIT-ROYAL OAKS AREA |
|                    | 2/15/2022  | ES142100     | Tara Shilling                   | \$9,904.88           | RECLASS RELOCATION EXPENS                    | V05407         | FLOOD MIT-RIVERWOOD ADDTN |
|                    |            |              |                                 | <b>\$22,596.99</b>   |  |                |                           |
| 790-7950-429.71-30 | 2/15/2022  | ES142100     | Ellen Sondreal                  | (\$10,644.11)        | RECLASS RELOCATION EXPENS                    | V05407         | FLOOD MIT-RIVERWOOD ADDTN |
|                    | 2/15/2022  | ES142100     | Susan Montplaisir               | (\$2,048.00)         | RECLASS RELOCATION EXPENS                    | V05408         | FLOOD MIT-ROYAL OAKS AREA |
|                    | 2/15/2022  | ES142100     | Tara Shilling                   | (\$9,904.88)         | RECLASS RELOCATION EXPENS                    | V05407         | FLOOD MIT-RIVERWOOD ADDTN |
|                    |            |              |                                 | <b>(\$22,596.99)</b> |  |                |                           |
| 790-7950-429.73-52 | 3/1/2022   | ES142100     | Rick Electric Inc               | \$4,351.00           | RICK ELECTRIC INC                            | V05407         | FLOOD MIT-RIVERWOOD ADDTN |
|                    |            |              |                                 | <b>\$4,351.00</b>    | <b>Infrastructure / Flood Control</b>        |                |                           |
| 790-7950-429.73-58 | 3/1/2022   | ES142100     | City of Fargo                   | \$106,505.33         | City of Fargo                                | V05419         | STORM LIFT STATION #24    |
|                    |            |              |                                 | <b>\$106,505.33</b>  |  |                |                           |
| 790-7950-429.73-69 | 3/1/2022   | ES142100     | City of Fargo                   | \$3,289.98           | City of Fargo                                | V05405         | LEEVE/FLOODWALL - BELMONT |
|                    |            |              |                                 | <b>\$3,289.98</b>    |  |                |                           |
| 790-7950-429.73-70 | 2/10/2022  | 317534       | Cass County Electric Cooperativ | \$82,853.59          | PULL CABLES DRAIN 27                         | V04704         | DRAIN 27 - POLE REMOVAL   |
|                    | 2/16/2022  | WP14210      | Cass County Electric Cooperativ | \$82,853.59          | 12.31.21 AP-02.10.22 CK                      | V04704         | DRAIN 27 - POLE REMOVAL   |
|                    | 2/16/2022  | WP14210      | Cass County Electric Cooperativ | (\$82,853.59)        | REV 12.31.21 AP-02.10.22                     | V04704         | DRAIN 27 - POLE REMOVAL   |
|                    |            |              |                                 | <b>\$82,853.59</b>   | <b>Infrastructure / Utilities</b>            |                |                           |
| 790-7952-429.33-05 | 2/3/2022   | 317420       | HOUSTON-MOORE GROUP L           | \$502.25             | DIVERSION PROJECT                            | V01633         | DESIGN & CONST. SUPPORT   |
|                    |            |              |                                 | <b>\$502.25</b>      | <b>Other Services / Engineering Services</b> |                |                           |
| 790-7955-429.33-05 | 2/3/2022   | 317420       | HOUSTON-MOORE GROUP L           | \$12,838.19          | DIVERSION PROJECT                            | V02827         | IN TOWN LEVY MAINTENANCE  |
|                    | 2/4/2022   | WP14210      | HOUSTON-MOORE GROUP L           | \$12,838.19          | 12.31.21 AP-02.03.22 CK                      | V02827         | IN TOWN LEVY MAINTENANCE  |
|                    | 2/4/2022   | WP14210      | HOUSTON-MOORE GROUP L           | (\$12,838.19)        | REV 12.31.21 AP-02.03.22                     | V02827         | IN TOWN LEVY MAINTENANCE  |
|                    |            |              |                                 | <b>\$12,838.19</b>   | <b>Other Services / Engineering Services</b> |                |                           |
| 790-7990-429.33-05 | 2/3/2022   | 317420       | HOUSTON-MOORE GROUP L           | \$15,917.38          | DIVERSION PROJECT                            | V01633         | DESIGN & CONST. SUPPORT   |
|                    |            |              |                                 | <b>\$15,917.38</b>   | <b>Other Services / Engineering Services</b> |                |                           |

**Summary Of Expenses**  
**EXP-2022-02**

| Account Number                                    | Check Date | Check Number | Vendor Name                    | Transaction Amount    | Description                | Project Number | Project Description        |
|---|------------|--------------|--------------------------------|-----------------------|----------------------------|----------------|----------------------------|
| 790-7990-429.33-25                                | 3/5/2022   | 913          | OHNSTAD TWICHELL PC            | \$20,532.50           | OHNSTAD TWICHELL PC        | V00102         | General & Admin. WIK       |
| <b>Other Services / Legal Services</b>            |            |              |                                | <b>\$20,532.50</b>    |                            |                |                            |
| 790-7990-429.33-47                                | 2/17/2022  | 317798       | Program Advisor Services, LLC  | \$42,375.00           | JAN CONSULTING SERVICE     | V05801         | CONSULTING SERVICES        |
| <b>Other Services / Consulting Services</b>       |            |              |                                | <b>\$42,375.00</b>    |                            |                |                            |
| 790-7990-429.34-55                                | 2/3/2022   | 317363       | AON RISK SERVICES CENTR        | \$3,025.00            | RISK ADVISORY SERVICES     | V03201         | PRE-AWARD P3 RISK ADVISOR  |
|   | 2/17/2022  | 317702       | Baker Tilly Muncpal Advisors   | \$20,565.00           | FINANCIAL FEASIBILITY      | V09901         | FINANCIAL ADVISORY SERVICE |
|   | 2/17/2022  | 317734       | Ernst & Young                  | \$17,591.00           | FINANCIAL ADVISORY SERVICE | V03301         | PPP FINANCL ADVISORY SVCS  |
|   | 2/22/2022  | WP14210      | Baker Tilly Muncpal Advisors   | \$20,565.00           | 12.31.21 AP-02.17.22 CK    | V09901         | FINANCIAL ADVISORY SERVICE |
|   | 2/22/2022  | WP14210      | Baker Tilly Muncpal Advisors   | (\$20,565.00)         | REV 12.31.21 AP-02.17.22   | V09901         | FINANCIAL ADVISORY SERVICE |
|   | 2/22/2022  | WP14210      | Ernst & Young                  | \$17,591.00           | 12.31.21 AP-02.17.22 CK    | V03301         | PPP FINANCL ADVISORY SVCS  |
|   | 2/22/2022  | WP14210      | Ernst & Young                  | (\$17,591.00)         | REV 12.31.21 AP-02.17.22   | V03301         | PPP FINANCL ADVISORY SVCS  |
| <b>Technical Services / Financial Advisor</b>     |            |              |                                | <b>\$41,181.00</b>    |                            |                |                            |
| 790-7990-429.34-57                                | 2/25/2022  | 4380         | BANK OF NORTH DAKOTA           | \$16,480.00           | BND TRUSTEE FEE - 2/2022   | V08502         | MONTHLY TRUSTEE FEE        |
| <b>Technical Services / FMDA Trustee Fees BND</b> |            |              |                                | <b>\$16,480.00</b>    |                            |                |                            |
| 790-7998-555.90-81                                | 2/28/2022  | ES022200     | Diversion Admin Budget Transfe | \$0.00                | ANNUAL ADMIN BDGT TRF-FEB  | VADMIN         | Diversion Administration   |
| <b>FMDA Admin. Budget Fund</b>                    |            |              |                                | <b>\$0.00</b>         |                            |                |                            |
| <b>790 Subtotal</b>                               |            |              |                                | <b>\$8,376,681.50</b> |                            |                |                            |

|   |                       |                                  |
|---|-----------------------|----------------------------------|
| <b>Total Amount Invoiced this period:</b> | <b>\$8,509,513.75</b> |                                  |
|   | <b>\$0.00</b>         | <b>Less Paid Retainage</b>       |
|   | <b>\$8,509,513.75</b> | <b>Total Less Paid Retainage</b> |

*Cummulative Vendor Payments Since Inception (Paid Only)*

| <b>Vendor Name</b>                   | <b>Approved Contract/Invoiced Amount</b> | <b>Liquidated</b> | <b>Outstanding Encumbrance</b> | <b>Purpose</b>  |
|--------------------------------------|--|-------------------|--------------------------------|---|
| LAND PURCHASE                        | \$253,161,754.44                         | \$253,161,754.44  | \$0.00                         | Land Purchase   |
| CH2M HILL ENGINEERS INC              | \$153,075,591.12                         | \$87,131,588.77   | \$65,944,002.35                | Project & Construction Management                               |
| HOUSTON-MOORE GROUP LLC              | \$86,838,161.73                          | \$60,635,180.27   | \$26,202,981.46                | Engineering Services  |
| INDUSTRIAL BUILDERS INC              | \$58,129,514.54                          | \$57,499,356.20   | \$630,158.34                   | 2nd St N Pump Station Project and 2nd St Floodwall, South of Pu |
| ARMY CORP OF ENGINEERS               | \$53,159,000.00                          | \$53,159,000.00   | \$0.00                         | Local Share   |
| RICHLAND-WILKIN JPA                  | \$35,000,000.00                          | \$35,000,000.00   | \$0.00                         | Economic Impact Relief Fund                                     |
| NORTH DAKOTA PUBLIC FINANCE AUTHORIT | \$25,193,620.00                          | \$25,193,620.00   | \$0.00                         | Debt Service  |
| INDUSTRIAL CONTRACT SERVICES INC     | \$18,419,743.64                          | \$18,419,743.64   | \$0.00                         | 4th St Pump Station and 2nd Street Floodwall                    |
| MEYER CONTRACTING                    | \$18,303,354.99                          | \$18,303,354.99   | \$0.00                         | WP-43CD and Gatewell - PVD & Surcharge Installation             |
| ADVANCED ENGINEERING INC             | \$14,663,193.01                          | \$7,105,378.06    | \$7,557,814.95                 | Lands Management and Public Outreach                            |
| OHNSTAD TWICHELL PC                  | \$14,500,337.40                          | \$14,500,337.40   | \$0.00                         | Legal Services  |
| WELLS FARGO                          | \$11,607,080.05                          | \$11,607,080.05   | \$0.00                         | Debt Service  |
| DORSEY & WHITNEY LLP                 | \$11,166,442.49                          | \$11,166,442.49   | \$0.00                         | Legal Services  |
| DAKOTA UNDERGROUND                   | \$11,141,625.69                          | \$11,141,625.69   | \$0.00                         | Utility Relocation  |
| LANDSCAPES UNLIMITED                 | \$11,007,612.78                          | \$11,007,612.78   | \$0.00                         | Golf Course Construction - Oxbow Country Club                   |
| OKEEFE, OBRIAN, LYSON & FOSS LTD     | \$9,962,512.68                           | \$9,962,512.68    | \$0.00                         | FLDBUY - COF Flood Home Buyouts                                 |
| KEY CONTRACTING INC                  | \$9,659,606.48                           | \$9,659,606.48    | \$0.00                         | FM1413 - Oakcreek and Copperfield Court Levee                   |
| ASHURST LLP                          | \$7,795,542.81                           | \$6,327,000.61    | \$1,468,542.20                 | PPP Legal Counsel   |
| MOORE ENGINEERING INC                | \$5,442,536.95                           | \$5,369,893.65    | \$72,643.30                    | Engineering Services  |
| ERNST & YOUNG                        | \$5,377,000.00                           | \$4,973,480.20    | \$403,519.80                   | P3 Financial Advisory Services                                  |
| CITY OF FARGO                        | \$4,810,386.12                           | \$4,778,886.12    | \$31,500.00                    | Utility Relocation, Accounting Svcs, Interest on Deficit Funds  |
| PROSOURCE TECHNOLOGIES, INC          | \$4,198,291.71                           | \$2,575,477.86    | \$1,622,813.85                 | Land Acquisition Services                                       |
| RILEY BROS                           | \$3,656,841.67                           | \$3,656,841.67    | \$0.00                         | Construction - OHB Ring Levee & WP-28A                          |
| CENTURYLINK COMMUNICATIONS           | \$3,544,465.02                           | \$3,425,723.78    | \$118,741.24                   | Utility Relocation  |
| PLENARY AMERICAS USA LTD             | \$3,000,000.00                           | \$3,000,000.00    | \$0.00                         | Stipend Payment for P3 RFP                                      |
| HOUSTON ENGINEERING INC              | \$2,886,143.94                           | \$2,886,143.94    | \$0.00                         | Engineering Services  |
| MINNESOTA DNR                        | \$2,636,755.60                           | \$2,617,681.40    | \$19,074.20                    | EIS Scoping and Permit Application                              |

*Cummulative Vendor Payments Since Inception (Paid Only)*

| <b>Vendor Name</b>                   | <b>Approved Contract/Invoiced Amount</b> | <b>Liquidated</b> | <b>Outstanding Encumbrance</b> | <b>Purpose</b>  |
|--------------------------------------|--|-------------------|--------------------------------|---|
| SRF CONSULTING GROUP                 | \$2,592,675.84                           | \$1,413,326.73    | \$1,179,349.11                 | Engineering Services  |
| SELLIN BROS INC                      | \$2,577,216.97                           | \$2,577,216.97    | \$0.00                         | Riverwood Flood Risk Project - Construction                 |
| OXBOW, CITY OF                       | \$2,383,317.16                           | \$2,383,317.16    | \$0.00                         | OXBOW MOU - LAND ADVANCE                                    |
| LANDWEHR CONSTRUCTION INC            | \$2,304,622.16                           | \$2,304,622.16    | \$0.00                         | In-Town and WP-43 Demolition Contracts                      |
| HDR ENGINEERING, INC.                | \$2,192,783.68                           | \$963,705.70      | \$1,229,077.98                 | Engineering Services  |
| ACONEX (NORTH AMERICA) INC           | \$2,098,721.65                           | \$1,056,353.97    | \$1,042,367.68                 | Electronic Data Mgmt and Record Storage System              |
| HOUGH INC                            | \$2,088,832.83                           | \$2,088,832.83    | \$0.00                         | Construction WP-42F.2 and Oxbow River Intake & Pumping Syst |
| URS CORPORATION                      | \$1,805,670.90                           | \$1,805,670.90    | \$0.00                         | Cultural Resources Investigations                           |
| ULTEIG ENGINEERS INC                 | \$1,744,157.63                           | \$1,189,684.45    | \$554,473.18                   | Land Acquisition Services                                   |
| CASS COUNTY GOVERNMENT               | \$1,629,250.46                           | \$1,629,250.46    | \$0.00                         | Gravel on County Rd 17 Bypass                               |
| REINER CONTRACTING INC               | \$1,599,646.21                           | \$1,599,646.21    | \$0.00                         | El Zagal Flood Risk Management                              |
| CROWN APPRAISALS                     | \$1,575,455.00                           | \$1,274,730.00    | \$300,725.00                   | Flowage Easements Valuation and Appraisal Services          |
| PROGRAM ADVISOR SERVICES, LLC        | \$1,505,000.00                           | \$1,038,315.44    | \$466,684.56                   | Program Consulting Services                                 |
| US BANK                              | \$1,205,546.13                           | \$1,205,546.13    | \$0.00                         | Loan Advance Debt Service Payments                          |
| CASS COUNTY TREASURER                | \$1,116,960.74                           | \$1,116,960.74    | \$0.00                         | Property Taxes  |
| SCHMIDT AND SONS INC.                | \$1,100,019.86                           | \$1,067,751.86    | \$32,268.00                    | Residential Demolition in Oxbow                             |
| CONSOLIDATED COMMUNICATIONS          | \$1,073,621.75                           | \$1,073,621.75    | \$0.00                         | Utility Relocation  |
| XCEL ENERGY-FARGO                    | \$1,058,209.21                           | \$1,011,609.21    | \$46,600.00                    | Utility Relocation  |
| KPH, INC.                            | \$1,048,093.28                           | \$1,025,640.12    | \$22,453.16                    | WP-43D5 Construction  |
| CASS RURAL WATER                     | \$1,036,402.73                           | \$879,845.43      | \$156,557.30                   | Utilities and Utility Relocation                            |
| CLERK OF DISTRICT COURT              | \$939,044.32                             | \$939,044.32      | \$0.00                         | FLDBUY - COF Flood Home Buyouts                             |
| TERRACON CONSULTING ENGINEERS        | \$887,718.41                             | \$887,718.41      | \$0.00                         | Materials Testing   |
| CASS COUNTY ELECTRIC COOPERATIVE     | \$852,443.70                             | \$852,443.70      | \$0.00                         | Electrical Services   |
| AECOM                                | \$838,725.00                             | \$412,764.34      | \$425,960.66                   | Cultural Resources Investigations                           |
| BRAUN INTERTEC CORP                  | \$823,763.63                             | \$761,843.98      | \$61,919.65                    | Materials Testing   |
| DAKOTA CARRIER NETWORK               | \$760,065.86                             | \$147,523.86      | \$612,542.00                   | Utility Relocation  |
| UNITED STATES ENVIRONMENTAL PROTECTI | \$707,886.35                             | \$707,886.35      | \$0.00                         | WIFIA LOAN APPLCATION FEE                                   |

*Cummulative Vendor Payments Since Inception (Paid Only)*

| <b>Vendor Name</b>                    | <b>Approved Contract/Invoiced Amount</b> | <b>Liquidated</b> | <b>Outstanding Encumbrance</b> | <b>Purpose</b>                                    |
|---------------------------------------|--|-------------------|--------------------------------|---|
| ERIK R JOHNSON & ASSOCIATES           | \$664,472.23                             | \$664,472.23      | \$0.00                         | Legal Services                                    |
| METROPOLITAN COUNCIL OF GOVERNMENTS   | \$637,390.01                             | \$637,390.01      | \$0.00                         | Digital Aerial Photography                        |
| MASTER CONSTRUCTION CO INC            | \$623,953.29                             | \$623,953.29      | \$0.00                         | Flood Mitigation - Royal Oaks Area - Construction |
| DUCKS UNLIMITED                       | \$587,180.00                             | \$587,180.00      | \$0.00                         | Wetland Mitigation Credits                        |
| AT&T                                  | \$586,269.60                             | \$586,269.60      | \$0.00                         | Utility Relocation                                |
| COMPASS LAND CONSULTANTS, INC         | \$534,547.50                             | \$500,007.50      | \$34,540.00                    | Property Appraisal Services                       |
| RED RIVER BASIN COMMISSION            | \$501,000.00                             | \$501,000.00      | \$0.00                         | Retention Projects - Engineering Services         |
| HOFFMAN & MCNAMARA CO.                | \$489,029.39                             | \$483,034.67      | \$5,994.72                     | General Landscaping and Planting (WP-42G)         |
| LINNCO, INC.                          | \$485,221.25                             | \$485,221.25      | \$0.00                         | House Demo and Removal                            |
| BUFFALO-RED RIVER WATERSHED DISTRICT  | \$471,568.00                             | \$471,568.00      | \$0.00                         | Retention Projects - Engineering Services         |
| MIDCONTINENT COMMUNICATIONS           | \$462,379.87                             | \$462,379.87      | \$0.00                         | Utility Relocation                                |
| NUSTAR PIPELINE OPERATING PARTNERSHIP | \$459,693.17                             | \$442,844.05      | \$16,849.12                    | Utility Relocation                                |
| ROBERT TRENT JONES                    | \$440,431.73                             | \$440,431.73      | \$0.00                         | Oxbow MOU - Golf Course Consulting Agreement      |
| PATCHIN MESSNER VALUATION COUNSELORS  | \$423,187.50                             | \$341,925.00      | \$81,262.50                    | Property Appraisal Services                       |
| NDSU BUSINESS OFFICE-BOX 6050         | \$391,989.00                             | \$356,145.00      | \$35,844.00                    | Ag Risk Study Services                            |
| BEAVER CREEK ARCHAEOLOGY              | \$391,529.14                             | \$341,408.20      | \$50,120.94                    | Engineering Services                              |
| MBA                                   | \$380,636.36                             | \$380,636.36      | \$0.00                         | Golf course and pump house - Oxbow Country Club   |
| LARKIN HOFFMAN ATTORNEYS              | \$376,622.99                             | \$376,622.99      | \$0.00                         | Legal Services                                    |
| MVM CONTRACTING                       | \$339,448.03                             | \$339,448.03      | \$0.00                         | Fiber Relocation                                  |
| AON RISK SERVICES CENTRAL INC         | \$330,000.00                             | \$244,663.50      | \$85,336.50                    | Risk Advisory Services P3 Pre-Award               |
| CASS COUNTY JOINT WATER RESOURCE DI   | \$320,383.99                             | \$320,383.99      | \$0.00                         | O/H/B Ring Levee, DPAC, Postage, Miscellaneous    |
| DFI BRIDGE CORPORATION                | \$316,211.21                             | \$316,211.21      | \$0.00                         | Bridge Construction - Oxbow Country Club          |
| FEDERAL STEEL SUPPLY, INC.            | \$307,378.00                             | \$307,378.00      | \$0.00                         | OHB - 42 inch steel pipe                          |
| DIRT DYNAMICS                         | \$301,332.37                             | \$301,332.37      | \$0.00                         | HD18A1 - Oakcreek, Copperfield & Univerisy - Demo |
| MAGELLAN PIPELINE                     | \$285,900.00                             | \$0.00            | \$285,900.00                   | Utility Relocation                                |
| GARY KILLEBREW                        | \$279,500.00                             | \$279,500.00      | \$0.00                         | Project Manager Services - Oxbow Country Club     |
| TURMAN & LANG                         | \$277,139.55                             | \$277,139.55      | \$0.00                         | Legal Services                                    |

*Cummulative Vendor Payments Since Inception (Paid Only)*

| <b>Vendor Name</b>                 | <b>Approved Contract/Invoiced Amount</b> | <b>Liquidated</b> | <b>Outstanding Encumbrance</b> | <b>Purpose</b>   |
|------------------------------------|--|-------------------|--------------------------------|--|
| MOODYS INVESTORS SERVICE, INC.     | \$274,375.00                             | \$274,375.00      | \$0.00                         | WIFIA loan fees  |
| INTEGRA REALTY RESOURCES           | \$268,062.50                             | \$241,250.00      | \$26,812.50                    | Property Appraisal Services                                |
| 702 COMMUNICATIONS                 | \$266,892.07                             | \$266,892.07      | \$0.00                         | Utility Relocation   |
| SPRINT COMMUNICATIONS COMPANY L.P. | \$256,409.37                             | \$256,409.37      | \$0.00                         | Fiber Optic Relocation for WP-43CD                         |
| SWANSON HEALTH PRODUCTS, INC.      | \$252,949.00                             | \$252,949.00      | \$0.00                         | FM1471 - Storm Lift Stations #55 and #56 - Drain 27        |
| WATTS AND ASSOCIATES, INC.         | \$250,000.00                             | \$172,610.03      | \$77,389.97                    | Crop insurance product development services                |
| PR FOR GOOD, INC                   | \$242,482.28                             | \$242,482.28      | \$0.00                         | Communications Support Services                            |
| FREDRIKSON & BYRON, PA             | \$241,881.28                             | \$241,881.28      | \$0.00                         | Lobbying Services  |
| NEON LOON COMMUNICATIONS, LLC      | \$236,400.00                             | \$29,632.50       | \$206,767.50                   | Communications Support                                     |
| NORTHERN IMPROVEMENT COMPANY       | \$235,531.95                             | \$235,531.95      | \$0.00                         | CR-17 asphalt paving                                       |
| GRAY PANNELL & WOODWARD LLP        | \$231,300.68                             | \$231,300.68      | \$0.00                         | Legal Services   |
| FORUM COMMUNICATIONS               | \$216,643.02                             | \$216,643.02      | \$0.00                         | Advertising Services                                       |
| AMERICAN ENTERPRISES, INC.         | \$200,281.00                             | \$200,281.00      | \$0.00                         | Construction/Demolition                                    |
| CITY OF OXBOW MOU                  | \$200,000.00                             | \$200,000.00      | \$0.00                         | Oxbow Park Relocation MOU Amendment                        |
| EXECUTIVE MANAGEMENT SYSTEMS, INC. | \$196,763.96                             | \$196,763.96      | \$0.00                         | Executive Coaching   |
| MAPLETON, CITY OF                  | \$179,605.00                             | \$61,416.07       | \$118,188.93                   | Prelim Engineering Services                                |
| SPRINGSTED INCORPORATED            | \$178,010.15                             | \$178,010.15      | \$0.00                         | Financial Advisor  |
| KADRMAS LEE & JACKSON, INC.        | \$176,164.00                             | \$176,164.00      | \$0.00                         | Engineering Services                                       |
| SERKLAND LAW FIRM                  | \$173,826.18                             | \$173,826.18      | \$0.00                         | Legal services   |
| MINNKOTA POWER COOPERATIVE         | \$173,393.07                             | \$73,393.07       | \$100,000.00                   | Utility Relocation   |
| MUNICIPAL AIRPORT AUTHORITY        | \$166,981.00                             | \$166,981.00      | \$0.00                         | Easement for Airport                                       |
| SOIL BORINGS                       | \$166,232.50                             | \$166,232.50      | \$0.00                         | Soil Borings   |
| CLAY COUNTY AUDITOR                | \$159,645.09                             | \$159,645.09      | \$0.00                         | Property Taxes - MN  |
| DAWSON INSURANCE AGENCY            | \$157,363.15                             | \$157,363.15      | \$0.00                         | Property Insurance - Home Buyouts                          |
| PLEASANT TOWNSHIP                  | \$154,317.60                             | \$154,317.60      | \$0.00                         | Building Permit Application                                |
| BANK OF NORTH DAKOTA               | \$151,885.04                             | \$151,885.04      | \$0.00                         | Legal review fees  |
| UNITED STATES GEOLOGICAL SURVEY    | \$151,520.00                             | \$151,520.00      | \$0.00                         | Water Level Discharge Collection & Stage Gage Installation |

*Cummulative Vendor Payments Since Inception (Paid Only)*

| <b>Vendor Name</b>              | <b>Approved Contract/Invoiced Amount</b> | <b>Liquidated</b> | <b>Outstanding Encumbrance</b> | <b>Purpose</b>                     |
|---------------------------------|--|-------------------|--------------------------------|------------------------------------|
| PFM PUBLIC FINANCIAL MANAGEMENT | \$146,460.00                             | \$146,460.00      | \$0.00                         | Financial Advisor                  |
| S&P GLOBAL RATINGS              | \$145,625.00                             | \$145,625.00      | \$0.00                         | Ratings Evaluation Service         |
| DAILY NEWS                      | \$141,989.76                             | \$141,989.76      | \$0.00                         | Advertising Services               |
| CHAPMAN AND CUTLER              | \$140,000.00                             | \$140,000.00      | \$0.00                         | Legal Services                     |
| QUANTUM SPATIAL, INC.           | \$139,061.35                             | \$139,061.35      | \$0.00                         | Digital Aerial Photography         |
| C THREE MEDIA, LLC              | \$128,910.00                             | \$66,446.06       | \$62,463.94                    | Videography Services               |
| SENTRY SECURITY, INC.           | \$121,212.85                             | \$121,212.85      | \$0.00                         | Security Services                  |
| ENVENTIS                        | \$115,685.62                             | \$115,685.62      | \$0.00                         | Utility Relocation                 |
| TINJUM APPRAISAL COMPANY, INC.  | \$113,450.00                             | \$56,500.00       | \$56,950.00                    | Property Appraisal Services        |
| GE BOCK REAL ESTATE, LLC        | \$112,590.00                             | \$106,990.00      | \$5,600.00                     | Property Appraisal Services        |
| OXBOW COUNTRY CLUB              | \$110,391.68                             | \$110,391.68      | \$0.00                         | Golf Course - Oxbow                |
| MAPLETON TOWNSHIP               | \$108,030.00                             | \$108,030.00      | \$0.00                         | Lost tax revenue and attorney fees |
| GA GROUP, PC                    | \$108,000.00                             | \$64,000.00       | \$44,000.00                    | Government Relations               |
| DAVID CLARDY                    | \$105,215.05                             | \$105,215.05      | \$0.00                         | Home buyouts - easement            |

**122 Vendors                      Report Totals:            \$896,842,896.70            \$785,346,106.11            \$111,496,790.59**



Data Through Date: Friday, February 25, 2022

**Parcel (OIN) Physical Location Summary**

| Project /<br>Physical Location | Parcels    | Acquired   | Cancelled<br>OIN's (HC) | PCT<br>Acquired /<br>Cancelled | Remaining<br>OIN's | Cost To<br>Date     |
|--------------------------------|------------|------------|-------------------------|--------------------------------|--------------------|---------------------|
| <b>BIOGEO</b>                  | <b>421</b> | <b>207</b> | <b>129</b>              | <b>80%</b>                     | <b>85</b>          | <b>\$997,585</b>    |
| BIOGEO                         | 292        | 207        | 0                       | 71%                            | 85                 | \$997,085           |
| HC                             | 129        | 0          | 129                     | 100%                           | 0                  | \$500               |
| <b>CHANNEL</b>                 | <b>679</b> | <b>459</b> | <b>214</b>              | <b>99%</b>                     | <b>6</b>           | <b>\$90,311,969</b> |
| HC                             | 214        | 0          | 214                     | 100%                           | 0                  | \$2,402,417         |
| LAP01                          | 130        | 129        | 0                       | 99%                            | 1                  | \$6,625,935         |
| LAP02                          | 97         | 97         | 0                       | 100%                           | 0                  | \$11,736,780        |
| LAP03                          | 84         | 79         | 0                       | 94%                            | 5                  | \$18,503,021        |
| LEGACY                         | 154        | 154        | 0                       | 100%                           | 0                  | \$51,043,816        |
| <b>MOBILITY</b>                | <b>123</b> | <b>0</b>   | <b>0</b>                | <b>0%</b>                      | <b>123</b>         | <b>\$0</b>          |
| DA_MOB37_MN                    | 51         | 0          | 0                       | 0%                             | 51                 | \$0                 |
| DA_MOB37_ND                    | 19         | 0          | 0                       | 0%                             | 19                 | \$0                 |
| DA_MOB38TH                     | 53         | 0          | 0                       | 0%                             | 53                 | \$0                 |
| <b>NA</b>                      | <b>7</b>   | <b>0</b>   | <b>7</b>                | <b>100%</b>                    | <b>0</b>           | <b>\$0</b>          |
| HC                             | 7          | 0          | 7                       | 100%                           | 0                  | \$0                 |
| <b>SEAILAND</b>                | <b>326</b> | <b>253</b> | <b>31</b>               | <b>87%</b>                     | <b>42</b>          | <b>\$38,508,347</b> |
| DRAIN 27                       | 37         | 37         | 0                       | 100%                           | 0                  | \$6,883,099         |
| HC                             | 31         | 0          | 31                      | 100%                           | 0                  | \$50,981            |
| LEGACY                         | 60         | 60         | 0                       | 100%                           | 0                  | \$11,764,566        |
| SE_I29                         | 12         | 12         | 0                       | 100%                           | 0                  | \$1,061,872         |
| SE-1                           | 43         | 42         | 0                       | 98%                            | 1                  | \$2,612,830         |
| SE-2A                          | 12         | 11         | 0                       | 92%                            | 1                  | \$1,412,649         |
| SE-2B                          | 36         | 24         | 0                       | 67%                            | 12                 | \$4,593,911         |
| SE-3                           | 6          | 5          | 0                       | 83%                            | 1                  | \$25,000            |
| SE-4                           | 28         | 9          | 0                       | 32%                            | 19                 | \$1,788,970         |
| SE-5                           | 7          | 0          | 0                       | 0%                             | 7                  | \$1,000             |
| UMA                            | 1          | 0          | 0                       | 0%                             | 1                  | \$0                 |
| WP26                           | 9          | 9          | 0                       | 100%                           | 0                  | \$2,952,107         |
| WP30                           | 8          | 8          | 0                       | 100%                           | 0                  | \$0                 |
| WP35                           | 36         | 36         | 0                       | 100%                           | 0                  | \$5,361,363         |
| <b>WP36</b>                    | <b>2</b>   | <b>0</b>   | <b>0</b>                | <b>0%</b>                      | <b>2</b>           | <b>\$2,750</b>      |
| WRDAM                          | 2          | 0          | 0                       | 0%                             | 2                  | \$2,750             |



Data Through Date: Friday, February 25, 2022

### Parcel (OIN) Physical Location Summary

| Project / Physical Location | Parcels      | Acquired   | Cancelled OIN's (HC) | PCT Acquired / Cancelled | Remaining OIN's | Cost To Date        |
|-----------------------------|--------------|------------|----------------------|--------------------------|-----------------|---------------------|
| <b>WP38</b>                 | <b>1,031</b> | <b>106</b> | <b>357</b>           | <b>45%</b>               | <b>568</b>      | <b>\$29,548,225</b> |
| BIOGEO                      | 2            | 2          | 0                    | 100%                     | 0               | \$4,500             |
| HC                          | 358          | 1          | 357                  | 100%                     | 0               | \$511,938           |
| LEGACY                      | 1            | 1          | 0                    | 100%                     | 0               | \$750               |
| SE-5                        | 2            | 0          | 0                    | 0%                       | 2               | \$0                 |
| UMA                         | 581          | 102        | 0                    | 18%                      | 479             | \$29,031,037        |
| UMA-C                       | 34           | 0          | 0                    | 0%                       | 34              | \$0                 |
| UMA-C2                      | 14           | 0          | 0                    | 0%                       | 14              | \$0                 |
| UMA-C3                      | 3            | 0          | 0                    | 0%                       | 3               | \$0                 |
| UMA-W                       | 24           | 0          | 0                    | 0%                       | 24              | \$0                 |
| UMA-W2                      | 6            | 0          | 0                    | 0%                       | 6               | \$0                 |
| UMA-W3                      | 6            | 0          | 0                    | 0%                       | 6               | \$0                 |
| <b>WP40</b>                 | <b>18</b>    | <b>7</b>   | <b>10</b>            | <b>94%</b>               | <b>1</b>        | <b>\$0</b>          |
| DRAYTON                     | 7            | 6          | 0                    | 86%                      | 1               | \$0                 |
| HC                          | 10           | 0          | 10                   | 100%                     | 0               | \$0                 |
| LEGACY                      | 1            | 1          | 0                    | 100%                     | 0               | \$0                 |
| <b>WP42</b>                 | <b>66</b>    | <b>49</b>  | <b>4</b>             | <b>80%</b>               | <b>13</b>       | <b>\$37,850,061</b> |
| HC                          | 4            | 0          | 4                    | 100%                     | 0               | \$0                 |
| LEGACY                      | 6            | 6          | 0                    | 100%                     | 0               | \$18,014,935        |
| WP42A1A3                    | 8            | 5          | 0                    | 63%                      | 3               | \$376,008           |
| WP42A2                      | 2            | 2          | 0                    | 100%                     | 0               | \$0                 |
| WP42C1                      | 4            | 3          | 0                    | 75%                      | 1               | \$0                 |
| WP42C2                      | 2            | 1          | 0                    | 50%                      | 1               | \$9,948,373         |
| WP42F1N                     | 2            | 2          | 0                    | 100%                     | 0               | \$27,000            |
| WP42F1S                     | 13           | 11         | 0                    | 85%                      | 2               | \$5,852,463         |
| WP42H1                      | 4            | 4          | 0                    | 100%                     | 0               | \$76,000            |
| WP42H2                      | 8            | 8          | 0                    | 100%                     | 0               | \$2,463,170         |
| WP42I2                      | 13           | 7          | 0                    | 54%                      | 6               | \$1,092,111         |

Data Through Date: Friday, February 25, 2022

**Parcel (OIN) Physical Location Summary**

| Project /<br>Physical Location | Parcels      | Acquired     | Cancelled<br>OIN's (HC) | PCT<br>Acquired /<br>Cancelled | Remaining<br>OIN's | Cost To<br>Date      |
|--------------------------------|--------------|--------------|-------------------------|--------------------------------|--------------------|----------------------|
| <b>WP43</b>                    | <b>264</b>   | <b>116</b>   | <b>145</b>              | <b>99%</b>                     | <b>3</b>           | <b>\$78,541,365</b>  |
| Non-OIN Hard Land Cost         | 0            | 0            | 0                       | 0%                             | 0                  | \$22,598,547         |
| HC                             | 145          | 0            | 145                     | 100%                           | 0                  | \$500                |
| LEGACY                         | 4            | 4            | 0                       | 100%                           | 0                  | \$2,422,914          |
| WP43A                          | 1            | 1            | 0                       | 100%                           | 0                  | \$0                  |
| WP43B                          | 6            | 6            | 0                       | 100%                           | 0                  | \$675,833            |
| WP43C                          | 74           | 74           | 0                       | 100%                           | 0                  | \$45,142,769         |
| WP43D                          | 20           | 20           | 0                       | 100%                           | 0                  | \$6,437,831          |
| WP43D5                         | 5            | 5            | 0                       | 100%                           | 0                  | \$1,175,055          |
| WP43G                          | 9            | 6            | 0                       | 67%                            | 3                  | \$87,915             |
| <b>Totals</b>                  | <b>2,937</b> | <b>1,197</b> | <b>897</b>              | <b>71%</b>                     | <b>843</b>         | <b>\$275,760,301</b> |

**FM Metropolitan Area Flood Risk Management Project**  
**Lands Expense - Life To Date**  
**As of February 28, 2022**

| Property Address   | Purchase Date | Purchase Price | Earnest Deposit | Relocation Assistance | Sale Proceeds  | Total          |
|--|---------------|----------------|-----------------|-----------------------|----------------|----------------|
| <b>Commercial Relocations - Fargo</b>  |               | 16,099,989.70  | -               | 16,300,462.10         | (1,100.00)     | 32,399,351.80  |
| <b>Home Buyouts - Fargo</b>  |               | 3,044,054.89   | -               | 521,417.80            | -              | 3,565,472.69   |
| <b>Home Buyouts - Moorhead</b>   |               | 495,809.91     | -               | 84,060.80             | (8,440.00)     | 571,430.71     |
| <b>Home Buyouts - Oxbow</b>  |               | 29,678,181.97  | -               | 17,142,531.46         | (368,167.87)   | 46,452,545.56  |
| <b>Home Buyouts - Hickson</b>  |               | 1,031,674.37   | -               | 120,422.18            | -              | 1,152,096.55   |
| <b>Home Buyouts - Horace</b>   |               | 7,602,598.67   | -               | 595,320.88            | -              | 8,197,919.55   |
| <b>Home Buyouts - Argusville</b>   |               | 215,030.91     | -               | 6,912.57              | -              | 221,943.48     |
| <b>Easements - Fargo</b>   |               | 504,716.00     | -               | -                     | -              | 504,716.00     |
| <b>Easements - Hickson</b>   |               | 500.00         | -               | -                     | -              | 500.00         |
| <b>Easements - Oxbow</b>   |               | 55,500.00      | -               | -                     | -              | 55,500.00      |
| <b>Easements - Diversion Inlet Control Structure</b>   |               | 4,234,581.90   | -               | -                     | -              | 4,234,581.90   |
| <b>Easements - Piezometer</b>  |               | 1,500.00       | -               | -                     | -              | 1,500.00       |
| <b>Easements - Minesota</b>  |               | 1,542,370.79   | -               | -                     | -              | 1,542,370.79   |
| <b>Farmland Purchases</b>  |               | 214,578,207.47 | -               | 4,371,636.49          | (1,460,296.28) | 103,374,117.66 |
| <b>Land Purchases</b>  |               | 101,884,007.81 | -               | 2,193,257.99          | (730,148.14)   | 103,374,117.66 |
| North One-half of the SW Quarter of Section 8, Township 137, Range 48  | 2/3/2022      | 291,600.62     |                 |                       |                |                |
| East half of the SW Quarter of Section 29, Township 138 Norht of Range 49 West of the Fifth Principal Meridian | 2/3/2022      | 1,412,649.00   |                 |                       |                |                |

**FM Metropolitan Area Flood Risk Management Project  
Lands Expense - Life To Date  
As of February 28, 2022**

| <b>Property Address</b>  | <b>Purchase Date</b> | <b>Purchase Price</b> | <b>Earnest Deposit</b> | <b>Relocation Assistance</b>       | <b>Sale Proceeds</b> | <b>Total</b>                 |
|--|----------------------|-----------------------|------------------------|------------------------------------|----------------------|------------------------------|
| The South Half of Government Lot 2 and all of Government Lots 3 and 5 of Section 18, in Township 137 North of Range 48 West of the Fifth Principal Meridian, Cass County, North Dakota, including all of Paul Bunyan Subdivision, part of Government Lots 2 and 3, Section 18, Township 137 North of Range 48 West AND Lot 5 Block 1, Babes's Addition, part of government lots 2 and 3 Section 18, Township 137 North, Range 48 West AND Lot 4, Block 1 Babe's Addition, part of Government lots 2 and 3, Section 18, Township 137 North, Range 48 West | 2/3/2022             | 1,534,029.19          |                        |                                    |                      |                              |
| The Northeast Quarter of Section Three, in Township One Hundred Thirty-seven North of Range Forty-nine West of the Fifth Principal Meridian  | 2/3/2022             | 1,711,111.25          |                        |                                    |                      |                              |
|  |                      | 279,084,716.58        | -                      | 39,142,764.28                      | (1,838,004.15)       | 316,389,476.71               |
|  |                      |                       |                        | <b>Property Management Expense</b> |                      | 7,703,173.08                 |
|  |                      |                       |                        | <b>Grand Total</b>                 | <b>\$</b>            | <b><u>324,092,649.79</u></b> |

**FM Metropolitan Area Flood Risk Management Project  
In-Town Levee Work  
as of February 28, 2022**

| <b>Vcode #</b> | <b>Vendor Name</b>          | <b>Descriptions</b>   | <b>Contract Amount</b>   | <b>Amount Paid</b>       |
|----------------|-----------------------------|---|--------------------------|--------------------------|
| V02801         | Industrial Builders         | WP42.A2 - 2nd Street North Pump Station                                 | \$ 8,696,548.46          | \$ 8,696,548.46          |
| V02802         | Terracon Consulting         | WP-42 (In Town Levees) Materials Testing                                | \$ 884,070.41            | \$ 884,070.41            |
| V02803         | Consolidated Communications | 2nd Street Utility Relocation   | \$ 1,178,781.73          | \$ 1,178,781.73          |
| V02804         | 702 Communications          | 2nd Street Utility Relocation   | \$ 266,892.07            | \$ 266,892.07            |
| V02805         | ICS                         | WP-42A.1/A.3 - 4th St Pump Station & Gatewell and 2nd St<br>Floodwall S | \$ 18,365,229.13         | \$ 18,365,229.13         |
| V02806         | HMG                         | WP42 - Services During Construction                                     | \$ 6,513,429.90          | \$ 6,513,429.90          |
| V02807         | CCJWRD                      | In-Town Levee Work  | \$ 5,886,140.36          | \$ 5,886,140.36          |
| V02808         | City of Fargo               | Relocation of fiber optic along 2nd Street North                        | \$ 397,906.52            | \$ 397,906.52            |
| V02809         | AT & T                      | 2nd Street Utility Relocation   | \$ 586,269.60            | \$ 586,269.60            |
| V02811         | Xcel Energy                 | 2nd Street & 4th Street Utility Relocations                             | \$ 769,791.73            | \$ 769,791.73            |
| V02812         | Industrial Builders         | WP-42F.1S - 2nd Street North Floodwall, South of Pump Station           | \$ 16,720,591.15         | \$ 16,720,591.15         |
| V02813         | Landwehr Construction       | Park East Apartments Demolition   | \$ 1,169,651.74          | \$ 1,169,651.74          |
| V02814         | Primoris Aevenia            | 2nd Street Utility Relocation   | \$ 16,230.00             | \$ 16,230.00             |
| V02815         | Centurylink Communications  | 2nd Street Utility Relocation   | \$ 2,660,937.92          | \$ 2,660,937.92          |
| V02816         | Landwehr Construction       | WP-42C.1 - In-Town Levees 2nd Street/Downtown Area Demo                 | \$ 907,999.08            | \$ 907,999.08            |
| V02817         | Reiner Contracting, Inc     | WP-42H.2 - El Zagal Area Flood Risk Management                          | \$ 1,599,646.21          | \$ 1,599,646.21          |
| V02818         | Industrial Builders         | WP-42I.1 - Mickelson Levee Extension                                    | \$ 738,880.50            | \$ 738,880.50            |
| V02819         | Industrial Builders         | WP42F.1N - 2nd Street North   | \$ 13,362,906.82         | \$ 13,362,906.82         |
| V02820         | CH2M Hill                   | WP42 - Construction Management Services                                 | \$ 851,775.30            | \$ 851,775.30            |
| V02821         | Hough Incorporated          | WP42F.2 - 2nd Street South  | \$ 1,639,524.33          | \$ 1,639,524.33          |
| V02822         | City of Fargo               | COF - 2016 O&M on Lifts   | \$ 184,958.12            | \$ 184,958.12            |
| V02823         | Hoffman & McNamara          | WP-42G General Landscaping and Planting                                 | \$ 489,029.39            | \$ 483,034.67            |
| V02824         | City of Fargo               | COF - In-Town Flood Protection Debt Payments                            | \$ 23,989,850.00         | \$ 25,193,620.00         |
| V01703         | Various                     | In-Town Property Purchases  | \$ 39,409,623.22         | \$ 38,192,183.71         |
| V02825         | Industrial Builders         | WP-42E - 2nd Street South and Main Avenue Flood Mitigation              | \$ 8,632,103.73          | \$ 8,632,103.73          |
| V02826         | City of Fargo               | In-Town Levee Maintenance   | \$ 8,823.82              | \$ 8,823.82              |
| V054XX         | City of Fargo               | In-Town Complementary Work - Reimbursements                             | \$ 39,289,243.78         | \$ 39,289,243.78         |
|                |                             |   | <u>\$ 195,216,835.02</u> | <u>\$ 195,197,170.79</u> |

**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: January 1, 2022 - January 31, 2022

|                                    |                        |
|------------------------------------|------------------------|
| Drawdown Request No: 121           |                        |
| <b>Requested Amount:</b>           | <b>\$ 2,753,630.08</b> |
| Total Funds Expended This Period:  | 5,507,260.15           |
| SB 2020 Matching Requirements      | 50%                    |
| Total Funds Requested at 50% Match | 2,753,630.08           |
| <b>Total Funds Requested:</b>      | <b>2,753,630.08</b>    |

**STATE AID SUMMARY:**

|  |                    |                         |
|--|--------------------|-------------------------|
| Summary of State Funds Appropriated  |                    |                         |
| Appropriations from 2009 Legislative Session                                 | \$                 | 45,000,000              |
| Appropriations from 2011 Legislative Session                                 |                    | 30,000,000              |
| Appropriations from 2013 Legislative Session                                 |                    | 100,000,000             |
| Appropriations from 2015 Legislative Session                                 |                    | 69,000,000              |
| Appropriations from 2015 Legislative Session - Interior Flood Control        |                    | 60,000,000              |
| Appropriations from 2017 Legislative Session                                 |                    | 66,500,000              |
| Appropriations from 2019 Legislative Session                                 |                    | 44,000,000              |
| Anticipated appropriations to be deferred from 2019 Legislative Session      | 22,500,000         |                         |
| Anticipated appropriations to be funded in 2021 Legislative Session          | 66,500,000         |                         |
| Anticipated appropriations to be funded in 2023 Legislative Session          | 66,500,000         |                         |
| Anticipated appropriations to be funded in 2025 Legislative Session          | 66,500,000         |                         |
| Anticipated appropriations to be funded in 2027 Legislative Session          | 66,500,000         |                         |
| Anticipated appropriations to be funded in 2029 Legislative Session          | 47,000,000         |                         |
| <b>Total State Funds</b>   | <b>335,500,000</b> | <b>414,500,000</b>      |
| Less: Payment #1 through #35 - City of Fargo                                 |                    | (55,510,209.00)         |
| Less: Payment #1 - Cass County   |                    | (136,039.36)            |
| Less: Payment #1 through #7 - Interior Flood Control                         |                    | (60,000,000.00)         |
| Less: Payment #1 through #28 - FM Diversion Authority                        |                    | (38,049,107.00)         |
| Less: Payment #29 through #115 - FM Metro Area Flood Risk Management Project |                    | (209,838,261.15)        |
| Less: Payment #116 - FM Metro Area Flood Risk Management Project             |                    | (5,862,311.78)          |
| Less: Payment #117 - FM Metro Area Flood Risk Management Project             |                    | (5,543,347.82)          |
| Less: Payment #118 - FM Metro Area Flood Risk Management Project             |                    | (2,268,176.69)          |
| Less: Payment #119 - FM Metro Area Flood Risk Management Project             |                    | (5,734,800.64)          |
| Less: Payment #120 - FM Metro Area Flood Risk Management Project             |                    | (5,380,812.43)          |
| Less: Payment #121 - FM Metro Area Flood Risk Management Project             |                    | (4,927,025.23)          |
| Less: Payment #121 - FM Metro Area Flood Risk Management Project             |                    | (2,753,630.08)          |
| <b>Total Funds Reimbursed</b>  |                    | <b>(396,003,721.18)</b> |
| <b>Total State Fund Balances Remaining</b>                                   |                    | <b>18,496,278.83</b>    |

**LOCAL MATCHING FUNDS SUMMARY:**

|  |           |              |
|--|-----------|--------------|
| Matching Funds Expended To Date - FM Metro Area Flood Risk Management Project      | \$        | 101,279,533  |
| Less: Match Used on Payment #1 through #35 - City of Fargo                         |           | (41,506,620) |
| Less: Match used on Payment #1 - Cass County                                       |           | (136,039)    |
| Less: Match Used on Payment #1 - 114 - FM Metro Area Flood Risk Management Project |           | (59,636,874) |
| <b>Balance of Local Matching Funds Available</b>                                   | <b>\$</b> | <b>(0)</b>   |

Finance Committee Bills from March 2022

| Vendor                                      | Description   |    |                      |
|---|---|----|----------------------|
| Clay County                                 | Diversion bills – Request #16 MCCJPA                    | \$ | 115,961.98           |
| Ohnstad Twichell, P.C.                      | Legal services rendered through February 21, 2022       | \$ | 109,626.40           |
| Cass County                                 | Reimburse misc expenses from Diversion Authority office | \$ | 29,315.17            |
|   |   |    | <hr/>                |
| Total Bills Received through March 16, 2022 |   |    | <u>\$ 254,903.55</u> |



COUNTY AUDITOR  
LORI J. JOHNSON  
Office Telephone (218) 299-5006

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March 10, 2022  
Diversion Authority  
P.O. Box 2806  
Fargo, ND 58108-2806

RE: Metro Flood Diversion Project

Greetings:

Attached to this email, please find a corrected spreadsheet summary of invoices/expense and all documentation for invoices paid by Clay County for the FM Flood Diversion project. All requests were approved or authorized by the Diversion Authority. Current invoice/expense reimbursement request total is as follows:

|  |              |
|--|--------------|
| Metro Flood Diversion (corrected amount) | \$115,961.98 |
|--|--------------|

We respectfully request 100% reimbursement as per the Joint Powers Agreement.

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

Sincerely,

Lori J. Johnson  
Clay County Auditor

Enclosures

Clay County Government Center  
3510 12<sup>th</sup> Ave S  
PO Box 280  
Moorhead, MN 56560



## FM Diversion MCCJPA invoices

| Vendor                          | Invoice Date | Description                   | Invoice Amount | Invoice #       | Date Approved | Date Paid | Notes                                      |
|---------------------------------|--------------|-------------------------------|----------------|-----------------|---------------|-----------|--|
| Lake Region Electric Coop       | 1/8/22       | svc 184 180th ave s           | \$45.68        | 1558802-1-8-22  | 1/17/22       | 1/26/22   | Electric - 184 180th Ave S                 |
| Lake Region Electric Coop       | 1/8/22       | svc 1021 100th ave            | \$104.64       | 2208702-1-8-22  | 1/17/22       | 1/26/22   | Electric - 1021 100th Ave                  |
| SRF Consulting Group            | 12/31/21     | prof svc thru 12/31/21        | \$13,180.24    | 13820.00-15     | 1/18/22       | 1/26/22   | Property Acquisition & Relocation Services |
| Wilkin County Auditor           | 1/6/22       | RE tax 22.101.0400            | \$1,227.10     | 22-101-0400     | 1/16/22       | 1/26/22   | Property Taxes - OIN 8527                  |
| ProSource Technologies          | 1/18/22      | prof svc thru 11/27/21        | \$18,498.68    | 46292           | 1/24/22       | 2/2/22    | Property Acquisition & Relocation Services |
| ProSource Technologies          | 1/18/22      | prof svc thru 12/31/21        | \$21,099.66    | 46293           | 1/24/22       | 2/2/22    | Property Acquisition & Relocation Services |
| Red River Valley Coop           | 1/4/22       | svc 13689 3rd st s            | \$54.17        | 9980003-1-4-22  | 1/27/22       | 2/2/22    | Electric - 13689 3rd St S                  |
| Red River Valley Coop           | 1/4/22       | svc 15253 3rd st w            | \$434.69       | 9980004-1-4-22  | 1/27/22       | 2/2/22    | Electric - 15253 3rd St W                  |
| Michael or Carolyn Handlos      |              | oin 1847 lease deposit refund | \$500.00       | OIN-1847        |               | 2/16/22   | Return Deposit - OIN 1847                  |
| SRF Consulting Group            | 1/31/22      | prof svc thru 1/31/22         | \$14,847.19    | 13820.00-16     | 2/14/22       | 2/16/22   | Property Acquisition & Relocation Services |
| Clay County Union               | 1/24/22      | ad joint powers meeting       | \$27.50        | 2349            | 2/17/22       | 2/16/22   | Public Meeting Notice                      |
| Red River Valley Coop           | 2/3/22       | svc 150th ave s 3rd st        | \$117.93       | 998005-2-3-22   | 2/20/22       | 2/16/22   | Electric - 150th Ave S 3rd St              |
| All American Plumbing & Heating | 2/9/22       | winterize oin 1847            | \$348.00       | 404750          | 2/11/22       | 2/23/22   | Winterize house - 803 140th Ave S          |
| All American Plumbing & Heating | 2/9/22       | winterize oin 8527            | \$348.00       | 404748          | 2/11/22       | 2/23/22   | Winterize house - 1021 100th Ave S         |
| All American Plumbing & Heating | 2/9/22       | winterize oin 1834            | \$348.00       | 404749          | 2/11/22       | 2/23/22   | Winterize house - 184 180th Ave S          |
| Ohnstad Twichell                | 2/2/22       | Environmental monitoring      | \$1,353.00     | 180438          | 2/10/22       | 2/23/22   | Legal Services                             |
| Ohnstad Twichell                | 2/2/22       | Southern embankment           | \$2,503.00     | 180441          | 2/10/22       | 2/23/22   | Legal Services                             |
| Ohnstad Twichell                | 2/2/22       | General 2022                  | \$1,768.00     | 180444          | 2/10/22       | 2/23/22   | Legal Services                             |
| Ohnstad Twichell                | 2/2/22       | Upstream mitigation           | \$13,865.50    | 180586          | 2/10/22       | 2/23/22   | Legal Services                             |
| Ohnstad Twichell                | 2/2/22       | Blilie oin 249 rrcs eminent   | \$1,227.00     | 180587          | 2/10/22       | 2/23/22   | Legal Services                             |
| Luther & Shelley Blilie         |              | oin 1879 enviro easement      | \$1,750.00     | OIN-1879        |               | 3/2/22    | Environmental Monitoring Easement (EME)    |
| Integra Realty Resources        | 2/10/22      | appraisal oin 7102            | \$2,000.00     | 124-2021-0255-2 | 2/14/22       | 3/2/22    | Property Acquisition & Relocation Services |
| ProSource Technologies          | 1/31/22      | Prof svc thru 1/29/22         | \$18,960.75    | 46322           | 2/17/22       | 3/2/22    | Property Acquisition & Relocation Services |
| All American Plumbing & Heating | 3/3/22       | furnace inspection oin 9234   | \$102.00       | 404782          | 3/6/22        | 3/9/22    | Furnace services - 15253 3rd St S          |
| Dakota Ag                       | 2/16/22      | oin 9234 furnace oil          | \$768.11       | km1323          | 2/20/22       | 3/9/22    | Fuel oil for furnace                       |
| Lake Region Electric Coop       | 2/4/22       | svc 184 180th Ave S           | \$246.29       | 1558802-2-4-22  | 3/1/22        | 3/9/22    | Electric - 184 180th Ave S                 |
| Lake Region Electric Coop       | 2/4/22       | svc 1021 100th ave            | \$236.85       | 2208702-2-4-22  | 3/1/22        | 3/9/22    | Electric - 1021 100th Ave                  |

\$115,961.98

**OHNSTAD TWICHELL, P.C.**  
**Attorneys at Law**

**Flood Diversion Board**  
**Bond Counsel Work - PPP**

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

Date: March 2, 2022

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

| <b>PROFESSIONAL SERVICES RENDERED</b> |              |             |                     |
|---------------------------------------|--------------|-------------|---------------------|
|                                       | <b>Hours</b> | <b>Rate</b> | <b>Totals</b>       |
| JTS                                   | 111.9        | \$375.00    | \$41,962.50         |
| CMM                                   | 7.5          | \$375.00    | \$2,812.50          |
| LDA                                   | 1.2          | \$375.00    | \$450.00            |
| KJS                                   | 42.3         | \$375.00    | \$15,862.50         |
| TJL                                   | 22.1         | \$375.00    | \$8,287.50          |
| JRS                                   | 1.9          | \$310.00    | \$589.00            |
| KJD                                   | 49.3         | \$300.00    | \$14,790.00         |
| DCP                                   | 4.0          | \$320.00    | \$1,280.00          |
| AJR                                   | 20.1         | \$205.00    | \$4,120.50          |
| <b>Total Fees:</b>                    | <b>260.3</b> |             | <b>\$90,154.50</b>  |
| Postage                               |              |             | \$30.65             |
| Prof Service Fee Gwendolyn            |              |             | \$18,875.00         |
| *Credit Card Processing Fee - 3%      |              |             | \$566.25            |
| <b>Total Expenses:</b>                |              |             | <b>\$19,471.90</b>  |
| <b>Grand Total</b>                    |              |             | <b>\$109,626.40</b> |

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

**PROFESSIONAL SERVICES RENDERED**

| <b>15-1395 JTS Invoice # 180879</b> |   | <b>Flood Diversion Board</b> | <b>Bond Counsel Work - PPP</b> |
|-------------------------------------|---|------------------------------|--------------------------------|
| <b>FILE NUMBER</b>                  | <b>MATTER DESCRIPTION</b>   | <b>INVOICE - TOTAL FEES</b>  |                                |
| 151395-1                            | General Topics (Includes General Governance Questions, Notices, etc.) | \$36,686.00                  |                                |
| 151395-2                            | Executive Director  | \$75.00                      |                                |
| 151395-4                            | Public Finance Issues   | \$4,265.50                   |                                |
| 151395-5                            | Consultant Contract Review/Development                                | \$2,894.50                   |                                |
| 151395-7                            | Coordination with Member Entities                                     | \$82.00                      |                                |
| 151395-9                            | Environmental Permitting Issues/NEPA                                  | \$3,075.00                   |                                |
| 151395-12                           | USACE Interface/Questions   | \$198.00                     |                                |
| 151395-13                           | Third Party Utility MOU's   | \$25,504.00                  |                                |
| 151395-17                           | EPA WIFIA Loan  | \$303.50                     |                                |
| 151395-18                           | SRF Loan Application  | \$150.00                     |                                |
| 151395-19                           | USACE WIFIA   | \$75.00                      |                                |
| 151395-23                           | PRAM  | \$7,307.00                   |                                |
| 151395-24                           | P3 Implementation   | \$9,539.00                   |                                |
| <b>TOTAL</b>                        |   | <b>\$90,154.50</b>           |                                |

CASS COUNTY GOVERNMENT  
PO BOX 2806  
211 9th STREET SOUTH  
Fargo, ND 58108  
  
(701) 241-5600

DATE: 3/04/22

TO: CITY OF FARGO  
PO BOX 2083  
FARGO, ND 58107

CUSTOMER NO: 198/294

TYPE: CA - FINANCE OFFICE

| CHARGE | DATE    | DESCRIPTION                      | REF-NUMBER                              | DUE DATE | TOTAL AMOUNT         |
|--------|---------|----------------------------------|---|----------|----------------------|
|        | 2/16/22 | BEGINNING BALANCE                |   |          | 85,940.29            |
| AUDIT  | 3/04/22 | FM DIVERSION<br>PAYROLL EXPENSES |   |          | 78,885.01            |
|        |         |                                  | Employee agreements in place            |          |                      |
| AUDIT  | 3/04/22 | FM DIVERSION<br>MISC EXPENSES    |   |          | <del>30,327.17</del> |
|        |         |                                  | Submitted for approval at Feb board mtg |          | \$29,315.17          |

| Current   | 30 days | 60 days | 90 days |
|-----------|---------|---------|---------|
| 195152.47 |         |         |         |

DUE DATE: 4/04/22

PAYMENT DUE: 195,152.47  
TOTAL DUE: \$195,152.47

PLEASE DETACH AND SEND THIS COPY WITH REMITTANCE

DATE: 3/04/22 DUE DATE: 4/04/22 NAME: CITY OF FARGO  
CUSTOMER NO: 198/294 TYPE: CA - FINANCE OFFICE

REMIT AND MAKE CHECK PAYABLE TO:  
CASS COUNTY FINANCE  
211 9TH ST S  
PO BOX 2806  
FARGO ND 58108-2806  
(701) 241-5606

TOTAL DUE: \$195,152.47





# Diversion Authority Board of Authority Meeting

March 24, 2022

Contracting Actions  
Joel Paulsen

# DA Board Approval Contract Actions (Action)



| Description   | Company                   | Budget/ Estimate (\$) |
|---|---------------------------|-----------------------|
| Services Agreement – IT Services – IT Services for the new MFDA Office  | Marco                     | \$63,287.72           |
| Task Order 02, Amendment 0 – Utility Relocations for the Diversion Inlet Structure and Drain 27                             | Cass County Electric Coop | \$427,900.00          |
| Services Agreement – Consulting Services – Website Design and Development and Media Monitoring for the FM Diversion Project | Flint Group, LLC          | \$80,300.00           |
|   |                           |                       |



**Executive Director Contracting Recommendation**

Date: 03/03/2022

**RECOMMENDATION FOR ACTION:**

The Executive Director has reviewed and recommends approval of the following Contract Action(s).

**SUMMARY OF CONTRACTING ACTION:**

Per the contract review and approval procedures that were adopted by the Diversion Authority on November 10, 2016 and amended December 16, 2021, the Owner’s Program Management Consultant (PMC) or Executive Director is directed to prepare this new Services Agreement and submit them to the Deputy Executive Director’s for review and to provide comments to the Executive Director for his or her review and action.

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

**Marco**

Services Agreement – IT Services

**\$63,287.72**

- IT Services for the new DA office

**BACKGROUND AND DISCUSSION:**

The Metro Flood Diversion Authority (“Owner”) and Marco (“Consultant”) is to enter into a Services Agreement to provide IT services to the Metro Flood Diversion Authority. The Owner and Consultant agree as follows:

The Consultant agrees to provide (but not limited to) the following:

- Consultant will make available to client and its designated users, access to the Marco Support desk.
- Designated user assistance in resolving incidents on designated users equipment that cause a reduction in normal quality or interruption of the standard functionality of the Marco Operation System or Microsoft Suite and virus and malware infection removal.
- Vendor and software guidance. Consultant may provide general guidance to Owner in considering the use of new or different software.
- Network Management: Consultant will monitor and provide maintenance of Owner servicers, switches, routers, firewall equipment, workstations (desktop and laptops), access points, wireless connected mobile devices, SAN, NAS, Controllers and UPS (“Network Equipment”) in order to assist Owner in ensuring availability and proper performance of its network.

Per the Executive Director, 3 quotes were not obtained due to Marco being the current IT provider for Cass County. Cass County expressed they are familiar and comfortable with Marco services. Due to only 1 quote being obtained, this Services Agreement will go before the Finance Committee and Board for approvals.

**REASON**

Metro Flood Diversion Authority requires new IT services for the new office.



See the table below for a summary of the contracting history for this agreement.

SUMMARY OF CONTRACTING HISTORY AND CURRENT CONTRACT ACTION:

| Original Agreement or Amendment | Budget Change | Initial or Revised Project Cost | Project Start | Project Completion | Comments |
|---------------------------------|---------------|---------------------------------|---------------|--------------------|----------|
| SA-A0                           | \$0.00        | \$63,287.72                     | 04/01/2022    | 04/01/2025         | IT work. |

The PMC prepared this new Services Agreement, and feels the information is accurate, complete, and ready for Executive Director review.

Summary of Annual Budget Allocation

| Original Agreement or Amendment | Cost account code | Estimated cost (\$) | Budget Allocated (\$) | Budget Remaining (\$) | Comments                |
|---------------------------------|-------------------|---------------------|-----------------------|-----------------------|-------------------------|
| Total for 2022                  | SW-1150A          | 19,020.68           | 19,020.68             | 0.00                  | Within allocated budget |
| Total for 2023                  | SW-1150A          | 19674.24            | 19674.24              | 0.00                  | Within allocated budget |
| Total for 2024                  | SW-1150A          | 19674.24            | 19674.24              | 0.00                  | Within allocated budget |
| Total for 2025                  | SW-1150A          | 4,918.56            | 4,918.56              | 0.00                  | Within allocated budget |
| Total                           | SW-1150A          | 63,287.72           | 63,287.72             | 0.00                  |                         |

ATTACHMENT(S):

1. Marco - Relationship Agreement
2. Marco - Standard Managed IT Agreement
3. Marco - Cost Proposal

Prepared by: Program Management Consultant

Ian Joynes

Dated: 03/03/2022

Approved by Joel Paulsen, Diversion Authority Executive Director via Aconex. Dated: 3/9/2022



# 604 PMC SCA – Board Chair Signature Form



Service Contracting Action Ref: Marco Service Agreement A0 – IT Services

Vendor Name: Marco

Date Submitted: 03/03/2022

Order Amount: \$63,287.72

**Electronic Signatures.** Metro Flood Diversion Authority "The Authority" and Vendor agrees that the electronic signature to this agreement shall be as valid as an original signature of Fargo-Moorhead Flood Diversion the Authority and Vendor. This shall be effective to bind the signatories to this agreement. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means or an electronic acknowledgment which provides the signatory the ability to validate and affix a digital signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

Vendor:

| Name: | Signature: | Date: |
|-------|------------|-------|
|       |            |       |

Approved by: Diversion Authority Executive Director

| Name: | Signature: | Date: |
|-------|------------|-------|
|       |            |       |

Approved by: Diversion Authority Board Chair

| Name: | Signature: | Date: |
|-------|------------|-------|
|       |            |       |

## MARCO TECHNOLOGIES RELATIONSHIP AGREEMENT

THIS MARCO TECHNOLOGIES RELATIONSHIP AGREEMENT (“Agreement”) is entered into as of the date the Parties first process a Product Agreement or the Client places an order under this Agreement, whichever is earlier (the “Effective Date”) by and between **MARCO TECHNOLOGIES, LLC** with a principal place of business at **4510 HEATHERWOOD ROAD, ST. CLOUD, MN 56301** (“Marco”) and **METRO FLOOD DIVERSION AUTHORITY** (“Client”) with a principal place of business at **207 4TH STREET NORTH, FARGO, ND 58102** (individually, a “Party,” and collectively, “Parties”).

This Agreement governs Marco’s relationship with Client for the provision of Products as further described in Product Agreements between the Parties. This Agreement is incorporated by reference and made part of any Product Agreement between the Parties. In the event of an express conflict between or among the provisions of this Agreement and any Product Agreement, the inconsistency shall be resolved by giving precedence in the following order: (1) This Agreement; and (2) the Product Agreement. The Parties may specify in the applicable Product Agreement that a particular provision of the Product Agreement supersedes a provision of this Agreement. Any such modification to a Product Agreement shall be effective only if the specific modified section of the Product Agreement expressly references the applicable section of this Agreement that is to be modified and clearly states that such modification supersedes the conflicting or inconsistent provision in this Agreement.

1. **Definitions.** In addition to any terms defined elsewhere in this Agreement, the following terms shall, when capitalized, have the meanings given to them in this **Definitions** Section.
  - 1.1 “**Affiliate**” means any entity, individual, firm, or corporation, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Marco.
  - 1.2 “**Applicable Privacy Law**” means any law applicable to Client regarding the privacy and/or protection of personal data of any individual.
  - 1.3 “**Client Materials**” means, collectively, parts, materials, equipment, hardware computers, software, software-as-a-service, cloud services, data, databases, datafeeds, operating systems, switches, routers, drives, firewalls, databases, backup systems, networks, internet connectivity, information, and other items and services owned by Client, or provided by a third party to Client, that are used for the provision or use of the Products and/or necessary for Marco to perform all of its obligations as set forth in this Agreement.
  - 1.4 “**Confidential Information**” means any and all information furnished or disclosed in connection with this Agreement by a Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) and marked as “Confidential”, “Proprietary,” or “Restricted” or which under all of the circumstances should reasonably be considered confidential, and shall include, without limitation, any property, product, technical and/or business documentation, pricing information, client information, client lists, computer programs, trade secrets, know-how, ideas, specifications, patent applications, methodologies, formulae, designs, processes, technology, techniques, drawings, inventions, diagrams, and all other relevant information pertaining to the Disclosing Party’s business. Confidential Information does *not* include information that: (a) was known or possessed by the Receiving Party without confidentiality obligation before receipt from the Disclosing Party; (b) is or becomes a matter of public knowledge through no breach of this Agreement; (c) is lawfully available or received from a third party without confidentiality obligation; (d) is authorized to be disclosed by a third party with the right to do so; or (e) is independently developed by the Receiving Party without the use of, or access to, the Disclosing Party’s Confidential Information.
  - 1.5 “**Equipment**” means resold equipment and other tangible goods.
  - 1.6 “**Incidentals**” means, collectively, all services necessary to perform a Product Agreement and not expressly stated in the Product Agreement, all services requested by Client and performed by Marco outside the scope of a Product Agreement, and any incidental expenses and costs incurred by Marco

- in the performance of Services or any of the foregoing.
- 1.7** **“Intellectual Property”** means, collectively, all: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases; (d) trade secrets, know-how, and other proprietary information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 1.8** **“License(s)”** means any license(s), agreement(s), or other prerequisite(s) of third-party Software publishers and vendors, or Equipment manufacturers, for the Products.
- 1.9** **“Loss(es)”** means any and all costs, expenses, damages, liabilities, fees (including reasonable attorney and expert fees), penalties, fines, or judgments of any kind or nature whatsoever.
- 1.10** **“Marco Property”** means, collectively, equipment, other goods, materials, supplies, and similar items, including, without limitation, software, information, and Intellectual Property owned by Marco or a third party, used by Marco or provided by Marco to Client for use by Client for the purposes of carrying out a Product Agreement.
- 1.11** **“Product Agreement”** means an agreement between the Parties for the provision of Products by Marco. Product Agreements include SOPs, proposals, change orders, and service tickets.
- 1.12** **“Product Lease”** means a lease between the Parties relating to any Products provided by Marco.
- 1.13** **“Products”** means, collectively, Services, Equipment, Software, and Incidentals.
- 1.14** **“Representatives”** means, collectively, a Party’s respective officers, directors, employees, agents, and contractors.
- 1.15** **“Required Consents”** means, collectively, all consents, licenses, permits, and approvals required to give Marco, or any Marco Representatives, the right or license to access, use, and/or modify in electronic form and in other forms, including, without limitation, derivative works and Client Materials.
- 1.16** **“Resold Products”** has the meaning given to that term in Exhibit A.
- 1.17** **“Schedule of Products”** or **“SOP”** means a Schedule of Products agreed between the Parties.
- 1.18** **“Services”** means any professional consulting services, managed services, or other technology services to be performed by Marco, that are expressly identified in a Product Agreement.
- 1.19** **“Software”** means software licensed, or third-party software licenses resold, by Marco to Client.

## **2. Purchases, Prices, and Payment.**

- 2.1** Marco agrees to provide, and Client agrees to purchase, lease, or license (as applicable) the Products at the price stated in the applicable Product Agreement (**“Price”**). The sale of Resold Products (as defined in Exhibit A) is governed by the terms in Exhibit A. Client shall pay Marco’s then prevailing rates for any Incidentals. Marco’s right to increase the Price to Client, if any, is set forth in each Product Agreement.
- 2.2** Client shall pay all undisputed invoices within thirty (30) calendar days of the invoice date. Client shall pay a late fee of 1.5 percent (1.5%) per month, or the highest rate permitted by law, whichever is less, on any amounts not received when due. Client shall pay for all costs and expenses, including reasonable attorney and expert fees, incurred by Marco in enforcing its rights for payment under this Agreement. Client shall pay all sales, use, excise, value added, or other taxes; duties, levies or fees assessed by any government or other authority resulting from its relationship with Marco under this Agreement and any Product Agreement, except for taxes imposed on Marco’s income. This provision shall not apply to any taxes for which Client is exempt and for which Client has furnished Marco with a valid tax exemption certificate authorized by the appropriate taxing authority.

Shipping and handling fees may apply and will be payable by Client upon invoice. Marco reserves the right to cancel, without penalty, any Product Agreement arising from pricing or other errors. Client shall not withhold any Marco Property or payment due under this Agreement for set off or reduction for any purpose whatsoever unless payment is disputed.

- 2.3** In the event Client disputes any portion of an invoice in good faith, Client shall pay the undisputed portion of the invoice by the date the invoice is due and shall submit to Marco a written explanation for the disputed amount, setting forth with specificity Client's grounds for such dispute. Client must submit its written dispute to Marco within thirty (30) calendar days of the date of invoice or such dispute shall be deemed waived, and invoices shall be deemed correct.
- 2.4** If Client and Marco enter into a Product Lease, Client's obligations with respect to the lease of such Products shall be solely governed by the Product Lease, except that Client shall remain liable for payment to Marco until Marco receives payment from the applicable third-party financing company.
- 3. Marco Property.** In addition to the Products, Marco may place at Client's site or otherwise provide Marco Property. Such placement or provision of Marco Property shall not create any rights of ownership in Client or any third party. Client shall use Marco Property solely in connection with the receipt and use of Products and Client shall use reasonable care with Marco Property, but no less care than Client uses with respect to its own property. Client shall return Marco Property upon Marco request and in accordance with the requirements under the section titled, **Effect of Termination or Expiration**, below. Client will be responsible for any loss or damage to Marco Property aside from normal wear and tear.
- 4. Client Materials.** In the course of a Product Agreement, Client Materials may be used or required for the provision or use of the Products. Unless otherwise stated in a Product Agreement, Client is solely responsible for ensuring that all software (including, without limitation, any software-as-a-service or other cloud services) used by Client is properly licensed. Client grants Marco, at no charge, the right to use any Client Materials required by Marco to provide the Services specified in any Product Agreement to Client and Client is solely responsible for ensuring that Client has the necessary rights and licenses to provide Marco with Client Materials. Client agrees to maintain Client Materials in good working order and repair and in compliance with applicable law and industry standards for the effective and efficient provision and use of the Products.
- 5. Use.** Client agrees not to use or permit third parties to use the Product(s) and Marco Property for any illegal purpose, or to achieve any kind of unauthorized access, such as to any computer systems, software, data, real, personal, or violate any Intellectual Property rights or privacy rights of any third party. Client agrees not to interfere with other clients' use of Marco provided services, equipment, other goods, or software and not to disrupt any Marco network, connectivity, infrastructure, or other services whether provided directly by Marco or through Marco suppliers or contractors. Marco authorizes Client's use of the Products and any Marco Property subject to the terms of this Agreement and the Product Agreement(s) and conditioned on Client's performance of its obligations thereunder. This authorization is nontransferable. Client shall access and use (and shall cause its Representatives to access and use) the Products and Marco Property ONLY: a) as permitted by, and in accordance with its obligations under this Agreement, the applicable Product Agreement, and any Licenses; b) for their intended purposes; c) in a manner which prevents negligent error and violation of any contractual obligation of Client; d) as permitted by, and in accordance with, the specifications of the manufacturer, publisher, or vendor of the Products; e) in a commercially reasonable manner for its own internal business; f) in a manner that does not violate any Intellectual Property right of Marco or any third party; g) for legitimate and lawful business purposes; and h) as permitted by law. Client shall not alter, modify, tamper with, make derivative works from, license, distribute, rent, lend, publish,

reverse engineer, decode, re-sell, export, sublease, or attempt to derive the source code of or reproduce the Products or Marco Property. Client shall take all reasonable action necessary to stop the violation or threatened violation of this Section and cause its Representatives to be bound by and comply with this Section. If Marco determines that a breach of this Section has occurred, then Marco may, in its sole discretion, and without liability: (i) restrict Client's and users' access to the Services; (ii) remove or require removal of any offending content; (iii) terminate this Agreement and any Product Agreement for cause; and/or (iv) exercise other rights and remedies, at law or in equity. Except in an emergency, as deemed necessary by Marco or as may otherwise be required by law, before undertaking the actions in this Section, Marco will attempt to notify Client by any reasonably practical means under the circumstances, such as, without limitation, by telephone or e-mail. Client will promptly notify Marco of any event or circumstance related to this Agreement, Client's or any user's use of the Services, or Content of which Client becomes aware, that could lead to a claim or demand against Marco, and Client will provide all relevant information relating to such event or circumstance to Marco at Marco's request.

- 6. Client Information.** Client represents and warrants (i) that it fully complies with applicable law governing the privacy and security of personally identifiable information and; (ii) that, if it does provide any personal data to Marco, Client has obtained the personal data from the data subject(s) for a lawful purpose and in accordance with the relevant requirements of the Applicable Privacy Law. To the extent any information relating to an identified or identifiable person under any Applicable Privacy Law is provided to Marco, the terms set forth in Marco's Data Processing Addendum ("DPA"), located at [www.marconet.com/legal](http://www.marconet.com/legal) shall apply to such data processing and the terms of the DPA are hereby incorporated by reference into this Agreement with the same force and effect as though fully set forth herein. Client shall also identify such personal data for Marco and understands that such personal data may be stored and processed on servers based outside of the United States, unless required by Applicable Privacy Law and agreed to in writing.

Client acknowledges that Marco exercises no control over the information passing through Client's equipment, network, and sites and that it is the sole responsibility of Client to ensure that the information that Client and its Representatives or any third party transmit(s) and receive(s) is for legitimate business purposes and complies with all applicable laws and regulations.

Client shall encrypt, at the application level, Client's Confidential Information and all other data that is considered sensitive data or that must be treated as confidential under state or federal law or under Client's contractual obligations to others. This includes, but is not limited to, Social Security Numbers, financial account numbers, driver's license numbers, state identification numbers, Protected Health Information (as that term is defined in Title II, Subtitle F of the Health Insurance Portability and Accountability Act, as amended (HIPAA) and regulations promulgated there under) and Nonpublic Personal Information (as that term is defined in Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley) and regulations promulgated there under).

## **7. Information Security**

- 7.1 Security Measures.** Marco will maintain commercially reasonable security measures for its Services that are designed to: (i) ensure the security of the Client's data stored by Marco; (ii) protect against any anticipated threats or hazards to the security or integrity of the Client's data stored by Marco; and (iii) protect against any unauthorized access to or use of Client's data as stored by Marco.
- 7.2 Notification and Prevention Obligations.** Upon becoming aware, Marco shall promptly notify Client of any actual security breach that may result in the unauthorized access to or disclosure of unencrypted Client personal data. Marco agrees to take all actions reasonably necessary under the circumstances to immediately prevent the continued unauthorized access of such personal data.



Marco further agrees that in the event of a breach of confidentiality or security of personal data, it will work in good faith and cooperate with Client to address the breach. Marco shall not be responsible or liable for any security breach caused by Client.

- 7.3 Audits by Marco.** Marco will conduct an annual audit (under SOC2 or a similar standard audit) of its security measures. Upon Client's written request, Marco shall provide a copy of its most recent audit report, but Marco may redact sensitive information. When available, and upon receipt of Client's written request, Marco may provide its vendors' audit report. The reports are to be treated as Confidential Information under this Agreement whether or not marked or otherwise identified as "Confidential" and remains the property of Marco, its Affiliate, or its vendor, as applicable.
- 7.4 Audits by Client.** Client shall have the right make reasonable requests to review Marco's security measures prior to the commencement of the Services and thereafter on an annual basis during the term of this Agreement. Such annual review may include an onsite audit, conducted by qualified personnel, in order to verify Marco's compliance with this Agreement, provided that nothing in this Agreement will be deemed to permit Client or any third party to access Marco's systems. The dates of any onsite audit shall be mutually agreed upon by the Parties. Client shall be responsible for the entire cost of any audit or information request. Marco may charge Client on a time-and-materials basis at the then-current standard time and materials rate for Client audits and requests for information based on the length and detail of the audit/information requested. No such audit may include activities that might result in downtime or unavailability of Marco's IT environment. Marco reserves the right to restrict Client's access to certain information if, in Marco's sole discretion, that information may compromise Marco's security measures.
- 8. Required Consents.** Client shall obtain and keep in effect all Required Consents at all times during this Agreement. Upon request, Client will provide to Marco evidence of any Required Consent. Marco will be relieved of its obligations under this Agreement (and any time for performance of any Products shall be reasonably extended) to the extent that they are affected by Client's failure to promptly obtain and maintain and provide to Marco any Required Consents. Client agrees that Marco may accept software terms and conditions and other Licenses (e.g., end user license agreements) on behalf of Client, following consultation with Client, while providing and installing Products to Client, and Client agrees to be bound by those License terms.
- 9. Software Licenses and Other Agreements.** Client shall enter into, maintain, comply with and be bound by any Licenses applicable to Products. Unless expressly provided otherwise in a Product Agreement, Client has the sole responsibility to manage its ownership and use of the Software including complying with any License terms, retaining copies of License agreements and other ownership documentation, monitoring License renewal and expiration dates, and renewing or terminating such Licenses. In the event Marco needs to access Client's software, Client grants Marco, at no charge, the right to access and use any Client-owned or developed software systems required by Marco to provide the Product specified in any Product Agreement.
- 10. Warranty.** Marco represents and warrants that it will provide the Services in a good and workmanship-like manner and that the Services will meet any applicable generally accepted industry standards. Client must provide a written notice to Marco within ten (10) calendar days after the delivery of the Services ("**Warranty Period**") describing any breach of the foregoing warranty in sufficient detail to allow Marco to correct and redeliver those Services. Marco shall as its sole obligation and Client's exclusive remedy for any breach of the foregoing warranty use commercially reasonable efforts to correct any non-compliance reported to Marco by Client in writing during the Warranty Period. EXCEPT AS EXPRESSLY STATED IN THIS SECTION, MARCO PROVIDES ALL THE PRODUCTS AND MARCO PROPERTY "AS IS" AND MARCO DOES NOT PROVIDE AND EXPRESSLY DISCLAIMS ANY WARRANTY OF ANY KIND RELATING TO THE PRODUCTS AND MARCO

PROPERTY, EXPRESS OR IMPLIED, STATUTORY OR OTHER, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT AND ALL WARRANTIES WHICH ARISE FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, CLIENT ACKNOWLEDGES AND AGREES THAT NO TECHNOLOGY IS FOOLPROOF OR IMMUNE FROM ATTACK. MARCO CANNOT MAKE AND EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE PRODUCTS AND MARCO PROPERTY, OR ANY RESULTS OR USE THEREOF WILL OPERATE WITHOUT INTERRUPTION, SECURELY, ERROR FREE, WITHOUT DEFECT, FREE OF HARMFUL CODE, THIRD PARTY DISRUPTION, OR THAT MARCO WILL CORRECT ALL DEFECTS. IN ADDITION, CLIENT UNDERSTANDS AND ACKNOWLEDGES THAT THE INTERNET IS NOT A SECURE MEDIUM, MAY BE INHERENTLY UNRELIABLE AND SUBJECT TO INTERRUPTION OR DISRUPTION, AND MAY BE SUBJECT TO INADVERTENT OR DELIBERATE BREACHES OF SECURITY, FOR WHICH MARCO SHALL NOT BE HELD LIABLE.

No statement or writing of any Representatives of Marco will create any warranty whatsoever not set forth in this Agreement.

Client represents and warrants that it will not use, nor will it allow any third parties under its control to use, the Products for high-risk activities, such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

Client shall not make any representations or warranties on behalf of Marco to any third party. Client shall be solely responsible and liable for any representations or warranties that Client makes to any third-party regarding Marco, the Products, or any other aspect of this Agreement.

Each Party represents and warrants to the other Party that: (a) it has full power and authority to enter into this Agreement; (b) it is in compliance and will continue to comply during the term of this Agreement, with all laws and regulations applicable to such Party; and (c) it has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

The Services will meet the technical standards of performance or service levels, if any, set forth in the applicable Product Agreement. Client's remedies for any failure to meet the applicable technical standards of performance or service levels shall be as specified in the applicable Product Agreement.

- 11. Intellectual Property.** Each Party is, and shall remain, the exclusive owner of its respective Intellectual Property and Confidential Information, whether existing prior to or created following the Effective Date of this Agreement. If not subject to a separate License, Marco hereby grants Client a non-exclusive, royalty-free license solely during the term of this Agreement to use Marco Intellectual Property delivered to Client and designated for use with the Products, solely and only to the extent necessary for using the Products. Except as provided herein, nothing in this Agreement or any Product Agreement shall be construed as transferring the rights to ownership or use of either Party's Intellectual Property or Confidential Information to the other Party, its Representatives or any third party. Any Intellectual Property developed by Marco in the performance of this Agreement shall be the sole property of Marco. Without limiting the generality of the foregoing, Marco will retain all right, title, and interest in all of Marco's ideas, know-how, approaches, methodologies, concepts, skills, tools, techniques, expressions, processes, including, without limitation, generally-applicable software and code (and related components), independently-developed software and code (and related components), and any Intellectual Property rights in any of the foregoing, whether possessed by Marco prior to, or acquired, developed, or refined by Marco during performance of this Agreement. Client acknowledges and agrees that Marco may provide consulting services to, or prepare materials for, third parties that may be the same or similar to the Products provided to Client under this Agreement.



