

Finance Committee Agenda



Diversion Authority Finance Committee

May 25, 2022 @ 4:00p.m. CST

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

1. Call to Order
 - a. Roll call of Members
2. Approve minutes from April 27, 2022
[Attachment 00.01] (Pg. 3)
3. Approve Order of Agenda
4. Approval of Bills
[Attachment 00.02] (Pg. 6)
5. Finance Report
[Attachment 01.00] (Pg. 14)
6. Executive Director Financial Report
[Attachment 02.00] (Pg. 32)
7. Contracting Actions
[Attachment 03.00] (Pg. 39)
 - a. DA Board Approval Contract Actions
 - i. Ambassador Inc, New Service Agreement [Attachment 03.01] (Pg. 41)
 - b. DA Board Approval 2022 Cash Budget Changes
[Attachment 03.02] (Pg. 43)
8. Other Business
 - a. DA Board Approved MOU and Agreement Actions
[Attachment 04.00] (Pg. 45)
 - i. BRRWD & MFDA MOU [Attachment 04.01] (Pg. 48)
 - ii. DCN & MFDA MURA [Attachment 04.02] (Pg. 82)
 - iii. Red River Telephone & MFDA MURA [Attachment 04.03] (Pg. 123)
 - b. Recommendation for the Disposal of Organic Farmlands
[Attachment 05.00] (Pg. 164)
 - c. Program Budget and Financial Plan Re-Baseline

9. Next Meeting: June 22, 2022

10. 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
- View the Meeting on the City of Fargo's Facebook or Twitter feed.
- View the Meeting at FMDiversion.com/Meeting
- View the Meeting at [Twitter.com/FMDiversion](https://twitter.com/FMDiversion)

Metro Flood Diversion Authority Finance Committee Meeting Minutes

4:00 P.M. – April 27, 2022

City of Fargo Commission Chambers

A regular meeting of the Metro Flood Diversion Authority Finance Committee was held on April 27, 2022. The following members were present: Bernie Dardis, Mayor, City of West Fargo; Dr. Tim Mahoney, Mayor, City of Fargo; Dan Jacobson, Chairman, Cass County Joint Water Resource District; Steve Sprague, City of Fargo Interim Finance Director; Lori Johnson, Clay County Auditor/Treasurer; Mike Redlinger, City of Fargo Interim City Administrator; Rick Steen, Cass County Commissioner; Dave Piepkorn, Fargo City Commissioner; Mike Rietz, City of Moorhead Assistant City Manager and Brandy Madrigga, Cass County Finance Director.

Members absent: Chad Peterson, Cass County Commissioner and Shelly Carlson, Mayor, City of Moorhead.

1. CALL TO ORDER

Mayor Dardis called the meeting to order at 4:00 PM. Roll call was taken, and a quorum was present.

Mr. Redlinger introduced Mr. Steve Sprague. Mr. Sprague will be serving as the interim city finance director until Mr. Costin's replacement is hired.

2. APPROVE MINUTES FROM THE MARCH 2022 MEETING

MOTION PASSED

Dr. Mahoney moved to approve the minutes from the March 2022, meeting and Mr. Steen seconded the motion. On a voice vote, the motion carried.

3. APPROVE ORDER OF AGENDA

MOTION PASSED

Dr. Mahoney moved to approve the order of the agenda and Mr. Steen seconded the motion. On a voice vote, the motion carried.

4. APPROVAL OF BILLS

Mr. Sprague reported that the four bills payable through April 19, 2022, total \$612,932.27 and are payable to the usual vendors.

MOTION PASSED

Dr. Mahoney moved to approve the bills as presented and Mr. Redlinger seconded the motion. On a roll call vote, the motion carried.

5. FINANCIAL REPORT

Mr. Sprague reported that our current net position is \$101,003,494.

MOTION PASSED

Dr. Mahoney moved to approve the financial report as presented and Mr. Steen seconded the motion. On a roll call vote, the motion carried.

6. EXECUTIVE DIRECTOR FINANCIAL REPORT

Mr. Paulsen reported that \$2.6 million has been received from city sales tax revenue, \$1.3 million from county sales tax revenue and \$4 million from the state 50% match this year. Mr. Paulsen indicated that we have approximately \$8.4 million in revenue receipts to date this year.

Mr. Paulsen also reported that approximately \$26 million in expenses have been submitted to the state for reimbursement from the Legacy Bond funds.

7. CONTRACTING ACTIONS

a. DA Board Approval Contract Actions

Mr. Paulsen provided an overview of the following contracting action:

New Services Agreement – Weed Control and Mowing Services for 2022 - JT Lawn Service \$37,900.00

MOTION PASSED

Dr. Mahoney moved to approve the contracting action as presented and Mr. Jacobson seconded the motion. On a roll call vote, the motion carried.

b. 2022 Cash Budget Changes

There were no cash budget changes for approval.

8. OTHER BUSINESS

a. Program Budget & Financial Plan Re-Baseline

Mr. Nicholson reported on the budget cost update and project funding using 2018 comparisons.

The three areas that have seen the highest increases are:

1) Lands – up \$120 million

2) LRED legal fees – up \$60 million

3) Settlement agreements and mitigation – up \$110 million

The total increase from 2018 to 2022 is approximately \$280 million. These increases have not created any project affordability issues. The increase in revenue from sales tax has been beneficial along with the WIFIA loan interest rate.

b. Rural Impact Mitigation Program Loan

Ms. Smith provided an overview of the RIMP program and its purpose. The RIMP is a 10-year forgivable loan for active farmsteads and rural businesses being displaced by the project, including the Southern Embankment and Associated Infrastructure (SEAI), SWDCAI and the Upstream Mitigation Area (UMA). The RIMP is a voluntary program being implemented by the Cass County Joint Water Resource District (CCJWRD) in North Dakota and the Moorhead Clay Count Joint Powers Agreement (MCCJPA) in Minnesota but is funded by the Metro Flood Diversion Authority (MFDA). Approximately, fifteen farmsteads will qualify for the loan.

Ms. Smith asked that the budget be increased to \$15 million to meet the needs of the program. Mr. Paulsen indicated that this increase has already been included in the cash budget as an anticipated cost.

MOTION PASSED

Dr. Mahoney moved to approve the \$10 million increase to the RIMP budget and Mr. Steen seconded the motion. On a roll call vote, the motion carried.

c. City of Fargo 2022 Work Plan

Mr. Bakkegard provided an update on the progress and budget changes on the in-town projects currently being bid by the City of Fargo. The City is requesting that the Authority review and approve the estimated amounts prior to when the bids are received to allow for them to award the bids prior to the next Authority Board meeting.

FM-19-C (Phases 1 and 2): 2018 Estimate = \$13,055,000; 2022 Engineer's Estimate = \$10,037,060
Estimated Cost Reduction = (\$3,017,940)

FM-22-C1: 2018 Estimate = \$5,782,000; 2022 Engineer's Estimate = \$9,242,000
Estimated Cost Increase = \$3,460,000

FM-22-B1: 2018 Estimate = \$3,146,000; 2022 Engineer's Estimate = \$1,727,000
Estimated Cost Reduction = (\$1,419,000)

Total 2022 Estimated Cost Reduction of the Three Projects = (\$976,940)

Mr. Bakkegard proposed that the current estimates be approved with the following motion:

Per the "Resolution Approving the Procedure for Requesting that the City of Fargo Undertake Development of Comprehensive Project In-Kind Work Elements and Authorizing the Reimbursement of Such Development Costs and Expenses" I move to approve the Development Plan Summary Sheets and the Estimated Total Project Costs for the three City of Fargo project to begin construction in 2022. The three projects include Project No. FM-19-C – Woodcrest Flood Risk Management, Project No. FM-22-C1 – Storm Sewer Lift Stations #55 & #56 Reconstruction, and Project No. FM-22-B1 – Storm Sewer Lift Station #15 Modifications.

MOTION PASSED

Mr. Steen moved to approve the resolution and Mr. Redlinger seconded the motion. On a roll call vote, the motion carried.

d. MFDA Common Terms Describing the Comprehensive Project

Mr. Paulsen shared an updated list of combined project terms. It is for reference only and will be updated and re-distributed periodically.

9. NEXT MEETING

The next meeting will be May 25, 2022.

10. ADJOURNMENT

The meeting adjourned at 4:34 PM.

Finance Committee Bills from May 2022

Vendor	Description		
Cass County Joint Water Resource District	Diversion bills – Request #96 CCJWRD	\$	2,706,251.31
Clay County	Diversion bills – Request #18 MCCJPA	\$	652,435.52
Ohnstad Twichell, P.C.	Legal services rendered through April 21, 2022	\$	114,141.51
Cass County	Reimburse misc expenses from Diversion Authority office	\$	25,706.83
Total Bills Received through May 17, 2022		\$	3,498,535.17



Cass County
Joint Water
Resource
District

SENT VIA EMAIL

May 5, 2022

Dan Jacobson
Chairman
West Fargo, North Dakota

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

Rodger Olson
Manager
Leonard, North Dakota

Greetings:

Ken Lougheed
Manager
Gardner, North Dakota

RE: Metro Flood Diversion Project
Oxbow-Hickson-Bakke Ring Levee Project

Enclosed please find copies of bills totaling \$2,706,251.31 regarding the above referenced projects. The breakdown is as follows:

Jacob Gust
Manager
Fargo, North Dakota

Metro Flood Diversion	\$2,704,066.31
Oxbow-Hickson-Bakke Ring Levee project	2,185.00