- 12. Confidential Information.** During the term of this Agreement, each Receiving Party shall use reasonable, industry standard physical, technical, and administrative controls to protect and maintain the confidentiality of and use the Disclosing Party's Confidential Information only for carrying out Receiving Party's rights and performing its obligations under this Agreement and the applicable Product Agreement(s). Receiving Party shall disclose Disclosing Party's Confidential Information only to Receiving Party's Representatives who need to know the information in order to carry out this Agreement and the applicable Product Agreement(s), and who are bound to enforceable confidentiality obligations consistent with this Agreement. Receiving Party shall cause its Representatives to be bound by and comply with this Section and Receiving Party shall be liable to the Disclosing Party for Receiving Party's Representatives' noncompliance. Each Party's confidentiality obligations shall survive this Agreement for so long as the Confidential Information disclosed under this Agreement remains confidential (other than due to a breach of this Agreement by Receiving Party).

If Receiving Party becomes legally compelled (by deposition, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any of Disclosing Party's Confidential Information, then Receiving Party shall (if legally permitted) notify Disclosing Party of the requirement promptly in writing so that Disclosing Party may seek a protective order or other appropriate remedy. If a protective order or other remedy is not obtained, or if Disclosing Party waives in writing compliance with the terms hereof, then Receiving Party shall furnish only that portion of the information which Receiving Party is advised by written opinion of counsel is legally required and Receiving Party will exercise reasonable efforts to obtain confidential treatment of such information.

Client acknowledges that the Equipment it has received may be equipped with technology that may store personal data and Confidential Information and Client understands the privacy and information security risks associated with personal and Confidential Information that may be stored on the Equipment. Client acknowledges and agrees that Client is solely responsible for safeguarding any personal and Confidential Information. Marco uses, processes, and stores private information according to its Privacy Policy located at <https://www.marconet.com/legal>.

- 13. Disclosure Notification.** If either Party becomes aware of an unauthorized disclosure of Confidential Information, they shall notify the other Party within three (3) business days. Both Parties acknowledge that a violation of their confidentiality obligations may cause severe and irreparable injury, which injury may not be adequately compensable by monetary damages. Accordingly, in the event of a violation (or threatened or attempted violation) of a Party's confidentiality obligations, either Party shall, in addition to any other legal and equitable rights and remedies, be entitled to seek immediate appropriate injunctive relief or a decree of specific performance.
- 14. Communication and Notices.** Notices, requests, and consents under this Agreement including requests for termination of Services under any Product Agreement shall be provided in writing to the Parties at the address(es) provided below, or to such other address(es) as is provided in writing and are effective upon personal delivery; or three (3) calendar days' after posting by certified mail, return receipt requested; or the day after being sent by verified delivery overnight courier with trackable delivery (e.g., FedEx). In the case of Client, a copy of notices requesting termination of Services shall be sent contemporaneously by email and U.S. Mail to the addresses below.

**MARCO:** Legal Counsel  
Marco Technologies, LLC  
4510 Heatherwood Road  
St. Cloud, MN 56301

**COPY TO:** LEGALSERVICES@MARCONET.COM



15. **Indemnification.** Subject to the limitations set forth herein, and except where caused by Client or its Representatives' negligence or willful act or omission acting within their scope of employment, Marco shall defend, indemnify, and hold harmless Client and its Representatives from and against third party (other than an indemnitee affiliate) demands, claims, actions, suits, or similar proceedings ("**Claim(s)**") for Losses, as defined below, to the extent caused by (a) the Marco's negligent, reckless, or willful acts or omissions; (b) real property damage or personal injury, including death; and (c) a breach of Marco's representations and warranties, to the extent not limited by sole and exclusive remedy language in this Agreement.

Marco shall defend, indemnify, and hold harmless Client from and against any and all Losses awarded against Client in a final judgment or in a Marco-approved settlement, arising out of or resulting from any Claim by a third party against Client that any of the Services or Marco-owned deliverables or Client's receipt or use thereof knowingly infringes any Intellectual Property Right of a third party existing as of the date of delivery of the applicable Services or Marco-owned deliverables and arising under the laws of the United States ("**IP Claim**"), provided however, Marco shall have no obligations under this **Indemnification** Section with respect to any IP Claims or Losses to the extent arising out of: (i) modification of the Services or deliverables other than with Marco's express prior written authorization and in strict accordance with Marco's written directions and specifications; (ii) any Client Materials; (iii) Marco's compliance with any requested features, functionality, designs, plans, specifications, requirements, or instructions provided by or on behalf of Client, whether in a Product Agreement, in connection with preparation of a Product Agreement, or otherwise; (iv) combination, operation, or use of the Services or deliverables in or with, any technology (including any software, hardware, firmware, system, or network) or service not provided by Marco or specified for Client's use in the Services; (v) use of the Services or deliverables by Client after Client was notified of the allegedly infringing activity or after being informed of modifications that would have avoided the alleged infringement; (vi) Services or deliverables not used in accordance with the terms and conditions of this Agreement and the applicable Product Agreement; (vii) any Resold Products or other third-party owned materials (including, without limitation, any "open source" materials), (viii) staff augmentation Services or other similar activities whereby Marco is providing support services and working at Client's direction, (ix) use of the Services or deliverables by any third-party or by or on behalf of Client that is outside the purpose, scope, or manner of use authorized by this Agreement or in any manner contrary to Marco's instructions; or (x) negligence, abuse, misapplication, or misuse of the Services or deliverables by or on behalf of Client or a third party. For purposes of clarity, Client is solely responsible for ensuring that: (A) any features, functionality, designs and other specifications of any Products requested by Client does not infringe the rights of third parties; and (B) Client's compliance with all laws applicable to Client and Client's business (including, without limitation, Client's use of any deliverables). If one or more of the Services or deliverables are determined to, or are believed by Marco to, infringe the rights of a third party, Marco may, at its sole option, elect to: (I) modify or replace the Services or deliverable(s), in whole or part, to seek to make the Services and/or deliverables non-infringing, while providing materially equivalent features and functionality, and such modified or replacement deliverable shall constitute a Deliverable under this Agreement; (b) obtain the right for Client to continue to use the Deliverable(s) materially as contemplated by this Agreement or an applicable SOW; or (c) if none of the foregoing is, in Marco's discretion, commercially practicable, terminate this Agreement or the affected Product Agreement(s) in its entirety or with respect to the affected part or feature of the Services or deliverable, effective immediately upon written notice to Client, in which event Client shall cease all use of such Services and deliverables immediately upon receipt of Marco's notice, and Marco shall promptly refund to Client the fees paid by Client for such deliverable(s), for any period after the date of such termination.

Marco and its Representatives shall not be responsible for any Claims and any Losses arising from or relating to: (a) Marco's use or reliance upon any Client Materials or any other plans, specifications, content and materials (including, without limitation, any software, hardware, data and networks) provided by or on behalf of Client in connection with the Products; (b) Client's violation of any law, rule or regulation applicable

to Client; or (c) any dispute or other proceeding (including, without limitation, response to any third-party subpoena, but excluding any dispute between Client and Marco) in which Marco becomes involved (even if only as a non-party or third-party participant) as a result of the Products and/or Marco's performance of this Agreement, including reimbursement of Marco's time and expenses (including reasonable external and internal legal costs) incurred to respond to any request or participate in any proceedings. In (c) above, Client agrees to pay Marco the hourly rates of Marco professionals for time spent preparing for and participating in responding to and participating in subpoenas, depositions, other discovery, litigation, hearings and dispute resolution proceedings in whatever form they may take.

As soon as practicable, Client shall notify Marco of its potential right to defense and indemnification in a writing detailing the basis for the request and the third-party Claim; provided that the failure to give notice within that time shall relieve Marco of its obligations under this Section only to the extent that Marco is actually prejudiced by such failure. If it accepts the defense, Marco shall control the defense and resolution of the Claim, including the selection and retention of counsel. Client shall cooperate in the defense and resolution of any Claim at the expense of Marco. Failure to provide such cooperation shall relieve Marco of its obligations under this Section. Client may participate in and observe the defense and resolution of any Claim with its own counsel at its sole cost and expense. Marco shall not settle the Claim in a manner that materially adversely affects Client without its consent, which shall not be unreasonably withheld.

THIS INDEMNIFICATION SECTION STATES THE ENTIRE LIABILITY OF MARCO, AND THE SOLE AND EXCLUSIVE REMEDY OF CLIENT, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

- 16. Limitation of Liability.** IN NO EVENT SHALL MARCO OR ITS REPRESENTATIVES BE LIABLE TO CLIENT, ITS REPRESENTATIVES OR ANY THIRD PARTY FOR CLAIMS OR LOSSES RESULTING FROM, ARISING FROM, OR RELATING TO: (A) CLIENT'S OR ITS REPRESENTATIVES' VIOLATION OF THIS AGREEMENT OR ANY PRODUCT AGREEMENT, DELAY OR FAILURE TO PERFORM ANY OBLIGATIONS THEREUNDER, ACTIONS OR DIRECTIONS WHICH AFFECT MARCO'S ABILITY TO PROVIDE, OR ABILITY TO USE THE PRODUCTS, (B), ANY SUSPENSION, DOWNTIME, SERVICE LIMITATIONS, REMEDIATION, OR DEFECTS; (C) ANY LOSS OF PRODUCTION, USE, DATA, BUSINESS, REVENUE, SAVINGS, GOODWILL, SOFTWARE, HARDWARE, OR PROFIT; (D) ANY GOOD FAITH ACTION OF MARCO IN PERFORMING THIS AGREEMENT (FOR EXAMPLE, TAKING STEPS TO PROTECT A CLIENT NETWORK IN THE PERFORMANCE OF MANAGED SECURITY SERVICES); (E) MARCO'S AND ITS REPRESENTATIVES' COMPLIANCE WITH ANY DIRECTION OR INSTRUCTION OF CLIENT OR ITS REPRESENTATIVES, OR (F) ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, OR ENHANCED DAMAGES, WHETHER ARISING OUT OF CONTRACT, TORT, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORIES WHATSOEVER, AND REGARDLESS OF HAVING BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER SUCH DAMAGES WERE FORESEEABLE.

IN NO EVENT SHALL MARCO AND ITS REPRESENTATIVES' COLLECTIVE AGGREGATE LIABILITY FOR ANY CLAIMS OR LOSSES (AS DEFINED ABOVE AND WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY) EXCEED THE AGGREGATE AMOUNT PAID OR PAYABLE TO MARCO IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE LAST EVENT UNDER THE PRODUCT AGREEMENT WHICH GAVE RISE TO THE CLAIM(S).

EACH PARTY ACKNOWLEDGES THAT THE FOREGOING DAMAGES EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND ACKNOWLEDGES THAT THE OTHER PARTY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT ABSENT SUCH EXCLUSIONS AND LIMITATIONS OF LIABILITY OR THAT THE PRICES PAID BY CLIENT FOR THE SERVICES WOULD HAVE BEEN HIGHER.

**17. Term and Termination.**

- 17.1 This Agreement.** This Agreement shall commence on the Effective Date and remain in effect until terminated by either Party as provided in this **Term and Termination** Section.
- 17.2 Product Agreement.** The term of each Product Agreement shall be as specified in that Product Agreement.
- 17.3 Termination for Convenience.** Either Party may terminate this Relationship Agreement for convenience at any time upon written notice to the other Party. If there are any active Product Agreements, termination shall be effective upon the expiration or termination of the last Product Agreement. If there are no active Product Agreements, termination shall be effective upon receipt of the written notice.
- 17.4 Termination for Breach.** Either Party may terminate this Agreement or any individual Product Agreement in accordance with the following:
- i. **Cure.** If the other Party breaches any material provision of this Agreement or any Product Agreement and fails to cure such breach within thirty (30) calendar days of receipt of notice of such breach from the non-breaching Party ("**Cure Period**"). The notice from the non-breaching Party shall specify the basis on which the Agreement or Product Agreement is being terminated, including a description of the breach and how the breach can be cured within the Cure Period. If the breaching Party fails to cure the breach within the Cure Period, then termination shall be effective on the thirty-first (31st) calendar day following receipt of such notice by the breaching Party.
  - ii. **No Opportunity to Cure.** If: (a) the other Party breaches any representation or warranty in this Agreement; (b) any representation or warranty is inaccurate, incomplete, false, or misleading in any material aspect; or (c) the breach is of a type or nature that is not capable of being cured within such time period (such as, by way of example and not limitation, an obligation relating to Confidential Information), the non-breaching Party may immediately terminate this Agreement and any affected Product Agreement. The notice from the non-breaching Party shall specify the basis on which the Agreement or Product Agreement is being terminated, including a description of any breach. Termination shall be effective immediately upon receipt of such notice by the breaching Party.
- 17.5 Termination for Financial Insecurity.** Either Party may terminate this Agreement and all Product Agreements upon written notice if the other Party ceases conducting business in the normal course, admits its insolvency, makes an assignment for the benefit of creditors, or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership, or reorganization. Termination shall be effective upon receipt of the written notice.
- 17.6 Suspension of Products or Credit.** Marco may suspend, terminate, repossess, or otherwise deny Client and any of its Representatives access to or use of the Products (collectively, "**Suspension**") and suspend or terminate Client's credit ("**Credit Hold**") without liability if: a) it is required by law to do so; b) if Client materially breaches this Agreement or any Product Agreement or (c) Client fails to make any payment when due. Upon Suspension, Client shall immediately cease, and cause its Representatives to cease, access and use of the Products, until further notice from Marco. Any Suspension or Credit Hold shall not terminate this Agreement or any Product Agreement, nor relieve Client from its payment obligations, which shall continue during any Suspension or Credit Hold, provided that nothing in this paragraph will limit either Party's termination rights under any other provision of this Agreement.

- 17.7 Effect of Termination or Expiration.** Upon termination or expiration of this Agreement or a Product Agreement, except as expressly identified under this **Effect of Termination or Expiration** Section: (i) Client shall no longer have access rights, privileges, and authorizations to the Services; (ii) at its sole expense, Client shall: (A) cease using Marco Property, the Services, Software, and any Incidentals (not owned by Client); (B) uninstall and return the Software; (C) return the Marco Property; and (D) take all necessary measures to ensure that it will have access to its data independent from Marco; (iii) following the Disclosing Party's request, the Receiving Party shall return or destroy (and certify the return or destruction of) the Disclosing Party's Confidential Information and all copies or embodiments thereof, as directed by the Disclosing Party, and (iv) Client shall immediately pay all undisputed amounts due to Marco. Notwithstanding the foregoing sentence, Marco may retain (but not use) copies of Client's Confidential Information that may be embedded in back-up or archival systems or storage media, to the extent that such copies are not readily divisible from other data, provided that such copies are maintained as Confidential Information in accordance with this Agreement. In addition, Marco may retain computer records or files containing Confidential Information that have been created solely by its automatic archiving and back-up procedures or as allowed or required by Applicable Law, but not for any other use or purpose. Marco shall retain such records confidentially and securely in accordance with the terms of this Agreement and Marco's established data governance policies. Any off-boarding, data extraction, and/or migration services Marco provides, including those that are the subject of a separate Product Agreement, shall be subject to and governed by the terms of this Agreement. Client shall pay the manufacturer's suggested retail price for any Marco Property which Client fails to return within thirty (30) calendar days of termination or expiration of the applicable Product Agreement.
- 18. Changes to Products.** Marco reserves the right in its sole discretion to make changes to the Products and Marco Property to maintain or enhance the quality, delivery, efficiency, effectiveness or performance thereof to its clients, provided such changes do not materially reduce the functionality of such Products and Marco Property. Either Party may request changes to its rights or obligations under a Product Agreement by providing the other a writing detailing the requested change through the project manager identified in the affected Product Agreement. The Party receiving the request shall respond in a writing either detailing the terms and conditions which apply to the requested change or denying the request.
- 19. Dispute Resolution, Venue, and Governing Law.** If a dispute arises out of or relates to this Agreement or any Product Agreement, the Parties agree to engage management in direct discussions in good faith to attempt to resolve the dispute. If a resolution cannot be reached through such discussions, the Parties agree to engage in nonbinding mediation to attempt to resolve the dispute. If mediation fails, the dispute will be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration will take place in Cass County, North Dakota. The arbitrator's decision will be final and binding. Without limiting the foregoing, the Parties agree that no arbitrator has the authority to award relief in excess of what this Agreement or the applicable Product Agreement provides. All claims shall be arbitrated individually. Client shall not bring or join any class action of any kind in court or in arbitration. Nothing in this Section shall prohibit either Party from seeking injunctive relief from any authority authorized by law to grant it. This Section does not prohibit Marco from enforcing any claim for payment in any court or other forum. **THE PARTIES WAIVE ANY RIGHT TO JURY TRIAL ARISING OUT OF THIS AGREEMENT OR ANY PRODUCT AGREEMENT.** This Agreement and all Product Agreements shall be governed by the laws of North Dakota without regard to choice or conflicts of law principles.
- 20. Assignment, Successors, Beneficiaries.** Client may not transfer, sell, or assign this Agreement, any Product Agreement, or any right or obligation arising thereunder, in whole or in part, without the written consent of



Marco, including, without limitation, by operation of law, upon plan of merger, or upon Client being acquired or selling substantially all of its assets. Marco may transfer or assign this Agreement, any Product Agreement in whole or in part, without notice or Client's consent. The Parties agree that there shall be no third-party beneficiaries to this Agreement or any Product Agreement. Subject to the foregoing, this Agreement and any Product Agreement(s) shall be binding on and inure to the benefit of the Parties' successors and permitted assigns.

- 21. Independent Contractors.** The relationship between the Parties is that of independent contractors. Nothing in this Agreement or any Product Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the Parties. Unless expressly provided herein or in a Product Agreement, neither Party shall have the authority to act on behalf of or to bind the other.
- 22. Insurance.** Each Party will obtain and maintain in effect during the term of this Agreement, a policy or policies of comprehensive general liability, workers' compensation, professional liability, cyber liability insurance, and other types of insurance and amounts of coverage each deems necessary to protect their individual interests from such claims, liabilities, or damages which may arise out of the performance of their respective obligations under this Agreement. For the avoidance of doubt, each Party is solely responsible for insuring its personal property wherever located, and, except as set forth in this Agreement or any Product Agreement, each Party acknowledges that neither of them will insure the property of the other while it is in transit or in the possession of the opposite Party.
- 23. Subcontractors.** Marco may engage subcontractors to perform services under any Product Agreement. Except as provided herein, Marco shall be fully responsible for the acts of all subcontractors to the same extent it is responsible for the acts of its own employees.
- 24. Employee Assignments.** Marco may assign or reassign employees in its sole discretion to perform the Services for Client.
- 25. Publicity.** Marco may publicize its business relationship with the Client and the nature of the Services performed for Client, in its discretion.
- 26. Non solicitation.** Each Party agrees to not, during the term of this Agreement and for a period of one (1) year thereafter, directory or indirectly solicit, hire, or otherwise engage with in any like activity in any manner whatsoever, any of the other Party's employees that worked in connection with this Agreement or any Product Agreement during the term of this Agreement or any Product Agreement. For each breach of the forgoing restrictions, the breaching Party will pay the other Party as liquidated damages and not as a penalty, an amount equal fifty percent (50%) of the then-current on-target annual compensation of such employee. It shall not be a violation of this section if a Party's employee responds, without solicitation by the other Party, to a job posting in the general circulation and not targeted toward any particular person.
- 27. Force Majeure.** Neither Party shall be liable for or be in breach of this Agreement or any Product Agreement, for failure or delay in performance to the extent caused by circumstances beyond the Party's reasonable control, including, but not limited to, acts of God, flood, fire, earthquake, war, terrorism, strikes or other labor or industrial disturbances, war, epidemic, pandemic, cyberattacks that could not have been reasonably prevented, internet or other system or network outages that could not have been reasonably prevented, governmental action, or interruption of, delay in, or inability to obtain on reasonable terms and prices adequate power, telecommunications, transportation, raw materials, supplies, goods, equipment, Internet or other services ("**Force Majeure Event(s)**"). At its option, Client may terminate any Product Agreement where the Services thereunder are delayed more than sixty (60) calendar days by a Force

Majeure Event(s); provided, however, that Client is not excused from paying Marco for all amounts owed for Services rendered and Products provided prior to the termination of the Product Agreement. A Force Majeure Event may not extend any payment obligation of Client by more than fifteen (15) calendar days.

- 28. Severability.** If any provision of the Agreement or any Product Agreement is held invalid by any law, order, or regulation of any government or other authority, or by the final determination of any court, such invalidity will not affect the enforceability of any other provisions not held to be invalid. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity, or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.
- 29. Remedies.** Unless and to the extent provided otherwise and subject to the limitations of liability herein, all remedies set forth in this Agreement will be cumulative, in addition to, and not in lieu of any other remedies available to either Party at law, in equity or otherwise, and may be enforced concurrently or from time to time.
- 30. Headings, Survival, and No Waiver.** Headings are for convenience only and are not part of this Agreement. Any term in this Agreement or any Product Agreement by its nature designed to survive completion, expiration, or termination of the Agreement or Product Agreement shall so survive. The failure of Marco at any time to require performance by Client of any provisions of this Agreement or a Product Agreement will in no way affect Marco's right to require performance of that provision nor be construed as a waiver of any Marco right under this Agreement or the Product Agreement.
- 31. Counterparts and Electronic Signatures.** This Agreement and any Product Agreement may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument. The execution and delivery of counterparts may be accomplished by email or facsimile signatures. The Parties agree that the electronic signature of a party to this Agreement, including exchange of counterparts by portable document format (pdf), shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement.
- 32. Entire Agreement and Amendment.** This Agreement (including its Exhibits) and the applicable Product Agreement(s) constitute the entire understanding between the Parties relating to the subject matter thereof and supersede and replace any and all prior discussions, agreements, understandings, promises, and representations whatsoever, whether oral or written, express or implied, between the Parties. Purchase or work orders or other similar writings (regardless of their date) of Client or a third party on Client's behalf shall not change or supplement this Agreement or any Product Agreement and shall not be binding on Marco or its Representatives whatsoever. Except as expressly stated herein, no modification of or amendment to this Agreement or any Product Agreement will be effective unless in writing and signed by a duly authorized representative of both Parties.

*Signature page to the Marco Technologies Relationship Agreement follows.*

*Signature page to the Marco Technologies Relationship Agreement.*

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be signed and delivered by its duly authorized officer or representative as of the Effective Date.

**Marco Technologies, LLC**

**Metro Flood Diversion Authority**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Version: February 1, 2022

**EXHIBIT A:  
TERMS SPECIFIC TO RESOLD PRODUCT SALES ONLY**

This Exhibit A: Terms Specific to Resold Product Sales Only applies to any order for software, hardware, or (“**Resold Products**”) made by Client, pursuant to a quotation issued by Marco (“**Quotation**”). As used in this Exhibit A, the term “**Services Sold by Part Number**” refers to services, which although ordered from Marco, are procured from, and supplied by, a third party (i.e., Marco does not directly perform or control the work) and are therefore considered Resold Product. Any such orders shall be subject to the terms and conditions of this Exhibit A.

**1. Product Returns and Warranty Assistance.**

- (a) Client acknowledges that Marco is reselling all Resold Products purchased by Client and that Resold Products are manufactured and/or delivered by a third party. Client shall not resell the Resold Products.
- (b) To the extent available, Marco shall, to the extent assignable, pass through to Client the manufacturer’s warranties for each Resold Product and agrees to use reasonable efforts to facilitate the manufacturer’s return policies. In no event will Marco provide return or warranty coverage for Resold Products beyond that provided by the manufacturer. Resold Products that are accepted for return are subject to the manufacturer’s applicable restocking fee(s).
- (c) Client acknowledges that the terms and conditions (including, without limitation, any License) governing the use of Resold Products shall be solely between Client and the manufacturer of such Products.

**2. Product Use and Product Warranty Disclaimer.** Client will not use the Resold Products for use in life support, life sustaining, nuclear or other applications in which failure of such Resold Products could reasonably be expected to result in personal injury, loss of life, or catastrophic property damage. Client agrees that Marco is not liable for any claim or damage arising from such use.

**MARCO MAKES NO WARRANTIES OF ANY KIND WITH REGARD TO THE RESOLD PRODUCTS. MARCO DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AS TO THE RESOLD PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF PERFORMANCE, FREEDOM FROM DEFECTS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.**

**3. Shipment and Risk of Loss for Product Sales.** All shipments of Resold Products to Client will be FOB point of shipment. Insurance coverage, freight charges, transportation costs, and all other expenses applicable to shipment to Client’s identified point of delivery will be the responsibility of Client and Client agrees to pay the same upon invoice. Risk of loss will pass to Client upon delivery of the Resold Products to the common carrier (regardless of who pays such common carrier).

**4. Permitting Compliance for Resold Products.** Client will obtain all licenses, permits, and approvals required by any governmental agency, foreign or domestic, having jurisdiction over the transaction.

**5. Price and Payment.** The Price set forth in any SOP is exclusive of all taxes, duties, licenses, and tariffs, payment of which shall be Client’s obligation. Prices quoted are firm for fifteen (15) calendar days unless otherwise specified in the Quotation. Payment is due thirty (30) calendar days from the date of the invoice, which will be sent upon shipment of the Resold Product. In the event Client chooses to finance its purchase using a third party, Client remains liable for payment to Marco until Marco receives complete payment from such third party.

**6. Cancellation.** The purchase of Resold Products may be canceled by Client only upon written approval of Marco.





**7. Limitation of Liability. NO MONETARY RECOVERY IS AVAILABLE FROM MARCO FOR WARRANTY CLAIMS. IN ADDITION, IN NO EVENT WILL MARCO'S LIABILITY TO CLIENT EXCEED THE PURCHASE PRICE PAID FOR THE RESOLD PRODUCT THAT IS THE BASIS FOR THE PARTICULAR CLAIM. MARCO WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOST OR DAMAGED DATA, AND LOSS OF BUSINESS OPPORTUNITY), HOWEVER CAUSED, ARISING OUT OF THE USE OF OR INABILITY TO USE THE RESOLD PRODUCT, OR IN ANY WAY CONNECTED TO THIS EXHIBIT A, EVEN IF MARCO HAS BEEN ADVISED OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, INFRINGEMENT OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY, CONTRIBUTION, OR OTHERWISE.**

## MARCO'S STANDARD MANAGED IT PRODUCT AGREEMENT

This Standard Managed IT Product Agreement ("MIT Agreement") is entered into by and between Marco Technologies, LLC ("Marco") and Metro Flood Diversion Authority ("Client") for the services ("Services"), equipment and other goods (collectively, "Equipment"), software ("Software"), and Incidentals (defined below) (collectively, "Products") that Marco will provide during the Term and any Renewal Term of the Marco Relationship Agreement ("Agreement") between Marco and Client. This MIT Agreement is governed by and subject to the Agreement. Defined terms in the Agreement have the same meaning in this MIT Agreement unless otherwise expressly stated. If Client does not accept and comply with this MIT Agreement, it may not place an order or use the Products.

### DESCRIPTION OF SERVICES AND DELIVERABLES

1. **Products.** Marco will provide, and Client will purchase, lease or license, as applicable, Services, Equipment, Software and Incidentals as described herein in accordance with the attached Schedules which are incorporated herein by reference. Client shall pay the prices ("Price(s)") listed on **Schedule A** hereto containing Marco's Schedule of Products ("SOP") for the Products, or as to Incidentals, at Marco's then prevailing rates, which Marco will supply upon request and which Client shall treat as Confidential Information. Marco shall have the right to increase the Price(s) to Client in its sole discretion at the end of the first twelve (12) months of the SOP Effective Date (defined below) and once each twelve (12) months thereafter, by up to ten (10) percent ("Price Increase"). The Products delineated herein are ALL the services, goods, and software Marco is providing under this MIT Agreement. Services under this MIT Agreement do not include equipment or other goods, replacement costs, and related services unless expressly indicated. Client's monthly recurring billing as provided in the SOP commences when Marco notifies Client that Support Desk Services are available to Client's Designated Users (defined below). The one-time fees set forth in the SOP are due upon Marco's notice that on boarding is complete.
2. **Designated Site(s).** Marco designates **the location(s) on the SOP** as the physical location(s) of Client's site where Marco will perform any on-site work under this MIT Agreement ("Designated Site").
3. **Designated Users.** Prior to Marco's installation of Remote Access Software (defined below), Client shall designate the specific number of users of Support Desk Services (defined below) allotted on the SOP ("Designated Users"). Client shall allow only its Designated Users to access the Support Desk Services. Client shall notify Marco of any changes to the Designated Users. Marco shall have the right to take all reasonable action it deems appropriate in its sole discretion to audit Designated Users' status and use of Support Desk Services at such times as Marco reasonably requests. Client shall cooperate in and provide Marco all Client Information and Access (defined below) Marco deems necessary to carry out such audit. If Client exceeds its allotted Designated Users, the Price will be increased accordingly.
4. **Designated Equipment.** Marco will provide Client with a list of all personal computers and servers on which Marco has loaded Remote Access Software (defined below) ("Designated Equipment" or "Asset Summary"). Client shall promptly review the Asset Summary and report any missing equipment or inaccuracies. Client acknowledges that Marco will be delayed in, or unable to, effectively and efficiently provide the Products without a complete and accurate Asset Summary and agrees that Marco shall have no liability to Client or any third party arising out of such delay.
5. **Minimum Equipment and Software Specifications.** Marco's obligations under this MIT Agreement are limited to:
  - a) equipment, which is professional grade, uses a business class operating system, meets manufacturer current specifications, and is supported under a current manufacturer's warranty;

- b) operating systems and other software which are business class, meet the software publisher's and/or vendor's current program specifications, and are supported under the software publisher's and/or vendor's current defined lifecycle policy; and
- c) all Designated Users existing on the Client's domain; and
- d) equipment, operating systems, and other software having the current capability to be supported by Marco remotely; and
- e) environments meeting Marco's Password Policy and Minimum Best Practice Environment Standards located at [www.marconet.com/legal](http://www.marconet.com/legal).

The above items are referred to herein collectively as "Minimum Specifications".

## 6. Term, Termination, and Renewals.

- a) Unless terminated earlier as provided in the Agreement or in Section 6. d. below, this MIT Agreement shall be in effect as of the first date of any SOP for applicable Products and shall continue for the term(s) stated in the SOP(s) for the Products purchased ("MIT Agreement Term"). This MIT Agreement shall automatically renew for successive twelve (12) month periods (each a "MIT Agreement Renewal Term"), unless either Party provides written notice of its intent not to renew at least thirty (30) calendar days prior to the end of the then-current MIT Agreement Term or MIT Agreement Renewal Term.
- b) Unless terminated earlier as provided in the Agreement or this MIT Agreement under Section 6. D. below, each SOP shall be in effect as of the Go Live Date defined below ("SOP Effective Date") and shall continue for the term stated in each SOP for Products purchased. Each SOP shall automatically renew for successive twelve (12) month periods at then applicable rates which are subject to change in Marco's sole discretion, unless either Party provides written notice of its intent not to renew at least thirty (30) calendar days prior to the end of the then-current SOP term or renewal term.
- c) For the avoidance of doubt, the terms and conditions of this MIT Agreement shall continue to apply with respect to any SOP which, by its terms, continues in effect after the date of termination of this MIT Agreement; provided that Marco shall not accept any new SOP for Managed IT from Client after a notice of termination of this MIT Agreement has been given by either Party, or while any uncured breach by Client exists.
- d) Client is purchasing the Products for the complete contract term designated in the SOP. Client may terminate any SOP after providing thirty (30) calendar days' written notice to Marco. In the event Client terminates a SOP prior to the end of the then current SOP term, Client will pay Marco an amount equal to the Monthly Recurring Charge, multiplied by the number of months remaining in the SOP Term or SOP Renewal Term ("Termination Fee") and any professional service, on boarding, off boarding, or other applicable fees. Client shall pay any portion of Marco's invoice containing the Termination Fee and any other fees within thirty (30) calendar days of the date of the invoice. Notice of termination under this subsection shall be provided as set forth in the Agreement.

## SUPPORT DESK ASSISTANCE

1. **Scope.** As part of the Services, Marco will make available to Client, and its Designated Users, access to the Marco Support desk ("Support Desk Service(s)").
2. **Incident Resolution.** Marco will provide: a) Designated Users assistance in resolving incidents on Designated Equipment that cause a reduction in the normal quality or interruption of the standard functionality of the Microsoft Operating System or Microsoft Office Suite, b) virus and malware infection removal, c) Third Party

- Application support; and d) Device Connectivity - all to the extent described in the Performance Specifications attached hereto as Schedule D (collectively, "Incidents"). Marco's assistance shall begin when Client or a Designated User contacts the Marco Support Desk and may include on-site support between 8:00 a.m. to 5:00 p.m. Central Time Monday through Friday in Marco's sole discretion for Incidents that cannot be resolved remotely. Marco's assistance ends when Marco resolves the Incident or determines in its sole discretion that it cannot resolve the Incident. Client acknowledges and agrees that it is solely responsible for any costs and expenses associated with resolving Incidents following the above determination by Marco.
3. **Vendor and Software Guidance.** At Client's request, Marco in its sole discretion may provide general guidance to Client in considering the use of new or different software. Any such Marco guidance shall not be considered to be an analysis on which Client should rely to purchase such software or to determine such software's capabilities or effect on the Products or Client, all of which is the sole responsibility of Client. Client may purchase a software assessment under a separate agreement.
  4. **Remote Services.** Remote Support Desk Services will be provided Monday through Friday, 7:00 a.m. to 5:00 p.m. Central Time, excluding Marco's published holidays. Client agrees that Marco may provide Support Desk Services remotely and that Marco may install such software on Client's personal computers and servers as Marco deems appropriate in its sole discretion for that purpose ("Remote Access Software"). Client agrees to provide Marco with: a) access to Client Equipment; b) Client Information and Access (defined below); and c) any other items Marco reasonably requests for the installation of the Remote Access Software and for Marco's remote provision of Support Desk Services to Client.
  5. **Additional Remote or On-site Services.** Client may purchase additional Support Desk Service(s) at Marco's then prevailing rates. Any such additional purchases shall be governed by and subject to the Agreement and this MIT Agreement and shall be made by an amendment hereto or separate agreement in Marco's sole discretion.
  6. **Rapid Resolution Response.** Marco will use commercially reasonable efforts to provide a live-call response to all Marco Support Desk Service requests. If Marco does not respond to a live-call, Client may leave a voice or email message. Marco Support Desk Service requests shall contain a detailed description of the problem, Client's requested timeline for resolution, the nature of any failure, any error/alert or other messages, tasks that were being performed prior to the problem, the name and version of software being used, and the desired end result.
  7. **Service Level Targets and Priority Standards.** Marco will provide Support Desk Service in accordance with its Service Level Targets and priority standards in effect at the time of Client's Support Desk Service request, which are subject to change in Marco's sole discretion. Current targets and priority standards are attached as Schedule B. Marco will use commercially reasonable efforts to meet its Support Desk Service Level Targets and Priority Standards, but it cannot guarantee that the targets and standards will be met in every instance. In addition, the nature of certain emergency and other Incidents will not allow strict compliance with these targets and standards.
  8. **Support Desk Downtime.** Support Desk Services will be interrupted by times of scheduled and unscheduled maintenance and repair of Marco Systems ("Downtime"). Marco will use commercially reasonable efforts to minimize such Downtime.

## NETWORK MANAGEMENT

As part of the Services, Marco will monitor and provide maintenance for Client owned servers, switches, routers, firewall equipment, workstations (desktops and laptops), access points, wireless connected mobile devices, SAN, NAS, controllers, and UPS ("Network Equipment") in order to assist Client in ensuring the availability and proper performance of its network ("Network Management") as defined in Schedule D. Marco can only provide Network Management on Network Equipment that is remotely manageable.

## PLANNING, IMPLEMENTATION AND CHANGES

- 1. Project Contacts.** The Parties shall each designate a project manager who has full authority to administer this MIT Agreement. Client shall also designate a primary and secondary IT administrator who shall be competent to, and shall have full authority to, dictate Client's network policy and make all technical decisions for Client concerning the provision and use of the Products. One of Client's IT Administrators may also serve as its project manager if Client so designates. Client represents and warrants that its project manager and IT administrator (collectively, "Contacts") have full authority to bind Client and that Marco may rely on the Contacts, and their decisions, instructions, and directions in carrying out the Agreement and this MIT Agreement.
- 2. Network Discovery.** Following the Effective Date of the Agreement, Marco will conduct a discovery of certain of Client's current equipment, operating systems, software, and network environment to gather the information Marco needs to carry out this MIT Agreement ("Network Discovery"). Marco will review its Network Discovery with Client. Client shall confirm the accuracy of the Network Discovery and provide Marco with any clarification and other information about the Network Discovery, Client Equipment, Client's environment, and any other information necessary for the efficient and effective provision and use of the Products. Client shall pay the implementation fee set forth in the SOP (Schedule A) for the Network Discovery.
- 3. Client Information and Access.** To facilitate a Network Discovery and the efficient and effective provision and use of the Products, Client agrees to provide to Marco, at Client's expense, copies of, access to, and permission to collect, maintain, process, use and enter, as applicable:

  - a) Client's Designated Site; Designated Equipment; Client Equipment; the Equipment; and other Equipment, hardware, or facilities of any other kind which Marco reasonably requests;
  - b) Client Designated Users' names, phone numbers, and email addresses
  - c) Client Contacts and other Representatives;
  - d) Client Access Information, which is defined as those rights, privileges and authorizations, Marco requires for it to carry out its obligations or exercise its rights under the Agreement and this MIT Agreement, both during and after Client's regular business hours, including but not limited to: administrative rights, passwords, security clearance, facilities entrance capabilities, and Network Credentials (defined below); and
  - e) Client's additional information, which Marco reasonably requests, including but not limited to: information about facilities, computers, network environment, servers, drives, switches, routers, hard drives, mobile devices, Third Party Applications, licenses (and their renewal), backup and protocol (including for emergencies), goods, equipment, etc. (collectively, "Client Information and Access").
  - f) If physical access to Client Equipment is controlled by a third party, then Client shall pay for Marco's time at then prevailing rates (including travel time) and any fees relating to such access, including fees associated with such things as finger printing, photographs, and background checks. Marco cannot guarantee consistency in the staff who will provide services for Client Equipment located in facilities controlled by a third party.
- 4. Remediation and Service Limitations.** Marco may designate certain limitations or exclusions from the Services ("Service Limitations"), including those on Schedule E, or require that Client enter into a separate remediation agreement or otherwise make remediations ("Remediation Plan") if: (i) on the Effective Date problems exist with Client's environment; or (ii) during Network Discovery, or at any other time during the MIT Agreement, Marco determines that upgrading, replacement, or other remediation by Client will be required in order for Marco to efficiently and effectively provide and Client and its Representatives to use the Products. Client shall pay Marco's then prevailing rates for any remediation services.



If Minimum Specifications are not met due to the circumstances described in this section or if Client elects not to implement a product or feature that is included in the MIT Agreement (including for security) (“MIT Feature”), Client shall be responsible for and shall pay Marco’s prevailing rates for any services Marco performs, including incident response or remediation, that Marco determines in its sole discretion resulted from (i) the failure to meet Minimum Specifications or implement MIT Feature(s) or (ii) the support of feature(s) Client has elected to use in lieu of the MIT Feature(s).

If (i) Minimum Specifications are not met; (ii) Client fails to implement a MIT Feature or a Remediation Plan; or (iii) Marco determines in its sole discretion that the Service Limitations would prohibit Marco from efficiently and effectively providing the Products, Marco may terminate the Agreement and this MIT Agreement without liability. If Marco terminates on the above basis, Client shall pay all undisputed fees incurred to the date of such termination.

Marco’s assistance in any audit or other investigation (e.g., computer forensics) initiated by or on behalf of Client or any third party is billable at Marco’s prevailing rates.

5. **Planning and Schedule.** Client shall work with Marco to plan for and schedule dates and times for all steps leading to implementation of the Products, including but not limited to: the Network Discovery, the provision of any Client Information and Access, any Existing Provider Cutover (defined below), the Go Live Date (defined below), and all other on boarding.
6. **Cutover from Existing Provider.** To the extent the Services, Equipment, or Software will be replacing existing services, equipment and software of another provider, Marco will assist Client with the transition to the Services, Equipment and Software by providing service continuation guidelines and an expected date when the transition will happen (“Existing Provider Cutover”). Client acknowledges and agrees that factors relating to Client’s existing provider, which are not in the reasonable control of Marco, may limit the effectiveness of the Existing Provider Cutover. Client agrees that Marco shall have no liability to Client or any third party arising out of such factors.
7. **Go Live.** Marco will notify Client when Support Desk Services are available to Client’s Designated Users (“Go Live Date”). Marco will host a welcome call and provide Client with information needed for Designated Users to access Marco Support Desk Services. Marco will notify Client when all remaining components of on boarding are completed.
8. **Discovery Scope.** The Network Discovery, Remediation Plan, and Service Limitations are not to be considered a comprehensive analysis, but rather are the limited discovery of Client’s network environment for purposes of Marco’s efficient and effective provision of the Products. Client represents and warrants that it and its Representatives shall not rely on nor allow any third party to rely on such assessment for any other purpose whatsoever.
9. **Equipment and Site Prerequisites.** The Equipment, if any, is identified on the SOP. Client shall keep the Equipment in good working order. Prior to Marco’s installation of any Equipment and thereafter, as required for Marco’s effective and efficient provision of the Products, Client shall:
  - a) Specify the location for any installation;
  - b) Prepare the installation site in accordance with Marco’s installation instructions and applicable environmental, health, and safety regulations;
  - c) Provide adequate: space for the equipment, network, or communication cable as required by Marco; light, separate AC power sources, ventilation and other equipment or items necessary for the efficient and effective installation, operation, and use of the Products; and
  - d) Take such other action as is necessary or reasonably requested by Marco to prepare and maintain the site and environment for the effective and efficient provision of the products.

- 10. Team Effort.** Client agrees to actively assist and cooperate with Marco to perform its obligations and exercise its rights under the Agreement and this MIT Agreement, including, but not limited to: actively participating in the planning, scheduling, information gathering, monitoring, maintaining, managing, providing feedback, considering recommendations (including as to single point failures), and implementing remediation or changes for the effective and efficient provision and use of the Products. Client acknowledges and agrees that: a) its failure to timely provide such assistance and cooperation and perform any of its obligations under this MIT Agreement; b) the necessity of an amendment to this MIT Agreement, a separate agreement, Remediation Plan, Service Limitations, or Client's request for enhanced, additional, or different services, equipment, software or other things; c) the Existing Provider Cutover; d) limitations or barriers to the Client Information and Access; or e) factors in the reasonable control of Client, but not of Marco, may result in the delay, reduction or failure of the effective and efficient provision and use of the Products (collectively, "Limitations"). Client agrees that it will be solely responsible for any Claims, Losses, or other liability or consequences whatsoever arising out of or relating to such Limitations.
- 11. Software License Terms.** In accordance with the Agreement, Client understands and agrees that it is required to comply with the then current version of License terms for the Software (including for Managed Backup) and/or MIT Feature(s) which (i) are located at <https://www.marconet.com/legal/managed-service-product-agreements/standard-managed-it-and-24x7-managed-it-agreement-terms>; and (ii) are otherwise applicable to any Software and/or MIT Feature.
- 12. Removal of Client's existing antivirus software.** The removal of the Client's existing antivirus software shall be Client's responsibility. Client shall coordinate such removal with Marco's installation of antivirus software. Client may request support for removal its existing antivirus software which, if provided, shall be billed on a time and material basis at Marco's then prevailing prices. If Client's network is housed within a domain, then Marco's installation of antivirus software and Remote Access Software shall be included as part of the Price. If Client's current network is structured as a work group, installation of antivirus software and Remote Access Software shall be billed on a time and material basis at Marco's then prevailing prices.
- 13. Repair.** At the request of Client, Marco may in its sole discretion, attempt to repair Defects in the Equipment or other equipment of Client, which meets Minimum Specifications ("Repairs"). Updates to firmware on Client Equipment are not included. After obtaining Client's consent, Marco shall have the option to remove the Equipment or other equipment of Client to the Marco service depot to make such Repairs.
- 14. Incidental Services and Equipment.** Client may request that Marco perform services or provide goods outside the scope of this MIT Agreement or not meeting the Minimum Specifications ("Incidentals"). Marco may provide the Incidentals in its sole discretion. Such Incidentals are not part of the Price. Client shall pay Marco's then prevailing prices for Incidentals, including but not limited to: time, materials and labor, which shall be charged at a minimum of fifteen (15) minutes for each request. Marco shall respond to each Incidental requested on a one-time occasion limited to thirty (30) minutes. Marco provides any Incidentals "AS IS," in accordance with the Agreement AND WITHOUT EXPRESS OR IMPLIED SERVICE WARRANTY OF ANY KIND as a courtesy to Client. Client's purchase and Marco's provision of any Incidentals is subject to all of the Client obligations, but none of its rights, and all of the Marco rights, but none of its obligations, under the Agreement and this MIT Agreement.
- 15. Changes and Enhanced Services.** Except as expressly stated otherwise herein or in the Agreement, no order, statement, or conduct of either Party, nor course of dealing, usage, or trade practice shall be treated as a change to the obligations or rights of either Party hereunder or in the Agreement, unless agreed in a writing by both Parties. The Parties' agreement to change this MIT Agreement shall be set forth in an amendment hereto and/or an updated SOP. Marco reserves the right in its sole discretion to require a separate agreement for any changes, additions, or enhancements to the Products.

## CLIENT RESPONSIBILITIES FOR IMPLEMENTATION

The implementation will require assistance from Client needed to complete the Network Discovery. Such assistance includes the items listed below. All information requested and communication should be routed to the Marco Project Manager assigned. Once the Agreement, this MIT Agreement, the SOP, and other related agreements, if any, are received fully executed, Marco will assign a Project Manager to work on the Managed IT Services implementation.

### 1. Network Credentials

Client will provide documentation of Network Credentials to Marco's Project Manager prior to the start of the Managed IT Services implementation. Network Credentials include the following (if applicable):

- Domain Administrator / Domain Server
- Local Server
- Local Workstation / Thin Client Administration
- Virtual Server - VMware / VSphere
- SAN Administrator
- Firewall
- Switch
- Router – if client owned
- Wireless Access Points
- SQL Administrator
- Email Administrator
- AntiVirus Managed Console
- Web Hosting or Web Filtering Appliance/Software
- Email Filtering Appliance / Software
- Universal Power Supply (UPS) / Battery Backup
- Ilo/IMM – Management Login
- Printers

### 2. Third Party Applications

Client shall provide Marco with a list of all Third Party Application software that Client is using and shall update that list as it changes. Marco recommends that Client meet with its employees to identify all of the software being used to perform their daily activities. Providing this information to the Support Desk will assist technicians in their understanding of and troubleshooting Third Party Application Incidents.

Examples of Third Party Applications are as follows:

- Accounting Software
- Shipping Software (FedEx, UPS, Speedy etc.)
  - Provide computer names that use the shipping software
- Custom Software
- Financial reporting
- Ordering systems
- Time clock
- Payroll
- ERP Systems
- Security Systems



**3. Third Party Vendors and Third Party Vendor Contact Information**

Client agrees to provide a list of vendors and vendor contact information including name, phone number and email address.

Required:

- Internet Service Provider
- Website Hosting
- DNS Host
- Domain Name Registrar
- Phone
- Application Support

Examples of additional vendors you may work with:

- Hosted Email
- Email Filtering
- Archiving
- Encryption
- Time Clock
- Printing
- Security System
- Paging / Video systems

**4. Remote Access Software Installation**

As part of the implementation, Marco will be loading Remote Access Software referred to in this Section as a “monitoring agent” on your server(s) and workstations. This agent will give Marco the ability to monitor that equipment, fulfill maintenance tasks, and remotely access the equipment for troubleshooting and other service-related activities.

Client shall assist Marco’s Project Manager in the installation of the Remote Access Software as requested, including the loading of the agent to the domain server, identifying the locations of servers and personal computers that will receive the agent, and confirming that all such equipment has a monitoring agent installed.

**SERVICES AND EQUIPMENT EXCLUSIONS**

Services required for the implementation beyond those described in this MIT Agreement, including any additional on-site time is billed at Marco’s prevailing rates per the terms and conditions of this MIT Agreement. If the SOP provides for a one-time preferred service plan (“PSP”) for services outside the scope of this MIT Agreement, Client must use the PSP within twelve (12) months of the Go Live Date (defined above). Any such services are subject to and governed by the Agreement. If Client terminates this MIT Agreement prior to the expiration of the MIT Agreement Term, Client shall be responsible to pay Marco its prevailing rates for services provided under the PSP upon receipt of Marco’s invoice.

IN WITNESS WHEREOF, the Parties have each caused this MIT Agreement to be signed and delivered by its duly authorized officer or representative on the date set forth below.

**Marco Technologies, LLC**

**Metro Flood Diversion Authority**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Version: July 27, 2020

## SCHEDULE A - SCHEDULE OF PRODUCTS

(To Be Delivered)

## SCHEDULE B - SERVICE LEVEL TARGETS AND PRIORITY STANDARDS

Marco will provide Support Desk Services provided in the MIT Agreement in accordance with its service level targets and priority standards in effect at the time of Client's support desk service request, which are subject to change in Marco's sole discretion. Current support desk service level targets and priority standards are set forth below.

### Severity: Critical

Provided when service or security incidents include outage issues that affect the entire organization or prevent Client from conducting essential business tasks such as effectively serving its Clients.

- **Ticket Acknowledged:** 10 Minutes
- **Technician Response:** 30 Minutes

### Severity: High

Provided when service or security incidents include outage issues that prevent a department or group from performing essential tasks, time sensitive systems failure resolutions or issues resulting in multiple-user stoppage.

- **Ticket Acknowledged:** 10 Minutes
- **Technician Response:** 1 Business Hour

### Severity: Medium

Provided when service or security incidents include issues that slightly reduce the entire organization's production or result in multiple users experiencing severe degradation or a single user stoppage.

- **Ticket Acknowledged:** 10 Minutes
- **Technician Response:** 2 Business Hours

### Severity: Normal

Provided when service or security incidents include issues that prevent a single user from overall productivity or slightly reduce the productivity of multiple users or end user standard change requests.

- **Ticket Acknowledged:** 30 Minutes
- **Technician Response:** Same or Next Business Day

### Severity: Low

Provided for end user non-standard change requests, requests for information, consultation, training, new Products, proactive maintenance or review, installation or root cause investigations or service or security incidents that do not prevent overall productivity of employees.

- **Ticket Acknowledged:** 30 Minutes
- **Technician Response:** 2 to 5 Business Days

Marco will use commercially reasonable efforts to meet its Service Level Targets and priority standards, but it cannot guarantee that the targets and standards will be met in every instance. In addition, the nature of certain emergency responses and other Incidents will not allow strict compliance with these targets and standards.

**Ticket Acknowledged** - *the time in which Marco targets to identify, categorize, and prioritize incidents or end user requests and assign tickets to the appropriate team.*

**Technician Response** - *the time in which a Marco Technician is assigned to a ticket and (i) engages and begins resolving incidents that may be investigated and diagnosed remotely or (ii) is scheduled for non-incident requests or requests requiring an onsite visit.*

*Expedition. Client may request a deviance from these targets and standards, which may be granted, and/or be subject to an amendment hereto or separate agreement, in Marco's sole discretion.*

## SCHEDULE C - INTENTIONALLY BLANK

## SCHEDULE D - PERFORMANCE SPECIFICATIONS

### PERFORMANCE SPECIFICATIONS FOR MANAGED IT

| Marco Managed IT Service Highlights  |   |
|--|---|
| <p><b>Support Desk Services</b><br/>Remote Services and On-site Services</p> <ul style="list-style-type: none"> <li>▪ Microsoft® OS</li> <li>▪ Microsoft Office®</li> <li>▪ Mobile device and remote network access connectivity</li> <li>▪ Third Party Applications</li> <li>▪ Vendor and software guidance</li> <li>▪ Rapid Resolution Response</li> </ul> <p><b>Equipment Monitoring &amp; Maintenance</b></p> <ul style="list-style-type: none"> <li>▪ Up-time reporting</li> <li>▪ Event log monitoring</li> <li>▪ Hardware performance</li> <li>▪ Drive space monitoring</li> <li>▪ Asset summary</li> </ul> <p><b>Third Party Patching</b></p> <ul style="list-style-type: none"> <li>▪ Per Marco’s patch policy</li> </ul> | <p><b>Microsoft Updates</b></p> <ul style="list-style-type: none"> <li>▪ Per Marco’s patch policy</li> </ul> <p><b>Security and Software</b></p> <ul style="list-style-type: none"> <li>▪ Antivirus Software - management/definition updates</li> <li>▪ Web content filtering</li> <li>▪ Spam filtering</li> <li>▪ Active Directory and user administration security</li> <li>▪ Windows File® sharing administration</li> <li>▪ Employee Security Awareness Training and End User Phishing, Smishing and Vishing Simulation Software</li> <li>▪ Threat detection software</li> </ul> <p><b>Network Management</b></p> <ul style="list-style-type: none"> <li>▪ Proactive Network Management maintenance for pre-approved items</li> </ul> |

#### Performance Standards

1. **Virus and Malware Infection.** Client agrees that Marco may install Marco’s chosen: a) web content filtering software for the purpose of restricting Designated Users’ access to known malicious www content; b) antivirus software for the purpose of scanning against known viruses; c) spam filtering software for the purpose of filtering spam through inbound email; (d) end-user phishing, smishing, and vishing simulation software, and (e) threat detection software.
2. **Third Party Patching.** As a part of the Services, Marco will apply third party patching to a set of supported applications in accordance with Marco’s third party Patch Policy located at [www.marconet.com/legal](http://www.marconet.com/legal).
3. **Microsoft Updates.** As part of the Services, Marco will apply Microsoft patches in accordance with Marco’s patching policy located at [www.marconet.com/legal](http://www.marconet.com/legal). Failure to comply with Microsoft Updates may result in limitations of Support Desk Services.
4. **Microsoft “How-to’s.”** Marco will assist Designated Users in operating standard functions of Microsoft Office.
5. **Third Party Applications.** Marco will provide the support identified below for third party software Client

uses in its business, which meets Minimum Specifications and has an active third party software support agreement (“Third Party Application(s)”). The Marco Support desk shall serve as Client’s initial point of contact for Third Party Application issues. Marco will work with Client and its Designated Users to conduct basic troubleshooting to resolve such issues. If an issue cannot be resolved through basic troubleshooting, Marco will engage with the Third Party Application publisher or vendor to assist in resolving the issue. While Marco expects to be able to resolve issues after receiving instruction and guidance from the Third Party Application publisher/vendor, there may be circumstances that require the Third Party Application publisher/vendor or other third parties to resolve the issue. Client acknowledges and agrees that it is solely responsible for all costs and expenses associated with any such publisher, vendor, or third party resolution.

- a) Client shall obtain and maintain, as applicable, such consents, agreements, or other prerequisites required by Third Party Application publishers/vendors in order for Marco to efficiently and effectively provide the support under this Section.
- b) Prior to Marco’s provision of any service for a Third Party Application, which Client deems restricted, Client shall designate in writing the pre-access security measures it requires Marco to follow (including Designated Users who have access privileges). Marco will work using Standard Work procedures provided to Client by the Third Party Application publishers and/or vendors. Client shall use commercially reasonable efforts to obtain such procedures from the publisher and/or vendor. If such procedures do not exist, Marco will assist Client in creating appropriate procedures from which Marco can efficiently and effectively provide Third Party Application support.

6. **Backup.** Unless Client purchases Managed Backup as designated on the SOP, Marco’s provision of the Products does not replace the need for Client to maintain reliable, regular data backups, and redundant archives (“Reliable Backup”). Client shall maintain such Reliable Backup during the Term and any Renewal Term of the Agreement and MIT Agreement.
7. **Mobile Device and Remote Access Connectivity.** Marco will assist Client in connecting to Client’s business network those mobile devices (for the purpose of Client’s employees’ remote access to Client’s email) and those computers (for purposes of Client’s employees’ remote access to Client’s network as allowed or restricted by Client) (collectively, “Remote Access Connectivity”). Client shall designate in writing to Marco any user or access restrictions to this connectivity, which require Marco implementation as part of such connectivity. Client shall provide reasonable notice to Marco of any changes, which affect Marco’s obligations hereunder. Marco will not address and Client shall be solely responsible for any issues requiring carrier communication, troubleshooting, or other action.
8. **Network Management.** Network Management shall consist of automated monitoring and addressing or making recommendations about (in Marco’s sole discretion) issues Marco identifies in Network Equipment uptime reports, event logs, drive space, antivirus reports, errors/alerts, switch and firewall configuration status, and hardware failure/warning lights. Client agrees that Marco may install software and/or equipment to assist in performing the Network Management. Marco will provide Network Management maintenance for items determined by Marco.
9. **Security and privacy.** Marco will provide reasonable physical, technical, and administrative measures to ensure security and controlled access to Marco systems and Client information.
10. **Client Responsibilities.** Client shall be solely and exclusively responsible for the following:
  - a) notifying Marco of any changes to Designated Users;
  - b) establishing and maintaining the security and confidentiality of Client data and of user accounts, ids, passwords, encryption keys, and any other personal identifiers;

- c) the procurement, operation, maintenance, and security of Client equipment, networks, software, Internet, and other computing resources, infrastructure, and services used to connect to and access the Services;
- d) retaining a current copy of Client data outside the Services; and
- e) all uses of the Products by Clients and its users.



## PERFORMANCE SPECIFICATIONS FOR MANAGED BACKUP

| Marco Managed Backup Service Highlights  |   |
|--|---|
| <p><b>Support Desk Services</b><br/>Remote Services and On-site Services</p> <p><b>Backup Appliance Monitoring &amp; Maintenance</b></p> <ul style="list-style-type: none"> <li>▪ Event log monitoring</li> <li>▪ Hardware performance</li> <li>▪ Drive space monitoring</li> <li>▪ Asset summary</li> <li>▪ Restoration of restorable data</li> </ul> | <ul style="list-style-type: none"> <li>▪ Online and local image-level and file-level backup</li> <li>▪ Virtualization support for VM recovery</li> <li>▪ Bandwidth throttling</li> <li>▪ No-cost seeding for initial upload</li> <li>▪ Thirty (30) calendar days of backup retention</li> <li>▪ Exchange database compatibility</li> <li>▪ VMware backup compatibility</li> <li>▪ MS-SQL database compatibility (MS-SQL 2008 and Up)</li> </ul> |

### Performance Standards

1. **Availability.** Marco’s backup appliance will be monitored and managed to confirm availability and completion of backup jobs.
2. **Updates.** As part of the Services, Marco will apply updates using Marco’s fixed scheduled, automated patch management process for critical and security systems updates as defined by Barracuda.
3. **Expandability.** Marco will provide the ability to increases in Client’s data size over time but may require an increase in appliance capacity and therefore increase in cost of services to meet this benchmark.
  - a) Client’s data size will be reviewed periodically, and Client will be advised when a threshold is exceeded and uplift is required.
  - b) Client’s invoice will be adjusted in accordance at the time of notification.
4. **Monitoring.** Marco will monitor Client’s backup devices for errors and failures twenty-four (24) hours a day, seven (7) days a week.
5. **Manageability.** Marco will not be responsible for purging of data or server maintenance to manage Client’s data size. Any requests to purge data and/or conduct other activities to manage data size must be approved by Marco and will be provided on a billable basis.
  - a) Industry best practices dictate that all server data will be included within the backup job(s). Exclusions of data must be in writing from Client, approved by Marco, and included in Schedule E.
6. **Content.** Backups do not include local data that may reside on Client’s desktop and laptop machines. This Product encompasses only currently supported Microsoft Windows Server operating systems.
7. **Servers.** Marco backs up the following servers only: Windows Servers, SQL servers, Exchange server, and Virtual Machines images running VMWare or Hyper V.
8. **Appliance.** Client may provide their own backup appliance unit or use Marco’s provided backup appliance unit. If Marco provided, the backup appliance unit, listed on the SOP, will be utilized by Marco in the execution of this service, shall remain the property of Marco, and must be returned if requested. If the backup appliance unit is stolen, damaged, or destroyed, Client must pay the replacement cost of

the unit. If Client provides their own backup appliance unit, Marco will only be responsible for the management of the appliance.

9. **Client Data.** The backup data being stored on the backup appliance as well as at Marco's Data Center remains the sole property of Client.
  - a) Client agrees to cease the use of any technology that remains the property of Marco upon termination of this Agreement.
10. **WAN Connection.** Client will be responsible for securing and maintaining proper bandwidth to support transfer of data offsite. Minimum bandwidth requirement is 5 Mbps upload speed per 500GB of data sent off-site.
  - a) As data size grows, bandwidth may require increased speed to accommodate the upload of changes and/or download of recovered files. Client is responsible for securing appropriate connections from Client's Internet Service Provider to meet the bandwidth requirement for the solution.
11. **Access.** Client will provide Marco and the third party solution provider with access to any and all systems and resources, including access credentials and passwords, necessary to perform its obligations for the backup Solution.
12. **Review.** Marco will perform an inspection on a quarterly basis of Client's backup environment.
13. **Client Responsibilities.** Client shall be solely and exclusively responsible for the following:
  - a) Client's IT contact is responsible to work with Marco's Project Coordinator and to supply information as required to ensure successful implementation, including admin rights and passwords.
  - b) Client's responsibility to work with Marco to address any problem areas in the network environment to ensure backup viability. This includes Marco's recommendations related to single point of failure issues.
  - c) Client is responsible for providing Marco full remote access and privileges as required to maintain online backup support both during and after Client's office hours. Any access restrictions or limitations may result in delay of service.
  - d) In the event that Client requires additions to or modifications of existing equipment or an existing network, either local area or wide area, or internet provider coverage, Marco reserves the right to:
    - i. Inspect said equipment or network and/or test bandwidth.
    - ii. If Marco determines that said equipment or network does not meet minimum standards of performance or practices for Managed Backup, Marco shall inform Client of identified equipment network deficiencies.
    - iii. Marco shall then make recommendations in writing necessary to bring said equipment or network up to minimum standards of performance or practices.
    - iv. In any event, Marco shall not be held responsible or liable for guarantees of prices, performance, or time frames resulting from such existing network or equipment deficiencies.
  - e) Client will need to designate a single point of contact to interface with Marco. This network administrator will have the authority to authorize purchases and generally dictate network policy to Marco. This includes triage of calls, assignment of work orders to internal personnel or Marco, and documentation of the completion of all work orders.

- f) Backup strategy is very much a partnership arrangement. Success will be determined by active participation on the Client's part. It is Marco's expectation that the Client will participate in the management process as well as provide the necessary feedback for proper network maintenance.
- g) Marco at its sole discretion may install software and/or hardware to assist in the process of managing and maintaining the Client's backup offering. Client agrees to abide by the licenses of the respective software publishers and hardware manufacturers. Copies of the respective licenses are available upon request.
- h) Upon termination of this MIT Agreement, Client agrees to remove and return all property of Marco promptly. Client will not hold any equipment belonging to Marco for claims of off-set or reduction for any purpose whatsoever. Client agrees to uninstall all software associated with Marco's managed services. If Client fails to return any software and/or hardware, Marco is entitled to collect Marco published list price of product in damages.
- i) Client is entitled to use any equipment supplied by Marco only in connection with Client's permitted use of the services.
- j) Client shall use best efforts to protect and keep confidential all intellectual property provided by Marco to Client through any equipment and shall make no attempt to copy, alter, reverse-engineer, or tamper with such intellectual property or to use it other than in connection with the services. Client shall not resell, transfer, export, or re-export any Equipment, or any technical data derived there from, in violation of any applicable United States or foreign law.

## SCHEDULE E – SERVICE LIMITATIONS AND REMEDIATION PLAN

(To Be Delivered)

Effective/Version: July 27, 2020

February 10, 2022

**PROPOSAL FOR**

# **METRO FLOOD DIVERSION AUTHORITY**

**JOEL PAULSEN**

Prepared By:

**Ellery Bresnahan**

Technology Advisor

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Document Number: 118541



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## IT - Managed IT -- Metro Flood Diversion Authority

**Prepared by:**

**Marco - Fargo**

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**Prepared for:**

**Metro Flood Diversion Authority**

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**Quote Information:**

**Quote #: 118541**

Version: 1  
 Date Issued: 02/10/2022  
 Expiration Date: 02/25/2022

**Managed IT (MIT)**

| Description   | Recurring         | One-Time          | Qty      | Ext. Recurring    | Ext. One-Time     |
|---|-------------------|-------------------|----------|-------------------|-------------------|
| <b>Standard Managed IT or 24x7 Managed IT Product Agreement as Indicated Below</b>                        |                   |                   |          |                   |                   |
| <b>Marco Managed IT</b>   | <b>\$1,639.52</b> | <b>\$4,265.00</b> | <b>1</b> | <b>\$1,639.52</b> | <b>\$4,265.00</b> |
| Designated Site: Fargo, ND - User Count: 10   |                   |                   |          |                   |                   |
| Marco - Managed IT - Standard User - 8x5 - Up to 10 Users   |                   |                   |          | X                 |                   |
| <b>** Additional Users will incur a \$84 per user/month uplift plus applicable Implementation fees **</b> |                   |                   |          |                   |                   |
| Marco - Managed IT - Monthly Base Fee   |                   |                   |          | X                 |                   |
| Marco - Managed IT - System Configuration Documentation   |                   |                   |          | X                 |                   |
| Marco - Managed IT - Managed Network Services Essentials  |                   |                   |          | X                 |                   |
| Marco - Managed IT - Remote Management & Monitoring   |                   |                   |          | X                 |                   |
| Marco - Managed IT - 3rd Party Application Patching   |                   |                   |          | X                 |                   |
| Marco - Managed IT - Email Security with ATP  |                   |                   |          | X                 |                   |
| Marco - Managed IT - Web Content Filter & Web Security  |                   |                   |          | X                 |                   |
| Marco - Managed IT - Security Phishing and Awareness Training   |                   |                   |          | X                 |                   |
| Marco - Managed IT - Endpoint Next-Generation Antivirus + Detection & Response + Threat Hunting           |                   |                   |          | X                 |                   |

**SCHEDULE A - SCHEDULE OF PRODUCTS TO PRODUCT AGREEMENT(S)**

|   |  |  |  |   |   |
|---|--|--|--|---|---|
| Marco - Managed IT - Security SOC, Threat Intelligence 8x5x24 SLA & SIEM w/30 Day Alert Storage - Per User  |  |  |  | X |   |
| Marco - Managed IT - Professional Services - Implementation Fee   |  |  |  |   | X |
| <i>Managed IT Implementation Fee is limited to Single Content Filtering for Endpoint Protection. Group Based Content Filtering configuration will incur additional implementation fees.</i> |  |  |  |   |   |

Recurring Subtotal: **\$1,639.52** Subtotal: **\$4,265.00**

**Managed Barracuda Backup**

| Description   | Qty |
|---|-----|
| Schedule D (to the Standard or 24x7 Managed IT Product Agreement Purchased Above) |     |

**Managed Barracuda Backup- Renewal**

| Description   | Qty |
|---|-----|
| Schedule D (to the Standard or 24x7 Managed IT Product Agreement Purchased Above) |     |



Quote Summary - One-Time Expenses

| Description      | Amount            |
|------------------|-------------------|
| Managed IT (MIT) | \$4,265.00        |
| <b>Total:</b>    | <b>\$4,265.00</b> |

Quote Summary - Recurring Expenses

| Description             | Amount            |
|-------------------------|-------------------|
| Managed IT (MIT)        | \$1,639.52        |
| <b>Recurring Total:</b> | <b>\$1,639.52</b> |

Payment Options

| Description                  | Payments | Interval | Amount     |
|------------------------------|----------|----------|------------|
| Recurring Payments           |          |          |            |
| 36 Months - Monthly Payments | 36       | Monthly  | \$1,639.52 |
|                              | 1        | One-Time | \$4,265.00 |

 Financing Equipment Schedule

| Description   | Qty |
|---|-----|
| Marco - Managed IT - Professional Services - Implementation Fee | 1   |

**Approval**

- Client represents that it has reviewed and agrees to be legally bound by this Schedule of Products.
  - Client represents that it has reviewed and agrees to be legally bound by the Relationship Agreement, any Product Agreement(s) referred to herein, and applicable policy(ies) (“Terms and Conditions”) which are located at [www.marconet.com/legal](http://www.marconet.com/legal) for the Products it is obtaining as identified in this Schedule of Products. If the parties have negotiated changes to the Terms and Conditions that have been reduced to writing and signed by both parties, the modified version(s) of such Terms and Conditions, that have not expired or been terminated, shall replace the online version(s).
  - Client agrees to use electronic signatures, electronic communications, and electronic records to transact business under the above documents.
  - The pricing above does not include taxes. Taxes, fees and surcharges shall be paid by Client and will be shown on invoices to Client.
  - Payments made via credit card are subject to a 3% surcharge.
  - A \$30 fee will be assessed for any returned payment
- By its execution below, Client agrees that instead of paying Marco the amount set forth above under the heading Quote Summary – One Time Expenses, Client has elected to pay for such amount in monthly installments in the amount and for the term set forth above under the heading Payment Options (which amount also includes the monthly amount payable to Marco for services as described under the heading Quote Summary – Recurring Expenses). In connection therewith, Client agrees that the Financing Agreement Terms set forth above shall govern Client’s payment and other obligations with respect to the products listed on the Financing Equipment Schedule and that such Financing Agreement Terms shall constitute an “Equipment Lease” (as such term is defined in the Relationship Agreement).
- Agrees that its electronic signature shall be applied to the Schedule of Products under the heading Approval and that such method of execution by Client shall be binding and shall constitute Client’s acceptance of the terms thereof.

**Marco Technologies, LLC**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Metro Flood Diversion Authority**

Prepared for: Joel Paulsen  
Signature: \_\_\_\_\_  
Signed by: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
PO Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**Executive Director Contracting Recommendation**

Date: 3/14/2022

**RECOMMENDATION FOR ACTION:**

The Executive Director has reviewed and recommends approval of the following Contract Action(s).

**SUMMARY OF CONTRACTING ACTION:**

Per the contract review and approval procedures that were adopted by the Diversion Authority on November 10, 2016 and amended December 16, 2021, the Owner's Program Management Consultant (PMC) or Engineer of Record (EOR) is directed to prepare new Task Order and task Order Amendments and submit them to Member Entity Technical Representatives and the Executive Director. The Member Entity Technical Representative will provide comments which will be consolidated in one form by the PMC and provided to the Director of Engineering. The Director of Engineering shall review the comments and provide recommendations to the Executive Director for review and action.

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

**Cass County Electric Cooperation, Inc**

Task Order 02 Amendment 0

\$427,900.00

- Diversion Inlet Structure and Drain 27 Electrical Works

**BACKGROUND AND DISCUSSION:**

CH2M, now Jacobs, has served as the Program Management Consultant (PMC) to the OWNER since November of 2011, with primary responsibilities to plan and implement the Fargo-Moorhead Area Diversion Project (the PROJECT). As such, the OWNER and CONSULTANT have agreed to enter into a Task Order focused on managing and reporting on the various aspects of the PROJECT. The PMC reports directly to the Executive Director.

In accordance with Section 2.01 of the Master Utility Relocation Agreement by and between the Metro Flood Diversion Authority (the "Authority") and Cass County Electric Cooperative, Inc (the "Utility") dated May 27, 2021 (the "Agreement"), the Authority and the Utility agree to the following:

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

- Burying approximately 14,850ft of three phase primary wire, directional boring roads and yards, setting a three phase junction box at the pre-determined location north of the Inlet site where Ames Construction will start with 3-3" conduits into the transformer site, pulling primary wire in said conduits and setting a 150kva 277/480 volt three phase transformer at the proposed inlet site and providing wire to a metering cabinet supplied by the Diversions electricians.

The table below summaries the contracting history for this task order and the current contracting action.

**Summary of Contracting History and Current Contract Action:**

| Original Agreement or Amendment | Budget Change (\$) | Revised Project Cost (\$) | Agreement Date | Project Completion | Comments                        |
|---------------------------------|--------------------|---------------------------|----------------|--------------------|---------------------------------|
| TO02-A0                         | 0.00               | 427,900.00                | 04/01/2022     | 10/31/2022         | Diversion inlet structure work. |

## Summary of Annual Budget Allocation:

| Original Agreement or Amendment | Cost account code | Estimated cost (\$ (a)) | Budget Allocated (\$ (b)) | Actual Paid (\$) (c) | Budget Remaining (\$) (b-c) | Comments                        |
|---------------------------------|-------------------|-------------------------|---------------------------|----------------------|-----------------------------|---------------------------------|
| 2022                            | CN-4010           | 427,900.00              | 427,900.00                | 0.00                 | 427,900.00                  | Within allocated annual budget. |
| Total                           | CN-4010           | 427,900.00              | 427,900.00                | 0.00                 | 427,900.00                  | Within allocated annual budget. |

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

## ATTACHMENT(S):

1. Cass County Electric Cooperative Task Order 02 Amendment 0

Prepared by: Program Management Consultant

Ian Joynes

Dated: 3/14/2022

Approved by Joel Paulsen, Diversion Authority Executive Director Via Aconex: Dated: 3/15/2022



# Cass County Electric Cooperative, Inc Diversion Inlet Structure and Drain 27 Task Order 02 - Amendment 0

---

In accordance with Section 2.01 of the Master Utility Relocation Agreement by and between the Metro Flood Diversion Authority (the "Authority") and Cass County Electric Cooperative, Inc (the "Utility") dated May 27, 2021 (the "Agreement"), the Authority and the Utility agree as follows:

## 1. Background Data

- a. Effective Date of Task Order: April 1, 2022
- b. Authority: Metro Flood Diversion Authority
- c. Utility: Cass County Electric Cooperative, Inc
- d. Specific Project (title): Diversion Inlet Structure and Drain 27
- e. Specific Project (description): Three phase primary wire

## 2. Services of Utility

The specific services to be provided or furnished by the Utility under this Task Order are as follows:

- a. Burying approximately 14,850ft of three phase primary wire, directional boring roads and yards, setting a three-phase junction box at the pre-determined location north of the Inlet site where Ames Construction will start with 3-3" conduits into the transformer site, pulling primary wire in said conduits and setting a 150kva 277/480-volt three phase transformer at the proposed inlet site and providing wire to a metering cabinet supplied by the Diversions electricians.
- b. The quote of \$427,900.00 includes a 10 percent contingency sum.
- c. Attached is the Upstream Breakdown Map. The line noted in Red on the exhibit is for this Task Order 02.
- d. The other two lines on the Upstream Breakdown Map will be covered under separate Task Orders.

## 3. Authority Responsibilities

The Authority has those responsibilities set forth in the Agreement.

## 4. Additional Services

Additional services that may be authorized or necessary under this task order are: None



5. Task Order Schedule

In addition to any schedule provisions in the Agreement or elsewhere, the Parties shall meet the following schedule:

| <u>Service</u>                          | <u>Estimated Completion Time</u> |
|---|----------------------------------|
| Underground wiring and Electrical items | October 31, 2022                 |

6. Payments to the Utility

- a. The Authority payment of cost are set forth in Article VIII of the Agreement.
- b. The total estimated cost of the services described in Section 2 of this Task Order is \$427,900.00 with 50% down payment in accordance with Section 8.03 of the Memorandum of Understanding between the Metro Flood Diversion Authority and Cass County Electric Cooperative, Inc.
- c. Refer to Exhibit A for Summary of Contracting History and Current Contract Action.

7. Consultants retained as of the Effective Date of the Task Order

Cass County Electric Cooperative, Inc

8. Other Modifications to the Agreement and Exhibits

None

9. Attachments

- a. Cass County Electric Cooperative – Aid to Construction Estimate – Inlet Structure Service.
- b. Cass County Electric Cooperative – Upstream Breakdown Map. The line noted in Red on the exhibit is for this Task Order 02.

10. Other Documents Incorporated by Reference

None

11. Terms and Conditions

Execution of this Task Order by the Authority and the Utility shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. The Utility is authorized to begin performance upon its receipt of a copy of this Task Order signed by the Authority.

In the event of a conflict between the terms and conditions of this Task Order and the underlying Agreement, the terms and conditions of the Agreement shall prevail.

The Authority and the Utility acknowledge and agree that this Task Order may be executed by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature.

*(Remainder of page intentionally left blank.)*





The Effective Date of this Task Order is April 1, 2022.

AUTHORITY:

Metro Flood Diversion Authority

---

Joel Paulsen, Executive Director

UTILITY:

Cass County Electric Cooperative, Inc

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

Its: \_\_\_\_\_



# Exhibit A

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Summary of Contracting History and Current Contract Action:

| Original Agreement or Amendment | Budget Change (\$) | Revised Project Cost (\$) | Agreement Date | Project Completion | Comments                        |
|---------------------------------|--------------------|---------------------------|----------------|--------------------|---------------------------------|
| TO02-A0                         | 0.00               | 427,900.00                | 04/01/2022     | 10/31/2022         | Diversion inlet structure work. |



4100 32nd Avenue SW  
 Fargo ND 58104

### Aid To Construction Estimate

DATE: 3/9/2022

|                                     |              |
|-------------------------------------|--------------|
| <b>Prepared By:</b><br>Daryl Brandt |              |
| Work #                              | 701-356-4476 |
| Cell #                              | 701-238-4319 |
| WO#                                 |              |
| Map Location                        | 106-320-0740 |

|                                   |
|-----------------------------------|
| <b>TO:</b><br>Diversion Authority |
| Phone                             |
| Home                              |

| JOB DESCRIPTION   |
|---|
| <p>Estimate to extend three phase primary service to Inlet structure of the FM Diversion. This covers the costs of burying approximately 14,850ft of three phase primary wire, directional boring roads and yards, Setting a three phase junction box at the pre-determined location north of the Inlet site where Ames construction will start with 3-3"conduits into the transformer site, Pulling primary wire in said conduits and setting a 150kva 277/480volt three phase transformer at the proposed inlet site and providing wire to a metering cabinet supplied by the Diversions electrician. If actual costs are different than the estimate the lesser of the two will be charged. Anything other than what has been discussed may be at additional cost.</p> <p>The schedule is to have the proposed buried power at the pre-determined junction box site north of the Inlet no later than June 15th barring any major related weather issues. The remainder of the project will be dependant upon the completion of the conduit system by Ames construction to the three phase transformer site, if that has been completed CCEC would be able to add wire into the conduit and to the transformer in that same time frame.</p> |

| ITEMIZED ESTIMATE: TIME AND MATERIALS                   | Qty | Cost       | ATC Allowance | ATC Req'd           |
|---|-----|------------|---------------|---------------------|
| Double Throw  |     |            |               |                     |
| Line Extension Cost                                     |     |            |               | 374,489.00          |
| Line Revamp Cost  |     |            |               |                     |
| Transformer Cost  |     |            |               | 13,711.00           |
| Service Fee /Per Amp Charge                             |     | \$1per/amp |               | 800.00              |
| Security Light Fee                                      |     |            |               |                     |
| Double Throw  |     |            |               |                     |
| Labor and Overheads                                     |     |            |               |                     |
| Other   |     |            |               |                     |
| Other   |     |            |               |                     |
| <b>Total Estimated Aid to Construction Cost</b>         |     |            |               | <b>\$389,000.00</b> |
| <b>Maximum contingency allowance above estimate (%)</b> |     |            |               | <b>10%</b>          |

**Terms and Conditions :** This is a good-faith estimate, valid for 30 days, and pending the successful acquisition of all necessary easements and permits to complete the work. It's possible the scope of the job as outlined above could change slightly due to unforeseen weather, soil, or other issues that might arise, which would result in additional charges, not to exceed the maximum contingency allowance percentage. Lead times for materials may be up to 12 weeks or more, and materials will not be ordered until the estimate is accepted. Payment is due as follows: 50% of member's share of the total cost will be paid prior to construction; final payment balance will be due within 30 days of receipt of invoice.

By signing below, I hereby accept and agree to the terms and conditions of this estimate. I agree to pay the estimated aid to construction as detailed above, and authorize Cass County Electric to proceed with the work proposed.

\_\_\_\_\_  
 ACCEPTED BY \_\_\_\_\_  
 DATE

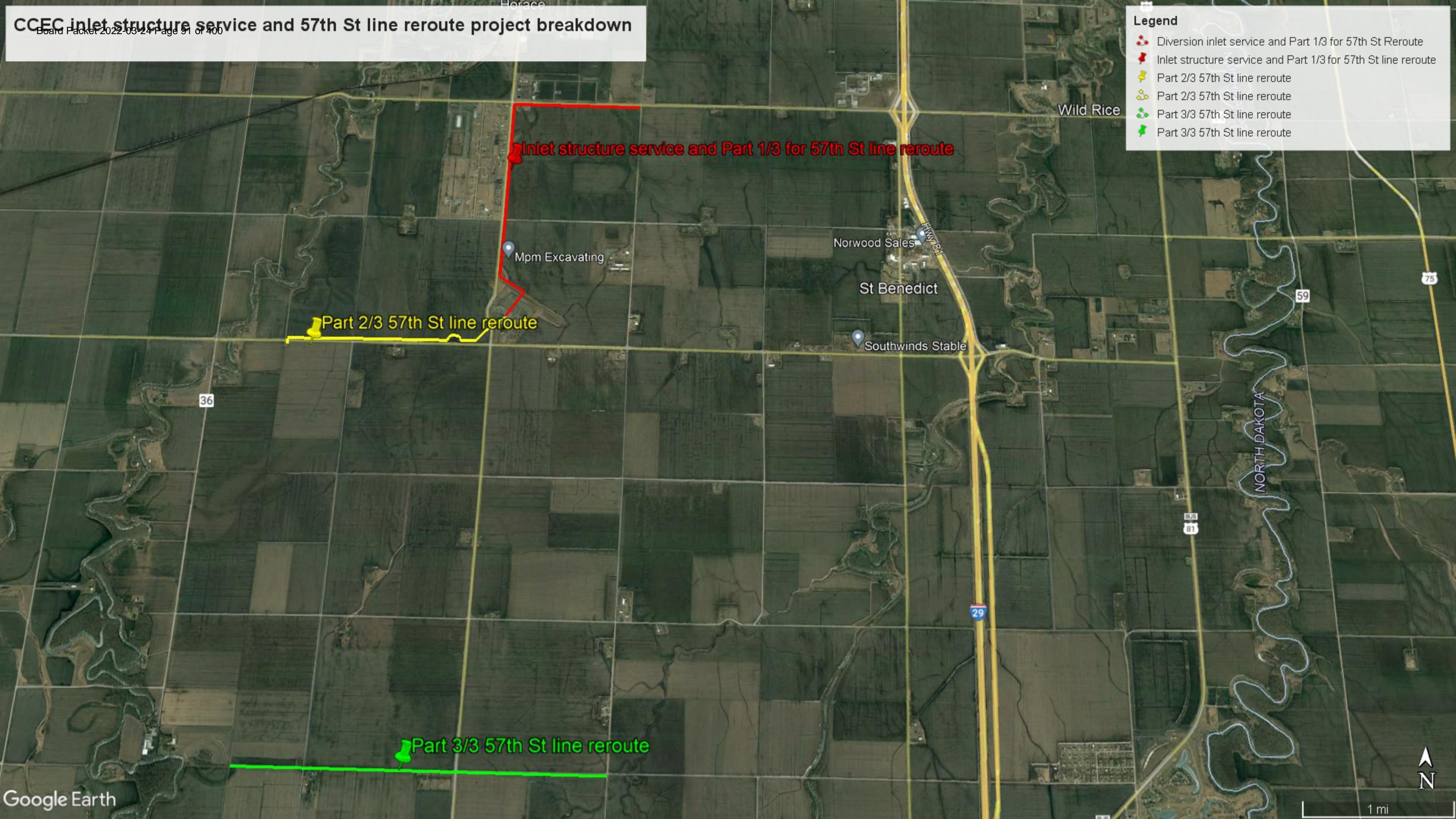


# CCEC inlet structure service and 57th St line reroute project breakdown

Board Packet 2022-03-24 Page 91 of 400

**Legend**

- 🔴 Inlet structure service and Part 1/3 for 57th St Reroute
- 🟡 Part 2/3 57th St line reroute
- 🟢 Part 3/3 57th St line reroute







**Executive Director Contracting Recommendation**

Date: 3/10/2022

**RECOMMENDATION FOR ACTION:**

The Executive Director has reviewed and recommends approval of the following Contract Action(s).

**SUMMARY OF CONTRACTING ACTION:**

Per the contract review and approval procedures that were adopted by the Diversion Authority on November 10, 2016 and amended December 16, 2021, the Owner’s Program Management Consultant (PMC) is directed to prepare Service Agreements and Service Agreement amendments for existing Service Agreements and submit them to the Deputy Executive Directors for review. The Director of Engineering then makes a recommendation to the Executive Director for approval.

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

**Flint Group, LLC**

*Service Agreement – Consulting Services*

**\$80,300.00**

- Metro Flood Diversion Website Design and Development

**BACKGROUND AND DISCUSSION:**

The Metro Flood Diversion Authority (“Owner”) and Flint Group, LLC (“Consultant”) is to enter into a Service Agreement to provide Website Design and Development for the Metro Flood Diversion Authority.

The Consultant agrees to provide (but not limited to) the following:

- Content Mapping – Provide a spreadsheet with existing website pages, which will be used in the creation of the updated sitemap.
- Page Creation – Flint will build unique templates, perform an audit of current content, write meta data for primary pages identified within the approved sitemap and write page content.
- Website style guide – Flint will create a style guide for website pages.
- Social sharing – Flint will use UltimatelySocial social sharing plug-in to create an admin module in the CMS to create setting, allowing visitors to share website content across social networks.
- Media Monitoring Services – Flint will provide daily (or as happens) media monitoring reports for the Metro Flood Diversion Authority

See the table below for a summary of the contracting history for this Services Agreement.