Keith Weston
Manager
Fargo, North Dakota

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

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

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT

Carol Harbeke Lewis
Secretary-Treasurer

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

Enclosures

701-298-2381
FAX 701-298-2397
wrld@casscountynnd.gov
casscountynnd.gov

5/5/2022

Inmittee Packet 2022-05-25 Page 6 of 10							5/5/2022
Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description	
				22 00	Cass County Joint WRD	Stop payment on check in Feb for lost EME check for McNamee	
				22 00	Cass County Joint WRD	Stop payment for stop payment on EME check for Quern	
4/19/2022	3/25/2022	181322	130007	20,898 50	Ohnstad Twichell, P.C.	Legal-Diversion Right of Way Acquisition	
4/19/2022	3/25/2022	181324	160007	4,899 56	Ohnstad Twichell, P.C.	Legal-Channel Phase I	
4/19/2022	3/25/2022	181325	160007	691 50	Ohnstad Twichell, P.C.	Legal-Diversion - Drayton Dam	
4/19/2022	3/25/2022	181326	160007	1,004 50	Ohnstad Twichell, P.C.	Legal-Channel Phase II	
4/19/2022	3/25/2022	181327	160007	440 00	Ohnstad Twichell, P.C.	Legal-Channel Phase III	
4/19/2022	3/25/2022	181328	170007	65,191 56	Ohnstad Twichell, P.C.	Legal-Upstream Mitigation Area	
4/19/2022	3/25/2022	181329	187007	7,709 00	Ohnstad Twichell, P.C.	Legal-Diversion - Southern Embankment	
4/19/2022	3/25/2022	181220	197007	1,431 00	Ohnstad Twichell, P.C.	Legal-Western Tie Back	
4/19/2022	3/25/2022	181331	207007	5,731 00	Ohnstad Twichell, P.C.	Legal-Wetland Mitigation Drain 27	
4/19/2022	3/25/2022	181332	227007	301 00	Ohnstad Twichell, P.C.	Legal-1099 Preparation - 2021 acquisitions	
4/20/2022	4/12/2022	181571	187007	39 00	Ohnstad Twichell, P.C.	Legal-Bio/Geo Easements	
4/20/2022	4/12/2022	181572	207007	9,674 86	Ohnstad Twichell, P.C.	Legal-Delaney (O N 1202) Quick Take Eminent Domain	
4/20/2022	4/12/2022	181573	207007	6,899 26	Ohnstad Twichell, P.C.	Legal-Kvalvog/Nyquist (O N 9400) quick take eminent domain	
4/20/2022	4/12/2022	181574	207007	152 50	Ohnstad Twichell, P.C.	Legal-Larson (OIN 1199) QTED	
4/20/2022	4/12/2022	181575	207007	671 00	Ohnstad Twichell, P.C.	Legal-Gust (O N 952) quick take eminent domain	
4/20/2022	4/12/2022	181576	207007	6,693 50	Ohnstad Twichell, P.C.	Legal-Cossette (O N 722, 723) quick take eminent domain	
4/20/2022	4/12/2022	181577	207007	1,159 00	Ohnstad Twichell, P.C.	Legal-Loberg (OIN 716) quick take eminent domain	
4/20/2022	4/12/2022	181578	207007	3,284 04	Ohnstad Twichell, P.C.	Legal-Thunberg Living Trust (O N 720) QTED	
4/20/2022	4/12/2022	181579	207007	3,416 00	Ohnstad Twichell, P.C.	Legal-Larry A Brant RLT (O N 9348) QTED	
4/20/2022	4/12/2022	181580	207007	2,174 50	Ohnstad Twichell, P.C.	Legal-Julie A Ottis Revocable Trust (OIN 5024) QTED	
4/20/2022	4/12/2022	181581	207007	152 50	Ohnstad Twichell, P.C.	Legal-Janet Wanzek Estate (OIN 8672-8675, 9747) QTED	
4/20/2022	4/12/2022	181582	207007	457 50	Ohnstad Twichell, P.C.	Legal-Libbrecht, Glen (O N 698, 9756-9759) QTED	
4/20/2022	4/12/2022	181583	207007	61 00	Ohnstad Twichell, P.C.	Legal-Perhus (O N 747, 751, 5014-5015, 5277) QTED	
4/20/2022	4/12/2022	181584	207007	274 50	Ohnstad Twichell, P.C.	Legal-Thue Living Trust (O N 1169, 1200) QTED	
4/20/2022	4/12/2022	181585	207007	945 50	Ohnstad Twichell, P.C.	Legal-Jameson (OIN 9749) QTED	
4/20/2022	4/12/2022	181586	217007	7,405 00	Ohnstad Twichell, P.C.	Legal-Coster RET (OIN 9736-9737) QTED	
4/20/2022	4/12/2022	181587	217007	16,776.44	Ohnstad Twichell, P.C.	Legal-Sauvageau (OIN 1107) QTED	
4/20/2022	4/12/2022	181588	217007	152 50	Ohnstad Twichell, P.C.	Legal-Richard (O N 27 1083) QTED	
4/20/2022	4/12/2022	181589	217007	70 00	Ohnstad Twichell, P.C.	Legal-Bailly RT (O N 213/214) QTED	
4/20/2022	4/12/2022	181590	217007	244 00	Ohnstad Twichell, P.C.	Legal-Brunelle LE (O N 1108-1110) QTED	
4/20/2022	4/12/2022	181591	227007	5,085.70	Ohnstad Twichell, P.C.	Legal-Roseen QTED (OIN 25)	
4/20/2022	4/12/2022	181592	227007	2,063.14	Ohnstad Twichell, P.C.	Legal-Sauvageau - Relocation appeal (OIN 1107)	
4/20/2022	4/12/2022	181593	227007	842 50	Ohnstad Twichell, P.C.	Legal-Brei Estate LLLP (OIN 843) QTED	
4/19/2022	4/7/2022	1200422376		56,617.11	HDR Engineering Inc	TO 1 Property Acquisition Services	
4/19/2022	3/31/2022	13783 00-23		72,940.74	SRF Consulting Group Inc	Task Order No 1 - Amend 1	
4/19/2022	3/31/2022	4751		22,500 00	Crown Appraisals, Inc.	Appraisals OIN 698, 945, 9741, 9756-9760	
4/19/2022	4/1/2022	124-2021-0213		5,000 00	Integra Realty Resources	Appraisal on OIN 1169	
4/19/2022	4/1/2022	124-2021-0214		5,000 00	Integra Realty Resources	Appraisal on OIN 1200	
4/19/2022	4/5/2022	22-1		6,300 00	Tinjum Appraisal Company Inc.	Appraisal OIN 1968	
4/18/2022				516,200 00	The Title Company	R MP Loan for Prairie Storage OIN 220	
4/19/2022				16,210 00	Donna Burley	TCE	
4/19/2022	3/1/2022	234017		896 83	CHS Dakota Plains Ag	diesel fuel OIN 837	
4/18/2022	4/18/2022			1,785,201 00	The Title Company	Sauvageau property purchase	
5/3/2022	4/12/2022	121413	R12 00049	13,772 01	Ulteig Engineers	Task Order 2 - Proj management and acquisition	
5/3/2022	3/31/2022	46593	3283-00	20,475 65	ProSource Technologies LLC	Task Order 2 - Proj management and acquisition	
4/29/2022	4/18/2022	260494		200 00	The Title Company	Escrow and start up fee and first draw fee for RIMP Loan O N 220	
4/28/2022				1,150 00	Brent Quern	\$2,000 paid prior and check was lost so reissued with \$1,150	
4/29/2022	4/14/2022	1135809		125 60	Cass County Electric Cooperative	Service to 4946 170 AV SE O N 837	
4/29/2022	4/14/2022	1108711		41 81	Cass County Electric Cooperative	Service to 5210 124 Av S	
4/28/2022				2,650 00	Keith Knoke	EME on O N 1014	
4/28/2022				1,750 00	Glen Meyer	EME on O N 995	



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

May 5, 2022
Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

RE: Metro Flood Diversion Project

Greetings:

Attached to this email, please find a 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	\$652,435.52
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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 12th Ave S
PO Box 280
Moorhead, MN 56560

FM Diversion MCCJPA invoices

Processed

Vendor	Invoice Date		Invoice Amount	Invoice #	Date Approved	Date Paid	Check #	Reimb Request
SRF Consulting Group	3/31/22	Prof svcs thru 3/31/22	\$19,992.48	13820.00-18	4/16/22		107473	5/5/2022
Clay County Auditor-Treasurer	4/14/22	2022 prop tax 15.007.1250	\$300.00	748816	4/25/22	5/4/22	107638	5/5/2022
Clay County Auditor-Treasurer	4/14/22	2022 prop tax 15.029.3001	\$956.00	765314	4/25/22	5/4/22	107638	5/5/2022
Clay County Auditor-Treasurer	4/14/22	2022 prop tax 15.006.4102	\$12.00	774500	4/25/22	5/4/22	107638	5/5/2022
Clay County Auditor-Treasurer	4/14/22	2022 prop tax 15.007.1251	\$2,582.00	772368	4/25/22	5/4/22	107638	5/5/2022
Clay County Auditor-Treasurer	4/14/22	2022 prop tax 15.031.4401	\$3,462.00	748649	4/25/22	5/4/22	107638	5/5/2022
Clay County Auditor-Treasurer	4/14/22	2022 prop tax 15.008.3500	\$1,160.00	749227	4/25/22	5/4/22	107638	5/5/2022
Clay County Auditor-Treasurer	4/14/22	2022 prop tax 15.007.1100	\$364.00	748567	4/25/22	5/4/22	107638	5/5/2022
Clay County Auditor-Treasurer	4/14/22	2022 prop tax 15.019.1001	\$2,808.00	773097	4/25/22	5/4/22	107638	5/5/2022
Clay County Auditor-Treasurer	4/14/22	2022 prop tax 15.017.2101	\$2,748.00	771945	4/25/22	5/4/22	107638	5/5/2022
Clay County Auditor-Treasurer	4/14/22	2022 prop tax 15.006.4701	\$1,124.00	764475	4/25/22	5/4/22	107638	5/5/2022
State of Minnesota	3/31/22	review & filing fee kragerud	\$71.50	516883	4/19/22	4/27/22	107576	5/5/2022
State of Minnesota	3/31/22	filing fee dobis & buth	\$50.00	516884	4/19/22	4/27/22	107576	5/5/2022
State of Minnesota	3/31/22	filing fee buth	\$50.00	516885	4/19/22	4/27/22	107576	5/5/2022
State of Minnesota	3/31/22	filing fee leech	\$50.00	516886	4/19/22	4/27/22	107576	5/5/2022
Red River Valley Coop	4/5/22	a#9980004 svc 15253 3rd st w	\$537.02		4/16/22	4/20/22	525787	5/5/2022
Red River Valley Coop	4/5/22	a#9980003 svc 13689 3rd st s	\$56.24		4/16/22	4/20/22	525787	5/5/2022
Red River Valley Coop	4/5/22	a#9980006 svc 803 140th ave s	\$175.08		4/16/22	4/20/22	525787	5/5/2022
Ohnstad Twichell	4/6/22	Upstream mitigation	\$11,277.00	181541	4/12/22	4/20/22	107464	5/5/2022
Ohnstad Twichell	4/6/22	Southern embankment	\$3,731.50	181542	4/12/22	4/20/22	107464	5/5/2022
Ohnstad Twichell	4/6/22	Blilie oin 249 rrcs eminent	\$2,700.00	181543	4/12/22	4/20/22	107464	5/5/2022
Ohnstad Twichell	4/6/22	general 2022	\$3,757.50	181544	4/12/22	4/20/22	107464	5/5/2022
Ohnstad Twichell	4/6/22	relocation appeal kragerud	\$2,212.50	181545	4/12/22	4/20/22	107464	5/5/2022
Ohnstad Twichell	4/6/22	relocation appeal dubois & buth	\$1,575.00	181546	4/12/22	4/20/22	107464	5/5/2022
Ohnstad Twichell	4/6/22	relocation appeal buth	\$1,462.50	181547	4/12/22	4/20/22	107464	5/5/2022
Ohnstad Twichell	4/6/22	relocation appeal leech	\$1,462.50	181548	4/12/22	4/20/22	107464	5/5/2022
The Title Co.	4/14/22	Exchange OIN 249, 257	\$23,524.00			4/14/22	906369	5/5/2022
The Title Co.	4/14/22	Flowage easement OIN 1835	\$159,226.00			4/14/22	906368	5/5/2022
Lake Region Electric Coop	4/6/22	svc 184 180th ave s	\$508.70		4/25/22	5/4/22	107655	5/5/2022
Integra Realty Resources	4/18/22	appraisal oin 1305	\$4,500.00	124-2021-0018	4/25/22	5/4/22	107652	5/5/2022
Thomas & Laurie Livdahl	5/4/22	earnest money oin 1793	\$400,000.00		5/4/22	5/5/22	107696	5/5/2022

Total MCCJPA reimbursement request 5/5/22

\$652,435.52

Attorneys at Law

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

Flood Diversion Board
Bond Counsel Work - PPP

Date: May 6, 2022

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

PROFESSIONAL SERVICES RENDERED			
	Hours	Rate	Totals
JTS	100.4	\$375.00	\$37,650.00
CMM	9.7	\$375.00	\$3,637.50
SNW	0.3	\$375.00	\$112.50
KJS	48.2	\$375.00	\$18,075.00
TJL	15.2	\$375.00	\$5,700.00
KJD	20.2	\$300.00	\$6,060.00
DCP	23.7	\$320.00	\$7,584.00
AJR	48.9	\$205.00	\$10,024.50
MRH	8.3	\$185.00	\$1,535.50
Total Fees:	274.9		\$90,379.00
Westlaw			\$80.25
Prof Service Fee Gwendolyn			\$21,250.00
*Credit Card Processing Fee - 3%			\$637.50
Travel/Mileage			\$1,794.76
Total Expenses:			\$23,762.51
Grand Total			\$114,141.51

	Rates
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
ATW Amy T. White, 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

OHNSTAD TWICHELL, P.C.