**SUMMARY OF CONTRACTING HISTORY AND CURRENT CONTRACT ACTION:**

| Original Agreement or Amendment | Budget Change | Initial or Revised Project Cost | Project Start | Project Completion | Comments              |
|---------------------------------|---------------|---------------------------------|---------------|--------------------|-----------------------|
| Agreement 0                     | 0.00          | 80,300.00                       | May 1, 2022   | Dec 31, 2022       | Initial Scope of work |

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

## Summary of Annual Budget Allocation:

| Original Agreement or Amendment | Cost account code | Estimated cost (\$) | Budget Allocated (\$) | Budget Remaining (\$) | Comments                 |
|---------------------------------|-------------------|---------------------|-----------------------|-----------------------|--------------------------|
| Agreement 0                     | SW-1150A          | 80,300.00           | 80,300.00             | 0.00                  | Within allocated budget. |
| Total for 2022                  | SW-1150A          | 80,300.00           | 80,300.00             | 0.00                  | Within allocated budget  |

## ATTACHMENT(S):

1. Flint Group, LLC Service Agreement

Prepared by: Program Management Consultant

Ian Joynes

Date: 3/10/22

Approved by Joel Paulsen, Diversion Authority Executive Director Via Aconex. Dated: 3/15/2022

---

**SERVICES AGREEMENT**

**BY AND BETWEEN  
METRO FLOOD DIVERSION AUTHORITY  
AND  
THE FLINT GROUP, LLC**

**Dated as of March 11, 2022**

**Relating to:**

**A Services Agreement to perform work pursuant to website design.**

---

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



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**EXHIBITS**

## **SERVICES AGREEMENT**

THIS SERVICES AGREEMENT (“Agreement”) is made and entered into this 1<sup>st</sup> day of March, 2022, by and between the METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota, whose address is 207 4th Street North, Suite A, Fargo, North Dakota 58102 (the “Authority”), and FLINT COMMUNICATIONS, LLC (d.b.a. FLINT GROUP), a corporation organized and existing under the laws of the State of North Dakota with a principal office at 101 10th Street North Fargo, ND 58102 (“FLINT”) (the Authority and FLINT collectively referred to as “Parties”).

### **RECITALS**

WHEREAS, in January 2022, the Executive Director of the Diversion Authority issued a Request for Qualifications for providing Website Design Services for the Diversion Authority staff; and

WHEREAS, on or prior to February 7, 2022, FLINT, submitted a response to the Authority’s Request for Qualifications; and

WHEREAS, the Executive Director of the Diversion Authority, in consultation with the Co-Executive Directors, is of the opinion that FLINT has the necessary qualifications, experience, and abilities to provide the services required for Website Design Services; and

WHEREAS, FLINT agrees to provide such services to the Authority on the terms and conditions provided in this Agreement; and

WHEREAS, the Authority agrees to compensate FLINT for such services on the terms and conditions provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

## AGREEMENT

1. Services Provided. The Authority hereby agrees to engage FLINT to provide the Authority with the following described list of services (the “Services”).

A. Content mapping

Flint Group will provide a spreadsheet with existing MFDA website pages, which will be used in the creation of the updated sitemap. The existing content will be mapped to the new page and used to create 301-redirects, which automatically map a user with an old link to where that page content lives in the new site. This is best practice for UX.

B. Assets

MFDA will review assets available and will select stock photography recommendations if needed. Stock photo costs not included in this estimate. To support ADA, responsive design and page load time requirements, DLC & MFDA-sourced media should be supplied in the following formats:

- a. Video – streaming platform URLs (YouTube, Vimeo, etc.) Audio – MP3 and MP4 files
- b. Photography – owned or external copyright sourced
- c. Downloads – ADA-compliant downloads (PDFs, Microsoft Office, etc.)  
Google Maps
- d. Exclusions: Because Adobe Flash is not supported across all platforms and does not meet RFP required ADA standards, Flash development and media formats are not included in this response.

C. Page creation

Flint Group will build unique templates, perform an audit of current content, write meta data for primary pages identified within the approved sitemap and write page content. The MFDA team will be trained to update content and meta data pre-launch in a one-hour training session.

D. Website style guide

Flint Group will create a style guide for website pages, including styling for navigation, buttons, headings, paragraphs, in-copy links, ordered lists, call-out quotes, photo sizing and forms.

E. Social sharing

Flint will use the UltimatelySocial social sharing plug-in to create an admin module in the CMS to create and maintain settings, allowing visitors to share website content across social networks. Platform-generated social sharing widgets will also be incorporated to feature content feeds from existing social accounts as desired.

F. Site search

Relevanssi plug-in will be used to configure site-wide search, allowing for predictive results.

**G. MEDIA MONITORING SERVICE**

Flint Group will provide daily (or as it happens) media monitoring reports for the Metro Flood Diversion Authority. Reports are produced by Meltwater and will be delivered in an e-newsletter. Dashboards compiling all mentions can be produced on an annual basis.

The Authority, for compensation in addition to those amounts provided in Section 3 hereof, may direct FLINT to perform Services in addition to the above-listed Services. FLINT hereby agrees to provide such Services to the Authority, and the Authority agrees to provide the agreed-upon compensation for such Services.

2. Term of Agreement. The term of this Agreement (the “Term”) will begin on the date of the execution of this Agreement and will expire on December 31, 2022, subject to earlier termination as provided in this Agreement. The Term may be extended with the prior written consent of both Parties. 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 thirty (30) calendar days of written notice and diligently complete the correction thereafter.

3. Compensation and Payment. The Authority agrees to pay the following to FLINT for completion of the Services:

|   |          |
|---|----------|
| <b>MFDA Website Redesign:</b>   |          |
| Project Plan & Discovery  | \$3,000  |
| Information Architecture (Sitemap and Wireframes)   | \$13,800 |
| Content (HTML titles, meta descriptions, MFDA-provided SEO keywords, create up to 20 page of content based on approved IA, two rounds of revisions) | \$10,800 |

|  |          |
|--|----------|
| Design (Up to two rounds of revisions for 7-10 page layouts based on approved IA, style guide)                               | \$18,500 |
| Develop and Deploy (Development, content population of primary pages included in approved sitemap, analytics implementation) | \$23,000 |
| QA, UAT and CMS Training (QA and WCAG 2.1 AA compliance testing, User Acceptance Testing, CMS Training)                      | \$6,700  |
| Website Launch (30 day guarantee)  | Included |
| <b>Media Monitoring Service:</b>   |          |
| Initial Setup (\$500 one-time fee)   | \$500    |
| Daily (or as it happens) Newsletter (\$150 per month)  | \$1,500  |
| Annual Dashboard Report (\$2,500 annually)   | \$2,500  |
|  |          |
| <b>TOTAL</b>   | \$80,300 |

Flint Group will bill monthly accrued time and will manage to the total budget.

If the event the Authority directs FLINT to perform additional Services pursuant to Section 1 hereof, the Authority agrees to compensate FLINT accordingly for those additional Services.

4. Invoicing.

A. FLINT shall invoice to the Authority on the fifteenth day (15<sup>th</sup>) day of each month for all Services provided. FLINT must review each invoice before it is sent to the Authority to determine its accuracy and to ensure the invoice complies with the requirements in this Agreement. Each invoice will be entered into the Aconex system and processed by the Authority for the following month.

- B. FLINT must submit each original invoice to:
- Metro Flood Diversion Authority  
c/o Joel Paulsen  
PaulsenJ@fmdiversion.gov  
and

APIInvoicesFMDiv@jacobs.com

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

- a. FLINT's name and address;
- b. FLINT's federal employer identification number;
- c. Unique invoice number;
- d. Billing period;
- e. Description of each activity performed for each day in which Services were performed;
- f. Work order number associated with each activity, in accordance with the Exhibit A Budgetary Breakdown;
- g. Name, billing rate, and hours worked by each person involved in each activity, in accordance with the Exhibit A Budgetary Breakdown;
- h. Total amount of fees and costs "billed to date," including the preceding months;
- i. Preferred remittance address, if different from the address on the invoice's coversheet; and
- j. All of the work performed during that billing period, in accordance with the Exhibit A Budgetary Breakdown.

D. After the Authority receives FLINT's invoice, the Authority will either process the invoice for payment or give FLINT specific reasons, in writing within fifteen (15) business days, why part or all of the Authority's payment is being withheld and what actions FLINT must take to receive the withheld amount.

E. In the event of a disputed billing, only the disputed portion will be withheld from payment, and the Authority shall pay the undisputed portion. The Authority will exercise reasonableness in disputing any bill or portion thereof. Interest will accrue on any disputed portion of the billing determined to be due and owing to FLINT.



F. Payment does not imply acceptance of Services or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, FLINT must credit any payment in error from any payment that is due or that may become due to FLINT under this Agreement.

G. The 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.

H. If the Authority fails to make payment in full within thirty (30) days of the date due for any undisputed billing, FLINT may, after giving seven (7) days' written notice to the Authority, suspend Services under this Agreement until paid in full, including interest. In the event of suspension of services, FLINT will have no liability to the Authority for delays or damages caused by the Authority because of such suspension.

5. Return of Property. Upon termination of this Agreement or expiration of its Term, FLINT will return to the Authority any property, documentation, records, or confidential information which is the Authority's property.

6. Capacity/Independent Contractor. In providing the Services under this Agreement, FLINT is acting as an independent contractor and not as an employee. FLINT and the Authority acknowledge that this Agreement does not create a partnership or joint venture between them and is exclusively a contract for service. The Authority is not required to pay, or make any contributions to, any social security, local, state, or federal tax, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension, or any other employee benefit for FLINT during the Term. FLINT is responsible for paying, and complying with reporting requirements for, all local, state, and federal taxes related to payments made to FLINT under this Agreement.

7. Indemnification. FLINT agrees to release, hold harmless, defend, and indemnify the Authority, Cass County Joint Water Resource District, the City of Fargo, Cass County, and the State of North Dakota, and expressly assumes all risk of personal injury, death, and property damage or loss, from whatever cause, arising out of the performance of any obligation under this Agreement or incurred in connection with this Agreement. Such obligation shall extend to any risk, damage, or loss incurred through the action or failure to act of FLINT's employees, subcontractors, agents, assignees, or invitees, or any employees, subcontractors, agents, assignees, or invitees of FLINT's agents. FLINT's obligation to indemnify the Authority, Cass County Joint Water Resource District, the City of Fargo, Cass County, and the State of North Dakota shall include, but is not limited to: any and all claims, demands, liabilities, causes of action, penalties, losses, costs, damages, and expenses, including reasonable investigation and attorneys' fees and expenses and court costs, that may arise against or incurred by the Authority or the State of North Dakota in any way related to, caused by, or arising out of or in connection with the subject matter of this Agreement. FLINT shall not be required to indemnify the Authority, Cass County Joint Water Resource District, the City of Fargo, Cass County, or the State of North Dakota for claims, liabilities, damages, losses, or expenses caused by wrongful acts or omissions of the entities, their agents, or their employees. The provisions of this Section shall survive the Term or any termination of this Agreement.

8. Insurance. FLINT agrees to maintain and shall cause its subcontractors to maintain the following insurance coverage in relation to their performance of the Services provided under this Agreement:

A. Commercial General Liability ("CGL") Insurance with combined single limits of \$500,000 per occurrence and \$500,000 in the aggregate and ;

B. Workers' Compensation Insurance in the amount required by law.

The Authority, Cass County Joint Water Resource District, and the State of North Dakota shall be added as additional insureds to any policy. The CGL policy shall be considered primary insurance without recourse to or contribution from any similar insurance carried by the Authority. The

insurance certificate shall contain a provision that coverage afforded under the policy evidenced by such certificate will not cancelled or changed without at least thirty (30) calendar days' prior written notice to the Authority. FLINT shall deliver certificates of insurance to the Authority evidencing the existence of such policy within twenty-eight (28) calendar days from the effective date of this Agreement.

9. Performance. Each Party will perform its respective obligations under this Agreement and do everything necessary to ensure that the terms of this Agreement take effect.

10. Dispute Resolution. The Authority and FLINT shall endeavor to resolve claims, disputes, and other matters in question between them through non-binding mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Practices in effect on the effective date of this Agreement. A request for non-binding mediation shall be made in writing, delivered to the other Party to this Agreement and filed with person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution, but in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) calendar days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order. The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Cass County, North Dakota, unless another location is mutually agreed upon by the Parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the Parties do not resolve a dispute through non-binding mediation pursuant to this Section, then the method of binding dispute resolution shall be via formal claims filed in a court of competent jurisdiction.

11. Modification. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

12. Notice. All notices, requests, demands, or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties at the following addresses:

If to the Authority:     Attn: Joel Paulsen  
Metro Flood Diversion Authority  
207 4<sup>th</sup> Street North, Suite A  
Fargo, ND 58102

If to FLINT:             Flint Group, LLC  
c/o Ms. Sadie Rudolph  
101 10th Street North, Suite 100  
Fargo, ND 58102

The Parties may confirm in a prior written and signed writing to change or waive their notice address. Any notice given under this Agreement shall be deemed properly delivered (a) immediately upon being served personally, (b) five (5) calendar days after being deposited with the postal service if served by registered mail, or (c) the following day after being deposited with an overnight courier.

13. Time of Essence. Time is of the essence in the execution and performance of this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

14. Good Faith, Fair Dealing, and Cooperation. The Parties affirmatively represent that they are entering into this Agreement in good faith, complete cooperation, due diligence, and honesty, and with the full and complete intention to uphold the provisions of this Agreement. The Parties agree to deal fairly and cooperate with the other party regarding the purpose of this Agreement. The Parties must perform their obligations under this Agreement with reasonable skill and diligence and may not intentionally interfere with or prevent the other Party's performance of its

obligations under this Agreement. The Parties will seek to resolve any dispute arising under or in connection with this Agreement through cooperation.

15. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and their respective successors and assigns and shall not be deemed to confer upon third parties any remedy, claim, liability, or reimbursement, claim of action, or other right.

16. Assignment. FLINT will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Authority.

17. Merger. This Agreement constitutes the entire agreement between the Parties. All negotiations and previous agreements or conditions concerning the subject matter of this Agreement are merged into this Agreement. This Agreement contains no representation, warranty, or collateral condition except as expressly provided for in this Agreement.

18. Benefit. This Agreement will inure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators, successors, and assigns.

19. Interpretation. This Agreement shall be interpreted so as to enforce its purpose and the Parties' mutual intentions to the fullest extent allowable under law and equity. The headings and titles of this Agreement are for the convenience of the Parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and neuter and vice versa.

20. Choice of Law and Forum. This is a North Dakota contract which shall be governed by and construed in accordance with the laws of the State of North Dakota. Any action arising from or in connection to this Agreement shall find its forum and be venued in a district court in Cass County, North Dakota.

21. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

22. Remedies and Waiver. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the Parties thereto under and pursuant to this Agreement. The waiver by either Party of a breach, default, delay, or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

23. Currency. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in United States dollars.

24. Representations. Each of the Parties hereto represents and warrants to the other that the Party executing this Agreement has the authority to do so, knowing that each of the other Parties to this Agreement are acting in reliance upon such representation. The provisions of this Section shall survive the termination of this Agreement.

25. 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.

26. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall not be effective until a counterpart has been signed by each Party to be bound by it. Signatures provided by electronic transmission or facsimile shall be deemed as valid as original signatures.

27. Force Majeure. FLINT is not responsible for damages or delays in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of FLINT.

28. Electronic Signatures. Fargo-Moorhead Flood Diversion Authority and Flint Group, LLC, agrees that the electronic signature to this agreement shall be as valid as an original signature of Fargo-Moorhead Flood Diversion Authority and Flint Group, LLC and shall be effective to bind the signatories to this agreement. For purposes hereof: (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means or an electronic acknowledgment which provides the signatory the ability to validate and affix a digital signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

*(Remainder of page intentionally left blank.)*



This Agreement is executed the day and year above noted.

DIVERSION AUTHORITY:

Metro Flood Diversion Authority

By: \_\_\_\_\_  
Chad Peterson, Chair  
Diversion Authority Board

By: \_\_\_\_\_  
Joel Paulsen, PE, Executive Director  
Diversion Authority Board

*(Additional signature contained on the following page)*

FLINT:

Flint Group, LLC

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

Its: \_\_\_\_\_



**Metro Flood Diversion Authority**

**Web Design and Maintenance Services**

**February 7, 2022**

**Contact for this Proposal:**

**Sadie Rudolph**

**sadie.rudolph@flint-group.com**

## AGENCY BACKGROUND AND EXPERTISE

Established as Flint Communications in 1946, the current-day Flint Group employs more than 100 professionals throughout the upper Midwest and serves a broad range of businesses, industries, government entities and not-for-profit clients. Our focus on research and strategy, coupled with fresh, creative ideas, has led to proven marketing communications success for our clients – many of them client referrals and some who have been our clients longer than most of us have been alive.

Flint Group has main offices in Fargo, North Dakota, and Duluth, Minnesota, and strongly embraces the “find the best people” philosophy, resulting in a few key remote employees. We’ve fine-tuned our communication and project management skills by collaborating on client projects within the RR46 network, a collection of marketing businesses serving over 500 clients across five countries.

Our development team has built a large variety of web experiences, including customer portals, marketing websites, Intranets, microsites, mobile apps and landing pages. Since 2012, Flint has developed 220+ WordPress websites, 40+ Drupal websites and 50+ custom websites.

Our typical marketing websites have been well served using the WordPress platform, which we recommend for this project. The site will be built in compliance with compliance standards outlined in the RFQ. Flint follows secure coding practices based on a subset of the OWASP coding standards in the development and configuration of websites.

WordPress best practices are followed; when hosting with Flint Group automatic core updates and automatic plugin updates are also included.

## PROJECT TEAM

SADIE RUDOLPH

***Public Relations Manager  
and Strategist***

Sadie has extensive experience in content/storytelling, crisis communications, media relations, event coordination and integrated communications planning. She is passionate about implementing effective strategies that help clients achieve their goals. Sadie deeply values her strong relationships with internal and external stakeholders, including local, regional and other media representatives. She focuses on helping clients achieve success, so she is committed to develop the most efficient ways for clients to position themselves as the best in their own industries.

Years of industry experience: 14

JEN STRICKLER

***SVP Creative and Technology  
Director of UX***

Jen will be involved with creating positive audience experiences across your website and branding to increase engagement, client satisfaction and brand loyalty. With a solid foundation in visual design and content organization, Jen has extensive experience helping clients integrate content, graphic design and technology to form human-centered websites that drive results for service-oriented brands like Blue Cross Blue Shield of North Dakota, Kraus-Anderson, RLB, Alerus, Education Minnesota and Potatoes USA.

Years of industry experience: 23

CHRISTINE HOPER

***Project Manager***

Christine has been managing projects in some way, shape or form over 20 years in a variety of industries, including technology, nonprofits, finance and health care. She

will provide project management support on your website project all the way from discovery to launch, managing all aspects of digital project workflow and ensure handoffs between creative, development and production teams are smooth, efficient transitions.

Years of industry experience: 22

GEORGE HANNA

***Development Team Lead***

George will be the lead developer on your website, implementing an audience-friendly design that works seamlessly across all devices. He brings extensive technical skill to the table to provide functional solutions for you to leverage technology to solve communication challenges. George has more than 20 years of experience developing websites and software solutions for clients such as Alerus, AGCO, AvMed and Blue Cross Blue Shield of North Dakota. George has built a strong portfolio of development and web experience, including everything from marketing websites and online stores to property management systems, customized marketing software and more.

Years of industry experience: 20

NIK ESCH

***Senior Digital Designer***

Nik will design and assist in developing your website, ensuring everything comes together to create an inviting, on-brand experience. Nik's background spans much of the digital landscape, everything from illustration to 3D work and video games. In addition to his capabilities designing, updating and maintaining websites, Nik offers valuable insights on user interface and experience, brand identity, and the creation of both static and motion assets.

Years of industry experience: 6

# WEBSITE DESIGN AND DEVELOPMENT

## WEBSITE DISCOVERY

You have provided Flint Group a great head start with background on your web needs, desired website architecture and website performance. We would like to continue exploring the right path forward with a joint discovery session where we finalize website objectives based on your goals, SEO considerations and best practices and use cases. We are firm believers that if you're not tracking success, you're not improving. We will discuss your key success metrics for the site and ensure analytics are set up to allow your team to track, report and optimize them.

A developed (non-theme) WordPress website provides you with enhanced security, increased speed, business integration, guaranteed longevity and ease of use compared to an out-of-box purchased theme site.

By building a custom WordPress website, Flint Group offers our clients development flexibility that is unrestricted by pre-set theme limitations, while allowing you full flexibility to edit your site pages, navigation, copy and imagery through an easy-to-use content management system (CMS). For Metro Flood Diversion Authority (MFDA) that means all code written by Flint developers becomes the sole property of MFDA upon final payment.

Upon launch, the website is fully accessible to future modifications by MFDA, Flint Group and/or third-party developers of MFDA's choosing.

## INFORMATION ARCHITECTURE

Using any existing analytics and information learned in our discovery session with MFDA key stakeholders, we will build information architecture documents. Applying what is learned in discovery, our internal team will determine the site architecture, wireframes, keyword/content strategies and development plan.

These include a sitemap and wireframes that outline functional specifications to organize the content aligned to the user experience (UX) recommendations. The detailed website project scope will be written to encompass the approved sitemap and functional specifications. Following sitemap approval, we will create wireframes representing the unique page templates to align with the type of information and page functionality. The wireframes will help answer the following:

- What content is on the page
- How the content is organized on the page
- Guidance for page title, meta description and alt tag definitions that enhance SEO
- Which content is most important on the page – priority/hierarchy
- Site-wide application of cross links, feeds and ShareThis; following icons and best-practice guidance for MFDA content creators incorporating social media content into primary and custom-post pages
- Where users will go from this page – navigation, forms and page linkage

We also recommend Google indexing. Flint will generate a sitemap and submit it to Google for indexing, giving Google direct access to your website's content. Once the MFDA website sitemap has been indexed with Google, the search engine can reference content toward user search queries faster; updated or new content is picked up by Google immediately.

## DESIGN

The design stage begins upon final approval of the sitemap and wireframes. This stage covers the information, interface and navigation design, as well as the visual tone aligning with MFDA brand elements and desire for a visually engaging site. Flint Group has a mobile-first philosophy, which helps ensure content is quick-loading, prioritized and easily consumable on smaller and touch devices. We focus on which content or design elements are the most important, helping to cut through the clutter of extraneous words to tell a story. In addition, we think through mobile capabilities that reduce task-time, such as location-enabled finders, click-to-call, etc.

Appropriate visual design means that the fonts, icons, colors and layout fit with your brand and helps all website audiences, whether individuals, businesses or candidates across all journey stages, quickly find information, paths to action and solutions to their problems. Flint will work with MFDA on asset selection which could include existing MFDA photos or stock photography.

Before presenting the design templates to MFDA for review and input, the Flint Group internal project team will do a thorough internal review. The internal review is performed to ensure the design aligns with usability goals identified in discovery and meets accessibility standards, while also considering development and load time efficiencies.

We will present a home page and two prominent inside page designs (mobile and desktop view). Through two rounds of feedback, the website style will be determined, then we will create the remaining templates to align with MFDA's site goals and content priorities.

## CONTENT

Our development team embraces the full user experience model as they create a solid foundation for your site. We understand that this is an important investment for you and are committed to creating a clean, documented,

light code base that will allow for growth and scalability. The site will be built to support user management, as well as publishing controls like expiration dates, password protection and page previews. We vet all third-party plug-ins and integrations to ensure the site remains sound and secure.

A Flint Group copywriter will write up to 20 pages of content included in the information architecture, incorporating MFDA-provided SEO keywords to write HTML titles and meta descriptions; two rounds of content revisions are included. Flint will migrate content for primary pages represented in the IA into the new site and conduct content mapping to ensure all pages on the current site are redirected to new pages on the new site.

### Social Sharing

Flint will use the UltimatelySocial social sharing plug-in to create an admin in the CMS to create and maintain settings, allowing visitors to share website content across social networks. Platform-generated social sharing widgets will also be incorporated to feature content feeds from existing social accounts as desired.

### Site Search

Flint will use the Relevanssi plug-in to configure site-wide search, allowing for predictive results.

### Forms

Basic forms used on the website will be created using the Gravity Forms plug-in, allowing website editors to easily create, manage and export forms within the WordPress admin. If discovery identifies a need for more complex or robust forms, a separate estimate will be prepared.

### Accessibility

Flint will build the site considering WCAG 2.1AA standards. As part of the QA process, Flint will perform an accessibility audit using the PowerMapper tool. Flint will report on any compliance issues noted with the code and correct as desired (some compliance issues can hurt overall usability, so it is important to weigh the risk/rewards).

## DEVELOPMENT

Once the design templates are approved, Flint Group will complete development of the unique design templates and modules in WordPress, applying our experience-minded approach throughout the development process as well.

### EXPECTATION

### RESPONSIBLE

|   |                             |
|---|-----------------------------|
| <p>Content mapping<br/>Flint Group will provide a spreadsheet with existing MFDA website pages, which will be used in the creation of the updated sitemap. The existing content will be mapped to the new page and used to create 301-redirects, which automatically map a user with an old link to where that page content lives in the new site. This is best practice for UX.</p>  | <p>Flint Group<br/>MFDA</p> |
| <p>Assets<br/>MFDA will review assets available and will select stock photography recommendations if needed. Stock photo costs not included in this estimate. To support ADA, responsive design and page load time requirements, DLC &amp; MFDA-sourced media should be supplied in the following formats:<br/>Video – streaming platform URLs (YouTube, Vimeo, etc.)<br/>Audio – MP3 and MP4 files<br/>Photography – owned or external copyright sourced<br/>Downloads – ADA-compliant downloads (PDFs, Microsoft Office, etc.)<br/>Google Maps<br/>Exclusions: Because Adobe Flash is not supported across all platforms and does not meet RFP required ADA standards, Flash development and media formats are not included in this response.</p> | <p>Flint Group<br/>MFDA</p> |
| <p>Page creation<br/>Flint Group will build unique templates, perform an audit of current content, write meta data for primary pages identified within the approved sitemap and write page content. The MFDA team will be trained to update content and meta data pre-launch in a one-hour training session.</p>  | <p>Flint Group<br/>MFDA</p> |
| <p>Website style guide<br/>Flint Group will create a style guide for website pages, including styling for navigation, buttons, headings, paragraphs, in-copy links, ordered lists, call-out quotes, photo sizing and forms.</p>   | <p>Flint Group</p>          |
| <p>Social sharing<br/>Flint will use the UltimatelySocial social sharing plug-in to create an admin module in the CMS to create and maintain settings, allowing visitors to share website content across social networks. Platform-generated social sharing widgets will also be incorporated to feature content feeds from existing social accounts as desired.</p>  | <p>Flint Group<br/>MFDA</p> |
| <p>Site search<br/>Relevanssi plug-in will be used to configure site-wide search, allowing for predictive results.</p>  | <p>Flint Group</p>          |



|   |                     |
|---|---------------------|
| Forms<br>Forms used on the website will be created using the Gravity Forms plug-in, allowing website editors to easily create, manage and export form data and notifications within the WordPress admin.  | Flint Group         |
| Google Maps platform<br>Google Maps, Routes and Places functionality will be configured to support Contact Us and Find This for property listings. The MFDA team will be asked to create or provide access to the existing Google Account with associated payment method. | Flint Group<br>MFDA |
| Interactive project maps<br>All GIS mapping data is either iFramed or embedded using an existing third-party API from your current GIS data provider.   | Flint Group<br>MFDA |

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OPTIONAL/EXCLUDED WEB-RELATED SERVICES

- PDF creation or modification to meet WCAG 2.1 standards
- Infographic creation
- Resource library beyond links and simple forms download page

Following development, Flint Group and MFDA will work together to complete User Acceptance Testing (UAT), CMS training and website launch. The following elements are part of website launch.

| EXPECTATION                             | EXPLANATION   | RESPONSIBLE |
|---|---|-------------|
| Code, CSS and design templates          | Flint Group will design and build the site using WCAG 2.1 AA best practices, and will conduct a PowerMapper accessibility audit as part of website launch QA.   | Flint Group |
| Quality assurance (QA) review           | Prior to launch, sites are tested on Chrome, Firefox, Safari, and IE 10 and above, as well as the latest versions of default browsers on Android and iOS operating systems for mobile compatibility. We provide MFDA with a link for UAT. This is the phase where MFDA can ensure the website aligns with scope and layout. | Flint Group |
| User acceptance training                | We provide MFDA with a link for UAT. This is the phase where MFDA can ensure the website aligns with scope and layout.  | MFDA        |
| CMS user training                       | Upon successful UAT, Flint Group will provide CMS training and assist MFDA in launching the site and turning over all code and design files or will host the site with our hosting partner, if desired.   | Flint Group |
| Google Analytics and Google Tag Manager | As part of our launch process, we train content authors to update the relevant portions of the website and train administrators how to manage and provide content for the CMS.  | Flint Group |
| 30-day post implementation              | Flint Group’s analytics team will assist in setting up or modifying an existing GA and GTM environment, including setting up goals for measurable KPIs. Any bugs or issues created by Flint Group will be fixed.  | Flint Group |
| Dashboard reporting (optional)          | Flint Group can provide a dashboard report identifying pre-determined KPIs. This report includes recommendations for improvement in reaching pre-defined goals.   | Flint Group |

## ANALYTICS, MEASUREMENT AND REPORTING

Measurement, observation and continual optimization are critical to the health and success of any website and corresponding marketing. We understand that to successfully meet the needs of your audience, you need to have insight into where they’re going, what they’re doing and barriers to their success. We will work with you to ensure that we’re building pages strategically, using content, functionality and code that tracks key information that informs optimization opportunities. Using a sound measurement strategy combined with Google Tag Manager, Google Analytics and other possible tools, we’ll help ensure your site activity is easily measured. If desired, Flint Group can also work with the MFDA team to put together quarterly dashboard reports, complete with recommendations for improvements.

# PROPOSED BUDGET

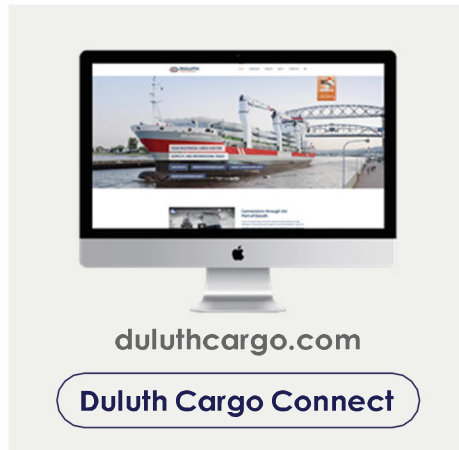
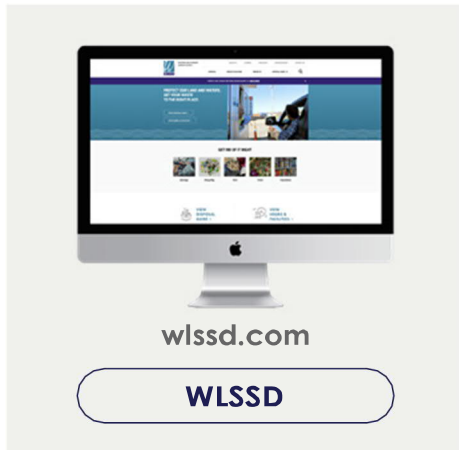
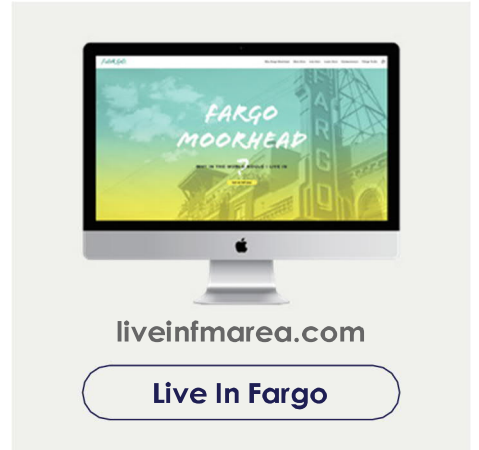
To keep the project on time and budget, we create a project schedule that will include dependencies and define responsibilities for MFDA and Flint Group. If needs shift as the project is underway, we will have an open and honest conversation about how any changes will affect the timeline and budget.

| WEBSITE  | COST            |
|--|-----------------|
| Phase: Project Planning, Discovery<br>Website discovery session prep and meetings<br>Project plan  | \$3,000         |
| Phase: Information Architecture (IA)<br>Sitemap<br>Wireframes  | \$13,800        |
| Phase: Content<br>HTML titles, meta descriptions, MFDA-provided SEO keywords<br>Create up to 20 pages of content based on approved IA, two rounds of revisions | \$10,800        |
| Phase: Design<br>Design with two rounds of revisions, for 7-10 page layouts based on approved IA<br>Style guide development                                    | \$18,500        |
| Phase: Develop and Deploy<br>Development<br>Content population of primary pages included in approved sitemap<br>Analytics implementation                       | \$23,000        |
| Phase: QA, UAT and CMS Training<br>QA and WCAG 2.1 AA compliance testing<br>User Acceptance Testing<br>CMS training  | \$6,700         |
| Website Launch<br>30-day guarantee   | Included        |
| <b>TOTAL WEBSITE RFP</b>   | <b>\$75,800</b> |

| ADDITIONAL/OPTIONAL SERVICES  | COST   |
|---|--|
| <p>Photography</p> <ul style="list-style-type: none"> <li>Stock recommendations and purchase @ \$75/photo; up to 30 images</li> </ul>   |  |
| <p>Hosting and server maintenance (optional)</p> <p><small>*Details on hosting options are provided separately.</small></p>   | Starts at \$600/year   |
| <p>CRM Admin and Editing Service (optional)</p> <ul style="list-style-type: none"> <li>Up to 30-hour combination of design, CMS admin, editing and development</li> <li>UX review of updates</li> <li>CRM publishing</li> </ul> | <p>\$5,000</p> <p>Up to 30 hours; budget and billing cycle flexible based on service utilization</p> |
| <p>Analytics dashboard (optional)</p> <ul style="list-style-type: none"> <li>Initial setup</li> <li>Quarterly reporting and insights</li> </ul>   | <p>\$2,000</p> <p>\$500-750/quarter</p>  |
| <p>Digital Copywriting (optional)</p> <ul style="list-style-type: none"> <li>Up to 20 pages of content with two rounds of revisions</li> <li>MFDA provided keywords</li> </ul>  | <p>\$10,500/20 pages</p>   |

## SIMILAR PROJECTS

Our development team has extensive experience in responsive web and content strategy, design and development. The examples of our work offer a cross-section of website work completed for other clients.



# All In for Your Success

Flint Group has a reputation for taking on tough challenges. We bring fresh thinking and a roll-up-your-sleeves work ethic to deliver finely tuned solutions to complex problems. And we believe in treating clients, like you, well – an approach that makes us trusted, long-term partners invested in your success.





January 31, 2021

**Metro Flood Diversion Authority  
Meltwater Reporting**



**COST ESTIMATE**



## Project Proposal:

Flint Group will provide daily (or as it happens) media monitoring reports for the Metro Flood Diversion Authority. Reports are produced by Meltwater and will be delivered in an e-newsletter. Annual dashboards compiling all mentions can be produced on an annual basis.

## Cost Estimate

| Service                                 | Estimate Range  |
|---|-----------------|
| Initial Setup                           | \$500           |
| Daily (or as it happens) newsletter     | \$150 per month |
| Dashboard report (can be done annually) | \$2,500         |





## Estimate Approval

This estimate is for anticipated costs of the project and is valid for 60 days. Should the scope change causing actual costs exceed the estimated amount, a new estimate will be developed. Any printing, shipping, postage, or other incidental expenses (e.g., travel) are not included in this estimate unless otherwise noted. The estimate includes the scope of work as outlined in this document. For items not mentioned, a revised scope of work will be completed with an accompanying estimate.

By signing this document, the project will commence, and you will be billed accordingly (monthly) for the work completed.

### Approved By:

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

Company: \_\_\_\_\_

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





# Diversion Authority Board Meeting

March 24, 2022

MOU and Agreement Actions for Consideration  
John Shockley

# DA Memorandum of Understanding (Action)



| MOU Parties   | Project | MOU Cost and Summary  |
|---|---------|---|
| Moorhead Public Service Commission & MFDA MOU               | DCAI    | The MOU outlines respective roles and responsibilities for the utility relocation work for Moorhead Public Service's facilities that will cross the SWDCAI within the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. The Authority is transferring the majority of the obligations set forth in this MOU to the Developer through the Project Agreement. The MOU addresses design; preliminary planning and engineering activities; property interest acquisition; construction; inspection, ownership and maintenance; future changes or additions; etc.  |
| Dickey Rural Networks & MFDA Utility Installation Agreement | DCAI    | The MOU outlines respective roles and responsibilities for the utility installation for Dickey Rural Networks fiber optic line crossing of the SWDCAI within the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. Dickey Rural Network is responsible for all costs of this Utility Installation Project. The MOU addresses design; preliminary planning and engineering activities; property interest acquisition; construction; inspection, ownership and maintenance; future changes or additions; etc.   |
| Berlin Township & MFDA MOU                                  | DCAI    | The MOU addresses design, construction, operating and maintenance, future changes or additions, etc. in respect to any impacts that the Fargo-Moorhead Metropolitan Area Flood Risk Management Project will have on township roadways. Design, construction, and maintenance costs will be covered by the Developer through the Project Agreement. Reimbursement includes the following: Construction costs and expenses up to \$3,000 annually from the effective date until project substantial completion; Post-construction costs and expenses up to \$1,500 annually after project substantial completion; a one-time lost tax revenue payment of \$9,007; and \$15,000 reimbursement for attorney's fees. |



# DA Memorandum of Understanding (Action)



| MOU Parties                  | Project                            | MOU Cost and Summary   |
|------------------------------|------------------------------------|--|
| City of Christine & MFDA MOU | Mitigation – Flood Control Project | <p>The Settlement Agreement contemplated the execution of this MOU between the City of Christine and MFDA to provide mutually agreeable terms for the Flood Control Project for the City. The purpose of this MOU is to ensure a coordinated, timely and cost-effective process for completing the Flood Control Project. The MOU addresses design; preliminary planning and engineering activities; property interest acquisition; construction; inspection, ownership and maintenance; future changes or additions; etc. Funding and reimbursement for the Flood Control Project include the following: The Authority is responsible for providing initial and annual funds for the design, construction, operation, and maintenance of the Flood Control Project including but not limited to consultant fees, preliminary activities, property acquisition, labor, materials, inspections, administrative costs, and legal fees and costs. The MOU currently includes a scope of work and fee for preliminary planning and engineering activities for \$650,000. Future scope and fee modifications will be brought forward under this MOU for future funding and reimbursement costs.</p> |
| Cass County & MFDA MOU       | Human Resources Services           | <p>The Authority has hired and may hire a small number of additional staff in the future. Given the County's large human resource department and the small number of employees hired and to be hired by the Authority in the future, the County offered to provide human resource services related to benefits and payroll services to Authority employees. The County's human resource department will provide human resource services related to payroll and benefits to the Authority's Executive Director and employees at no cost to the Authority, beginning January 1, 2022, through December 31, 2026.</p>   |

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**MEMORANDUM OF UNDERSTANDING**

**By and Between**

**METRO FLOOD DIVERSION AUTHORITY**

**and**

**MOORHEAD PUBLIC SERVICE COMMISSION**

**Dated as of February 4, 2022**

**Relating to:**

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

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This instrument was drafted by:  
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P.O. Box 458  
West Fargo, North Dakota 58078

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## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the Metro Flood Diversion Authority, a North Dakota political subdivision, whose post office address is 207 4th St. N, Suite A, Fargo, ND 58102, and the Moorhead Public Service Commission, (hereinafter referred to as the “Utility”). Metro Flood Diversion Authority and the Utility may be referred to collectively as “the Parties.”

### RECITALS

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

**WHEREAS**, the Utility has real property interests (hereinafter referred to as “Prior Property Interests”) within the area generally described in Article III of this Memorandum of Understanding and further described in Exhibits 1 through 12; and

**WHEREAS**, it will be necessary for the Prior Property Interests of the Utility to be relocated, protected, removed, or adjusted as part of “Utility Relocation Project” in coordination with construction of the Project;

**WHEREAS**, this Memorandum of Understanding is only intended to bind the Parties in regard to the portion of the Comprehensive Project north of the Southern Embankment and shall have no implications for or binding power in regard to the Parties work, efforts, or relations in the Southern Embankment. The Parties interactions with one another in the Southern Embankment shall be governed by a separate agreement between the Parties; and

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

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby state as follows:

### ARTICLE I. DEFINITIONS AND INTERPRETATION

**Section 1.01** DEFINITIONS. All capitalized and bolded terms used and not otherwise defined herein shall have the meanings given to them in this Memorandum of Understanding and as defined in this Section unless a different meaning clearly applies from the context.

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

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

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

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

**“Comprehensive Project”** means the Fargo-Moorhead Metropolitan Area Flood Risk Management Project authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo Moorhead Metropolitan Area Flood Risk Management, dated July 2011 and approved in accordance with the Chief’s Report, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the U.S. Army Engineer, St. Paul, on September 19, 2013, and as amended by the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering Documentation Report, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, ND and MN, Modifications Through February 2019.

**“Construction Documents Submittal”** means the design submittal described in Section 7.06(c) of this **Memorandum of Understanding**.

**“Effective Date”** means the date of the signatures below.

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

**“Final Design Submittal”** means the design submittal described in Section 7.06(b) of this **Memorandum of Understanding**.

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

**“IDF Line of Protection”** means inflow design flood line of protection.

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

“**Member Entities**” means those entities—the City of Moorhead, the City of Fargo, Clay County, Cass County, and the CCJWRD—signing the Joint Powers Agreement Dated as of June 1, 2016, establishing and continuing a joint powers entity called the Metro Flood Diversion Authority.

“**Memorandum of Understanding**” means this **Memorandum of Understanding** by and between the **Metro Flood Diversion Authority** and the **Utility**.

“**Metro Flood Diversion Authority**” means the political subdivision created by the Joint Powers Agreement, effective June 1, 2016, by and between the City of Moorhead, a political subdivision of the State of Minnesota; the City of Fargo, a political subdivision of the State of North Dakota; Clay County, a political subdivision of the State of Minnesota; Cass County, a political subdivision of the State of North Dakota; and Cass County Joint Water Resource District, a political subdivision of the State of North Dakota, and vested with the powers therein.

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

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

“**Parties**” means the **Metro Flood Diversion Authority** and the **Utility**.

“**Preliminary Design Submittal**” means the design submittal described in Section 7.06(a) of this **Memorandum of Understanding**.

“**Prior Property Interest(s)**” means any property interest(s) owned by the **Utility** that **Metro Flood Diversion Authority** or **P3 Developer** deems necessary to **Relocate** as identified in Section 3.02 of this **Memorandum of Understanding**.

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

“**Project Agreement**” means a Public-Private Partnership Agreement as authorized by Chapter 48-02.1 of the North Dakota Century Code, by and between the **Metro Flood Diversion Authority**, or one or more member entities authorized by the **Metro Flood Diversion Authority**, and the **P3 Developer** for design, construction, financing, operation, and maintenance of the **Project**.

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

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

“**Relocate,**” “**Relocated,**” or “**Relocation**” means providing a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding railroad bridges and approaches thereto required for construction of the **Comprehensive Project**), or public facility

when such action is authorized in accordance with applicable legal principles of just compensation; or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a **Relocation** in the authorizing legislation for the **Project** or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, rising, or replacement and attendant demolition of the affected facility or part thereof.

**“Shop Drawings and Samples”** means shop drawings, laying drawings, erection drawings, fabrication drawings, product information, catalog information, samples, mock-ups, plans, test procedures and results, descriptions of services, descriptions of specific means, and methods and related documentation.

**“Site(s)”** means the physical location at which any **Utility Adjustment Construction Work** is being done, has been done, or will be done as part of the **Utility Relocation Project**.

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

**“SWDCAI”** means the Storm Water Diversion Channel and Associated Infrastructure, portion of the **Comprehensive Project**, which is being procured by the **Metro Flood Diversion Authority** and includes, but is not limited to, the thirty (30) mile channel, outlet, river and drain inlets, road bridges, railroad bridges, aqueducts, utility relocations, and recreational features.

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

**“USACE”** means the United States Army Corps of Engineers.

**“Utility Adjustment”** means each **Relocation** (temporary or permanent), abandonment, protection in place, adjustment in place, removal (of previously abandoned utilities as well as of newly abandoned utilities), replacement, reinstallation, or modification of existing utilities necessary to accommodate construction, operation, maintenance or use of the **Project**. The **Utility Adjustment Work** for each crossing of the **Project** right-of-way by a utility that crosses the **Project** right-of-way more than once will be considered a separate **Utility Adjustment**. For any utility installed longitudinally within the **Project** right-of-way, the **Utility Adjustment Work** for each continuous segment of that utility located within the **Project** right-of-way will be considered a separate **Utility Adjustment**.

**“Utility”** means the Moorhead Public Service Commission.

**“Utility Adjustment Completion”** means that the **Utility Adjustment Construction Work** for a **Utility Adjustment** is sufficiently complete in the opinion of the **Metro Flood Diversion Authority** and the **Utility**.

**“Utility Adjustment Construction Work”** means all **Utility Adjustment Work** related to construction.

**“Utility Adjustment Design Work”** means all **Utility Adjustment Work** related to design.

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

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

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

**Section 1.02** TERMS GENERALLY. The definition of terms herein applies equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun includes the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” are deemed to be followed by the phrase “without limitation.” The word “will” is construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein is construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications set forth herein), (b) any reference herein to any person is construed to include any person’s permitted successors and assigns, (c) the words “herein,” “hereof,” and “hereunder,” and words of similar import, is construed to refer to this **Memorandum of Understanding** in its entirety and not to any particular provision hereof, and (d) all references herein to articles, sections, exhibits, and schedules are construed to refer to articles and sections of, and exhibits and schedules to, this **Memorandum of Understanding**.

**Section 1.03** SURVIVAL OF TERMS. The terms of this **Memorandum of Understanding** shall survive through the thirty-year period following **Project Substantial Completion** and for successive ten-year terms until the **Parties** hereto, their respective successors or assigns agree to terminate this **Memorandum of Understanding** as provided for herein. The provisions of Article X shall continue to bind the **Parties** for as long as **Utility** has property within the **Project Footprint**.

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

## ARTICLE II. PURPOSE OF MEMORANDUM OF UNDERSTANDING

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



**Section 2.02** COORDINATION BETWEEN ENGINEERS. The **Parties** are likely to employ the use of professional engineers in the completion of **Utility Adjustment Construction Work**. Engineers employed by the **Parties** shall maintain open lines of communication, coordinate, and collaborate with engineers employed by other parties described herein.

**Section 2.03** COORDINATION WITH USACE. **Utility** shall not communicate directly with the **USACE** regarding any aspect of the **Comprehensive Project** or any other subject-matter referenced in, related to, or arising from this **Memorandum of Understanding**, without the prior written authorization of the **Metro Flood Diversion Authority**.

**ARTICLE III.  
REAL PROPERTY INTERESTS**

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

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

| <b>Exhibit No.</b> | <b>Section</b> | <b>Township</b> | <b>Range</b> | <b>Type</b> | <b>Preliminary Diversion Channel Station</b> | <b>Right of Way Documents</b> |
|--------------------|----------------|-----------------|--------------|-------------|--|-------------------------------|
| 1                  | 24             | 139             | 50           | OH Electric | 1113+00                                      | 330560                        |
| 2                  | 24             | 139             | 50           | OH Electric | 1113+00                                      | 330560                        |
| 3                  | 24             | 139             | 50           | OH Electric | 1113+00                                      | 330560                        |
| 4                  | 24             | 139             | 50           | OH Electric | 1113+00                                      | 330560                        |
| 5                  | 24             | 139             | 50           | OH Electric | 1113+00                                      | 330561                        |
| 6                  | 24             | 139             | 50           | OH Electric | 1113+00                                      | 330561                        |
| 7                  | 24             | 139             | 50           | OH Electric | 1113+00                                      | 330561                        |
| 8                  | 24             | 139             | 50           | OH Electric | 1113+00                                      | 330561                        |
| 9                  | 24             | 139             | 50           | OH Electric | 1113+00                                      | 330562                        |
| 10                 | 24             | 139             | 50           | OH Electric | 1113+00                                      | 330562                        |
| 11                 | 24             | 139             | 50           | OH Electric | 1113+00                                      | 330562                        |
| 12                 | 24             | 139             | 50           | OH Electric | 1113+00                                      | 330562                        |

**Section 3.03** UNDISCLOSED PRIOR PROPERTY INTERESTS. If the **Metro Flood Diversion Authority**, for any reason, determines **Undisclosed Prior Property Interests** should be

**Relocated**, such **Relocation** shall occur pursuant to the terms of this **Memorandum of Understanding**.

**Section 3.04** DISCOVERY OF UNDISCLOSED PRIOR PROPERTY INTERESTS. **Undisclosed Prior Property Interests** identified for **Relocation** prior to request for submission of the first submittal required by Article VII shall be **Relocated** through the same process as if the **Undisclosed Prior Property Interests** were disclosed herein. A separate accounting and recording of costs shall be maintained for **Undisclosed Prior Property Interests** and **Prior Property Interests** disclosed herein. Should **Undisclosed Prior Property Interests** be identified after the submission of one or more submittals pursuant to Article VII, the **Utility** shall, within sixty (60) days of written notification of identifying **Undisclosed Prior Property Interests** to be **Relocated**, submit a **Supplemental Plan** meeting the requirements of Article VII, for the **Relocation of Undisclosed Prior Property Interests**. Each **Party** shall have the same rights and responsibilities as they would have if the **Supplemental Plan** were included in previously approved plans, as detailed in Article VII, unless explicitly provided otherwise herein.

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

**Section 3.06** ACQUISITION OF EASEMENT. **Metro Flood Diversion Authority** shall use its **Best Efforts** to acquire any easements and/or right-of-way it determines are necessary for the **Utility Relocation Project** as provided for in Section 7.03 of this **Memorandum of Understanding**. This Section shall not apply to any easements constituting a **Betterment**.

#### ARTICLE IV.

#### RESPONSIBILITY FOR UNDISCLOSED PRIOR PROPERTY INTERESTS

**Section 4.01** UTILITY RESPONSIBILITY. The **Utility** shall be responsible for the cost of **Relocating Undisclosed Prior Property Interests**, unless provided otherwise herein.

**Section 4.02** REQUESTS FOR RELIEF. Within thirty (30) calendar days of **Utility Adjustment Completion**, the **Utility** may file a written request for relief with the **Metro Flood Diversion Authority** requesting payment or partial payment for the costs of **Relocating Undisclosed Prior Property Interests**, which such relief will not be unreasonably withheld. This request for relief shall be a separate document from the cost report required by Article VII, but shall be submitted to the **Metro Flood Diversion Authority** in conjunction with the cost report required by Article VII. All requests for relief shall include an itemized list of costs, the total amount requested, and justification for **Utility's** failure to identify the **Undisclosed Prior Property Interest**. Requests for relief may be approved, approved in part and denied in part, or denied.

#### ARTICLE V.

#### RIGHT OF SITE ACCESS

**Section 5.01** RIGHT OF SITE ACCESS. To ensure the **Metro Flood Diversion Authority** is able to proceed with construction of the **Project** in a timely and efficient manner, as well as to properly monitor and ensure proper completion of the **Utility Relocation Project**, to the extent the **Metro Flood Diversion Authority** requires a grant of access over, across, or through any

**Utility** right-of-way, the **Utility** hereby grants the **Metro Flood Diversion Authority** right-of-way in, on, over, and across any and all **Sites** as well as the right to access, enter, and inspect any **Site**.

**Section 5.02** NON-REVOCABLE RIGHT OF THE METRO FLOOD DIVERSION AUTHORITY. Nothing herein shall be construed as limiting or providing for the termination of **Metro Flood Diversion Authority** rights or authority.

**Section 5.03** PERMISSION REQUIRED. Between the Effective Date and **Project Substantial Completion**, **Utility** shall request and be given permission to access a **Site** by the **Metro Flood Diversion Authority**, at least forty-eight hours prior to accessing a **Site**. Prior to **Project Substantial Completion**, the **Metro Flood Diversion Authority** may deny **Utility** access to any **Site**. In the event of an emergency affecting safety or interruption of service to its customers, **Utility** will give as much notice as reasonably possible before accessing a **Site** but may not interfere with active construction activities.

**Section 5.04** DUTY TO TAKE CARE. If the Metro Flood Diversion Authority accesses a Site, it shall take protective safety measures as follows:

- (a) Abide by and comply with all applicable federal, state, and local laws and safety codes.
- (b) Maintain at least fifteen (15) feet of clearance based on maximum sag from any of the **Utility**'s transmission line conductors to the closest object.
- (c) Before allowing people or equipment capable of contacting or approaching transmission line conductors within less than fifteen (15) feet, the **Metro Flood Diversion Authority** or its authorized representative agrees to provide **Utility** not less than fourteen (14) days prior written notice, as required by WAPA and Southwest Power Pool ("SPP").
- (d) Not plant any trees or shrubbery in the Easement Area expected to exceed fifteen (15) feet in height above ground level.

## ARTICLE VI. REQUIRED REPORTS

**Section 6.01** REQUIRED REPORTS. The **Utility** will cooperate with the **Metro Flood Diversion Authority** to identify and supply required reports, analysis, or other information and materials relevant to the **Project** in **Utility**'s possession.

**Section 6.02** DEADLINES. All reports, engineering analysis, and other information and materials requested by the **Metro Flood Diversion Authority** pursuant to Section 6.01 shall be provided before the expiration of a reasonable deadline determined by the **Metro Flood Diversion Authority**.

**ARTICLE VII.  
PERFORMANCE AND CONSTRUCTION**

**Section 7.01 DESIGN.** The **Utility** is investigating the potential for its infrastructure to be relocated just north of 32<sup>nd</sup> Avenue West, just south of **Utility**'s existing easement (the "Desired Location"). Should the **Utility** obtain the property rights required to locate its infrastructure in the **Desired Location** in time to reasonably allow for location of the **Utility**'s line in the **Desired Location** without causing delay to the **Utility Relocation Project**, the **Metro Flood Diversion Authority** shall cooperate with **Utility** to effectuate such a relocation. All actual costs for the **Utility Adjustment Work** above those estimated for relocating the **Utility** infrastructure within its existing easement shall be considered a **Betterment**, the costs of which shall be borne entirely by **Utility**. **The Utility Adjustment Design Work** shall be completed as follows:

- (a) The **Metro Flood Diversion Authority** shall submit the **Utility Adjustment Design Work** to the **Utility** as described in Section 7.04 of this **Memorandum of Understanding**.
- (b) Submittals developed pursuant to this **Memorandum of Understanding** shall be reviewed by **Utility** in accordance with Section 7.04.
- (c) The **Utility** support structures will be sized appropriately for 795 Drake ACSS with the capacity and capability to add OPGW on the static line.
- (d) The design will include a backup/temporary design in the event a new support structure fails. This will require either a spare structure or a temporary design for use until a replacement for the failed structure is in place.
- (e) Towers or tower foundations may not be located within fifteen (15) feet of the **Diversion Channel Line of Protection**.
- (f) Guy wires and anchors to support the towers may not be located within fifteen (15) feet of the **Diversion Channel Line of Protection**.
- (g) Meet or exceed the minimum height requirement of the National Electric Safety Code (NESC) for transmission line conductors above finished grade. Locate the transmission lines so as to not interfere with the integrity and or operation of the Diversion Channel or the **Diversion Channel Line of Protection**.
- (h) Abandoned utilities will be removed, pursuant to easements, as applicable. Abandoned utilities are defined as transmission structures, transmission lines, and associated equipment in the delivery of power that is no longer needed for the intended purposes. Damage done to access roads or paths and areas from which abandoned utilities will be removed will be repaired and restored to an undamaged condition consistent with adjacent property, including seeding or sodding to grass, if that is what is in the surrounding area. Watering will be the landowner's responsibility. This will be a **Metro Flood Diversion Authority** expense.

**Section 7.02 CONSTRUCTION.** Except as provided otherwise herein, the **Metro Flood Diversion Authority** shall be responsible for and bear the cost of all **Utility Adjustment**

**Construction Work**, any of which may be assigned to third parties at the sole discretion of the **Metro Flood Diversion Authority**.

**Section 7.03** ADDITIONAL RIGHT OF WAY.

- (a) Betterments. Should the design include **Betterments** requiring additional right-of-way and/or easements, the **Utility** shall be responsible for the acquisition and cost of any right-of-way needed to accommodate **Betterments** at no cost to **Metro Flood Diversion Authority**.
- (b) Acquisition. The **Metro Flood Diversion Authority** shall use its **Best Efforts** to acquire any right-of-way necessary for the **Utility Relocation Project**, not including **Betterments**, unless provided otherwise herein.
- (c) Purchase Price. Should the **Utility** need or elect to acquire right-of-way for the benefit of or in connection with the **Utility Relocation Project** outside of the **Project Property**, the **Utility** shall request and obtain the **Metro Flood Diversion Authority's** consent to the price included with any such offer, before extending the offer to a would-be seller. Consent shall not be unreasonably withheld or delayed. Should **Utility** be unable to acquire property interests at a price acceptable to the **Metro Flood Diversion Authority**, it will be **Metro Flood Diversion Authority's** responsibility to work with the **Utility** to redesign the relocation if necessary. The **Utility** has the option of contributing to the cost of easement acquisition.

**Section 7.04** PROPOSALS AND PLANS. Any time following the execution of this **Memorandum of Understanding**, the **Metro Flood Diversion Authority** may provide the **Utility** a **Preliminary Design Submittal**, a **Final Design Submittal**, and a **Construction Document Submittal** for review, comment and approval by **Utility**.

- (a) Preliminary Design Submittal. The **Metro Flood Diversion Authority** shall complete a **Preliminary Design Submittal** to a minimum of approximately thirty percent (30%) level of design completion and define the basis of design for all aspects of each **Utility Adjustment** of the **Utility Relocation Project**. The **Preliminary Design Submittal** shall include, if applicable, calculations demonstrating that the proposed configuration meets and satisfies the technical requirements contained herein. The **Preliminary Design Submittal** shall also provide sufficient detail to demonstrate compliance with all design and construction requirements as described herein. All of the following should also be included in the **Preliminary Design Submittal**:
  - (i) A plan for completion of work on the **Utility Relocation Project**, including, but not limited to the intended sequence of work.
  - (ii) A schedule outlining construction, testing, outages, and start and end dates.
- (b) Final Design Submittal. The **Metro Flood Diversion Authority** shall complete a **Final Design Submittal** including, a completed design, an updated specifications content sheet, calculations verifying the design performance, geotechnical information, **Project** test and survey data, and all other related design and

engineering reports, studies, and analyses. The **Final Design Submittal** shall also contain complete applicable technical specifications. In addition to the aforementioned information, the **Final Design Submittal** shall include:

- (i) **Utility** plan and profile alignments demonstrating conformance with the terms of this Section.
  - (ii) **Site** plans for the location of appurtenances and structures and **Utility** line markers.
  - (iii) When horizontal directional drilling is used, submittals and testing referenced in the design guidelines described or referenced in this **Memorandum of Understanding**.
  - (iv) Geotechnical calculations, as noted above.
- (c) Construction Documents Submittal. The **Metro Flood Diversion Authority** shall complete and provide a **Construction Documents Submittal**. The **Construction Documents Submittal** shall include the final plans for construction, the **Final Design Submittal**, the final specifications content sheet, calculations detailing design performance, geotechnical information, **Project** test and survey data, and other related design and engineering reports, studies, and analyses. The **Construction Documents Submittal** shall incorporate and address review comments from the **Final Design Submittal** and describe each change made since submission of the **Final Design Submittal**. Upon completion of the **Construction Documents Submittal**, the **Metro Flood Diversion Authority** shall sign and seal the contents of the **Construction Documents Submittal** as required by applicable laws.
- (d) Review. The **Utility** shall complete a full review of each submittal and provide comments and/or approval.
- (i) The **Utility's** review of submittals shall be restricted to a determination of whether the submittal complies with the specifications and requirements set forth in this **Memorandum of Understanding** and the performance specifications provided in the **Utility's** technical specifications submittal described in this Article.
  - (ii) The **Utility** shall comment on submittals within twenty (20) **Business Days** of the date on which the **Metro Flood Diversion Authority** provides a submittal. Should the **Utility** determine a submittal is not in compliance with the terms and specifications of this **Memorandum of Understanding**, and the **Metro Flood Diversion Authority** resubmits an amended submittal, the **Utility** shall review and respond to the amended submittal within ten (10) **Business Days**. The **Utility's** review of re-submittals shall be limited to portions of the resubmittal previously deemed noncompliant as well as any other portions of the resubmittal which have been amended or added since the initial submission. In the event that the **Utility** does not provide comments within the period prescribed by this **Memorandum of**

**Understanding**, the **Metro Flood Diversion Authority** shall provide written notice of the failure to respond. If the **Utility** does not respond within five (5) **Business Days** of receiving written notification, the submittal shall be deemed approved

**Section 7.05** OTHER APPROVALS. The **Utility** shall promptly apply for and obtain all **Other Approvals** necessary for the **Utility Relocation Project**. To the extent the **Utility Adjustment Design Work** calls for **Utility** infrastructure or property of any kind to cross above, below, or through **Water Resource District Infrastructure**, the **Utility** shall obtain a utility permit from the relevant water resource district prior to the initiation of **Utility Adjustment Construction Work**. **Metro Flood Diversion Authority** will provide reasonable assistance in support of **Utility**'s efforts to obtain a utility permit upon a written request for assistance.

**Section 7.06** ADJUSTMENTS TO THE PROJECT. Should the planned route of the **SWDCAI** change in a material manner, the **Utility** and **Metro Flood Diversion Authority** shall interface to adjust plans for the **Utility Relocation Project** as necessary. The **Utility** shall be reimbursed for any costs associated with such change in accordance with the terms of this **Memorandum of Understanding**.

**Section 7.07** ADJUSTMENTS TO THE UTILITY ADJUSTMENT WORK. Any changes or modifications to the **Construction Documents Submittal** during construction that materially affect the performance or construction of the **Utility Adjustment Work** will be subject to written approval by the **Utility**. The **Metro Flood Diversion Authority** will submit the proposed changes or modifications to the **Utility** for review and approval. The **Utility** shall review the submittals in accordance with procedure and timelines in Section 7.04. **Utility** lines not required to be moved prior to the adjustment of **Construction Documents Submittal**, which need to be **Relocated** after changes are made to **Construction Documents Submittal** shall not be treated as **Undisclosed Prior Property Interests** for purposes of assigning responsibility for costs.

**Section 7.08** INSPECTION. The **Utility** shall be responsible for inspection of the **Utility Adjustment Construction Work**; however, the **Metro Flood Diversion Authority** shall have concurrent rights of inspection. Inspections shall occur on a day and time mutually agreeable to **Utility** and **Metro Flood Diversion Authority**. The **Metro Flood Diversion Authority** will grant permission to **Utility** to access the **Utility Adjustment Construction Work** for purposes of inspection pursuant to this Section.

**Section 7.09** UTILITY COMPLETION. The **Metro Flood Diversion Authority** will provide **Utility** written notice of any anticipated **Utility Adjustment Completion** for the **Utility Adjustment Construction Work** at least sixty (60) calendar days and fifteen (15) **Business Days** prior to the anticipated date for **Utility Adjustment Completion**. Within ten (10) **Business Days** of the anticipated date for **Utility Adjustment Completion**, the **Metro Flood Diversion Authority** will notify the **Utility** of its progress so as to allow **Utility** to schedule a final inspection of the **Utility Adjustment Construction Work** to determine whether the **Utility Adjustment** meets the final design and any material changes or modifications made pursuant to this **Memorandum of Understanding**. If **Utility** finds the construction is not in conformance with the **Construction Documents Submittal** or any approved material changes or modifications, **Utility** shall notify the **Metro Flood Diversion Authority** of such fact within ten (10) calendar days and the **Metro Flood Diversion Authority** will correct such nonconformance and re-notify the **Utility** for inspection.

## ARTICLE VIII. PAYMENT OF COSTS

**Section 8.01** NECESSITY TO KEEP COSTS LOW. The **Utility** and **Metro Flood Diversion Authority** each recognize the need to minimize the cost of the **Utility Relocation Project**, while seeking to maintain the same quality of service to the **Utility's** customers. The **Utility** and **Metro Flood Diversion Authority** shall be diligent in keeping costs as low as reasonably possible.

**Section 8.02** COSTS, GENERALLY. The **Metro Flood Diversion Authority** shall pay for or reimburse **Utility** for all reasonable costs of the **Utility Relocation Project**, whether those are external costs incurred by the **Utility** or costs incurred by the **Metro Flood Diversion Authority**. The **Metro Flood Diversion Authority** will not pay the internal costs and expenses of **Utility**.

**Section 8.03** REPORTING OF COSTS. Upon completion of the **Utility Relocation Project**, the **Utility** shall submit a detailed, itemized report of the costs and expenses incurred to third parties, including reasonable engineering and legal fees, by the **Utility** for the **Utility Relocation Project**, for which the **Utility** desires to be reimbursed.

**Section 8.04** REJECTION OF COSTS. The **Metro Flood Diversion Authority** may reject reported costs and expenses to the extent it deems any specific cost or expense is unreasonable. Notice of rejection of any cost or expense shall be provided to **Utility** in writing.

**Section 8.05** APPEAL OF A DECISION TO REJECT COSTS. The **Utility** may appeal a decision rejecting any cost by providing the **Metro Flood Diversion Authority** written notice of the appeal and justification for its expenses within twenty (20) days of its receipt of the rejection notice. Should **Utility** be unhappy with the outcome of a decision to reject costs under this Section, **Utility** may challenge the reasonableness of the decision through the process provided for in Sections 12.03 and 12.04 of this **Memorandum of Understanding**.

**Section 8.06** WRITTEN JUSTIFICATION OF COSTS. Within twenty (20) days of receipt of the written notice described in Section 8.05, the **Metro Flood Diversion Authority** shall determine which **Party** will bear the rejected costs.

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

**Section 8.08** BETTERMENTS. In no situation shall the **Metro Flood Diversion Authority** be responsible for the costs and expenses of betterments to the **Utility** facilities installed during the **Utility Relocation Project**.

## ARTICLE IX. ASSIGNMENT OF RESPONSIBILITIES

**Section 9.01** ASSIGNMENT BY THE METRO FLOOD DIVERSION AUTHORITY. The **Metro Flood Diversion Authority** may, in its sole discretion, assign all or any of its rights, responsibilities, authorities, or obligations under this **Memorandum of Understanding**.



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

**ARTICLE X.  
FUTURE RIGHTS AND RESPONSIBILITIES**

**Section 10.01** RIGHT-OF-WAY. If necessary for purposes of the **Utility Relocation Project**, the **Metro Flood Diversion Authority** shall grant the **Utility** a right-of-way below, above, and across its right-of-way so the **Utility** can properly maintain its facilities in the right-of-way. The right-of-way shall be subject to the following restrictions and requirements:

- (a) Maintenance of Utility Property. Following completion of the **Utility Relocation Project**, the **Utility** shall be responsible for all maintenance of **Utility** property and associated infrastructure.
- (b) Post-Construction Access. Following completion of the **Utility Relocation Project**, the **Utility** shall provide the **Metro Flood Diversion Authority** with written notice, at least three (3) **Business Days** prior, of any maintenance it intends to do within the **Project Right-of-Way**, unless said maintenance is previously unplanned, but necessary due to an emergency situation.
- (c) Approval for Ground Disturbing Maintenance or Repairs. The **Utility** must obtain written approval from **Metro Flood Diversion Authority** before initiating any maintenance or repair which requires the ground with the **Project Property** to be disturbed.
- (d) Clean Up. The **Utility** shall ensure that after any maintenance or repairs to **Utility** property, the ground within the **Project Property** is returned to the state in which it existed prior to the maintenance or repair that caused the ground within the **Project Property** to be disturbed.
- (e) Access. The **Metro Flood Diversion Authority** shall have unrestricted access in, over, and across the easement. The **Metro Flood Diversion Authority** shall not construct any buildings or structures over the easement granted pursuant to this Article that will permanently and/or entirely limit **Utility's** access to its facilities.
- (f) No above ground structures may be constructed in the easement area or right-of-way granted to **Utility** without **Utility's** written consent, which may not be unreasonably withheld. The area may be covered with a hard surfacing and used for driving, walking or parking. No water retention areas may be constructed within two hundred fifty (250) feet of a **Utility** support structure. This does not apply to the **SWDCAI**. No trees which will attain a height in excess of fifteen (15) feet may be grown or allowed to grow in the **Utility** easement/right-of-way area.
- (g) Damage to the SWDCAI. Should the **Metro Flood Diversion Authority** reasonably determine that **Utility** action, omission, or property malfunction, or

deconstruction causes damage to the **SWDCAI**, the **Utility** shall be responsible for the cost of repairing said damage.

- (h) Abandonment. Should the **Utility** abandon or remove a utility line within the easement prior to initiation of the **Utility Relocation Project** or after completion of the **Utility Relocation Project** and fail to replace the line within three (3) years of removal, the **Utility** shall forfeit and extinguish said easement.

**Section 10.02** USE OF EXISTING EASEMENT. In the event **Utility** property is **Relocated** within **Utility**'s currently existing easement, the **Utility** shall exercise its rights under any existing easement subject to the requirements and obligations contained in Section 10.01. The requirements of this Section shall survive so long as the **Utility** has property located within the **Project Property**.

**Section 10.03** RECORD KEEPING. The **Utility** shall maintain or cause to be maintained (by way of contract and enforcement of such contract) a complete set of records detailing all costs it incurs in the **Utility Relocation Project**, in accordance with the recordkeeping and audit requirements of this **Memorandum of Understanding** and the laws of North Dakota.

**Section 10.04** FUTURE PERMITS. Should the **Utility** file a formal permit application pertaining to the utility line **Relocated** pursuant to this **Memorandum of Understanding**, with the **Metro Flood Diversion Authority** after the **Effective Date**, the **Metro Flood Diversion Authority** shall grant, at no cost to the **Utility**, the permit application so long as the permit application meets all reasonable requirements listed in the instructions to said permit application and the proposed crossing would not unreasonably risk harm to the **SWDCAI** or interfere with other facilities already contained within the **Project Property**, as determined by the **Metro Flood Diversion Authority**. Should an existing **Utility** line be modified in the future, the **Metro Flood Diversion Authority**, in its sole discretion shall determine whether the modification is allowable under a previously existing permit or whether the modification is significant enough in its nature or effect to require the **Utility** to apply for a new permit. The term "modifications" as used in this Section, include changes that bring new or existing conductors below the height elevation approved pursuant to Article VII, changes that would move tower locations approved pursuant to Article VII, or any other changes that would impinge upon the clear space between the inner edges of the towers located immediately adjacent to either side of the channel or the conductor elevations and the ground approved pursuant to Article VII.

**Section 10.05** MAINTENANCE OF UTILITY PROPERTY. The **Utility** shall be responsible for all maintenance of **Utility** property and associated infrastructure.

## ARTICLE XI. DISPUTES WITH CONTRACTORS AND OTHER THIRD PARTIES

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

**ARTICLE XII.**  
**DISPUTES AMONG THE UTILITY, AND METRO FLOOD DIVERSION AUTHORITY**

**Section 12.01** INTENT AND PROCEDURE. The **Parties** shall cooperate and use their **Best Efforts** to ensure that the provisions of this **Memorandum of Understanding** are fulfilled. The aforementioned **Parties** agree to act in **Good Faith** to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this **Memorandum of Understanding**. If disputes cannot be resolved informally by the **Parties** or under other, situation-specific dispute resolution mechanisms contained herein, the following procedure shall be used.

**Section 12.02** MEDIATION. If there is a failure between the **Parties** to resolve a dispute on their own, the **Parties** shall first attempt to mediate the dispute. The **Parties** shall agree upon a single mediator, or if they cannot agree, each shall contribute three names to a list of mediators and select a mediator by alternately striking names until one remains. The **Parties** shall flip a coin, with **Metro Flood Diversion Authority** selecting whether the coin lands heads up or tails up. The **Party** that wins the coin toss shall strike the first name, followed by the other **Party**, until one name remains.

**Section 12.03** LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within thirty (30) days after the end of mediation proceedings, the **Parties** may litigate the matter.

**Section 12.04** LEGAL FEES. Each **Party** will be responsible for their own attorney's fees in connection with a dispute under this Article, except as provided otherwise herein.

**ARTICLE XIII.**  
**USE OF EMINENT DOMAIN**

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

**Section 13.02** NULLIFICATION BY EMINENT DOMAIN. Should the **Metro Flood Diversion Authority** initiate eminent domain proceedings against **Utility** to accomplish the goals of the **Utility Relocation Project**, any term or terms of this **Memorandum of Understanding** may be deemed null and void at the sole discretion of the **Metro Flood Diversion Authority**. The **Utility** will maintain Prior Property Interests noted herein for use if the Utility Relocation is not completed. **Utility's** use of any existing easements following **Substantial Completion** of the **Project** shall be subject to the restrictions described in Article X.

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

**ARTICLE XIV.  
MISCELLANEOUS**

**Section 14.01** NOTICE. All notices under the **Memorandum of Understanding** will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses:

- (a) All notices to the **Metro Flood Diversion Authority**, including **Project** correspondence, submittals, and samples will be marked as regarding the **Project** and will be delivered to the following address or as otherwise directed by the **Metro Flood Diversion Authority's** authorized representative:

Jacobs Engineering Group, Inc.  
64 4th Street North, Suite 300  
Fargo, North Dakota 58102

- (b) All legal notices to the **Metro Flood Diversion Authority**, in addition to being provided to the **Metro Flood Diversion Authority's** representative as provided above, will also be provided to the Executive Director at the following address or as otherwise directed by the **Metro Flood Diversion Authority's** representative:

Metro Flood Diversion Authority  
Attention: Executive Director  
207 4<sup>th</sup> Street N. Suite A  
Fargo, ND 58102

And

[APIInvoicesFMDiv@jacobs.com](mailto:APIInvoicesFMDiv@jacobs.com)  
[PaulsenJ@FMDiversion.gov](mailto:PaulsenJ@FMDiversion.gov)

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

Moorhead Public Service Commission  
ATTN: General Manager  
500 Center Ave  
Moorhead, MN 56560  
Email: [tschmidt@mpsutility.com](mailto:tschmidt@mpsutility.com)

And

Wold Johnson, P.C.  
ATTN: John V. Boulger  
P.O. Box 1680  
Fargo, ND 58107  
Email: [jboulger@woldlaw.com](mailto:jboulger@woldlaw.com)  
and [elarsgaard@woldlaw.com](mailto:elarsgaard@woldlaw.com)

And

[mps@mpsutility.com](mailto:mps@mpsutility.com)

- (d) Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central Time and all other notices received after 5:00 p.m. Central Time will be deemed received on the first **Business Day** following delivery.

**Section 14.02 WORKERS' COMPENSATION.** Each **Party** shall be responsible for injuries or deaths of its own personnel. Each **Party** will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are providing assistance pursuant to this **Memorandum of Understanding**. Each **Party** waives the right to pursue a legal action against one of the other **Parties** for any workers' compensation benefits paid to its own employee or volunteer or their dependents, even if the injuries are caused wholly or partially by the negligence of any other **Party** or its officers, employees, or volunteers.

**Section 14.03 INSURANCE.** The **Utility** shall list the **Metro Flood Diversion Authority** (including its agents and contractors) as well as the **CCJWRD**, as additional insured on any insurance policy obtained in connection with the **Utility Relocation Project**. **Utility** shall add the **P3 Developer** as an additionally insured on any insurance policy obtained in connection with the **Utility Relocation Project**. No **Utility Adjustment Work** may be done until a certificate of insurance listing as the then required additionally insureds is produced. An additional insured shall be given notice at least thirty (30) days before an insurance policy on which it is an additional insured is canceled or allowed to expire. In the event that the policy is terminated for any reason and notice has not been previously given to the additional insureds, the formerly insured shall give notice to the additional insureds as soon as is reasonably possible. The **Utility** shall obtain a general liability insurance policy providing no less than two million dollars (\$2,000,000) of coverage in connection with the **Utility Relocation Project**. **Metro Flood Diversion Authority** shall obtain and maintain a general liability insurance policy providing no less than two million dollars (\$2,000,000) of coverage, on which **Utility** shall be named as an additionally insured party.

**Section 14.04 INDEMNIFICATION.** The **Utility** shall indemnify save and hold the **Metro Flood Diversion Authority**, its member entities, directors, officers, employees, and agents harmless from any liability, loss, damage, or expense, including legal fees, arising out of the negligent performance of **Utility** obligations by **Utility**, its employees, contractors, or agents, under this **Memorandum of Understanding** or by anyone for whom they are in law responsible. The **Parties** agree that they shall cooperate with each other in the defense of any such action, including providing each other with prompt notice of any such action and the provision of all

material documentation. The **Parties** further agree that they have a right to retain their own counsel to conduct a full defense of any such action.

**Section 14.05 RELATIONSHIPS CREATED.** The **Parties** agree this **Memorandum of Understanding** does not create any agency, partnership, joint venture, or any other relationship between the **Parties** and that **Utility** is solely responsible for its own actions or omissions.

**Section 14.06 GOVERNING LAW.** This **Memorandum of Understanding** shall be controlled by the laws of the State of North Dakota. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this **Memorandum of Understanding** shall be venued in Cass County in the State of North Dakota, and the **Parties** waive any objection to personal jurisdiction.

**Section 14.07 SEVERABILITY.** Each provision, section, sentence, clause, phrase, and word of this **Memorandum of Understanding** is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this **Memorandum of Understanding**.

**Section 14.08 ELECTRONIC SIGNATURES.** The parties acknowledge and agree that this **Memorandum of Understanding** may be executed by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature.

**Section 14.09 FEDERAL LOBBYING RESTRICTIONS.** Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for US EPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, **Utility** shall complete and submit to the **Metro Flood Diversion Authority** the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34, which are attached as Exhibits to this **Memorandum of Understanding**. **Utility** shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

**Section 14.10 DEBARMENT AND SUSPENSION.** **Utility** certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 CFR Part 32 to participate in the **Project**. Suspension and debarment information can be accessed at <http://www.sam.gov>. **Utility** represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this **Memorandum of Understanding**. Upon award of this contract, **Utility** shall complete and submit to the **Metro Flood Diversion Authority** the federal certification form regarding debarment and suspension, which is attached as an Exhibit to this **Memorandum of Understanding**.

**Section 14.11 CIVIL RIGHTS OBLIGATIONS.** **Utility** shall comply with the following, federal non-discrimination requirements:

- (a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
- (b) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
- (c) The Age Discrimination Act of 1975, which prohibits age discrimination.
- (d) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
- (e) 40 CFR Part 7, as it relates to the foregoing.
- (f) Executive Order No. 11246.

**Section 14.12** AMERICAN IRON AND STEEL. The **Utility** acknowledges to and for the benefit of the **Metro Flood Diversion Authority** and the United States Environmental Protection Agency (“EPA”) that it understands the goods and services under this **Memorandum of Understanding** are being funded with monies made available by the Water Infrastructure Finance and Innovation Act program of the EPA that has statutory requirements commonly known as “American Iron and Steel” that requires all of the iron and steel products used in the **Project** to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the **Utility** pursuant to this **Memorandum of Understanding**. **Utility** hereby represents, warrants and covenants to and for the benefit of the **Metro Flood Diversion Authority** and the EPA that:

- (a) the **Utility** has reviewed and understands the American Iron and Steel Requirement,
- (b) all of the iron and steel products used in the **Project** will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and
- (c) the **Utility** will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the **Metro Flood Diversion Authority** or the EPA.

Notwithstanding any other provision of this **Memorandum of Understanding**, any failure to comply with this paragraph by the **Utility** shall permit the **Metro Flood Diversion Authority** or the EPA to recover as damages against the **Utility** any loss, expense, or cost (including without limitation attorney’s fees) incurred by the **Metro Flood Diversion Authority** or the EPA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EPA or any damages owed to the EPA by the **Metro Flood Diversion Authority**). While the **Utility** has no direct contractual privity with the EPA, as a lender to the **Metro Flood Diversion Authority** for the funding of its **Project**, the **Metro Flood Diversion Authority** and the **Utility** agree that the EPA is a third-party beneficiary and neither this paragraph (nor any other provision of this **Memorandum of Understanding** necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the EPA.

**Section 14.13** CERTIFICATION. Upon award of this contract, **Utility** shall comply with, complete, and submit to the **Metro Flood Diversion Authority** full executed versions of the federal certification forms attached as exhibits hereto.

**Section 14.14** MODIFICATIONS. Any modifications or amendments to this **Memorandum of Understanding** must be in writing and signed by both **Parties** to this **Memorandum of Understanding**.

**Section 14.15** BINDING EFFECT. This **Memorandum of Understanding** shall be for the benefit of, and may be enforced only by, the **Parties** and is not for the benefit of, and may not be enforced by any third party.

**Section 14.16** REPRESENTATION. The **Parties**, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this **Memorandum of Understanding**, and agree they have not been influenced by any representations or statements made by any other parties.

**Section 14.17** HEADINGS. Headings in this **Memorandum of Understanding** are for convenience only and will not be used to interpret or construe its provisions.

**Section 14.18** COUNTERPARTS. This **Memorandum of Understanding** may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the **Parties** and delivered to the other **Party**.

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

**Section 14.20** TERMINATION. This **Memorandum of Understanding** may be terminated by the **Metro Flood Diversion Authority** at any time. In the event of termination by **Metro Flood Diversion Authority**, Section 13.03 of this Agreement shall apply and costs incurred by **Utility** to the effective date of termination shall be reimbursed to **Utility** as set forth in Article VIII. **Utility** will maintain its **Prior Property Interests** and any rights granted by **Metro Flood Diversion Authority**, the use of which shall remain subject to the restrictions and obligations of Article X of this **Memorandum of Understanding**.

**Section 14.21** FORCE MAJEURE. Neither the **Utility** nor **Metro Flood Diversion Authority** shall be held responsible for any delay or failure in performance of any part of this **Memorandum of Understanding** to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party. The affected **Party** will notify the other **Party** in writing within ten (10) days after the beginning of any such cause that would affect its performance. Notwithstanding, if a **Party's** performance is delayed for a period exceeding thirty (30) days from the date the other **Party** receives notice under this section, the non-affected **Party** will have the right, without any liability to the other **Party**, to terminate this **Memorandum of Understanding**.

*(Signatures appear on the following pages.)*



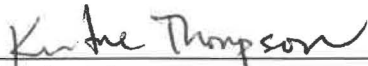
IN WITNESS WHEREOF, the Parties executed this Memorandum of Understanding on the date first written above.

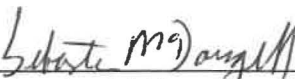
METRO FLOOD DIVERSION AUTHORITY

BY: \_\_\_\_\_  
Chad Peterson, Chair

BY: \_\_\_\_\_  
Joel Paulsen, Executive Director

MOORHEAD PUBLIC SERVICE  
COMMISSION  
A utility of the City of Moorhead, a municipal  
corporation

BY:   
Kristine Thompson  
Its: Chairperson

BY:   
Sebastian McDougall  
Its: Secretary

**RIGHT-OF-WAY DOCUMENTS**

**EXHIBIT 1**

BOOK 7-2 PAGE 622

E A S E M E N T

KNOW ALL MEN BY THESE PRESENTS, that ANNA B. PROBERT (also known as ANNETTE B. PROBERT), a widow, of Wahpeton, North Dakota, IVY R. BROWN and HERBERT N. BROWN, her husband, of Denver, Colorado, and JEAN PROBERT McCRARY and IRVIN J. McCRARY, her husband, of Vista, California, for and in consideration of the sum of six hundred eighty and no/100ths dollars (\$680.00), the receipt whereof is hereby acknowledged, do hereby grant unto the City of Moorhead, a municipal corporation existing under the laws of the State of Minnesota, and its successors or assigns, the right to enter upon the lands of the undersigned, described as:

The Southwest Quarter (SW $\frac{1}{4}$ ) of Section Twenty-four (24), in Township One Hundred Thirty-nine (139) North, of Range Fifty (50) west of the Fifth Principal Meridian, Cass County, North Dakota;

and to place, construct, operate, and maintain an electric transmission line or system, with structures and ground attachments as shown on the attached drawing No. 872-B1; and to cut down, trim or in any manner eliminate trees or shrubbery, to a width of thirty (30) feet on each side of the center line hereinafter described, and to top or trim, from time to time, all dead, weak, leaning or dangerous trees, beyond said width, that are tall enough to strike the transmission line wires in falling; that the center line of such electric transmission line or system shall traverse said lands as follows:

Beginning at a point eight hundred fifty feet (850') North of the Southwest corner of Section Twenty-four (24), in Township One Hundred Thirty-nine (139) North, of Range Fifty (50) west of the Fifth Principal Meridian; thence easterly parallel to South line Section 24 a distance fourteen hundred feet (1400'); thence Southeast at a deflection angle to the right of forty degrees (40 $^{\circ}$ ) a distance of three hundred ninety feet (390'); thence easterly at a deflection angle to the left of forty degrees (40 $^{\circ}$ ) along a line six hundred feet (600') north of and parallel to the South line of Section

-1-

MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson  
Kristine Thompson  
Its: Chairperson

BY: Sebastian McDougall  
Sebastian McDougall  
Its: Secretary

**EXHIBIT 2**

Twenty-four (24) to the East line of the West Half (W $\frac{1}{2}$ ) of Section 24.

The undersigned covenant that they are the owners of the above described lands, and that said lands are free and clear of encumbrances and liens of whatsoever character.

The grantors reserve the right to cultivate, use, and occupy said premises for any purpose consistent with the rights and privileges above granted and which will not in any way interfere with or endanger any of the equipment of the City of Moorhead or the use thereof. In case of permanent abandonment of said right of way, the title and interest herein granted shall end, cease, and determine. The City of Moorhead shall use due care in the construction and maintenance of such transmission lines.

The City of Moorhead agrees to pay for crop damage caused by and during the construction of said power lines and the maintenance of such lines.

IN TESTIMONY WHEREOF, The said ANNA B. PROBERT (also known as ANNETTE B. PROBERT), a widow, IVY R. BROWN and HERBERT N. BROWN, her husband, and JEAN PROBERT McCRARY and IRVIN J. McCRARY, her husband, hereunto set their hands this 21st day of December, A. D. 1955.

Anna B. Probert  
 (Anna B. Probert)

Ivy R. Brown  
 (Ivy R. Brown)

Herbert N. Brown  
 (Herbert N. Brown)

Jean Probert McCrary  
 (Jean Probert McCrary)

Irvin J. McCrary  
 (Irvin J. McCrary)

-2-  
BOOK 7-2 PAGE 623

MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson  
Kristine Thompson  
Its: Chairperson

BY: Sebastian McDougall  
Sebastian McDougall  
Its: Secretary

EXHIBIT 3

BOOK 7-2 PAGE 624

STATE OF FLORIDA.....)
COUNTY OF Manatee )SS.

On this 5 day of January, A.D. 1956, before me, a Notary Public in and for said County and State, personally appeared ANNA B. PROBERT (also known as ANNETTE B. PROBERT), a widow, known to me to be one of the persons who is described in and who executed the within and foregoing Basement, and she acknowledged to me personally that she executed the same.

Carmen S. Hiscox
Carmen S. Hiscox
(Type in Notary's Name, Please)
Public in and for said County and State.
My commission expires:
APRIL 24 1957

STATE OF CALIFORNIA.....)
COUNTY OF San Diego )S.

On this 31st day of December, A.D. 1955, before me, a Notary Public in and for said County and State, personally appeared JEAN PROBERT McCRARY and IRVIN J. McCRARY, her husband, and IVY R. BROWN and HERBERT N. BROWN, her husband, known to me to be four of the persons who are described in and who executed the within and foregoing Basement, and they severally acknowledged to me that they executed the same.

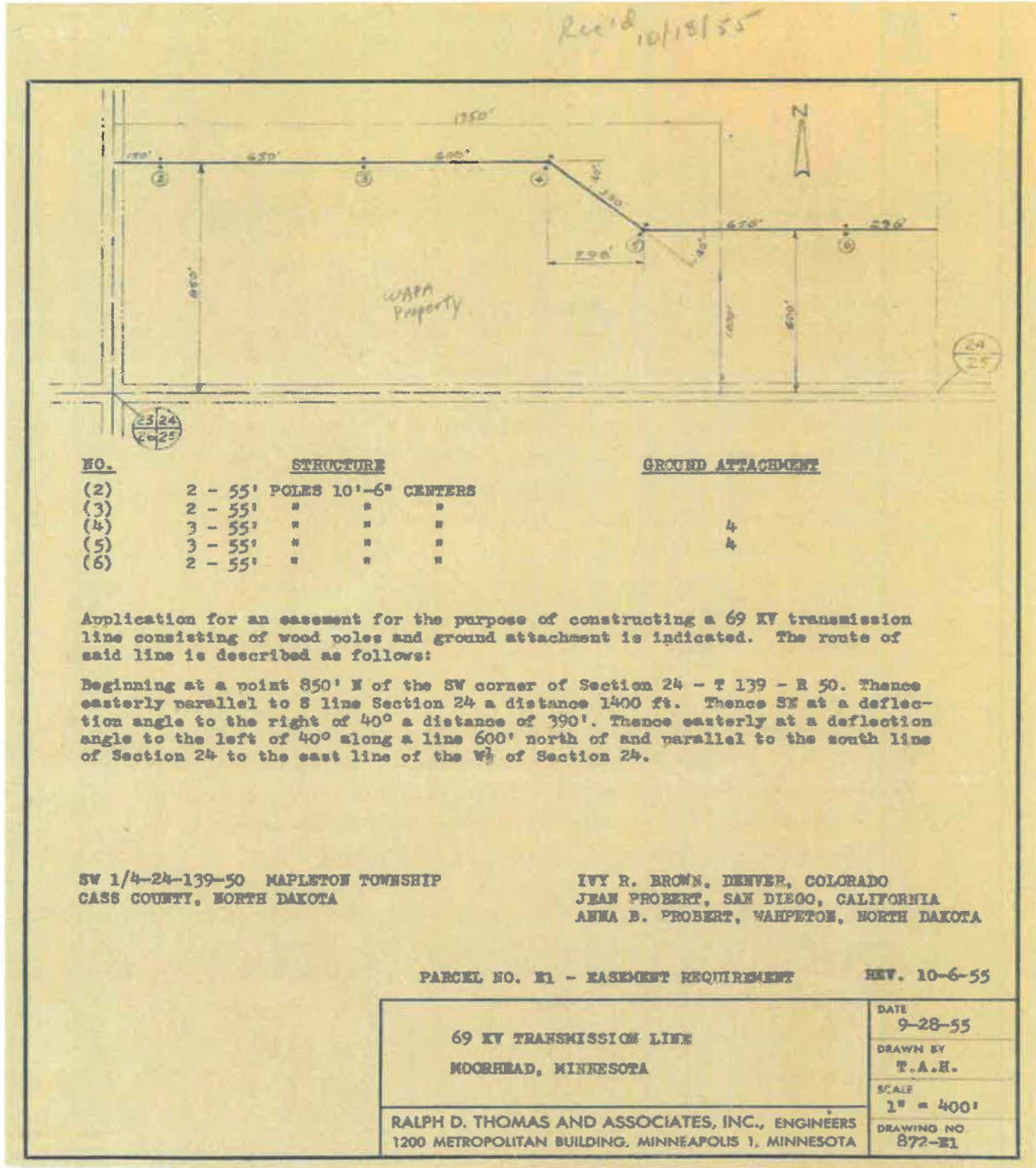
RAY O. JOHNSON
(Please Type in Notary's Name)
Public in and for said County and State. My commission expires:
November 15, 1956

MOORHEAD PUBLIC SERVICE COMMISSION
A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson
Kristine Thompson
Its: Chairperson

BY: Sebastian McDougall
Sebastian McDougall
Its: Secretary

**EXHIBIT 4**



MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

BY: *Kristine Thompson*  
Kristine Thompson  
Its: Chairperson

BY: *Sebastian McDougall*  
Sebastian McDougall  
Its: Secretary

EXHIBIT 5

BOOK 7-2 PAGE 626

E A S E M E N T

KNOW ALL MEN BY THESE PRESENTS, That we, PAUL GAARD  
a single person \_\_\_\_\_, of \_\_\_\_\_  
Route #1, Fargo, North Dakota \_\_\_\_\_, for  
and in consideration of the sum of two hundred and  
no/100ths \_\_\_\_\_ dollars  
(\$ 200.00 \_\_\_\_\_), the receipt whereof is hereby acknowledged,  
do hereby grant unto the CITY OF MOORHEAD, a municipal cor-  
poration existing under the laws of the State of Minnesota,  
and its successors and assigns, the right to enter upon the  
land of the undersigned, situate in Cass County, North Da-  
kota, and described as:

The Southwest Quarter of the Southeast Quarter  
(SW $\frac{1}{4}$  of SE $\frac{1}{4}$ ) of Section Twenty-four (24), in  
Township One Hundred Thirty-nine (139) North,  
of Range Fifty (50) West of the Fifth Princ-  
ipal Meridian;

and to place, construct, operate, repair, maintain, and re-  
place thereon and in or upon all streets, roads, or highways  
abutting said lands an electric transmission line or system,  
and to cut down, trim or in any manner eliminate trees or  
shrubbery to the extent necessary to keep them clear of said  
electric line or system, and to cut down from time to time  
all dead, weak, leaning or dangerous trees that are tall  
enough to strike the wires in falling. That the center  
line of such electric transmission line or system shall  
traverse said lands as follows:

Line to run from a point six hundred feet (600')

-1-

MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson  
Kristine Thompson  
Its: Chairperson

BY: Sebastian McDougall  
Sebastian McDougall  
Its: Secretary

**EXHIBIT 6**

North of the South line of Section 24, Township 139, Range 50 at the West line of the East Half (E $\frac{1}{2}$ ) of said Section 24; thence easterly and parallel to the South line of said Section 24 to the East line of the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$  of SE $\frac{1}{4}$ ) of said Section 24;

poles to be set in the manner and at such intervals as specifically indicated on the survey drawing hereto attached, identified as No. 872-E2.

The undersigned covenant that they are the owners of the above described lands, and that said lands are free and clear of encumbrances and liens of whatsoever character.

The grantors reserve the right to cultivate, use, and occupy said premises for any purpose consistent with the rights and privileges above granted and which will not in any way interfere with or endanger any of the equipment of the City of Moorhead or the use thereof. In case of permanent abandonment of said right of way, the title and interest herein granted shall end, cease, and determine. The City of Moorhead shall use due care in the construction and maintenance of such transmission lines.

The City of Moorhead agrees to pay for crop damage caused by and during the construction of said power lines and the maintenance of such lines, and also agrees to keep the ground around poles and guy wires free of weeds to a distance of five feet from their bases.

IN TESTIMONY WHEREOF, The said PAUL GAARD  
a single person hereunto  
set their hands this 6th day of March,  
A.D. 1956.

Paul Gaard  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

-2- BOOK T-2 PAGE 627

MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson  
Kristine Thompson  
Its: Chairperson

BY: Sebastian McDougall  
Sebastian McDougall  
Its: Secretary



EXHIBIT 7

BOOK 72 PAGE 628

STATE OF NORTH DAKOTA )  
 )SS.  
COUNTY OF CASS.....)

On this 6th day of March,  
A.D. 1956, before me, a Notary Public in and for said County  
and State, personally appeared \_\_\_\_\_  
PAUL GAARD, a single person, to  
me known to be the person described in and who executed  
the foregoing Basement, and who personally acknowledged to  
me that he executed the same.



Harry Lashkowitz  
Harry Lashkowitz, Notary  
Public, Cass County, North Da-  
kota. My commission expires  
August 24, 1956

STATE OF \_\_\_\_\_ )  
 )SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_,  
A. D. 1956, before me, a Notary Public in and for said County  
and State, personally appeared \_\_\_\_\_  
\_\_\_\_\_, to me known to be \_\_\_\_\_ the  
person described in and who executed the foregoing Base-  
ment, and who personally acknowledged to me that he exe-  
cuted the same.

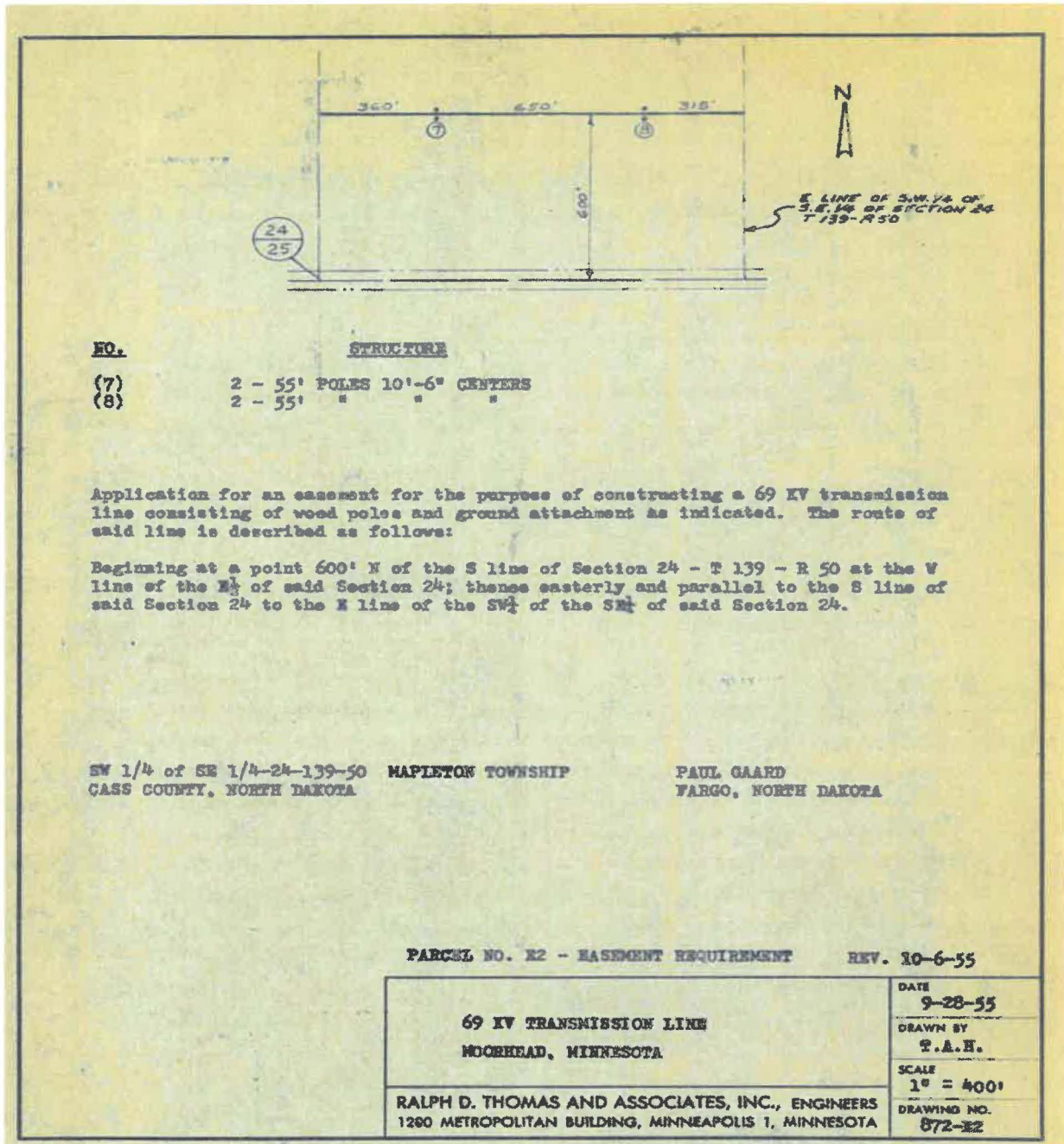
\_\_\_\_\_  
Notary  
Public in and for said County  
and State. My commission ex-  
pires \_\_\_\_\_

MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson  
Kristine Thompson  
Its: Chairperson

BY: Sebastian McDougall  
Sebastian McDougall  
Its: Secretary

**EXHIBIT 8**



MOORHEAD PUBLIC SERVICE COMMISSION  
 A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson  
 Kristine Thompson  
 Its: Chairperson

BY: Sebastian McDougall  
 Sebastian McDougall  
 Its: Secretary

EXHIBIT 9

BOOK 7-2 PAGE 630

B A S E M E N T

KNOW ALL MEN BY THESE PRESENTS, That we, HAROLD B. GAARD, a single person

\_\_\_\_\_ of \_\_\_\_\_  
Route #1, Fargo, North Dakota

and in consideration of the sum of two hundred fifty  
and no/100ths \_\_\_\_\_ dollars

(\$ 250.00), the receipt whereof is hereby acknowledged, do hereby grant unto the CITY OF MOORHEAD, a municipal corporation existing under the laws of the State of Minnesota, and its successors and assigns, the right to enter upon the land of the undersigned, situate in Cass County, North Dakota, and described as:

Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$  of SE $\frac{1}{4}$ ) of Section Twenty-four (24), in Township One Hundred Thirty-nine (139) North, of Range Fifty (50) west of the Fifth Principal Meridian;

and to place, construct, operate, repair, maintain, and replace thereon and in or upon all streets, roads, or highways abutting said lands an electric transmission line or system, and to cut down, trim or in any manner eliminate trees or shrubbery to the extent necessary to keep them clear of said electric line or system, and to cut down from time to time all dead, weak, leaning or dangerous trees that are tall enough to strike the wires in falling. That the center line of such electric transmission line or system shall traverse said lands as follows:

Line to run from: Beginning at a point six hundred feet (600') North of the South line of Section 24,

-1-

MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson  
Kristine Thompson  
Its: Chairperson

BY: Sebastian McDougall  
Sebastian McDougall  
Its: Secretary

EXHIBIT 10

Township 139, Range 50, at the west line of the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$  of SE $\frac{1}{4}$ ) of said Section 24; thence easterly and parallel to the South line of said Section a distance of nine hundred ninety-five feet (995'); thence southeasterly to a point on the East line of and four hundred seventy feet (470') North of the Southeast corner of said Section 24;

poles to be set in the manner and at such intervals as specifically indicated on the survey drawing hereto attached, identified as No. 872-E3. The undersigned covenant that they are the owners of the above described lands, and that said lands are free and clear of encumbrances and liens of whatsoever character.

The grantors reserve the right to cultivate, use, and occupy said premises for any purpose consistent with the rights and privileges above granted and which will not in any way interfere with or endanger any of the equipment of the City of Moorhead or the use thereof. In case of permanent abandonment of said right of way, the title and interest herein granted shall end, cease, and determine. The City of Moorhead shall use due care in the construction and maintenance of such transmission lines.

The City of Moorhead agrees to pay for crop damage caused by and during the construction of said power lines and the maintenance of such lines, and also agrees to keep the ground around poles and guy wires free of weeds to a distance of five feet from their bases.

IN TESTIMONY WHEREOF, The said HAROLD B. GAARD a single person hereunto set their hands this 6th day of March, A.D. 1956.

Harold Gaard  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

-2- BOOK 7-2 PAGE 631

MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson  
Kristine Thompson  
Its: Chairperson

BY: Sebastian McDougall  
Sebastian McDougall  
Its: Secretary

EXHIBIT 11

BOOK 7-2 PAGE 632

STATE OF NORTH DAKOTA)
)SS.
COUNTY OF CASS.....)

On this 6th day of March,
A.D. 1956, before me, a Notary Public in and for said County
and State, personally appeared
HAROLD R. GAARD, a single person,
to me known to be the person described in and who executed
the foregoing Basement, and who personally acknowledged to
me that he executed the same.



Handwritten signature of Harry Lashkowitz
Harry Lashkowitz Notary
Public, Cass County, North Da-
kota. My commission expires
August 24, 1956

STATE OF \_\_\_\_\_)
)SS.
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_,
A. D. 1956, before me, a Notary Public in and for said County
and State, personally appeared \_\_\_\_\_
to me known to be \_\_\_\_\_ the
person described in and who executed the foregoing Base-
ment, and who personally acknowledged to me that he exe-
cuted the same.

Notary
Public in and for said County
and State. My commission ex-
pires \_\_\_\_\_

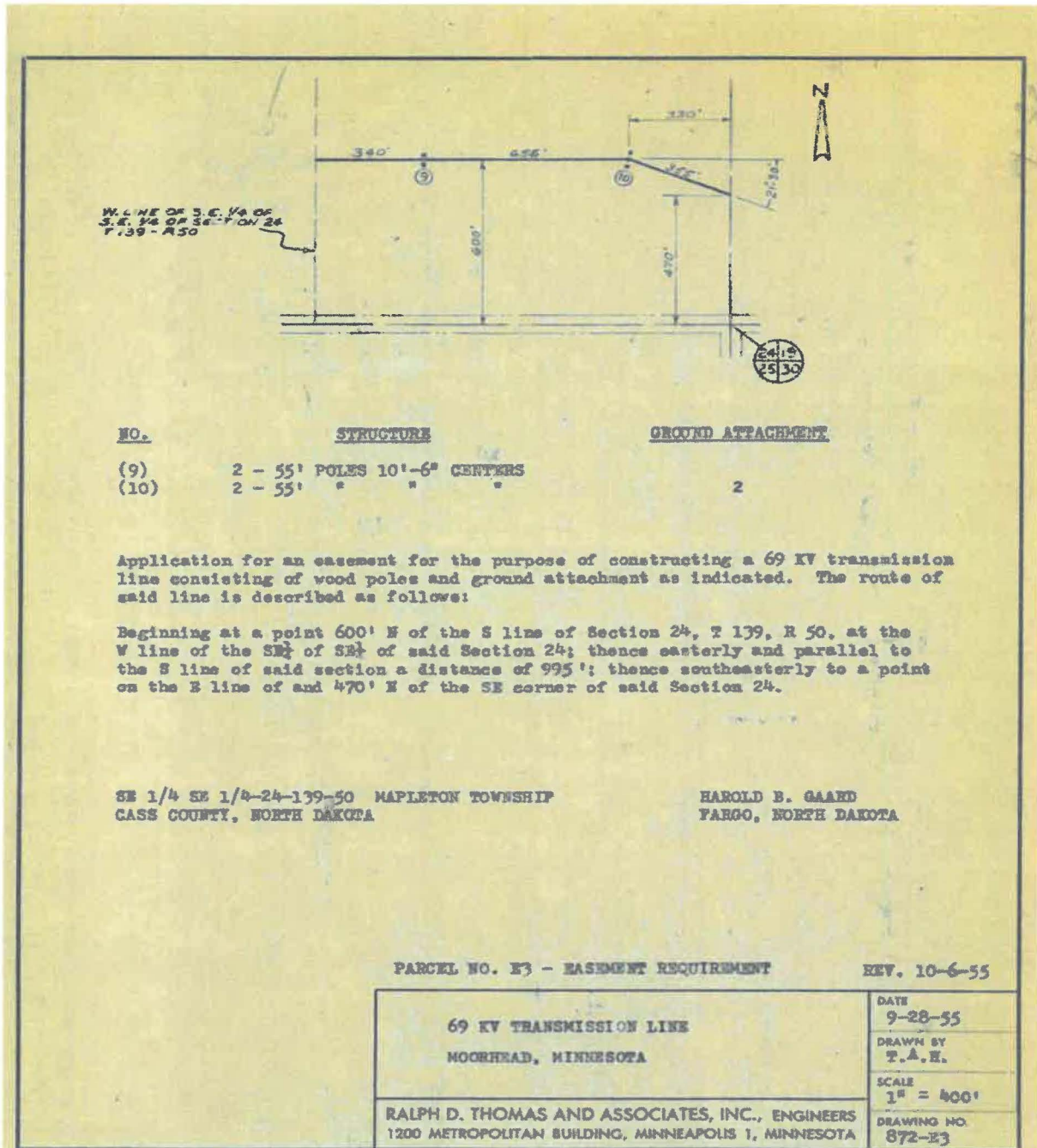
MOORHEAD PUBLIC SERVICE COMMISSION
A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson
Kristine Thompson
Its: Chairperson

BY: Sebastian McDougall
Sebastian McDougall
Its: Secretary



**EXHIBIT 12**

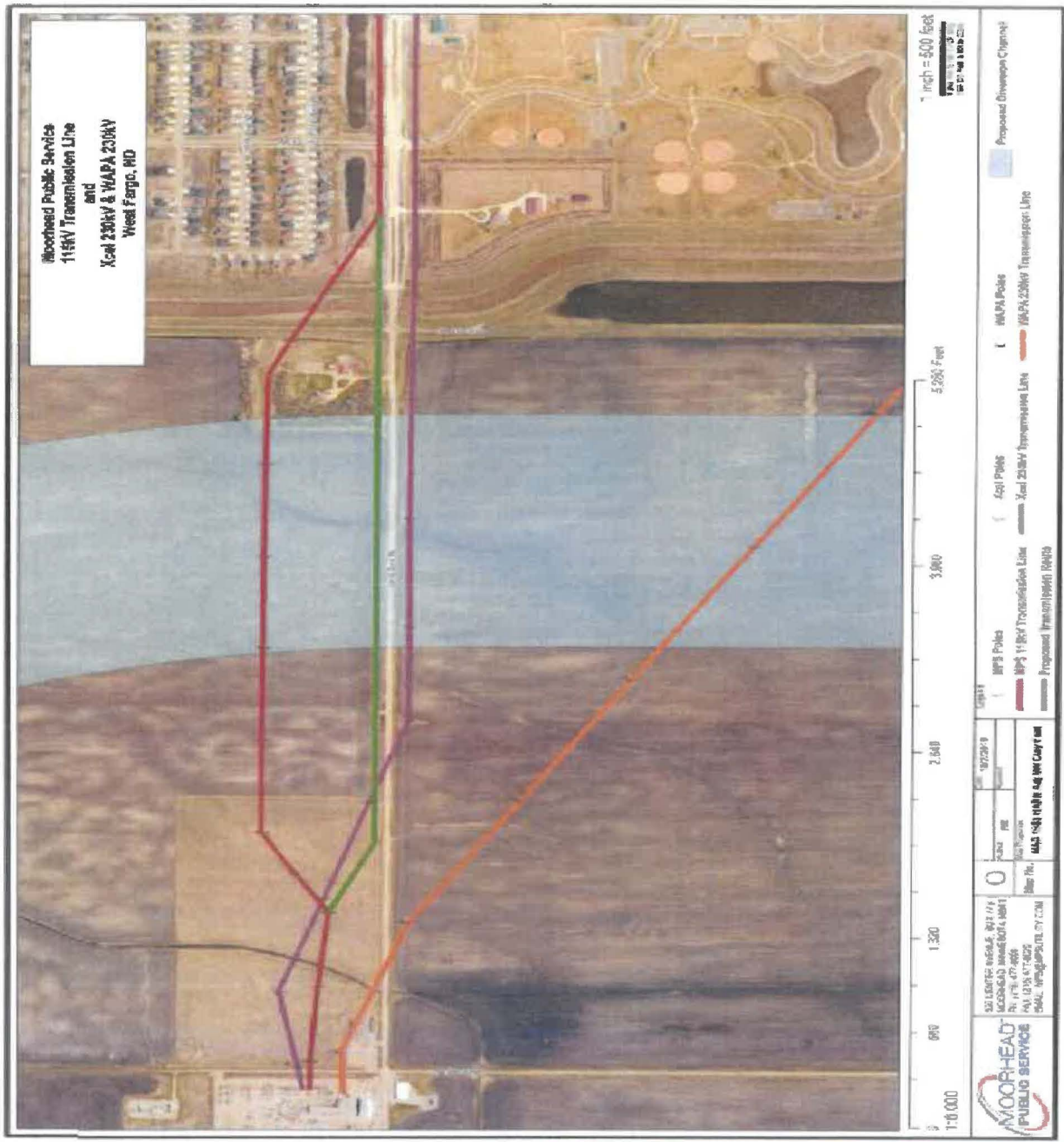


MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson  
Kristine Thompson  
Its: Chairperson

BY: Sebastian McDougall  
Sebastian McDougall  
Its: Secretary

EXHIBIT 13 - MAP



MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson  
Kristine Thompson  
Its: Chairperson

BY: Sebastian McDougall  
Sebastian McDougall  
Its: Secretary



**EXHIBIT 14**  
**AUTHORITY INVOICING REQUIREMENTS**

Moorhead Public Service will submit copies of the invoice to:

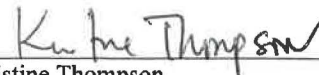
[PaulsenJ@FMDiversion.gov](mailto:PaulsenJ@FMDiversion.gov) and [APIInvoicesFMDiv@jacobs.com](mailto:APIInvoicesFMDiv@jacobs.com)

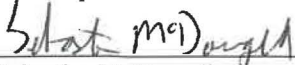
Moorhead Public Service's invoices must be detailed and precise. Moorhead Public Service's invoices must clearly indicate fees and expenses for the current billing period month and include at least the following information:

- i. Moorhead Public Service's name and address;
- ii. Moorhead Public Service's federal employer identification number;
- iii. Unique invoice number;
- iv. Billing period;
- v. Description of each activity performed for each day in which services were performed;
- vi. Work order number associated with each activity;
- vii. Name, billing rate, and hours worked by each person involved in each activity;
- viii. Total amount of fees and costs "billed to date," include the preceding months;
- ix. Preferred remittance address, if different from the address on the invoice's coversheet; and
- x. All of the work performed during that billing period.

After Metro Flood Diversion Authority (Authority) receives Moorhead Public Service's invoice, Authority will either process the invoice for payment or give Moorhead Public Service specific reasons, in writing within fifteen (15) business days, why part of all of Authority's payment is being withheld and what actions Moorhead Public Service must take to receive the withheld amount. In the event of disputed billing, only the disputed portion will be withheld from payment and Authority shall pay the undisputed portion. Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified following the receipt of payment, Moorhead Public Service must credit any payment in error from any payment that is due or that may become due to Moorhead Public Service under this Memorandum of Understanding or return the overpayment to Authority within thirty (30) calendar days of the identification of the error.

MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

BY:   
Kristine Thompson  
Its: Chairperson

BY:   
Sebastian McDougall  
Its: Secretary



**EXHIBIT 15  
FEDERAL CERTIFICATION FORMS  
CERTIFICATION REGARDING FEDERAL LOBBYING**

The undersigned certifies to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in any award documents for any of its subcontractors at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into a contract with the Authority. By executing this certificate, the undersigned agrees and acknowledges that he/she has been duly authorized to execute this certificate.

MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson  
Kristine Thompson

Its: Chairperson

BY: Sebastian McDougall  
Sebastian McDougall

Its: Secretary

PLEASE RETURN TO:  
Metro Flood Diversion Authority  
207 4th St. N, Suite A  
Fargo, ND 58102

Date: March 1, 2022

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
AND OTHER RESPONSIBILITY MATTERS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211).

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)**

- (1) The official representative of the party contracting with the Metro Flood Diversion Authority certifies to the best of its knowledge and belief that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application had one or more public transactions, including contracts (Federal, State, or local) terminated for cause or default.
  - (e) Are not presently debarred, suspended, declared ineligible or voluntarily excluded from performing work for the State of North Dakota, the State of Minnesota, the Metro Flood Diversion Authority or any of its Member Entities.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.
- (3) The Official signing this certificate has been and is duly authorized to sign this certificate on behalf of the entity or entities which intend to enter into a contract with the Metro Flood Diversion Authority.

Official Business Name

MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

Date: March 1, 2022

BY: Kristine Thompson

Kristine Thompson  
Its: Chairperson

PLEASE RETURN TO:  
Metro Flood Diversion Authority  
207 4th St. N, Suite A  
Fargo, ND 58102

BY: Sebastian McDougall

Sebastian McDougall  
Its: Secretary

### INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this certification, the prospective contracting party is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contracting party shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Metro Flood Diversion Authority's (the "Authority") determination whether to enter into this transaction. However, failure of the prospective contracting party to furnish a certification or an explanation shall disqualify such person from entering into contracts with the Authority.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Authority determined to enter into a contract with the prospective contracting party. In order to qualify for participation in the U.S. EPA WIFIA program the Authority is required to obtain this certification. If it is later determined that the prospective contracting party knowingly rendered an erroneous certification, in addition to other remedies available to both the Authority and the Federal Government, the Authority may terminate this transaction for cause or default.
4. The prospective contracting party shall provide immediate written notice to the Authority to which this Certificate is submitted if at any time the prospective contracting party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Authority for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective contracting party agrees by submitting this certification that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Authority.
7. The prospective contracting party further agrees by submitting this certification that it will require a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," from all sub-contractors without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A contracting party in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A contracting party may decide the method and frequency by which it determines the ineligibility of its principals.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a contracting party is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a contracting party in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Authority may terminate this transaction for cause or default.

**ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE**

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, THE AGE DISCRIMINATION ACT OF 1975, SECTION 13 OF THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972, 40 CFR PART 7, AND EXECUTIVE ORDER NO. 11246

The undersigned provides this assurance for the purpose of entering into a contract with the Metro Flood Diversion Authority (Authority) related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project), which is receiving federal financial assistance. Specifically, the US EPA WIFIA Program requires this assurance of all contractors and subcontractors providing services for the Project.

The undersigned assures that it will comply with:

1. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin including limited English proficiency (LEP);
2. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against persons with disabilities;
3. The Age Discrimination Act of 1975, as amended, which prohibits age discrimination;
4. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex;
5. 40 CFR Part 7, as it relates to the foregoing; and
6. Executive Order No. 11246.

The undersigned understands that this Assurance is binding on the undersigned, its successors, transferees, and assignees at any time during which federal financial assistance is provided to the Project. The undersigned will ensure that all contractors, subcontractors, or others with whom it arranges to provide services or benefits are not discriminating in violation of items 1-6. Otherwise, the contracts for services can be terminated for cause and the undersigned can be declared ineligible to contract for the Project.

By signing this form, the undersigned is agreeing to the above provisions and that he/she is duly authorized to execute this form.

MOORHEAD PUBLIC SERVICE COMMISSION  
A utility of the City of Moorhead, a municipal corporation

BY: Kristine Thompson  
Kristine Thompson  
Its: Chairperson

BY: Sebastian McDougall  
Sebastian McDougall  
Its: Secretary

PLEASE RETURN TO:  
Metro Flood Diversion Authority  
207 4th St N, Suite A  
Fargo, ND 58102

Date: March 1, 2022

---

**UTILITY INSTALLATION AGREEMENT**

**By and Between**  
**METRO FLOOD DIVERSION AUTHORITY**  
**and**  
**DICKEY RURAL NETWORKS**

**Dated as of March 24, 2022**

**Relating to:**

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

---

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

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## UTILITY INSTALLATION AGREEMENT

THIS AGREEMENT is made and entered into this 24<sup>th</sup> day of March, 2022 (hereinafter referred to as the “Effective Date”), by and between the Metro Flood Diversion Authority, a North Dakota political subdivision, whose post office address is P.O. Box 2806, Fargo, ND 58108-2806, and Dickey Rural Networks, whose post office address is 9628 Hwy 281, Ellendale, ND 58436 (hereinafter referred to as the “Utility”).

### RECITALS

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

**WHEREAS**, the Utility intends to acquire real property interests (hereinafter referred to as “Property Interests”) and install a new fiber optic cable within the area of the SWDCAI; and

**WHEREAS**, it will be necessary for the Property Interests and telecommunications optical network infrastructure to be located in a manner to circumvent conflicts with the construction, operation or maintenance of the SWDCAI by the Metro Flood Diversion Authority; and

**WHEREAS**, the Utility and the Metro Flood Diversion Authority desire to set forth in writing their mutual understandings and to define the terms and conditions, and each party’s rights and obligations in connection with the location and placement of the telecommunications optical network infrastructure (herein after referred to as the “Utility Installation Project”). and

**WHEREAS**, this Agreement is only intended to bind the Parties in regard to the portion of the Comprehensive Project north of the Southern Embankment and shall have no implications for or binding power in regard to the Parties work, efforts, or relations in the Southern Embankment. The Parties interactions with one another in the Southern Embankment shall be governed by a separate agreement between the Parties.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby state as follows:

### ARTICLE I. DEFINITIONS AND INTERPRETATION

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

“**Agreement**” means this Agreement between the **Metro Flood Diversion Authority** and Dickey Rural Networks.

“**Best Efforts**” means acting in **Good Faith** and in accordance with generally accepted commercial practices, and using reasonable due diligence to undertake all action contemplated by this **Agreement**, in accordance with applicable federal and state laws, regulations, and rules;

however, the obligation to use **Best Efforts** does not mean a duty to take action that would be in violation of applicable federal or state law.

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

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

“**Comprehensive Project**” means the Fargo-Moorhead Metropolitan Area Flood Risk Management Project authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo Moorhead Metropolitan Area Flood Risk Management, dated July 2011 and approved in accordance with the Chief’s Report, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the U.S. Army Engineer, St. Paul, on September 19, 2013, and as amended by the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering Documentation Report, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, ND and MN, Modifications Through February 2019.

“**Construction Documents Submittal**” means the design submittal described in Article V of this **Agreement**.

“**Design Exception**” means a deviation in design such that the design does not comply with the prevailing requirements.

“**Effective Date**” means the date on which both Parties have executed this Agreement.

“**Engineer of Record**” means an individual, or individuals, properly registered as an engineer, responsible for preparing the **Final Design Submittal** and the **Construction Documents Submittal**.

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

“**Final Design Submittal**” means the design submittal described in Article V of this **Agreement**.

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

“**Diversion Channel Line of Protection**” means inflow design flood line of protection.

“**LFC**” means the low-flow channel constructed in the bottom section of the diversion channel from the diversion outlet to the diversion inlet structure with minimum low flow-rates of seven hundred twenty (720) cubic feet per second from the diversion outlet to the Rush River Inlet; four hundred seventy (470) cubic feet per second from the Rush River inlet to the Maple River

aqueduct; and flow rates determined by the **P3 Developer** from the Maple River aqueduct to the diversion inlet structure.

“**Member Entities**” means those entities—the City of Moorhead, the City of Fargo, Clay County, Cass County, and the CCJWRD—signing the Joint Powers Agreement Dated as of June 1, 2016, establishing and continuing a joint powers entity called the Metro Flood Diversion Authority.

“**Metro Flood Diversion Authority**” means the political subdivision created by the Joint Powers Agreement, effective June 1, 2016, by and between the City of Moorhead, a political subdivision of the State of Minnesota; the City of Fargo, a political subdivision of the State of North Dakota; Clay County, a political subdivision of the State of Minnesota; Cass County, a political subdivision of the State of North Dakota; and Cass County Joint Water Resource District, a political subdivision of the State of North Dakota and vested with the powers therein.

“**Other Approvals**” means all approvals and permits legally required to complete approved **Work** on the **Utility Installation Project**, including, but not limited to, construction permits and permits from the applicable water resource district.

“**P3 Developer**” means Red River Valley Alliance, LLC, which entered into the **Project Agreement** with the **Metro Flood Diversion Authority** to design, finance, build, operate, and maintain the **SWDCAI**. References to the P3 Developer or Developer throughout this MOU include references to other entities engaged by the Developer to complete such work.

“**Parties**” means the entities to this **Agreement**, specifically the **Metro Flood Diversion Authority**, the **P3 Developer**, and the **Utility**.

“**Project**” means the design, construction, finance, operations, and maintenance of the **SWDCAI**.

“**Project Agreement**” means a Public-Private Partnership Agreement as authorized by Chapter 48-02.1 of the North Dakota Century Code, by and between the **Metro Flood Diversion Authority**, or one or more member entities authorized by the **Metro Flood Diversion Authority**, and a **P3 Developer** for design, construction, financing, operation and maintenance of the **Project**.

“**Project Footprint**” means the physical area within which the **SWDCAI** is contained.

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

“**Record Drawings Deliverable**” means an organized set of plans, details, specifications, calculations, and related documentation that accurately represents the structure constructed and the conditions encountered during construction.

“**Released for Construction Documents**” means all drawings, specifications, revisions thereto, and any other items necessary to construct the **Work**, signed and sealed by an **Engineer of Record**.

“**Site**” means the physical location at which any **Work** is being done, has been done, or will be done as part of the **Utility Location Project**.

“**Southern Embankment and Associated Infrastructure**” or “**SEAI**” means the infrastructure consisting of the Diversion Inlet, Wild Rice and Red River Control Structure, associated road raises, earthen embankment and western tie-back levee.

“**Substantial Completion**” means the time at which the **Work**, or a specified part thereof, has progressed to the point where, in the opinion of the **Metro Flood Diversion Authority**, the **Work** is sufficiently complete, in accordance with the plan approved by the **Metro Flood Diversion Authority**.

“**SWDCAI**” means the Storm Water Diversion Channel and Associated Infrastructure, portion of the **Comprehensive Project**, which is being procured by the **Metro Flood Diversion Authority** and includes, but is not limited to, the thirty (30) mile channel, outlet, river and drain inlets, road bridges, railroad bridges, aqueducts, utility relocations, and recreational features. The **SWDCAI** does not include the **SEAI**.

“**Telecommunications Network Infrastructure**” means all conduit, innerduct, handholes, manholes, cables and other infrastructure the **Utility** intends to install within the **Project Footprint** of the **SWDCAI**.

“**USACE**” means the United States Army Corps of Engineers.

“**Utility**” means Dickey Rural Networks.

“**Utility Installation Project**” means the process of locating and placing the **Telecommunications Network Infrastructure** within the **Project Footprint** as detailed in the Scope of Work attached hereto as Exhibit 1.

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

“**Work**” means those elements of locating and constructing the **Telecommunications Network Infrastructure** within the **Project Footprint**.

**Section 1.02 TERMS GENERALLY.** The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications set forth herein), (b) any reference herein to any person shall be construed to include any person’s permitted successors and assigns,

(c) the words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to this **Agreement** in its entirety and not to any particular provision hereof, and (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this **Agreement**.

**Section 1.03 SURVIVAL OF TERMS.** The terms of this **Agreement** shall end at the later of: (i) completion of the **Work** within the **Project Footprint**, (ii) the grant of the easement outlined in Section 8.01 hereof from the **Metro Flood Diversion Authority** to the **Utility**, or (iii) substantial completion of the **Project Agreement**.

**Section 1.04 INTENT TO ASSIGN.** **Utility** acknowledges the **Metro Flood Diversion Authority’s** intent to assign certain rights and obligations under this **Agreement** to the **P3 Developer**, and hereby irrevocably waives any right to object to any such assignment.

## **ARTICLE II. PURPOSE OF AGREEMENT**

**Section 2.01 PURPOSE.** The purpose of this **Agreement** is to ensure a coordinated, time-efficient, and cost-effective process for completing the **Utility Installation Project**.

**Section 2.02 COORDINATION BETWEEN ENGINEERS.** The **Metro Flood Diversion Authority** and **Utility** are likely to employ the use of professional engineers in the analysis, design, and completion of designs, plans, and completion of work. Engineers employed by **Metro Flood Diversion Authority** and **Utility** shall maintain open lines of communication, coordinate, and collaborate with engineers employed by other parties described herein throughout the completion of the **Utility Installation Project**.

## **ARTICLE III. RIGHT OF SITE ACCESS**

**Section 3.01 RIGHT OF SITE ACCESS.** To ensure the **Metro Flood Diversion Authority** is able to proceed with construction of the **Project** in a timely and efficient manner, as well as to properly monitor and ensure proper completion of the **Utility Installation Project**, the **Metro Flood Diversion Authority** shall have a right-of-way in, on, over, and across any and all **Sites** as well as the right to access, enter, and inspect any **Site**.

**Section 3.02 NON-REVOCABLE RIGHT OF THE METRO FLOOD DIVERSION AUTHORITY.** Nothing herein shall be construed as limiting or providing for the termination of the rights described herein as it pertains to the **Metro Flood Diversion Authority**.

**Section 3.03 NO NOTICE REQUIRED.** No notice shall be required for the **Metro Flood Diversion Authority** to exercise the rights described in this Article.

**Section 3.04 DELAY FOR SAFETY PURPOSES.** If the **Metro Flood Diversion Authority** attempts to exercise the rights described in this Article, but doing so would pose a safety hazard in the discretion of the **Utility**, the party shall be kept from accessing, entering, or inspecting the **Site** in question only for as long as is reasonably required to make the **Site** safe for access, entry, and inspection.

**Section 3.05 FAILURE TO ALLOW ACCESS, ENTRY, AND INSPECTION.** Should any **Party** having authority to access, enter, and inspect a **Site** be denied access for more than twenty-four (24) hours, other than when the same **Party** deems such a delay appropriate under Section 3.04, and **Metro Flood Diversion Authority** incurs any liquidated damages pursuant to the terms of the **Project Agreement**, and reasonably determines said liquidated damages arose in whole or in part, from **Utility's** failure, the **Utility** shall be responsible for and reimburse the **Metro Flood Diversion Authority** for the full amount of said liquidated damages..

#### **ARTICLE IV. REQUIRED REPORTS**

**Section 4.01 REQUIRED REPORTS.** The **Utility** shall prepare any reports, analysis, or other information and materials related to the **Telecommunications Network Infrastructure**, and/or anything that may impact the **Work** on the **Utility Installation Project**, or the **Project**, as is requested by the **Metro Flood Diversion Authority**.

**Section 4.02 DEADLINES.** All reports, engineering analysis, and other information and materials requested by the **Metro Flood Diversion Authority** shall be provided before the expiration of a reasonable deadline determined by the **Metro Flood Diversion Authority**.

**Section 4.03 FAILURE TO TIMELY PRODUCE.** Should the **Utility** fail to produce any reports, analysis, or other information and materials requested of them by the **Metro Flood Diversion Authority**, and **Metro Flood Diversion Authority** incurs any liquidated damages pursuant to the terms of the **Project Agreement**, and reasonably determines said liquidated damages arose in whole or in part, from **Utility's** failure, the **Utility** shall be responsible for and reimburse the **Metro Flood Diversion Authority** for the full amount of said liquidated damages.

#### **ARTICLE V. PERFORMANCE AND CONSTRUCTION**

**Section 5.01 WORK.** The **Utility** shall be responsible for the design and performance of all **Work** on the **Utility Installation Project** in accordance with the Scope of Work attached to this **Agreement** as Exhibit 1.

**Section 5.02 TECHNICAL SPECIFICATIONS.** The **Utility Installation Project** must be designed according to the following:

- a. Diversion Channel and Levee Crossings.
  1. Depth – Determine the depth of the diversion channel, including **LFC**, and the elevation of the bottom of the **Diversion Channel Line of Protection** (i.e., original ground minus stripping layer). Include an allowance for five (5) feet of erosion when determining the elevation of the utilities below the diversion channel or the **LFC**. Locate the top of the utility ten (10) feet below the eroded bottom of the diversion channel and the **LFC** and a minimum of fifteen (15) feet below the bottom of the lowest compacted fill layer for levees and the bottom of flood wall foundations (i.e., for **LFC**: design the **LFC** invert elevation with 5-foot erosion allowance, 10-foot cover). Place open cut utilities

that are above the levee above the **Diversion Channel Line of Protection** elevation, including freeboard and overbuild.

2. Method of construction – Utilities may be directionally drilled or open cut unless otherwise indicated. Direct trenching of utilities using a plow type installation process and jack and bore installation are not permitted. When installed using an open cut, provide bedding and pipe zone using controlled low strength material (CLSM), except beneath the levee. Submit CLSM mix design and test batch results. Design and construct CLSM for fifty (50) to one hundred fifty (150) psi, 28-day compressive strength. Use material excavated for utility placement as backfill above the pipe zone, except as noted for the area under the levee. Compact backfill to a minimum of ninety-five percent (95%) of maximum dry density. For areas under the **Diversion Channel Line of Protection** (defined by the area between the extension of the levee side slopes to the depth of the utility, plus fifteen (15) feet in each direction), match the levee material in properties and installation requirements for backfill above the pipe zone.
3. Horizontal directional drilling – If horizontal directional drilling is used, follow the **USACE Guidelines for Installation of Utilities Beneath Corps of Engineers Levees Using Horizontal Directional Drilling**. For the diversion channel, conduct direction drilling in accordance with ASTM F1962. If the conditions of these drilling requirements conflict for work under the channel, the requirements of this Agreement apply. Do not locate pipe entry/exit locations (pits) within fifty (50) feet of the **Diversion Channel Line of Protection**. Fill the annulus between the borehole and casing or pipe with drilling fluid or other material.
4. Geotechnical calculations – Prepare and submit calculations to demonstrate that each utility line has adequate strength, flexibility, and slack to withstand the expected loading, rebound, and settlement beneath levees and other fills and that the selected depth accounts for rebound and settlement.
5. Design requirement – Design and construct the **Telecommunications Network Infrastructure** crossing the **Diversion Channel Line of Protection** in accordance with the following **USACE** publication. In the case of a conflict with stated requirements, design and construct in accordance with this Agreement.
  - i. *Engineer Manual, EM 1110-2-1913, "Design and Construction of Levees"*.
  - b. Excavated Material Berms, local Drainage Ditch Crossings, and Other Areas.
    1. Method of construction – Install utilities by directionally drilling or open cutting, unless otherwise indicated. Do not direct trench utilities using a plow type installation process. Do not install utilities by jack and bore process. When installed using an open cut, the bedding and pipe zone of utility lines can



be backfilled with CLSM or the standard bedding and pipe zone material the **Utility** uses. Submit CLSM mix design and test batch results. Design and construct CLSM for fifty (50) to one hundred fifty (150) psi, 28-day compressive strength. Use material excavated for utility placement as backfill above the pipe zone. Compact backfill to a minimum ninety-five percent (95%) of maximum dry density. For directional drilling, conform to the requirements for crossing the diversion channel.

2. Depth – Design and construct utilities to the desired depth and accommodate the following:

- i. Stripping work areas of topsoil.
- ii. Heaving equipment loads.
- iii. Removal of **EMBs** in the future.
- iv. Except as indicted otherwise, construct the top of utilities a minimum of three and one-half feet (3.5) feet below the stripped surface and drainage ditch inverts.

3. Geotechnical calculations – Consider the expected loading, rebound, and settlement, as well as utility strength, flexibility, and slack in the design of Work.

c. Water Resource District Crossings. The construction of **Utility** property and infrastructure pursuant to this **Agreement** shall also require a utility permit from the applicable Water Resource District if said **Work** includes locating **Utility** property or infrastructure above, beneath, or through **Water Resource District Infrastructure**. The **Utility** shall obtain the appropriate permit(s) from applicable water resource district(s) before final review and approval of the **Utility Installation Project** by the **Metro Flood Diversion Authority**.

d. Other Requirements.

1. Grouting – Where horizontal directional drilling is used, grout the annular space between the borehole and the casing with cementitious grout for fifty (50) linear feet from the end of the casing or pipe at the entrance and exit pits. Inject grout into the annular space at multiple points around the circumference of the pipeline throughout this 50-foot length. Install baskets or other devices on the pipeline just beyond the 50-foot length to prevent the grout from flowing more deeply into the hole, but completely fill the annular space between the basket and the ground surface. Limit grout pressure to the mud pressure used for the directional drill.

2. Limit non-pressurized dry utilities buried under the **Diversion Channel Line of Protection** to those that can be installed inside a conduit or casing that is joined together continuously (welded, glued, or fused joints) and maintain

sufficient strength to resist the tensile stresses imposed during pullback operations.

3. Casings are not required where the utility crosses above the **Diversion Channel Line of Protection**.
4. Unless installed using horizontal directional drilling, fill the annular space around dry utility cables on the inside of non-pressurized utility casings/conduits with grout or foamed concrete at least fifteen (15) feet beyond the area under the **Diversion Channel Line of Protection** (both sides).
5. Where horizontal directional drilling is used, seal the annular space between the casing and conduits on each end with a non-porous expanding foam. Rubber boots and expanding plugs are not acceptable.
6. Seal each end of the annular space between the conduit and cable. For spare conduits, seal each end of the conduit. Rubber boots and expanding plugs are not acceptable.
7. Crossing identification – Install four (4) color-coded fiberglass service line marker posts for underground utilities at each crossing point. Install the marker posts at the perimeter of the **Project** right-of-way and on the offset bench area (if any) between the diversion channel and the **EMB**. Use markers (length seventy-two (72) inches; width four (4) inches) to identify service lines and underground facilities. In addition, install one (1) color-coded fiberglass service-line marker post immediately adjacent to each buried appurtenance within the right-of-way.
8. Abandonment and removal - Remove abandoned fiber optic cables within the **Project Footprint**. The **Utility** shall have staff onsite for the removal of conduits to confirm that a line is decommissioned and can be removed.

**Section 5.03 PROPOSALS AND PLANS.** Anytime following execution of this **Agreement**, the **Utility** shall prepare a **Final Design Submittal**, and a **Construction Document Submittal** for review, comment and approval by the **Metro flood Diversion Authority**.

- a. Final Design Submittal. The **Utility** shall complete a **Final Design Submittal** including, but not limited to, a completed design for all work described in the attached Scope of Work, complete technical specifications, calculations verifying the design performance, geotechnical information, **Project** test and survey data, and all other related design and engineering reports, studies, and analyses. In addition to the aforementioned information, the **Final Design Submittal** shall include:
  1. **Utility** plan and profile alignments demonstrating conformance with the terms of this Section.

2. **Site** plans for the location of appurtenances and structures and **Utility** line markers.
  3. When horizontal directional drilling is used, submittals and testing referenced in the design guidelines described or referenced in this **Agreement**.
  4. Geotechnical calculations, as noted above.
  5. A schedule outlining construction start, splicing, testing and completion dates.
- b. Construction Documents Submittal. Following approval of the **Final Design Submittal** by the **Metro Flood Diversion Authority** the **Utility** shall complete and provide a **Construction Documents Submittal**. The **Construction Documents Submittal** shall include the final plans for construction as detailed in the Scope of Work, the final specifications content sheet, calculations detailing design performance, geotechnical information, **Project** test and survey data, and other related design and engineering reports, studies, and analyses. The **Construction Documents Submittal** shall incorporate and address review comments from the **Final Design Submittal** and describe each change made since submission of the **Final Design Submittal**. Upon completion of the **Construction Documents Submittal**, the **Utility** shall sign and seal the contents of the **Construction Documents Submittal** as required by applicable laws.
- c. Review. The **Metro Flood Diversion Authority** shall complete a full review of each submittal and provide comments and/or approval as follows:
1. The **Metro Flood Diversion Authority's** review of submittals shall be restricted to a determination of whether the submittal complies with the specifications and requirements set forth in this **Agreement** and the performance specifications provided in the technical specifications submittal described in this Section.
  2. The **Metro Flood Diversion Authority** shall complete a full review and provide comments on or approval of submittals within twenty (20) **Business Days** of the date on which the **Metro Flood Diversion Authority** receives a full and complete submittal. The **Utility** shall notify the **Metro Flood Diversion Authority** when it believes a submission is full and complete. Should the **Metro Flood Diversion Authority** determine a submittal is not in compliance with the terms and specifications of this **Agreement**, and the **Utility** resubmits an amended submittal, the **Metro Flood Diversion Authority** shall review and respond to the amended submittal within ten (10) **Business Days**. The **Metro Flood Diversion Authority's** review of re-submittals shall be limited to portions of the resubmittal previously deemed noncompliant as well as any other portions of the resubmittal which have been amended or added since the initial submission.
  3. Concurrence by the **Metro Flood Diversion Authority** of any **Final Design Submittal** or **Construction Document Submittal** will only mean the plans and specifications meet the subjective standards of the **Metro Flood Diversion**

**Authority**, and concurrence by the **Metro Flood Diversion Authority** will not be deemed to mean that the plans and specifications or construction will be structurally sound and appropriate or that the plans and specifications meet applicable regulations, laws, statutes or local ordinances.

**Section 5.04** REQUIREMENT OF CONCURRENCE. No **Work** shall begin on the Utility Location Project to the extent the Work is within the Project Footprint until the **Metro Flood Diversion Authority** concurs with the proposals, plans, and timelines required by section 5.03 hereof.

**Section 5.05** CONCURRENCE WITHHELD. Where concurrence is withheld, the **Utility** shall prepare and submit to the **Metro Flood Diversion Authority** a new and complete set of specific plans for the **Work** for which concurrence was withheld within no later than thirty (30) days following receipt of written notice.

**Section 5.06** OTHER APPROVALS. Prior to the initiation of **Work** on the **Utility Installation Project**, the **Utility** shall provide documentation that it has applied for and obtained all **Other Approvals** necessary for the **Utility Installation Project**. The **Utility** shall abide by these approvals, as required, throughout the completion of the **Work**. Approved copies of all applicable permits and easement documentation shall be included in Exhibit 2 of this Agreement.

**Section 5.07** INITIATION OF WORK. After the **Construction Document Submittal** has been approved, the **Utility** shall deliver **Released for Construction Documents** to the **Metro Flood Diversion Authority** for the **Utility Installation Project**. Along with the **Released for Construction Documents**, the **Utility** shall provide written confirmation of compliance with the following requirements to the **Metro Flood Diversion Authority**:

- a. Review comments are incorporated, and comment responses are resolved, responded to, and documented.
- b. No Design Exceptions or deviations from the Scope of Work included with this Agreement exist that have not been accepted by the Metro Flood Diversion Authority.
- c. The **Construction Documents Submittal** complies with this **Agreement**.

**Section 5.08** ADJUSTMENTS TO THE PROJECT. Should the planned route of the **SWDCAI** change in a material manner, the **Utility** and **Metro Flood Diversion Authority** shall immediately interface to adjust plans for the **Utility Installation Project** as necessary.

**Section 5.09** ADJUSTMENTS TO THE SCOPE OF WORK. Any changes or modifications to the **Released for Construction Documents** during construction that materially affect the performance or construction of the **Utility Installation Project** will be subject to written approval by the **Metro Flood Diversion Authority**. The **Utility** will submit the proposed changes or modifications to the **Metro Flood Diversion Authority** for review and approval. The **Metro Flood Diversion Authority** will provide approval or a written explanation of its specific objections to the changes or modifications within twenty (20) **Business Days** of receipt of the proposed changes or modifications by the **Utility**.

**Section 5.10 INSPECTION.** The **Utility** shall be responsible for inspection of all **Work**; however, the **Metro Flood Diversion Authority** shall have concurrent rights of inspection.

**Section 5.11 THIRD PARTY CONTRACTORS.** Should **Utility** engage any third-party contractor to fulfill, contribute to, or otherwise act in regard to an obligation assigned to **Utility** in this **Agreement**, **Utility's** contractor shall abide by all restrictions and requirements provided for in this **Agreement**.

**Section 5.12 UTILITY COMPLETION.** The **Utility** will provide the **Metro Flood Diversion Authority** with written notice of any anticipated **Substantial Completion** at least sixty (60) calendar days and fifteen (15) **Business Days** prior to the anticipated date for **Substantial Completion**. Within ten (10) **Business Days** of the anticipated date for **Substantial Completion**, the **Utility** and the **Metro Flood Diversion Authority** will conduct a final inspection of the **Work** to determine whether the **Work** meets the **Released for Construction Documents** and any material changes or modifications made per Section 5.08 or 5.09. If the **Metro Flood Diversion Authority** finds the construction is not in conformance with the **Released for Construction Documents** or any approved material changes or modifications, the **Metro Flood Diversion Authority** shall notify the **Utility** of such fact and the **Utility** will correct such nonconformance and re-notify for inspection.

**Section 5.13 RECORD DRAWINGS.** The **Utility** shall provide the **Metro Flood Diversion Authority** as built record drawings defining horizontal location and depth of each new conduit at fifty (50) foot intervals using the North American Datum of 1983 (NAD83) (NSRS2007), North Dakota State Plane Coordinate System, South Zone and the North American Vertical Datum of 1988 (NAVD88) (GEOID09). The **Utility** shall coordinate with the **Metro Flood Diversion Authority** to document the **Work** within the **Project Footprint**.

## ARTICLE VI. PAYMENT OF COSTS

**Section 6.01 RESPONSIBILITY.** The **Utility** shall be responsible for all costs of the **Utility Installation Project**. This Section shall not be construed to apply to costs incurred to relocate the **Utility** facilities in the event relocation is necessitated by a change in the **Project Site**, occurring after completion of the **Utility Installation Project**.

## ARTICLE VII. THIRD-PARTY BENEFICIARIES

**Section 7.01 P3 DEVELOPER.** The **Metro Flood Diversion Authority** and **Utility** specifically agree, acknowledge, and covenant that the **P3 Developer** selected to build the **SWDCAI** under the **Project Agreement** is an intended third-party beneficiary and may enforce the terms and conditions of this **Agreement**, including, but not limited to, securing a court judgment against the **Utility** to perform its obligations under this **Agreement**. Should the **Utility** fall into breach or default of this **Agreement**, the **Utility** shall indemnify and hold the **P3 Developer** and **Metro Flood Diversion Authority** harmless for any liability either **Party** incurs because of such breach or default. In addition to the foregoing, the **P3 Developer** shall have all other rights available to it at law or in equity, and all of the rights and remedies provided hereunder are deemed cumulative and not exclusive of any right or remedies. The **Metro Flood Diversion**

**Authority** may assign any right, responsibility, or obligation assigned to it herein to the **P3 Developer**.

**ARTICLE VIII.  
FUTURE RIGHTS AND RESPONSIBILITIES**

**Section 8.01 RIGHT-OF-WAY.** Should the **Metro Flood Diversion Authority** deem it necessary for purpose of the **Utility Installation Project**, the **Metro Flood Diversion Authority** shall grant the **Utility** a right-of-way below, above, and across its right of way so the **Utility** can properly maintain its facilities in the right-of-way, subject to the following restrictions and obligations:

- a. Maintenance of Utility Property. Following completion of the **Utility Installation Project**, the **Utility** shall be responsible for all maintenance of **Utility** property and associated infrastructure. The **Metro Flood Diversion Authority** shall maintain the vegetative cover within the **Project Footprint**.
- b. Post-Construction Access. Following completion of the **Utility Installation Project**, the **Utility** shall provide the **Metro Flood Diversion Authority** with seven (7) days' written notice of any maintenance it intends to do within the **Project Footprint**.
- c. Approval for Ground Disturbing Maintenance or Repairs. The **Utility** must submit and obtain approval for any and all plans for maintenance or repair that requires the ground within the **Project Footprint** to be disturbed, from the **Metro Flood Diversion Authority**.
- d. Clean Up. The **Utility** shall ensure that after any maintenance or repairs to **Utility** property, the ground within the **Project Footprint** is returned to the state in which it existed prior to the maintenance or repair that caused the ground within the **Project Footprint** to be disturbed.
- e. Metro Flood Diversion Authority Access. In the event that **Utility** property malfunctions, destructs, or otherwise begins to cause on-going damage to the **SWDCAI**, the **Metro Flood Diversion Authority** shall have the authority to access the damage-causing **Utility** property and take any action necessary to stop on-going damage to the **SWDCAI**.
- f. Access. The **Metro Flood Diversion Authority** shall have unrestricted access in, over, and across the right-of-way.
- g. Damage to the SWDCAI. Should **Utility** property malfunction, deconstruct, or otherwise cause damage to the **SWDCAI**, the **Utility** shall take immediate action to stop on-going damage to the **SWDCAI** and repair all damage that occurs.
- h. Abandonment. Should the **Utility** abandon or remove a utility line within the easement and fail to replace the line within three (3) years of removal, the **Utility** shall forfeit and extinguish said easement.

**Section 8.02** USE OF EXISTING EASEMENT. In the event **Telecommunications Network Infrastructure** is relocated within the **Utility's** currently existing easement or right-of-way, the **Utility** shall be bound to exercise its rights under said easement, subject to the requirements and obligations contained in this Article. The requirements of this Article shall survive so long as the **Utility** has **Telecommunications Network Infrastructure** located within the **Project Footprint**.

**Section 8.03** RECORD KEEPING. The **Utility** shall maintain or cause to be maintained (by way of contract and enforcement of such contract) a complete set of records detailing all costs it incurs in the **Utility Installation Project**, in accordance with the recordkeeping and audit requirements of this **Agreement** and the laws of North Dakota.

**Section 8.04** FUTURE PERMITS. Should the **Utility** file a formal permit application pertaining to the **Utility** line installed pursuant to this **Agreement** with the **Metro Flood Diversion Authority** after the **Effective Date**, the **Metro Flood Diversion Authority** shall grant, at no cost to the **Utility**, the permit application so long as the permit application meets all reasonable requirements listed in the instructions to said permit application and the proposed crossing would not unreasonably risk harm to the **SWDCAI** or interfere with other facilities already contained within the **Project Footprint**, as determined by the **Metro Flood Diversion Authority**. Should the **Utility** desire to modify the **Telecommunications Network Infrastructure** in the future, the **Metro Flood Diversion Authority**, in its sole discretion, shall determine whether the modification is allowable under a previously existing permit or whether the modification is significant enough in its nature or effect to require the **Utility** to apply for a new permit.

## ARTICLE IX. DISPUTES WITH CONTRACTORS AND OTHER THIRD PARTIES

**Section 9.01** COORDINATION. The **Parties** shall coordinate with respect to any dispute with third parties. Such coordination shall include any potential or ongoing litigation and each **Party** shall bear its own fees and costs in connection therewith.

## ARTICLE X. DISPUTES AMONG THE UTILITY, P3 DEVELOPER, AND METRO FLOOD DIVERSION AUTHORITY

**Section 10.01** INTENT AND PROCEDURE. The **Utility** and the **Metro Flood Diversion Authority** shall use their **Best Efforts** to ensure that the provisions of this **Agreement** are fulfilled. The **Parties** agree to act in **Good Faith** to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this **Agreement**. If disputes cannot be resolved informally by the **Parties** or under other, situation-specific dispute resolution mechanisms contained herein, the following procedure shall be used.

**Section 10.02** MEDIATION. If there is a failure between the **Parties** to resolve a dispute on their own, the **Parties** shall first attempt to mediate the dispute. The **Parties** shall agree upon a single mediator or, if they cannot agree, shall obtain a list of court-appointed mediators from the Cass County District Court Administrator, and select a mediator by alternately striking names until one remains. The **Metro Flood Diversion Authority** shall strike the first name, followed by the **Utility**, in that recurring order until one name remains.

**Section 10.03** LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within thirty (30) days after the end of mediation proceedings, the **Parties** may litigate the matter.

**Section 10.04** LEGAL FEES. Each **Party** will be responsible for their own attorney's fees in connection with a dispute under this Article.

**Section 10.05** WAIVER OF JURY TRIAL. THE **PARTIES** HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS **AGREEMENT**, OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS **AGREEMENT**, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY **PARTY** HERETO RELATING TO THIS **AGREEMENT**. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL MEMBER ENTITIES ENTERING INTO THIS **AGREEMENT**. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE **UTILITY AND METRO FLOOD DIVERSION AUTHORITY** ARISING OUT OF OR RELATED TO THIS **AGREEMENT** AND DOES NOT APPLY TO THIRD-PARTY CLAIMS OR SUITS BY OR ON BEHALF OF THE **PARTIES** FOR **PROJECT PROPERTY** ACQUISITION AND/OR CONSTRUCTION CONTRACT CLAIMS AND DEFENSES.

#### **ARTICLE XI. USE OF EMINENT DOMAIN**

**Section 11.01** EMINENT DOMAIN. Nothing in this **Agreement** shall be construed as limiting the **Metro Flood Diversion Authority's**, or its member entities', ability to exercise its powers of eminent domain.

#### **ARTICLE XII. MISCELLANEOUS**

**Section 12.01** NOTICE. All notices under the **Agreement** will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses:

- a. All notices to the **Metro Flood Diversion Authority**, including **Project** correspondence, submittals, and samples, will be marked as regarding the **Project** and will be delivered to the following address or as otherwise directed by the **Metro Flood Diversion Authority's** authorized representative:

Jacobs Engineering Group, Inc.  
4784 Amber Valley Pkwy  
Fargo, North Dakota 58104



- b. All legal notices to the **Metro Flood Diversion Authority**, in addition to being provided to the **Metro Flood Diversion Authority's** representative as provided above, will also be provided to the Executive Director at the following address or as otherwise directed by the **Metro Flood Diversion Authority's** representative:

Metro Flood Diversion Authority  
Attention: Executive Director  
207 4<sup>th</sup> Street N. Suite A  
Fargo, North Dakota 58102

And

APInvoicesFMDiv@jacobs.com  
PaulsenJ@FMDiversion.gov

- c. All notices to the **Utility** will be marked as regarding the **Project** and will be delivered to the following address or as otherwise directed by the **Utility's** authorized representative:

Dickey Rural Networks  
9628 Hwy 281  
Ellendale, North Dakota 58436

- d. Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central Time and all other notices received after 5:00 p.m. Central Time will be deemed received on the first **Business Day** following delivery.

**Section 12.02** WORKERS' COMPENSATION. Each **Party** shall be responsible for injuries or deaths of its own personnel. Each **Party** will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are providing assistance pursuant to this **Agreement**. Notwithstanding any other provision of this **Agreement**, each **Party** waives the right to pursue a legal action against one of the other **Parties** for any workers' compensation benefits paid to its own employee or volunteer or their dependents, even if the injuries are caused wholly or partially by the negligence of any other **Party** or its officers, employees, or volunteers.

**Section 12.03** INSURANCE. The **Utility** will during the term of this **Agreement**, at its own expense, purchase or self-insure and maintain Commercial General Liability Insurance and Automobile Liability (any auto) Insurance by insurance companies authorized to do business in North Dakota, with a policy or policies which will include coverage for bodily injury, property damage, personal injury and advertising injury, with a combined policy limit of at least \$2,000,000 per occurrence and \$3,000,000 aggregate. The policies will name the **Utility** as the insured, and shall list the **Metro Flood Diversion Authority**, **CCJWRD**, and **P3 Developer** as additional insureds on any insurance policy obtained in connection with the **Utility Installation Project**. No **Work** may be done until a certificate of insurance listing the aforementioned entities as additional

insureds is produced. An additional insured shall be given notice at least thirty (30) days before an insurance policy on which it is an additional insured is canceled or allowed to expire. In the event that the policy is terminated for any reason and notice has not been previously given to the additional insureds, the formerly insured shall give notice to the additional insureds as soon as is reasonably possible.

**Section 12.04 INDEMNIFICATION.** The **Utility** shall indemnify and hold harmless the **Metro Flood Diversion Authority**, its member entities, and directors, officers, employees, and agents harmless against any and all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including attorney's fees), which arise out of, relate to or result from any act or omission of the **Utility** or failure of **Utility's** facilities or property.

**Section 12.05 RELATIONSHIPS CREATED.** The **Parties** agree this **Agreement** does not create any agency, partnership, joint venture, or any other relationship between the **Parties** and that the **Utility** is solely responsible for its own actions or omissions.

**Section 12.06 GOVERNING LAW.** This **Agreement** shall be controlled by the laws of the State of North Dakota. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this **Agreement** shall be venued in Cass County in the State of North Dakota, and the **Parties** waive any objection to personal jurisdiction.

**Section 12.07 SEVERABILITY.** Each provision, section, sentence, clause, phrase, and word of this **Agreement** is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this **Agreement**.

**Section 12.08 MODIFICATIONS.** Any modifications or amendments to this **Agreement** must be in writing and signed by both **Parties** to this **Agreement**.

**Section 12.09 BINDING EFFECT.** This **Agreement** shall be binding upon and inure to the benefit of the **Parties** hereto and their respective personal representatives, successors, and assigns.

**Section 12.10 REPRESENTATION.** The **Parties**, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this **Agreement**, and agree they have not been influenced by any representations or statements made by any other parties.

**Section 12.11 HEADINGS.** Headings in this **Agreement** are for convenience only and will not be used to interpret or construe its provisions.

**Section 12.12 COUNTERPARTS.** This **Agreement** may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the **Parties** and delivered to the other **Party**.

**Section 12.13 REPRESENTATION OF AUTHORITY.** Each **Party** signing this **Agreement** represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this **Agreement** and that the **Agreement** is a valid and legal agreement binding on such **Party** and enforceable in accordance with its terms.

**Section 12.14 FEES.** The fees provided for herein shall not be interpreted or deemed to be the **Metro Flood Diversion Authority's** sole source of recovery for damages in any way arising from or related to **Utility's** delay, actions, or failure to act. The **Metro Flood Diversion Authority** shall have all remedies available to it at law in addition to any fees paid to the **Metro Flood Diversion Authority** by **Utility** pursuant to this **Agreement**.

**Section 12.15 ELECTRONIC SIGNATURES.** The parties acknowledge and agree that this **Agreement** may be executed by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature.

**Section 12.16 TERMINATION.** This **Agreement** may be terminated by the **Metro Flood Diversion Authority**, at any time and for any reason with three (3) calendar days written notice to **Utility**.

*(Signatures appear on the following pages.)*

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

METRO FLOOD DIVERSION AUTHORITY

BY: \_\_\_\_\_  
Chad Peterson, Chair

BY: \_\_\_\_\_  
Joel Paulsen, Executive Director

DICKEY RURAL NETWORKS

By:   
*Signature*

Name: Kent Schimke  
*Printed*

Title: CEO/GM

By:   
*Signature*

Name: Troy Radlrmacher  
*Printed*

Title: CFO

## **EXHIBIT 1**

### **SCOPE OF WORK**

#### **ReadiTech Fiber plan for crossing the Red River Diversion at Sta. 1171+00**

##### **I. Temporary crossing request for 2021/2022**

Step 1: Place fiber optic facility from 26th St. SW to the quarter line located ½ mile to the East of 26th St. SW along the North side of 40th Ave. W. This facility ends in a handhole placed level with the ground at said quarter line and will be utilized as a future starting point for crossing the Red River Diversion's planned location east of said handhole. Please note that this handhole is outside of the Metro Flood Diversion Authorities' area of responsibility.

Step 1 was completed in July of 2021.

Step 2: In this step, ReadiTech Fiber, is requesting to place a temporary fiber optic cable from the handhole on the quarter line, noted in Step 1, to an existing DCN (Dakota Carrier Network) handhole located just to the West of the approach road for the cell tower that is present at that location and within the Diversion area. ReadiTech Fiber will splice their fiber facility to the existing DCN Fiber in this handhole to provide temporary service Easterly through the planned Diversion. Our plan will be to splice this new fiber optic cable into the existing DCN cable inside of the DCN handhole.

Our preference is to complete this portion as early in 2022 as allowed.

##### **II. Permanent Crossing for 2022 and beyond**

Step 1: ReadiTech Fiber will coordinate with DCN to confirm the conduit size required for the DRN and DCN fiber lines to occupy. This conduit will be installed by the Metro Flood Diversion Authority's (MFDA) selected Developer, Red River Valley Alliance (RRVA), on the North side of 40th Ave W.

ReadiTech Fiber's current plan is to wait until RRVA has completed placing the new conduit for DCN and will then construct facilities to connect the ends of that conduit with the new handholes constructed by DCN that ReadiTech will utilize to access this conduit.

DCN's fiber contractor will extend the HDPE conduit installed under the proposed channel to new overlay handholes outside the channel ROW over existing DCN facilities to tie into the existing conduits running east and west. RRVA's contractor will temporarily seal the empty conduit and ReadiTech will permanently seal the conduit after cables are pulled. ReadiTech will construct their conduits to the DCN handholes placed by DCN as part of the DCN relocation.

Step 2: At some point after the new DCN conduit is placed by RRVA, ReadiTech Fiber will place facilities from the DCN conduit end location handhole to the nearest ReadiTech Fiber handhole located to the West of the proposed diversion location.

Step 3: Place fiber optic cable innerducts and properly seal all innerducts.

1. The cable to be pulled into the DCN innerduct will be placed by a contractor of DCN's choosing and will be a 288 fiber that has a diameter of just under 1-inch.
2. The annular space will be sealed around between the cable and the innerduct that it is in, but it will be sealed in such a manner that DCN will be able to place a second fiber into that same conduit at some point in the future.

Step 4: Install two (2) fiberglass warning sign marker posts.

1. ReadiTech Fiber will place warning markers at the two ReadiTech Fiber handholes that will be used as access points for the DCN conduit that will be placed by RRVA.

### **III. Preparing for Construction**

Step 1: Dakota Carrier Network (DCN) shall be notified at least 60 calendar days and 15 business days prior to the anticipated date for Utility Adjustment Completion.

Step 2: As-built drawings shall be provided to the Metro Flood Diversion Authority after completion.

1. ReadiTech, in conjunction with DCN, shall provide location and depth of each new conduit at fifty (50) foot intervals using the North American Datum of 1983 (NAD83) (NSRS2007), North Dakota State Plane Coordinate System, South Zone and the North American Vertical Datum of 1988 (NAVD88) (GEOID09). ReadiTech shall coordinate with the Metro Flood Diversion Authority to document the Utility Adjustment Construction Work within the Project Footprint.

The as-built drawings will provide the type and size of fiber that is to be placed, which conduits were utilized by DCN/ReadiTech Fiber and the path taken to get from the handholes placed by DCN to the nearest ReadiTech Fiber handholes. As-built records for the temporary cable installation shall be provided to the Metro Flood Diversion Authority within thirty (30) calendar days following completion.

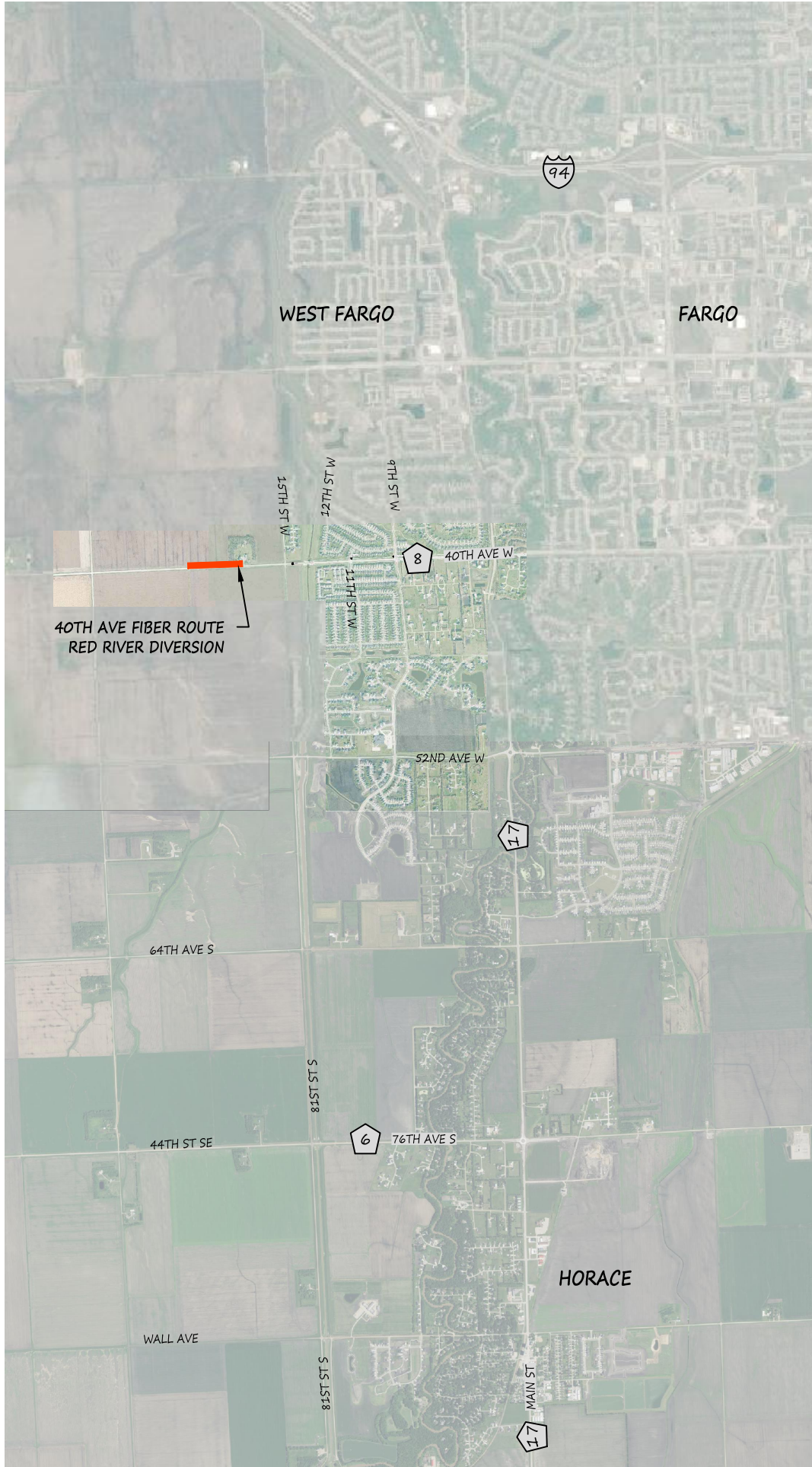
## **EXHIBIT 2**

### **TEMPORARY CONSTRUCTION PLANS**

Once approval is granted by the Metro Flood Diversion to Read iTech Fiber, they will utilize the contractor Optical Xperts from Wisdom, MN to complete a bore from the existing Read iTech Fiber handhole located on the quarter line located between 15<sup>th</sup> St. W and 26<sup>th</sup> St. W on 40<sup>th</sup> Ave. W and the existing DCN handhole that is located by the approach road to the cell tower that is currently being served by DCN. This bore will consist of one 1.25" SDR11 conduit placed approximately 4' deep and 70' north of the centerline of 40<sup>th</sup> Ave. W for approximately 1,530 feet.

This placement will occur as early in 2022 as is allowed by this Agreement. The temporary fiber optic cable will be removed and the innerduct will be abandoned as soon as the permanent placement is in place for Read iTech Fiber to connect to. To see a visualization of this placement, please refer to the Plan view – 40<sup>th</sup> AVE RED RIVER DIVERSION.





VICINITY MAP - 40TH AVE  
 RED RIVER DIVERSION

PROJECT# 201-2021  
 WO# RTS21.3.01

CASS COUNTY

|                   |             |
|-------------------|-------------|
| SCALE             | 1" = 4000'  |
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| PREPARED INITIALS | PEB         |
| PREPARED DATE     | 03/02/22    |
| REVISED INITIALS  |             |
| REVISED DATE      |             |
| RECORD INITIALS   |             |
| RECORD DATE       |             |



|                  |   |    |   |
|------------------|---|----|---|
| TAB SHEET NUMBER | 1 | OF | 2 |
|------------------|---|----|---|



READI TECH

HORACE TOWN  
2022 CONSTRUCTION

PLAN VIEW - 40TH AVE  
RED RIVER DIVERSION

PROJECT# 201-2021  
WO# RTS21.3.01

CASS COUNTY

|                   |             |
|-------------------|-------------|
| SCALE             | 1"=200'     |
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| PREPARED INITIALS | PEB         |
| PREPARED DATE     | 03/02/22    |
| REVISED INITIALS  |             |
| REVISED DATE      |             |
| RECORD INITIALS   |             |
| RECORD DATE       |             |



TAB SHEET NUMBER  
2 OF 2

**EXHIBIT 3**

**RIGHT OF WAY DOCUMENTS**



**TELEPHONE COMPANY RIGHT-OF-WAY EASEMENT**

**KNOW ALL BE THESE PRESENTS**, that We, the undersigned, Owners (whether one or more), **BRUCE COSSETTE** whose mailing address is 3831 17<sup>TH</sup> St S, Fargo, ND 58104-6339 for a good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant unto **DICKEY RURAL TELEPHONE COOPERATIVE**, a cooperation corporation (hereafter call the "Cooperative") whose post office address is P.O. Box 69, Ellendale, North Dakota 58436, and to its successors or assigns, the right of ingress and egress to enter upon the lands herein described in Cass County, North Dakota:

**A 75' wide corridor for placement of communication facilities running East-West, parallel to and at least 100' from the center line of 40<sup>th</sup> Ave W for approximately 2,690 lineal feet, located in the Southern 75' of a property in the SE1/4 of Section 25, T139N, R50W, of the 5<sup>th</sup> Principal Meridian, Cass County, North Dakota, Parcel #53-0000-09132-010 & 53-0000-09132-020.**

to construct, reconstruct, operate and maintain on or under the above-described lands and/or in, upon or under all streets, roads or highways abutting said lands, a Communications line or system, to cut and trim trees and shrubbery that may interfere with or threaten to endanger the operation and maintenance of said line or system and to license, permit or otherwise agree to the joint use of occupancy of said line or system and to license, permit or otherwise agree to joint use or occupancy of said line or system by any other person, firm or corporation for Communication or electrification purposes.

The Cooperative agrees to compensate the owner or tenant for all crop loss resulting from Cooperative activities upon said land pursuant to this easement.

The undersigned agrees that all poles, wires, and other facilities, including all Communication equipment, installed on the above-described premises at the Cooperative's expense, shall remain the property of the Cooperative, removable at the option of the Cooperative.

The undersigned covenant that they are the owners of the above-described property. This Easement shall be for a period of ninety-nine years or such longer period as allowed under State Law.

**IN WITNESS WHEREOF**, the undersigned have set their hands and seals this 15 day of APRIL, 2021.

*Bruce Cossette*  
**BRUCE COSSETTE**

STATE OF Florida )

: ss.

COUNTY OF Collier )

On this 15 day of April, 2021, before me, a Notary Public in and for said County and State personally appeared **BRUCE COSSETTE**, known to me to be the person(s) described herein and who executed the above and foregoing instrument and acknowledged to me that he executed the same.

*Jared Lee Sanborn* Notary Public

March 12 2024 My Commission Expires



**TELEPHONE COMPANY RIGHT-OF-WAY EASEMENT**

**KNOW ALL BE THESE PRESENTS**, that We, the undersigned, Owners (whether one or more), **BRUCE COSSETTE** whose mailing address is 3831 17<sup>TH</sup> St S, Fargo, ND 58104-6339 for a good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant unto **DICKEY RURAL TELEPHONE COOPERATIVE**, a cooperation corporation (hereafter call the "Cooperative") whose post office address is P.O. Box 69, Ellendale, North Dakota 58436, and to its successors or assigns, the right of ingress and egress to enter upon the lands herein described in Cass County, North Dakota:

**A 75' wide corridor for placement of communication facilities running East-West, parallel to and at least 100' from the center line of 40<sup>th</sup> Ave W for approximately 2,630 lineal feet, located in the Southern 75' of a property in the SW1/4 of Section 25, T139N, R50W, of the 5<sup>th</sup> Principal Meridian, Cass County, North Dakota, Parcel #53-0000-09131-000.**

to construct, reconstruct, operate and maintain on or under the above-described lands and/or in, upon or under all streets, roads or highways abutting said lands, a Communications line or system, to cut and trim trees and shrubbery that may interfere with or threaten to endanger the operation and maintenance of said line or system and to license, permit or otherwise agree to the joint use of occupancy of said line or system and to license, permit or otherwise agree to joint use or occupancy of said line or system by any other person, firm or corporation for Communication or electrification purposes.

The Cooperative agrees to compensate the owner or tenant for all crop loss resulting from Cooperative activities upon said land pursuant to this easement.

The undersigned agrees that all poles, wires, and other facilities, including all Communication equipment, installed on the above-described premises at the Cooperative's expense, shall remain the property of the Cooperative, removable at the option of the Cooperative.

The undersigned covenant that they are the owners of the above-described property. This Easement shall be for a period of ninety-nine years or such longer period as allowed under State Law.