WEST FARGO, NORTH DAKOTA 58078

COST ADVANCES BY US FOR YOUR ACCOUNT, FOR WHICH WE HAVE NOT
BEEN BILLED, WILL APPEAR ON YOUR NEXT STATEMENT.

Page 2 of 2

PROFESSIONAL SERVICES RENDERED

15-1395 JTS Invoice # 182014		Flood Diversion Board	Bond Counsel Work - PPP
FILE NUMBER	MATTER DESCRIPTION	INVOICE - TOTAL FEES	
151395-1	General Topics (Includes General Governance Questions, Notices, etc.)	\$46,588.00	
151395-4	Public Finance Issues	\$525.00	
151395-5	Consultant Contract Review/Development	\$866.00	
151395-7	Coordination with Member Entities	\$287.00	
151395-9	Environmental Permitting Issues/NEPA	\$487.50	
151395-11	Legislative Interface/Lobbying Support	\$562.50	
151395-12	USACE Interface/Questions	\$928.50	
151395-13	Third Party Utility MOU's	\$21,837.50	
151395-18	SRF Loan Application	\$2,070.00	
151395-20	USDOT PABs	\$112.50	
151395-22	SRF Loans	\$187.50	
151395-23	PRAM	\$1,939.50	
151395-24	P3 Implementation	\$13,987.50	
TOTAL		\$90,379.00	

CASS COUNTY GOVERNMENT
PO BOX 2806
211 9th STREET SOUTH
Fargo, ND 58108

(701) 241-5600

DATE: 5/06/22

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
	4/01/22	BEGINNING BALANCE			189,180.08
** AUDIT	3/04/22	FM DIVERSION			1,012.00
		MISC EXPENSES			
** AUDIT	4/01/22	FM DIVERSION			69,197.78
		PAYROLL EXPENSES			
** AUDIT	4/01/22	FM DIVERSION			10,770.12
		MISC EXPENSES			\$11,782.12
	4/04/22	PAYMENT			62,171.16-
	4/04/22	PAYMENT			4,274.00-
	4/04/22	PAYMENT			160.00-
	4/04/22	PAYMENT			3,774.84-
	4/04/22	PAYMENT			882.81-
	4/04/22	PAYMENT			7,622.20-
	4/04/22	PAYMENT			726.00-
	4/04/22	PAYMENT			26,923.00-
	4/04/22	PAYMENT			263.00-
	4/04/22	PAYMENT			945.00-
	4/04/22	PAYMENT			364.02-
	4/04/22	PAYMENT			78.04-
	4/04/22	PAYMENT			16.11-
AUDIT	5/06/22	FM DIVERSION	Employee agreements in place		70,492.06
		PAYROLL EXPENSES			
AUDIT	5/06/22	FM DIVERSION	Submitted for approval at May board mtg		25,706.83
		MISC EXPENSES			
			Total		\$96,198.89

CONTINUED ON NEXT PAGE...

**FM Metropolitan Area Flood Risk Management Project
Fiscal Accountability Report Design Phase
As of 04/30/22**

Fiscal Accountability Report Design Phase As of 04/30/22								790: FM Division Projct Fund	770: Budget Fund			773: Excess Capital Fund		
	2011-2017	2018	2019	2020	2021	2022	Total	2021	2022	Fund	2021	Total	Grand Total	
Revenues														
City of Fargo	135,530,327	30,150,091	32,835,957	30,746,840	39,900,525	5,666,977	274,830,716	-	-	-	-	-	274,830,716	
Cass County	192,414,790	14,305,401	15,637,755	15,716,168	20,605,468	1,925,155	260,604,737	-	-	-	-	-	260,604,737	
State Water Commission	165,835,767	9,227,010	26,655,616	69,249,584	44,928,872	36,895,186	352,792,035	-	-	-	-	-	352,792,035	
Cass County Joint Water Resource District	-	-	-	-	28,630,991	-	28,630,991	-	-	-	-	-	28,630,991	
Other Agencies	706,805	-	-	-	-	-	706,805	-	-	-	-	-	706,805	
City of Oxbow MOU Repayment	1,586,436	-	358,178	878,020	122,038	-	2,944,671	-	-	-	-	-	2,944,671	
Reimbursements	78,599	27,396	22,600	40,007	52,055	-	220,657	-	-	-	-	-	220,657	
Lease/Rental Payments	967,151	527,903	653,883	802,745	622,459	33,100	3,607,240	-	-	-	-	-	3,607,240	
Asset Sales	1,222,335	-	-	13,234	1,802,265	-	3,037,835	-	-	-	-	-	3,037,835	
Interest Income	505,157	1,246,875	1,885,896	1,152,843	1,011,554	176,561	5,978,887	-	-	-	-	-	5,978,887	
Miscellaneous	3,879	356	-	651	7,336	-	14,205	659,570	450,086	1,109,655	-	-	1,123,860	
Total Revenues	498,851,246	55,485,032	78,049,884	118,600,091	137,683,563	44,698,962	933,368,778	659,570	450,086	1,109,655	-	-	934,478,434	
Expenditures														
7905 Army Corp Payments	53,159,000	-	-	-	-	-	53,159,000	-	-	-	-	-	53,159,000	
7910 WIK - Administration	2,006,449	849,081	1,201,725	2,068,489	2,650,150	333,681	9,109,575	697,145	174,090	871,235	-	-	9,980,810	
7915 WIK - Project Design	28,398,585	2,142,880	2,516,133	3,258,835	2,261,337	190,094	38,767,865	-	-	-	-	-	38,767,865	
7920 WIK - Project Management	45,205,261	6,817,589	8,326,357	10,369,118	13,629,756	2,459,266	86,807,347	-	-	-	-	-	86,807,347	
7925 WIK - Recreation	163,223	-	40,000	75,000	-	-	278,223	-	-	-	-	-	278,223	
7930 LERRDS - North Dakota	170,376,168	8,114,895	30,223,861	66,942,804	42,321,398	8,823,518	326,802,646	-	-	-	-	-	326,802,646	
7931 LERRDS - Minnesota	2,202,937	4,914	5,352	2,769,551	3,832,050	59,317	8,874,122	-	-	-	-	-	8,874,122	
7940 WIK Mitigation - North Dakota	843,506	69,283	12,357	97,512	35,279,546	7,589	36,309,793	-	-	-	-	-	36,309,793	
7941 WIK Mitigation - Minnesota	-	-	-	-	112,271	31,834	144,105	-	-	-	-	-	144,105	
7950 Construction - North Dakota	69,359,502	4,384,090	18,183,794	12,172,911	25,488,649	128,027	129,716,973	-	-	-	-	-	129,716,973	
7951 Construction - Minnesota	-	-	-	-	-	-	-	-	-	-	-	-	-	
7952 Construction - O/H/B	28,025,762	4,111,617	369,936	1,104,928	2,070,541	19,413	35,702,197	-	-	-	-	-	35,702,197	
7955 Construction Management	10,172,430	296,092	685,741	444,536	180,481	11,022	11,790,301	-	-	-	-	-	11,790,301	
7980 Operations & Maintenance	34,941	41,493	35,328	79,049	2,971	-	193,782	-	-	-	-	-	193,782	
7990 Project Financing	14,762,103	9,879,405	11,434,046	12,017,311	14,236,187	304,791	62,633,843	-	-	-	-	-	62,633,843	
7995 Project Eligible - Off Formula Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	
7999 Non Federal Participating Costs	221,684	-	-	-	-	-	221,684	-	-	-	-	-	221,684	
Total Expenditures	424,931,551	36,711,339	73,034,630	111,400,046	142,065,336	12,368,553	800,511,456	697,145	174,090	871,235	-	-	801,382,691	
Other Financing Sources (Uses)														
Transfers From Other Diversion Funds	-	-	-	-	-	-	-	-	-	-	-	-	-	
7998 Transfers to Other Diversion Funds	-	-	-	-	659,566	450,000	1,109,566	-	-	-	-	-	1,109,566	
Total Other Financing Sources (Uses)	-	-	-	-	659,566	450,000	1,109,566	-	-	-	-	-	1,109,566	

FM Metropolitan Area Flood Risk Management Project
Statement of Net Position
April 30, 2022

	FM Diversion Project Fund	Budget Fund	Grand Total
Assets			
Cash	\$ 100,712,463	\$ 238,420	\$ 100,950,883
Cash Horace 3.01 MIT	2,500,404	-	2,500,404
Cash Held In Trust at BND			
Excess Revenue Fund	190,722	-	190,722
Temp Debt Obligation Fund	503,970	-	503,970
Authority Loan Fund	13,451	-	13,451
P3 Reserve Fund	16,122,915	-	16,122,915
Revenue Fund	8	-	8
Receivables			-
State Water Commission *	11,761,987	-	11,761,987
Prepaid Expense	223,728	-	223,728
Total assets	132,029,649	238,420	132,268,069
Liabilities			
Vouchers payable	95,244	-	95,244
Retainage payable	167,048	-	167,048
Rent Deposit	19,600	-	19,600
Total liabilities	281,891	-	281,891
NET POSITION	\$ 131,747,757	\$ 238,420	\$ 131,986,177