**IN WITNESS WHEREOF**, the undersigned have set theirs hands and seals this 15 day of APRIL, 2021.

*Bruce Cossette*  
**BRUCE COSSETTE**

STATE OF Florida )

: ss.

COUNTY OF Collier )

On this 15 day of April, 2021, before me, a Notary Public in and for said County and State personally appeared BRUCE COSSETTE, known to me to be the person(s) described herein and who executed the above and foregoing instrument and acknowledged to me that he executed the same.

*Jared Lee Sanborn* Notary Public

March 12 2024 My Commission Expires



# UTILITY PERMIT APPLICATION

**Please Print or Type** Instructions: Complete all questions that apply, sign, attach necessary documents, and submit to the Cass County Highway Department, along with a nonrefundable application fee in the amount of \$50. Submit an application and fee for each permit requested.



**Highway Department**  
 1201 Main Avenue West  
 West Fargo, ND 58078  
[www.casscountynd.gov](http://www.casscountynd.gov)  
 Phone: 701-298-2370  
 Fax: 701-298-2395

|   |   |
|---|---|
| Applicant (Owner of Facility)<br><b>Michelle Peterson</b> | Applicant's Representative (Consultant/Engineer/Contractor)<br><b>Brian Steiner</b> |
| Address<br><b>9628 N. Highway 281, PO Box 69</b>          | Address<br><b>PO Box 218</b>  |
| City, State Zip<br><b>Ellendale, ND 58436</b>             | City, State Zip<br><b>Casselton, ND 58012</b>                                       |
| Phone<br><b>701-344-6008</b>                              | Phone<br><b>701-344-9050</b>  |
| Email Address<br><b>mpeterson@drtel.com</b>               | Email Address<br><b>bsteiner@readitech.com</b>                                      |

|  |   |   |  |
|--|---|---|--|
| Type of Facility Requested <i>Fiber Optic Cable</i>  |   |   |  |
| <input type="checkbox"/> Open Trenching<br><input checked="" type="checkbox"/> Boring or Jacking<br><input type="checkbox"/> Repair<br><input checked="" type="checkbox"/> Other (Describe) <b>Plowing</b>                                     |   | Please attach a plan showing the location(s) of proposed facilities. Include dimensions from existing roads and other permanent structures. Include size and location of boring/jacking pits, appurtenances, and other pertinent information that will aid in the permit approval. The size of the plan should preferably be 8½ x 11. |  |
| Address, City, State Zip of Property to be Served by Permit (if applicable)<br><b>Horace, ND, 58047</b>  |   |   |  |
| On what county highway are you requesting the utility?<br><b>Co Rd 8</b>   | Section-Township-Range<br>25, 26, 27 & 28-139-50 & 30 & 31-139-49 | What side of the highway?<br><input checked="" type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W   | <input checked="" type="checkbox"/> Along <input checked="" type="checkbox"/> Across |
| Description of proposed work<br><b>Installation of New Fiber Optic line along and across Cass Cnty Rd 8, all in current Right of way. The newly proposed line will go from the intersection of Cass Cnty Rd 15 and 9th St W in West Fargo.</b> |   |   |  |
| Estimated Project Start Date<br><b>5/17/2021</b>   |   | Estimated Project Completion Date<br><b>6/24/2022</b>   |  |

By signing below, the Applicant agrees to perform all work in accordance with this Permit and to indemnify and hold harmless the County, its officers, and employees from all liability, judgments, costs, expenses, and claims growing out of damages, or alleged damages, of any nature whatsoever, to any person or property arising out of performance or nonperformance of said work, or the existence of said utilities.

*Michelle B Peterson*  
 Applicant Signature

4-14-21  
 Date

Upon approval and issuance of the permit, the Applicant is hereby granted permission to install and maintain the utilities applied for as shown on the plans attached hereto and made a part hereof, as per the Estimated Project Start Date, within the deeded right of way or easement or will obtain proper easements via the landowner.

*Brian Steiner*  
 Authorized Highway Department Signature

5/5/2021  
 Date

**TERMS AND CONDITIONS:** Installation and maintenance of said utilities on highway right of way shall be subject to the following terms and conditions:

1. Installation, maintenance, relocation, and removal of said utilities on highway right of way shall be done in a manner satisfactory to the Board of County Commissioners or County Engineer.
2. No work under this application is to be started until the application is approved and the permit is issued.
3. Where work on or near the traveled roadway is necessary, proper signs, channelizing devices, warning lights, and barricades must be erected to protect traffic, employees, and pedestrians. All traffic control devices and methods shall conform to the Manual on Uniform Traffic Control Devices.
4. No foreign material such as dirt, gravel, or bituminous material shall be deposited or left on the road during the construction or installation said facilities.
5. Roadside must be cleaned up after work is completed.
6. Proper erosion control and sedimentation devices shall be used.
7. Surfacing may be omitted on field entrances if so specified in the application.
8. The Applicant shall repair or replace highway structures, appurtenances, and any existing facilities located on, over, or under highway right of way, which may be damaged as a result of the installation and maintenance of said utilities on highway right of way.
9. Applicant shall promptly remove said utilities from highway right of way, shall relocate, or adjust said utilities, at its sole cost and expense when requested to so do by the Board of County Commissioners.
10. The Applicant is responsible for obtaining all utility locates prior to beginning any work within the highway right of way.
11. The Applicant shall be required to wear an ANSI/ISEA 107-2004 Class II high visibility garment while within the highway right of way as per the requirements of 23 CFR 634.
12. The County shall not be liable for damage to said utilities resulting from reconstruction or maintenance of the highway.
13. Within thirty (30) days after construction, maintenance, relocation, or removal of said utilities, any right of way scars shall be removed and disturbed areas shall be seeded and restored to original conditions. The area will be maintained by the Applicant for a period of one (1) year from the date of final inspection.
14. The utility shall be placed at a minimum depth of forty-two (42) inches below the ditch elevation and/or culvert within one hundred (100) feet from the centerline of the County Highway.
15. The utility shall be placed under all County Highways by means of casing pipe or boring at a minimum depth of forty-two (42) inches under the road surface or below the lowest ditch elevation. No open cuts allowed 42 inches below any culvert.
16. Marker posts shall be installed on all crossings on the right of way line or farther from the centerline of the road.
17. After construction is completed, the Applicant shall notify the Cass County Highway Department that the work is completed and is ready for final inspection.
18. No construction shall be considered complete until checked and approved by the County Highway Department. The applicant will notified of any deficiencies. Failure to complete the repairs will cause the applicant to be liable to the County for the cost of the repairs, as outlined in Ordinance #2015-2 and NDCC § 24-05-23.

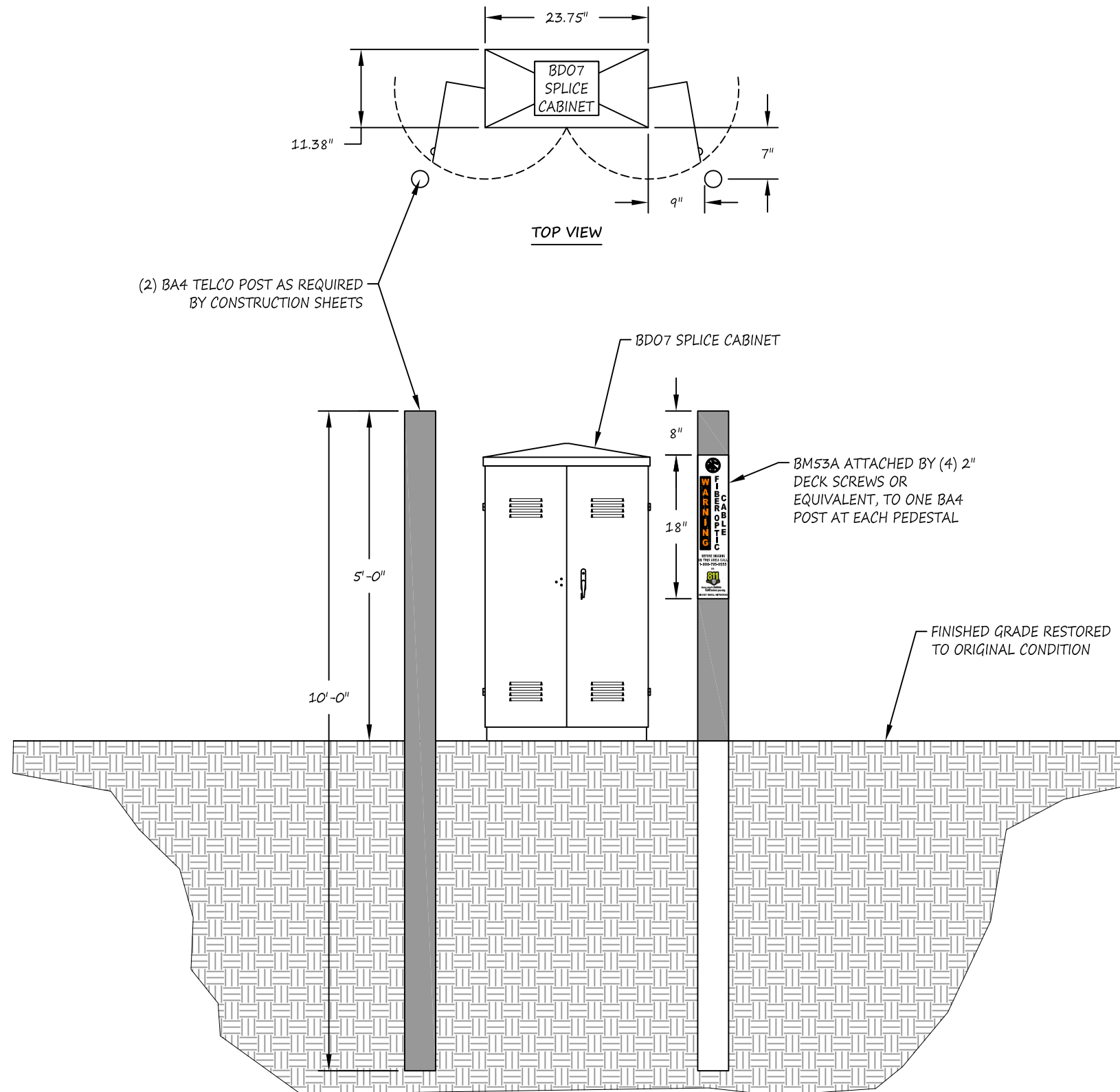
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|---|--|---------------|
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| Approved Permit Sent to Applicant:                          | Date: 5/5/21 <i>(LS)</i>                                 |               |
| Notification Received From Applicant that work is complete: | Date:  |               |
| Final Inspection Completed By:                              |  | Date:         |
| Final Inspection Approved:                                  | <input type="checkbox"/> Yes <input type="checkbox"/> No |               |
| Comments:   |  |               |



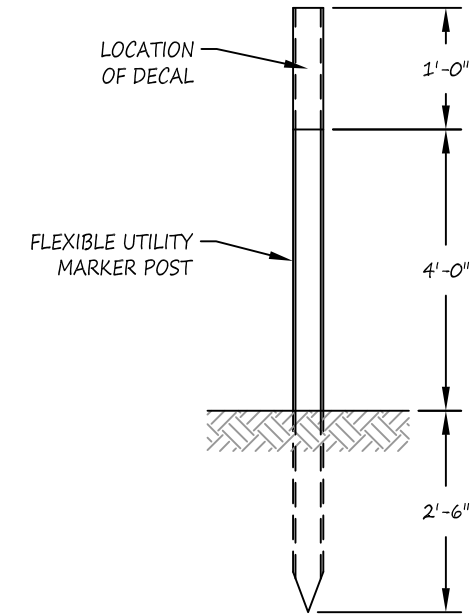
2021 DRN TRANSPORT  
MAPLETON TO HORACE

TYPICAL PLOW METHOD

PR# 208\_2020



DECAL LAYOUT



WARNING SIGN

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| TAX CODE         |                |
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| DRAWN DATE       | 03/25/2021     |
| REVISED INITIALS |                |
| REVISED DATE     |                |
| FIELD OBSERVER   |                |
| RECORD INITIALS  |                |
| RECORD DATE      |                |



PLAN SHEET NUMBER  
P01 OF 4

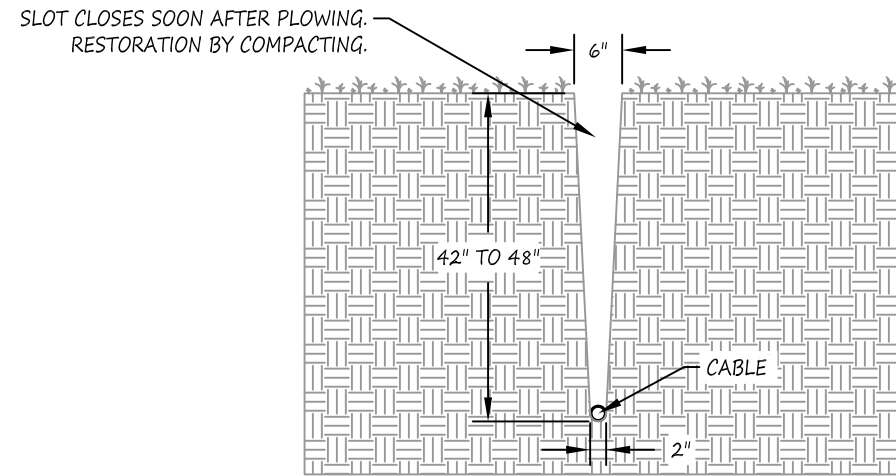




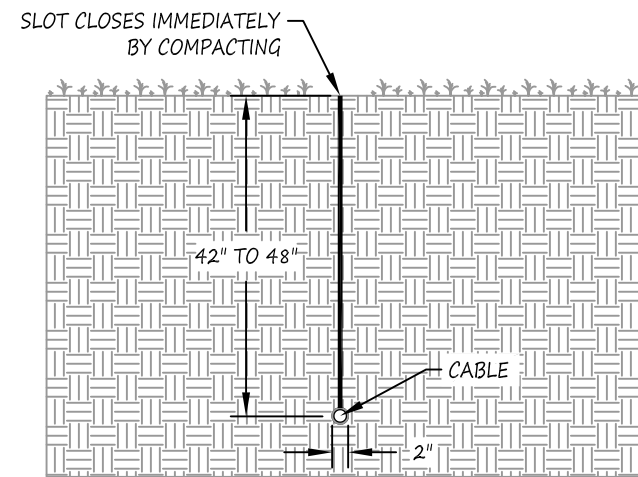
2021 DRN TRANSPORT  
MAPLETON TO HORACE

WATER CROSSING

PR# 208\_2020



TYPICAL PLOW METHOD CABLE PLACEMENT



TYPICAL PLOW METHOD RESTORED

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| DRAWN DATE       | 03/25/2021     |
| REVISED INITIALS |                |
| REVISED DATE     |                |
| FIELD OBSERVER   |                |
| RECORD INITIALS  |                |
| RECORD DATE      |                |



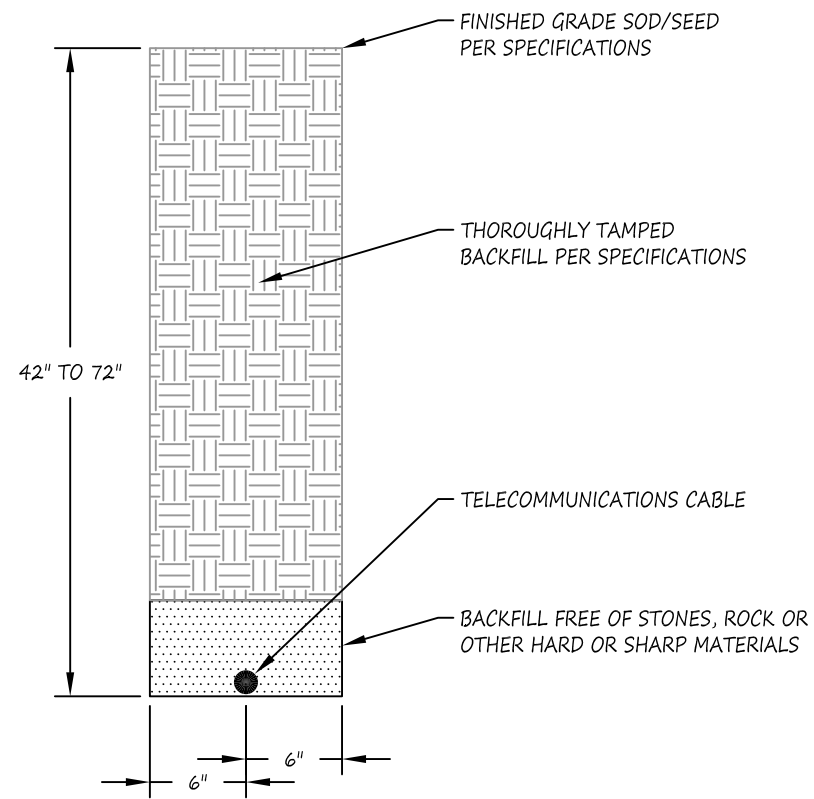
PLAN SHEET NUMBER  
P02 OF 4



2021 DRN TRANSPORT  
MAPLETON TO HORACE

TYPICAL ABOVE GROUND  
APPURTENANCES

PR# 208\_2020



TYPICAL TRENCHING DETAIL

|                  |                |
|------------------|----------------|
| SCALE            | NTS            |
| TAX CODE         |                |
| FILE NAME        | PERMIT_DETAILS |
| BASE FILE        |                |
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| DRAWN DATE       | 03/25/2021     |
| REVISED INITIALS |                |
| REVISED DATE     |                |
| FIELD OBSERVER   |                |
| RECORD INITIALS  |                |
| RECORD DATE      |                |



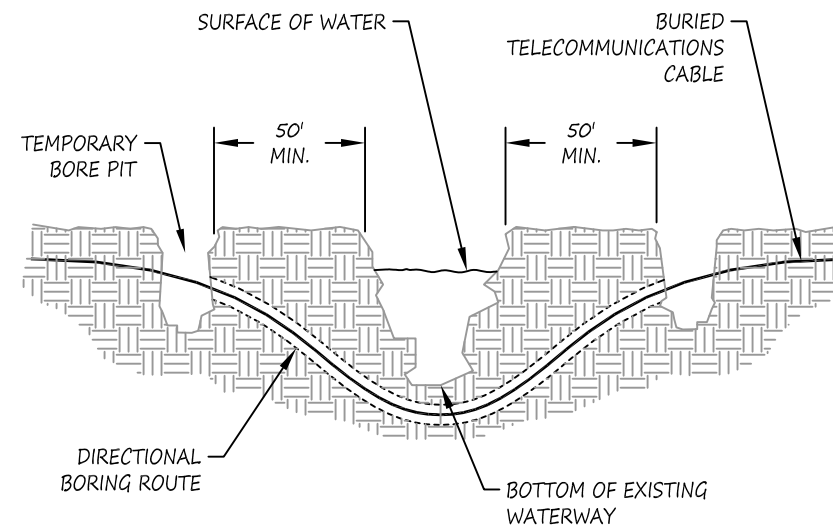
PLAN SHEET NUMBER  
P03 OF 4



2021 DRN TRANSPORT  
MAPLETON TO HORACE

TRENCHING AND  
SPECIAL CONSTRUCTION

PR# 208\_2020



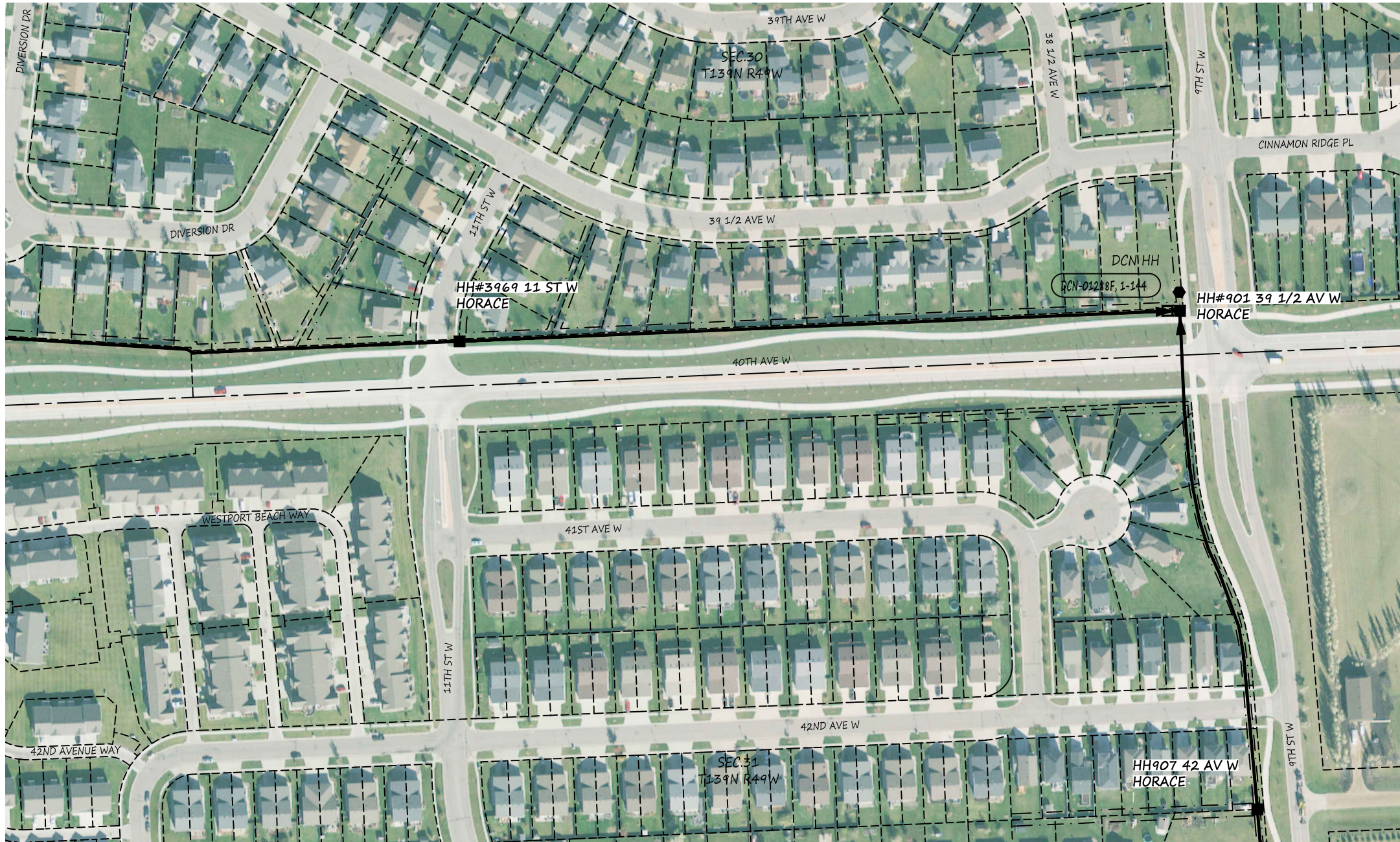
DIRECTIONAL BORE DETAIL

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| BASE FILE        |                |
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| DRAWN DATE       | 03/25/2021     |
| REVISED INITIALS |                |
| REVISED DATE     |                |
| FIELD OBSERVER   |                |
| RECORD INITIALS  |                |
| RECORD DATE      |                |



PLAN SHEET NUMBER  
P04 OF 4





SEE SHEET 31

SEE SHEET 29



**HORACE TOWN  
2021 CONSTRUCTION**

**RTE\_288A**

PROJECT# 201-2021  
WO# RTS21.3.01  
N/A EXCHANGE  
CASS COUNTY

CONSTRUCTION NOTES

1. DO NOT LEAVE A COIL AT HH#907 42 AV W. CZABLE WILL PULL STRAIGHT THROUGH.
2. SPLICE DRN BFO144 AT HH#901 39 1/2 AV W.
3. LEAVE A 100' COIL AT HH#901 39 1/2 AV W AND CONTINUE BFO288 TO TERMINATE IN DCN HH.
4. PULL BFO144 IN EXISTING VACANT DCN 2" DUCT HEADING WEST.
5. EXPOSE EXISTING VACANT 2" DCN DUCT AND SWING INTO HH#3969 11 ST W.

**CAUTION - UTILITY WARNING!!**  
SHOWN UTILITY LINE LOCATIONS ARE APPROXIMATE! CONTRACTOR SHALL DETERMINE EXACT NUMBERS AND LOCATIONS OF UTILITY LINES PRIOR TO CONSTRUCTION.

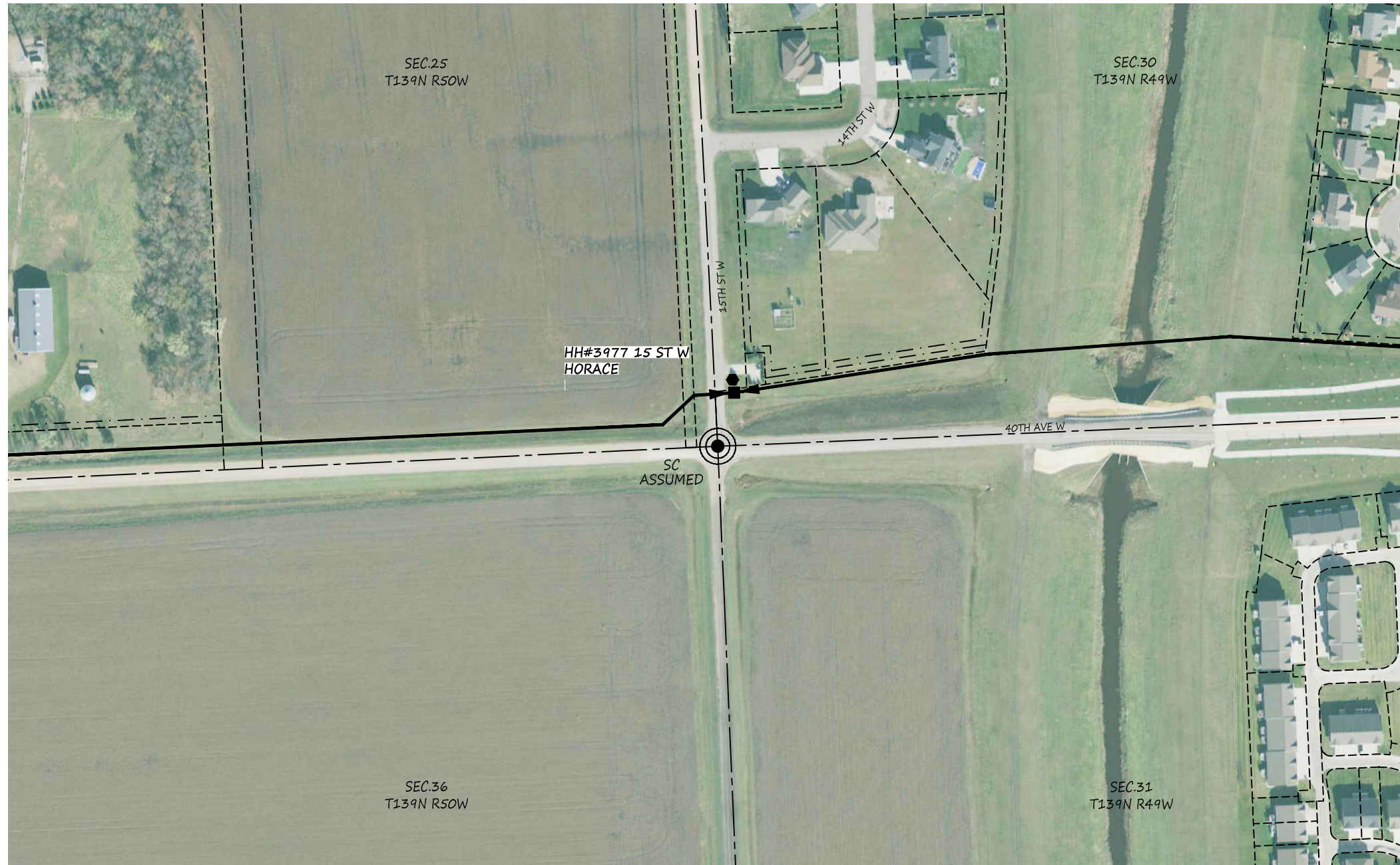
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| DRAWN DATE       | 04/06/21    |
| REVISED INITIALS |             |
| REVISED DATE     |             |
| FIELD OBSERVER   |             |
| RECORD INITIALS  |             |
| RECORD DATE      |             |



PLAN SHEET NUMBER  
**30** OF **33**



4/21/2021 7:31:03 AM



SEE SHEET 32

SEE SHEET 30



**HORACE TOWN  
2021 CONSTRUCTION**

- CONSTRUCTION NOTES
1. EXPOSE EXISTING VACANT 2" DCN DUCT AND SWING INTO HH#3977 15 ST W.

**RTE\_288A**

PROJECT# 201-2021  
WO# RTS21.3.01  
N/A EXCHANGE  
CASS COUNTY

**CAUTION - UTILITY WARNING!!**  
SHOWN UTILITY LINE LOCATIONS ARE APPROXIMATE!  
CONTRACTOR SHALL DETERMINE EXACT NUMBERS AND LOCATIONS OF UTILITY LINES PRIOR TO CONSTRUCTION.

|                  |             |
|------------------|-------------|
| SCALE            | 1" = 200'   |
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| BASE FILE        | BASE_HRCE21 |
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| DRAWN DATE       | 04/06/21    |
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| REVISED DATE     |             |
| FIELD OBSERVER   |             |
| RECORD INITIALS  |             |
| RECORD DATE      |             |



PLAN SHEET NUMBER  
**31** OF **33**



4/21/2021 7:31:06 AM



**HORACE TOWN  
2021 CONSTRUCTION**

CONSTRUCTION NOTES

1. A PRIVATE EASEMENT IS REQUIRED FOR HATCHED AREA.

**RTE\_288A**

PROJECT# 201-2021  
 WO# RTS21.3.01  
 N/A EXCHANGE  
 CASS COUNTY

**CAUTION - UTILITY WARNING!!**

SHOWN UTILITY LINE LOCATIONS  
 ARE APPROXIMATE!  
 CONTRACTOR SHALL DETERMINE  
 EXACT NUMBERS AND LOCATIONS  
 OF UTILITY LINES PRIOR TO  
 CONSTRUCTION.

SCALE 1" = 200'  
 TAX CODE  
 FILE NAME RTE\_288A\_A  
 BASE FILE BASE\_HRCE21  
 DRAWN INITIALS PEB  
 DRAWN DATE 04/06/21  
 REVISED INITIALS  
 REVISED DATE  
 FIELD OBSERVER  
 RECORD INITIALS  
 RECORD DATE



PLAN SHEET NUMBER  
**32** OF **33**



SEE SHEET 33

SEE SHEET 31



4/21/2021 7:31:08 AM



CONSTRUCTION NOTES

1. A PRIVATE EASEMENT IS REQUIRED FOR HATCHED AREA.



**HORACE TOWN  
2021 CONSTRUCTION**

**RTE\_288A**

PROJECT# 201-2021  
WO# RTS21.3.01  
N/A EXCHANGE  
CASS COUNTY

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| FIELD OBSERVER   |             |
| RECORD INITIALS  |             |
| RECORD DATE      |             |



PLAN SHEET NUMBER  
**33** OF **33**

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**MEMORANDUM OF UNDERSTANDING**

**BY AND BETWEEN**

**METRO FLOOD DIVERSION AUTHORITY**

**AND**

**BERLIN TOWNSHIP, NORTH DAKOTA**

**Dated as of \_\_\_\_\_, 2022**

**Relating to:**

**A Memorandum of Understanding outlining the respective roles and responsibilities of the Parties in regard to the impacts resulting from construction of the Storm Water Diversion Channel and Associated Infrastructure of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.**

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## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** (hereinafter the “MOU”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the “Effective Date”), by and between the METRO FLOOD DIVERSION AUTHORITY (the “Authority”) and BERLIN TOWNSHIP, NORTH DAKOTA (the “Township”).

In consideration of the faithful performance of the mutual covenants and agreements herein set forth, the Authority and the Township mutually agreed as follows:

### ARTICLE I. DEFINITIONS AND INTERPRETATION

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

“**Compensation Event**” means as defined in the Project Agreement.

“**Comprehensive Project**” means the project commonly known as the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, which includes the SWDCAI.

“**Design Documents**” means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details, and diagrams), specifications, reports, studies, working drawings, shop drawings, calculations, electronic files, records, and submittals necessary for, or related to, the design of the SWDCAI.

“**Developer**” means the individual, partnership, corporation, or joint venture that enters the Project Agreement with the Authority to design, finance, build, operate, and maintain the SWDCAI. References to the Developer throughout this MOU include references to other entities engaged by the Developer to complete such work.

“**Diversion Inlet Structure**” means the hydraulic control structure being constructed by USACE at the confluence of County Road 16 and County Road 17.

“**Force Majeure Flood Event**” means (i) until Project Substantial Completion, the gauge height for USGS gauge 05054000 (Red River) meets or exceeds 43 feet; and (ii) on or after Project Substantial Completion, more than 46,600 cfs is permitted to flow through the Diversion Inlet Structure.

“**Indemnified Party**” means a party identified by the Project Agreement as such.

“**Insurance Policies**” means the insurance policies the Authority is required to carry or ensure are carried by the Developer.

“**Intellectual Property**” means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any

other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United States or any part of the world together with all or any goodwill relating or attached thereto which is created, brought in existence, acquired, used, or intended to be used by the Authority for the purposes of carrying out the work or otherwise for the purposes of this MOU.

**“Losses”** means any loss, damage, injury, liability, obligation, costs, response cost, expense, fee, charge, judgment, penalty, or fine. Losses include injury to or death to Persons, damage or loss of property, and harm or damage to natural resources.

**“MAI”** means mitigation and associated infrastructure.

**“Material Change or Modification”** means a change or modification affecting the operation or performance of a New Gravel Road.

**“Milestone One Limits”** means the portion of the SWDCAI from the new Drain 14 inlet structure (including the Drain 14C inlet facilities) to the outlet of the SWDCAI into the Red River (i.e., all features of the SWDCAI north of approximately 920+00 as shown on Exhibit G attached hereto).

**“New Gravel Road”** means a gravel road or field access that will be constructed (i) to provide access to a Parcel Without Access or (ii) to reconnect 168th Avenue Southeast, on both the north and south sides, to the crossing on County Road 32.

**“Parcel Without Access”** means a parcel of land that, as a result of the construction of the SWDCAI, will be left without an access point or whose access will be severed, excluding property that can be accessed by adjoining parcels with a matching owner.

**“Party”** means the Authority or the Township, as the context may require, and their respective legal representatives, successors, and permitted assigns, and wherever a reference in this MOU is made to any Parties hereto, **“Parties”** means the Authority and the Township, collectively, and their respective legal representatives, successors, and permitted assigns.

**“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.

**“Project Agreement”** means the contract to design, build, finance, operate, and maintain the SWDCAI that the Authority will enter with the Developer.

**“Project Data”** means

- (a) Design Documents; and
- (b) Any other information, documents, or data required or brought into existence or used in relation to the Work or this MOU;

in each case, that is used by or on behalf of the Authority in connection with the provision of the Work or the performance of the Authority's obligations under this MOU.

**"Project Limits"** means the approximate right-of-way for the SWDCAI, as currently projected in Exhibit A.

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

**"Released for Construction Documents"** means all drawings, specifications, revisions thereto, and any other items necessary to construct the work, signed and sealed by the Engineer of Record.

**"Relief Event"** means as defined in the Project Agreement.

**"Routine Maintenance"** means re-striping, snow plowing, and/or ice and snow control (e.g., application of salts, chloride, and sand), depending upon the type of road. For gravel roads, Routine Maintenance is limited to snow plowing.

**"SEAI"** means the southern embankment and associated infrastructure portion of the Comprehensive Project.

**"Storm Water Diversion Channel and Associated Infrastructure" or "SWDCAI"** means the approximately thirty (30) mile, 20,000 cubic feet per second (cfs) during a 100-year event channel and associated features, including the outlet, river and drain inlets, road bridges, railroad bridges, aqueducts, and recreational features, to be constructed as part of the Comprehensive Project.

**"Substantial Completion"** means a New Gravel Road is functional to its intended use.

**"Third Party Claims"** means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, investigations or administrative proceedings brought by a Person that is not an Indemnified Party, including the Township, with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines, or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

**"Township Completion Acceptance"** means an agreement between the County and the Authority that a New Gravel Roadway is substantially complete.

**"Traffic Mitigation Route"** means an existing road that may be used as a detour route during the construction of the SWDCAI.

## **ARTICLE II. INTENT**

**Section 2.01** INTENT. The Authority, in conjunction with the United States Army Corps of Engineers (USACE), is designing, constructing, operating, and maintaining the Comprehensive

Project. One element of the Comprehensive Project is the SWDCAI, which the Authority intends to deliver through a public-private partnership with a Developer. The Authority intends to transfer the majority of the obligations set forth in this MOU to the Developer through the entrance of the Project Agreement. If an obligation is not transferred to the Developer, the Authority will undertake such obligation itself or assign the same to a third party. References to the Authority throughout this MOU include references to other entities engaged by the Authority, including the Developer, to complete such work. Regardless of whether the Authority assigns any of the work described in this MOU, it will remain liable for the obligations assigned by this MOU.

**Section 2.02 DEVELOPER AND AUTHORITY CONTACT.** Following the selection of the Developer, an Authority appointed and Developer selected contact within the agency and prime contractor (“Point of Contact”) will be assigned to the Township Representative. The intended purpose of this Point of Contact is to allow the Township Representative to provide information to the Authority and the Developer regarding Township-related activities that may be occurring on property near the Project Limits that may have an impact on the Developer’s work, as well as to allow the Township Representative to inform the Authority and the Developer of conflicts or concerns the Township may have. The Authority will work with the Township to remedy any such conflicts or concerns.

### **ARTICLE III. SWDCAI AND OPENING**

**Section 3.01 DESIGN AND CONSTRUCTION.** The Authority is responsible for designing and constructing the SWDCAI. Once the Authority has prepared plans and specifications for the SWDCAI, the Authority will open New Gravel Roads as set forth in the following section.

**Section 3.02 NEW GRAVEL ROADS.** In the event the Authority’s design creates a Parcel Without Access, the Authority will establish a New Gravel Road to provide access to that parcel. Additionally, the Authority will construct New Gravel Roads to reconnect 168th Avenue Southeast to County Road 32. A New Gravel Road will be constructed as a Two-Lane Township Gravel Section road in accordance with the standards attached hereto as Exhibit B. The Authority will open New Gravel Roads through platting. The Township will not be responsible for any costs in constructing New Gravel Roads.

### **ARTICLE IV. PROPERTY INTEREST ACQUISITION**

**Section 4.01 ACQUISITION.** The Authority will, at its sole cost and expense, obtain all easements, rights-of-way, or other interests in real property necessary for the opening of New Gravel Roadways.

**Section 4.02 TRANSFER OF INTEREST.** For those portions of New Gravel Roads located outside of the Project Limits and acquired by the Authority, the Authority will convey to the Township, at the time set forth herein, the necessary right-of-way and/or easement interests needed to operate and maintain the New Gravel Roads. The Authority will maintain ownership of those portions of New Gravel Roads located within the Project Limits.



**Section 4.03 WEED CONTROL.** On property in which the Authority has obtained an interest for the development of the Comprehensive Project, the Authority will designate personnel to monitor and maintain control of weeds in accordance with all applicable noxious weed control ordinances.

**Section 4.04 SWDCAI.** The Authority intends to plat the Project Limits. Cass County, pursuant to N.D.C.C. § 24-05-09, will declare, by resolution, those portions of Township roads, as determined by the Project Limits, that will be impacted by construction to be part of the Cass County highway system. The section line road rights-of-way that the Authority anticipates will be impacted by the construction are included on the Project Impacts Map, attached as Exhibit E.

## **ARTICLE V. PRELIMINARY PLANNING AND ENGINEERING ACTIVITIES**

**Section 5.01 SITE TESTING.** The Authority will perform all preliminary engineering activities for New Gravel Roads, including: (a) technical studies and analyses; (b) geotechnical, seismic, flooding, and biological investigations; (c) right-of-way mapping, surveying, and appraisals; (d) utility subsurface investigations and mapping; (e) hazardous materials investigations; and (f) archeological, paleontological, and cultural investigations.

**Section 5.02 MITIGATION.** The Authority is responsible, at its sole cost and expense, for the remediation and removal of all hazardous materials unearthed as a result of the SWDCAI and New Gravel Roads.

**Section 5.03 ENVIRONMENTAL REVIEWS.** The Authority will coordinate with USACE to ensure that all work described in this MOU complies with applicable environmental laws and regulations and receives all necessary environmental clearances.

**Section 5.04 UTILITY RELOCATION.** The Authority is responsible for coordinating and/or performing utility relocations and will be responsible for costs incurred for these relocations.

**Section 5.05 PERMITS AND APPROVALS.** The Authority will secure any necessary permits and/or approvals for construction of the SWDCAI from the State of North Dakota and is responsible for carrying out any requirements of those permits and/or approvals, including environmental requirements. From the Township, the Authority will apply for and secure conditional use permits for recreational features of the SWDCAI as required under the Township's ordinances. Currently, there are no recreational features included in the Authority's technical requirements for the SWDCAI. The current features of the SWDCAI include the following:

- (a) Diversion channel;
- (b) Low flow channel;
- (c) Diversion channel outlet;
- (d) Maintenance roads and trails;

- (e) Drainage inlets;
- (f) Aqueducts;
- (g) Project access points;
- (h) Excavated material berms;
- (i) Diversion channel line of protection;
- (j) Local drainage;
- (k) Highway crossings;
- (l) Railroad crossings; and
- (m) Utility crossings.

In the event recreational features are added to the SWDCAI, the Authority will apply for and secure a conditional use permit from the Township for their construction. Except as otherwise specifically set forth herein, the Authority is not required to obtain any other permits from the Township.

## **ARTICLE VI. DESIGN AND CONSTRUCTION**

**Section 6.01** DESIGN. The Authority will submit all designs for New Gravel Roads to the County for review and approval in accordance with the terms of the memorandum of understanding entered between the County and the Authority for the SWDCAI. Any designs resulting from this MOU will be the property of the Authority. The provisions of this section do not preclude the Township from hiring its own engineer (the “Township Engineer”) to be consulted during the design phase. If the Township desires to have the Township Engineer consulted, it will notify the Authority Representative, who will coordinate with the Township Engineer on design reviews. The Township is authorized to submit any engineering expenses incurred for design to the Authority for reimbursement pursuant to Article XIII.

**Section 6.02** CONSTRUCTION. The Authority will be responsible for constructing New Gravel Roads and any other physical alterations necessary for construction, operation, and maintenance of the SWDCAI. Construction of a New Gravel Road will be in accordance with the plat and will be constructed as a Two-Lane Township Gravel Section road in accordance with the standards attached hereto as Exhibit B.

**Section 6.03** CREATION OF DEAD-ENDS. At each location where construction of the SWDCAI creates a dead-end of a section line road, the Authority will construct a cul-de-sac of material consistent with the material of the remaining section line road and according to the design attached hereto as Exhibit D. The cul-de-sac may be constructed outside the Project Limits or inside the Project Limits, as the design for the SWDCAI allows in the discretion of the Authority

and acceptance by the Township, with the preference being that it is constructed outside the Project Limits.

**Section 6.04** TRAFFIC MITIGATION ROUTES. The Authority will utilize Traffic Mitigation Routes to maintain adequate mobility and construction access to the SWDCAI during construction. Once the Authority has identified Traffic Mitigation Routes, it will inform the Township. The use of Traffic Mitigation Routes may or may not entail upgrading an existing earthen or dirt road to a gravel road. During the time that traffic is detoured on a Traffic Mitigation Route, the Authority will maintain the Traffic Mitigation Route in a condition that is smooth and free from holes, ruts, ridges, bumps, and standing water. The Township will be responsible for Routine Maintenance on Traffic Mitigation Routes. Once the detour along the Traffic Mitigation Route is terminated, the Authority will either remove the road for construction of the SWDCAI or will restore the detour route to a condition that is equivalent to that which existed prior to its use.

**Section 6.05** HAUL ROUTES. Prior to beginning construction, the Authority will identify existing public roads that it may utilize as haul routes and inform the Township. The Authority will comply with seasonal and other load restrictions on existing public roads. The Authority will use its best efforts to utilize County roads, in lieu of Township roads, as haul routes and will work with the County Engineer in doing so. The Authority will operate and maintain the condition of these roads during construction and make any necessary adjustments to the existing public roads to accommodate the vehicles hauling construction material. The Township will provide Routine Maintenance on haul routes. In the event the Township believes maintenance is not being performed or is being underperformed, it will notify the Point of Contact, and the Authority will coordinate maintenance, which may include, if agreed upon, the Township performing the maintenance and receiving reimbursement from the Authority. By completion of the Milestone One Limits, the Authority will have restored those roads used as haul routes to a condition equivalent to that which existed prior to their use. Any changes to haul routes will be forwarded to the Township for review and comment.

**Section 6.06** SIGNAGE AND LANE CLOSURES. The Authority will be responsible for traffic flow impacted by its construction and will place and maintain appropriate signage during construction of New Gravel Roads and the DCAI, as necessary. The Authority will maintain traffic control devices in like new condition and located in positions required by the Manual on Uniform Traffic Control Devices. Additionally, the Authority will provide advanced notification to the Township and the public of road closures, lane closures, and/or traffic switches.

**Section 6.07** CHANGES OR MODIFICATIONS. Any material changes or modifications to the location of a New Gravel Road will be subject to approval following the procedure outlined in Article III for opening a New Gravel Road. Any Material Change or Modification to the Released for Construction Documents of a New Gravel Road will also be subject to review and approval by the County in accordance with the terms of the memorandum of understanding entered between the County and the Authority for the SWDCAI. If the Township hired a Township Engineer to be engaged during design review, as described in Section 6.01, the Authority Representative will also consult with the Township Engineer for any Material Change or Modification to the Released for Construction Documents of a New Gravel Road.

**Section 6.08** CONSTRUCTION SCHEDULE. To facilitate scheduling for construction work of the New Gravel Roads, the Authority will provide the Township Representative with a proposed construction schedule for New Gravel Roads, as well as a map of designated haul routes. The Point of Contact will provide schedule updates to the Township Representative as they become available.

**Section 6.09** SUBSTANTIAL COMPLETION. The Authority will provide the Township Representative, the County Engineer, and the Township Engineer, if applicable, with written notice of any anticipated Substantial Completion of a New Gravel Road (i) no later than sixty (60) calendar days and (ii) no later than fifteen (15) Business Days prior to the anticipated date for Substantial Completion. No later than ten (10) Business Days prior to the anticipated date for Substantial Completion, the County Engineer, and the Township Engineer, if applicable, and the Authority will conduct a final inspection of the New Gravel Road to determine whether the structure meets the requirements as provided in this MOU. If the County Engineer or the Township Engineer finds the construction is insufficient, whether due to it being incomplete or non-compliant with the requirements as provided in this MOU, as applicable, the County Engineer or the Township Engineer will notify the Authority of such fact and the Authority will correct such deficiency in the construction work and re-notify for inspection.

**Section 6.10** OWNERSHIP.

(a) Upon substantial completion of the Milestone One Limits, the Authority will transfer ownership and control of New Gravel Roads outside of the Project Limits to the Township and any other entities having shared jurisdiction with the Township over those elements (“Turnover”). The Authority will maintain ownership and control of a New Gravel Road within the Project Limits.

(b) The Authority will warrant that the work on New Gravel Roads is complete and conforms to Good Industry Practice and that all materials and equipment furnished as a part of the work are of good quality and free of defects in materials and workmanship. This warranty will be effective for a period of one (1) year beginning on the date of Project Substantial Completion.

**Section 6.11** INSPECTION AND ACCESS. The Township will have the right to inspect the construction work to be performed hereunder at any time during its progress and to make final inspection upon notification of anticipated Substantial Completion. The Authority will permit and facilitate reasonable access for the Township for the reasonable inspection of the New Gravel Roads and shall cooperate fully with Township inspection personnel. Inspections may only be made upon reasonable notice to the Authority and during business hours, and the Township must comply with the Authority’s site safety requirements. In an emergency, the Township may access the site as needed and provide notice as soon as reasonably possible to the Authority. The presence or absence of a Township inspector does not relieve the Authority from any requirement in this MOU, nor is any inspector authorized to issue instructions to the Developer or change any term or condition of this MOU.

**Section 6.12** EXTRA MATERIAL PILE. By Project Substantial Completion, the Authority will have stockpiled approximately twenty-five thousand (25,000) cubic yards of excavated materials near the County Road 32 crossing of the SWDCAI. The Township will have the

opportunity to utilize these materials, in the discretion of the Authority. If the Township desires to utilize these materials, it must contact the Authority for authorization. All removals must be more than two thousand (2,000) cubic yards and no more than three (3) separate withdrawals will be authorized per calendar year. The Township will be responsible for all costs associated with removal of the excavated materials from the deposit site.

## **ARTICLE VII. MAINTENANCE**

**Section 7.01** NEW GRAVEL ROADS. Between completion of a New Gravel Road and Turnover, the Authority will perform maintenance, aside from Routine Maintenance, on the New Gravel Road, whether located inside or outside the Project Limits, in good condition. At all times following Turnover of a New Gravel Road, the Township, at its sole cost and expense, will maintain the New Gravel Road that is located outside of the Project Limits and the Authority, at its sole cost and expense, will perform maintenance, aside from Routine Maintenance, on the New Gravel Road that is located within the Project Limits. The Township will be responsible for Routine Maintenance on a New Gravel Road at all times, whether located inside or outside the Project Limits.

**Section 7.02** SIGNAGE. If the Authority installs any permanent signage outside of the Project Limits during the work outlined in this MOU, the Township may repair or replace the signage, as necessary, and submit an invoice to the Authority, in accordance with Exhibit C attached hereto, for the expense of such repair or replacement.

**Section 7.03** SWDCAI. The Township will have no responsibilities for maintenance associated with the SWDCAI.

**Section 7.04** GARBAGE DUMPING. In the event the dumping of garbage on roads that have been dead ended due to the construction of the SWDCAI occurs, the Township has the authority to clean up the dumped garbage and submit the same for reimbursement from the Authority pursuant to Article XIII.

## **ARTICLE VIII. FUTURE CHANGES OR ADDITIONS**

**Section 8.01** TOWNSHIP ROADS. In the event the Township desires to add a crossing of the SWDCAI, the Township must secure written approval from the Authority. Low water crossings of the SWDCAI will neither be considered nor allowed by the Authority.

**Section 8.02** SWDCAI.

(a) The Authority retains the ability, at its sole cost and expense, to adjust or alter the SWDCAI to the extent such may be accomplished without adversely affecting, changing, or altering any open section lines.

(b) If it becomes necessary or desirable to discontinue, close, or reopen a section line to accommodate the SWDCAI project, the cost of such work, including any incidental costs made necessary by any such changes, will be the expense of the Authority.

**Section 8.03** COORDINATION. In the event the Authority desires to discontinue, close, or reopen a section line to accommodate future changes or additions of the SWDCAI, the Authority and the Township will work in Good Faith, with the understanding that time is of the essence, to agree to terms regarding the accommodation of a future change or addition of the SWDCAI through an addendum to this MOU.

## **ARTICLE IX. INSURANCE AND LIABILITY**

### **Section 9.01** INSURANCE.

(a) The Authority will procure and maintain the following insurance coverage until Turnover of all New Gravel Roads:

(1) Commercial General Liability Insurance including coverage for premises and operations, bodily injury (including death), personal injury, property damage (including loss of use), product and completed operations, explosion, collapse and underground, and contractual liability of limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The Township is to be named as additional insured on a primary, non-contributory basis.

(2) Workers' Compensation and Employer's Liability Insurance including coverage for, but not limited to, the statutory liability under the State of North Dakota's workers' compensation laws and employer's liability with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, and \$500,000 by disease each employee.

(3) Claims Made Project Specific Errors & Omissions (Professional Liability) Insurance in connection with design and construction with a minimum combined total period of ten (10) years for design, construction, and extended reporting with limits of at least \$2,000,000 per claim and in the aggregate.

(4) All Risk Insurance in completed value form including coverage for permanent and/or temporary works executed and in the course of execution, materials, supplies, equipment, and other goods of at least \$10,000,000.

(a) The Authority will procure and maintain the following insurance coverage after Turnover of all New Gravel Roads throughout the warranty term provided in Section 6.11(b) of this MOU:

(1) Commercial General Liability Insurance including coverage for premises and operations, bodily injury (including death), personal injury, property damage (including loss of use), product and completed operations, explosion, collapse and underground, and contractual liability of limits of at least \$1,000,000 per occurrence and

\$2,000,000 annual aggregate. The Township is to be named as additional insured on a primary, non-contributory basis.

(2) Workers' Compensation and Employer's Liability Insurance including coverage for, but not limited to, the statutory liability under the State of North Dakota's workers' compensation laws and employer's liability with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, and \$500,000 by disease each employee.

**Section 9.02** RELEASE OF LIABILITY AND INDEMNITY.

(a) Except as set forth in the following Section, to the fullest extent permitted by Applicable Law, the Authority will require that the Developer release, defend, indemnify, and hold harmless the Township on demand and from and against any and all liability for Losses arising from Third Party Claims, in each case, to the extent such Losses arise out of, or as a consequence of, any breach of the MOU by the Developer or any negligence of the Developer. Additionally, the Authority will retain responsibility for the following key decisions and matters relating to the scope of the SWDCAI and the Comprehensive Project and the interaction of the SWDCAI and the SEAI and MAI ("Authority-Retained Responsibilities"):

- (1) The decision to undertake the SWDCAI and the Comprehensive Project;
- (2) The decision to deliver the Comprehensive Project through a split procurement model with the Authority procuring the SWDCAI and USACE procuring the SEAI and the MAI;
- (3) The decision as to the location and alignment of the Project Limits;
- (4) The decision as to the form of the flood management system and the level of flood protection to be delivered through the SWDCAI and the Comprehensive Project;
- (5) The design, construction, operation, and maintenance of the SEAI and the MAI; and
- (6) From time to time, the decision as to whether or not to operate the control structure on the Red River, the control structure on the Wild Rice River, or the Diversion Inlet Structure.

**Section 9.03** EXCLUSIONS FROM INDEMNIFICATION. The Authority will not require the Developer to be responsible or to be obliged to release, defend, indemnify, or hold harmless the Township with respect to any liability or Losses to the extent that the same arise as a direct result of:

- (a) The Authority-Retained Responsibilities;
- (b) A Compensation Event or Relief Event;



- (c) The presence of Hazardous Materials for which the Authority is responsible under the terms of the Project Agreement;
- (d) The fraud, negligence, recklessness, bad faith, or willful misconduct of the Township;
- (e) Any Losses suffered by the Township under a contract with a third party;
- (f) Any breach of the MOU by the Authority; or
- (g) Any Losses suffered by the Township with respect to use of the Project Data, or any Intellectual Property related to the Project Data, other than any use specifically for the SWDCAI.

**Section 9.04** CONDUCT ON THIRD PARTY CLAIMS.

- (a) Where the Township is entitled to make a claim under this MOU against the Developer in relation to a Third Party Claim, the Township shall give notice of the relevant claim to the Developer promptly, setting out the full particulars of the claim.
- (b) Subject to the rights of the insurers under the Insurance Policies, the Developer may at its own expense, and with the assistance and cooperation of the Township, conduct and control the Third Party Claims including its settlement and the Township shall not, to the extent that the Developer has elected to conduct and control the relevant Third Party Claim, take any action to settle or prosecute the Third Party Claim.
- (c) The Developer shall, if it wishes to have conduct and control of any Third Party Claim, reimburse the Township for any cost or liability arising out of the conduct and control of the Third Party Claim by the Developer within thirty (5) calendar days of receiving an invoice from the Township with respect to such costs.
- (d) The Township shall at all times take all reasonable steps to minimize and mitigate any loss for which the Township is entitled to bring a claim against the Developer pursuant to this MOU.

**Section 9.05** CERTIFICATES OF INSURANCE. Prior to commencing construction work under this MOU, the Authority furnish to the Township Representative certificates of insurance evidencing the coverages, endorsements, and amendments described herein. The Authority will notify the Township in writing at least five (5) Business Days prior to any cancellation, non-renewal, substitution, or material alteration of insurance.

**Section 9.06** NO WAIVER OF LIMITATION ON LIABILITY. The indemnity and hold harmless provisions herein shall not be deemed as a waiver by the Authority of the limits of liability set forth in N.D.C.C. § 32-12.1-03, as amended from time to time, or a waiver of any available immunities or defenses.

**ARTICLE X.  
TERM AND TERMINATION**

**Section 10.01** TERM. This MOU will continue in full force and effect for ten (10) years following the Effective Date and will automatically renew for successive 1-year terms unless a Party gives a 1-year advanced written notice of a desire to not renew to the other Party.

**Section 10.02** TERMINATION. The Parties may also mutually agree, in writing, to terminate this MOU.

**ARTICLE XI.  
THIRD PARTY BENEFICIARIES**

**Section 11.01** DEVELOPER. The Authority and the Township specifically agree, acknowledge, and covenant that portions of the Township's property or right-of-way will be used by the Developer in order to construct, operate, and maintain the SWDCAI. As a result, the Authority and the Township agree and acknowledge that, at any time during which one or more of the Parties is in breach or default of its respective obligations arising out of or related to this MOU, the Developer may enforce the terms and conditions of this MOU including, without limitation, by securing a court order directing the Party to perform its obligations under the MOU. In addition to the foregoing, the Developer shall have all other rights available to it at law or in equity, and all of the rights and remedies provided hereunder are deemed cumulative and not exclusive of any rights or remedies provided by law or otherwise available to the Developer. The Developer, however, will have no rights to utilize the Township's property or right-of-way beyond what is available to the general public or what has been granted to the Authority by this MOU.

**ARTICLE XII.  
REIMBURSEMENT AND INVOICING**

**Section 12.01** CONSTRUCTION COSTS AND EXPENSES. Between the Effective Date and Project Substantial Completion, the Township may seek reimbursement from the Authority for any costs and expenses incurred as a result of work provided under this MOU, in an amount up to \$3,000.00 annually. The first annual period shall run from the Effective Date until the date preceding the first anniversary of the Effective Date. Annual periods thereafter shall run from the anniversary of the Effective Date until the earlier of: (i) the date preceding the next anniversary of the Effective Date or (ii) Project Substantial Completion. The Township will submit an invoice for such costs and expenses in accordance with the procedure outlined in Exhibit C attached hereto or as otherwise instructed by the Point of Contact.

**Section 12.02** POST-CONSTRUCTION COSTS AND EXPENSES. Following Project Substantial Completion, in addition to any reimbursable costs and expenses set forth herein, the Township may seek reimbursement from the Authority for any costs or expenses incurred in relation to the Comprehensive Project in an amount up to \$1,500.00 annually. The first annual period shall run from the date of Project Substantial Completion until the date preceding the first anniversary of the date of Project Substantial Completion. Annual periods thereafter shall run from the anniversary of the date of Project Substantial Completion until the date preceding the next anniversary of the date of Project Substantial Completion. The Township will submit an

invoice for such costs and expenses in accordance with the procedure outlined in Exhibit C attached hereto or as otherwise instructed by the Point of Contact.

**Section 12.03** EXTRAORDINARY EXPENSES. In addition to the allowable reimbursements set forth in Sections 13.01 and 13.02, the Township may seek reimbursement from the Authority for extraordinary expenses if prior to incurring the expense, the Township receives written authorization from the Authority. The Authority will not unreasonably withhold approval of these requests.

**Section 12.04** ATTORNEY'S FEES. The Authority will reimburse the Township \$15,000.00 for attorney's fees on or prior to the Effective Date. The Parties intend that this reimbursement includes all attorney's fees incurred up to the Effective Date of this MOU and any attorney's fees that the Parties anticipate may be incurred through the life of the MOU. If the Township incurs unanticipated attorney's fees, the Township may seek reimbursement from the Authority pursuant to Section 12.03.

**Section 12.05** LOST TAX REVENUE. Due to the construction of the SWDCAI and ownership thereof by the Authority, the Authority recognizes that the Township will experience a loss of revenue from ad valorem taxes. The Authority estimates that approximately five hundred ninety-three (593) acres in the Township will be owned by the Authority for the SWDCAI. For the 2020 general tax levy, the billed ad valorem tax per aggregate acre was \$1.52. In order to assist the Township in recouping some of this loss of revenue, on or prior to the Effective Date, the Authority will remit funds to the Township for ten (10) years of lost revenue from the above-mentioned five hundred ninety-three (593) acres at \$1.52 per acre for a total of \$9,007.

### **ARTICLE XIII. MISCELLANEOUS**

**Section 13.01** AMENDMENTS. This MOU may be amended only by written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this MOU.

**Section 13.02** SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this MOU is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this MOU.

**Section 13.03** FORCE MAJEURE. Neither the Authority nor the Township will be liable to the other during any period in which its performance is delayed or prevented, in whole or in part, by any of the following circumstances: war, civil war, invasion, violent act of foreign enemy, or armed conflict; nuclear, chemical, or biological contamination; ionizing radiation; Force Majeure Event; or any act of terrorism. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Party of the same.

**Section 13.04** AUTHORIZED REPRESENTATIVES. Each of the Authority and the Township hereby designates the following individuals as its initial authorized representatives, respectively, to administer this MOU on its respective behalf:

- (a) Authority Representative: Kris Bakkegard, Director of Engineering
- (b) Township Representative: Scott Verwest, Clerk/Treasurer of Board of Supervisors

**Section 13.05** NOTICE.

(a) All notices under the MOU will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by email communication followed by a hard copy, to the following addresses.

(b) All notices to the Authority will be marked as regarding the SWDCAI and will be delivered to the following address or as otherwise directed by the Authority Representative:

Jacobs  
64 4th Street North, Suite 300  
Fargo, North Dakota 58102

and

Executive Director  
Box 2806  
207 4th Street North, Suite A  
Fargo, North Dakota 58102

(c) All notices to the Township will be marked as regarding the SWDCAI and will be delivered to the following address or as otherwise directed by the Township Representative:

16452 28th Street SE  
Argusville, North Dakota 58005-9712

**Section 13.06** GOVERNING LAW. This MOU will be governed and construed in accordance with the laws of the State of North Dakota.

**Section 13.07** FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for the United States Environmental Protection Agency (“EPA”) in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. On or prior to the Effective Date, the Township will

complete and submit to the Authority the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 23, which are attached within Exhibit F to this MOU. The Township will also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

**Section 13.08** DEBARMENT AND SUSPENSION. The Township certifies it will not knowingly enter into a contract with anyone who is ineligible under 40 CFR Part 32 to participate in the Comprehensive Project. Suspension and debarment information can be accessed at <http://www.sam.gov>. The Township represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this MOU. On or prior to the Effective Date, the Township will complete and submit to the Authority the federal certification form regarding debarment and suspension, which is attached within Exhibit F to this MOU.

**Section 13.09** CIVIL RIGHTS OBLIGATIONS. The Township will comply with the following, federal non-discrimination requirements:

- (a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
- (b) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
- (c) The Age Discrimination Act of 1975, which prohibits age discrimination.
- (d) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
- (e) 40 CFR Part 7, as it relates to the foregoing.
- (f) Executive Order No. 11246.

On or prior to the Effective Date, the Township will complete and submit to the Authority the federal certification form regarding civil rights, which is attached within Exhibit F to this MOU.

**Section 13.10** LITIGATION; VENUE. All litigation between the Parties arising out of or pertaining to this MOU or its breach will be filed, heard, and decided in the State District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue. If there is litigation, regardless of the outcome, each Party will be responsible for its own attorney's fees.

**IN WITNESS WHEREOF**, the Parties hereto have caused this MOU to be duly executed on the dates indicated below.

*(Remainder of page intentionally left blank.)*

*Signature Page for Metro Flood Diversion Authority*

The Governing Body of the Metro Flood Diversion Authority approved this MOU on the \_\_\_\_\_ of \_\_\_\_\_, 2022.

**METRO FLOOD DIVERSION AUTHORITY**

By: \_\_\_\_\_  
Chad Peterson, Chair

By: \_\_\_\_\_  
Joel Paulsen, Executive Director

ATTEST:

By: \_\_\_\_\_  
Dawn Lindblom, Secretary

*Signature Page for Berlin Township, North Dakota*

The Board of Supervisors of Berlin Township, North Dakota, approved this MOU on the \_\_\_\_\_ of \_\_\_\_\_, 2022.

**BERLIN TOWNSHIP, NORTH DAKOTA**

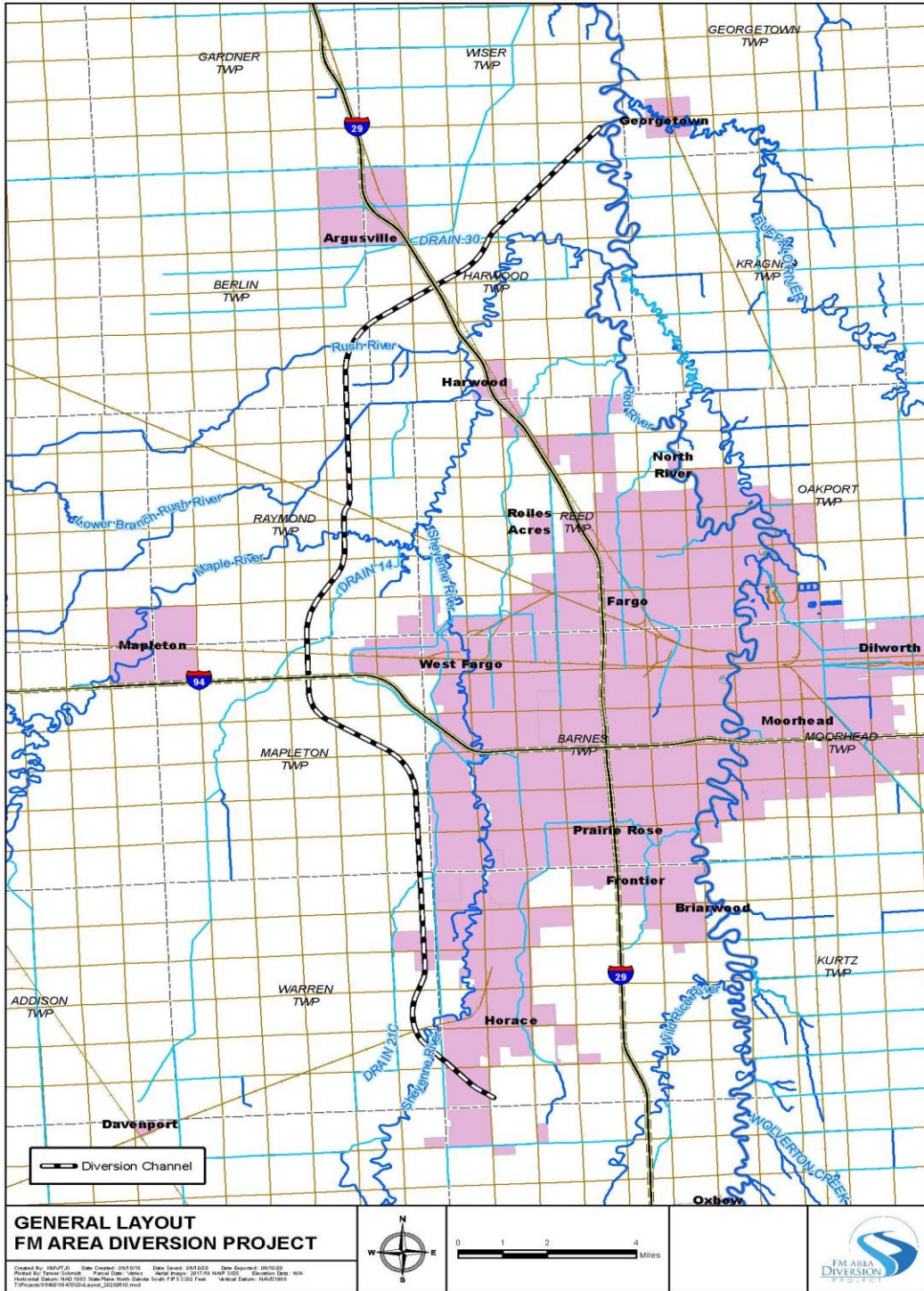
By: \_\_\_\_\_  
Karl Langseth, Chairman

ATTEST:

By: \_\_\_\_\_  
Scott Verwest, Clerk/Treasurer



## EXHIBIT A PROJECT LIMITS



**EXHIBIT B  
MINIMUM DESIGN STANDARDS**

Two-Lane Township Gravel Section Road

| <i>Minimum Design Standards for New or Reconstruction of Existing Infrastructure</i> |                     |                     |                      |                   |                                  |                        |                            |
|--|---------------------|---------------------|----------------------|-------------------|----------------------------------|------------------------|----------------------------|
| <b>Typical Section</b>   | <b>Design Speed</b> | <b>Right of Way</b> | <b>Roadway Width</b> | <b>Turn Lanes</b> | <b>Minimum Section Thickness</b> | <b>Access Controls</b> | <b>Bike/Ped Facilities</b> |
| Two-Lane Township Gravel Section   | 55 mph              | 100 feet            | 24 feet              | No                | 4 inches gravel                  | ¼ mile spacing         | Not Applicable             |

Reinforced Concrete Box Culvert

1. NDDOT *Design Manual, Chapter IV*
2. NDDOT *Design Manual, Chapter V*
3. NDDOT *Standard Specifications for Road and Bridge Construction*
4. AASHTO *LRFD Bridge Design Specifications*
5. AASHTO *LRFD Bridge Construction Specifications*
6. Cass County *Comprehensive Highway Plan*

For cases where AASHTO specifications conflict with NDDOT standards and policies, the NDDOT standards and policies take precedence.

**EXHIBIT C**  
**AUTHORITY INVOICING REQUIREMENTS**

(a) The Township will remit hard copy invoices to the Authority at the Authority's main office, and the invoices will be processed by the Authority for the following month. The Township will also submit copies of the invoices to the Authority electronically at APInvoicesFMDiv@jacobs.com, copied to jpaulsen@fmdiversion.gov. Each invoice should include the identification of the Township, a description of the activity included in the invoice, and the address where payment should be remitted. The Township may (i) initially pay for work included in an invoice and then seek reimbursement from the Authority for the payment or (ii) submit invoices directly to the Authority for initial payment. In either instance, the Authority will remit payment to the Township.

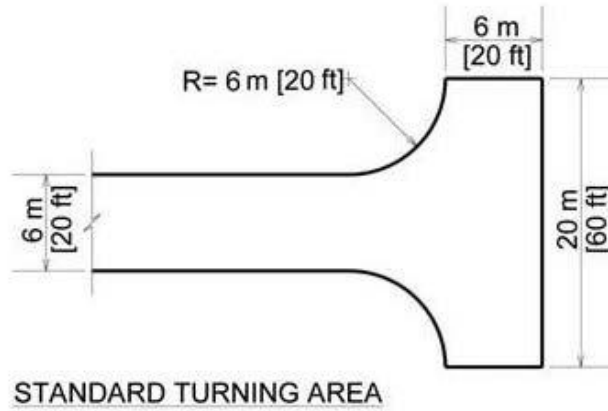
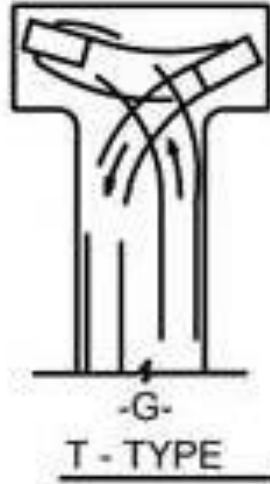
(b) After the Authority receives a Township invoice, the Authority will either process the invoice for payment or give the Township specific reasons, in writing, within fifteen (15) calendar days, why part or all of the Authority's payment is being withheld and what actions the Township must take to receive the withheld payment.

(c) In the event of disputed billing, only the disputed portion will be withheld from payment and the Authority will pay the undisputed portion. The Authority will exercise reasonableness in disputing any bill or portion thereof. Interest will accrue on any disputed portion of the billing determined to be due and owing to the Township.

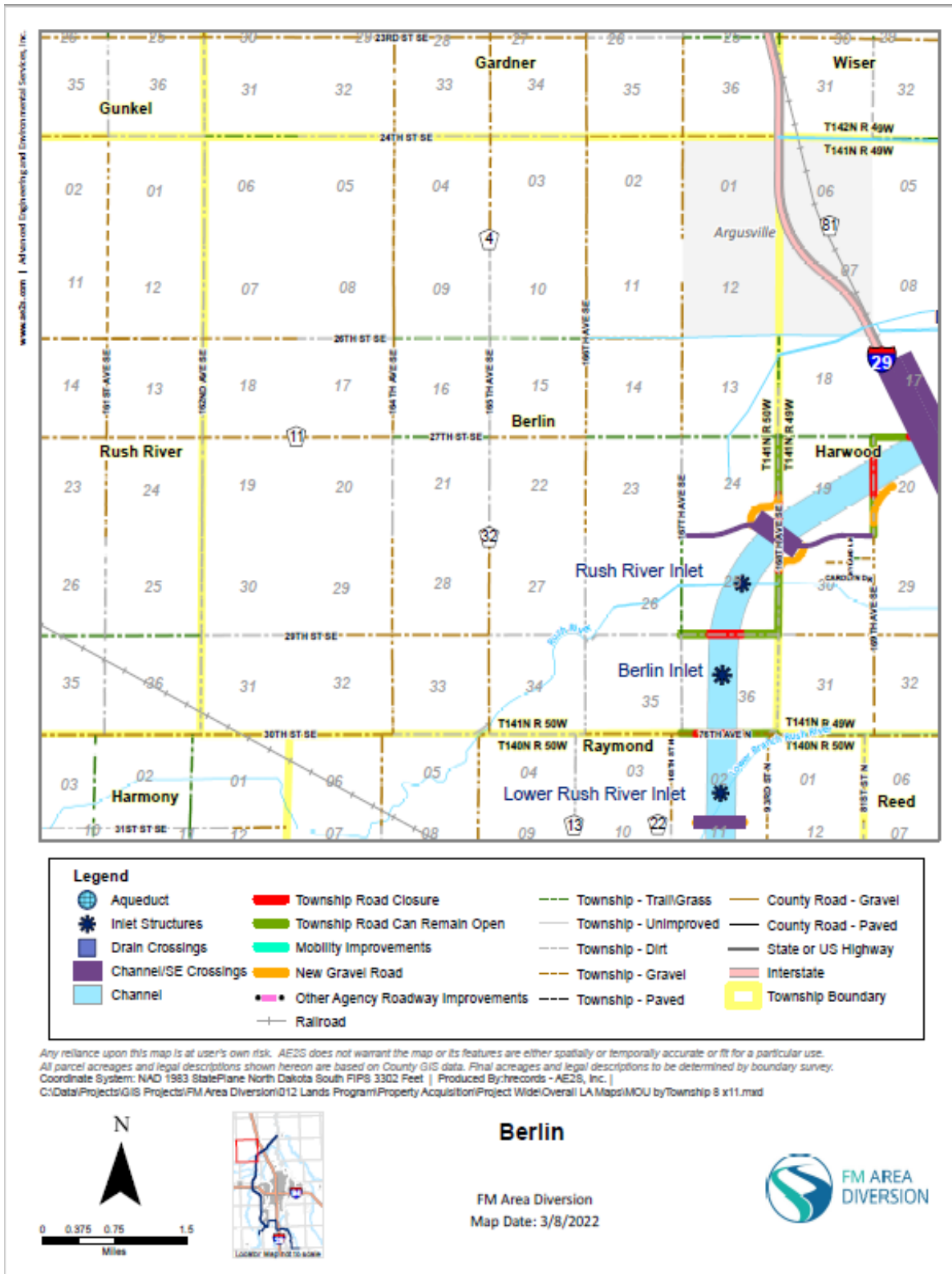
(d) Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, the Township must credit any payment error from any payment that is due or that may become due to the Township under this MOU.

(e) The Authority will be charged interest at the rate of one-half percent (1/2%) per month, or the maximum amount permitted by North Dakota law if a lesser amount, on all past-due amounts thirty (30) days after receipt of invoice. Payments will first be credited to interest and then to principal.

**EXHIBIT D  
CUL-DE-SAC DESIGN**



## EXHIBIT E PROJECT IMPACTS MAP



**EXHIBIT F  
FEDERAL CERTIFICATION FORMS  
CERTIFICATION REGARDING FEDERAL LOBBYING**

The undersigned certifies to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in any award documents for any of its subcontractors at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into a contract with the Authority. By executing this certificate the undersigned agrees and acknowledges that he/she has been duly authorized to execute this certificate.

Company/

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

Signed: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
AND OTHER RESPONSIBILITY MATTERS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211).

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)**

- (1) The official representative of the party contracting with the Metro Flood Diversion Authority certifies to the best of its knowledge and belief that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application had one or more public transactions, including contracts (Federal, State, or local) terminated for cause or default.
  - (e) Are not presently debarred, suspended, declared ineligible or voluntarily excluded from performing work for the State of North Dakota, the State of Minnesota, the Metro Flood Diversion Authority or any of its Member Entities.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.
- (3) The Official signing this certificate has been and is duly authorized to sign this certificate on behalf of the entity or entities which intend to enter into a contract with the Metro Flood Diversion Authority.

Official Business Name \_\_\_\_\_

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

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

Name and Title of Authorized Representative

PLEASE RETURN TO:

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

\_\_\_\_\_  
Signature of Authorized Representative



## INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this certification, the prospective contracting party is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contracting party shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Metro Flood Diversion Authority's (the "Authority") determination whether to enter into this transaction. However, failure of the prospective contracting party to furnish a certification or an explanation shall disqualify such person from entering into contracts with the Authority.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Authority determined to enter into a contract with the prospective contracting party. In order to qualify for participation in the U.S. EPA WIFIA program the Authority is required to obtain this certification. If it is later determined that the prospective contracting party knowingly rendered an erroneous certification, in addition to other remedies available to both the Authority and the Federal Government, the Authority may terminate this transaction for cause or default.
4. The prospective contracting party shall provide immediate written notice to the Authority to which this Certificate is submitted if at any time the prospective contracting party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Authority for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective contracting party agrees by submitting this certification that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Authority.
7. The prospective contracting party further agrees by submitting this certification that it will require a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," from all sub-contractors without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A contracting party in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A contracting party may decide the method and frequency by which it determines the ineligibility of its principals.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a contracting party is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  
10. Except for transactions authorized under paragraph 6 of these instructions, if a contracting party in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Authority may terminate this transaction for cause or default.

**ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE**

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, THE AGE DISCRIMINATION ACT OF 1975, SECTION 13 OF THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972, 40 CFR PART 7, AND EXECUTIVE ORDER NO. 11246

The undersigned provides this assurance for the purpose of entering into a contract with the Metro Flood Diversion Authority (Authority) related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project), which is receiving federal financial assistance. Specifically, the US EPA WIFIA Program requires this assurance of all contractors and subcontractors providing services for the Project.

The undersigned assures that it will comply with:

1. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin including limited English proficiency (LEP);
2. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against persons with disabilities;
3. The Age Discrimination Act of 1975, as amended, which prohibits age discrimination;
4. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex;
5. 40 CFR Part 7, as it relates to the foregoing; and
6. Executive Order No. 11246.

The undersigned understands that this Assurance is binding on the undersigned, its successors, transferees, and assignees at any time during which federal financial assistance is provided to the Project. The undersigned will ensure that all contractors, subcontractors, or others with whom it arranges to provide services or benefits are not discriminating in violation of items 1-6. Otherwise, the contracts for services can be terminated for cause and the undersigned can be declared ineligible to contract for the Project.

By signing this form, the undersigned is agreeing to the above provisions and that he/she is duly authorized to execute this form.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Name of Institution or Agency

\_\_\_\_\_  
Date

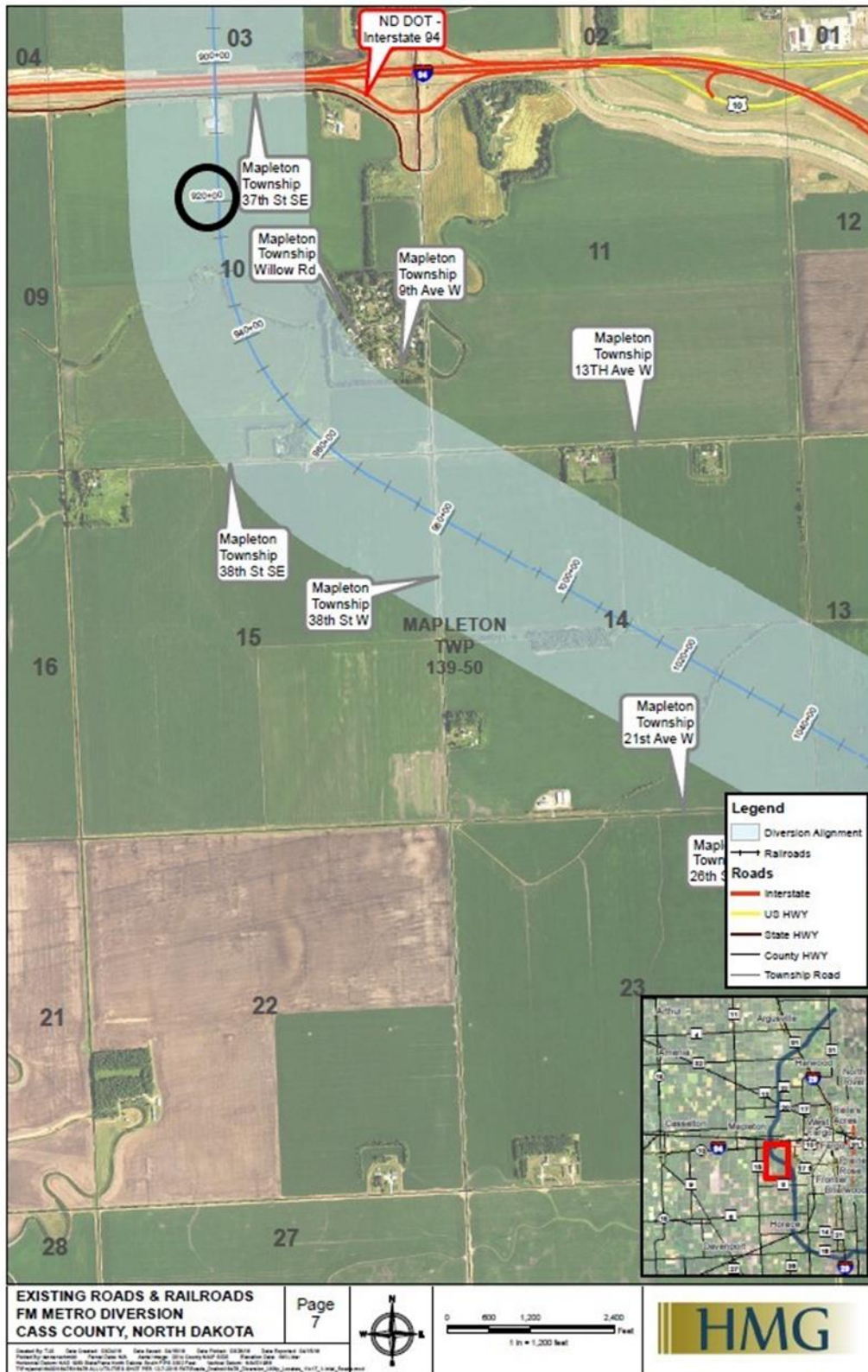
\_\_\_\_\_  
Street

\_\_\_\_\_  
City, State, Zip Code

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

\_\_\_\_\_  
Office Email Address

### EXHIBIT H MILESTONE ONE LIMITS MAP



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**MEMORANDUM OF UNDERSTANDING**

**BY AND BETWEEN**

**METRO FLOOD DIVERSION AUTHORITY**

**AND**

**CITY OF CHRISTINE, NORTH DAKOTA**

**Dated as of \_\_\_\_, 2022**

**Relating to:**

**A Memorandum of Understanding outlining the respective roles and responsibilities of the Parties in regard to the Flood Control Project in the City of Christine, North Dakota, related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.**

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

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## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** (the “MOU”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”), by and between METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota (the “Authority”), and CITY OF CHRISTINE, NORTH DAKOTA, a political subdivision of the State of North Dakota (the “City”).

**WHEREAS**, the Authority, along with the Cities of Fargo and Moorhead, have partnered with USACE to design, construct, finance, operate, and maintain the Comprehensive Project; and

**WHEREAS**, following extensive negotiations, the Authority, along with other parties, entered into the Settlement Agreement to globally resolve all disputes and litigation pertaining to the Comprehensive Project; and

**WHEREAS**, as part of the Settlement Agreement, the Authority agreed to work collaboratively with the City in Good Faith to implement the Flood Control Project; and

**WHEREAS**, the Authority and the City now desire to enter into this MOU to set forth each Party’s roles and responsibilities for delivering the Flood Control Project.

**NOW THEREFORE**, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, the Authority and the City agree as follows:

### ARTICLE I. DEFINITIONS AND INTERPRETATION

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

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

“**Best Efforts**” means acting in Good Faith to undertake all action contemplated by this MOU, in accordance with applicable Federal and state laws, regulations, and rules; however, the obligation to use Best Efforts does not mean a duty to take action that would be in violation of applicable Federal or state law.

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

“**CCJWRD**” means the Cass County Joint Water Resource District, a political subdivision of the State of North Dakota.

**“City”** or **“City of Christine”** means the City of Christine, North Dakota, a political subdivision of the State of North Dakota.

**“Comprehensive Project”** means the Fargo-Moorhead Metropolitan Area Flood Risk Management Project authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo Moorhead Metropolitan Area Flood Risk Management, dated July 2011, and approved in accordance with the Chief’s Report, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the U.S. Army Engineer, St. Paul, on September 19, 2013, and as amended by the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering Documentation Report, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, ND and MN, Modifications Through February 2019.

**“Construction Documents Submittal”** means the design submittal described in Section 4.03 of this MOU.

**“Construction Work”** means all work for the Flood Control Project that is related to construction.

**“Design Standards”** means the design specifications set forth in Section 3.02.

**“Design Work”** means all work for the Flood Control Project that is related to design.

**“Effective Date”** means the date provided in the initial paragraph.

**“FEMA Accredited Flood Protection”** means a flood protection system that FEMA has determined can be shown on a FIRM as providing one percent (1%) chance flood or greater level of flood protection. This determination is based on the submittal of data and documentation required by 44 CFR Section 65.10, which must be certified by a Professional Engineer.

**“Final Design Submittal”** means the design submittal described in Section 4.03 of this MOU.

**“FIRM”** means Flood Insurance Rate Map.

**“Flood Control Project”** means the flood control project described in Section 3.02, designed and implemented by the City as more fully described in this MOU and Section XVI of the Settlement Agreement.

**“Good Faith”** means the honesty in fact and observance of reasonable standards of fair dealing that will ensure the Parties will receive the benefits and perform the obligations contemplated in the Settlement Agreement and this MOU.

**“Interim Design Submittal”** means the design submittal described in Section 4.03 of this MOU.

**“Joint Powers Agreement”** means the agreement entered by and between the City of Moorhead, Minnesota; the City of Fargo, North Dakota; Clay County, Minnesota; Cass County, North Dakota; and CCJWRD, dated as of June 1, 2016, to create the Authority.

**“Member Entities”** means those entities – the City of Moorhead, Minnesota; the City of Fargo, North Dakota; Cass County, North Dakota; Clay County, Minnesota, and CCJWRD – signing the Joint Powers Agreement and establishing the Authority.

**“MDNR Permit”** means the MDNR Dam Safety and Public Waters Work Permit No. 2018-0819, and any amendments thereto.

**“MOU”** means this Memorandum of Understanding by and between the Authority and the City.

**“ND OSE Permits”** means collectively the permit or permits issued by ND OSE for the construction, operation, and maintenance of elements of the Comprehensive Project located in the State of North Dakota.

**“Other Approvals”** means all approvals and permits legally required to complete the Project Work, including, but not limited to, permits required by State of North Dakota agencies and USACE.

**“Party”** means either the Authority or the City, as the context requires, and its representatives, successors, and assigns.

**“Period of Record Hydrology”** means flows for a river or watershed that are based on a hydrological analysis for the defined period of record of available flow measurements for the Comprehensive Project design and the infrastructure projects contemplated in the Settlement Agreement; the years 1902 through 2009 comprise the period of record.

**“Preliminary Activities”** means preliminary planning and engineering activities that must be completed to aid in the design and construction of the Flood Control Project, including but not limited to: (a) technical studies and analyses; (b) geotechnical, seismic, flooding, and biological investigations; (c) right-of-way mapping, surveying, and appraisals; (d) utility subsurface investigations and mapping; (e) environmental reviews; (f) hazardous materials investigation and remediation; and (g) archeological, paleontological, and cultural investigations.

**“Preliminary Design Submittal”** means the design submittal described in Section 4.03 of this MOU.

**“Professional Engineer”** means an individual or individuals properly registered in the state where they perform services requiring registration as an engineer, responsible for the certification of a flood protection system.

**“Project Completion”** means the Construction Work is sufficiently complete in the opinion of the Authority and the City.

**“Project Property”** means real property acquired for the Flood Control Project, including, but not limited to, fee, rights-of-way, easements, licenses, and leases.

**“Project Work”** means all efforts necessary to accomplish the Flood Control Project, including all coordination, Design Work, design review, permitting, Construction Work, inspection, and maintenance of records, whether provided by the Authority or the City.

**“Protected Area”** means an area of one (1) square mile radius measured from the City limits as of the effective date of the Settlement Agreement

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

**“Shop Drawings and Samples”** means shop drawings, laying drawings, erection drawings, fabrication drawings, product information, catalog information, samples, mock-ups, plans, test procedures and results, descriptions of services, descriptions of specific means and methods, and related documentation.

**“Site”** means the physical location at which any Project Work is being done, has been done, or will be done as part of the Flood Control Project.

**“USACE”** means the United States Army Corps of Engineers.

**Section 1.02** TERMS GENERALLY. The definition of terms herein applies equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun includes the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” are deemed to be followed by the phrase “without limitation.” The word “will” is construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein is construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications set forth herein); (b) any reference herein to any person is construed to include any person’s permitted successors and assigns; (c) the word “herein,” “hereof,” and “hereunder,” and words of similar import, are construed to refer to this MOU in its entirety and not to any particular provision hereof; and (d) all references herein to articles, sections, exhibits, and schedules are construed to refer to articles and sections of, and exhibits and schedules to, this MOU.

## **ARTICLE II. SETTLEMENT AGREEMENT**

**Section 2.01** MEMORANDUM OF UNDERSTANDING. Section 16.03 of the Settlement Agreement contemplates the execution of a memorandum of understanding between the Authority and the City, which is intended to provide mutually agreeable terms for the Flood Control Project. The Parties agree this MOU fulfills the intentions of section 16.03 of the Settlement Agreement.

**Section 2.02 SUPPLEMENT.** This MOU is not intended to replace or modify the Settlement Agreement, but instead, it should be considered a supplement to the Settlement Agreement. The Settlement Agreement remains unchanged and in full force and effect. In the event of a conflict between the MOU and the Settlement Agreement, the Settlement Agreement shall supersede the MOU.

### **ARTICLE III. PURPOSE**

**Section 3.01 PURPOSE.** The purpose of this MOU is to ensure a coordinated, timely, and cost-effective process for completing the Flood Control Project.

**Section 3.02 FLOOD CONTROL PROJECT GENERALLY.** The purpose of the Flood Control Project is to design, construct, operate, and maintain a flood control project in the City to protect against any adverse flood impacts of the Comprehensive Project to the City. The Flood Control Project will include appropriate in-town interior lift stations and/or storm water retention ponds needed for flood control and provide 100-year FEMA Accredited Flood Protection (based upon the Period of Record Hydrology) and provide levees that are one (1) foot above the 500-year flood elevation (collectively, the “Design Standards”). Additionally, the Flood Control Project must be planned to include flood protection one (1) square mile radius measured from the City’s current city limits as of the effective date of the Settlement Agreement (the “Protected Area”). The Protected Area shall be agreed upon by the City and the Authority based on reasonable growth for the City.

**Section 3.03 COORDINATION BETWEEN ENGINEERS.** The Parties are likely to employ the use of professional engineers in the completion of the Project Work. Engineers employed by the Parties shall maintain open lines of communication and shall coordinate and collaborate with engineers employed by other parties described herein.

### **ARTICLE IV. DESIGN**

**Section 4.01 DESIGN.** The City shall be responsible for the Design Work, including the development and submittals described in this MOU. At this time, the City intends to utilize Moore Engineering as a consultant for the Design Work in accordance with the scope of services and fees attached hereto as Exhibit B. The City will first review and approve invoices for reasonable costs or expenses incurred for the Design Work and then will submit such invoices to the Authority for payment as described herein. The Authority has reviewed and approves of the scope of services and fees submitted by Moore Engineering. In the event any modification to such scope of services or an increase in estimated fees for such work is necessary to comply with the terms and intent of this MOU or the Settlement Agreement, the City, via the consultant, shall seek approval from the Authority of the modification or increase. All modifications or increases shall be undertaken in Good Faith, and approval by the Authority will not be unreasonably withheld. All costs associated with Design Work shall be the responsibility of the Authority.

**Section 4.02** TECHNICAL SPECIFICATIONS. The City will design the Flood Control Project in accordance with FEMA Accredited Flood Protection certifications.

**Section 4.03** REVIEW SUBMITTALS. The City will be responsible for submitting the following to the Authority for review for the Flood Control Project:

(a) Preliminary Design Submittal. The City shall complete a Preliminary Design Submittal to a minimum of approximately thirty percent (30%) level of design completion and define the basis of design for all aspects of the Flood Control Project. The Preliminary Design Submittal shall include calculations demonstrating that the proposed configuration meets and satisfies any technical requirements contained herein. The Preliminary Design Submittal shall also provide sufficient detail to demonstrate compliance with all design and construction requirements as described herein. All of the following must also be included in the Preliminary Design Submittal:

(1) A plan for completion of Construction Work, including but not limited to, any intended sequencing of the Construction Work; and

(2) A schedule outlining construction, testing, outages, costs, anticipated start dates, and the anticipated date of completion.

(b) Interim Design Submittal. The City shall complete an Interim Design Submittal to a minimum of appropriately sixty percent (60%) level of design completion and define the basis of design for all aspects of the Flood Control Project. The Interim Design Submittal shall include calculations demonstrating that the proposed configuration meets and satisfies any technical requirements contained herein. The Interim Design Submittal shall also provide sufficient detail to demonstrate compliance with all design and construction requirements as described herein.

(c) Final Design Submittal. The City shall complete a Final Design Submittal including, but not limited to, a completed design, an updated specifications content sheet, calculations verifying the design performance, geotechnical information, test and survey data, and all other related design and engineering reports, studies, and analyses. The Final Design Submittal shall also incorporate and/or address comments provided on the Preliminary Design Submittal. Furthermore, the Final Design Submittal shall describe any and all changes made since the submission of the Preliminary Design Submittal. The Final Design Submittal shall also contain complete applicable technical specifications. In addition to the aforementioned information, the Final Design Submittal shall include:

(1) Plan and profile alignments demonstrating conformance with the terms of this MOU;

(2) Site plans for the location and appurtenances and structures;

(3) A complete cost estimate for the Construction Work;



(4) A schedule of work breakdown structure that identifies outages, testing, and other critical dates; and

(5) Geotechnical report including calculations.

(c) Construction Documents Submittal. The City shall provide the Authority with the required elements of the Construction Documents Submittal, which shall include plans for construction, specifications sheets, other data for the Flood Control Project, incorporate and address review comments from the Final Design Submittal, and describe each change made since submission of the Final Design Submittal. Once approved by the Parties, the City shall sign and seal the contents of the Construction Documents Submittal as required by law.

(d) Shop Drawing and Sample Submittals. The City shall submit Shop Drawings and Samples that detail the Construction Work to the Authority.

**Section 4.04** AUTHORITY REVIEW.

(a) The Authority shall complete a full review of each submittal and provide comments and/or approval. The Authority's review of submittals shall be restricted to a determination of whether the submittal complies with the specifications and requirements set forth in this MOU.

(b) The Authority shall complete a full review and provide comments on submittals within ten (10) Business Days of the date on which the Authority receives a full and complete submittal. Should the Authority determine that a submittal is not in compliance with the terms and specifications provided in this MOU, the City will be notified of the reason for non-compliance and may resubmit with corrections, amendments, and/or addendums before a reasonable timeline to be determined by the Authority after conferring with the City. The Authority shall review the resubmittal and respond within ten (10) Business Days. The Authority's review of the resubmittal shall be limited to the portions of the initial submittal deemed insufficient, as well as any other portions of the submittal which have been amended or added since the initial submission. All review shall be undertaken in Good Faith.

**Section 4.05** REQUIREMENT OF APPROVAL. No Construction Work may begin until the Authority approves the Construction Documents Submittal and the cost estimate required by this MOU.

**Section 4.06** APPROVAL WITHHELD. In the event the Authority withholds approval as to any proposed Construction Work, written notice of, and reasons for, withholding shall be provided to the City. Where approval is withheld, the City shall prepare and submit a corrected submittal to the Authority within sixty (60) calendar days.

## **ARTICLE V. PRELIMINARY ACTIVITIES**

**Section 5.01** PRELIMINARY ACTIVITIES. The City will be responsible for completing all Preliminary Activities required for the Flood Control Project. The Authority will be responsible for any costs or expenses incurred for Preliminary Activities after receiving invoices submitted by the City as herein described.

**Section 5.02** PROJECT PROPERTY ACQUISITION. The City will be responsible for acquiring any Project Property. Prior to making any offer for any Project Property, the City shall consult with the Authority to determine the price at which the City will offer to purchase the Project Property. The City will only offer to purchase Project Property at a price consented to by the Authority, which such consent will not be unreasonably withheld or delayed. The Authority will be responsible for any and all costs or expenses incurred for acquisition of Project Property after receiving invoices submitted by the City as herein described.

**Section 5.03** OTHER APPROVALS AND PERMITS. The City is responsible for obtaining all Other Approvals and permits for the Flood Control Project. The Authority will work with the City, as requested by the City, to secure Other Approvals and permits. All costs associated with obtaining Other Approvals and permits shall be borne by the Authority after receiving invoices submitted by the City as herein described.

## **ARTICLE VI. CONSTRUCTION**

**Section 6.01** CONSTRUCTION. The City shall be responsible for all Construction Work required for the Flood Control Project. The City estimates construction on the Flood Control Project will commence in 2022 and be completed by 2026.

**Section 6.02** ADJUSTMENTS TO PROJECT WORK. Any changes or modifications to the Construction Documents Submittal during construction that materially affect the performance or construction of the Project Work will be subject to written approval by the Authority, which approval shall not be unreasonably withheld and examined in Good Faith. The Authority shall provide approval or a written explanation of its specific objections to the changes or modifications in accordance with the procedures and timelines set forth in Section 4.04.

**Section 6.03** COMPLETION. The City will provide the Authority with written notice of any anticipated Project Completion for Construction Work at least sixty (60) calendar days and again at least fifteen (15) Business Days prior to the anticipated date for Project Completion. Within ten (10) Business Days of the anticipated date for Project Completion, the City will notify the Authority to schedule a final inspection of the Construction Work to determine whether the Construction Work meets the Construction Documents Submittal and any material changes or modifications made pursuant to the preceding Section. If the Authority finds the construction is not in conformance with the Construction Documents Submittal or any approved material changes or modifications, the Authority will notify the City of such fact and the City will correct such nonconformance in the Construction Work and renotify for inspection. Any review under this section shall be conducted in Good Faith.

**Section 6.04** RECORD DRAWINGS. The City will provide record drawings of the Flood Control Project to the Authority within thirty (30) calendar days of its respective Project Completion.

**Section 6.05** INSPECTION. The City shall be responsible for inspection of Construction Work. The Authority, however, shall have a concurrent right to inspect Construction Work.

**Section 6.06** SIGN FOR PROJECT. At the Site for the Flood Control Project, the City shall display a sign in substantially the form included on attached Exhibit C.

## **ARTICLE VII. RIGHT OF SITE ACCESS**

**Section 7.01** AUTHORITY RIGHT. To ensure the Authority can monitor and ensure completion of the Flood Control Project in a timely and efficient manner, the City shall, to the extent the Authority requests a grant of access, grant the Authority the right to access, enter, and inspect any Site. This grant to the Authority does not relieve the City from its responsibility to inspect the Flood Control Project.

**Section 7.02** NON-REVOCALE RIGHT. Nothing herein shall be construed as limiting or providing for the termination of the rights described herein as it pertains to the Authority.

**Section 7.03** NOTICE REQUIRED. Prior to exercising rights of Site access, the Authority shall provide the City with at least twenty-four (24) hours' notice if it intends to access a Site on which Project Work is currently and actively being completed. The Authority must comply with any safety requirements of the City while on a Site.

**Section 7.04** DELAY FOR SAFETY PURPOSES. If the Authority attempts to exercise the rights described in this Article, but doing so would pose a safety hazard, the Authority shall be kept from accessing, entering, or inspecting the Site in question, only for so long as reasonably required to make the Site safe for access, entry, and inspection.

## **ARTICLE VIII. REQUIRED REPORTS**

**Section 8.01** REQUIRED REPORTS. The City will cooperate with the Authority to identify and supply required reports, analyses, or other information and materials relevant to the Flood Control Project, as necessary.

**Section 8.02** DEADLINES. All reports, engineering analyses, and other information and materials requested by the Authority shall be provided before the expiration of a reasonable deadline as agreed upon by the Parties.

**ARTICLE IX.  
OPERATIONS AND MAINTENANCE**

**Section 9.01** FLOOD CONTROL PROJECT. The City will be responsible for operations and maintenance of the Flood Control Project. Prior to the commencement of operations, the City will request enrollment in the USACE program for regular inspections of the Flood Control Project, will develop an operations and maintenance plan (“O&M plan”) for the Flood Control Project, and will submit the O&M plan to the Authority for review and approval. If there are any proposed changes or modifications to the O&M plan following the commencement of operations, the City shall again seek review and approval of those changes or modifications from the Authority prior to their implementation. All costs associated with operations and maintenance shall be the responsibility of the Authority, as well as all costs incurred by the City in relation to enrollment in the USACE program and all activities associated with the O&M plan, including but not limited to preparation, modification, and implementation of the O&M plan.

**ARTICLE X.  
FUTURE PROJECT CHANGES**

**Section 10.01** FLOOD CONTROL PROJECT. Pursuant to the terms of this MOU, the Authority is responsible for providing all funds for the Flood Control Project up to the agreed upon Design Standards and within the Protected Area, including but not limited to design, consultant fees, preliminary activities, property acquisition, construction, labor, materials, inspection, operations, maintenance, administrative costs, and legal fees and costs, including costs and fees associated with the drafting of this MOU.

**Section 10.02** In the event the Parties decide to expand the Flood Control Project to a specification beyond those provided in agreed upon the Design Standards or outside of the Protected Area, as initially agreed upon by the Parties pursuant to Section 3.02, to allow for growth of the City, then the Authority will be solely responsible for the costs and expenses associated with the Flood Control Project as defined in Section 3.02 and Article XVI of the Settlement Agreement. Any expansion beyond the agreed upon Flood Control Project limits will be the responsibility of the City.

**ARTICLE XI.  
ASSIGNMENT OF RESPONSIBILITIES**

**Section 11.01** AUTHORITY. The Authority may, in its sole discretion, assign all or any of its rights, responsibilities, authority, or obligations under this MOU so long as said assignment does not frustrate the purpose of this MOU.

**Section 11.02** CITY. The City may, in its sole discretion, assign any or all of its rights, responsibilities, authority, or obligations under this MOU so long as said assignment does not frustrate the purpose of this MOU.

## **ARTICLE XII. FUNDING AND REIMBURSEMENT**

**Section 12.01** PROJECT FUNDING. The Authority is responsible for providing initial and annual funds for the design, construction, operation, and maintenance of the Flood Control Project, including but not limited to funds necessary for consultant fees, preliminary activities, property acquisition, labor, materials, inspections, administrative costs, and legal fees and costs, into perpetuity. The City will cooperate with the Authority if the Authority pursues other funding sources to complete the Flood Control Project.

**Section 12.02** DESIGN WORK AND PRELIMINARY ACTIVITIES INVOICING. Prior to commencing Design Work or a Preliminary Activity, the City shall submit a cost estimate for the same to the Authority. The Authority shall review and approve the cost estimate under the terms identified in Section 4.04. The City will submit invoices for payments set forth in a cost estimate pursuant to the following Article.

**Section 12.03** CONSTRUCTION WORK COST ESTIMATE AND INVOICING. In conjunction with the submittal of a Construction Documents Submittal, the City shall submit a cost estimate for the Construction Work to the Authority. The Authority shall review and approve the cost estimate under the terms identified in Section 4.04. The City will submit invoices for payments set forth in the cost estimate pursuant to the following Article.

**Section 12.04** WHEN REPORTED COSTS EXCEED ESTIMATES. If the costs reported pursuant to the preceding Sections exceed the aggregate cost approved by the Authority or appear to be unreasonable, the Authority may, within thirty (30) calendar days of receipt of the itemized report, provide the City with written notice requesting clarification of specific line items as excessive or unreasonable in relation to the costs approved by the Authority, and the City will provide proper justification within thirty (30) calendar days. Following clarification by the City or the expiration of thirty (30) calendar days, the Authority shall accept or reject the costs in question. Acceptance of costs shall not be unreasonably withheld and all review shall be conducted in Good Faith. Should the Authority reject any costs, it shall provide the City with an explanation of the reasons for said rejection.

**Section 12.05** APPEAL OF REJECTION OF COSTS. The City may appeal a decision rejecting any cost by providing the Authority written notice of the appeal and justification for its expenses within twenty (20) calendar days of its receipt of the rejection notice.

**Section 12.06** DETERMINATION. Within twenty (20) calendar days of receipt of the written notice described in the preceding Section, the Authority shall determine which Party will bear the rejected costs.

**Section 12.07** PAYMENT OF ACCEPTED COSTS. Within thirty (30) calendar days of the determination of the Authority's liability, the Authority shall issue payment of the amount owed to the City.

**Section 12.08** PAYMENT AFTER TERMINATION. Should the Parties terminate this MOU, all costs incurred by the City shall be paid by the Authority within thirty (30) calendar days of invoicing, pursuant to the review and acceptance provisions detailed in this Article.

**Section 12.09** ANNUAL O&M BUDGET AND FUNDS. The Authority will provide annual funds for the operation and maintenance of the Flood Control Project. The City will present an annual O&M budget for approval of the Authority, which will not be unreasonably withheld. The City has the discretion to advise what operation and maintenance is required, in accordance with reasonable standards of infrastructure and Flood Control Project management. This may, from time to time, include extraordinary maintenance items as warranted in the discretion of the City.

### **ARTICLE XIII. INVOICING AND AUDIT**

**Section 13.01** INVOICES.

(a) The City will remit hard copy invoices to the Authority at the Authority's main office, and the invoices will be processed by the Authority for the following month. The City will also submit copies of the invoices to the Authority electronically at [APIInvoicesFMDiv@jacobs.com](mailto:APIInvoicesFMDiv@jacobs.com), copied to [jpaulsen@fmdiversion.gov](mailto:jpaulsen@fmdiversion.gov).

(b) The City's invoices must be detailed and precise, clearly indicating each fee and expense for the amounts due on a line-item basis, and include at least the following information:

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

(c) Payment does not imply acceptance of services or that the invoice is accurate. In the event the City discovers an error in the amount of payment following the receipt of payment, the City must provide written notice of the overpayment to the Authority and credit any payment in error from any payment that is due or that may become due to the City under this MOU or return the overpayment to the Authority within thirty (30) calendar days of the identification of the error.

**Section 13.02** AUDIT. All original timecards, payrolls, material records, and other accounts for all charges and expenditures for which reimbursement will be claimed by the City from the Authority will be available at all reasonable times to allow the Authority to check and audit the invoices submitted by the City. The ability of the Authority to audit the City's invoices will extend for a period of three (3) years from the date final payment has been received by the City.

#### **ARTICLE XIV. TERM AND TERMINATION**

**Section 14.01** TERM. Unless terminated in accordance with the terms herein, this MOU will continue in full force and effect for ten (10) years following the Effective Date and will automatically renew for successive 10-year periods.

**Section 14.02** TERMINATION. This MOU will terminate upon termination of the Settlement Agreement. The Authority's obligations under this MOU to pay for the City's costs and expenses that occurred prior to the termination of this MOU shall remain in place following termination of this MOU.

#### **ARTICLE XV. DISPUTES**

**Section 15.01** CONTRACTORS AND THIRD PARTIES. The Parties shall coordinate with respect to any dispute with contractors and/or third parties. Such coordination shall include any potential or ongoing litigation.

**Section 15.02** PARTIES. The Parties shall cooperate and use their Best Efforts to ensure that the provisions of this MOU are fulfilled. The Parties agree to act in Good Faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this MOU. If disputes cannot be resolved informally by the Parties or under other situation-specific dispute resolution mechanisms contained herein, the following procedure shall be used.

(a) Mediation. If there is a failure between the Parties to resolve a dispute on their own, the Parties shall first attempt to mediate the dispute. The Parties shall agree upon a single mediator, or if that cannot be agreed upon, shall each contribute three (3) names to a list of mediators and select a mediator by alternately striking names until one (1) remains. The Authority shall strike the first name, followed by the City, until one (1) name remains. The Authority will be responsible for all costs associated with the hiring of the mediator.

(b) **Arbitration.** The arbitration shall be conducted and decided by one (1) arbitrator who is a retired judge or a lawyer with at least ten (10) years of experience, and who is mutually agreeable to the Parties. If the Parties cannot agree on an arbitrator, any Party may petition a court with jurisdiction, pursuant to the arbitration statutes, for the appointment of an arbitrator. To aid the arbitrator, the arbitrator shall have the authority to hire experts and special masters such as engineers. The arbitration shall be conducted pursuant to the Commercial Arbitration Rules promulgated by the American Arbitration Association. The arbitration shall not be administered by the American Arbitration Association. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Authority will be responsible for all costs associated with the hiring of the arbitrator.

(c) **Legal Fees.** Each Party will be responsible for its own attorney's fees in connection with a dispute under this MOU.

## **ARTICLE XVI. MISCELLANEOUS**

**Section 16.01 AUTHORIZED REPRESENTATIVES.** Each of the Authority and the City hereby designates the following individual as its initial authorized representative, respectively, to administer this MOU on its respective behalf:

- (a) Authority Representative: Kris Bakkegard, Director of Engineering
- (b) City Representative: Mayor, City of Christine

**Section 16.02 NOTICE.** All notices under the MOU will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by email communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses:

(a) All notices to the Authority, including Comprehensive Project correspondence, submittals, and samples, will be marked as regarding the Comprehensive Project and will be delivered to the following address or as otherwise directed by the Authority's authorized representative:

Metro Flood Diversion Authority  
Attention: Director of Engineering  
207 4th Street North, Suite A  
Fargo, North Dakota 58102

(b) All legal notices to the Authority, in addition to being provided to the Authority's representative as provided in the preceding Subsection, will also be provided to the Executive Director at the following address or as otherwise directed by the Authority's representative:



Metro Flood Diversion Authority  
Attention: Executive Director  
207 4th Street North, Suite A  
Fargo, North Dakota 58102

(c) All notices to the City will be marked as regarding the Comprehensive Project and will be delivered to the following address or as otherwise directed by the City's authorized representative:

City of Christine  
Attn: Mayor  
PO Box 1241  
Christine, ND 58015

Lies, Bullis & Hatting, PLLP  
Attn: Brittany Hatting  
610 2<sup>nd</sup> Ave N  
PO Box 275  
Wahpeton, ND 58075

Moore Engineering  
Attn: Tracy Eslinger  
925 10th Avenue East  
West Fargo, North Dakota 58078

(d) Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other person making the delivery. Notwithstanding the foregoing, notices received after 5:00 p.m. Central Time will be deemed received on the first Business Day following delivery.

**Section 16.03** WORKERS' COMPENSATION. Each Party shall be responsible for injuries or deaths of its own personnel unless the injuries are caused wholly or partially by the negligence, intentional acts, or willful misconduct of another Party. Each Party or their assigns will maintain workers' compensation insurance or self-insurance coverage covering its own personnel while they are providing assistance pursuant to this MOU. Each Party waives the right to pursue a legal action against one of the other Parties for any workers' compensation benefits paid to its own employee or volunteer or their dependents, unless the injuries are caused wholly or partially by the negligence, intentional acts, or willful misconduct of any other Party or its officers, employees, or volunteers.

**Section 16.04** INSURANCE. The City shall list the Authority (including its agents and contractors), as well as CCJWRD, as additional insureds on any insurance policy obtained in connection with the Flood Control Project. No Project Work may be done until a certificate of insurance listing the additional insureds is produced. An additional insured shall be given notice at least thirty (30) calendar days before an insurance policy on which it is an additional insured is canceled or allowed to expire. In the event that the policy is terminated for any reason and notice

has not been previously given to the additional insureds, the formerly insured shall give notice to the additional insureds as soon as is reasonably possible. The City shall obtain a general liability insurance policy providing no less than two million dollars (\$2,000,000) of coverage in connection with the Flood Control Project. All costs associated with obtaining and maintaining any necessary insurance coverages under this Section shall be the responsibility of the Authority.

**Section 16.05 INDEMNIFICATION.** The City shall indemnify, save, and hold the Authority, its officers, employees, and agents harmless from any liability, loss, damage, or expense, including legal fees, arising out of the negligent performance of its respective obligations under this MOU, for its intentional acts, willful misconduct, or by anyone for whom they are in law responsible. The Parties agree that they shall cooperate with each other in the defense of any such action, including providing each other with prompt notice of any such action and the provision of all material documentation. The Parties further agree that they have a right to retain their own counsel to conduct a full defense of any such action. This indemnity and hold harmless provision shall not be deemed as a waiver by the City of the limits of liability set forth in N.D.C.C. § 32-12.1-03, as amended from time or time, or a waiver of any available immunities or defenses.

**Section 16.06 RELATIONSHIPS CREATED.** The Parties agree this MOU does not create any agency, partnership, joint venture, or any other relationship between the Parties and that the City is solely responsible for its own actions or omissions.

**Section 16.07 GOVERNING LAW.** This MOU shall be controlled by the laws of the State of North Dakota. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this MOU shall be venued in Richland County in the State of North Dakota, and the Parties waive any objection to personal jurisdiction.

**Section 16.08 CONFLICT.** In the event of conflict between this MOU and any other agreement, this MOU shall control and govern the Flood Control Project, excepting that in the event of a conflict between this MOU and the Settlement Agreement, the Settlement Agreement shall control and govern the Flood Control Project.

**Section 16.09 ELECTRONIC SIGNATURES.** The Parties acknowledge and agree that this MOU may be executed by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature.

**Section 16.10 FEDERAL LOBBYING RESTRICTIONS.** Recipients of Federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a Federal grant, loan, or contract. These requirements are implemented for the United States Environmental Protection Agency (“EPA”) in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of a contract, the City shall complete and submit to the Authority the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34, which are attached in Exhibit A to this MOU. The City shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete

and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR Part 34.110.

**Section 16.11** DEBARMENT AND SUSPENSION. The City certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 CFR Part 32 to participate in the Flood Control Project. Suspension and debarment information can be accessed at <http://www.sam.gov>. The City represents and warrants that it has or will include a term or condition requiring compliance with this provision in all of its subcontracts under this MOU. Upon award of a contract, the City shall complete and submit to the Authority the federal certification form regarding debarment and suspension, which is attached in Exhibit A to this MOU.

**Section 16.12** CIVIL RIGHTS OBLIGATIONS. The City shall comply with the following Federal non-discrimination requirements:

- (a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
- (b) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
- (c) The Age Discrimination Act of 1975, which prohibits age discrimination.
- (d) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
- (e) 40 CFR Part 7, as it relates to the foregoing.
- (f) Executive Order No. 11246.

**Section 16.13** AMERICAN IRON AND STEEL. The City acknowledges to and for the benefit of the Authority and the EPA that it understands the goods and services under this MOU may be funded with monies made available by the Water Infrastructure Finance and Innovation Act program of the EPA that has statutory requirements commonly known as “American Iron and Steel” that requires all of the iron and steel products used to be produced in the United States (“American Iron and Steel Requirement”). In the event the Flood Control Project is financed with monies made available by the Water Infrastructure Finance and Innovation Act, the City hereby represents, warrants, and covenants to and for the benefit of the Authority and the EPA that (a) the City has reviewed and understands the American Iron and Steel Requirements; (b) all of the iron and steel products used in the Flood Control Project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement unless a waiver of the requirement is approved; and (c) the City will provide any further verified information, certification, or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Authority or the EPA. Notwithstanding any other provision of this MOU, any failure to comply with this paragraph by the City shall permit the Authority or the EPA to recover as damages against the City any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Authority or the EPA resulting from any such failure (including without limitation

any impairment or loss of funding, whether in whole or in part, from the EPA or any damages owed to the EPA by the Authority). While the City has no direct contractual privity with the EPA, as a lender to the Authority for the funding of the Comprehensive Project, the Authority and the City agree that the EPA is a third-party beneficiary and neither this paragraph (nor any other provision of this MOU necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the EPA.

**Section 16.14** CERTIFICATION. Upon award of a contract, the City shall comply with, complete, and submit to the Authority fully executed versions of the Federal certification forms attached in Exhibit A to this MOU.

**Section 16.15** COMPLETE AGREEMENT. This MOU and the Settlement Agreement contain the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter.

**Section 16.16** SEVERABILITY. Each provision, section, sentence, clause, phrase, and word of this MOU is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this MOU.

**Section 16.17** MODIFICATIONS. Any modifications or amendments to this MOU must be in writing and signed by both Parties to this MOU.

**Section 16.18** BINDING EFFECT. Except as otherwise specifically set forth herein, this MOU shall be for the benefit of, and may be enforced only by, the Parties and is not for the benefit of, and may not be enforced by, any third party.

**Section 16.19** REPRESENTATION. The Parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this MOU and agree they have not been influenced by any representations or statements made by any other parties.

**Section 16.20** HEADINGS. Headings in this MOU are for convenience only and will not be used to interpret or construe its provisions.

**Section 16.21** COUNTERPARTS. This MOU may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

**Section 16.22** REPRESENTATION OF AUTHORITY. Each Party signing this MOU represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this MOU and that the MOU is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

**Section 16.23** FORCE MAJEURE. Neither the City nor the Authority shall be held responsible for any delay or failure in performance of any part of this MOU to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control, and without the fault or negligence of the delayed or non-performing party. The affected party will notify the other party in writing within ten (10) calendar days after the beginning of any such cause that would affect its performance. Notwithstanding, if a party's performance is delayed for a period exceeding thirty (30) calendar days from the date the other Party receives notice under this Section, the non-affected Party will have the right, without any liability to the other Party, to terminate this MOU.

**IN WITNESS WHEREOF**, the Authority and the City caused this MOU to be executed.

*(Remainder of page intentionally left blank.)*

*Signature Page for the Metro Flood Diversion Authority*

The governing body of the Metro Flood Diversion Authority approved this MOU on the \_\_\_\_ day of \_\_\_\_\_, 2022.

**METRO FLOOD DIVERSION  
AUTHORITY**

By: \_\_\_\_\_  
Chad Peterson, Chair

By: \_\_\_\_\_  
Joel Paulsen, Executive Director

ATTEST:

\_\_\_\_\_  
Dawn Lindblom, Secretary

*Signature Page for the City of Christine, North Dakota*

The governing body of the City of Christine, North Dakota, approved this MOU on the \_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF CHRISTINE, NORTH  
DAKOTA**

By: \_\_\_\_\_  
Randy Monson, Mayor

ATTEST:

\_\_\_\_\_  
Jennifer Skoog, City Auditor

**EXHIBIT A  
FEDERAL CERTIFICATION FORMS**

**CERTIFICATION REGARDING FEDERAL LOBBYING**

The undersigned certifies to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in any award documents for any of its subcontractors at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into a contract with the Authority. By executing this certificate the undersigned agrees and acknowledges that he/she has been duly authorized to execute this certificate.

Company/Entity Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Its: \_\_\_\_\_

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

PLEASE RETURN TO:  
Metro Flood Diversion Authority  
207 4th St. N, Suite A  
Fargo, ND 58102



**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
AND OTHER RESPONSIBILITY MATTERS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211).

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)**

- (1) The official representative of the party contracting with the Metro Flood Diversion Authority certifies to the best of its knowledge and belief that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application had one or more public transactions, including contracts (Federal, State, or local) terminated for cause or default.
  - (e) Are not presently debarred, suspended, declared ineligible or voluntarily excluded from performing work for the State of North Dakota, the State of Minnesota, the Metro Flood Diversion Authority or any of its Member Entities.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.
- (3) The Official signing this certificate has been and is duly authorized to sign this certificate on behalf of the entity or entities which intend to enter into a contract with the Metro Flood Diversion Authority.

Official Business Name \_\_\_\_\_

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

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

Name and Title of Authorized Representative

PLEASE RETURN TO:

Metro Flood Diversion Authority  
207 4th St. N, Suite A  
Fargo, ND 58102

\_\_\_\_\_  
Signature of Authorized Representative

### INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this certification, the prospective contracting party is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contracting party shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Metro Flood Diversion Authority's (the "Authority") determination whether to enter into this transaction. However, failure of the prospective contracting party to furnish a certification or an explanation shall disqualify such person from entering into contracts with the Authority.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Authority determined to enter into a contract with the prospective contracting party. In order to qualify for participation in the U.S. EPA WIFIA program the Authority is required to obtain this certification. If it is later determined that the prospective contracting party knowingly rendered an erroneous certification, in addition to other remedies available to both the Authority and the Federal Government, the Authority may terminate this transaction for cause or default.
4. The prospective contracting party shall provide immediate written notice to the Authority to which this Certificate is submitted if at any time the prospective contracting party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Authority for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective contracting party agrees by submitting this certification that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Authority.
7. The prospective contracting party further agrees by submitting this certification that it will require a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," from all sub-contractors without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A contracting party in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A contracting party may decide the method and frequency by which it determines the ineligibility of its principals.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a contracting party is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a contracting party in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Authority may terminate this transaction for cause or default.

**ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE**

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, THE AGE DISCRIMINATION ACT OF 1975, SECTION 13 OF THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972, 40 CFR PART 7, AND EXECUTIVE ORDER NO. 11246

The undersigned provides this assurance for the purpose of entering into a contract with the Metro Flood Diversion Authority (Authority) related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project), which is receiving federal financial assistance. Specifically, the US EPA WIFIA Program requires this assurance of all contractors and subcontractors providing services for the Project.

The undersigned assures that it will comply with:

1. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin including limited English proficiency (LEP);
2. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against persons with disabilities;
3. The Age Discrimination Act of 1975, as amended, which prohibits age discrimination;
4. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex;
5. 40 CFR Part 7, as it relates to the foregoing; and
6. Executive Order No. 11246.

The undersigned understands that this Assurance is binding on the undersigned, its successors, transferees, and assignees at any time during which federal financial assistance is provided to the Project. The undersigned will ensure that all contractors, subcontractors, or others with whom it arranges to provide services or benefits are not discriminating in violation of items 1-6. Otherwise, the contracts for services can be terminated for cause and the undersigned can be declared ineligible to contract for the Project.

By signing this form, the undersigned is agreeing to the above provisions and that he/she is duly authorized to execute this form.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Name of Institution or Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
Street

\_\_\_\_\_  
City, State, Zip Code

PLEASE RETURN TO:  
Metro Flood Diversion Authority  
207 4th St. N, Suite A  
Fargo, ND 58102


\_\_\_\_\_  
Office Email Address

## EXHIBIT B MOORE ENGINEERING SCOPE OF SERVICES AND FEES


|   |   |            |   | v6.12-13-2019  |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               |   |         |   |            |                                 |  |
|---|---|------------|---|--|--------------------|-----------|------|------------------|-------------------|-------------------------|---------------|----------------|----------------------|-----------------|----------------|-------------------|---------------|---|---------|---|------------|---------------------------------|--|
| Project Name: <b>Flood Control Project</b>                      |   |            |   | NOTE: YOU MAY UNPROTECT THIS WORKSHEET USING PASSWORD: 654 |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               | MARKUP % (15% default for STANDARD billing rates) |         | MARKUP % (15% default for STANDARD billing rates) |            | PRICE PER MILE (\$0.56 default) |  |
| Project Number: <b>21568</b>                                    |   |            |   | CHOOSE BILLING RATE IN C192 - DEFAULT IS STANDARD          |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               | 15%   |         | 15%   |            | \$0.56                          |  |
| Date: <b>7/23/2021</b>  |   |            |   |  |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               |   |         |   |            |                                 |  |
| Client: <b>City of Christine, ND</b>                            |   |            |   |  |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               |   |         |   |            |                                 |  |
| TASK NO.  | WORK TASK DESCRIPTION   | Group Name | Defined Limits                          | PRINCIPAL  | SR PROJECT MANAGER | SENIOR PE | PE I | PROJECT ENGINEER | GRADUATE ENGINEER | ENGINEERING DESIGNER II | CADD TECH III | SURVEY MANAGER | SURVEY CREW CHIEF II | SURVEY TECH III | ADMINISTRATIVE | LABOR TOTAL (WIP) | SUBCONSULTANT | MISC EXPENSE                                      | MILEAGE | PER DIEM  | TASK TOTAL |                                 |  |
| <b>1 Preliminary Planning, Scoping &amp; Authorization</b>      |   |            |   |  |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               |   |         |   |            |                                 |  |
| 1.001   | Develop Scope of Flood Control Project & Schedule for Implementing                                      |            |   | 4  | 8                  | 16        |      |                  | 8                 |                         |               |                |                      |                 |                | \$6,500           |               |   |         |   | \$6,500    |                                 |  |
| 1.002   | Kickoff Meeting with City Council   |            |   |  | 8                  | 8         |      |                  |                   |                         |               |                |                      |                 |                | \$3,080           |               |   | \$45    |   | \$3,125    |                                 |  |
| 1.003   | Presentation of Project and Schedule to DA  |            |   |  | 4                  | 4         |      |                  |                   |                         |               |                |                      |                 |                | \$1,540           |               |   |         |   | \$1,540    |                                 |  |
| 1.004   | Assist Christine with project outline and schedule  |            |   |  | 8                  | 8         | 2    |                  | 2                 |                         | 16            |                |                      |                 |                | \$5,780           |               |   |         |   | \$5,780    |                                 |  |
| 1.005   |   |            |   |  |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               |   |         |   |            |                                 |  |
| 1.006   |   |            |   |  |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               |   |         |   |            |                                 |  |
| SUBTOTAL - PHASE 1  |   |            |   | 4  | 28                 | 36        | 2    |                  | 10                |                         | 16            |                |                      |                 |                |                   |               |   | \$45    |   | \$16,945   |                                 |  |
| <b>2 Accumulation of Data Regarding Existing Infrastructure</b> |   |            |   |  |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               |   |         |   |            |                                 |  |
| 2.001   | Research existing records, plans, maps and discuss with City  |            |   |  | 4                  |           | 4    |                  |                   |                         |               |                |                      |                 |                | \$1,460           |               |   |         |   | \$1,460    |                                 |  |
| 2.002   | Analyze obtained information to determine gaps to be filled by field survey                             |            |   |  |                    |           | 6    | 6                |                   |                         |               |                |                      |                 |                | \$1,950           |               |   |         |   | \$1,950    |                                 |  |
| 2.003   | Field survey  |            |   |  |                    | 8         | 8    | 8                |                   |                         | 21            | 4              | 120                  | 120             |                | \$36,830          |               |   | \$840   |   | \$37,670   |                                 |  |
| 2.004   | Review existing drainage conditions, deficiencies & inadequacy of existing storm sewer system & outlets |            |   |  | 2                  |           | 6    | 16               |                   |                         | 40            |                |                      |                 |                | \$9,090           |               |   |         |   | \$9,090    |                                 |  |
| 2.005   | Draw up field survey  |            |   |  |                    | 6         | 16   |                  |                   |                         | 80            |                |                      |                 |                | \$14,260          |               |   |         |   | \$14,260   |                                 |  |
| 2.006   | Incorporate records, Lidar, plans, and maps into single project base map, field visit                   |            | Does not include legal boundary surveys |  | 4                  | 16        | 16   |                  |                   |                         |               |                |                      |                 |                | \$6,540           |               |   |         |   | \$6,540    |                                 |  |
| 2.007   | Review existing LIDAR and watershed   |            |   |  | 2                  |           |      |                  |                   |                         |               |                |                      |                 |                | \$390             |               |   |         |   | \$390      |                                 |  |
| 2.008   | Environmental Review - Wetlands   |            |   |  | 2                  | 20        |      |                  |                   |                         |               |                |                      |                 |                | \$12,750          |               |   |         |   | \$12,750   |                                 |  |
| SUBTOTAL - PHASE 2  |   |            |   | 14   | 50                 | 56        | 30   |                  |                   |                         | 141           | 4              | 120                  | 120             |                |                   |               |   | \$840   |   | \$84,110   |                                 |  |

Note: All items that contain no hours are EXCLUDED from the Proposal.  
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|  |  | v6.12-13-2019  |                |           |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   | MARKUP %<br>(15% default<br>for<br>STANDARD<br>billing rates) |              | MARKUP %<br>(15% default<br>for<br>STANDARD<br>billing rates) |          | PRICE<br>PER<br>MILE<br>(\$0.56<br>default) |          |
|---|--|--|----------------|-----------|--------------------|-----------|------|------------------|-------------------|-------------------------|---------------|----------------|----------------------|-----------------|----------------|-------------------|---|--------------|---|----------|---|----------|
| Project Name: Flood Control Project   |  | NOTE: YOU MAY UNPROTECT THIS WORKSHEET USING PASSWORD: 654 |                |           |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   | 15%   |              | 15%   |          | \$0.56                                      |          |
| Project Number: 21568   |  | CHOOSE BILLING RATE IN C192 - DEFAULT IS STANDARD          |                |           |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |   |              |   |          |   |          |
| Date: 7/23/2021   |  |  |                |           |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |   |              |   |          |   |          |
| Client: City of Christine, ND   |  |  |                |           |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |   |              |   |          |   |          |
| TASK NO.  | WORK TASK DESCRIPTION  | Group Name   | Defined Limits | PRINCIPAL | SR PROJECT MANAGER | SENIOR PE | PE I | PROJECT ENGINEER | GRADUATE ENGINEER | ENGINEERING DESIGNER II | CADD TECH III | SURVEY MANAGER | SURVEY CREW CHIEF II | SURVEY TECH III | ADMINISTRATIVE | LABOR TOTAL (WIP) | SUBCONSULTANT   | MISC EXPENSE | MILEAGE   | PER DIEM | TASK TOTAL                                  |          |
| <b>4 Generation of Opinions of Probable Cost</b>                                  |  |  |                |           |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |   |              |   |          |   |          |
| 4.001   | Calculate quantities for project alternatives                          |  |                |           | 1                  | 2         | 18   | 16               |                   | 20                      | 8             |                |                      |                 |                | \$9,955           |   |              |   |          | \$9,955                                     |          |
| 4.002   | Determine estimated unit prices for each item                          |  |                |           | 1                  | 2         | 8    | 8                |                   |                         |               |                |                      |                 |                | \$3,175           |   |              |   |          | \$3,175                                     |          |
| 4.003   | Assemble opinions of probable construction                             |  |                |           | 1                  | 4         | 6    | 4                |                   |                         | 4             |                |                      |                 |                | \$3,115           |   |              |   |          | \$3,115                                     |          |
| 4.004   | Assemble opinions for right-of-way                                     |  |                |           | 1                  | 4         | 6    | 8                |                   | 8                       | 4             |                |                      |                 |                | \$4,855           |   |              |   |          | \$4,855                                     |          |
| 4.005   |  |  |                |           |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |   |              |   |          |   |          |
| SUBTOTAL - PHASE 4  |  |  |                |           | 4                  | 12        | 38   | 36               |                   | 28                      | 16            |                |                      |                 |                |                   |   |              |   |          |   | \$21,100 |
| <b>5 Preparation of Planning and Funding Report</b>                               |  |  |                |           |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |   |              |   |          |   |          |
| 5.001   | Summarize each alternative   |  |                |           | 1                  | 4         | 24   | 8                |                   |                         |               |                |                      |                 |                | \$6,275           |   |              |   |          | \$6,275                                     |          |
| 5.002   | Prepare map of each alternative  |  |                |           | 1                  |           | 4    | 4                |                   | 24                      |               |                |                      |                 |                | \$4,855           |   |              |   |          | \$4,855                                     |          |
| 5.003   | Prepare alternatives, recommendations & prioritization of improvements |  |                | 4         | 8                  | 8         | 8    | 24               |                   |                         |               |                |                      |                 | 4              | \$9,300           |   |              |   |          | \$9,300                                     |          |
| 5.004   | QA/QC. Review & revise report prior to submittal to the owner          |  |                | 8         | 4                  | 8         | 12   | 2                |                   |                         |               |                |                      | 4               | \$6,570        |                   |   |              |   |          | \$6,570                                     |          |
| 5.005   | Funding assistance for DA and SWC or other sources                     |  |                | 4         | 40                 |           | 20   | 80               |                   |                         |               |                |                      |                 |                | \$24,380          |   |              |   |          | \$24,380                                    |          |
| 5.006   |  |  |                |           |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |   |              |   |          |   |          |
| SUBTOTAL - PHASE 5  |  |  |                | 16        | 54                 | 20        | 68   | 118              |                   | 24                      |               |                |                      | 8               |                |                   |   |              |   |          |   | \$51,380 |

Note: All items that contain no hours are EXCLUDED from the Proposal.  
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|  |  |            |                | v6.12-13-2019  |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               | MARKUP %<br>(15% default<br>for<br>STANDARD<br>billing rates) |         | MARKUP %<br>(15% default<br>for<br>STANDARD<br>billing rates) |            | PRICE<br>PER<br>MILE<br>(\$0.56<br>default) |  |
|---|--|------------|----------------|--|--------------------|-----------|------|------------------|-------------------|-------------------------|---------------|----------------|----------------------|-----------------|----------------|-------------------|---------------|---|---------|---|------------|---|--|
| Project Name: Flood Control Project   |  |            |                | NOTE: YOU MAY UNPROTECT THIS WORKSHEET USING PASSWORD: 654 |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               | 15%   |         | 15%   |            | \$0.56                                      |  |
| Project Number: 21568   |  |            |                | CHOOSE BILLING RATE IN C192 - DEFAULT IS STANDARD          |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               |   |         |   |            |   |  |
| Date: 7/23/2021   |  |            |                |  |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               |   |         |   |            |   |  |
| Client: City of Christine, ND   |  |            |                |  |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               |   |         |   |            |   |  |
| TASK NO.  | WORK TASK DESCRIPTION  | Group Name | Defined Limits | PRINCIPAL  | SR PROJECT MANAGER | SENIOR PE | PE I | PROJECT ENGINEER | GRADUATE ENGINEER | ENGINEERING DESIGNER II | CADD TECH III | SURVEY MANAGER | SURVEY CREW CHIEF II | SURVEY TECH III | ADMINISTRATIVE | LABOR TOTAL (WIP) | SUBCONSULTANT | MISC EXPENSE  | MILEAGE | PER DIEM  | TASK TOTAL |   |  |
| <b>6 Attend City/WRD Meetings to Present Report and Recommendations</b>           |  |            |                |  |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               |   |         |   |            |   |  |
| 6.001   | Attend City meetings to review alternatives and recommendations                      |            |                | 4  | 24                 | 12        | 20   | 4                |                   | 4                       |               |                |                      |                 |                | \$12,320          |               |   |         |   | \$12,320   |   |  |
| 6.002   | Make revisions to proposed alternatives, costs, maps, etc. (based on City/DA review) |            |                |  | 2                  |           | 2    | 8                |                   |                         |               |                |                      |                 |                | \$1,970           |               |   |         |   | \$1,970    |   |  |
| 6.003   | Present at public meeting in City  |            |                |  | 8                  | 12        | 12   | 12               |                   |                         |               |                |                      |                 |                | \$7,740           |               |   |         |   | \$7,740    |   |  |
| 6.004   | Present at DA  |            |                |  | 4                  | 4         |      |                  |                   |                         |               |                |                      |                 |                | \$1,540           |               |   |         |   | \$1,540    |   |  |
| 6.005   | Follow up, provide recommendations for advancement. Attend council meeting           |            |                |  | 8                  | 8         | 8    |                  |                   |                         |               |                |                      |                 |                | \$4,440           |               |   |         |   | \$4,440    |   |  |
| 6.006   |  |            |                |  |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               |   |         |   |            |   |  |
| 6.007   |  |            |                |  |                    |           |      |                  |                   |                         |               |                |                      |                 |                |                   |               |   |         |   |            |   |  |
| SUBTOTAL - PHASE 6  |  |            |                | 4  | 46                 | 36        | 42   | 24               |                   | 4                       |               |                |                      |                 |                |                   |               |   |         |   | \$28,010   |   |  |

Note: All items that contain no hours are EXCLUDED from the Proposal.  
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|  |  | v6.12-13-2019  |                |           |                    |           |          |                  |                   |                         |               |                |                      |                 |                |  | MARKUP % (15% default for STANDARD billing rates) |              | MARKUP % (15% default for STANDARD billing rates) |          | PRICE PER MILE (\$0.56 default) |  |  |
|---|--|--|----------------|-----------|--------------------|-----------|----------|------------------|-------------------|-------------------------|---------------|----------------|----------------------|-----------------|----------------|--|---|--------------|---|----------|---------------------------------|--|--|
| Project Name: Flood Control Project   |  | NOTE: YOU MAY UNPROTECT THIS WORKSHEET USING PASSWORD: 684 |                |           |                    |           |          |                  |                   |                         |               |                |                      |                 |                |  | 15%   |              | 15%   |          | \$0.56                          |  |  |
| Project Number: 21568   |  | CHOOSE BILLING RATE IN C192 - DEFAULT IS STANDARD          |                |           |                    |           |          |                  |                   |                         |               |                |                      |                 |                |  |   |              |   |          |                                 |  |  |
| Date: 7/23/2021   |  |  |                |           |                    |           |          |                  |                   |                         |               |                |                      |                 |                |  |   |              |   |          |                                 |  |  |
| Client: City of Christine, ND   |  |  |                |           |                    |           |          |                  |                   |                         |               |                |                      |                 |                |  |   |              |   |          |                                 |  |  |
| TASK NO.  | WORK TASK DESCRIPTION  | Group Name   | Defined Limits | PRINCIPAL | SR PROJECT MANAGER | SENIOR PE | PE I     | PROJECT ENGINEER | GRADUATE ENGINEER | ENGINEERING DESIGNER II | CADD TECH III | SURVEY MANAGER | SURVEY CREW CHIEF II | SURVEY TECH III | ADMINISTRATIVE | LABOR TOTAL (WIP)                          | SUBCONSULTANT                                     | MISC EXPENSE | MILEAGE   | PER DIEM | TASK TOTAL                      |  |  |
|   | Phase  |  |                | PRINCIPAL | SR PROJECT MANAGER | SENIOR PE | PE I     | PROJECT ENGINEER | GRADUATE ENGINEER | ENGINEERING DESIGNER II | CADD TECH III | SURVEY MANAGER | SURVEY CREW CHIEF II | SURVEY TECH III | ADMINISTRATIVE | LABOR TOTAL (WIP)                          | SUBCONSULTANT                                     | MISC EXPENSE | MILEAGE   | PER DIEM | TOTAL HOURLY ESTIMATE           |  |  |
|   | Standard Billing Rates - 2021                                  |  | COST/HOUR      | \$195     | \$195              | \$190     | \$170    | \$155            | \$140             | \$140                   | \$130         | \$145          | \$140                | \$105           | \$90           | N/A  | N/A   | N/A          | N/A   | N/A      |                                 |  |  |
|   | Preliminary Planning, Scoping & Authorization                  |  | 1 HOURS        | 4         | 28                 | 36        | 2        | 10               |                   |                         | 16            |                |                      |                 |                | 96   | N/A   | N/A          | N/A   | N/A      |                                 |  |  |
|   |  |  | COST           | \$780     | \$5,460            | \$6,840   | \$340    | \$1,400          |                   |                         | \$2,080       |                |                      |                 |                | \$16,900                                   |   |              | \$45  |          | \$16,945                        |  |  |
|   | Accumulation of Data Regarding Existing Infrastructure         |  | 2 HOURS        |           | 14                 | 50        | 56       | 30               |                   |                         | 141           | 4              | 120                  | 120             |                | 603  | N/A   | N/A          | N/A   | N/A      |                                 |  |  |
|   |  |  | COST           |           | \$2,730            | \$9,500   | \$9,520  | \$4,650          |                   |                         | \$18,330      | \$580          | \$16,800             | \$12,600        |                | \$83,270                                   |   |              | \$840   |          | \$84,110                        |  |  |
|   | Determination of Infrastructure Needs                          |  | 3 HOURS        | 4         | 333                | 28        | 164      | 480              |                   | 72                      | 268           | 13             | 104                  | 104             | 8              | 2106                                       | N/A   | N/A          | N/A   | N/A      |                                 |  |  |
|   |  |  | COST           | \$780     | \$64,935           | \$5,320   | \$27,880 | \$74,400         |                   | \$10,080                | \$34,840      | \$1,885        | \$14,560             | \$10,920        | \$720          | \$335,380                                  | \$112,125   | \$299        | \$651   |          | \$448,455                       |  |  |
|   | Generation of Opinions of Probable Cost                        |  | 4 HOURS        |           | 4                  | 12        | 38       | 36               |                   | 28                      | 16            |                |                      |                 |                | 134  | N/A   | N/A          | N/A   | N/A      |                                 |  |  |
|   |  |  | COST           |           | \$780              | \$2,280   | \$6,460  | \$5,580          |                   | \$3,920                 | \$2,080       |                |                      |                 |                | \$21,100                                   |   |              |   |          | \$21,100                        |  |  |
|   | Preparation of Planning and Funding Report                     |  | 5 HOURS        | 16        | 54                 | 20        | 68       | 118              |                   | 24                      |               |                |                      |                 | 8              | 308  | N/A   | N/A          | N/A   | N/A      |                                 |  |  |
|   |  |  | COST           | \$3,120   | \$10,530           | \$3,800   | \$11,560 | \$18,290         |                   | \$3,360                 |               |                |                      |                 | \$720          | \$51,380                                   |   |              |   |          | \$51,380                        |  |  |
|   | Attend City/WRD Meetings to Present Report and Recommendations |  | 6 HOURS        | 4         | 46                 | 36        | 42       | 24               |                   | 4                       |               |                |                      |                 |                | 156  | N/A   | N/A          | N/A   | N/A      |                                 |  |  |
|   |  |  | COST           | \$780     | \$8,970            | \$6,840   | \$7,140  | \$3,720          |                   | \$560                   |               |                |                      |                 |                | \$28,010                                   |   |              |   |          | \$28,010                        |  |  |
|   | TOTALS   |  | HOURS          | 28        | 479                | 182       | 370      | 688              | 10                | 128                     | 441           | 17             | 224                  | 224             | 16             | 3,403                                      |   |              |   |          |                                 |  |  |
|   |  |  | COST           | \$5,460   | \$93,405           | \$34,580  | \$62,900 | \$106,640        | \$1,400           | \$17,920                | \$57,330      | \$2,465        | \$31,360             | \$23,520        | \$1,440        | \$536,040                                  | \$112,125   | \$299        | \$1,536   |          | \$650,000                       |  |  |
|   | Contingencies  |  |                |           |                    |           |          |                  |                   |                         |               |                |                      |                 |                | Enter Contingency % if any (default is 0%) |   |              |   |          |                                 |  |  |
|   | <b>PROJECT GRAND TOTAL</b>                                     |  |                |           |                    |           |          |                  |                   |                         |               |                |                      |                 |                |  |   |              |   |          | <b>\$650,000</b>                |  |  |

Note: All items that contain no hours are EXCLUDED from the Proposal.  
 Q:\Projects\2106002150\021568 ChristineND FloodControl\02-Bid and Proposal\02-Engineering Agreement (Rp)\Proposals\ChristineTaskHourFloodControl.xlsx 8/24/2021



**EXHIBIT C**  
**SIGN TEMPLATE**



This project is funded by the  
**Metro Flood Diversion Authority**

Visit [www.fmdiversion.gov](http://www.fmdiversion.gov) for more information

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**MEMORANDUM OF UNDERSTANDING**

**BY AND BETWEEN  
CASS COUNTY, NORTH DAKOTA  
AND  
THE METRO FLOOD DIVERSION AUTHORITY**

**Dated as of January 1, 2022**

**Relating to:**

**An agreement outlining the relationship and responsibilities of Cass County and the Metro  
Flood Diversion Authority with regard to human resource related services.**

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

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## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** (the “Agreement”) is effective as of the 1<sup>st</sup> day of January, 2022 (the “Effective Date”), by and between Cass County, North Dakota, a North Dakota Home Rule County and political subdivision of the State of North Dakota (the “County”) and the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota (the “Authority”) (collectively referred to as the “Parties”).

**WHEREAS**, under the terms of the Joint Powers Agreement dated June 11, 2016, (the “JPA”), the Authority may enter contracts and employ personnel related to the Fargo-Moorhead Area Diversion Project (the “Project”); and

**WHEREAS**, under the terms of the JPA, the Authority employed an Executive Director to function as the chief administrative officer of the Authority on September 1, 2019; and

**WHEREAS**, on August 22, 2019, the County and the Authority entered into an Interim Memorandum of Understanding whereby the County’s human resource department provided human resource services related to payroll and benefits to the Authority’s Executive Director and future employees at no cost to the Authority; and

**WHEREAS**, the Interim Memorandum of Understanding expired on December 31, 2019, and the County and the Authority entered into a more complete agreement regarding the provisions of personnel services; and

**WHEREAS**, under the terms of the subsequent agreement, the County’s human resource department provided human resource services related to payroll and benefits to the Authority’s Executive Director and employees at no cost to the Authority, beginning January 1, 2020, through December 31, 2021; and

**WHEREAS**, the Parties desire to lengthen the term and continue the relationship by memorializing the terms, rights, and responsibilities in writing under this new Agreement, which supersedes all previous agreements between the parties related to this matter.

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### 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 Agreement and as defined in this Section unless a different meaning clearly applies from the context.

“**Agreement**” means this Memorandum of Understanding dated January 1, 2022.

“**Applicable Law**” means, collectively, the Constitutions of the United States and the State, all common law and principles of equity, and all federal, State, and local laws including, without limitation, all environmental laws, statutes, treaties, codes, acts, rules, regulations,

guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation, or administration thereof, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations and permits of, and agreements with, any governmental authority, and, with respect to any person, the articles of incorporation, bylaws, or other organizational or governing documents of such person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to the Authority or the County.

**“Authority”** means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota and a permanent, joint powers entity formed through the Joint Powers Agreement to provide the Fargo-Moorhead metropolitan area with permanent and comprehensive flood protection.

**“Best Efforts”** means an entity 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 Law.

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

**“Effective Date”** means January 1, 2022.

**“Employee Handbook”** means the Cass County Employee Handbook which describes workplace policies and employee guidelines for Cass County Employees.

**“Executive Director”** means the person hired by the Authority pursuant to an Employment Agreement dated September 1, 2019, to serve as the Executive Director of the Authority pursuant to the terms and conditions of the Joint Powers Agreement.

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

**“Joint Powers Agreement”** means the agreement entered into by and between the City of Moorhead, the City of Fargo, Clay County, Cass County, and the Cass County Joint Water Resource District, dated as of June 1, 2016, to create the Authority.

**“Metro Flood Diversion Authority”** or **“Authority”** means the political subdivision created by the Joint Powers Agreement consisting of the communities of Fargo, North Dakota and Moorhead, Minnesota, along with Cass County, North Dakota, Clay County, Minnesota, and the Cass County Joint Water Resources District.

**“Party”** means either the Authority or the County, as the context may require, and their respective legal representatives, successors, and permitted assigns, and wherever a reference in this Agreement is made to any Parties hereto, **“Parties”** means the Authority and the County, collectively, and their respective legal representatives, successors, and permitted assigns.

**“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 US Army Corps of Engineers, District Engineer, St. Paul District on September 19, 2013, the Final Supplemental Environmental Assessment #2, Fargo Moorhead Metropolitan Area Flood Risk Management Project, dated February 2019 and approved by the District Engineer, St. Paul District on February 28, 2019, and as amended by the Governors' Task Force and applicable permit requirements.

**Section 1.02** INTERPRETATION. The headings of Articles and Sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of this Agreement. Any and all exhibits to this Agreement are hereby incorporated by reference. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (b) any reference herein to any person shall be construed to include such person's permitted assigns, (c) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this Agreement, and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

## ARTICLE II. INTENT

**Section 2.01** INTENT. The Authority has hired and may hire a small number of additional staff in the future. Given the County's large human resource department and the small number of employees hired and to be hired by the Authority in the future, the County offered to provide human resource services related to benefits and payroll services to Authority employees. The County's human resource department will provide human resource services related to payroll and benefits to the Authority's Executive Director and employees at no cost to the Authority, beginning January 1, 2022, through December 31, 2026.

## ARTICLE III. RIGHTS, DUTIES, AND OBLIGATIONS OF THE COUNTY

**Section 3.01** RIGHTS, DUTIES, AND OBLIGATIONS OF THE COUNTY. It is hereby acknowledged and agreed upon between the Parties that the County will:

1. Provide human resource services related to payroll to the Executive Director and any employee hired by the Authority. The County shall administer payroll to the

Executive Director and any employee hired by the Authority in accordance with the provisions and guidelines set forth in the Cass County Employee Handbook (“Employee Handbook”), “Timekeeping/Payroll” Sections 401-406 as may be amended from time to time, attached as **Exhibit A**;

2. Provide retirement and health benefits to the Executive Director and any employees of the Authority through the County’s sponsored plans, in compliance with applicable federal and state laws, and subject to eligibility requirements. The County shall provide benefit services in accordance with “Employee Benefits” Section 301 as may be amended from time to time, of the the Employee Handbook;
3. Conduct individual meetings with the Executive Director and any employees hired by the Authority to address any questions, suggestions, or concerns in relation to County human resource policies;
4. Provide the Executive Director and any employee hired by the Authority with sections of the Employee Handbook referenced above. The County agrees that it will ensure these sections of the Employee Handbook are timely updated, as necessary, due to changes in federal and state law, or as might otherwise be deemed appropriate by the County;
5. Make Best Efforts and work cooperatively in Good Faith with the Executive Director, employees, contractors, consultants, and staff of the Authority;
6. Invoice the Authority for any and all employment related costs associated with the Executive Director or and other Authority employees, including salary, benefits and reimbursements provided in accordance with the Executive Director’s Employment Agreement and in accordance with the salary and benefits schedule established by the Authority for other Authority employees at the end of each month;
7. Recognize the Authority’s exclusive right to direct and control the day-to-day activity of the Executive Director and future employees hired by the Authority as is necessary to conduct business related to the construction of the Project;
8. Recognize the Authority’s exclusive right to hire, discipline, and terminate the Executive Director and any employee hired by the Authority as may be necessary to fulfill the Authority’s responsibilities; and
9. Provide the services to the Authority, at no cost.

**ARTICLE IV.  
RIGHTS, DUTIES, AND OBLIGATIONS OF THE AUTHORITY**

**Section 4.01** RIGHTS, DUTIES, AND OBLIGATIONS OF THE AUTHORITY. It is hereby acknowledged and agreed upon between the Parties that the Authority will:

1. Retain the exclusive right to direct and control the day-to-day activity of the Executive Director and employees hired by the Authority as is necessary to conduct business related to the construction of the Project;



2. Retain the exclusive right to hire, discipline, and terminate the Executive Director and any employee hired by the Authority as may be necessary to fulfill the Authority's responsibilities;
3. Report to the County any Authority employees hired, promoted, or terminated;
4. Provide any other pertinent information requested by the County's human resource department in a timely manner; and
5. Promptly pay all County invoices for any and all Authority employment-related costs as prepared by the County in accordance with Section 3.01(6) of this Agreement.

**ARTICLE V.  
TERM AND TERMINATION**

**Section 5.01** TERM. The term of this Agreement shall commence on the Effective Date and shall remain in effect for five (5) years until termination on December 31, 2026 (the "Initial Term"). After the Initial Term, the parties may enter into a new or amended agreement.

**Section 5.02** TERMINATION. In addition to the provisions of Section 5.01, this Agreement may terminate for any of the following reasons:

1. Either Party may terminate this Agreement without termination fee, penalty, or liquidated damages if the other Party commits a breach of any material obligation under this Agreement; provided that if a Party shall by any act or omission, be in breach of any material obligation under this Agreement and such breach shall continue for a period of fourteen (14) days after written notice thereof has been given by the Party to the offending Party, the Party shall have the right to terminate this Agreement with immediate effect by notice to the offending Party.
2. The Parties may mutually agree in writing to terminate this Agreement, at any time, without termination fee, penalty, or liquidated damages.

**Section 5.03** NOTICE. Written notice shall be addressed to the following addresses:

Authority: Chair  
Metro Flood Diversion Authority Board  
207 4th St. N, Suite A  
Fargo, ND 58102

County: Cass County Finance Director  
P.O. Box 2806  
Fargo, ND 58108-2806

**ARTICLE VI.  
DISPUTE RESOLUTION**

**Section 6.01** INTENT AND PROCEDURE. The Parties will cooperate and use their Best Efforts to ensure that the various provisions of this Agreement are fulfilled. The Parties agree to act in Good Faith to undertake resolution of disputes in an equitable and timely manner and in

accordance with the provisions of this Agreement. If disputes cannot be resolved informally by the Parties, the Parties will use the following procedure.

**Section 6.02** MEDIATION. If there is a failure between the Parties to resolve a dispute on their own, the Parties will first attempt to mediate the dispute. The Parties will agree upon a single mediator or, if an agreement cannot be reached within ten (10) calendar days, each Party will propose two (2) potential individuals to serve as mediator, for a total of four (4) individuals. The Parties will then select a mediator by alternatively striking the names of the proposed individuals, with the County striking first, followed by the Authority.

**Section 6.03** LITIGATION. If the dispute is not resolved within forty-five (45) calendar days after the selection of the mediator pursuant to the prior Section, the Parties may litigate the matter.

**Section 6.04** VENUE. All litigation between the Parties arising out of or pertaining to this Agreement or its breach will be filed, heard, and decided in the District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

**Section 6.05** WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN 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 AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS.

## **ARTICLE VII. MISCELLANEOUS**

**Section 7.01** ASSIGNMENT. Neither Party may assign this Agreement without the prior written consent of the other Party. The Parties' rights and obligations under this Agreement will be passed to the assignees to which those rights and obligations have been permissibly assigned.

**Section 7.02** MODIFICATION. This Agreement may be amended or modified only by mutual consent of both Parties, unless otherwise provided for herein.

**Section 7.03** GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of North Dakota.

**Section 7.04** SEVERABILITY. In case any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

**Section 7.05** WAIVER. No waiver of any Party of any right or remedy pursuant to this Agreement will be deemed to be a waiver of any other or subsequent right or remedy pursuant to this Agreement. The consent of one Party to any act by the other Party requiring such consent will not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

**Section 7.06** ACKNOWLEDGMENT. Each of the Parties affirm and acknowledge that it has fully read and appreciates, and understands the words, terms, conditions, and provisions of this Agreement and is fully satisfied with the same. Each Party affirms and acknowledges that it has been, or had the opportunity to be represented by legal counsel of its choice.

**Section 7.07** THIRD PARTY BENEFICIARIES. This Agreement was created for the benefit of the Executive Director and/or any employees hired by the Authority as third party beneficiaries.

**Section 7.08** ENTIRE AGREEMENT. This Agreement contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter, except as otherwise provided herein.

**Section 7.09** SURVIVAL. The indemnifications, limitations, releases, obligations, and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement will survive the expiration or earlier termination of this Agreement.

**Section 7.10** FORCE MAJEURE. Neither Party will be liable to the other during any period in which its performance is delayed or prevented, in whole or in part, by any of the following circumstances including, but are not limited to: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Party of the same.

**Section 7.11** COUNTERPARTS; ELECTRONIC SIGNATURES. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page was an original thereof.


**IN WITNESS WHEREOF**, the Parties caused this Agreement to be executed.

*(Remainder of page intentionally left blank)*


*Signature Page for Cass County*

The Governing Body of Cass County, North Dakota approved this Agreement on the 7th of March, 2022.

Cass County, North Dakota  
Board of Commissioners

By:   
Chad Peterson, Vice Chair

ATTEST:

  
Brandy Madriga, County Finance Director

*Signature Page for the Metro Flood Diversion Authority*

The Governing Body of the Metro Flood Diversion Authority approved this Agreement on the \_\_\_\_\_ of \_\_\_\_\_, 2022.

Metro Flood Diversion Authority

By: \_\_\_\_\_  
Chad Peterson, Chair

ATTEST:

\_\_\_\_\_  
Dawn Lindblom, Secretary

**EXHIBIT A**  
**CASS COUNTY EMPLOYEE HANDBOOK**

**[See Following Pages]**



# **Cass County**

## **EMPLOYEE HANDBOOK**

**Issued 01/01/2019**

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## **Mission Statement**

The Mission of the Cass County Board of Commissioners:

1. To develop, approve and administer yearly budgets and set appropriate mill levies within statutory constraints.
2. To determine County policy and strategic planning decisions in conjunction with County functional directors to assure that County services mandated by statute, or determined by policy are provided equitably to the citizens of Cass County.
3. To assure that property tax assessment and collection is accomplished, as dictated by statute, and determined by service level in serving the citizens of Cass County.

In addition, the Commission shall manage and maintain all County property, purchase and dispose of such property and supervise the electoral process for the citizens of Cass County, and employs all non-elected personnel.

## **Code of Ethics**

Cass County is committed to the highest standards of conduct by and among county personnel in the performance of their public duties. Individual and collective adherence to high ethical standards by public personnel is central to the maintenance of public trust and confidence in government.

While county personnel agree on the need for proper conduct, they may experience personal conflict or differing views of values or loyalties.

In such cases the principles contained in this Code of Ethics provide valuable guidance in reaching decisions which are governed, ultimately, by the dictates of the individual conscience of the public employee and his or her commitment to the public good.

Certain of these ethical principles are best expressed as positive statements: actions which should be taken; courses which should be followed; goals which should permeate both public and private conduct. Other principles are expressed as negative statements: actions to be avoided and conduct to be condemned.

The Code of Ethics for County Personnel has been created by and for county personnel. However, these principles apply to the day-to-day conduct of both elected and appointed officials and employees of county government.

Cass County recognizes that this Code of Ethics should serve as a valuable reference guide for all those in whom the public has placed its trust.

## **Ethical Principles**

The ethical county employee should:

- Properly administer the affairs of the county.
- Promote decisions which only benefit the public interest.
- Actively promote public confidence in county government.
- Keep safe all funds and other properties of the county.
- Conduct and perform the duties of the office diligently and promptly dispose of the business of the county.
- Maintain a positive image to pass constant public scrutiny.
- Evaluate all decisions so that the best service or product is obtained at a minimal cost without sacrificing quality and fiscal responsibility.
- Inject the prestige of the office into everyday dealings with the public employees and associates.
- Maintain a respectful attitude toward employees, other public personnel, colleagues and associates.
- Effectively and efficiently work with governmental agencies, political subdivisions and other organizations in order to further the interest of the county.
- Faithfully comply with all laws and regulations applicable to the county and impartially apply them to everyone.
- The ethical county employee should not:
  - Engage in outside interests that are not compatible with the impartial and objective performance of his or her duties.
  - Improperly influence or attempt to influence other officials to act in his or her own benefit.
  - Accept anything of value from any source which is offered to influence his or her action as a public official.
- The ethical county employee accepts the responsibility that his or her mission is that of servant and steward to the public.

## Organizational Chart

### **Cass County Commission**

- Five Commissioners Elected in Districts

### **Elected Department Heads**

- Sheriff
- State's Attorney

### **Appointed Department Heads**

- County Administrator
- County Finance Director
- County Coroner
- County Recorder
- Emergency Manager
- Extension Agent
- Highway Engineer
- Information Technology
- Tax Director
- Veterans Service Officer

### **Commission Appointed Boards**

- Cass County Human Service Zone Board
- County Planning Commission
- Housing Authority
- SE Cass, North Cass, Rush River and Maple River Water Resource Districts
- Weed Control
- Vector Control

The County Commission appoints some members of various other boards and serves on additional boards themselves. The board also supports, through mill levies, Cass County Council on Aging, Fargo Senior Commission, Cass County Fair Association and Cass County Historical Society; however, the Commission does not appoint the members of these boards.

**Commissioner Portfolios  
2021-2022**

Administrative Services “A”  
(COMMISSIONER RICK STEEN)

County Administration  
- Buildings and Grounds  
- Human Resources  
Finance

Human Services  
(COMMISSIONER DUANE BREITLING)

Human Services Zone Board  
Extension  
Veterans Service

Planning & Operation Services  
(COMMISSIONER MARY SCHERLING)

Roads and Bridges  
- Planning  
- Weed  
- Vector  
- Water Resource Boards

Administrative Services “B”  
(COMMISSIONER CHAD PETERSON)

State’s Attorney  
Information Technology  
County Recorder  
County Assessor

Public Safety Services  
(COMMISSIONER JIM KAPITAN)

Sheriff  
- Jail & Juvenile Center  
- Emergency Management  
- Coroner

**100 About the Handbook***Effective Date: 05/07/2018*

From time to time, we may change, revise, or eliminate any of the policies and/or benefits described in this handbook. Any such change, or any deviation from the stated policies, must be authorized and signed by the Administrator of Cass County and approved by the County Commission.

This handbook replaces any previous handbooks, and also replaces any prior oral or written policies, practices, or promises made by us concerning you or another employee's terms and condition of employment.

Every policy in this handbook has been carefully considered and is important to the successful operations of our county. Thus, if you violate any policy in this handbook, you may be subject to discipline, up to and including termination from employment, regardless if the policy provides for specific disciplinary actions that we may take.

**101 Employee Relations & Fair Treatment Policy***Effective Date: 05/07/2018*

At Cass County, we recognize that employees are the backbone of our success. Our achievements are due to the spirit and cooperation of our people who contribute. We promote a work environment that encourages both teamwork and individual initiative.

**We will do our best to:**

- provide a safe working environment;
- select and promote people on the basis of skill, training, ability, merit, attitude, and character without prejudice or discrimination;
- maintain competitive wages and benefits, appropriate with our philosophies;
- welcome employee input, ideas and constructive criticisms at all times;
- develop competent people who understand and meet our objectives, and who accept with open minds the ideas, suggestions, and constructive criticisms of fellow workers;
- dedicate ourselves to being the best and getting better;
- respect individual rights, and treat all employees with courtesy and consideration;
- maintain mutual respect in our working relationship; and
- do all these things in a spirit of friendliness and cooperation.

**Each of us, as employees, is responsible for:**

- regular and punctual attendance;
- reporting to work, ready to work with proper attire;
- good housekeeping skills (keeping self, work station, and surrounding areas as clean as possible);
- safe working practices and good work performance;
- cooperating with fellow employees to achieve the best results;

- mutual respect for those we work with;
- constructive participation in the operation of the county by contributing your individual ideas and by becoming personally involved in opportunities as they may arise; and
- portraying a positive image, both at work and while in the community.

We believe that the work conditions, wages, and benefits we offer to our employees are competitive with those offered by other employers in this area and in this industry. If you have concerns about work conditions or compensation, you are strongly encouraged to voice these concerns openly and directly to your supervisors.

Our experience has shown that when employees deal openly and directly with supervisors, the work environment can be excellent, communications can be clear, and attitudes can be positive. We demonstrate our commitment to our employees by responding promptly and effectively to employee concerns.

### **Fair Treatment Policy**

We provide you and other employees with a method by which everyone can voice their concerns when anyone feels they have been treated unfairly and the dispute is not resolved through normal problem solving channels. You are encouraged to resolve informal complaints with the appropriate member of management. We will attempt to resolve an informal complaint within seventy-two (72) working hours.

#### ***STEP I***

**Employee** If you have a complaint, you should make every effort to discuss the problem orally with your immediate supervisor and/or the Human Resources Director. This initial contact should be made within a reasonable period from the time the incident occurs, usually fifteen (15) working days.

If the complaint is initially reported to the Human Resources Director, the Human Resources Director should notify the Department Head within three (3) working days of receiving the complaint.

**Supervisor** It is the responsibility of the supervisor to address the problem. Supervisors should generally respond orally within fifteen (15) working days from receipt of the complaint.

#### ***STEP II***

**Employee** If you are not satisfied with the results of Step I, you may state the complaint in writing and present the written complaint to your department head and/or the Human Resources Director. This must be done within fifteen (15) working days after Step I has concluded. One copy of the form should be given to the department head, one to the Human Resources Department, and you should keep one copy.



Department Head      It is the responsibility of the department head to address the problem. Department heads should generally respond within fifteen (15) working days from receipt of the written complaint

### **102 At Will Employment**

*Effective Date: 05/07/2018*

Your employment with us is voluntary and is subject to termination by you or us at will, with or without cause, and with or without notice, at any time, with the exception of Social Services' employees, who are subject to the State Merit System. Nothing in this handbook should be interpreted to be in conflict with or modify your status as an at-will employee. This handbook is not an employment contract, and no one outside of our Administrator has the ability to offer you any sort of contract of employment.

### **103 Equal Employment Opportunity**

*Effective Date: 05/07/2018*

We provide employment opportunities to all employees and applicants for employment without regard to race, color, religion, sex, pregnancy, citizenship, national origin, age, disability, military service, veteran status, genetic information, union membership, sexual orientation, gender identity, marital status, status with regards to public assistance, participation in lawful activity off the employer's premises during non-working hours (which is not in direct conflict with the essential business-related interests of the County) or any other characteristic protected by law. In order to provide equal employment and advancement opportunities to all individuals, employment decisions are based on merit, qualifications, and abilities. However, we may provide hiring preference to veterans and disabled veterans, pursuant to N.D.C.C. §37-19.1.

We will not request or require a genetic test or collect or use any protected genetic information from any employee or applicant in connection with employment-related decisions.

This policy applies to all terms and conditions of employment, including recruiting, hiring, compensation, selection, job assignment, promotion, discipline, termination, layoff, recall, transfer, access to benefits, leaves of absences, and training. If you have a question or concern about any type of discrimination in the workplace, you are encouraged to bring these issues to the attention of your immediate supervisor or the Human Resources Department. You can raise concerns and make reports without fear of reprisal. Anyone found to be engaging in any type of unlawful discrimination will be subject to disciplinary action, up to and including termination of employment.

**104 Accommodating Individuals with Disabilities***Effective Date: 05/07/2018*

We are committed to complying with all applicable provisions of the Americans with Disabilities Act (“ADA”). It is our policy not to discriminate against any qualified employee or applicant with regard to any terms or conditions of employment because of such individual’s disability. This includes, but is not limited to, discrimination with respect to hiring, promotion, discharge, compensation, benefits, training, and all other aspects of employment.

If you believe you need a reasonable accommodation to perform the essential functions of your job, contact the Human Resources Department. Consistent with this policy of nondiscrimination, we will provide reasonable accommodations to a qualified individual with a disability, as defined by the ADA, provided that such accommodation does not constitute an undue hardship on our organization. We encourage individuals with disabilities to come forward and request reasonable accommodations if needed.

On receipt of an accommodation request, a member of the Human Resources Department will meet with you to discuss and identify the precise limitations resulting from the disability and the potential accommodation that we might make to help you overcome those limitations. We may request reasonable medical documentation to help us better understand your limitations and necessary reasonable accommodations.

We will determine whether the requested accommodation constitutes an undue hardship by considering various factors, including, but not limited to the nature and cost of the accommodation in light of the our financial resources and the accommodation’s impact on the operation of our organization, including its impact on the ability of other employees to perform their duties and our ability to conduct business.

The ADA does not require us to reallocate essential job functions or to provide personal use items such as eyeglasses, hearing aids, and wheelchairs. We retain sole discretion to determine the reasonableness of requested accommodations.

You must comply with safety rules at all times. We make every effort to place applicants and employees in positions for which they are qualified. However, in the event that you are placed in a position where, with or without a reasonable accommodation, you would create a direct threat to the safety or health of yourself or others, we may remove you from the position until we can obtain medical documentation regarding your ability to safely perform the essential functions of the position.

Information obtained or provided in connection with the existence of a disability, or the need for an accommodation, will be kept strictly confidential, and will only be disclosed to those individuals who have an actual need to know about them, and then, only to the degree necessary.

If you have a question or concern about this policy, you are encouraged to bring these issues to the attention of the Human Resources Department. You can raise concerns and make reports without fear of reprisal. Anyone found to be in violation of this policy will be subject to disciplinary action, up to and including termination of employment.

**105 Personal Relationships in the Workplace***Effective Date: 05/07/2018*

The employment of relatives or persons involved in dating relationships in the same area of the organization may cause serious conflicts and problems with favoritism and employee morale. In addition, personal conflicts from outside the work environment can be carried into day-to-day working relationships.

We do not prohibit employing relatives of other employees, or persons involved in dating relationships with other employees. However, we monitor situations in which such individuals may work in the same area. Generally, relatives and persons involved in dating relationships will not be allowed to report to one another or otherwise work in a position that has control or influence over the other person's hiring, advancement, performance evaluation, discipline, or termination. In case of actual or potential problems, we will take prompt action. This can include reassignment or, if necessary, termination of employment for one or both of the individuals involved.

For the purposes of this policy, a relative is defined as a spouse, mother, father, sister, brother, children, grandparents, nieces, nephews, aunts, uncles, and persons bearing the same relationship as the employee's spouse.

**106 Employee Medical Examinations***Effective Date: 05/07/2018*

We may require you to undergo a medical examination if necessary to comply with applicable state and/or federal laws, or if we wish to ensure that you are able to perform your duties safely.

**Pre-Employment and Pre-Transfer / Promotion Physicals**

You may have to successfully pass a physical exam before starting certain positions within the County. If so, you will only be tested on your ability to perform job-specific tasks and functions, and will not be tested on your general health. If you do not pass the physical exam, we will withdraw the job offer or promotional opportunity, unless there is a reasonable accommodation that will enable you to effectively perform the position's essential functions. The cost of the exam will be our responsibility.

**Additional Employee Assessments**

We may also have you evaluated by a doctor in such circumstances as the following: to determine or update your ability to perform in your current position, pursuant to our drug and alcohol policy, to confirm your need for medical leave, to assess your ability to return to the workplace after a medical leave, to determine your need for accommodations, or to comply with applicable state or federal laws.

We keep your medical information confidential and separate from the other parts of your personnel file, and we strictly limit access to such information to those individuals who have a legitimate and necessary need to know.

**107 Immigration Law Compliance***Effective Date: 05/07/2018*

We employ only individuals who are authorized to work in the United States. We do not unlawfully discriminate on the basis of citizenship or national origin.

When hired, as a condition of employment, you must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility. If you were previously employed with us, you must complete a new form if you have not completed an I-9 for us within the past three years, or if your previous I-9 is no longer retained or valid.

We must terminate employees who are unable to provide appropriate documentation in support of their right to work in the United States within three (3) days of their start date.

If you have questions or want more information on immigration law issues, contact the Human Resources Department. You may raise questions or complaints about immigration law compliance without fear of reprisal.