* Receivable balance is as of 3/31/2022

Summary Of Expenses
EXP-2022-04

Tuesday, May 17, 2022

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
770-7910-429.33-37	4/7/2022	318735	HighRoad Partners, LLC	\$400.00	APR HR SERVICES	V09701	HR SERVICES
Other Services / HR Services				\$400.00			
770 Subtotal				\$400.00			
790-7910-429.33-25	5/5/2022	929	OHNSTAD TWICHELL PC	\$87,955.75	OHNSTAD TWICHELL PC	V00102	General & Admin. WIK
Other Services / Legal Services				\$87,955.75			
790-7910-429.34-20	4/7/2022	318769	Neon Loon Communications, LL	\$13,940.75	COMMUNICATIONS SUPPORT	V09601	COMMUNICATIONS SUPPORT
	4/28/2022	319143	Michael H Klein	\$5,849.01	OUTREACH/COMM SUPPORT	V07201	COMMUNICATION CONSULTING
	5/5/2022	319209	C THREE MEDIA, LLC	\$15,175.50	VIDEOGRAPHY SERVICES	V08601	VIDEOGRAPHY
	4/12/2022	JB152100	Neon Loon Communications, LL	\$0.00	12.31.21 AP - 01.06.22 CK	V09601	COMMUNICATIONS SUPPORT
Technical Services / Marketing / Public Relat.				\$34,965.26			
790-7910-429.34-40	4/28/2022	319120	Flint Group	\$650.00	MEDIA MONITORING	V10201	WEBSITE DESIGN
	4/28/2022	319120	Flint Group	\$2,030.00	WEBSITE DESIGN	V10201	WEBSITE DESIGN
Technical Services / Web Site Develop/Maintain				\$2,680.00			
790-7910-429.34-56	4/14/2022	ES042200	City of Fargo	\$16,480.00	FISCAL AGENT FEE-03/22	V05902	MONTHLY FISCAL AGENT FEE
	4/29/2022	ES042200	City of Fargo	\$16,480.00	FISCAL AGENT FEE - 04/22	V05902	MONTHLY FISCAL AGENT FEE
				\$32,960.00			
790-7910-429.38-68	4/7/2022	318725	GA Group, PC	\$4,000.00	APR COUNSEL SERVICES	V07601	2021 GOVERNMENT RELATIONS
Other Services / Lobbyist				\$4,000.00			
790-7915-429.33-05	4/7/2022	318687	AECOM	\$20,211.25	CULTURAL RESOURCES INVEST	V01004	SEAI CULTURAL RES INVEST
	4/28/2022	319136	HOUSTON-MOORE GROUP L	\$74,852.23	PROJ MGMT, CONTROLS,	V01633	DESIGN & CONST. SUPPORT
	4/28/2022	319136	HOUSTON-MOORE GROUP L	\$56,307.91	PROJ MGMT, SUPPORT SERV	V01634	H&H MITIG. & PERMIT SUPPORT
Other Services / Engineering Services				\$151,371.39			
790-7915-429.33-25	4/7/2022	WP15210	Cass Rural Water	(\$61,393.28)	REV 12.31.21 AP-3.31.21CK	V05005	CASS RURAL WATER US MOU
	4/7/2022	WP15210	Cass Rural Water	\$61,393.28	12.31.21 AP-03.31.22 CK	V05005	CASS RURAL WATER US MOU
Other Services / Legal Services				\$0.00			

Summary Of Expenses
EXP-2022-04

Tuesday, May 17, 2022

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7920-429.33-05	4/28/2022	319136	HOUSTON-MOORE GROUP L	\$39,252.89	PROJ MGMT, CONTROLS,	V01633	DESIGN & CONST. SUPPORT
	4/28/2022	319136	HOUSTON-MOORE GROUP L	\$24,183.50	PROJ MGMT, SUPPORT SERV	V01634	H&H MITIG. & PERMIT SUPPORT
Other Services / Engineering Services				\$63,436.39			
790-7920-429.33-79	4/7/2022	318785	MOORE ENGINEERING INC	\$922.50	MOORE ENGINEERING, INC	V02421	OXBOW MOU-MOORE PROJ MG
	4/28/2022	319108	CH2M Hill Engineers Inc	\$584,359.02	PROGRAM MGMT & SERVICES	V00211	CH2M HILL-6/2019-12/2021
	4/28/2022	319108	CH2M Hill Engineers Inc	\$502,168.07	P3 SUPPORT SERVICES	V00212	P3 PROCUREMENT SUPPORT
	5/5/2022	319268	MOORE ENGINEERING INC	\$1,864.60	REIMB MOORE ENG INVOICE	V02421	OXBOW MOU-MOORE PROJ MG
Other Services / Construction Management				\$1,089,314.19			
790-7930-429.33-05	4/28/2022	319096	ADVANCED ENGINEERING I	\$292,420.01	DIVERSION 2/12-3/18/22	V00302	PROGRAM MGMT SERVICES
	4/28/2022	319136	HOUSTON-MOORE GROUP L	\$557.00	PROJ MGMT, CONTROLS,	V01633	DESIGN & CONST. SUPPORT
	4/28/2022	319136	HOUSTON-MOORE GROUP L	\$14,302.22	PROJ MGMT, SUPPORT SERV	V01634	H&H MITIG. & PERMIT SUPPORT
Other Services / Engineering Services				\$307,279.23			
790-7930-429.33-25	4/7/2022	318791	Pleasant Township	\$3,342.50	REIMB GARAAS LAW INVOICE	V06801	WILD RICE STUC-BLDG PRMT
Other Services / Legal Services				\$3,342.50			
790-7930-429.33-79	4/28/2022	319108	CH2M Hill Engineers Inc	\$76,679.32	P3 SUPPORT SERVICES	V00212	P3 PROCUREMENT SUPPORT
	4/28/2022	319108	CH2M Hill Engineers Inc	\$13,090.51	PROPERTY ACQUISITION MGMT	V00210	CH2M HILL-LAND ACQUISITON
Other Services / Construction Management				\$89,769.83			
790-7930-429.71-30	5/9/2022	ES042200	Red River Valley & Western Rai	\$800,000.00	RECORD DIVERSION EARNEST	V01701	ND LAND PURCH-OUT OF TOWN
Land / Land Purchases				\$800,000.00			
790-7931-429.33-05	4/13/2022	WP15210	Prosource Technologies, Inc	\$39,598.34	12.31.21 AP-03.31.22 CK	V06201	MCCJPA - MN ROE
	4/13/2022	WP15210	Prosource Technologies, Inc	(\$39,598.34)	REV 12.31.21 AP-3.31.22CK	V06201	MCCJPA - MN ROE
	4/13/2022	WP15210	SRF Consulting Group	\$13,180.24	12.31.21 AP-03.31.22 CK	V06201	MCCJPA - MN ROE
	4/13/2022	WP15210	SRF Consulting Group	(\$13,180.24)	REV 12.31.21 AP-3.31.22CK	V06201	MCCJPA - MN ROE
Other Services / Engineering Services				\$0.00			
790-7931-429.33-32	4/13/2022	WP15210	INTEGRA REALTY RESOURC	\$2,000.00	12.31.21 AP-03.31.22 CK	V06201	MCCJPA - MN ROE
	4/13/2022	WP15210	INTEGRA REALTY RESOURC	(\$2,000.00)	REV 12.31.21 AP-3.31.22CK	V06201	MCCJPA - MN ROE
Other Services / Appraisal Services				\$0.00			

Summary Of Expenses
EXP-2022-04

Tuesday, May 17, 2022

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7931-429.62-51	4/13/2022	WP15210	LAKE REGION ELECTRIC CO	\$150.32	12.31.21 AP-03.31.22 CK	V02301	MN LAND PURCHASES
	4/13/2022	WP15210	LAKE REGION ELECTRIC CO	(\$150.32)	REV 12.31.21 AP-3.31.22CK	V02301	MN LAND PURCHASES
	4/13/2022	WP15210	RED RIVER VALLEY COOPE	\$488.86	12.31.21 AP-03.31.22 CK	V02301	MN LAND PURCHASES
	4/13/2022	WP15210	RED RIVER VALLEY COOPE	(\$488.86)	REV 12.31.21 AP-3.31.22CK	V02301	MN LAND PURCHASES
Energy / Electricity				\$0.00			
790-7931-429.80-17	4/13/2022	WP15210	WILKIN COUNTY AUDITOR	\$1,227.10	12.31.21 AP-03.31.22 CK	V02301	MN LAND PURCHASES
	4/13/2022	WP15210	WILKIN COUNTY AUDITOR	(\$1,227.10)	REV 12.31.21 AP-3.31.22CK	V02301	MN LAND PURCHASES
Debt Service / Property Tax - FMDA				\$0.00			
790-7941-429.33-05	4/7/2022	318704	MOORE ENGINEERING INC	\$4,177.50	REIMB MOORE ENG INVOICE	V10102	LAGOON
	5/5/2022	319217	MOORE ENGINEERING INC	\$5,902.10	REIMB MOORE ENG INVOICE	V10102	LAGOON
Other Services / Engineering Services				\$10,079.60			
790-7950-429.33-05	4/28/2022	319136	HOUSTON-MOORE GROUP L	\$46,836.55	PROJ MGMT, CONTROLS,	V01633	DESIGN & CONST. SUPPORT
Other Services / Engineering Services				\$46,836.55			
790-7950-429.73-66	4/28/2022	319133	Hoffman & McNamara Co.	\$4,150.00	LANDSCAPE & PLANTINGS	V02823	LANDSCAPING & PLANTINGS
Infrastructure / Landscaping				\$4,150.00			
790-7950-429.73-70	5/5/2022	319216	CENTURYLINK COMMUNIC	\$25,652.19	UTILITY RELOCATION	V04806	UTILITY RELOCATION
Infrastructure / Utilities				\$25,652.19			
790-7952-429.33-05	4/28/2022	319136	HOUSTON-MOORE GROUP L	\$3,733.00	PROJ MGMT, CONTROLS,	V01633	DESIGN & CONST. SUPPORT
Other Services / Engineering Services				\$3,733.00			
790-7990-429.33-05	4/28/2022	319136	HOUSTON-MOORE GROUP L	\$25,197.94	PROJ MGMT, CONTROLS,	V01633	DESIGN & CONST. SUPPORT
Other Services / Engineering Services				\$25,197.94			
790-7990-429.33-25	5/5/2022	929	OHNSTAD TWICHELL PC	\$21,670.65	OHNSTAD TWICHELL PC	V00102	General & Admin. WIK
Other Services / Legal Services				\$21,670.65			
790-7990-429.33-47	5/5/2022	319278	Program Advisor Services, LLC	\$45,211.91	PROGRAM CONSULTING SERVICE	V05801	CONSULTING SERVICES
Other Services / Consulting Services				\$45,211.91			
790-7990-429.34-55	5/5/2022	319200	AON RISK SERVICES CENTR	\$1,437.50	RISK ADVISORY SERVICES	V03201	PRE-AWARD P3 RISK ADVISOR
Technical Services / Financial Advisor				\$1,437.50			

Summary Of Expenses

EXP-2022-04

Tuesday, May 17, 2022

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7990-429.34-57	4/29/2022	9420	BANK OF NORTH DAKOTA	\$16,480.00	BND TRUSTEE FEE 4/2022	V08502	MONTHLY TRUSTEE FEE
Technical Services / FMDA Trustee Fees BND				\$16,480.00			
790-7998-555.90-81	4/14/2022	ES042200	Diversion Admin Budget Transfe	\$0.00	ANNUAL ADMIN BDGT TRF-MAR	VADMIN	Diversion Administration
	4/29/2022	ES042200	Diversion Admin Budget Transfe	\$0.00	ANNUAL ADMIN BDGT TRF-APR	VADMIN	Diversion Administration
FMDA Admin. Budget Fund				\$0.00			
790 Subtotal				\$2,867,523.88			

Total Amount Invoiced this period:

\$2,867,923.88

\$0.00 Less Paid Retainage

\$2,867,923.88 Total Less Paid Retainage

Cummulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
LAND PURCHASE	\$260,028,267.40	\$260,028,267.40	\$0.00	Land Purchase
CH2M HILL ENGINEERS INC	\$152,663,307.12	\$89,464,736.93	\$63,198,570.19	Project & Construction Management
HOUSTON-MOORE GROUP LLC	\$86,838,161.73	\$61,448,415.75	\$25,389,745.98	Engineering Services
INDUSTRIAL BUILDERS INC	\$58,129,514.54	\$57,513,846.20	\$615,668.34	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
OHNSTAD TWICHELL PC	\$14,854,822.09	\$14,854,822.09	\$0.00	Legal Services
ADVANCED ENGINEERING INC	\$14,665,462.81	\$7,589,138.07	\$7,076,324.74	Lands Management and Public Outreach
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	\$7,769,668.21	\$6,327,000.61	\$1,442,667.60	PPP Legal Counsel
MOORE ENGINEERING INC	\$5,474,611.13	\$5,406,686.63	\$67,924.50	Engineering Services
ERNST & YOUNG	\$5,377,000.00	\$4,982,146.10	\$394,853.90	P3 Financial Advisory Services
CITY OF FARGO	\$4,843,346.12	\$4,811,846.12	\$31,500.00	Utility Relocation, Accounting Svcs, Interest on Deficit Funds
PROSOURCE TECHNOLOGIES, INC	\$4,198,291.71	\$2,641,916.51	\$1,556,375.20	Land Acquisition Services
SRF CONSULTING GROUP	\$3,967,675.84	\$1,479,249.01	\$2,488,426.83	Engineering Services
RILEY BROS	\$3,656,841.67	\$3,656,841.67	\$0.00	Construction - OHB Ring Levee & WP-28A
CENTURYLINK COMMUNICATIONS	\$3,568,941.53	\$3,484,683.41	\$84,258.12	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

Cummulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
MINNESOTA DNR	\$2,636,755.60	\$2,617,681.40	\$19,074.20	EIS Scoping and Permit Application
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	\$1,009,995.10	\$1,182,788.58	Engineering Services
HOUGH INC	\$2,088,832.83	\$2,088,832.83	\$0.00	Construction WP-42F.2 and Oxbow River Intake & Pumping Syst
ACONEX (NORTH AMERICA) INC	\$1,970,927.50	\$928,559.82	\$1,042,367.68	Electronic Data Mgmt and Record Storage System
URS CORPORATION	\$1,805,670.90	\$1,805,670.90	\$0.00	Cultural Resources Investigations
CASS COUNTY GOVERNMENT	\$1,801,643.84	\$1,801,643.84	\$0.00	Gravel on County Rd 17 Bypass
ULTEIG ENGINEERS INC	\$1,744,157.63	\$1,205,309.95	\$538,847.68	Land Acquisition Services
CROWN APPRAISALS	\$1,689,455.00	\$1,523,730.00	\$165,725.00	Flowage Easements Valuation and Appraisal Services
REINER CONTRACTING INC	\$1,599,646.21	\$1,599,646.21	\$0.00	El Zagal Flood Risk Management
PROGRAM ADVISOR SERVICES, LLC	\$1,505,000.00	\$1,126,277.35	\$378,722.65	Program Consulting Services
SCHMIDT AND SONS INC.	\$1,324,920.61	\$1,067,751.86	\$257,168.75	Residential Demolition in Oxbow
CASS COUNTY ELECTRIC COOPERATIVE	\$1,280,817.74	\$852,917.74	\$427,900.00	Electrical 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
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
AECOM	\$1,037,594.64	\$432,975.59	\$604,619.05	Cultural Resources Investigations
CASS RURAL WATER	\$949,908.71	\$941,238.71	\$8,670.00	Utilities and Utility Relocation
CLERK OF DISTRICT COURT	\$939,044.32	\$939,044.32	\$0.00	FLDBUY - COF Flood Home Buyouts
BRAUN INTERTEC CORP	\$909,654.63	\$768,421.23	\$141,233.40	Materials Testing
TERRACON CONSULTING ENGINEERS	\$887,718.41	\$887,718.41	\$0.00	Materials Testing
RED RIVER VALLEY & WESTERN RAILROAD C	\$800,000.00	\$800,000.00	\$0.00	Railroad Facilities and the Rail Property
DAKOTA CARRIER NETWORK	\$727,348.58	\$727,348.58	\$0.00	Utility Relocation

Cummulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
UNITED STATES ENVIRONMENTAL PROTECTI	\$707,886.35	\$707,886.35	\$0.00	WIFIA LOAN APPLCATION FEE
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	\$509,007.50	\$25,540.00	Property Appraisal Services
RED RIVER BASIN COMMISSION	\$501,000.00	\$501,000.00	\$0.00	Retention Projects - Engineering Services
HOFFMAN & MCNAMARA CO.	\$493,179.39	\$487,184.67	\$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
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
PATCHIN MESSNER VALUATION COUNSELORS	\$390,887.50	\$349,925.00	\$40,962.50	Property Appraisal Services
LARKIN HOFFMAN ATTORNEYS	\$390,031.97	\$390,031.97	\$0.00	Legal Services
MBA	\$380,636.36	\$380,636.36	\$0.00	Golf course and pump house - Oxbow Country Club
MVM CONTRACTING	\$339,448.03	\$339,448.03	\$0.00	Fiber Relocation
AON RISK SERVICES CENTRAL INC	\$330,000.00	\$246,101.00	\$83,899.00	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

Cummulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
TURMAN & LANG	\$277,139.55	\$277,139.55	\$0.00	Legal Services
MOODYS INVESTORS SERVICE, INC.	\$274,375.00	\$274,375.00	\$0.00	WIFIA loan fees
MINNKOTA POWER COOPERATIVE	\$268,393.07	\$73,393.07	\$195,000.00	Utility Relocation
INTEGRA REALTY RESOURCES	\$268,062.50	\$243,250.00	\$24,812.50	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	\$63,761.25	\$172,638.75	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
BANK OF NORTH DAKOTA	\$184,845.04	\$184,845.04	\$0.00	Legal review fees
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
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	\$157,951.15	\$157,951.15	\$0.00	Property Insurance - Home Buyouts
PLEASANT TOWNSHIP	\$157,660.10	\$157,660.10	\$0.00	Building Permit Application

Cummulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
UNITED STATES GEOLOGICAL SURVEY	\$151,520.00	\$151,520.00	\$0.00	Water Level Discharge Collection & Stage Gage Installation
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	\$100,207.36	\$28,702.64	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	\$60,500.00	\$52,950.00	Property Appraisal Services
GE BOCK REAL ESTATE, LLC	\$112,590.00	\$112,590.00	\$0.00	Property Appraisal Services
OXBOW COUNTRY CLUB	\$110,391.68	\$110,391.68	\$0.00	Golf Course - Oxbow
EIDE BAILLY LLP	\$108,373.00	\$58,373.00	\$50,000.00	Audit Services
GA GROUP, PC	\$108,229.32	\$76,000.00	\$32,229.32	Government Relations
MAPLETON TOWNSHIP	\$108,030.00	\$108,030.00	\$0.00	Lost tax revenue and attorney fees
DAVID CLARDY	\$105,215.05	\$105,215.05	\$0.00	Home buyouts - easement

124 Vendors

Report Totals:

\$907,095,691.40

\$798,616,183.46

\$108,479,507.94

Data Through Date: Friday, April 29, 2022

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
BIOGEO	421	211	129	81%	81	\$1,012,181
BIOGEO	291	210	0	72%	81	\$240,496
HC	130	1	129	100%	0	\$771,685
CHANNEL	682	436	212	95%	34	\$90,392,067
ENV	2	0	0	0%	2	\$1,250
HC	215	3	212	100%	0	\$2,402,417
LAP01	132	121	0	92%	11	\$6,641,673
LAP02	97	92	0	95%	5	\$11,761,833
LAP03	82	66	0	80%	16	\$18,541,078
LEGACY	154	154	0	100%	0	\$51,043,816
MOBILITY	123	1	1	2%	121	\$0
DA_MOB37_MN	51	0	0	0%	51	\$0
DA_MOB37_ND	19	0	0	0%	19	\$0
DA_MOB38TH	52	1	0	2%	51	\$0
HC	1	0	1	100%	0	\$0
NA	7	0	7	100%	0	\$0
HC	7	0	7	100%	0	\$0
SEAILAND	331	259	34	89%	38	\$44,841,311
DRAIN 27	37	37	0	100%	0	\$10,613,049
HC	35	1	34	100%	0	\$195,421
LEGACY	62	62	0	100%	0	\$11,764,566
SE_I29	11	11	0	100%	0	\$1,961,828
SE-1	43	43	0	100%	0	\$2,612,830
SE-2A	13	13	0	100%	0	\$2,830,929
SE-2B	35	23	0	66%	12	\$4,449,471
SE-3	6	5	0	83%	1	\$25,000
SE-4	28	11	0	39%	17	\$1,789,470
SE-5	7	1	0	14%	6	\$2,750
UMA	1	0	0	0%	1	\$0
WP26	9	8	0	89%	1	\$2,952,107
WP30	8	8	0	100%	0	\$0
WP35	36	36	0	100%	0	\$5,643,890
WP36	2	0	0	0%	2	\$2,750
WRDAM	2	0	0	0%	2	\$2,750

Data Through Date: Friday, April 29, 2022

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
WP38	1,031	108	357	45%	566	\$29,987,080
BIOGEO	2	2	0	100%	0	\$4,500
HC	359	2	357	100%	0	\$1,283,123
LEGACY	1	1	0	100%	0	\$750
SE-5	2	0	0	0%	2	\$0
UMA	579	103	0	18%	476	\$28,698,707
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	7	0	0	0%	7	\$0
WP40	18	6	10	89%	2	\$0
DRAYTON	7	5	0	71%	2	\$0
HC	10	0	10	100%	0	\$0
LEGACY	1	1	0	100%	0	\$0
WP42	66	51	3	82%	12	\$37,850,061
HC	4	1	3	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	12	0	92%	1	\$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, April 29, 2022

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
WP43	265	115	146	98%	4	\$78,541,365
Non-OIN Hard Land Cost	0	0	0	0%	0	\$22,598,547
HC	146	0	146	100%	0	\$500
LEGACY	4	4	0	100%	0	\$2,422,914
WP43A	1	1	0	100%	0	\$0
WP43B	6	5	0	83%	1	\$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
Totals	2,946	1,187	899	71%	860	\$282,626,814

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of April 30, 2022

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
Commercial Relocations - Fargo		16,099,989.70	-	16,300,462.10	(1,100.00)	32,399,351.80
Home Buyouts - Fargo		3,044,054.89	-	521,417.80	-	3,565,472.69
Home Buyouts - Moorhead		495,809.91	-	84,060.80	(8,440.00)	571,430.71
Home Buyouts - Oxbow		29,678,181.97	-	17,142,531.46	(368,167.87)	46,452,545.56
Home Buyouts - Hickson		1,031,674.37	-	120,422.18	-	1,152,096.55
Home Buyouts - Horace		7,602,598.67	-	595,320.88	-	8,197,919.55
Home Buyouts - Argusville		215,030.91	-	6,912.57	-	221,943.48
Easements - Fargo		504,716.00	-	-	-	504,716.00
Easements - Hickson		500.00	-	-	-	500.00
Easements - Oxbow		55,500.00	-	-	-	55,500.00
Easements - Diversion Inlet Control Structure		4,234,581.90	-	-	-	4,234,581.90
Easements - Piezometer		1,500.00	-	-	-	1,500.00
Easements - Minnesota		1,542,370.79	-	-	-	1,542,370.79
Farmland Purchases		221,926,894.33	-	5,109,571.44	(1,460,296.28)	110,193,291.51
Land Purchases		108,332,738.24	-	2,563,701.41	(730,148.14)	110,193,291.51
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 North 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 April 30, 2022

[illegible]

**FM Metropolitan Area Flood Risk Management Project
In-Town Levee Work
as of April 30, 2022**

Vcode #	Vendor Name	Descriptions	Contract Amount	Amount Paid
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 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	\$ 493,179.39	\$ 487,184.67
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>\$ 195,220,985.02</u>	<u>\$ 195,201,320.79</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: February 1, 2022 - February 28, 2022

Drawdown Request No: 124	
Requested Amount:	\$ 5,062,879.53
Total Funds Expended This Period:	10,125,759.05
SB 2020 Matching Requirements	50%
Total Funds Requested at 50% Match	5,062,879.53
Total Funds Requested:	5,062,879.53

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	
Total State Funds	335,500,000	414,500,000
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 #122 - FM Metro Area Flood Risk Management Project		(2,753,630.08)
Less: Payment #123 - FM Metro Area Flood Risk Management Project		(3,945,477.58)
Less: Payment #124 - FM Metro Area Flood Risk Management Project		(5,062,879.53)
Total Funds Reimbursed		(405,012,078.29)
Total State Fund Balances Remaining		9,487,921.72

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)
Balance of Local Matching Funds Available	\$	(0)



Diversion Authority Finance Committee Meeting

May 25, 2022

Financial Report
Martin Nicholson

Annual Revenue Status



Revenue Sources	2022 Approved Budget (Thousands)	Current Month (Thousands)	Fiscal Year To Date (Thousands)
City of Fargo		\$0	\$0
City of Fargo Sales Tax	\$38,800	\$3,032	\$5,667
Cass County		\$0	\$0
Cass County Sales Tax	\$19,968	\$577	\$1,925
Cass County Joint Water Resource District	\$0	\$0	\$0
State of ND - 50 % Match	\$97,419	\$7,751	\$11,762
State of ND - Legacy Bond Fund Draws	\$0	\$25,133	\$25,133
State of Minnesota	\$0	\$0	\$0
Other Agencies	\$0	\$0	\$0
City of Oxbow MOU Reimbursement	\$0	\$0	\$0
Financing Proceeds	\$100	\$44	\$177
Reimbursements	\$0	\$2	\$2
Sales of Assets	\$0	\$0	\$0
Property Income	\$200	\$9	\$33
Miscellaneous	\$38,352	\$0	\$0
MIT Inter-Fund Transfers		\$200	\$450
Total Revenue Sources	\$194,839	\$36,748	\$45,149

Overall Status – Level 1 Summary



Program Categories Non-Federal Portion	Estimate at Completion (EAC) Millions	Overall Cost to Date As of: 04/29/2022	FY2022 Annual Budget (Millions)	FY2022 Cost To Date As of: 04/29/2022
P3 Support Services	\$85.51	\$35.60	\$8.09	\$0.42
Milestone Payments to the Developer	\$763.14	\$7.44	\$37.52	\$2.90
Fargo In-Town Projects	\$92.90	\$90.94	\$0.01	\$0.01
Fargo- River Stage 37' Projects	\$99.40	\$47.57	\$25.00	\$4.16
Moorhead- River Stage 37' Projects	\$43.80	\$0.00	\$0.00	\$0.00
Lands and Impacted Property Mitigation	\$416.43	\$326.21	\$77.86	\$14.18
Engineering, Legal, Financial	\$200.37	\$137.28	\$23.91	\$4.79
DA Construction Contingency	\$160.85	\$0.00	\$0.00	\$0.00
3rd Party MOU Mitigation	\$27.32	\$39.63	\$14.23	\$1.41
Net Current Interest / Financing Fees Paid	\$27.95	\$0.00	\$0.00	\$0.00
Designated P3 Channel Bridges	\$23.82	\$0.00	\$0.00	\$0.00
Designated Options and Easements after 2024	\$83.37	\$0.00	\$0.00	\$0.00
Designated 37' River Stage	\$20.33	\$0.00	\$0.00	\$0.00
DA Payment to USACE	\$67.39	\$53.16	\$0.00	\$0.00
Other/Mitigation Construction	\$72.56	\$29.29	\$1.03	\$0.01
Financing Costs				
Short Term Loan Payments	\$329.87	\$37.64	\$7.19	\$0.00
Non-Federal Totals	\$2,515.00	\$804.76	\$194.84	\$27.89
Less Outstanding Accounts Payable		(\$3.38)		
Actual Expenditure To Date		\$801.38		

Overall Status – Level 2 Detail

Schedule Budget Categories Non-Federal Portion	Overall Cost to Date (Millions) 04/29/2022	FY2022 Annual Budget	FY2022 Cost To Date 04/29/2022
Diversion Channel & Assoc. Infrastructure	\$43.05	\$45,607,981	\$3,319,631
Management, Legal, Financial, Procurement	\$35.60	\$8,090,000	\$417,837
Channel - Construction and Mitigation	\$7.44	\$37,517,981	\$2,901,794
Southern Embankment & Assoc. Infrastructure	\$58.02	\$8,000,000	\$1,266,045
WP-26 Diversion Inlet	\$0.07	\$0	\$0
WP-27 Red River - West Embankment	\$0.00	\$0	\$0
WP-29 Red River - East Embankment	\$0.00	\$0	\$0
WP-30 Wild Rice River Control Structure	\$0.00	\$0	\$0
WP-31 I-29 Grade Raise	\$2.86	\$0	\$0
WP-33 CR81 Bridge	\$0.00	\$0	\$0
WP-35 Red River Control Structure	\$0.00	\$0	\$0
WP-46 SEAI / UMA Utility Relos	\$1.94	\$8,000,000	\$1,266,045
WP-47 Contracted Utility Relocations	\$0.00	\$0	\$0
WP-51 - Recreation SEAI (Metro-COG)	\$0.00	\$0	\$0
USACE Local Share \ Management Oversight	\$53.16	\$0	\$0

Overall Status – Level 2 Detail

Schedule Budget Categories Non-Federal Portion	Overall Cost to Date (Millions) 04/29/2022	FY2022 Annual Budget	FY2022 Cost To Date 04/29/2022
Other Mitigation Projects	\$65.58	\$7,259,570	\$157,697
WP-36 Wild Rice Dam Mitigation	\$0.00	\$0	\$0
WP-40 Drayton Dam Mitigation	\$0.00	\$0	\$0
WP-41 Richland/Wilkin County JPA	\$35.36	\$0	\$0
WP-43 Oxbow-Hickson-Bakke	\$27.89	\$1,027,000	\$14,490
WP-49 Cultural Remediation	\$0.00	\$0	\$0
WP-50 Phase II Demo	\$1.90	\$591,000	\$0
WP-52 Township & City MOU Agreements	\$0.43	\$5,641,570	\$143,207
In-Town Flood Protection	\$139	\$25,006,000	\$4,175,029
WP-42 In-Town Levees	\$90.94	\$6,000	\$10,900
Fargo- River Stage 37' Projects	\$47.57	\$25,000,000	\$4,164,129
Moorhead- River Stage 37' Projects	\$0.00	\$0	\$0
Enabling Work / Other	\$1	\$0	\$0
WP-28 - Cass County Road 16 and 17 Bridge	\$1.40	\$0	\$0
Land Acquisition & Mitigation	\$326	\$77,860,539	\$14,184,757
Management, Legal, Financial, Procurement	\$35.07	\$12,950,000	\$1,852,580
Diversion Channel & Assoc. Infrastructure	\$90.39	\$6,000,000	\$80,098
Southern Embankment & Assoc. Infrastructure	\$44.84	\$25,100,539	\$10,235,215
Mitigation & Assoc. Infrastructure (OHB)	\$87.05	\$1,360,000	\$25,782
WP-38 Upstream Staging	\$30.82	\$32,450,000	\$1,991,082
In-Town Flood Protection	\$38.02	\$0	\$0

Overall Status – Level 2 Detail

Schedule Budget Categories Non-Federal Portion	Overall Cost to Date (Millions) 04/29/2022	FY2022 Annual Budget	FY2022 Cost To Date 04/29/2022
Engineering & Design Fees	\$48.1	\$6,983,000	\$1,214,043
Management, Legal, Financial, Procurement	\$10.67	\$5,300,000	\$1,095,595
Work-In-Kind Programs (WIK) Studies	\$14.11	\$440,000	\$118,448
Indicative Design	\$7.13	\$0	\$0
Land, Easements, ROW, Relocation & Disposal	\$0.46	\$0	\$0
Permitting	\$5.17	\$1,043,000	\$0
Certification	\$0.00	\$0	\$0
FMDA Detention Funding	\$0.72	\$0	\$0
Other Mitigation Projects	\$9.85	\$200,000	\$0
Enabling Work	\$0.00	\$0	\$0
Program Support Services	\$86.06	\$16,844,000	\$3,573,954
Management, Legal, Financial, Procurement	\$84.26	\$14,989,000	\$3,169,368
Diversion Authority Operations	\$1.81	\$1,855,000	\$404,586
Contingency	\$0	\$0	\$0
Debt Service	\$37.64	\$7,194,000	\$0
Maintenance	\$0.18	\$84,000	\$0
Report Totals	\$804.76	\$194,839,090	\$27,891,156
Less Outstanding Accounts Payable	-\$3.38		
Actual Expenditure To Date	\$801.38		

Diversion Authority Operations – Budget Summary



Expense Category	FY2022 Budget	Cost to Date	Remining Budget
Salary	\$901,148	\$220,897	\$680,251
Benefits	\$175,510	\$62,049	\$113,461
Office	\$59,727	\$11,088	\$48,639
Other	\$118,615	\$36,536	\$82,080
Totals *	\$1,255,000	\$330,569	\$924,431

* Includes pending costs



Diversion Authority Finance Committee Meeting

May 25, 2022

Contracting Actions
Martin Nicholson

DA Board Approval Contract Actions (Action)



Description	Company	Budget/ Estimate (\$)
Services Agreement – Cleaning services – Provide cleaning services for the DA office at 4784 Amber Valley Parkway	Ambassador, Inc	\$45,100.00

**Executive Director Contracting Recommendation**

Date: 5/6/2022

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):

Ambassador, Inc

Services Agreement – A0

\$45,100.00

- Cleaning services provided for the DA office at 4784 Amber Valley Parkway

BACKGROUND AND DISCUSSION:

The Metro Flood Diversion Authority ("Owner") and Ambassador Inc ("Vendor") is to enter into a Services Agreement to provide cleaning services to the Metro Flood Diversion Authority at 4784 Amber Valley Parkway. The Owner and Vendor agree as follows:

- Janitorial services to cover:
 - Restrooms
 - Trash bins
 - Vacuuming
 - Tiled Floors.
 - Cleaning Services
 - Cleaning supplies

3 quotes were not obtained due to Ambassador Inc being the current cleaning provider for the rest of 4784 Amber Valley Parkway through the Developer. The Developer asked that the DA portion be under a separate contract since it is not part of the P3 requirements.

REASON

Metro Flood Diversion Authority requires cleaning services for their part of 4784 Amber Valley Parkway 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	\$45,100.00	05/01/2022	05/01/2023	Cleaning Services for one year.

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 (\$)	Paid to date (\$)	Budget Remaining (\$)	Comments
Total for 2022	SW-1150	45,100.00	45,100.00	0.00	45,100.00	Within allocated budget
Total	SW-1150	45,100.00	45,100.00	0.00	45,100.00	

ATTACHMENT(S):

1. Ambassador Inc Contract - Services Agreement – A0

Prepared by: Program Management Consultant

Ian Joynes

Dated: 5/4/2022

Approved by Joel Paulsen, Diversion Authority Executive Director via Aconex.