**108 Conflicts of Interest***Effective Date: 05/07/2018*

Activities or relationships that conflict with our interests or adversely affect our reputation should be avoided. We cannot describe every situation that may constitute a conflict of interest; rather, the purpose of these guidelines is to provide general direction so that you can seek further clarification on issues related to conflicts of interest. Contact the County Administrator if you have any questions about conflicts of interest.

A conflict of interest occurs when your loyalty is, or appears to be, divided between your self-interest or the interests of a third-party and our interests. The types of conflicts of interest you must avoid include, but are not limited to:

- Accepting, agreeing to accept, or soliciting money or other tangible or intangible benefit in exchange for favorable decisions or actions in the performance of your job or that might appear to influence your decision-making or professional conduct;
- Accepting employment or compensation or engaging in any business or professional activity that might require disclosure of confidential information or trade secrets;
- Accepting employment or compensation that could reasonably be expected to impair your independent judgment in the performance of your duties;
- Accepting a kickback, bribe, substantial gift, or special consideration as a result of any transaction or business dealings involving us;
- Giving preferential treatment in business dealings to any person or company in which you, a relative or friend has a significant ownership interest or relationship.

This policy does not apply to elected officials seeking election contributions. Employees in the Social Services department are also subject to an additional policy based on the guideline from the North Dakota Department of Human Services.

You must disclose actual or potential conflicts or any relationships that may create the appearance of a conflict of interest to your supervisor as soon as you become aware of them so that safeguards can be established to protect all parties.

### **109 Whistleblower Protections**

*Effective Date: 05/07/2018*

We strive to create an ethical and open work environment, to ensure we have a governance and accountability structure that supports our mission, and to encourage and enable you to raise legitimate concerns about the occurrence of illegal or unethical actions within the County instead of turning to outside parties for resolution.

We expect you to report activities you consider to be illegal, unethical, or dishonest internally. You are not responsible for formally investigating the activity or determining fault or corrective measures. Instead, as discussed below, appropriate management officials are charged with these responsibilities.

Examples of illegal, unethical, or dishonest activities include, but are not limited to:

- Violations of federal, state or local laws
- Activities that potentially violate healthcare reform laws
- Theft or inappropriate removal or possession of property
- Unethical, immoral, or criminal conduct in or outside of the workplace
- Falsification of timekeeping records
- Violation of OSHA or other regulatory standards
- Sexual or other unlawful or unwelcome harassment
- Unauthorized disclosure of business “secrets” or confidential information

If you have knowledge of or a concern about actual or potential illegal, dishonest, or fraudulent activity, you should contact your immediate supervisor or the Department Head. The Human Resources Department and Department Head will investigate your concerns and determine the proper course of corrective action. If someone in the Human Resources Department is the subject of the whistleblower complaint, the County Administrator will become responsible.

Insofar as possible, we will try to maintain your confidentiality. However, your identity may have to be disclosed to conduct a thorough investigation, to comply with the law and to provide accused individuals their legal rights of defense. We will not retaliate, nor permit retaliation against anyone who brings forward a legitimate concern under this policy. If you believe you are being retaliated against, contact the Human Resources Department immediately. Protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.

If you intentionally or recklessly file a false or baseless report of wrongdoing, you will be subject to discipline up to and including termination. If you have questions about this policy, please contact your supervisor or the Department Head.

**110 Confidentiality and Non-Disclosure***Effective Date: 12/20/2021*

While much of our business information is open to the public through public access laws, we still have an interest in keeping certain information confidential. Confidential information includes electronic data or intellectual property owned by the County.

To the extent information is confidential, as defined in this policy, or set forth by Department procedures, policies or practices, or set forth in a confidentiality or non-disclosure agreement, it is to remain confidential and protected from disclosure until such time as we specifically declare such information to be no longer confidential, except as required or provided by law.

Unless we specifically direct otherwise, you shall not duplicate or otherwise copy any confidential materials or information. You must return all confidential materials or information in your possession immediately upon separation of employment or upon request.

Nothing in this policy is intended to restrict you from exercising legal rights under any state or federal law nor will you be subject to discipline for engaging in legally protected activity.

We recognize some of our information is open to the public. However, we consider all materials, information, and electronic data to be the property of Cass County. If you, or anyone else, including former employees, want to access these records or copy these records, you must do so through an open records request.

**111 Job Posting***Effective Date: 05/07/2018*

We believe strongly in employee promotion and development. We encourage you to express your interest in open positions and advancement opportunities within the organization according to your skills and experience. We typically post job openings on the employee bulletin board, but posting depends on the Department. All positions are posted with North Dakota Job Services and on the County website as well. In the interest of finding the most qualified candidate, we often post positions both internally and externally at the same time.

To apply for an open position, submit a job application to the Human Resources Department listing job-related skills and accomplishments. Job openings for Social Services are posted on the State of North Dakota's website and applications should be submitted according to that website.

Once you apply, your supervisor will usually be contacted to verify performance, skills, and attendance. Any staffing limitations or other circumstances that might affect a prospective transfer will also be discussed at that time.

We recognize the benefit of developmental experiences and encourage you to talk with your supervisor about career plans. Supervisors are encouraged to support employees' efforts to gain experience and advance within the organization

Although we usually prefer to fill open positions with current employees who express interest in the positions, we may choose to hire an external candidate over a current employee if we determine that the external candidate best meets the needs of the position.

### **Promotions or Transfers**

If you are interested in a promotion or a transfer, submit a completed application form. You are not guaranteed a promotion simply because a vacancy may occur. Instead, promotions will be based on information documented by our performance evaluation process, including outstanding work performance, levels of skills and training, demonstrated reliability, your current disciplinary status, as well as position availability, and the qualifications of external candidates, if applicable.

We reserve the right to transfer employees if it is in the best interest of the County. If offered and you accept a transfer, you must notify your current Department Head. The transfer will be negotiated between the Department Heads, but will be delayed no longer than 30 days.

### **Posting jobs**

All vacant positions, including temporary positions, must have a staff requisition form signed either electronically or in writing by the Portfolio Commissioner and the Commission Chairman prior to advertising. In the absence of the Portfolio Commissioner, another Commissioner shall be appointed by either the Portfolio Commissioner or the County Administrator to sign and/or approve the staff requisition form. When the Commission Chairman is the department portfolio, the staff requisition for vacant positions shall be signed by the Commission Chairman and Vice Chairman. If a temporary position is recruited through an employment agency, the Human Resources Department must be informed of the individual's name and length of employment.

Promotions from within a department may occur. However, the position must be posted within the County. In general, these vacancies are posted for 5 working days.

Before creating a staff requisition, the Cass County Recruitment Guidelines handbook should be referenced.

### **Hiring and Referral Bonus**

#### Hiring Bonus – Hard to Fill Positions:

Hiring Bonuses of \$1,000 will be paid to new full-time Cass County employees hired into hard to fill positions who meet certain requirements. Positions and new employees eligible for the hiring bonus will have the following characteristics: the new employee will have successfully completed six months employment. Prior to filling the position with the new employee, the position was advertised and vacant for at least 90 days. Current employees promoted into a hard to fill position are not eligible to receive this bonus. Individuals who successfully complete internships in County departments and are hired into hard to fill positions at the conclusion of the internship are eligible to receive a hiring bonus.

Referral Bonus for Current Employees:

Referral bonuses of \$500 will be paid to current full-time Cass County employees who refer new employees to full-time Cass County employment. Referral Bonuses will only be paid after the new employee has successfully completed six months of employment.

A current employee is only eligible to receive a Referral Bonus if the new employee lists the referring employee on their initial employment application submitted to Cass County Human Resources. Department Heads are not eligible to receive a referral bonus related to a position within their department. Referral bonuses will not be paid related to interns hired into a full-time county position.

Eligible hiring and referral bonuses will be paid related to employment applications received after January 1, 2022.

referenced.



## 201 Employment Categories

*Effective Date: 05/07/2018*

Your employment status and benefit eligibility depend upon your employment classifications. All employees in all classifications described below are subject to our employment-at-will policy described earlier in this handbook.

Your position is classified as either nonexempt or exempt from state and federal wage and hour laws. Nonexempt employees are entitled to overtime pay and other benefits under the wage and hour laws, whereas exempt employees are excluded from specific provisions of the wage and hour laws, and don't receive overtime pay. Nonexempt employees are usually paid on an hourly basis, while exempt employees are usually paid on a salaried basis. We determine whether your position is nonexempt or exempt based on the requirements of state and federal law.

In addition to the above categories, you belong to one or more of the following employment categories:

- **Full Time** employees are those who are not in a temporary category and who are regularly scheduled to work our full time schedule of at least 40 hours per week. Generally, regular full time employees are eligible for our entire benefit package, subject to the terms, conditions, and limitations of each benefit program.
- **Part Time** employees are those who are not assigned to a temporary category and who are regularly scheduled to work less than 40 hours per week. Regular part time employees may be eligible for some benefits sponsored by us, subject to the terms, conditions, and limitations of each benefit program.
- **Temporary** employees are those who are hired as interim replacements, to temporarily supplement the work force, or to assist in the completion of a specific project and typically are employed six months or less. However, employment beyond any initially stated period does not in any way imply a change in employment status. Temporary employees retain that status unless and until notified of a change. While temporary employees hired directly by us receive all legally mandated benefits (such as workers' compensation insurance and Social Security), they typically are ineligible for all of our other benefit programs.

## 202 Access to Personnel Files

*Effective Date: 05/07/2018*

We maintain a personnel file on each employee. The personnel file includes such information as your job application, resume, records of training, documentation of performance appraisals and salary increases, and other employment records.

Personnel files are our property, and we restrict access to the information they contain. N.D.C.C. §44-04-18.1(2) exempts certain confidential personal information from public review. Disclosure of personnel files will be made upon request and pursuant to public access law and pertinent exemptions. However, supervisors and managers who have a legitimate reason to review information in a file may do so. In the event someone other than your supervisor or

manager access your personnel file, you will be informed in writing. Medical information will be kept separate and will not be released without written consent.

If you wish to review your file, contact the Human Resources Department. With written advance notice, you may review your personnel files. The files may be reviewed in our offices and in the presence of an individual appointed by us to maintain the files.

### **203 Background Checks**

*Effective Date: 05/07/2018*

We may conduct background and reference checks to ensure that individuals who work for us are well qualified and have a strong potential to be productive and successful. We may conduct these checks at certain critical times during the employment process, including but not limited to:

- The application and hiring process;
- Times when an employee is given access to restricted or confidential items, information, or data;
- Assignment to a particular project or customer; and
- Other significant employment events (such as promotions).

The types of checks we conduct may include such inquiries such as criminal history, credit history, degree confirmation, employment references, and licensure confirmation. The information we obtain via such inquiries will be considered in light of the needs and concerns underlying the check, and may take into account such things as customer directives or restrictions, the recency of the conviction, and the relevance of the information to the work to be performed.

We retain the sole discretion to determine what impact the acquired information may have on the applicant or employee in question, including discontinuation of the application process, removal from customer assignment, denying access to restricted items/information/and data, and even termination of employment. Decisions are made on an individualized basis.

### **Driving Records**

Our insurance carrier may conduct a motor vehicle record (MVR) check at least annually for any employee listed as a driver of County vehicles. Driving privileges may be suspended for those who do not have a current, valid driver's license. Upon review of the MVR, the County may revoke driving privileges and/or take other employment action.

### **204 Personnel Data Changes**

*Effective Date: 05/07/2018*

We expect you to promptly notify us of any changes in personnel data. Be sure to provide us with your accurate and current personal mailing address, telephone numbers, number and names of dependents, individuals to be contacted in the event of emergency, educational accomplishments, and other similar information. If your personnel data has changed, notify the Human Resources Department.

**205 Employment Applications***Effective Date: 05/07/2018*

We rely upon the accuracy of information contained in your employment application, as well as the accuracy of other information you provide throughout the hiring process and employment. If you falsify, misrepresent, or omit any requested information, we may not hire you or, if we have already hired you, we may terminate you.

**206 Performance Evaluation***Effective Date: 05/07/2018*

We strongly encourage our supervisors, managers and employees to regularly discuss job tasks, encourage and recognize strengths, identify areas for improvement, and discuss positive, purposeful approaches for meeting goals.

During your first year of employment, we provide you with a formal performance evaluation. In addition, we generally schedule your annual performance evaluation on or near your anniversary date each year. More frequent evaluations may take place.

In determining performance, we compare your actual performance against accountabilities established for the position. You should work with your supervisor or Department Head to establish accountabilities, based on the duties, responsibilities, and standard of the position. The performance evaluation process should be a cooperative process and your participation is encouraged through all phases of the process. Goals and objectives should be jointly established between you and your supervisor or Department Head for the next review period.

**207 Status Date***Effective Date: 05/07/2018*

We recognize everyone has two distinct anniversary dates – a “hire anniversary” and an “in grade” or “status” date. We use these status dates to determine your anniversary date and when step salary adjustments become effective.

A “hire anniversary” date reflects the date you began employment with us and is useful in determining benefits such as sick leave, annual leave and years of service. The “hire anniversary” date remains constant throughout your uninterrupted employment regardless of promotions, demotions or transfers within the County. A “hire anniversary” date may be adjusted to compensate for a leave of absence or some other similar interruption to employment.

An “in grade anniversary” or “status” date reflects the actual date you assume a particular position within a pay grade. At the start of employment, the “hire anniversary” and “in grade anniversary” will be identical and remain as such, until you are promoted or demoted, and then a new “in grade anniversary” date will be established. “In grade anniversary” dates are not established for lateral transfers.

Department Heads shall ensure that any changes to “in grade anniversary” date or “status” date for any particular employee are made timely by completing the appropriate paperwork,

including a staff requisition form, vacancy notice, and salary request form, and submit it to the Human Resources Department at the time of salary change.

### **208 Demotions**

*Effective Date: 05/07/2018*

On occasion, during the course of your employment relationship, demotions may be appropriate. We may demote an individual based on their request or at the request your supervisor where an individual's skills and abilities more closely fit the requirements of another position. Any type of demotion must go through the Department Head and Human Resources.

If you are assigned to a job requiring less skill, knowledge, etc. than the prior job (regardless of whether this new assignment results from your choice or a supervisor's decision), your compensation will typically be adjusted to reflect the rate of pay appropriate to the position with credit for years of service. Any new pay rate will go into effect at the beginning of the first payroll period on or following the assumption of the duties of the new job.

Either you or the Department Head may request an exception to Human Resources.

**301 Employee Benefits***Effective Date: 05/07/2018*

We provide eligible employees with a wide range of employee benefits. This handbook may contain general descriptions of those benefits. You can find detailed descriptions of benefits in our benefit enrollment materials and the summary plan descriptions and/or insurance certificates for the plans, where applicable, or in policies within this handbook.

Your eligibility for benefits depends on a variety of factors, including your employee classification. The Human Resources Department can identify the programs for which you are eligible.

The following benefit programs are available to eligible employees:

- Annual Leave
- Dental Insurance
- Dependent Care & Medical FSA
- Funeral Leave
- Holidays
- Jury Duty Leave
- Medical Insurance
- Medical Leave
- Military Leave
- Personal Leave
- Retirement
- Sick Leave
- Supplemental Life Insurance
- Uniform and Uniform Maintenance

Some benefit programs require you to make contributions, some are unpaid (such as some of our leave programs), and others may be fully paid by us.

**302 Holidays***Effective Date: 05/07/2018***Observed Holidays**

We observe the following holidays:

- New Year's Day (January 1)
- Martin Luther King Jr. Day (third Monday in January)
- Presidents' Day (third Monday in February)
- Good Friday (Friday before Easter)
- Memorial Day (last Monday in May)
- Independence Day (July 4)
- Labor Day (first Monday in September)
- Veterans' Day (November 11)
- Thanksgiving Day (fourth Thursday in November)
- Christmas Day (December 25)

**Eligibility for Paid Holidays**

All full-time and part-time employees working more than 20 hours per week receive holiday pay. If eligible, you will receive holiday pay at your regular rate of pay times the number of hours you would otherwise have worked on that day (up to a maximum of 8 hours). Part-time employees

will receive pro-rated holiday pay based on straight-time pay. If you are not scheduled to work on a holiday, you will receive holiday pay as outlined above or compensable time (up to a maximum of 8 hours).

A recognized holiday that falls on a Saturday will usually be observed on the preceding Friday. A recognized holiday that falls on a Sunday will usually be observed on the following Monday. Christmas will be observed as follows:

| <b>Christmas falls on a....</b> | <b>Christmas will be observed on...</b> |
|---------------------------------|---|
| Monday                          | Monday                                  |
| Tuesday                         | Monday & Tuesday                        |
| Wednesday                       | Tuesday afternoon & Wednesday           |
| Thursday                        | Wednesday afternoon & Thursday          |
| Friday                          | Thursday afternoon & Friday             |
| Saturday                        | Preceding Friday                        |
| Sunday                          | Following Monday                        |

You are expected to report to work on the day after Thanksgiving, and the Friday after Christmas where Christmas falls on a Thursday, unless you request and use annual leave, subject to our policy. Department heads are strongly encouraged to comply with all reasonable annual leave requests, keeping in mind the requirements of the department. If a Department chooses to close a department, the phones must be forwarded and messages must be posted referring customers to other open county departments.

If you have been authorized to work on a recognized holiday, you will normally be given an alternate paid day off. Non-exempt employees who have been authorized to work on a recognized holiday will normally receive their hours worked, in addition to holiday pay or compensable time on an hour for hour basis. If you are non-exempt and must work due to an emergency call-out on a holiday, you will receive 1½ times your normal rate of pay for hours worked.

With the exception of pre-approved paid time off, you are expected to work both your normally scheduled days before and after the holiday in order to be eligible for holiday pay. If you call in sick or take unpaid time on either of those days, you may jeopardize your ability to be paid for the holiday. If a recognized holiday falls during your paid time off (such as annual leave), you will receive holiday pay instead of the paid time off benefit you otherwise would have received. However, if you are on an unpaid leave of absence, you will not be paid for holidays.

Holiday pay will not be counted as hours worked for the purposes of determining whether nonexempt employees are entitled to overtime for the week in which the holiday falls.

**303 Annual Leave***Revised Date: 12/06/2021*

Annual leave is an all-purpose time off policy to enable you to maintain a better work-life balance and allow time to rest, rejuvenate, and come back to the workplace reinvigorated. It is meant to function as wage replacement for times that you choose to be away from work for personal reasons, and is not considered to be compensation for work you have performed.

We provide an opportunity to regular full time and regular part time employees to accrue and use annual leave as described in this policy. Elected officials, temporary, per diem, and emergency employees are not eligible.

The amount of annual leave you receive each calendar year increases with the length of your employment as shown in the following schedule:

**ANNUAL LEAVE ACCRUAL SCHEDULE**

| <b>Years of Eligible Service</b> | <b>Annual Leave Days Each Year</b> | <b>Annual Leave Hours Each Month</b> |
|----------------------------------|------------------------------------|--------------------------------------|
| Years 0-5                        | 12 Days                            | 8 Hours                              |
| Years 6-14                       | 18 Days                            | 12 Hours                             |
| 15+ Years                        | 24 Days                            | 16 Hours                             |

The accrual schedule set forth in the table above is based on an employee working our regular full time schedule of at least 40 hours per week. If you are a regular part time employee (i.e., working less than 40 hours per week), your accruals will be pro-rated accordingly.

Under special circumstances, for positions that are difficult to fill, the Department Head may submit a request to the County Administrator to consider an exception. Typically, an exception would involve starting a new employee at the 6-14 year accrual level where they would remain until they have completed their 14<sup>th</sup> year of employment. This request must be approved by the County Administrator before offered to the potential employee.

**Usage and Rollover**

We will not “advance” you annual leave, which means that at no time may you use annual leave before it has accrued. Any time off taken in excess of your accrual balance will be considered unpaid time off, and is generally discouraged.

Annual leave is paid at your base pay rate at the time of absence. It does not include overtime or any special forms of compensation such as incentives, commissions, or bonuses.

In the event that you do not use your available annual leave by the end of the calendar year, you may carry up to 240 hours of unused time forward into the next calendar year. Any unused time beyond 240 hours will be forfeited on January 15<sup>th</sup> of the following calendar year. Except in the event of extreme hardship or emergency, and with advance approval from the Department Head, and the County Commission, you may be allowed to carry over additional amounts, but any additional amount above 240 hours must be used within 90 days. In rare and extenuating circumstances, with the approval of the Department Head and County Commission, an employee

may be paid off for annual leave above 240 hours.

To schedule annual leave, you must request advance approval from your supervisor as soon as possible. All departments must be appropriately staffed to meet the needs of our customers and clients. This means that annual leave may not be granted in all circumstances, and such requests will be approved or denied solely at the discretion of your supervisor, based upon current workloads, staffing levels, and your disciplinary status.

When one or more employees in the same area request annual leave for the same time periods (for example, around popular vacation times such as summer or holidays), priority may be given to the employee whose request was submitted first.

### **End of Employment**

If you transfer departments, you may transfer annual leave. Years of service credit will be for continuous years of employment with a break of less than one year.

When your employment with us terminates, you will be paid for unused annual leave that has been accrued, but unused, through your last day of work.

### **304 Leave Donation**

*Effective Date: 05/07/2018*

To provide assistance to those who otherwise may need to take unpaid leave due to a serious health condition, you can donate some of your accrued annual leave to a leave bank. All requests must be solicited through and approved by the Department Head, the Human Resources Director, and one other Department Head. The maximum number of hours contained in the leave bank may not exceed 1000 hours.

You may be eligible to receive donated leave after you have otherwise exhausted all paid leave and you either suffer from a serious health condition, as defined under federal Family and Medical Leave Act, or your spouse, parent, or child suffers from a serious health condition.

If you need donated leave and meet the criteria, you may request solicitation of leave from your Department Head. Do not solicit donations on your own. Your Department Head may provide basic information in order to request donations from your fellow employees in the same department. The maximum use of donated leave may not exceed 480 hours (12 weeks) in any 12-month period. Once you receive donated leave, you must use the leave within 365 days from the time of the request. If you are unable to use the donated leave within that time frame, it will be moved from your balance to the County Donated Leave bank.

Any information to request leave donations will be reviewed with you before it is publicized. While we will withhold your name on request, please understand we cannot provide assurances that co-workers will not figure out the identity—for example, based on the timing of your absence.



To make a donation, please submit a signed statement or e-mail to the Department Head indicating the number of accrued annual leave hours you wish to donate. Your Department Head will then provide this information to the Human Resources Department. The donations must be in full hour increments. Once leave is donated, it is not returnable. If you want to donate annual leave hours, you are doing so on a strictly volunteer basis.

### **305 Sick Leave**

*Effective Date: 005/07/2018*

We provide paid sick leave benefits to all full time and part time employees for periods of temporary absence due to illnesses or injuries. Elected officials, temporary, per diem, and emergency employees are not eligible.

If you are eligible and full-time, you will accrue sick leave benefits at the rate of 8 hours per month, 12 days per year. We pro-rate sick leave benefits if you are part-time. Accruals cease after 30 calendar days of continuous unpaid leave.

You may use sick leave benefits for an absence due to your own illness or injury, or for medical and dental appointments. You can also use sick leave to care for certain family members who are ill or need assistance obtaining medical or health services. For the purposes of this policy, eligible family members include your spouse, parent, child (natural, adoptive, foster, or step), and any other family member financially or legally dependent upon you or who resides with you for the purpose of you providing care to the family member. You can use up to 160 hours per year for the purpose of caring for family members under this policy. If you need to use more than 160 hours to care for a family member, you will need advance approval from the County Administrator and your Department Head.

If you are unable to report to work due to illness or injury, you should notify your direct supervisor before the scheduled start of the workday if possible. Your direct supervisor must also be contacted on each additional day of absence. In general, calls from friends or family members are not acceptable. If you are absent for three or more consecutive days due to illness or injury, or at our discretion, a physician's statement may be required to verify the disability and its beginning and expected ending dates. Such verification may be requested for other sick leave absences as well and may be required as a condition to receiving sick leave benefits. Sick leave benefits will be calculated based on your base pay rate at the time of absence.

Unused sick leave benefits will be allowed to accumulate until you have accrued a total of 960 hours' worth of sick leave benefits. If your benefits reach this maximum, you will receive monetary compensation for 50% of all hours accumulated over 960 at your hourly rate of pay. This compensation will occur annually in December or upon termination. Social Service employees, pursuant to North Dakota state policy, are not subject to this cap or to payout.

Sick leave benefits are intended solely to provide income protection in the event of illness or injury, and may not be used for any other absence, except where specifically provided for in this handbook. Please use your sick leave only for legitimate illnesses and injuries, and keep in mind that if you are out of sick leave and/or annual leave, then any other absences will be unpaid, may be considered unexcused, and may subject to disciplinary action up to and

including termination of employment. In rare circumstances, unpaid time off may be permitted if approved in advance. Note that unpaid time off will not count against you if it is approved under another leave policy within this handbook.

Sick leave is transferable from one department to another. However, Social Service employees may only transfer up to 960 hours of sick leave to another department, unless they move to another Human Service Agency, in which case they may transfer their entire sick leave balance. However, leave is not transferable to Cass County from any other agency or employer.

Years of service credit will be for continuous years of employment with a break of less than one year. If you are laid off, and return within 12 months of layoff, you will receive years of service credit for continuous years of employment.

### **306 Impact of Leaves of Absence on Employee Benefits**

*Effective Date: 05/07/2018*

In addition to paid absences, such as holidays, annual leave, or sick leave, we offer a number of leaves of absence which either become unpaid at some point, or are unpaid in their entirety. Unless otherwise noted in a specific leave policy, your employee benefits will be handled as described below.

#### **Insurance and related benefits**

During your leave, we will continue to provide you with the benefits in which you have enrolled for as long as any law might require us to do so, or until such time as you cease to be eligible under the terms, conditions, and limitations of the applicable plans.

While you are on leave, you will continue to be responsible for your share of the insurance premiums, and will be required to make regular payments in order to continue your coverage. During any parts of your leave for which you may also be using annual leave or sick leave, we will continue to make payroll deductions as normal to collect your share of the premiums.

However, at the point that your leave becomes unpaid (e.g., you use up your available paid leave benefits), you will be required to submit monthly payments to the Human Resources Department by the 30th day of each month of your leave. If the payment is more than 30 days late, your health and other coverage may be terminated for the remainder of your leave.

In some cases, you may be offered COBRA or USERRA continuation coverage if you are gone from work long enough, or if we are not required by law to continue your benefits. If so, you will have to formally elect continuation in order to stay on the applicable insurance plans. See our COBRA Continuation Coverage or Military Leave policy for more information.

If you lose coverage or have elected COBRA during your leave, we will reinstate you as an active participant upon your return from leave, according to the terms of each plan. This may mean that you have reapplied and undergo underwriting for certain benefits, like life or cancer insurance. If we have chosen to pay your portion of the premiums on your behalf during your leave, you will be required to repay us any such amounts at the end of your leave.

### Other benefits

Retirement contributions cease during any leave period.

Annual leave, sick leave, and other accrual-based benefits will cease accruing after 30 continuous days of leave not being paid directly by us. So, for instance, unpaid leave time, or leave periods that are being paid by third-parties (such as work comp or short-term disability) will result in the cessation of accruals after 30 days of leave. However, absences during which annual leave or sick leave is being used, or that are paid by us (such as jury duty), will not result in accrual discontinuation. Similarly, holiday pay will not be provided during any leave periods not being paid by us.

### 307 Family and Medical Leave

*Effective Date: 05/07/2018*

We grant up to 12 weeks (or 26 weeks, if leave is taken to provide care for qualifying family member injured during active military service) of family and medical leave during any 12 month period to eligible employees, in accordance with the Family and Medical Leave Act (FMLA).

### Eligibility

In order to qualify to take family and medical leave under this policy, you must meet all of the following conditions:

- You must have worked for us at least 12 months (these 12 months need not have been consecutive);
- You must have worked at least 1,250 hours during the 12 month period immediately before the date when the leave would begin; and
- You must work in an office or worksite where 50 or more employees are employed within 75 miles of that office or worksite. (If you have no fixed office or work out of your home, you will be treated as though you work in the office to which you report.)

### Reasons for Leave

In order to qualify as FMLA leave under this policy, you must be taking the leave for one of the reasons listed below:

- The birth of a child;
- The adoption of a child, or the placement of a child with you for foster care;
- Your own *serious health condition*;
- To care for a spouse, child or parent with a *serious health condition*;
- Due to a *qualifying exigency* for the spouse, children, or parents of individuals who are on, or are about to be on, *covered active duty*; or
- To provide care for a *covered servicemember* with a serious injury or illness incurred or aggravated in the line of duty while on active duty.

Leave that qualifies for annual leave, sick leave, workers' compensation, short-term disability, or other wage replacement benefits may also qualify as FMLA leave and, if so, the time off will also be counted as FMLA leave. If you have questions about whether your leave may be covered under this FMLA policy, you are encouraged to consult with the Human Resources Department.

### **Duration of Leave**

#### *12 Weeks*

For all FMLA covered leaves other than leave taken to provide care for a covered servicemember, if eligible, you can take up to 12 weeks of leave under this policy during any 12 month period. We use a rolling 12 month period measured backward from the date you use any leave under this policy to determine whether you exhausted your 12 weeks of leave. Each time you take leave, we will compute the amount of leave you have taken under this policy for any form of FMLA leave in the last 12 months and subtract that amount from your 12 weeks of available leave; the balance remaining is the amount you are entitled to take at that time.

#### *26 Weeks*

For all FMLA covered leaves taken to provide care for a covered servicemember, if eligible, you can take up to 26 weeks of leave under this policy during any single 12 month period. This single 12 month period begins on the first day you take FMLA leave to provide care for the covered servicemember. Any FMLA time taken for any other reason during this single 12 month period shall count against the 26 weeks of leave available to care for the covered servicemember. Similarly, any FMLA time taken to care for a covered servicemember shall count against the 12 weeks of leave available to you for any other reason.

#### *Spouses*

Spouses who both work for us are limited to a combined total of 12 weeks of leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent with a serious health condition. Similarly, if you and your spouse both work for us, you are both limited to a combined total of 26 weeks of leave to care for a covered servicemember.

### **Employee Benefits During Leave**

While you are on leave, we will continue your medical, dental, and other benefits during the leave period at the same level and under the same conditions as if you had continued to work. For information about premium payments during your leave, see our Impact of Leaves of Absence on Employee Benefits policy.

### **Use and Accrual of Paid and Unpaid Leave**

FMLA leave is unpaid. However, we require that you use all available sick and annual leave during any FMLA leave, except where you are receiving worker's compensation, short-term disability, or similar wage replacement benefits.

Benefit accruals, such as annual leave, sick leave, will be suspended after 30 calendar days of continuous unpaid leave, and will resume upon return to active employment. Holiday pay will be suspended during any period of unpaid leave.

### **Intermittent Leave or a Reduced Work Schedule**

In addition to taking leave in consecutive blocks of time, you may be allowed to take time off intermittently (i.e., reduced workweeks or reduced workdays) if needing leave for one of the following reasons:

- Your own serious health condition;
- The serious health condition of your spouse, parent, or child;
- To provide care for a covered servicemember with a serious injury or illness incurred or aggravated in the line of duty while on active duty; or
- Due to a qualifying exigency if you are the spouse, child, or parent of an individual who is on, or is about to be on, covered active duty.

To qualify for intermittent leave, you must show that the intermittent leave is medically necessary or related to a “qualifying exigency.” If leave is taken on an intermittent or reduced leave schedule due to foreseeable leave needs (other than qualifying exigencies), we may temporarily transfer you to an alternative position with equivalent pay and benefits.

### **Certification of the Need for Leave**

We may ask for certification to verify the need for leave for the reason requested by you. You must respond to such a request within 15 days of the request, or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of the leave. We may also require recertification during the leave to verify the status of the need for leave.

We may directly contact the healthcare provider or other third-party to verify and clarify information contained in the certification. You are responsible for signing or obtaining any authorization necessary to permit the healthcare provider or other third party to provide us with the required information.

We have the right to ask for a second opinion of a certification of a serious health condition. Should we choose to do so, we will pay for you to get a certification from a second healthcare provider, which we will select. If it is necessary to resolve a conflict between the original certification and the second opinion, we will require the opinion of a third healthcare provider. We (you and us) will jointly select the third doctor, and we will pay for the opinion. This third opinion will be considered final.

### **Returning From Leave**

If you take leave under this policy, you will be returned to the same job you held when your leave began. If this is not feasible, you will be returned to a position that entails substantially equivalent skill, effort, responsibility and authority as the position you previously held. The only exceptions to this rule will be in circumstances of layoffs or reorganizations, where your position would have been eliminated even if you had not been on leave. You may be required to provide a fitness for duty assessment when returning from a leave of absence for your own serious health condition.

### **Procedure for Requesting Leave**

When you plan to take leave under this policy, you must give us 30 days' notice. If it is not possible to give 30 days' notice, you must give as much notice as is practicable. If you are undergoing planned medical treatment, you are required to make a reasonable effort to schedule the treatment to minimize disruptions to our operations. If you fail to provide 30 days' notice of foreseeable leave, the leave request may be denied until at least 30 days from the date we received notice.

When you request leave under this policy, you must submit the request in writing to your immediate supervisor, with a copy to the Human Resources Department. Where the need for leave is not foreseeable, you must verbally notify your supervisor of the need for leave as soon as possible, and follow our normal call-in procedures for unexpected absences. Failure to follow our normal call-in procedures under such circumstances will be treated like any other violation of our call-in procedures, and may result in discipline or termination, even though the leave itself may be covered by the FMLA. You may be required to confirm your need for FMLA leave in writing after giving verbal notice.

While on leave, you may be required to periodically report to us regarding the status of your intent to return to work.

### **Rights, Remedies, and Additional Information**

Words that appear in italics or quotes in this policy are terms defined by the FMLA and we will rely upon those definitions in the law and regulations.

We fully comply with the provisions of the FMLA. Accordingly, if you have questions regarding this policy, contact the Human Resources Department. Further information on your rights and remedies under the FMLA can be located on our FMLA poster (which can be found in the break area), or online on the Department of Labor's website at:

<https://www.dol.gov/general/topic/benefits-leave/fmla>.

### **308 Pregnancy-Related Conditions**

*Effective Date: 05/07/2018*

We will not discriminate against anyone who requests an excused absence for medical disabilities associated with pregnancy. Such leave requests will be evaluated according to the medical leave policy provisions outlined in this handbook and all applicable federal and state laws.

Upon request, we will consider providing reasonable accommodations for health conditions related to pregnancy or childbirth in accordance with state and federal law. Depending on the accommodation requested, you may be required to provide medical substantiation of the need for accommodation. Similarly, if the requested accommodation would present an undue hardship to the performance of your position, we may not be able provide the accommodation.

Requests for accommodations or time off associated with pregnancy and/or childbirth that are not related to your medical incapacity (such as time off for bonding, pre-birth house

preparations, or child care) will be considered in the same manner as other requests for unpaid personal leave.

### 309 Unpaid Personal Leave

*Effective Date: 05/07/2018*

We understand that there may be times where you will need to take a period of time away from work to fulfill personal obligations that are not covered by the other types of leave that we offer. With that in mind, we offer unpaid personal leaves of up to 45 work days in a year.

If you have a need to take personal leave, you should request as much advance approval from your supervisor as possible. The request must be in writing, provide the nature of leave, and the time requested. We may request documentation regarding your request as often as deemed necessary during the leave.

Please understand that we may not be able to grant your request for personal leave, as we will evaluate each request on a case-by-case basis. In doing so, we will consider a variety of factors, including input from your Department Head, current workloads, staffing levels, and your disciplinary status. Also, in most cases, personal leave may not be used to extend leaves of absence taken under other policies in this handbook.

If you take approved leave, you will be required to use any available paid time off as part of the approved period of leave (annual leave or sick leave, where applicable). For information about what happens to your insurance benefits, sick leave and annual leave accruals, and eligibility for holiday pay during leave taken under this policy, see our Impact of Leaves of Absence on Employee Benefits policy.

When a personal leave ends, every reasonable effort will be made to return you to the same position, if it is available, or to a similar available position for which you are qualified. However, we cannot guarantee reinstatement in all cases. If you fail to report to work promptly at the expiration of the approved leave period, or fail to communicate with us about your possible need for additional leave, we will consider you to have resigned employment.

### 310 Funeral Leave

*Effective Date: 05/07/2018*

If you wish to take time off due to the death of an immediate family member, notify your supervisor immediately.

If you are a regular full time employee, except those in Social Services, you may be eligible for the following amounts of paid bereavement leave:

- **Up to 32 consecutive working hours** for your spouse, parent, child, sibling; your grandparents or grandchildren, at the discretion of the Department Head.
- **Up to 16 consecutive working hours** for extended family, which includes your spouse's parents, siblings, and grandparents, foster parents, foster children, your child's spouse, or any other person you had a relationship with that is similar to any of the previously listed

individuals (i.e., aunts, uncles, etc.), at the discretion of the Department Head.

If you are a part-time employee, you may be eligible for leave, as outlined above, but on a pro-rated basis. Full time employees in the Social Services department receive the following leave:

- **Up to 24 consecutive working hours** for your spouse, parent, stepparent, child, sibling; your spouse's parent, stepparent, child, sibling; foster parent or foster child; grandparents or grandchildren.

Part-time employees may be eligible for pro-rated leave.

You may, with your supervisor's approval, use any available annual leave for additional time off as necessary.

Bereavement pay is only paid for hours for which you would normally have been scheduled.

### **311 Jury Duty**

*Effective Date: 05/07/2018*

We encourage you to fulfill your civic responsibility by serving jury duty when summoned. While all employees are eligible to take jury duty leave, employees who have completed a minimum of 90 calendar days of service may request up to twenty (20) working days of paid jury duty leave over a calendar year.

Your jury duty pay will be calculated by multiplying your base pay rate times the number of hours you would otherwise have worked on the day of absence. We may also require you to sign over any compensation you may receive from the court for serving jury duty as a condition of receiving pay under this policy. If you take annual leave, you will not be required to sign over any compensation.

You must show the jury duty summons to your supervisor as soon as possible so that your supervisor may make arrangements to accommodate your absence. Of course, you are expected to report for work whenever the court schedule permits. Where court rules permit jurors to call in the night before to find out whether they have to come into the courthouse the next day, you may have to provide written confirmation from the court that you actually were called in on the day in question in order to be eligible for jury duty pay under this policy.

You or your supervisor may request an excuse from jury duty if, in our judgment, your absence would create serious operational difficulties.

For information about what happens to your insurance benefits, annual leave and sick leave accruals, and eligibility for holiday pay during an extended leave taken under this policy, see our Impact of Leaves of Absence on Employee Benefits policy.



**312 Witness Duty***Effective Date: 05/07/2018*

We encourage you to appear in court for witness duty when subpoenaed.

If we subpoena you or otherwise require you to testify as a witness, we will pay you for the entire period of your witness duty.

If a third party has asked you to appear in court as a witness, we will provide you with sufficient unpaid leave to satisfy your witness duty. You are free to use any available paid leave benefit to receive compensation for the period of this absence.

Show the subpoena to your supervisor immediately after you receive it so that operating requirements can be adjusted, where necessary, to accommodate your absence. You are expected to report for work whenever the court schedule permits.

**313 Military Leave***Effective Date: 05/07/2018*

You are entitled to take military leave for any absences related to military service in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA). We also comply with North Dakota Century Code 37-01-25 and 37-01-25.1. Advance notice of military service is required, unless military necessity prevents such notice or it is otherwise impossible or unreasonable.

While all employees are eligible to take military leave, regular full time and regular part time employees who have completed a minimum of 90 calendar days of service may request paid leave for active duty assignments, as outlined below. Military leave pay will be calculated on your base pay rate times the number of hours you would otherwise have worked on the day of absence, up to a maximum of 8 hours per day.

- **Active duty assignments:** Up to twenty (20) days paid leave per calendar year. This includes training periods which are defined as active duty periods only. For leaves exceeding 30 days, or at our discretion, written confirmation of assignment to active duty will be required prior to activation, if possible, or post activation within two weeks of return to work. Any portion of leave exceeding 20 days will be unpaid and you may use any available annual leave for the absence.
- **Non-active duty training:** You may use annual leave during this period, request leave without pay, or request a schedule change if applicable to your job position. This includes training periods which are defined as non-active duty periods only.

For information about what happens to your insurance benefits, annual leave and sick leave accruals, and eligibility for holiday pay during an extended leave taken under this policy, see our Impact of Leaves of Absence on Employee Benefits policy.

If you are on military leave for up to 30 days, you are required to return to work for the first regularly scheduled shift after the end of service, allowing reasonable travel time. If you are on longer military leave, you must notify us of your intent to return, in accordance with USERRA

and all applicable state laws.

When you return from military leave, you will be placed in the position you would have attained had you remained continuously employed or a comparable one depending on the length of military service in accordance with USERRA. You will be treated as though you were continuously employed for purposes of determining benefits based on length of service.

Contact the Human Resources Department for more information or questions about military leave.

### **314 Benefits Continuation (COBRA)**

*Effective Date: 05/07/2018*

A federal law called COBRA allows you, your spouse and/or dependent children to continue health insurance coverage under our health plan when a “qualifying event” occurs. Some common qualifying events are resignation, termination of employment, a reduction of hours or a leave of absence, death, divorce, and a dependent child’s loss of eligibility. Ordinarily, you may continue your health coverage for up to 18 months if you lose coverage as a result of a qualifying event.

If you, your spouse and/or dependents continue coverage under COBRA you must pay the full cost of coverage at our group rates plus any applicable administration fee of up to 2%.

We will provide you with an important written notice describing your rights and obligations under COBRA. Please read the notice.

### **315 Workers’ Compensation Insurance**

*Effective Date: 05/07/2018*

We provide a comprehensive workers’ compensation insurance program at no cost to our employees. This program covers any injury or illness sustained in the course of employment that requires medical, surgical, or hospital treatment. Subject to applicable legal requirements, workers’ compensation insurance may also provide wage replacement benefits after a short waiting period.

If you experience or witness a work-related injury or illness, you must tell your supervisor immediately even if the injury or illness seems minor.

You have a right to report all work-related injuries and illnesses. Reporting the injury or illness timely will enable an eligible employee to qualify for coverage under our workers’ compensation insurance program as quickly as possible. We will not discriminate or retaliate against you for reporting work-related injuries or illnesses. However, failure to promptly report workplace injuries or illnesses may result in discipline, up to and including termination of employment.

You may use accumulated sick leave, followed by accumulated annual leave, while receiving workers’ compensation benefits. However, you will only receive the difference between your workers’ compensation benefit and your gross salary, and leave banks will be deducted only for the proportion of hours paid out. The combination of paid leave and workers’ compensation

benefits shall not exceed your gross salary. Please send a copy of your workers' compensation check to Human Resources so your salary may be adjusted accordingly. If you have exhausted all paid leave, you must request an unpaid leave of absence.

In general, we will make reasonable efforts to make accommodations and find light duty work if you suffer a work injury. However, we reserve the sole discretion to determine when light duty work is available. Where such work is possible, we will make sure the work provided stays within the restrictions established by your doctor. Similarly, if you return to a light duty position, you must agree to work within those restrictions, and are forbidden from working beyond them. If you turn down a light-duty or alternative work position, you may lose your ability to receive wage replacement from our work comp insurance company. Light duty assignments will be reviewed every 30 days.

If you are unable to perform the regular functions of your job due to a work injury, you may be required to notify the Department Head and Human Resources in writing regarding the nature and extent of your disability and the reason you are unable to perform the job duties. We will also require a doctor's report with a diagnosis, current treatment plan, expected length of disability, and any work restrictions. We may require an independent evaluation, at our expense, to verify medical information.

### **316 License Fees**

*Effective Date: 05/07/2018*

If a professional license or certificate is required for the performance of your job duties, then we will pay the following license fees:

- 100% of the license fee if you are full-time.
- pro-rated share of the license fee dependent on your part-time hours if you are part-time.

For purposes of this policy, a determination as to full-time or part-time will be made as of the start of the calendar year.

We will pay dues in a single state/national association for each department, as approved in the annual budget.

### **317 Retirement**

*Effective Date: 05/07/2018*

All new non-elected employees employed twenty hours or more per week, for more than five months per year, are required to participate in the North Dakota Public Employees Retirement System (NDPERS). Elected officials may apply for membership.

We pay a portion of your gross monthly salary on your behalf, if eligible. You must contribute a percentage on a pre-tax basis. NDPERS provides for invested retirement benefits after three years of service.

The NDPERS Portability Enhancement Provision (PEP) allows vesting in our contribution if you participate in an approved pre-tax Deferred Compensation Program. This means that if you leave employment and do not wish to draw a pension, you have the opportunity to take both your contribution and our contribution out of the NDPERS system.

If you terminate employment prior to being vested (three years), you may be required to receive a refund. If you terminate employment after becoming vested, you should work with Human Resources and NDPERS.

If you are a temporary or part-time employee employed less than 20 hours per week, you can elect to participate in NDPERS. You shall make monthly payments in an amount equal to the applicable percentage as defined times the present monthly salary to the fund. You may continue to participate as a temporary or part-time employee in the public employee's retirement system until termination of employment or classification as a standard employee.

Refer to the appropriate North Dakota Public Employees Retirement System handbook for more details.

If you began employment prior to the mandatory date (May 1971) for NDPERS enrollment, you are not required to participate in NDPERS. At that time, you had the option to enroll under the NACo Deferred Compensation Program. Under NACo, we contribute a portion of your gross monthly salary as a benefit.

Elected officials may choose to participate in either NDPERS or NACo.

### **318 Deferred Compensation**

*Effective Date: 05/07/2018*

Deferred Compensation is a tax-deferred supplemental retirement program that allows you to contribute a portion of your salary before taxes to a retirement account. You can defer pre-tax earnings (subject to limitations set annually by the IRS) into a tax sheltered retirement account. You may also choose to participate in a Roth 457 plan, in which the amount is taxed at the same time it is taken out of your paycheck. Check with the Human Resources Department for current IRS limits.

This is a voluntary program for standard employees. Your contributions are 100% vested at all times. You may discontinue or change your contributions at your discretion.

Because your contribution is automatically deducted from pay before federal and state tax withholdings are calculated, this program allows you to save tax dollars now by having your current taxable amount reduced. Deferred income is taxable upon receipt of the benefits.

Contact the Human Resources Department for more information about the deferred compensation program.

**401 Timekeeping***Effective Date: 05/07/2018*

In order to properly calculate your pay and benefits, federal and state laws require us to keep an accurate record of all time you work, no matter how small the increment. As a result, it is your responsibility to record all of the time you spend working. However, elected officials are not required to keep time records.

Time worked is all the time actually spent performing assigned duties, including work performed away from our workplace, such as at job sites, or from your home. In general, work should not be performed outside of our workplace, unless doing so is specifically required for your position, or you have received advance approval from your supervisor.

If you are non-exempt, you should accurately record the time you begin and end your work, as well as the beginning and ending time of each meal period. You should also record the beginning and ending time of any split shift or departure from work for personal reasons. You must obtain your supervisor's approval before performing any overtime work. If you are exempt, you must keep accurate records of any leave periods, including annual leave or sick leave.

You may be subject to disciplinary action, up to and including termination of employment, if you alter, falsify, or tamper with time records, or record time on another employee's time record.

You should report to work no more than 7 minutes prior to your scheduled starting time. You should not work more than 7 minutes after your scheduled stop time without first obtaining your supervisor's consent.

You are responsible for verifying the accuracy of all time you record. Your supervisor will review and then certify your time record before submitting it for payroll processing. If corrections or modifications are made to the time record, both you and your supervisor must verify the accuracy of the changes to the time record.

**402 Paydays***Effective Date: 05/07/2018*

You are paid monthly on the last day of the month. If you are exempt or non-exempt salaried, your paycheck will reflect pay for the entire calendar month, less any annual leave, sick leave, or compensatory time entered prior to the 15<sup>th</sup> of the month. If you are part-time hourly, your paycheck will include all earnings for all work performed through the 15<sup>th</sup> of each month. Seasonal employees may have an alternate pay method.

You must have your paycheck directly deposited into a bank account of your choice. You will receive an itemized statement of wages on the last day working day of each month. However, your first paycheck and final paycheck upon termination will be actual checks.

**403 Pay Corrections***Effective Date: 05/07/2018*

We take all reasonable steps to ensure that you are correctly and promptly paid. However, mistakes sometimes happen, so we encourage you to carefully review your pay statements.

If you notice an error in the amount of your pay, bring the discrepancy immediately to the attention of the Human Resources Department so that corrections can be made as quickly as possible.

If we discover an error in the amount of your pay, we will correct it using appropriate means. For example, we may recoup overpayments from future pay.

**404 Deductions from Pay***Effective Date: 05/07/2018*

The law requires us to make certain deductions from your pay. We must deduct applicable federal, state, and local income taxes. We also must deduct Social Security taxes on your earnings up to a specified limit that is called the Social Security “wage base.” We match the amount of Social Security taxes paid by each employee.

From time to time, we may be required to make deductions to pay off a debt, loss, or other obligation you may owe to us or to a third party (such as garnishments, liens, or child support orders). In such cases, you may be required to sign a payroll deduction authorization form and/or enter into some other sort of pay back or reimbursement agreement during the course of employment or at the time you separate employment from us, regardless of the reason for separation.

Upon recommendations from your Department Head, the Human Resources Department, and the Auditor, we may authorize deductions for equipment needed to function in your position. This relates to equipment used exclusively for work purposes. The initial purchase of equipment will be made by us and we’ll maintain ownership until repayment through payroll deduction is complete. You will need to sign a payroll deduction authorization form prior to receipt of the equipment.

We offer various programs and employee benefits beyond those required by law. If eligible for such programs and/or benefits, you may voluntarily authorize deductions from your paychecks to cover the costs of participation.

Additionally, if you are an exempt employee, deductions from your regular salary may be made under the following circumstances:

- Absences from work for one or more full days for personal reasons other than sickness or disability;
- Absences of one or more full days due to sickness or disability if the deduction is made in accordance with our Annual Leave/Sick Leave Policy;
- To offset amounts you receive as jury or witness fees, or for military pay;

- For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions;
- Days not worked during your initial or terminal week of employment;
- Penalties imposed in good faith for infractions of safety rules of major significance; or
- For any increments of time taken as unpaid leave under FMLA.

We will make sure that any such deductions will be in full compliance with the wage and hour regulations under the Fair Labor Standards Act (FLSA).

If you have questions concerning why deductions were made from your paycheck or how they were calculated, ask your supervisor for assistance.

#### **405 Acting Pay**

*Effective Date: 05/07/2018*

If you are temporarily assigned for non-training purposes to a classification with a higher pay range for more than four (4) consecutive normal work weeks, you will be paid at the entry or minimum level of the higher classification, or 5% above current salary, whichever is greater. All such requests must have the approval of the Commission.

#### **406 Wage and Salary Administration**

*Revised Date: 05/07/2018*

We maintain a wage and salary administration system for all employees. Annually, as part of the budget development cycle, the Board of County Commissioners shall set the specific structure for pay administration plan based on our financial condition, changing personnel needs/concerns that are identified through Department reviews, and the changing community pay standards. The Commission may choose to distribute salary adjustments based on cost of living increases, merit, changes in the grades/classification, and/or changes in community salary standards.

Every three years, we will conduct a comprehensive system review that includes both a review of all positions and a market study to determine the base for our salary scale. Between studies only special adjustments will be considered based on documented significant changes.

Each Department Head is accountable to forecast and control salary expenditures within the approved annual salary budget. Salary adjustment increases outside the annual pay administration schedule shall be initiated by the request of the Department Head, approved by the County Commission and administered by the Human Resources Department.

#### **Overview of the Classification System**

All positions have been assigned a Decision Band Method (DBM) rating by our professional consultant. These ratings are the current structure for the pay and classification system. A Position Analysis Questionnaire (PAQ) or Position Information Questionnaire (PIQ) for Social

Services is filed in the Human Resources Department for all standard positions. These positions will all be assigned a position number. You will be asked to complete a PAQ, which will be reviewed by your supervisor and your Department Head. Each PAQ/PIQ designates essential functions according to the Americans with Disabilities Act.

Certain designated positions have specific training and/or experience requirements related to their DBM rating/classification. If you meet those specific requirements, your position classification (DBM rating) is adjusted. Currently, this policy applies to Sheriff's Staff, State's Attorneys, and Social Services financial workers. The specific criteria for each position's adjustment procedures are as follows:

### SHERIFF'S STAFF

#### CORRECTIONAL OFFICER I (New Employee)

This position is entry level with no experience and is not of deputy status. This position is responsible to Jail Shift Commander.

##### A. DUTIES

1. Abide by all jail rules.
2. Issue clothing and bedding.
3. Monitor inmate conduct and maintain jail security.
4. Perform other duties as assigned with general supervision.

##### B. MINIMUM QUALIFICATIONS

1. Must pass physical and psychological exam.
2. Must meet and pass all department requirements.

#### CORRECTIONAL OFFICER II & III

This position may be of limited deputy status and shall have acquired the necessary Correctional schools required to be certified. This position is responsible to Jail Shift Commander.

##### A. DUTIES

1. Abide by all jail rules.
2. Issue inmate clothing and bedding.
3. Assist in completing booking entry, personal descriptions, property envelope, and fingerprinting.
4. Conduct criminal check on inmates and checks department files for warrants or other charges.
5. Monitor inmate conduct and maintain security.
6. Insure safety of jail visitors.
7. Assist in prisoner releases and complete necessary release forms.
8. Perform routine duties as assigned with general supervision.



Limited Jail Deputies will wear the uniform while on duty only and may carry an issued weapon while on duty outside the jail. Limited Deputies are empowered to enforce court orders or laws pertaining to prisoners within the confines of the jail or while guarding or transporting prisoners.

Correctional Officer III's may be asked to fill field patrol deputy shifts on an as-needed basis.

#### B. MINIMUM QUALIFICATIONS

1. FULL-TIME EMPLOYEE: Must meet and pass all state and department requirements. Must be proficient in use of all assigned equipment. Must be certified to do CPR. Attend training as required.
2. PART-TIME EMPLOYEE: Must meet and pass all state and department requirements. Must be certified to do CPR. Attend training as required.

### REGULAR OR LIMITED DEPUTY POSITIONS JAIL

#### DEPUTY/CORPORAL

This position shall be of regular deputy status and have completed the Law Enforcement basic training required of regular deputies. This position is responsible to the Jail Sergeant.

#### A. DUTIES

1. Abide by all jail rules.
2. Process prisoners brought into the jail.
3. Issue inmate clothing and bedding.
4. Complete booking entry, personal characteristics, property envelope, and fingerprinting.
5. Conduct criminal check on each inmate and check department files for warrants and other charges.
6. Monitor inmate conduct and maintain jail security.
7. May transport prisoners to various destinations, such as court, the hospital, or state institutions, and provide security in court, hospitals, and other sites where prisoners are held.
8. Serve meals and administer prescribed medication to prisoners.
9. Administer prisoner commissary.
10. Insure safety of jail visitors.
11. Supervise visits from relatives, friends, attorneys, ministers, counselors, and probation personnel.
12. Process prisoner releases and complete necessary release forms.
13. Supervise clean-up and maintenance duties as required.
14. Perform routine daily tasks with general supervision.

## B. MINIMUM QUALIFICATIONS

Must meet and pass all state and department requirements. Must hold ND Peace Officer License and be proficient in the use of all assigned equipment. Must be certified to do CPR.

### STATE'S ATTORNEYS

#### SENIOR ATTORNEY

This is a professional position for attorneys with at least one year experience in a prosecutor's office. Although occasionally an experienced prosecutor may be hired into the Senior States Attorney classification (DBM D62A), typically this position will be a natural progression from the Attorney I classification (DBM C44). It is intended that new hires with no relevant experience would enter as an Attorney I and progress in salary via annual professional adjustments to the entry level of Senior Attorney when recommended by the State's Attorney and following a satisfactory performance appraisal. Thereupon, they would immediately be reclassified as a Senior Attorney. Years of service are cumulative.

### SOCIAL SERVICES - FINANCIAL WORKERS

#### FINANCIAL WORKER I

Occasionally, Social Services is unable to recruit an individual employee who meets the minimum requirements for the position (one year of specific job-related experience). At that time, the position will be underfilled at the Financial Assistance Specialist level (B22) until the employee meets the minimum qualifications of a Financial Intake Representative (B23).

#### **Policies for Adding New Positions**

Prior to the addition of any positions, the Department Head will be responsible for writing a PAQ describing the proposed duties and recommending a DBM rating/classification and title to the Human Resources Department, which will also review and concur or disagree. The Human Resources Department and Department Head will then present a recommendation(s) to the Personnel Overview Committee.

Department Heads must submit PAQs for new regularly budgeted positions for review by 5:00 PM on the 1<sup>st</sup> Monday of April of each year. If a position is added in the middle of the year, a temporary DBM rating/classification will be assigned by the Personnel Overview Committee with full review by our professional consultant as part of the annual review process, if needed.

The PAQ and recommendation will be reviewed by the Personnel Overview Committee:

1. If the position is similar to an existing position, a DBM rating/classification title may be assigned by the Personnel Overview Committee, if there is agreement with the department head's recommendation.

2. If the position is not similar to an existing position, the Human Resources Department will review the information to ensure that it is complete, and then submit it to the County's professional consultant for assignment of a DBM rating and classification/title.

### **Re-Classification Procedures**

In the event there is a permanent and significant (more than 25%) change in duties, you or your immediate supervisor may request a re- classification. Re-classification requests will require that a current PAQ be submitted with written documentation from you and the Department Head stating the reasons for the request with a list of similar positions. Re-classification requests will be considered once each year prior to budget preparation. Requests must be submitted no later than the first Monday in April of each year to the Human Resources Department.

All reclassification requests will be reviewed by the Personnel Overview Committee to ensure that all relevant information is provided and to identify other positions that could be affected by the positions. The Personnel Overview Committee will then send all material to our professional consultant for final recommendation.

Re-classifications will then be appropriately budgeted for and will become effective the first of the following year, unless there is an emergency reason for immediate change.

If a position has been re-classified at a higher grade, your salary will be placed at least at the minimum of the range. If your position is reclassified to a lower grade because re-evaluation indicates reduced duties, no salary reduction should occur. If your salary is above the maximum of the new grade:

1. No new salary increment or general structure increases will apply until the maximum for the new grade equals or exceeds your salary.
2. If there has not been a substantial change in duties, classification review can only be done as part of the overall structure review (every three years) or once per position between comprehensive reviews.

### **Starting Salary/Promotional Adjustments**

New employees, other than seasonal employees, are generally hired at the minimum of the salary range. Seasonal employees are paid at 92% of the full DBM salary. New employee salaries will commence on the first day of actual work.

In some unusual instances, employees may be hired above the minimum of the salary range. Justification for hiring a new employee at a step above the minimum includes but is not limited to:

1. Market conditions that create recruitment difficulties for certain skill sets.

2. Availability of a candidate whose qualifications significantly exceed the position's minimum qualifications if it is determined that it is in the County's best interest to hire the exceptionally qualified candidate over other candidates that meet the minimum qualifications.
3. Consideration should be given to maintaining internal equity within the department.
4. Department heads may hire new employees at step 2 through 5 with the approval of both the County Administrator and Portfolio Commissioner. In the event that either or both the County Administrator and Portfolio Commissioner are not in agreement with the department head request, the department head may request that the matter be placed on the Commission agenda for consideration by the entire board. Hiring above step 5 must be approved by the full County Commission. Requests to hire above step 5 will be submitted by the department head to the Human Resources Office with written justification. The County Administrator will forward the request to the County Commission with a disposition recommendation. All requests for hiring a new employee above a step 1 must be done at the time of hire and will not be considered retroactively.

Starting step for appointed Department Heads will be determined by the County Commission.

The starting salary for newly elected officials will generally be the minimum of the County pay scale for that position. Salaries for County Commissioners shall be established at the rate allowed by state law.

In recognition of increased duties and responsibility, if you have been promoted, you will be granted a salary increase to the first even step that is at least 5% over the current salary, assuming that this promotional adjustment does not adversely impact any other employees by creating an internal inequity. If an inequity among employees within a DBM rating will be created by a 5% adjustment, the Department Head and the Human Resources Department will recommend a fair salary adjustment using the criteria established in the starting salary policy.

### **Lateral Transfers**

If you are transferred or you transfer to a class of comparable value or worth as determined by the DBM rating method, you will not receive an adjustment in pay, and your status date will not change.

### **Salary Increases**

All salary increases are contingent on satisfactory performance of assigned duties and responsibilities as documented through annual performance evaluations and subject to County Commission approval. Employment status date will change.

**501 Safety***Effective Date: 05/07/2018*

To assist in providing a safe and healthful work environment for our employees, customers, and visitors, we have established a workplace safety program. This program is a top priority. The County Administrator has responsibility for implementing, administering, monitoring, and evaluating the safety program. Everyone here must be involved and committed to safety. This must be a team effort. Together, we can prevent accidents and injuries.

We provide information to you about workplace safety and health issues through new hire orientation and regular internal communication channels such as bulletin board postings, newsletters, or other written communications. We also provide more formalized periodic workplace safety training, where necessary. The training covers potential safety and health hazards, as well as specific workplace practices and procedures to eliminate or minimize hazards. Everyone is expected to be familiar with our safety, fire prevention and disaster programs and the role each of us may play.

**Employee Conduct and Responsibilities**

You are expected to perform the functions of your position in a safe manner. We are only truly efficient when high productivity is achieved with safe work habits. No job is so important, nor any service so urgent, that time cannot be taken to perform the work safely. The use of proper safety devices and tools and equipment and wearing appropriate clothing and footwear is essential.

Horseplay at work is inappropriate. No matter how playful or well intentioned, horseplay is by its nature unpredictable, and may inadvertently result in accident, injury, or unsafe conditions. As a result, anyone engaging in horseplay may be subject to discipline, up to and including termination of employment.

You are expected to take ownership of your surroundings, to obey safety rules, and to exercise caution in all work activities. This includes being familiar with and observing all rules and policies for health, safety, and preventing injuries while at work. You must immediately report any unsafe condition or near miss to the Department Head. In the event of an injury to a visitor, you should find proper assistance and follow established incident reporting procedures for that Department. In the case of accidents that result in injury, regardless of how insignificant the injury may appear, immediately notify the Department Head or the appropriate supervisor. Such reports are necessary to comply with laws and initiate insurance and workers' compensation benefits procedures.

**502 Work Schedules & On Call***Effective Date: 12/16/2019*

Work schedules vary throughout our organization. Your typical work week, except for designated law enforcement personnel in the Sheriff's Office), will be 40 hours. Our work week starts at 12:01 a.m. on Saturday through midnight on Friday. Your supervisor will normally determine your work schedule, as well as any variations from week to week. For those employees performing work in the office, office hours are usually 8:00 a.m. - 5:00 p.m. Some

employees may be asked to be “on call” periodically. Department Heads may establish adjusted work hours, such as summer flex time, providing all County offices remain open between 8 a.m. – 5 p.m. Monday – Friday and the departments are sufficiently staffed to handle the needs to the public and other County offices.

Staffing needs, operational demands, and individual workloads may necessitate variations in starting and ending times, as well as variations in the total hours that may need to be worked each day and week. This can be particularly true if you are an exempt employee, since although you are normally expected to be available during our core business hours and work at least 40 hours per week, you may find that the job you are performing requires additional time over and above the regular work week.

In certain circumstances, job-sharing between two part-time employees (assigned to the same job equivalent to a one full-time employee) may be permitted. A Department Head must authorize the arrangement and there is an expectation of continuity of work. The position would be assigned one work station, which would be shared between the individuals job-sharing.

### **On Call**

The following departments may require on-call status from time to time: Information Technology, State’s Attorney, Sheriff, Social Services, Coroner, and Buildings and Grounds.

If you are on-call, you are required to be available to provide a specific essential County function outside of your regularly assigned duties or work schedule. If you are non-exempt and on-call, you will receive, at the discretion of the Department Head, either:

- a) An additional salary base of \$100.00 for each week served on-call. Where this coincides with a paid holiday, you will receive an additional salary base of \$100.00 for that week. You will be paid for actual time worked (excluding travel time) at the appropriate FLSA rate dependent on your weekly work schedule, but will be paid a minimum of two (2) hours of pay for each call that requires you to travel to work; or
- b) Four (4) hours of compensation time for each week on-call and four hours for each County paid holiday worked. You will be paid for the actual time worked.

Exempt employees will not receive additional pay for being on-call, but you may receive time off at the discretion of the Department Head.

As a non-exempt employee, if you are called back to work for an emergency, and you are not otherwise on call, you will be entitled to pay according to the FLSA and your weekly work schedule. You will be paid a minimum of three hours pay or comp time.

**503 Emergency Closings***Effective Date: 02/16/2021*

On occasion, we may close down for emergencies or extreme weather.

Unless an emergency closing is announced, we expect you to report to work in a timely manner and in accordance with applicable policies. In the event of inclement weather, use your own discretion in deciding whether you can commute safely to work. You should follow the call-in and notice procedures set forth by the Department.

**Decisions to Close and Communication**

In the event of hazardous weather or emergency closings, the Administrator, in coordination with the Sheriff and County Commission Chair, may delay opening of County offices or announce an early closing. Where it appears that closure of County offices for the full day is prudent, the Administrator, in coordination with the Sheriff and County Commission Chair, may close County offices. When the decision has been made to delay opening for the day, local media and employees will be notified by 6:30 a.m. Information shall also be posted on the County website. You are responsible for obtaining the information regarding inclement weather and emergency closings. The County storm line phone number is 241-5880. Additional methods of communication will also be used.

For protection and safety reasons, you are not allowed to work at County offices during any periods of closure unless work has been approved by your Department Head.

**Leave Use and Compensation**

If we decide to close prior to the start of the workday, including for inclement weather, you will typically be paid for the day, except for hourly employees, who may use annual leave. If you were scheduled to be off, you will not be entitled to any change in compensation. If you are required to work and the County is closed, you may receive compensatory time, at the discretion of your Department Head.

Where the decision is made to close during the workday, you will receive full pay if you have worked all the hours the County was open during that day. Otherwise, you may be required to use annual leave. If the work day is less than five hours, no lunch breaks are allowed.

If we decide to stay open, but you choose not to work, you must use any annual leave. If you do not have annual leave available, you must take the day unpaid.

**504 Smoking***Effective Date: 05/07/2018*

In keeping with our intent to provide a safe and healthful work environment, we prohibit smoking in all of our County facilities and vehicles.

If you smoke, you will not be permitted any greater number of breaks than those who do not. As a result, you should only smoke or use tobacco products before or after work, or during

designated breaks or meal periods. North Dakota law requires smokers to be at least 20 feet away from building entrances and exits.

### **505 Rest and Meal Periods**

*Effective Date: 05/07/2018*

If you are an hourly and/or nonexempt employee, you will usually be provided with one unpaid meal period, with the length determined by the Department Head. In general, shifts exceeding five hours of work require a minimum of 30-minute uninterrupted break between the 3<sup>rd</sup> and 5<sup>h</sup> hour. If you choose, exceptions may be made if also approved by the Department Head. Hourly and/or nonexempt employees usually are provided two paid rest periods of 15 minutes in length. To the extent possible, rest periods will be provided in the middle of work periods.

Nonexempt employees are generally required to take an unpaid 30 minute meal period, and are not permitted to perform work during this time (unless specifically authorized by a supervisor). Similarly, you are strongly encouraged to take your breaks, and not to perform work while on break. Typically, you are not allowed to combine your breaks, take them with your meal periods, or use them to leave early with pay. Since break time is counted and paid as time worked, you must not be absent from your work stations beyond the allotted rest period time.

### **506 Breaks for Nursing Mothers**

*Effective Date: 05/07/2018*

We provide reasonable unpaid break time each day to employees who need to express breast milk for their infant children. Break time under this policy runs concurrently with any meal and/or break times that may already be provided.

We provide a private area where employees may express milk. This area will comply with both federal and state law.

This policy may not apply when you are at customer or job sites, since we will have little ability to control the availability of private and secure locations for the expression of breast milk.

To ensure you are accommodated under this policy if you have a need to express milk, you must contact your supervisor or Department Head to make the necessary arrangements.

### **507 Overtime & Compensatory Time**

*Effective Date: 05/07/2018*

Overtime hours are sometimes necessary when our operating requirements or other needs cannot be met during regular working hours. Sometimes overtime may be necessary for a group of employees due to workload and project needs, while at other times individual employees may have a specific need to work extra hours. Regardless, you must receive prior approval from your supervisor or Department Head before working any overtime.

You may request compensatory time off by requesting leave from your Department Head. Leave will typically be granted, subject to Department Head's discretion and the department being



appropriately staffed so as not to unduly disrupt operations. You must use compensatory time before using any accrued annual leave.

### **Non-exempt employees**

We pay overtime compensation to all nonexempt employees in accordance with federal and state wage and hour laws. Overtime pay is based on actual hours worked, and will be paid for time worked over 40 hours in the workweek. If you work in the Sheriff's Office and are engaged in law enforcement activities, you typically receive overtime only after working 171 hours in a 28-day cycle. Time off on annual leave, holidays, or any leaves of absence will not be considered hours worked for purposes of performing overtime calculations. We define the workweek as the seven-day period starting at 12:01 on Saturday morning, and continuing through midnight the following Friday.

When you work overtime, you shall be paid 1½ times your regular rate of pay for all overtime hours or you can take compensatory time at a rate of 1½ hours for each hour of overtime worked. You shall select a method of compensation at the time you begin working for us, which will stay in effect until a new authorization is submitted to the Department Head. Changes will only be processed once per year in January. In the event no election is made, you will receive payment. Where the County declares a disaster, all overtime accrued subsequently will be paid out (as opposed to accruing compensatory time).

You may accrue up to a maximum of 12 hours of compensatory time (18 compensable hours). Any hours earned in excess of these maximum limits must be paid as overtime. This accrued compensatory time must be used by December 15<sup>th</sup> each year. Any unused time after December 15<sup>th</sup> will be paid out. Any overtime accrued after December 15<sup>th</sup> will be used in the following calendar year.

### **Exempt Employees**

Exempt employees typically are not eligible for overtime. However, you may occasionally be rewarded compensatory time by Department Heads. In addition, when the Commission officially declares an emergency, you will receive overtime under this policy. Use of compensatory time is subject to this policy.

You may not accrue more than 160 hours of compensatory time and must use all accrued time by the end of the calendar year or forfeit any such remaining hours. When you leave our employment, you will not receive cash payment for any unused compensatory time.

## **508 Use of Vehicles and Equipment**

*Effective Date: 05/07/2018*

As part of your job, you may be expected to use certain types of equipment, or drive for work purposes. In order to reduce the risk of damaging equipment, or causing harm to yourself or others, you are expected to exercise care, perform required maintenance, and follow all operating instructions, safety standards, and guidelines, when using our property or equipment, or while driving for work purposes.

You must keep any work vehicle clean that you may drive. Please notify a supervisor if any equipment, machines, tools, or vehicles need repair. Prompt reporting of damages, defects, and the need for repairs could prevent deterioration of equipment and possible injury to others. Supervisors can answer any questions about your responsibility for maintenance and care of equipment or vehicles used on the job.

Please use credit cards issued for purchases of fuel from the appropriate County vendor. Purchase orders will be utilized for parts, and emergencies such as batteries, or tire repair necessary for operation of the vehicle.

You must obey all traffic laws and all safety rules concerning the safe operation of motor vehicles while driving our vehicles or driving your own vehicles for work purposes. In particular, you must refrain from reading or sending e-mails, text messages, and/or instant messages, searching or scrolling for audio, and accessing the Internet from your cell phones or other wireless devices while operating a motor vehicle at any time the vehicle is in motion, part of traffic (e.g., while sitting at a stop sign or stop light), or is anything other than parked. In addition, if you must make or receive a call while driving for work purposes, pull off the roadway and park your vehicle for the duration of the call, or limit your conversation to the minimum time necessary and utilize a hands-free device.

You must participate in defensive driving course prior to operating a County vehicle, every 3 years thereafter, or any time you are in an accident. You must have a valid driver's license, which you should have at all times you operate a vehicle. Do not place unauthorized bumper stickers or equipment in our vehicles.

We will not pay the costs of any parking tickets or traffic violations that you incur. In the event of overweight fines, you may be responsible for the first \$50. If you drive your own vehicle for work purposes, you must adequately insure the vehicle, and provide us with proof of insurance upon request. For insurance purposes, we may occasionally check your driving record, and if you fail to meet our standards, your driving privileges will be revoked.

You are expected to use our property, including our vehicles, for business use only and not personal use. Occasional personal use while traveling for work purposes may be permitted. Do not transport hitchhikers. Non-employees such as guests or family members may be passengers if reasonable to transport them. However, our insurance may not cover their transportation.

In the event of an accident, you are required to immediately report the accident to your Department Head and, if directed, obtain a police report. An accident form must be completed and filed with the Auditor for insurance purposes.

**509 Lobbying**  
*Effective Date: 05/07/2018*

Anyone, other than an elected official, who is involved in lobbying at the State Legislature, in a personal capacity, shall take annual leave for such activities unless such lobbying has been approved by the County Commission. If the Commission is not in session, such lobbying shall

be approved by the Commissioner holding that portfolio and reported at the next Commission meeting.

### **510 Business Expenses and Reimbursements**

*Effective Date: 05/07/2018*

We will reimburse you for reasonable business expenses you incur while performing work, including expenses incurred while travelling for work purposes. The reimbursement rate is set by the County Commission and follows the state reimbursement rate or the federal reimbursement rate, whichever is greater. All business travel must be approved in advance by your Department Head.

We reimburse the actual costs of travel, meals, lodging, and other expenses directly related to accomplishing your job duties. You must limit all such expenses to reasonable amounts. We will provide per diem for meals when you are away from your normal place of employment for a minimum of 4 hours. However, meals within the County, while attending formal meetings required by your Department Head, or attending conferences directly related to work, and you are restricted from leaving the conference or meeting, will be reimbursed. You cannot claim a meal for reimbursement if it was provided to you or if you were not away from your normal work location for at least 4 hours. Reimbursement for in-county meals will be at the actual expense, not to exceed the state rate.

You should submit completed expense reports within 60 days of incurring the expense or by December 31, whichever is sooner. Reports must include receipts for each separate expense, other than for meals, which will be paid for using the per diem. For those submitting expense vouchers, expenses shall not be reimbursed by any other governmental agency or business. Payment of travel expenses over \$100 will be reimbursed as soon as vouchers are processed. Payment under \$100 will be made monthly.

If you can save substantial transportation costs by incurring additional meals/lodging, you were encouraged to travel at the lowest overall cost. If you choose to travel in an alternative method, you are responsible for payment of the difference of any cost and any additional travel time must use accrued annual leave.

If you travel for business purposes and are accompanied by family, a spouse, or a significant other, you are responsible for any costs associated with your travel companions.

Contact your supervisor for guidance and assistance on procedures related to expense reports, reimbursement for specific expenses, or business travel issues.

### **Training Time**

All time spent in training that is required and approved by your supervisor is considered as time worked for non-exempt employees. Travel to and from such required training will be compensable if located outside the Fargo/Moorhead area.

**511 Visitors in the Workplace***Effective Date: 05/07/2018*

To provide for the safety and security of you and your coworkers, only authorized visitors are allowed in certain areas of the County. For purposes of this policy, visitors include all non-employees, including family members. Restricting unauthorized visitors helps maintain safety standards, protects against theft, ensures security of equipment, protects confidential information, safeguards your welfare, and avoids potential distractions and disturbances.

All persons, with the exception of law enforcement and those who have County identification badges are subject to screening when entering the Courthouse or Annex. The hours of regular security operation in the Courthouse and Annex are 8:00 a.m. through 5:00 p.m. Monday through Friday. You must escort visitors conducting business with you after hours through the facilities.

If an unauthorized individual is observed on our premises, immediately notify your supervisor or, if necessary, escort the individual to the security area.

**512 Phones and Electronic Devices***Effective Date: 05/07/2018*

Whether it's using our phones or your own electronic devices, we know that you may occasionally want to text, make/take phone calls, and otherwise use them for personal purposes. Where possible, any such use should be confined to nonworking times such as breaks or meal periods, and should not interfere with your ability to effectively perform in your position, or distract your coworkers. With this in mind, cell phones and other electronic devices should generally be shut off during times you are working, and kept out of designated work areas, unless carrying such a device is necessary for work purposes, or prior approval has been obtained.

**513 Electronic Communication Devices & Services***Effective Date: 05/07/2018*

We provide computers, e-mail and Internet access to assist you in completing your work, improving your efficiency and obtaining work-related data and technology. We have established the following guidelines to help ensure responsible and productive computer usage.

**Definitions**

Electronic communication devices include desk phones, cell phones, computers, laptops and tablets, copiers, printers and other peripheral devices. Electronic communication services include local and long distance calling, voicemail, e-mail, instant messaging, software applications, tablet and cell phone apps, file storage systems such as SharePoint or OneDrive, network shared or personal drives and Internet access. This non-exhaustive list of technology devices and services is meant to include all forms of electronic communications, devices and services provided by us. As new technologies are obtained and implemented, those items will also be included in this policy

All electronic communication devices and access to network services furnished to you to do your job are our property, and are intended for business use. As a result, you have no right to privacy for any uses, business or personal, to which you may put the electronic communication devices and services we have provided. We reserve the right to monitor any and all use to which our electronic communication devices and services may be put, regardless of whether the use is personal in nature, or occurs during non-working times, such as breaks or meal periods.

### **Personal Use of Electronic Devices and Services**

While electronic communication devices and services are intended for job-related activities, incidental and occasional personal use may be permitted within reasonable limits. The personal use of electronic communications devices and services shall NOT be a substitute for keeping your business and personal e-mail, files, videos, movies, pictures and internet activity strictly separate. As such, all personal related email, files and digital media shall be conducted or stored on personally owned email accounts, devices or online services.

Do not use your County provided email or website addresses for personal use to register or subscribe for any service, including but not limited to any social media sites, online newsletters or journals, personal finance websites, public or private schools, religious or sporting activities, health services, household bills and utilities, hotel and travel sites or any online shopping or shipping services without prior approval from the IT Department.

We strictly prohibit using our Internet services for the personal use of streaming video, audio, internet radio or music and using electronic devices or services for the storage, viewing or playing of personal pictures, videos, music and other personal files. Do not connect personal cell phones, iPods, other music players or playing of CD or DVD discs on county owned electronic devices.

The electronic communication devices and services provided to you remain at all times the property of Cass County. To ensure compliance with this policy, we reserve the right to monitor Internet traffic, and retrieve and read any data composed, sent, received or stored on devices or services. All data that is composed, transmitted, received or stored on our computer system is considered to be part of the official records of Cass County and, as such, is subject to open records disclosure to law enforcement or other third parties.

You must comply with any and all potentially applicable laws (e.g., industry regulations, harassment laws, copyright restrictions, contractual obligations or restrictions, etc.) each and every time you use our electronic communication devices and services for any purpose, as well as during any occasion you may be using your own personal computer networks, systems, or equipment in ways that may directly or indirectly be associated with Cass County.

### **Computer Security**

You should take all security precautions available and prescribed by us. You should not attempt to bypass or disable any anti-virus precautions installed on our computers. Please protect the integrity of electronic communication devices and services at all times, including logging off or locking systems when not in use or when you are away from the workspace.

If you use electronic devices offsite, including home, hotels or other public locations, you shall take all precautions to protect our equipment. Maintain positive control of devices when in public locations and take necessary precautions when connecting to public Internet or Wi-Fi connections.

If you check out or are provided County resources for working off-site, you are prohibited from allowing non-employees, including family members, to use the electronic communication devices and services.

Passwords and user IDs to access any system shall not be written down or shared with anyone else, including coworkers, at any time and users shall not login to a system for the purposes of allowing another user access. This includes, but is not limited to, computers, servers, state applications, or online business accounts.

Do not transfer, copy, upload or forward any County email, documents, or files to personally owned devices or services, including but not limited to, USB flash drives, portable hard drives, CD/DVD drives, personal email accounts or any online storage services such as Dropbox, iCloud, OneDrive, or Google Drive, without permission from the IT Department.

When required, you should only send confidential, sensitive and/or proprietary information using County approved encryption or secure email methods. Similarly, when receiving emails, you should encourage outside clients, vendors and business partners to send any confidential, sensitive and/or proprietary information using appropriate safeguards, including encryption or secure email methods.

### **Prohibited Usage**

The following behaviors are examples of actions and activities that are prohibited and can result in disciplinary action up to and including termination of employment:

- Sending or posting messages or images that are disruptive, offensive, discriminatory, obscene, threatening, harassing, intimidating, or harmful to morale
- Using our computers or services for personal gain
- Using our email to solicit for outside commercial ventures, religious or political causes, outside organizations, or other non-business matters
- Sending or posting confidential material, trade secrets, or proprietary information outside of the organization (such information includes, but is not limited to, information outlined in our Confidentiality and Non-Disclosure policy)
- Failing to observe licensing agreements
- Engaging in unauthorized transactions that may incur a cost to the organization or initiate unwanted Internet services and transmissions
- Viewing or exchanging pornography or obscene materials
- Attempting to break into the computer system of another organization or person
- Refusing to cooperate with a security investigation or destroying, concealing, or disclosing information protected by attorney-client privilege, legal hold or spoliation order

- Sending or posting chain letters or advertisements not related to business purposes or activities
- Using the computer for gambling of any sort
- Jeopardizing the security of the organization's electronic communications systems
- Sending or posting messages that defame or slander other individuals
- Passing off personal views as representing those of the County
- Sending anonymous e-mail messages
- Using the electronic devices or services, including email or Internet, for purposes of seeking other employment or preparing or posting a resume
- Loading software without permission
- Engaging in any other illegal activities
- Engaging in any other computer related activity determined by us to be inappropriate or unacceptable

We strive to maintain a workplace free of harassment and sensitive to the diversity of our employees. Therefore, we prohibit the use of electronic communication devices and services in ways that are disruptive, offensive to others, discriminatory, obscene, threatening, harassing, intimidating, or harmful to morale. For example, the display or transmission of sexually explicit images, messages, and cartoons is not allowed. Other such misuse includes, but is not limited to, ethnic slurs, racial comments, gender-specific comments, off-color jokes, or anything that may be construed as harassment, bullying or showing disrespect for others.

We purchase and license the use of various computer software for business purposes and do not own the copyright to this software or its related documentation. Unless authorized by the software developer, we do not have the right to reproduce or install such software for use on more than one computer. You may only use software on local area networks or on multiple machines according to the software license agreement. We prohibit the illegal duplication of software and its related documentation.

The unauthorized use, installation, copying, or distribution of copyrighted, trademarked, or patented material on the Internet is expressly prohibited. As a general rule, if you did not create material, do not own the rights to it, or have not gotten authorization for its use, you should not put it on the Internet or transmit through the e-mail system.

You will be required to sign an acknowledgement form for Cass County's Appropriate Use of Electronic Communication Devices and Services.

If you have questions about acceptable usage of the computer or networks we provide you, please contact the Human Resources Department.

## 514 Social Networking Websites and Online Communications

*Revised Date: 01/01/2019*

### Social Networking Websites

Social networking sites present unique opportunities for you to communicate with others and express yourself in a public forum. However, social networking also poses significant risks to the workplace, even if your social networking activities are conducted completely on your own time and on your personal devices and networks. As a result, you need to always be mindful of how the things you post and do online might impact your coworkers, our reputation, and your professional reputation.

### Online Code of Conduct

Although you are solely responsible for what you post or endorse online, since what you say and do can impact us and your coworkers, we've come up with some examples of online behaviors that we consider to be unacceptable:

- Sending or posting discriminatory, defamatory, harassing, bullying or threatening messages or images (including photographs or videos) regarding any current or former employee
- Making any defamatory, slanderous or derogatory reference or post against any prospect, client, customer, vendor or business partner that may harm or interfere with the working relationship or current contracts
- Posting any confidential, proprietary or non-public information or documents, including, but not limited to, information listed in our Confidentiality and Non-Disclosure policy
- Posting comments or opinions regarding our products or services, and which may be construed as violating state or federal law (e.g. the FTC's Endorsement Guidelines)
- Failing to respect the financial disclosure laws by posting our financial information, which could be perceived as giving outsiders an unfair advantage or insight ("tip") in violation of state or federal laws
- Posting any confidential information pertaining to employees or customers, which may otherwise be protected under state and federal laws such as state privacy and disability laws, Red Flag Regulations, ADA, HIPAA or GINA
- Disclosing any information protected by attorney-client privilege, legal hold or spoliation order
- Representing (or otherwise giving the impression) that you are speaking on our behalf
- Failing to use proper disclaimers with anything that might be connected back to us, such as "postings on this site are my own and do not represent others' opinions, philosophies or business strategies"
- Posting photographs, videos or images of other employees without proper authorization, or failing to remove such images when requested by another employee
- Unlawfully gaining access to another employee's social networking website or profile
- Demanding or otherwise requiring applicants or employees to give you their social networking passwords



**Resolving Conflict**

When communicating online, be fair and courteous to current and former employees, customers, clients and vendors. Work-related issues are more likely to be resolved by speaking directly with the person at issue or going to your Department Head.

Should you decide to post complaints or criticisms, avoid using statements, photographs, videos or audio that reasonably could be viewed as malicious, obscene, harassing, threatening, intimidating, bullying, or that disparages customers, clients or vendors. Failure to follow these guidelines may result in disciplinary action, or legal action initiated by a third-party.

**Monitoring and Consequences for Policy Violations**

While we have no general practice of reviewing your personal profiles on social media sites, you should be aware that if such profiles contain information suggesting conduct that violates this or any other policy, such information may form the basis for an appropriate investigation and/or discipline.

Nothing in this policy prohibits you from exercising any legal right under any state or federal law, nor will you be subject to discipline for any posts that are legally protected. However, you should be aware that most posts to personal social networking sites are not entitled to legal protection, and any such posts may result in disciplinary action up to and including termination of employment, if they violate this or any other policy.

If you have been the subject of online harassment or bullying, notify the Human Resources Department or your supervisor or Department Head.