Dated: 5/16/2022



Diversion Authority Finance Committee Meeting

May 25, 2021

Budget Change Requests
Martin Nicholson

FY-2022 Budget Movements



Budget Change Request No.	WBS	WBS Title	Budget Re-Allocations					Explanation
			Cost Account	Vendor	Current Budget	Transfer Amount	New Budget	
007	SWDCAI_C	Channel Utility Relocations	DB-1011	BNSF	13,250,000	(1,729,877)	11,520,123	Reallocate \$1,729,877 from BNSF O&M to NuStar & Magellan pipeline relocation.
	SWDCAI_C	Channel Utility Relocations	DB-1011	NuStar	4,040,000	1,664,977	5,704,977	
	SWDCAI_C	Channel Utility Relocations	DB-1011	Magellan	2,700,000	64,900	2,764,900	



Diversion Authority Finance Committee Meeting

May 25, 2022

MOU and Agreement Actions for Consideration

John Shockley

MFDA Memorandum of Understanding (Action)



MOU Parties	Project	MOU Cost and Summary
BRRWD & MFDA MOU	Projects for the Cities of Georgetown & Wolverton, MN	<p>This MOU addresses Sections 14.03 and 15.03 of the Settlement Agreement which contemplates the execution of a MOU between the Authority and the District, which is intended to provide mutually agreeable terms for the Projects. The Authority is responsible for providing initial and annual funds for the design, construction, operation, and maintenance of the Projects as defined in the MOU.</p> <p>The purpose of the Georgetown Project is to design, construct, operate, and maintain a project for 100-year FEMA Accredited Flood Protection (based upon the Period of Record Hydrology) for Georgetown to close gaps in Georgetown's permanent flood protection and to protect Georgetown against any adverse flood impact(s) of the Comprehensive Project. The Georgetown Project will include appropriate in-town lift stations needed for flood control raises to existing transportation levee crossings and include already existing flood control elements such as existing levees, as well as other accompanying features required for FEMA certification.</p> <p>The purpose of the Wolverton Project is to design, construct, operate, and maintain a project for 100-year FEMA Accredited Flood Protection (based upon the Period of Record Hydrology) as set forth in the District's already proposed flood protection project and to protect Wolverton against any adverse flood impact(s) of the Comprehensive Project. Additionally, the Wolverton Project may include the construction of a flood control project to protect the Wolverton city cemetery and will include appropriate in-town lift stations needed for flood control and provide levees or flood walls that are one (1) foot above the 500-year flood elevation, as well as other accompanying features required for FEMA certification.</p>

MFDA Agreements (Action)



MOU Parties	Project	MOU Cost and Summary
Dakota Carrier Network & MFDA MURA	SEAI & UMA	<p>The purpose of this Agreement is to ensure a coordinated, time-efficient, and cost-effective process for completing the Utility Relocation Project, for coordinating operations and maintenance activities after completion of the Utility Relocation Project, and for the development of individual Task Orders issued in conjunction with, and subject to, the terms and conditions of this Agreement.</p> <p>The Authority shall pay all reasonable costs of the Utility Relocation Project approved under Section VII and actually incurred, whether those costs are incurred by the Utility or the Authority, excluding the Utility's internal costs.</p>
Red River Rural Telephone Association & MFDA MURA	SEAI & UMA	<p>The purpose of this Agreement is to ensure a coordinated, time-efficient, and cost-effective process for completing the Utility Relocation Project, for coordinating operations and maintenance activities after completion of the Utility Relocation Project, and for the development of individual Task Orders issued in conjunction with, and subject to, the terms and conditions of this Agreement.</p> <p>The Authority shall pay all reasonable costs of the Utility Relocation Project approved under Section VII, whether those costs are incurred by the Authority or the Utility. The Utility shall be entitled to reimbursement or payment of all out-of-pocket costs and expenses actually incurred and paid to third-parties, including but not limited to Utility's reasonable costs and expenses for this Agreement, the Utility's reasonable costs and expenses for obtaining Other Approvals, and any reasonable costs or expenses made necessary by the Utility Relocation Project, and as approved under Section VII. Utility shall not seek any reimbursement for general overhead, administrative costs, or lost revenue of any nature.</p>

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

METRO FLOOD DIVERSION AUTHORITY

AND

BUFFALO-RED RIVER WATERSHED DISTRICT

Dated as of _____, 2022

Relating to:

A Memorandum of Understanding outlining the respective roles and responsibilities of the Parties in regard to the Georgetown Project in the City of Georgetown, Minnesota, and the Wolverton Project in the City of Wolverton, Minnesota, related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

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

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS AND INTERPRETATION	1
SECTION 1.01 DEFINITIONS	1
SECTION 1.02 TERMS GENERALLY	4
ARTICLE II. SETTLEMENT AGREEMENT	5
SECTION 2.01 MEMORANDUM OF UNDERSTANDING	5
SECTION 2.02 SUPPLEMENT	5
ARTICLE III. PURPOSE.....	5
SECTION 3.01 PURPOSE.....	5
SECTION 3.02 GEORGETOWN PROJECT GENERALLY	5
SECTION 3.03 WOLVERTON PROJECT GENERALLY	5
SECTION 3.04 COORDINATION BETWEEN ENGINEERS.....	6
ARTICLE IV. DESIGN	6
SECTION 4.01 DESIGN	6
SECTION 4.02 TECHNICAL SPECIFICATIONS.....	6
SECTION 4.03 REVIEW SUBMITTALS.....	6
SECTION 4.04 AUTHORITY REVIEW	7
SECTION 4.05 REQUIREMENT OF APPROVAL	8
SECTION 4.06 APPROVAL WITHHELD	8
ARTICLE V. PRELIMINARY ACTIVITIES.....	8
SECTION 5.01 PRELIMINARY ACTIVITIES.....	8
SECTION 5.02 PROJECT PROPERTY ACQUISITION	8
SECTION 5.03 OTHER APPROVALS.....	8
ARTICLE VI. CONSTRUCTION	9
SECTION 6.01 CONSTRUCTION	9
SECTION 6.02 ADJUSTMENTS TO PROJECT WORK	9
SECTION 6.03 COMPLETION	9
SECTION 6.04 RECORD DRAWINGS	9
SECTION 6.05 INSPECTION	9
SECTION 6.06 SIGNS FOR PROJECTS.....	9
ARTICLE VII. RIGHT OF SITE ACCESS	10
SECTION 7.01 AUTHORITY RIGHT	10
SECTION 7.02 NON-REVOCABLE RIGHT	10
SECTION 7.03 NOTICE REQUIRED	10
SECTION 7.04 DELAY FOR SAFETY PURPOSES	10
ARTICLE VIII. REQUIRED REPORTS	10
SECTION 8.01 REQUIRED REPORTS	10
SECTION 8.02 DEADLINES.....	10

ARTICLE IX. OPERATIONS AND MAINTENANCE	10
SECTION 9.01 GEORGETOWN PROJECT	10
SECTION 9.02 WOLVERTON PROJECT	10
ARTICLE X. FUTURE PROJECT CHANGES.....	11
SECTION 10.01 GEORGETOWN PROJECT	11
SECTION 10.02 WOLVERTON PROJECT	11
ARTICLE XI. ASSIGNMENT OF RESPONSIBILITIES	11
SECTION 11.01 AUTHORITY	11
SECTION 11.02 DISTRICT	11
ARTICLE XII. FUNDING AND REIMBURSEMENT	11
SECTION 12.01 PROJECT FUNDING.....	11
SECTION 12.02 DESIGN WORK AND PRELIMINARY ACTIVITIES INVOICING.....	11
SECTION 12.03 CONSTRUCTION WORK COST ESTIMATE AND INVOICING	11
SECTION 12.04 CHANGE ORDERS.	12
SECTION 12.05 WHEN REPORTED COSTS EXCEED ESTIMATES	12
SECTION 12.06 APPEAL OF REJECTION OF COSTS.....	12
SECTION 12.07 PAYMENT OF ACCEPTED COSTS.....	12
SECTION 12.08 PAYMENT AFTER TERMINATION	12
SECTION 12.09 ANNUAL O&M BUDGET AND FUNDS.....	12
ARTICLE XIII. INVOICING AND AUDIT.....	13
SECTION 13.01 INVOICES	13
SECTION 13.02 AUDIT	13
ARTICLE XIV. TERM AND TERMINATION.....	14
SECTION 14.01 TERM.....	14
SECTION 14.02 TERMINATION.....	14
ARTICLE XV. DISPUTES.....	14
SECTION 15.01 CONTRACTORS AND THIRD PARTIES.....	14
SECTION 15.02 DISPUTE RESOLUTION PROCESS.....	14
ARTICLE XVI. MISCELLANEOUS.....	15
SECTION 16.01 AUTHORIZED REPRESENTATIVES	15
SECTION 16.02 NOTICE	15
SECTION 16.03 WORKERS’ COMPENSATION.....	16
SECTION 16.04 INSURANCE.....	16
SECTION 16.05 INDEMNIFICATION	16
SECTION 16.06 RELATIONSHIPS CREATED.....	16
SECTION 16.07 GOVERNING LAW	17
SECTION 16.08 CONFLICT	17
SECTION 16.09 ELECTRONIC SIGNATURES	17
SECTION 16.10 FEDERAL LOBBYING RESTRICTIONS	17
SECTION 16.11 DEBARMENT AND SUSPENSION	17
SECTION 16.12 CIVIL RIGHTS OBLIGATIONS	17
SECTION 16.13 AMERICAN IRON AND STEEL.....	18

SECTION 16.14 CERTIFICATION 18

SECTION 16.15 COMPLETE AGREEMENT 18

SECTION 16.16 SEVERABILITY 18

SECTION 16.17 MODIFICATIONS 19

SECTION 16.18 BINDING EFFECT 19

SECTION 16.19 REPRESENTATION..... 19

SECTION 16.20 HEADINGS 19

SECTION 16.21 COUNTERPARTS..... 19

SECTION 16.22 REPRESENTATION OF AUTHORITY 19

SECTION 16.23 FORCE MAJEURE 19

SECTION 16.24 ELECTRONIC SIGNATURES 19

SIGNATURE PAGESS-1 THROUGH S-2

EXHIBIT A – FEDERAL CERTIFICATION FORMS

EXHIBIT B – WOLVERTON PROJECT MAP

EXHIBIT C – SIGN TEMPLATE

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is made and entered into this _____ day of _____, 2022 (the “Effective Date”), by and between METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota (the “Authority”), and BUFFALO-RED RIVER WATERSHED DISTRICT, a watershed district organized under the laws of the State of Minnesota (the “District”).

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 and the District, 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 and the District agreed to work collaboratively in Good Faith to implement the Georgetown Project and the Wolverton Project; and

WHEREAS, the Authority and the District now desire to enter into this MOU to set forth each Party’s roles and responsibilities for delivering the Georgetown Project and the Wolverton 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 District 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 and in accordance with generally accepted commercial practices and using reasonable due diligence 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.

“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, also known as Plan B, and as further described in the Plan B Permit issued with modifications stipulated to by all parties to contested case proceedings in Office of Administrative Hearings Docket NO. 65-2002-36151, and subject to the Settlement Agreement.

“Construction Documents Submittal” means the design submittal described in Section 4.03 of this MOU.