**515 Workplace Monitoring**

*Effective Date: 05/07/2018*

From time to time, we conduct workplace monitoring to ensure quality control, employee safety, security, and customer satisfaction.

We reserve the right to monitor your computer, Internet, and e-mail usage as described in our Electronic Communication Devices & Services policy, including any personal usage to which you may put our systems, networks, or equipment.

We may monitor your telephone conversations or text messages if you have County-owned phones, including cell phones. Telephone calls may be recorded by employees participating in the call if a record of the conversation is material to a job duty being performed or to protect the safety of county employees.

We may conduct video surveillance of non-private workplace areas to identify safety concerns, maintain quality control, detect theft and misconduct, and discourage or prevent acts of harassment and workplace violence. Any such video surveillance may include audio recording, as well.

We may also use GPS units on vehicles to help us track the times, locations, and routes you may

drive in connection with work, for safety, efficiency, and compliance purposes.

We perform workplace monitoring in an ethical and respectful manner, and we are sensitive to the privacy concerns of employees.

### **516 Telecommuting**

*Effective Date: 12/16/2019*

If you believe that regularly working from home can enhance your ability to get your job done, submit a written request to your supervisor proposing how it will benefit you and us. The request should explain how you will be accountable and responsible, what equipment is necessary, and how communication barriers will be overcome.

The decision to approve a telecommuting arrangement will be based on factors such as position and job duties, performance history, related work skills, and the impact on the organization. Your compensation, benefits, work status, work responsibilities, and the amount of time you are expected to work per day or per pay period will not change just because you may be occasionally working from home (unless otherwise agreed upon in writing).

Your work hours will conform to a schedule agreed upon by you and your supervisor. If such a schedule has not been agreed upon, your work hours will be assumed to be the same as they were before you began telecommuting. Changes to this schedule must be reviewed and approved in advance by your supervisor.

In general, any equipment we provide to you in support of the approved telecommuting relationship is intended to be used solely for work purposes, and should not be used for personal purposes, unless otherwise approved. We will maintain the equipment we supply to you and you are responsible for maintaining any equipment you supply. We do not accept responsibility for damage or repairs to your equipment.

We expect you to ensure the confidentiality and protection of proprietary and customer information that you may use or access while working from home. This may include the use of locked file cabinets and desks, regular password maintenance, and any other steps appropriate for the job and the environment.

During working hours, your remote work space will be considered an extension of our work space. Therefore, workers' compensation benefits may be available for job-related accidents that occur in your remote work space during working hours. All job-related accidents will be investigated immediately. We assume no responsibility for injuries occurring in your remote work space outside of your agreed-upon work hours. You agree to maintain safe conditions in your remote work space and to practice the same safety habits as those followed on our premises. In the case of an injury while telecommuting, follow our Workers' Compensation policy.

Telecommuting is at the discretion of the Department Head and will be addressed on a case-by-case basis. Telecommuting is considered a privilege and may not work for every employee or every position. Employees who telecommute will coordinate with their supervisors about specific work assignments and specific ways to track productivity. Prior to approval of

telecommuting, the Department Head must coordinate efforts with IT to ensure feasibility.

Telecommuting only works in some circumstances, and is not a universal employee benefit. As a result, we will only provide this opportunity when we are convinced it will be in our best interests, and may terminate approved telecommuting arrangements whenever we believe it necessary to do so.

**601 Employee Conduct and Work Rules***Effective Date: 05/07/2018*

In order to maintain the excellent reputation we have earned with our customers and to provide the best possible work environment for you and your coworkers, we expect you to follow the rules of conduct set forth in this policy.

**Performing with Integrity and Honesty**

Any time you are interacting with someone connected to our workplace, their perception of your words, actions, and behaviors is more important than your intent. As a result, we expect you to perform with the highest level of integrity possible and to be honest and fair when you interact with customers, management, and coworkers.

If you are ever in doubt about whether a particular course of action is appropriate, seek guidance from your supervisor or Department Head.

**Treating Others with Respect**

Treat everyone with respect and demonstrate genuine concern for their needs, because one bad experience can ruin the relationship. Consideration, respect and courtesy also play important roles in maintaining positive and productive working relationships with your supervisors and coworkers. Everyone is expected to communicate and work in a manner that is respectful to others.

**Unacceptable Conduct**

While it is not possible to list all the forms of behavior that are considered unacceptable in the workplace, the following are examples of actions and behaviors that may result in disciplinary action, up to and including termination of employment:

- Theft or inappropriate removal or possession of property
- Unethical, immoral, or criminal conduct in or outside of the workplace
- Dishonesty or misrepresentation including, but not limited to, falsification of timekeeping records, misrepresentation on employment applications, or dishonesty in an investigation
- Working under the influence of alcohol or illegal drugs
- Possession, distribution, sale, transfer, or use of alcohol or illegal drugs in the workplace, while on duty, or while operating tools and equipment
- Fighting or threatening violence in the workplace
- Boisterous or disruptive activity in the workplace
- Negligence or improper conduct leading to damage of employer-owned or customer-owned property
- Insubordination or other disrespectful conduct
- Violation of safety or health rules
- Failure to comply with written doctor restrictions or statements
- Failing to report injuries timely
- Smoking in prohibited areas

- Sexual or other unlawful or unwelcome harassment
- Excessive absenteeism or any absences without notice
- Unauthorized absence from work station during the workday
- Unauthorized use of computers, telephones, mail system, or other employer-owned equipment or networks
- Unauthorized disclosure of business “secrets” or confidential information
- Inappropriate words, actions, or conduct, inside or outside of the workplace that may reflect poorly upon, or cause harm to, Cass County. This prohibition applies even to words, actions, or conduct that occurs completely on personal time, including on Internet social networking sites. However, this is not intended to prohibit you from exercising legal rights and you will not be disciplined for engaging in protected activity.
- Unsatisfactory performance or conduct, including inefficiency, inattentiveness, and failure to manage and complete necessary workloads within scheduled hours
- Violation of personnel policies

### **Duty to Report Violations**

Report any matter that you believe violates this policy and/or may result in any of the following: monetary loss, damage to reputation, or harm to an individual(s). Reporting such matters is essential so that we can respond appropriately. We do not retaliate against any employee who, in good faith, reports suspected violations of our policies.

### **602 Drugs and Alcohol**

*Effective Date: 05/07/2018*

We want to maintain a healthful and safe workplace that is free from improper drug or alcohol use. Our policies described below help us promote this goal.

### **Prohibited Uses of Alcohol, Illegal Drugs, and Legal Drugs**

While on our premises and while conducting business-related activities off our premises, you may not use, possess, distribute, sell, or be under the influence of alcohol, illegal drugs, or any legal drugs (including prescribed drugs) that might cause you impairment or impact your ability to fully or safely perform the functions of your position.

### **Employee Assistance Program**

Our Employee Assistance Program (EAP) provides confidential counseling and referral services if you need assistance with such problems as drug and/or alcohol abuse or addiction. We encourage you to address any questions or concerns you may have about substance dependency or abuse with the EAP, and to review the treatment programs that may be covered under our health insurance program or any other health insurance program that provides coverage to you. You can discuss these matters with your supervisor or the Human Resources Department to receive assistance or referrals to appropriate resources in the community.

### **Alcohol in County-Approved Situations**

From time to time, the consumption of moderate amounts of alcohol may be permitted at

conferences or with the express approval of management. If you consume alcohol under such circumstances you must drink responsibly, must not become intoxicated, and must not return to work after drinking. You may not operate our vehicles while under the influence.

If you have any questions on this policy or issues related to drug or alcohol use in the workplace, please raise your concerns with your supervisor or the Human Resources Department.

### **603 Drug and Alcohol Testing**

*Effective Date: 05/07/2018*

Using or being under the influence of drugs or alcohol on the job poses serious safety and health risks. To help ensure a healthful and safe working environment, employees in safety sensitive positions may be asked to provide body substance samples (such as urine and/or blood) to determine the illicit, illegal, or impermissible use of drugs and alcohol. Refusal to submit to drug testing may result in disciplinary action, up to and including termination of employment.

There are a variety of circumstances under which we might test for drugs or alcohol, including, but not limited to, in connection with a workplace accident or injury, randomly (for safety-sensitive positions), with reasonable suspicion, and on applicants to whom a conditional job offer has been made.

To the extent that a drug test is conducted in connection with a workplace accident or injury, we will not require post-injury or post-accident drug testing unless the circumstances of the injury or accident are such that there is a reasonable possibility that alcohol or drug use could have been a contributing factor to the occurrence of the injury or accident.

A lengthier and more detailed policy setting forth the various steps and procedures involved in our drug testing program for those in a safety-sensitive position can be found in Appendix A.

Information and records relating to test results, drug and alcohol dependencies, and legitimate medical explanations shall be kept confidential and maintained in secure files separate from normal personnel files, to the extent required by law.

Questions concerning this policy or its administration should be directed to the Human Resources Department.

### **604 Bullying, Harassment & Offensive Behavior**

*Effective Date: 05/07/2018*

We are committed to providing a work environment where you and all other employees are treated with dignity, decency, and respect. In keeping with this policy, we will not tolerate bullying, harassment, offensive behaviors, or retaliation (hereinafter, "harassment," unless otherwise noted). This policy extends to workplace harassment involving non-employees, such as outside vendors, suppliers, consultants, or customers. Conduct prohibited by this policy is unacceptable in the workplace and in any work-related setting outside of the workplace, such as during business trips, business meetings and social events, or where there is an impact in the workplace.

**What is Harassment?**

Harassment is hostile or offensive physical conduct, verbal comments, or written comments including, but not limited to, electronic communications, such as online posts or text messaging if that conduct:

- Has the purpose or effect of creating an intimidating, hostile or offensive working environment;
- Unreasonably interferes with an individual's work performance or opportunities; or
- Otherwise affects the terms and conditions of employment.

Harassment because of the individual's race, color, religion, sex, pregnancy, citizenship, national origin, age, disability, military service, veteran status, genetic information, union membership, marital status, status with regards to public assistance, participation in lawful activity off of our premises during non-working hours (which is not in direct conflict with our essential business-related interest) or any other status protected by law is unacceptable and will not be tolerated.

**Definition of Sexual Harassment**

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, comments (verbal or written), or physical conduct of a sexual nature when:

- Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or
- The conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or
- The conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment.

Sexual harassment may involve individuals of the same or different gender.

**Examples of Harassment**

Examples of harassment include, but are not limited to:

- Unwanted sexual advances.
- Offering employment benefits in exchange for sexual favors.
- Making or threatening reprisals after a negative response to sexual advances.
- Leering or making sexual gestures.
- Displaying or circulating sexually suggestive objects, pictures, cartoons, e-mails or posters.
- Displaying or circulating offensive objects, pictures, cartoons, e-mails or posters based on a legally-protected characteristic such as race, religion or sexual orientation.
- Making or using derogatory comments, epithets, slurs, or jokes.

- Electronic communications, such as online posts or text messaging, which are offensive or derogatory in nature about an individual due to their membership in a protected class.
- Graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, or suggestive or obscene letters, notes, or invitations.
- Unwelcome physical conduct including touching, assaulting, impeding or blocking movements, or threatening and intimidating behavior.

### Reporting Procedure

You are responsible for, and have an obligation to, report harassing or inappropriate behavior, whether it is directed at you or is something you saw or heard that was directed at someone else. Any manager or supervisor who learns of or observes harassing or inappropriate behavior, or receives a complaint about this kind of behavior, must immediately report the behavior or complaint to the Human Resources Department.

If you *experience* harassment in the workplace, whether by employees or non-employees, take the following steps:

- Take immediate action rather than ignoring the problem and waiting for it to go away;
- Tell the offending person, if you feel comfortable doing so, that his or her actions or comments are unwelcome, that the behavior is offensive and it must stop immediately;
- Report the incident as soon as possible to a supervisor, the Human Resources Department, or a Department Head; and
- Remember that we will *not* tolerate any retaliation against you for reporting concerns about harassing behavior or conduct.

If you *witness* harassment, take the following steps:

- Take the incident(s) seriously;
- Refuse to condone or participate in the behavior;
- Encourage the victim to speak with his or her supervisor or the Human Resources Department; and
- Express suspicions or concerns to the appropriate supervisor, the Human Resources Department or a Department Head so that we can be alerted to any possibly harassing situations.

If you *engage in* harassing behavior or have been accused of engaging in harassing or inappropriate behavior, take the following steps:

- Stop the behavior immediately;
- Listen to the person complaining about the behavior; and
- Learn from the experience and do not repeat it.

You are protected from retaliation for making a complaint or exercising other rights protected by law.



## Supervisors

For purposes of this policy, Supervisors are employees whose primary duties involve managing a division of the County and directing the work of at least two full time employees or equivalents. Among other duties, supervisors are responsible for hiring, firing, and disciplining others. Employees who direct the work of employees, but do not have the authority to hire, fire, or discipline others, are not supervisors.

If you are a Supervisor who is responsible for hiring, firing and disciplining employees, and if you engage in harassment, permit others under your supervision to engage in such harassment, retaliate or permit retaliation against an employee who reports such harassment, you are guilty of misconduct and shall be subject to immediate disciplinary action that may include termination of employment.

## Investigations

We will promptly investigate any report of harassment, and will take swift and appropriate action at the end of our investigation. Complaints will be handled as discreetly as possible, although we cannot guarantee absolute confidentiality, since the alleged harasser is entitled to answer the charges, particularly if discipline or termination is a possible outcome.

You must cooperate fully during any investigation or fact-finding we conduct and must provide honest and complete information. You cannot choose to “stay out of it” if you are asked for information that you have or have access to. This is true whether you are the complaining party, the accused party, or a potential witness.

Failure to participate fully and honestly in the investigative process, or in any fact-finding process initiated by us, is a serious violation of our policy and grounds for disciplinary action, which may include termination from employment.

## Retaliation

We do not tolerate any retaliation against any employee who reports an incident of alleged harassment or inappropriate workplace behavior, or provides information during an investigation, and will take measures to protect all such employees from retaliation. *Engaging in retaliatory behavior is a violation of this policy, and is grounds for corrective action, up to and including termination of employment.*

## Off-Site Events

On occasion, you may have the opportunity to participate in off-site County-sponsored events, such as social gatherings, planning sessions, retreats, customer meetings, or conferences. These settings, which may be more informal than our workplace, can facilitate new learning, creative thinking and camaraderie among employees, vendors, and third parties. We expect that you will demonstrate the same professional standards of behavior at these events as you would in the workplace. Two specific guidelines should be kept in mind:

- If alcoholic beverages are served, they must be consumed in moderation.
- Harassment in any form will not be tolerated.

### **Liability for Harassment**

If you violate this policy, you will be subject to disciplinary action, up to and including termination from employment. You may also be subject to personal legal liability for violation of this policy.

If you want more information about our harassment policy or complaint process, please contact a supervisor or the Human Resources Department.

### **605 Personal Appearance**

*Effective Date: 05/07/2018*

Dress, grooming, and personal cleanliness standards contribute to the morale of all employees and affect the business image we project to customers and visitors.

During business hours or when representing us, you are expected to present a neat, clean and professional appearance and limit natural or artificial scents that could be distracting or annoying to others. You should dress and groom yourself according to the requirements of your position and accepted social standards. This is particularly true if your job involves dealing with customers or visitors in person. Where necessary, reasonable accommodation may be made for employees with disabilities, or who have legitimate religious needs.

Your supervisor or Department Head is responsible for establishing a reasonable dress code appropriate to the job you perform. If your supervisor feels your personal appearance is inappropriate, you may be asked to leave the workplace until you are properly dressed or groomed. Under such circumstance, you may not be compensated for the time away from work.

Consult your supervisor if you have questions as to what constitutes appropriate appearance.

### **606 Return of Property & ID Badges**

*Effective Date: 05/07/2018*

You are responsible for the safety and security of items that we issue to you or that are in your possession or control, including, but not limited to, the following:

- Cell phones
- Computers/laptops
- Credit cards
- Customer data and information
- Equipment
- Identification badges
- Keys
- Manuals
- Protective equipment
- Security passes
- Tools
- Uniforms
- Written materials

You must return all of our property immediately upon request or upon termination of employment. Department Heads will report terminations to the Information Technology service desk and the Sheriff's Office.

You must wear your identification badge when inside any County building during business hours or elsewhere in the County while County duties are being performed. If you forget your identification badge during non-business hours, you will not be allowed in County buildings. You must retrieve your own badge to gain entrance.

Please report your lost or stolen keys or badges to your Department Head, the Sheriff's Office, and the Information Technology service desk immediately upon learning of the fact.

### **607 Personal Property in the Workplace**

*Effective Date: 05/07/2018*

If you bring personal property into the workplace—whether in a parking area, at a job or customer site, or in a building or workspace—you are solely responsible for such property. We are not responsible for any damage to, theft, or loss of personal property, and we do not have insurance to cover any such loss, damage, or theft. As a result, if you are concerned about the safety of your personal items you should leave them at home and not bring them to work.

Please report all theft of personal belongings to your supervisor, documenting the missing item, the last known location of the item, the approximate time the theft may have occurred, and the description of the item. The supervisor will report the possible theft to the Department Head. However, it is your responsibility to report the theft to the Sheriff's Office or appropriate law enforcement agency.

### **608 Weapons & Violence in the Workplace**

*Revised Date: 05/07/2018*

#### **Weapons**

Threatening and violent behavior is prohibited throughout the workplace, and we have adopted this policy to ensure that all employees can work in an environment that is safe from, and free of, such behaviors. This policy is in addition to North Dakota Century Code §62.1-02-09, which makes it a felony for a person, other than a law enforcement officer, to possess certain weapons in government buildings without express written consent.

In order to carry a weapon, you must be a peace officer licensed by the State of North Dakota and have met all the requirements for continuing education as mandated by the peace officers board. You must be “qualified” to carry the weapon on duty and “qualify” for the same ammunition that you carry while on duty. We use the same qualification procedures as established by the State of North Dakota. The Sheriff, or his designee, as entrusted by the Commission, is the qualifications administrator.

For the purposes of this policy, weapons include but are not limited to: any gun (loaded or unloaded), stun gun, BB gun, CO<sub>2</sub> gun, air gun, machete, sword, knife (with blades of 5” or more), bow & arrow, spear, any martial arts weapon, or any other device intended to cause bodily harm to another person.

### **Violence in the Workplace**

Employees, customers, vendors, and other members of the public should be treated with courtesy and respect at all times. You are expected to comply with our Safety and Employee Conduct and Work Rules policies, and refrain from fighting, "horseplay," and other conduct that may be dangerous to others.

At no time may you commit an act of violence against anyone you come into contact with while working. Similarly, you may not threaten or otherwise intimidate an employee, vendor, customer, or other member of the public.

If you receive or observe a threat of violence or actual violence, call 911 immediately and then take appropriate action to remain safe. This includes threats or conduct by employees, customers, vendors, and other members of the public. Be as specific and detailed as possible when reporting a threat or act of violence.

You must also immediately report any suspicious activities or unaccompanied non-employees in the workplace to the Sheriff's Office (701-241-5800). Do not place yourself in peril. If you see or hear commotion or a disturbance, do not try to intercede.

In the event of an active shooter or other situation posing imminent danger, you should:

- Run if there is an accessible escape path;
- Hide if evacuation is not possible; and
- Fight if your life is in imminent danger and you have no option other than to attempt to disrupt and/or incapacitate the active shooter.

We will promptly and thoroughly address all reports of threatened or actual violence, as well as suspicious individuals or activities. Employees found to have engaged in threatening or violent behavior will be subject to prompt disciplinary action, up to and including termination of employment.

We encourage you to bring concerns and disputes to the attention of your supervisor, a Department Head, or the Human Resources Department without fear of retaliation.

### **609 Security Inspections**

*Effective Date: 05/07/2018*

In an effort to maintain a safe work environment, including one that is free of illegal drugs, alcohol, firearms, explosives, or other improper materials, and to discourage theft or unauthorized possession of our property or yours, we reserve the right to inspect all work areas, including vehicles, desks, storage containers, lockers, and areas where personal belongings may be kept. We require the cooperation of everyone in administering this policy.

Because of the urgency underlying such searches, we may conduct inspections at any time, and without advance notice to you.

In addition, we may also conduct inspections of persons entering and/or leaving the premises, as well as personal items, such as purses, coats, etc. Anyone who wishes to avoid inspection of any articles or materials should not bring such items to the workplace.

If you are not wearing an identification badge when entering a County building, you may be subject to screening and any items will be subject to inspection and search.

### **610 Solicitation & Bulletin Boards**

*Effective Date: 05/07/2018*

In an effort to ensure a productive and harmonious work environment, non-employees may not solicit or distribute literature in the workplace at any time for any purpose.

We recognize that you have interests in events and organizations outside the workplace and that you may make solicitations as a result of your involvement. However, you may not solicit or distribute literature concerning these activities during working time, unless approved by the County Commission. Working time does not include lunch periods, work breaks, or any other periods in which employees are not on duty.

For example, the following types of solicitation should be kept out of the workplace:

- The collection of money, goods, or gifts for community groups;
- The collection of money, goods, or gifts for religious groups;
- The collection of money, goods, or gifts for political groups;
- The sale of goods, services, or subscriptions outside the scope of official organizational business;
- The circulation of petitions;
- The distribution of literature not approved by us; or
- The solicitation of memberships, fees, or dues.

You may be allowed to leave information in a designated location; please check with your supervisor. In addition, posting materials or sending electronic announcements are permitted only with prior approval from the Human Resources Department.

### **Intranet Bulletin Board**

Our intranet bulletin board is provided as a service to all employees. We do not endorse and are not responsible for the content posted. You may post advertisements on that electronic bulletin board, subject to the following:

1. Postings are used to sell or give away personal items.
2. Soliciting and fundraising is prohibited.
3. Advertising firearms or any type of weapon is prohibited.

4. Any activity on the bulletin board, including posting or responding to advertisements, must take place before or after work. You cannot use the bulletin board during lunch or break times.
5. Items will be advertised using text only (no photos).
6. Items will be posted for two weeks and then automatically deleted.

We reserve the right to remove a post at any time or eliminate the use of the intranet bulletin board without advance notice.

### **611 Progressive Discipline**

*Effective Date: 05/07/2018*

This policy describes how we administer equitable and consistent discipline for unsatisfactory conduct and performance in the workplace. The best disciplinary measure is the one that does not have to be enforced and comes from good leadership and fair supervision at all levels.

We want to treat employees fairly and make sure that disciplinary actions are prompt, uniform, and impartial. Our goal for any disciplinary action is to correct the problem, prevent recurrence, and prepare the employee for satisfactory service in the future.

Although your employment with us is based on mutual consent and either of us have the right to terminate employment at will, with or without cause or advance notice, we may use progressive discipline at our discretion.

Disciplinary action may call for any of four steps -- verbal warning, written warning, performance improvement plan, or termination of employment -- depending on the severity of the problem and the number of occurrences.

Progressive discipline means that, with respect to most disciplinary problems, the following steps will typically be followed:

- 1<sup>st</sup> warning: A first offense may require your supervisor to verbally counsel you about an issue of concern, and a written record of the discussion will be placed in your file for future reference.
- 2<sup>nd</sup> warning: A subsequent offense may require a written warning which will be placed in your personnel file.
- Suspension or performance improvement plan: If you have failed to resolve performance issues despite prior discussion, coaching or discipline, you may either be suspended, or placed on a performance improvement plan (PIP). PIP status will last for a predetermined amount of time not to exceed 90 days. Within that time period, you must demonstrate a willingness and ability to meet and maintain the conduct and/or work requirements as specified by your supervisor and the organization. At the end of the performance improvement period, the PIP may be closed or, if established goals are not met, a new PIP created or termination may occur.

- Termination of employment.

Certain types of problems may be serious enough to justify bypassing some of these steps, or, in extreme situations, going straight to termination. Social Service employees will follow the disciplinary procedures established by North Dakota Human Resources Department's Administrative Rules.

While it is impossible to list every type of behavior that may be deemed a serious offense, our Employee Conduct and Work Rules policy includes examples of problems that may result in discipline and/or termination.

By using progressive discipline, we hope that most problems can be corrected at an early stage, without the need to pursue any additional interventions.

### 612 Employment Resignation and Termination

*Effective Date: 05/07/2018*

Termination of employment is an inevitable part of personnel activity within any organization, and many of the reasons for termination are routine. Below are examples of some of the most common circumstances under which employment is terminated:

**Resignation / Retirement** occurs any time you notify us of your intent to end your employment with us. If you wish to resign from your employment with us, please notify your supervisor in writing at least 2 weeks' prior to your last day of employment with us. If you are in management, we ask that you provide 1 month notice. Your last day of work, you must be physically present; you cannot use annual leave or sick leave for the last day.

If you resign, we may schedule an exit interview with you during your notice period to discuss the reasons for your resignation and the effect of the resignation on your benefits.

In some circumstances, we may need to adjust your last day of employment to a date sooner than the date you requested in your resignation.

**Discharge / Termination** occurs when we make the decision to terminate your employment for performance or conduct reasons.

**Layoff** occurs when we make the decision to end your employment for non-disciplinary reasons, such as business slow-downs, reorganizations, etc.

Your employment with us is voluntary and is subject to termination by you or us at will (except Social Services, which is subject to North Dakota Human Resources Department's Administrative Rules), with or without cause, and with or without notice, at any time. You will receive your final pay in accordance with applicable state laws.

**613 Health Insurance Portability & Accessibility Act (HIPAA)***Effective Date: 05/07/2018*

The Cass County HIPAA policies contained herein shall apply to each and every affected Department in Cass County relevant to the storage and dissemination of Individuals Identifiable Health Information ("IIHI") (hereinafter "Privacy Regulation").

It is the policy of Cass County to provide for enhanced security and privacy of individual health information and standardize data interchanges between Cass County and healthcare organizations, the State of North Dakota or other business associates.

**Appointment and Duties of Data Privacy Officer**

The Cass County Administrator, Auditor and Social Services Director shall serve as the Privacy Officers for Cass County (hereinafter "Privacy Officers"). The Privacy Officers shall carry out and implement the policies stated herein and otherwise required under applicable Federal, State, and local laws.

The Privacy Officers shall receive requests or complaints and should provide information about matters covered by HIPAA. The Privacy Officers need to be familiar with privacy regulations. Delegation of some of these duties may be given by the Privacy Officer to those whom they may designate within their departments. The County Administrator is the point person for implementation of these policies in Cass County, as a whole.

**Minimum Necessary Policies**

Cass County will make reasonable efforts to limit the use and disclosure of IIHI. Release will be to accomplish the intended purpose of the use or disclosure. In general, release policies do not apply in the following circumstances:

- Disclosures for treatment;
- Use or disclosures made to the individual subject of the data;
- Disclosures made to DHS, Office of Civil Rights;
- Use or disclosure as required by law or court order;
- Use or disclosure required for compliance with the privacy regulation.

For the appropriate uses, Cass County will provide access to IIHI only to those employees on a "need to know" basis. Employees will only be given information that the employee needs to have in order to accomplish a given function and only for proper administration of HIPAA. Cass County will limit the amount of IIHI disclosed to the amount reasonably necessary to achieve the purpose of the disclosure on a case-by-case basis. For appropriate uses, Cass County will release non-routine IIHI when it is determined that the request constitutes a valid request and IIHI to be disclosed will be limited to the amount reasonably necessary to accomplish the purpose of the disclosure.



Cass County may rely on a reasonable request as the minimum necessary for the stated purpose(s) when:

- The disclosure is to a public official as allowed in the social responsibility reporting found in § 45 CFR 164.512;
- The information is requested by another covered entity;
- The information is requested by an employee or business associate of Cass County;
- The disclosure is for research purposes and the County has documented a waiver approval as required by 45 CFR 164.512(1).

### **Access to Designated Record Set**

Individuals have a right to access any protected health information that is used to make decisions about the individual subject of the data, including information used to make healthcare decisions or information used to determine whether a claim will be paid. The individual has a right to access their "designated record set." The right of access also applies to healthcare clearinghouses, healthcare providers that create or receive protected IIHI other than as a business associate of Cass County.

For Cass County's purposes, the following is defined as a "designated record set:"

- A group of records maintained by Cass County that is: a) the medical records and billing records about individuals; b) the enrollment, payment, claims adjudication and case management record systems maintained by Cass County; c) used, in whole or in part, by or for Cass County to make decisions about individuals.
- The term "record" means any item, collection, or grouping of information that includes protected IIHI data and is maintained, collected, used or disseminated by the County.

Cass County will permit any individual to request access to inspect or copy the designated record set applicable to that individual for as long as it is maintained by Cass County, with the following exceptions:

- Psychotherapy notes;
- Information compiled in reasonable anticipation of a civil, criminal or administrative action or proceeding;
- Information held by clinical laboratories if access is prohibited by the Clinical Laboratory Improvements Amendment of 1988 (42 USC 263a);
- Any data that North Dakota State Law classifies as "confidential" or protected nonpublic.

Cass County will require that any individual requesting access to present that request in writing. This is in conformity with Cass County's basic data practices protocol. A Release of Information document must be completed.

Requests for access to IIHI will be handled by the Privacy Officer in the affected department or their designees. Requests should be sent to one of the following:

**Cass County Auditor**

211 9th Street South  
Fargo ND 58103

**Cass County Human Resources**

211 9th Street South  
Fargo ND 58103

**Cass County Social Services**

1010 2nd Avenue South  
Fargo ND 58103

If Cass County provides access to IIHI, it will act on the request within thirty (30) calendar days. One thirty (30) day extension will be allowed. Cass County will charge a reasonable, cost-based fee that will only include the cost of copying, postage and preparation of an agreed upon summary or explanation of the IIHI.

If Cass County denies access to IIHI, Cass County will provide a timely, written denial that states the basis for the denial and the procedures for making a complaint to the County Administrator. The individual has a right to a review of the denial of access by the County Administrator who did not participate in the original decision to deny access. In some situations, the individual would have the right to review a denial by a designated licensed health professional who did not participate in the original decision. Those scenarios include, but are not limited to, the following:

- A licensed healthcare professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person.
- The protected IIHI makes reference to another person (unless such other person is a healthcare provider) and a licensed healthcare professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person.
- The request for access is made by the individual's personal representative and a licensed healthcare professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

Some information maintained by Cass County is not used to make healthcare decisions, such as management information systems that are used for quality control or peer review analysis. In accordance with the privacy regulations, Cass County is not required to grant an individual access to protected IIHI maintained in these types of information systems.

Cass County will provide upon request, a six (6) year accounting of disclosures made of the individual's IIHI, except for disclosures:

- To carry out treatment, payment or healthcare operations;
- To the individual data subject;
- To facility directories or to persons involved in the individual's care or other notification purposes [45 CFR 164.510(b)];
- For national security or intelligence purposes;
- To corrections officials or law enforcement personnel when the individual is in custody [45 CFR 164.512(k)(5)]; or
- Which were made before the compliance date.

In certain circumstances involving health oversight agencies or law enforcement agencies, Cass County may temporarily suspend the individual's right to receive an accounting of disclosures.

Cass County will permit an individual to request that Cass County amend IIHI. Cass County will require that the request be in writing and that a reason be stated for the amendment. Cass County will so inform any individual of this expectation. All requests to amend IIHI data should be sent to the County Administrator. Cass County will have up to sixty (60) calendar days to act on the request. One thirty (30) day extension is allowed. The subject of the data's written request will become a part of any case file maintained on the subject.

If Cass County decides to accept an amendment, Cass County will:

- Make the appropriate amendment to the protected IIHI or record that is the subject of the request for amendment by, at a minimum, identifying the records in the designated record set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.
- Timely informing the individual that the amendment is accepted. Cass County will obtain agreement from the individual to allow Cass County to share the amendment with individuals or entities identified by the individual and Cass County.
- Make reasonable efforts to inform and provide the amendment within a reasonable time to: a) persons identified by the individual as having received protected IIHI about the individual and needing the amendment; and b) persons, including business associates that Cass County knows have the protected IIHI that is the subject of the amendment and that may have relied, or could foreseeably rely, on such information to the detriment of the individual.

If Cass County denies all or a part of the requested amendment, Cass County will:

- Provide the individual with a timely, written denial. The denial will use plain language and contain: a) the basis for the denial; b) the individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement; c) a statement that, if the individual does not submit a statement of disagreement, the individual may request that Cass County provide the individual's request for amendment

- and the denial with any future disclosures of the protected IIHI that is the subject of the amendment; and d) a description of how the individual may complain to Cass County or to the Office of Civil Rights.
- Permit the individual to submit a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such agreement. Prepare a written rebuttal to the individual's statement of disagreement.
  - Identify the record or protected IIHI in the designated record set that is the subject of the disputed amendment and append or otherwise link the individual's request for an amendment, Cass County's denial of the request, the individual's statement of disagreement, if any, and Cass County's rebuttal, if any, to the designated record set.
  - If the individual has submitted a statement of disagreement, Cass County must include the material appended, or an accurate summary of any such information, with any subsequent disclosure of the protected IIHI to which the disagreement relates.

If Cass County is informed by another covered entity of an amendment to an individual's IIHI, Cass County will amend the protected IIHI in designated record sets. Amendments will be made in a reasonable time period, as expeditiously as possible.

### **Business Associate Relationships and Amending Business Associate Contracts or Agreements**

A "business associate" is a person or entity who is not a member of Cass County's workforce and who performs a function for Cass County which requires it to use, disclose, create, or receive IIHI. Cass County may disclose IIHI to another entity if it receives satisfactory assurances, provided in a written contract, that the business associate will appropriately safeguard the IIHI. If Cass County and business associate are both governmental entities, a memorandum of agreement will provide satisfactory assurances.

The requirement for business associates does not apply to:

- Disclosures made to a provider for treatment;
- Disclosures made to a health-plan sponsor; and
- Use or disclosures by a health plan that is a government program providing public benefits, if eligibility for, or enrollment in, the health plan is determined by an agency other than the agency administering the health plan, or if the protected IIHI used to determine enrollment or eligibility in the health plan is collected by an agency other than the agency administering the health plan, and such activity is authorized by law, with respect to the collection and sharing of IIHI for the performance of such functions by the health plan and the agency other than the agency administering the health plan.

A contract or other written arrangement will provide satisfactory assurances to Cass County that the business associate will comply with HIPAA requirements necessary to protect the protected IIHI shared by Cass County. The contract or other written arrangement will establish permitted and required uses and disclosures and will also require the business associate to:

- Appropriately safeguard the IIHI;

- Report any misuse of IIHI;
- Secure satisfactory assurances from any subcontractor;
- Grant individuals access and ability to amend their IIHI;
- Make available an accounting of disclosures;
- Release applicable records to Cass County, if requested; and
- Upon termination, return or destroy all IIHI.

The contract or other written arrangement will authorize termination if the business associate violates its terms. If Cass County knows of a pattern of non-compliance with HIPAA by the business associates, Cass County realizes it will be found to be non-compliant unless Cass County took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful:

- Terminate the contract or arrangement, if feasible; or
- If termination is not feasible, report the problem to the Privacy Officer.

### **Verification Policies**

Before disclosing IIHI, Cass County will verify the identity of the person requesting the IIHI and the authority of that person to have access. Cass County may rely on written statements, if such reliance is reasonable. For public officials, Cass County may rely on an identification badge or a letter written on government letterhead. Cass County will treat a personal representative as the individual for purposes of the privacy regulations:

- A personal representative is someone who has, under applicable law, the authority to act on behalf of an individual in making decisions related to health care.
- Cass County will abide by special provisions for unemancipated minors, deceased individuals, and abuse-neglect and endangerment situations.

Cass County will accommodate all reasonable requests from individuals to receive communication of protected IIHI by alternative means or at an alternative location, provided the individual clearly states that disclosure of all or part of that information could endanger the individual.

Cass County will not retaliate against any person for exercising a right under the HIPAA privacy regulations, or for filing a complaint, participating in an investigation, or opposing any lawful act relating to the privacy regulations.

Cass County will reasonably safeguard protected IIHI from any intentional or unintentional use or disclosure that is in violation of the HIPAA privacy standards. Records stored in Cass County will be kept secure at all times, and IIHI will not be stored or kept in unsecured areas.

### **Training**

Cass County will train all members of its workforce in the policies and procedures adopted by Cass County necessary to comply with the HIPAA privacy regulations. Department staff will receive initial training at the time of implementation of the privacy regulations. Additional

training will be provided to each new member of Cass County's work force at the time of hire, and each member of the workforce whose functions are affected by a material change in the required policies or procedures.

Cass County will apply appropriate disciplinary sanctions to employees who fail to comply with Cass County's privacy policies or procedures or who fail to comply with the HIPAA privacy regulations.

## Employee Acknowledgement Form

The employee handbook describes important information about my employment, and I understand that I should consult my Department Head regarding any questions not answered in the handbook. I have entered into my employment relationship voluntarily and acknowledge that there is no specified length of employment. Accordingly, either I or the organization can terminate the relationship at will, with or without cause, at any time, so long as there is no violation of applicable federal or state law, with the exception of Social Services, which is subject to the North Dakota Human Resources Department's Administrative Rules.

Since the information, policies, and benefits described here are necessarily subject to change, I acknowledge that revisions to the handbook may occur, except to the policy of employment at-will. I acknowledge that the handbook is maintained on the Cass County website and that I have been shown how to view it and print it, if desired. Only the County Administrator or the Cass County Commission has the ability to adopt any revisions to the policies in this handbook. All such changes may be communicated through official notices, and I recognize that revised information may supersede, modify, or eliminate existing policies.

I understand a new Employee Acknowledgement Form may not be obtained for any subsequent changes. Furthermore, I acknowledge that this handbook is neither a contract of employment nor a legal document. I have received access to the handbook, and I understand that it is my responsibility to read and comply with the policies contained in the handbook and any revisions made to it.

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*Employee's Signature*

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*Date*

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*Employee's Name (typed or printed)*

## *APPENDIX A*

### **REQUIRED ALCOHOL AND CONTROLLED-SUBSTANCE TESTING OF EMPLOYEES IN SAFETY-SENSITIVE POSITIONS**

In an effort to prevent injuries and deaths due to drug-or alcohol-impaired drivers operating commercial vehicles, the United States Congress enacted the Omnibus Transportation Employee Testing Act of 1991 (the 'Act'). This federal law mandates drug and alcohol testing for certain classes of transportation employees.

All Cass County employees who, as a requirement of their job, operate vehicles classified as commercial and have a commercial driver's license, are considered to be in "safety-sensitive positions" and are subject to the Act. Employees in the following job categories are subject to this policy:

Equipment Operators  
Highway Foremen  
Temporary employees operating commercial vehicles

This policy applies at all times when an employee is on duty, regardless of the task the employee is performing. Employees are subject to alcohol testing requirements only just prior to, just after, or when performing safety-sensitive functions. Provisions for disciplinary actions are based on the independent authority of the County.

#### **Alcohol Prohibition**

Employees must:

1. Test when requested.
2. Not use alcohol, in any form, on the job (including mouthwash or cough syrup containing alcohol).
3. Not have even one drink fewer than 4 hours before work duties begin.
4. Not work under the influence of alcohol.
5. Not remain on work duty with a breath-alcohol concentration (BAC) of .02 or greater.
6. Not use alcohol within 8 hours after an accident or until undergoing post-accident alcohol test.

The Act requires that covered employees be available to be tested for alcohol while on duty and just prior to, just after, or while performing a safety-sensitive function. Employees who refuse to be tested or to cooperate in testing, or who attempt to alter test results, are subject to termination procedures.



### **Controlled-Substance Prohibition**

Employees must:

1. Test when requested.
2. Not use illegal controlled substances.
3. Not use prescription drugs containing controlled substances contrary to the physician's instructions.
4. Notify their supervisor if using a prescription containing a controlled substance. The driver must also provide documentation that use of the drug does not adversely affect the driver's ability to operate a commercial motor vehicle.

The Act requires that employees be available to be tested while on duty.

Employees who refuse to be tested or to cooperate in testing, or who attempt to alter test results are subject to termination procedures.

### **ALCOHOL AND CONTROLLED-SUBSTANCE TESTS**

All applicants and employees who undergo County-mandated tests must be notified if the test result is positive.

The vendor will follow specific procedures if an alcohol-test result is positive. The procedures are required by federal guidelines and are intended to make sure that the test result is a true positive.

Tests required by the County, except for pre-employment tests and return-to-duty tests, are considered a duty assignment. Time for travel and time spent in providing the specimen at the collecting site will be with pay.

#### **Definition of Positive Alcohol Test**

Alcohol tests will be considered positive if the breath test indicates an alcohol presence of .04 or greater. If the test results are positive, the employee and supervisor will be notified before the employee leaves the test site.

If an alcohol test indicates an alcohol concentration of at least .02, but less than .04, the test is considered negative, but the driver will be taken out of service for 24 hours. The driver must use annual leave or leave without pay. Supervisor will explain the employee's options.

#### **Testing Vendor Responsibilities in Alcohol Tests**

If the initial test results are .02 or greater, the testing vendor will wait 15 minutes and then issue a retest or confirmation test. During the 15-minute waiting period before the confirmation test, the employee will be given a set of instructions (for example, no eating or drinking) that must be followed. If the employee does not follow these instructions, it may be considered an attempt to alter the tests results. The confirmation test result is used to make decisions about employment and treatment.

### **Definition of Positive Controlled-Substance Test**

A test will be considered positive if controlled substance for which no legitimate explanation is determined by the medical review officer is found in the urine specimen.

### **Testing Vendor Responsibilities in Controlled-Substance Tests**

Controlled-substance tests must use proper laboratory procedures.

If a test is positive, it will be reviewed by the physician serving as the testing vendor's medical review officer (MRO). The MRO will follow specific procedures required by the federal guidelines. These procedures are intended to make sure that the test result is a true positive. The MRO will call the employee who has tested positive, discuss what might have caused the test result to be positive, and make sure of the result before notifying the County. If the test remains positive, the employee may request, at his or her expense, that a second independent analysis be performed on the untested portion of the sample.

### **Pre-Employment Tests**

New employees will be hired for safety-sensitive positions on the condition of a negative drug test (administered after being chosen but before starting safety-sensitive tasks) and a drug testing record from previous employers that shows no drug use for the previous two years or successful treatment followed by a lengthy nonuse time period.

County job announcements will say whether the position is safety-sensitive and requires pre-employment drug-testing.

### **Post-Accident Tests**

Drivers are responsible for notifying the County of any vehicle accident.

1. In an accident resulting in a death, all County drivers working at the scene must undergo post-accident testing.
2. In an accident which does **not** result in a death, but in which the County driver is cited for a moving traffic violation, and (A) if the accident involved bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene, or (B) when one or more motor vehicles incur disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

A driver who is subject to post-accident testing shall remain readily available for 8 hours for such testing or may be deemed to have refused to submit to testing. Post-accident breath alcohol tests must be completed within eight hours of the accident or it should not be done. The drug test should be completed within 32 hours of the accident or it should not be done. Employees must be tested for alcohol within two hours and controlled substances within 32 hours after all accidents resulting in a death or where the driver is cited for a moving violation. If the alcohol test is not administered within two hours, the supervisor must file and maintain records stating why. If no alcohol test is administered within 8 hours of the accident, no test will be given, and the supervisor must file and maintain records stating the reason for the delay and the lack of testing.

Employees must remain at work, but must not perform safety-sensitive functions, until the post-accident alcohol test is administered or 8 hours after the accident.

If the controlled-substance test is not administered within 32 hours, no test will be given, and the supervisor must file and maintain records stating the reason for the delay and the lack of testing.

### **Random Tests**

A minimum number of alcohol tests, equal to 25 percent of the average number of County drivers covered under the Act, will be performed each year. The vendor will select drivers using a computerized random-selection program. Drivers selected will be tested only while the driver is on duty and just prior to, just after, and while performing a safety-sensitive function.

A minimum number of controlled-substance tests, equal to 50 percent of the average number of drivers, will be performed each year. Tests may be performed at any time the driver is on duty, regardless of the duties being performed at the time of testing.

Drivers may potentially be tested at any time, even if there is a recent previous test. Once a driver is notified of the testing, he or she must report immediately to the testing site.

### **Reasonable-Suspicion Tests**

A driver must undergo alcohol or controlled-substance testing when his or her supervisor has reason to believe that the driver has used alcohol or controlled substances in violation of the Act or this policy. An alcohol test may be administered just prior, just after, or while the employee is performing a safety-sensitive function.

All supervisors will be given adequate training to make judgments about a reasonable suspicion of drug or alcohol use. The supervisor's judgment must be based on specific observations relating to appearance, behavior, speech, or body odors, including indications of the chronic and withdrawal effects of controlled substances. The supervisor must document the observations fully upon notifying the employee that testing is required. Supervisors will be trained regarding physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

If the alcohol test is not administered within two hours following the supervisor's observation, the supervisor must file and maintain records explaining the reason for the delay. If the alcohol test is not administered within eight hours following the supervisor's observation, no tests will be given, and the supervisor must file and maintain records explaining the reason for the delay and the lack of testing. Employees must remain at work, but must not perform safety-sensitive functions, until the reasonable suspicion test is administered or eight hours after the reasonable suspicion was determined.

If the controlled-substance test is not administered within 32 hours, no test will be given, and the supervisor must file and maintain records stating the reason for the delay and the lack of testing.

All employees, including non-supervisory employees, may call their supervisor or the testing vendor to ask any questions about the program, or to state their suspicions about another

employee, including a supervisor. The caller must give his or her name, but the names will be kept confidential to the extent possible under the open records law.

**Return-to-Duty Tests**

If any test result is positive and the course of treatment recommended by a licensed addiction counselor has been completed, the driver must submit to return-to-duty alcohol or controlled substance tests prior to resuming duties.

The return-to-duty alcohol test must indicate a breath-alcohol concentration of less than .02. Controlled-substance test results must be negative.

**Follow-up Tests**

Unannounced follow-up tests are required for any driver who, after a positive test result, is determined by a licensed addiction counselor to need help with alcohol or controlled substance abuse.

**Controlled Substance Test**

| Results  | Employee Status                | Required Action  |
|----------|--------------------------------|--|
| Positive | Applicant                      | Not hired  |
| Positive | Employee<br>Temporary Employee | Taken off duty; referred to a licensed addiction counselor for evaluation and treatment; Subject to County discipline, up to and including termination |

**Alcohol Test**

| Results    | Employee Status                | Required Action  |
|------------|--------------------------------|--|
| .02 - .039 | Employee<br>Temporary Employee | Taken out of service for 24 hours without pay (may use annual leave if available); Subject to County discipline, up to and including termination       |
| .04 - .99  | Employee                       | Taken off duty; referred to a licensed addiction counselor for evaluation and treatment; Subject to County discipline, up to and including termination |
| .04 - .99  | Temporary Employee             | Taken off duty; referred to a licensed addiction counselor for evaluation and treatment; and terminated  |

|     |                                |   |
|-----|--------------------------------|---|
| .1+ | Employee<br>Temporary Employee | Taken off duty; referred to a licensed addiction counselor for evaluation and treatment; and terminated |
|-----|--------------------------------|---|

### Other Prohibited Conduct & Required Action

| Prohibited Conduct  | Employee Status                | Required Action  |
|---|--------------------------------|--|
| Refusing to be tested   | Applicant                      | Not hired  |
| Refusing to be tested   | Employee<br>Temporary Employee | Terminated   |
| Reporting for duty fewer than 4 hours after having a drink  | Employee<br>Temporary Employee | Taken off duty; referred to a licensed addiction counselor for evaluation and treatment; Subject to County discipline, up to and including termination |
| Unless the test is complete within 8 hours after reasonable suspicion occurrence or accident in which there was a fatality or citation for moving violation   | Employee<br>Temporary employee | Taken off duty; referred to a licensed addiction counselor for evaluation and treatment; Subject to County discipline, up to and including termination |
| Possessing or consuming alcohol, i.e. beverage as defined in Title V of the ND Century Code, on the job   | Employee<br>Temporary Employee | Taken off duty; referred to a licensed addiction counselor for evaluation and treatment; Subject to County discipline, up to and including termination |
| Possessing or consuming cough syrup, mouthwash, or any other substance containing alcohol while on the job  | Employee<br>Temporary Employee | Taken off duty; referred to a licensed addiction counselor for evaluation and treatment; Subject to County discipline, up to and including termination |
| Possessing or using a controlled substance without a prescription   | Employee<br>Temporary Employee | Taken off duty; referred to a licensed addiction counselor for evaluation and treatment; Subject to County discipline, up to and including termination |
| Performing a safety sensitive function while using a prescription containing a controlled substance when a physician has not instructed the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle | Employee<br>Temporary Employee | Taken off duty; referred to a licensed addiction counselor for evaluation and treatment; Subject to County discipline, up to and including termination |

### **Evaluation of Employees with Positive Test Results**

Any employee who has a positive test result or engages in prohibited conduct as described in this policy will be referred to a licensed addiction counselor for an evaluation to determine what help is necessary. If a rehabilitation program is prescribed, the licensed addiction counselor will determine whether the driver has followed the program. All costs of employee assistance will be at the employee's expense.

If an employee receives a positive test result on an alcohol test, the licensed addiction counselor will recommend the frequency of follow-up testing, (However, if an employee receives a positive test result on a drug test, the MRO recommends follow-up testing.) Follow-up testing will consist of at least 6 unannounced tests in the first 12 months. These follow-up tests are in addition to any random tests that the employee might happen to be chosen for. No follow-up testing will be conducted more than 60 months after the driver's return to duty. However, potential random tests will continue to be administered for which the employee may be randomly selected.

### **Out-of-Service Request**

All drivers are subject to call for emergency duties. However, if the driver has had even one drink in the four hours prior to the call or suspects that he or she may have a breath-alcohol concentration .02 or above, the driver must take himself or herself out of service. No disciplinary measures will be taken when the driver requests to take him or herself out of service. However, repeated work absences due to repeated out of service requests could result in a determination of unsatisfactory attendance and work performance.

### **Disciplinary Action**

The charts above show the required action required for controlled-substance tests, alcohol tests, and prohibited conduct. Any employee who commits any of the acts where the required actions say 'terminated' will automatically lose employment with the County.

However, in order to determine the appropriate progressive disciplinary action, all other violations-such as situations where the employee will be evaluated and treated under a licensed addiction counselor will be evaluated based on their severity, the degree of danger to other employees and the general public, and the frequency of occurrence.

### **Self-Referral to a Licensed Addiction Counselor**

All drivers who feel they have a problem with the use of alcohol or controlled substances may refer themselves for evaluation and any needed rehabilitation through a licensed addiction counselor. No employee will be subjected to disciplinary action for self-referral.

### **Supervisors' Responsibilities**

Supervisors include:

- Foremen
- Superintendent
- Design and Construction Supervisor
- County Engineer

No County supervisor of employees in safety-sensitive positions will permit any driver to violate this policy. All supervisors must require reasonable-suspicion testing of any employee who would appear to be in violation of this policy. Failure to carry out supervisory duties under this policy will result in disciplinary action up to and including dismissal.

All responsible administrators and supervisors will receive the training necessary to perform their supervisory duties. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

All supervisors and administrators are bound by the rules of confidentiality. No information may be released except as provided in this policy or expressly authorized by 49 CFR 382.405. No administrator or supervisor responsible for implementing random testing may give any notice or information about upcoming test requirements. Any violation of these confidentiality requirements will result in disciplinary action up to and including termination.

### **Program Administration**

The Association of Counties will be the County's coordinator for the program, responsible for implementing and overseeing the program. Duties will include managing the vendor contract, responding to inquiries from the U.S. Department of Transportation, and relaying information on positive test results directly from the vendor to the county contact personnel.

The County Engineer will be the local coordinator for the program. In the absence of the County Engineer, the Maintenance Superintendent will be responsible for relaying information on positive test results.

### **Required Records**

The County, acting through any vendors providing services under this section, will maintain necessary records at the primary vendor's place of business. In all cases, information must be available at the County within 24 hours if requested by officials of the U.S. Department of Transportation responsible for the testing program.

#### Record retention schedule:

Retain for five years

1. Results of driver-alcohol tests indicating an alcohol concentration of .02 or greater
2. Results of positive controlled-substance tests
3. Documentation of refusals to submit to tests
4. Calibration documentation
5. Driver evaluation and referrals
6. Annual summary

Retain for two years

1. Records related to the alcohol and controlled-substance process.
2. Training.

Retain for one year

1. Records of negative and canceled controlled-substance test results and alcohol-test results with a concentration of less than .02.

Each year, the vendor will prepare an annual summary, in the format prescribed by the County, of the program results for previous calendar year. The summary will be retained 5 years.

All testing information about individual drivers is confidential and is not in the public domain and will be maintained in the same manner as other county medical records. Such information may not be released except as required by law or expressly authorized by 49 CFR 382.405.

### **County Requirements to Inquire with Previous Employers**

The County must inquire with previous employers at the time of hiring someone to fill a safety-sensitive position. Applicants must sign a release of information allowing County officials to inquire with previous employers about the applicant's drug-testing history during the previous two years. Information that may be requested includes:

- Previous test dates
- Positive test results
- Refusals to test
- Evaluation and rehabilitation results

### **County Requirements to Inform Prospective Employers**

If asked, and the proper release of information is provided, the County will disclose the following information to any potential future employers of drivers covered under the County's alcohol-and drug-testing programs:

- Results of any tests which a driver took
- Any referral for evaluation and rehabilitation
- The results of any such referral

### **County Requirements to Notify Employees About This Policy**

New employees will be notified about this policy after they are hired but before they report to work with the County. They must sign off, indicating that they have read and understood the policy, before they begin work duties with the County.





METRO  
FLOOD  
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AUTHORITY

# Diversion Authority Board Meeting

March 24, 2022

Executive Director Report

Joel Paulsen

## Media Highlights & Events

- Kris Bakkegard and Jason Benson presented at the ND Transportation Conference on March 2, 2022
- John Shockley and Joel Paulsen presented at the P3 Conference on March 15, 2022
- Flowage Easement Public Meetings held March 14-16 and March 21 & 22, 2022
- Groundbreaking ceremony for DCAI tentatively scheduled for June 28, 2022, at 2:00 p.m.

## Major Project Accomplishments

- Received the Water P3 Deal of the year award on March 3, 2022
- Received the IJ Global Award for Public Project of the Year on March 17, 2022

## P3 Updates

- NTP1 issued on February 28, 2022
- Kickoff workshop held on February 22, 2022
- NTP2 is estimated for June 2022

## USACE Updates

- On schedule to award Red River Structure project in March 2022
- Drain 27 bids received
- Drayton Dam and SEAI Reach SE-2A projects out for bid and due in April 2022
- Starting design of SEAI reaches SE-4 and SE-5 in Minnesota





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AUTHORITY

# Public Outreach Update

MARCH 24, 2022

# Public Outreach/Communication Efforts



## Recently Completed

### Videos:

- Operations Video
- Construction Update
- Drone footage of first DIS gate deliveries

### Website:

- Authority page updated
- Media kit added
- Discovery session for new site

**PR:** International awards release

**Collateral Materials:** DRB recruitment

### Conferences/Meetings:

- P3 Conference & Expo
- Flowage Easement public meetings

## Coming Soon

**Videos:** Land Agent profiles

**Social Media:** 2009 flood crest commemoration

### Conferences/Speaking Engagements:

- P3 Water Summit panel presentation
- WTOC update
- NDSU classes

**Research:** Preliminary meetings with partners and NDSU for labor/housing study

**Message Map:** Acquisition prices

**Crisis Communications Plan:** In final review

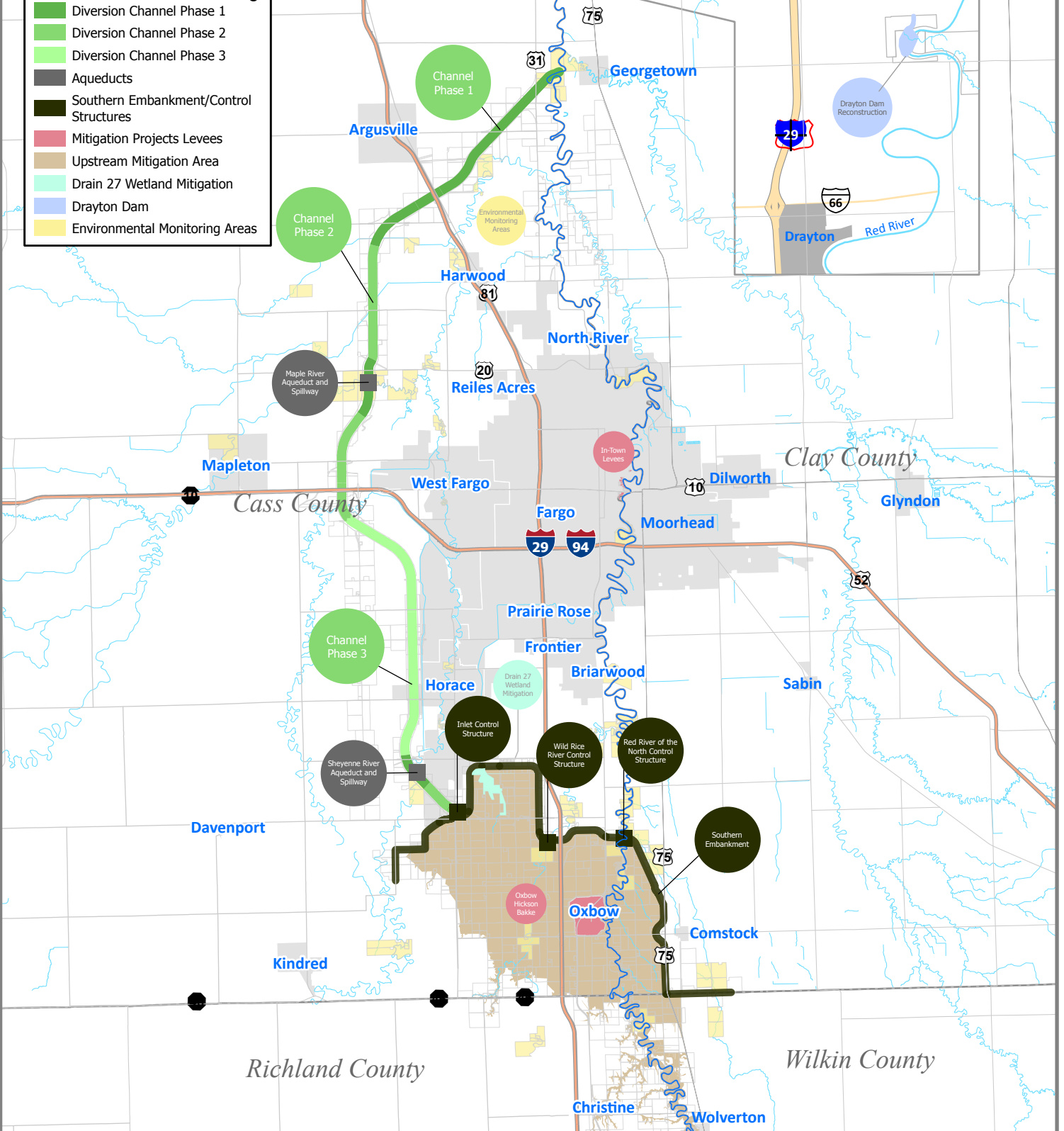


# Save the Date!

**Diversion Channel Groundbreaking**

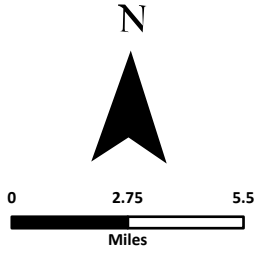
**2 p.m. Tuesday, June 28**

Invitations and details to come



- Diversion Channel Phase 1
- Diversion Channel Phase 2
- Diversion Channel Phase 3
- Aqueducts
- Southern Embankment/Control Structures
- Mitigation Projects Levees
- Upstream Mitigation Area
- Drain 27 Wetland Mitigation
- Drayton Dam
- Environmental Monitoring Areas

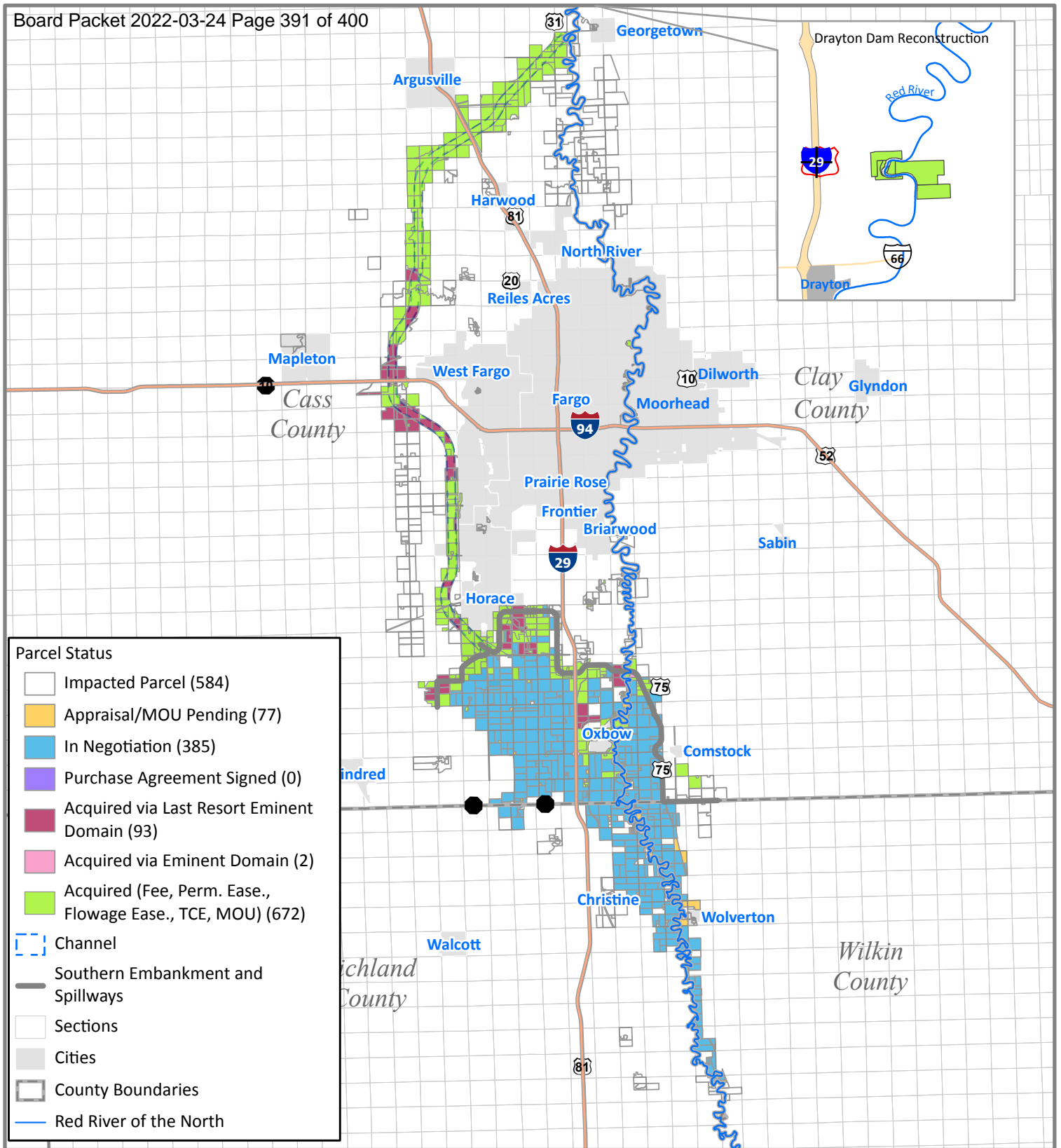
Information depicted may include data unverified by AE2S. Any reliance upon such data is at the user's own risk. AE2S does not warrant this map or its features are either spatially or temporally accurate.  
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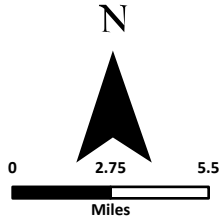
**FM AREA DIVERSION  
 KEY ACQUISITION AREAS**

Date: 3/15/2022





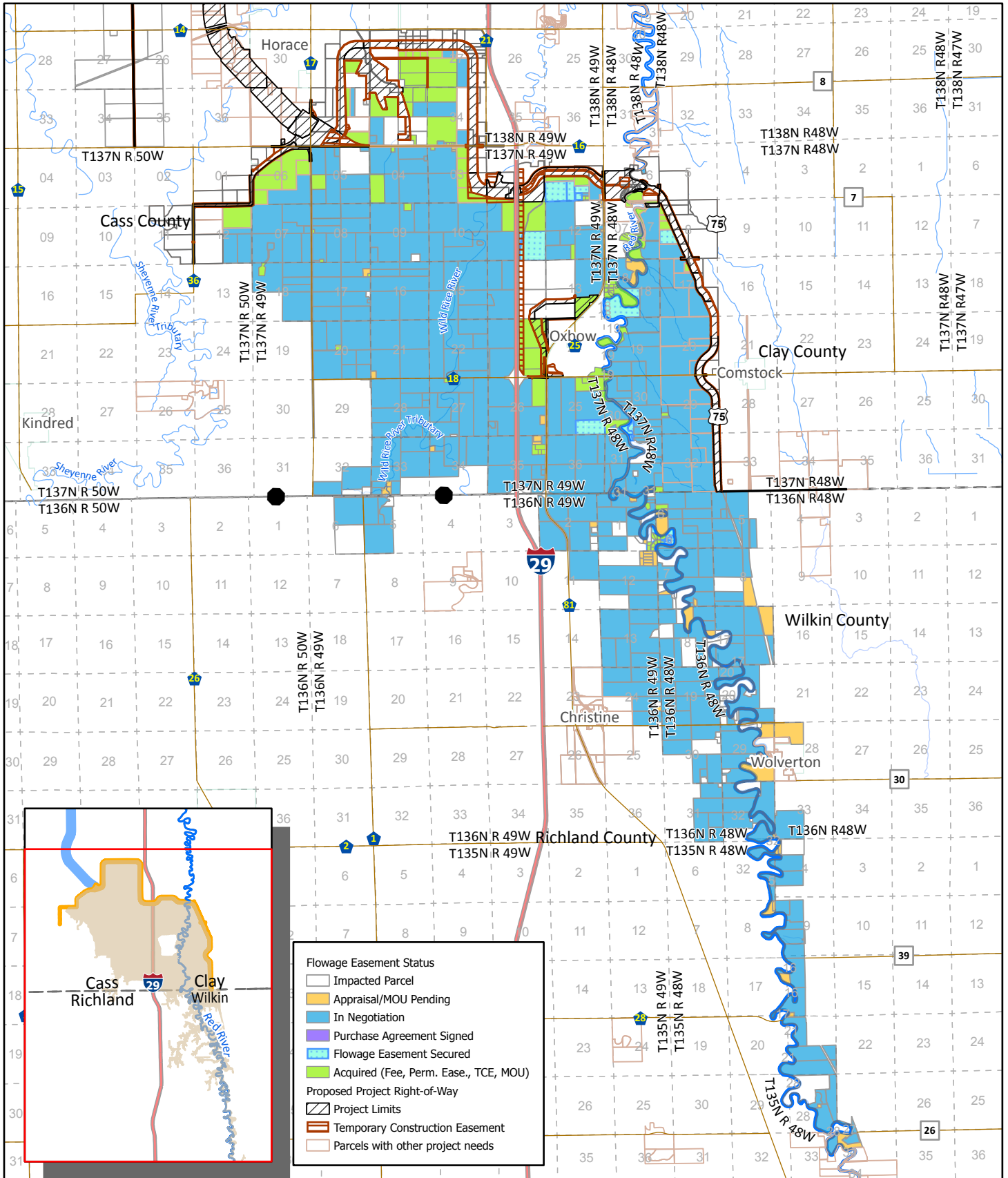
Information depicted may include data unverified by AE2S. Any reliance upon such data is at the user's own risk. AE2S does not warrant this map or its features are either spatially or temporally accurate.  
 C:\Data\Projects\GIS Projects\FM Area Diversion\FMDiversionParcelStatus.aprx, Layout: PropertyAcquisitionStatusReport\_8x11



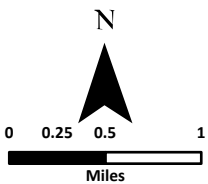
# PROPERTY ACQUISITION STATUS REPORT

Date: 3/15/2022





Information depicted may include data unverified by AE2S. Any reliance upon such data is at the user's own risk. AE2S does not warrant this map or its features are either spatially or temporally accurate. Edited by cwickenheiser | C:\Data\Projects\GIS Projects\FM Area Diversion\FMDiversionParcelStatus.aprx | Layout: UMA Status\_Flowage Easement\_8x11

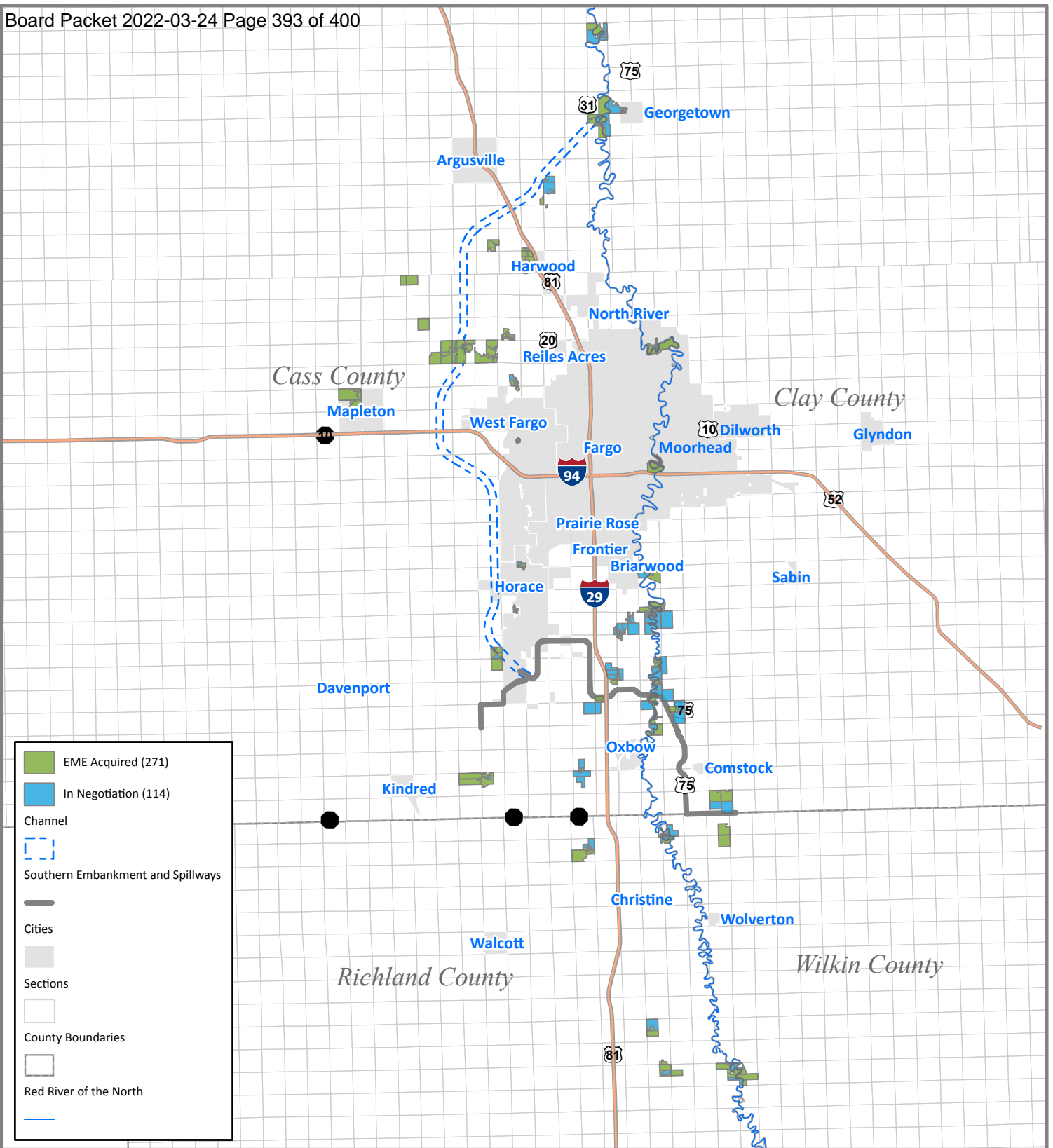


## FLOWAGE EASEMENT ACQUISITION STATUS REPORT

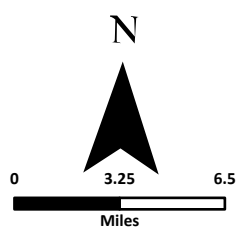
Date: 3/15/2022  
Page 3 of 10







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

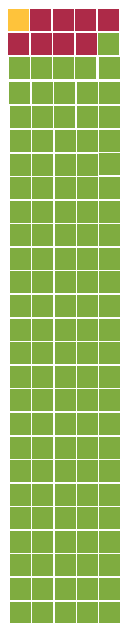
Date: 3/15/2022



# Diversion Channel

## Phase 1

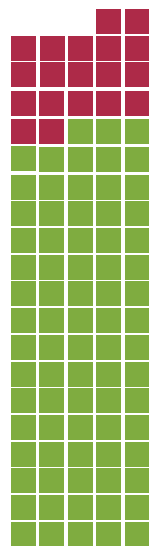
(WP LAP01)



130 parcels total

## Phase 2

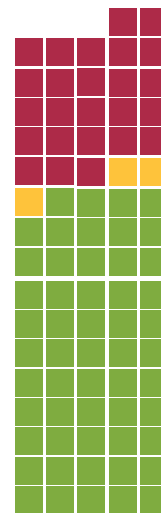
(WP LAP02)



97 parcels total

## Phase 3

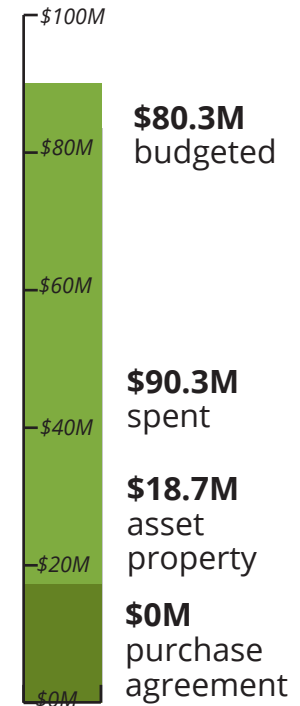
(WP LAP03)



82 parcels total

## Hard Costs paid to Property Owners

NOTE: Based on Financial data through February



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

- 0 MOU Pending
- 0 In Negotiation
- 0 Agreement Signed
- 78 Acquired MOU/TCE/FEE
- 19 Condemnation
- Change from last report

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

- Budgeted
- Purchase Agreement
- Spent
- Asset Property

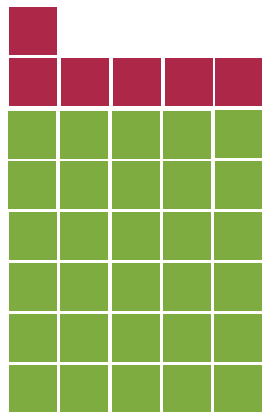
# Southern Embankment Control Structures

As of March 15, 2022

## Red River Control Structure

(WP 35)

Project Status:  
Complete

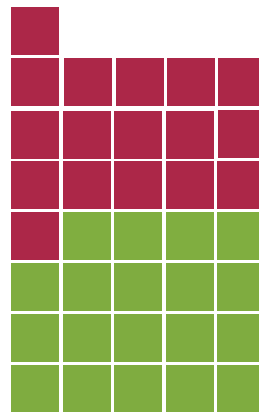


36 parcels total

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

## Drain 27 Wetland Project

Targeted Completion:  
Part 1 - October 2021  
Part 2 - June 2022



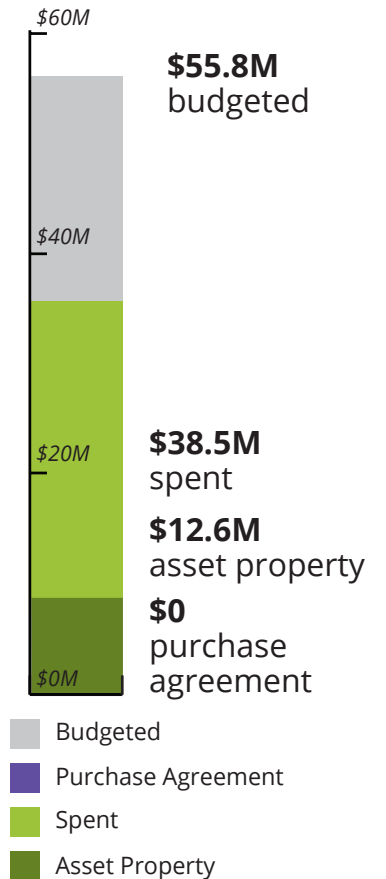
36 parcels total

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

## Southern Embankment Control Structures, & Drain 27

Hard Costs paid to Property Owners

Note: Based on financial data through February



# Southern Embankment

## Southern Embankment

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

**143 parcels total**

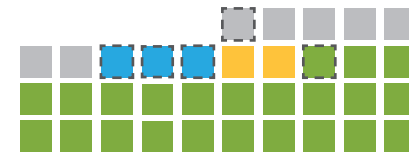
SE-1 Complete Total Parcels: 42



SE-2A Target Completion: April 2022  
 Total Parcels: 12



SE-2B Target Completion: January 2023  
 Total Parcels: 35



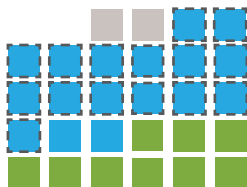
SE-3 Target Completion: November 2024  
 Total Parcels: 5



I29 Completed  
 Total Parcels: 12



SE-4 Target Completion: November 2023  
 Total Parcels: 28

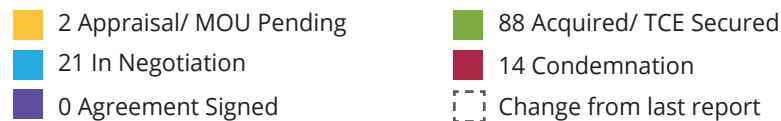


SE-5 Target Completion: November 2024  
 Total Parcels: 9



ND

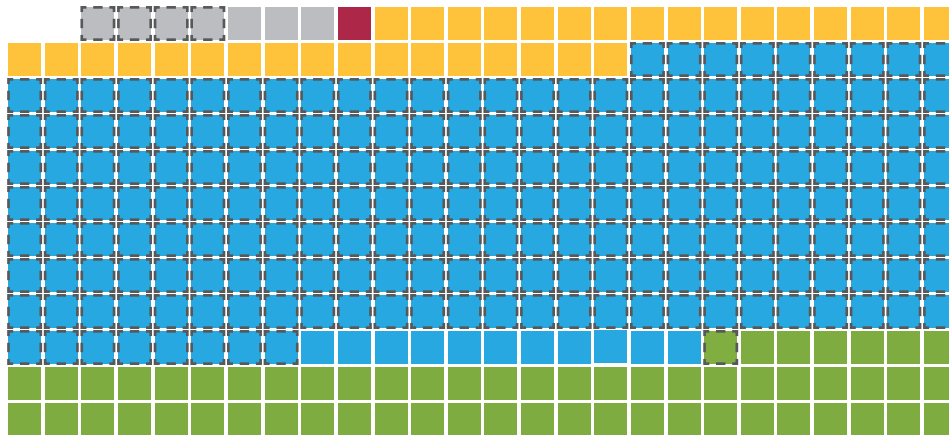
MN



# Upstream Mitigation Area - ND (UMA)

## Flowage Easements without structures (ND)

Approximately 310 parcels in ND



- 33 Appraisal/MOU Pending
- 210 In Negotiation
- 0 Agreement Signed
- 10 Flowage Easement Secured
- 49 Acquired
- 1 Condemnation
- Changed

Note: Excludes parcels in City of Christine

## Parcels with Structures (ND)

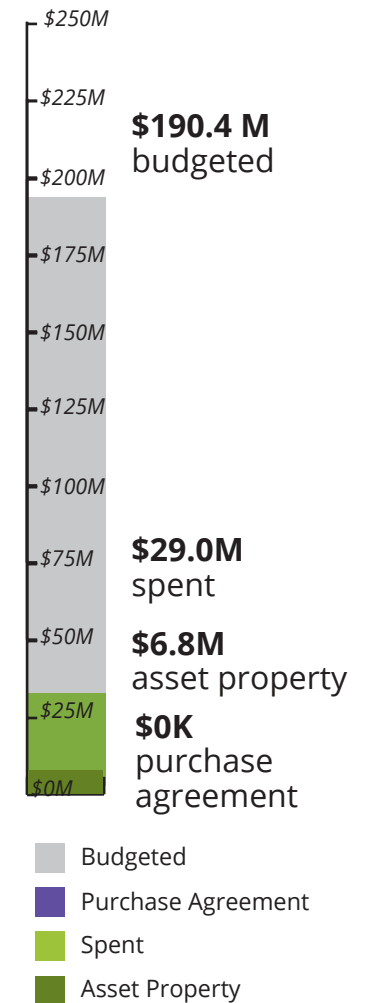
Approximately 128 parcels in ND



- 14 Appraisal/MOU Pending
- 52 In Negotiation
- 0 Agreement Signed
- 30 Acquired
- 0 Flowage Easement Secured
- Condemnation
- Changed

## ND + MN UMA Hard Costs paid to Property Owners

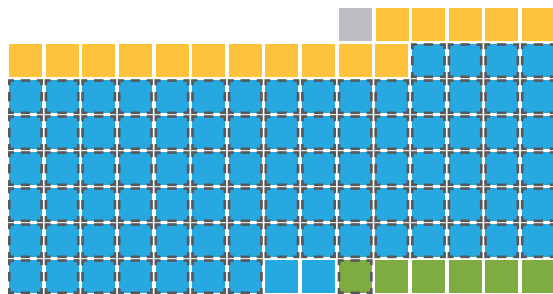
Note: Based on financial data through February



# Upstream Mitigation Area - MN (UMA)

## Flowage Easements without structures (MN)

Approximately  
111 parcels in MN



- 16 Appraisal/MOU Pending
- 88 In Negotiation
- 0 Agreement Signed
- 5 Flowage Easement Secured
- 1 Acquired
- 0 Condemnation
- Changed

Note: Excludes parcels in the City of Wolverton

## Parcels with Structures (MN)

Approximately  
33 parcels in MN



- 4 Appraisal/MOU Pending
- 19 In Negotiation
- 0 Agreement Signed
- 0 Flowage Easement Secured
- 6 Acquired
- Condemnation
- Changed



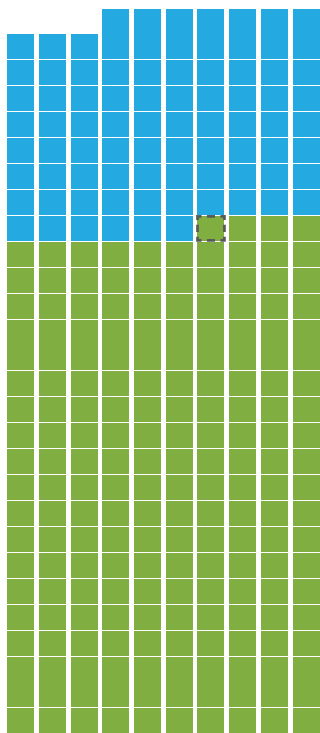
As of March 15, 2022

# Environmental Monitoring Areas (BIOGEO)

North Dakota

Minnesota

## Cass County



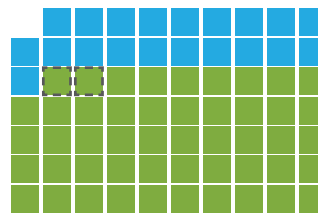
277 parcels total

## Richland County



31 parcels total

## Clay County



69 parcels total

## Wilkin County

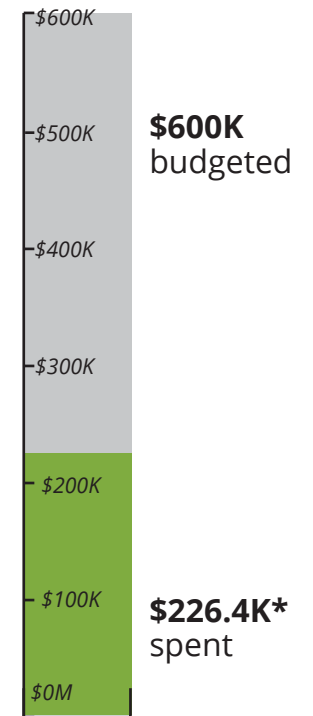


9 parcels total

- 115 In Negotiations
- 271 Environmental Monitoring
- Change from last report

## Hard Costs paid to Property Owners

Note: Based on financial data through February



\*includes payments for monuments and easements.

- Budgeted
- Purchase Agreement
- Spent

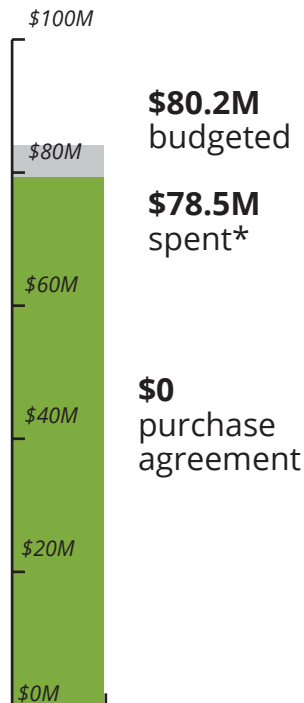
# OHB Projects

## OHB Ring Levee

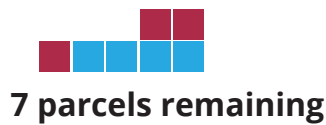
WP 43

### Hard Costs paid to Property Owners

NOTE: Based on Financial data through February



Parcels needed for remaining portion of OHB Project.



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

\* Includes parcels purchased outside the OHB Ring Levee

- Budgeted
- Purchase Agreement
- Spent
- Asset Property