“Construction Work” means all work for either the Georgetown Project or the Wolverton Project related to construction.

“Design Work” means all work for either the Georgetown Project or the Wolverton Project related to design.

“District” means the Buffalo-Red River Watershed District, a watershed district organized under the laws of the State of Minnesota.

“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.

“Georgetown” means the City of Georgetown, Minnesota, a political subdivision of the State of Minnesota.

“Georgetown Project” means the flood control project described in Section 3.02, designed and implemented by the District as more fully described in this MOU.

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

“Interference Action” means commencing or participating in any and all proceedings adverse to the Comprehensive Project, including but not limited to litigation, lobbying, enacting or enforcing local ordinances, local legislation, or invoking/using any federal, state, or local administrative activities, remedies, processes, or proceedings to prevent, delay, or encumber the Comprehensive Project from being designed, financed, constructed, operated, or maintained in accordance with the terms and conditions of the Settlement Agreement, the MDNR Permit, ND OSE Permits, and federal permits for the Comprehensive Project.

“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 Works Water Permit No. 2018-0819, and any amendments thereto.

“MOU” means this Memorandum of Understanding by and between the Authority and the District.

“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 Minnesota agencies and USACE.

“Party” means either the Authority or the District, 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 Projects, 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 District.

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

“Project Work” means all efforts necessary to accomplish the Projects, including all coordination, Design Work, design review, permitting, Construction Work, inspection, and maintenance of records, whether provided by the Authority or the District.

“Projects” means the Georgetown Project and the Wolverton Project, collectively.

“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” 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 Projects.

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

“Wolverton” means the City of Wolverton, Minnesota, a political subdivision of the State of Minnesota.

“Wolverton Project” means the flood control project described in Section 3.03, designed and implemented by the District as more fully described in this MOU.

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. Sections 14.03 and 15.03 of the Settlement Agreement contemplate the execution of a memorandum of understanding between the Authority and the District, which is intended to provide mutually agreeable terms for the Projects. The Parties agree this MOU fulfills the intentions of sections 14.03 and 15.03 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.

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 Projects.

Section 3.02 GEORGETOWN PROJECT GENERALLY. The purpose of the Georgetown Project is to design, construct, operate, and maintain a project for 100-year FEMA Accredited Flood Protection (based upon the Period of Record Hydrology) for Georgetown to close gaps in Georgetown’s permanent flood protection and to protect Georgetown against any adverse flood impact(s) of the Comprehensive Project. The Georgetown Project will include appropriate in-town lift stations needed for flood control raises to existing transportation levee crossings and include already existing flood control elements such as existing levees, as well as other accompanying features required for FEMA certification. The District has the discretion to determine the plan and design for the Georgetown Project, just as it normally does for all other District projects.

Section 3.03 WOLVERTON PROJECT GENERALLY. The purpose of the Wolverton Project is to design, construct, operate, and maintain a project for 100-year FEMA Accredited Flood Protection (based upon the Period of Record Hydrology) as set forth in the District’s already proposed flood protection project and to protect Wolverton against any adverse flood impact(s) of the Comprehensive Project. The Wolverton Project is intended to include flood protection for an area as identified in Exhibit B. Additionally, the Wolverton Project may include the construction

of a flood control project to protect the Wolverton city cemetery and will include appropriate in-town lift stations needed for flood control and provide levees or flood walls that are one (1) foot above the 500-year flood elevation, as well as other accompanying features required for FEMA certification. The District has the discretion to determine the plan and design for the Wolverton Project, just as it normally does for all other District projects.

Section 3.04 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 District shall be responsible for the Design Work, including the development and submittals described in this MOU. The District will seek reimbursement from the Authority for reasonable costs or expenses incurred for the Design Work by submitting invoices as described herein. Prior to commencing Design Work, the District will submit a cost estimate to the Authority for review and approval, which will not be unreasonably withheld.

Section 4.02 TECHNICAL SPECIFICATIONS. The District will design the Projects in accordance with FEMA Accredited Flood Protection certifications.

Section 4.03 REVIEW SUBMITTALS. The District will be responsible for submitting the following to the Authority for review for both the Georgetown Project and the Wolverton Project:

(a) Preliminary Design Submittal. The District 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 Projects. 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 District shall complete an Interim Design Submittal to a minimum of approximately sixty percent (60%) level of design completion and define the basis of design for all aspects of the Projects. 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 District 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 of 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.

(d) Construction Documents Submittal. The District 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 Projects, 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 District shall sign and seal the contents of the Construction Documents Submittal as required by law.

(e) Shop Drawing Submittals. The District shall submit Shop Drawings 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 District 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 District. 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. If no written objection is received by the District within ten (10) Business Days, the submissions are deemed approved.

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. The Authority will have ten (10) Business Days within which to respond to either Construction Document Submittals or cost estimates. If no written objection is received by the District within ten (10) Business Days, the submissions are deemed approved.

Section 4.06 APPROVAL WITHHELD. Approvals will not be unreasonably 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 District. Where approval is withheld, the District 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 District will be responsible for completing all Preliminary Activities required for the Projects. The Authority will reimburse the District for any costs or expenses incurred for Preliminary Activities submitted by invoices as herein described.

Section 5.02 PROJECT PROPERTY ACQUISITION. The District will be responsible for acquiring any Project Property. Prior to making any offer for any Project Property, the District shall consult with the Authority to determine the price at which the District will offer to purchase the Project Property. The District 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 reimburse the District for costs or expenses incurred for acquisition of Project Property submitted by invoices as herein described. To the extent the property acquisition process results in condemnation, the District will lead the litigation effort, in which case the Authority will reimburse the District for reasonable litigation and expert fees, costs, and appeal fees. The District will lead the decision-making on trial and appellate strategy, in consultation with the Authority. The Authority will also reimburse the District for any adjudicated property valuation and reasonable landowner attorney's fees and costs.

Section 5.03 OTHER APPROVALS. The District is responsible for obtaining all Other Approvals for the Projects. The Authority will work with the District, as requested by the District, to secure Other Approvals. The Authority will reimburse the District for any costs or expenses incurred in obtaining Other Approvals, pursuant to submitted invoices as herein described.

ARTICLE VI. CONSTRUCTION

Section 6.01 CONSTRUCTION. The District shall be responsible for all Construction Work required for the Projects. The District estimates construction on the Georgetown Project will commence in 2022 and be completed by 2025 and estimates construction on the Wolverton Project will commence in 2022 and be completed by 2025. More exact timelines for construction will be determined during the design phase. Construction timeframes of Project components along Trunk Highway 75 and the BNSF Railway will be dictated by MnDOT and BNSF Railway reviews and approvals.

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 will not be unreasonably withheld or delayed. 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 District 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 District 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 District of such fact and the District will correct such nonconformance in the Construction Work and renotify for inspection. If an engineering or construction defect in a Project is discovered during a time in which the applicable statute of limitations for bringing a claim regarding such a defect has not run, which results in litigation, the Authority will reimburse the District for reasonable litigation expenses associated with such engineering or construction defect; provided, however, the Authority shall receive any funds recovered from a third party, including any insurance proceeds, as a result of such litigation.

Section 6.04 RECORD DRAWINGS. The District will provide record drawings of the Georgetown Project and the Wolverton Project to the Authority within thirty (30) calendar days of its respective Project Completion.

Section 6.05 INSPECTION. The District shall be responsible for inspection of Construction Work. The Authority, however, shall have a concurrent right to inspect Construction Work.

Section 6.06 SIGNS FOR PROJECTS. At the project sites for each of the Projects, the District shall display a sign in substantially the form included on the 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 Projects in a timely and efficient manner, the District 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 District from its responsibility to inspect the Projects.

Section 7.02 NON-REVOCABLE 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 District 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 District 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 District will cooperate with the Authority to identify and supply required reports, analyses, or other information and materials relevant to the Projects.

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 determined by the Authority, except with good cause shown by the District.

ARTICLE IX. OPERATIONS AND MAINTENANCE

Section 9.01 GEORGETOWN PROJECT. The District will be responsible for operations and maintenance of the Georgetown Project. Prior to the commencement of operations, the District will request enrollment in the USACE program for regular inspections of the Georgetown Project, will develop an operations and maintenance plan ("O&M Plan") for the Georgetown 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 District shall again seek review and approval of those changes or modifications from the Authority prior to their implementation.

Section 9.02 WOLVERTON PROJECT. The District will be responsible for operations and maintenance of the Wolverton Project. Prior to the commencement of operations, the District will

request enrollment in the USACE program for regular inspections of the Wolverton Project, will develop an O&M Plan for the Wolverton 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 District shall again seek review and approval of those changes or modifications from the Authority prior to their implementation.

ARTICLE X. FUTURE PROJECT CHANGES

Section 10.01 GEORGETOWN PROJECT. Pursuant to the terms of this MOU, the Authority is responsible for providing funds for the Georgetown Project up to the design standards described herein and to close gaps in Georgetown's existing permanent flood control protection. Any future expansion of the Georgetown Project beyond the limits established herein for FEMA certification will be the responsibility of the District.

Section 10.02 WOLVERTON PROJECT. Pursuant to the terms of this MOU, the Authority is responsible for providing funds for the Wolverton Project up to the design standards described herein and within the limits as set forth in the District's already proposed flood protection project. Any future expansion of the Wolverton Project beyond the limits established herein for FEMA certification will be the responsibility of the District.

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 DISTRICT. The District 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 Projects as defined in this MOU.

Section 12.02 DESIGN WORK AND PRELIMINARY ACTIVITIES INVOICING. Prior to commencing Design Work or a Preliminary Activity, the District 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 District 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 District 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 District will submit invoices for payments set forth in the cost estimate pursuant to the following Article.

Section 12.04 CHANGE ORDERS. The Parties understand that conditions and circumstances at times require contractor change orders. All change orders that, in the aggregate, exceed five percent (5%) of the total contract amount must be provided to the Authority for input prior to final approval by the District. Approval by the Authority will not be unreasonably withheld. Change orders under five percent (5%) of the total contract amount may be approved by the District and will be reimbursed by the Authority.

Section 12.05 WHEN REPORTED COSTS EXCEED ESTIMATES. Other than as directed in Section 12.04, 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 District with written notice requesting clarification of specific line items as excessive or unreasonable in relation to the costs approved by the Authority, and the District will provide proper justification within thirty (30) calendar days. Following clarification by the District 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. Should the Authority reject any costs, it shall provide the District with an explanation of the reasons for said rejection.

Section 12.06 APPEAL OF REJECTION OF COSTS. If the District disagrees with the Authority's position on costs, the District will notify the Authority within twenty (20) calendar days from the date of receiving the Authority's written rejection notice pursuant to Section 12.05. The Parties will agree to use a mediator to assist in the resolution of the dispute pursuant to Section 15.02(a). If mediation is unsuccessful, the Parties will agree on an arbitrator and submit the issue to binding arbitration. Both Parties must accept the determination of the arbitrator without opportunity to appeal.

Section 12.07 PAYMENT OF ACCEPTED COSTS. Within thirty (30) calendar days of the arbitrator's determination of the Authority's liability for costs, the Authority shall issue payment of the amount owed to the District.

Section 12.08 PAYMENT AFTER TERMINATION. If this MOU is terminated, all costs incurred by the District 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 each Project. The District will present an annual O&M budget for approval of the Authority, which will not be unreasonably withheld. The District has the discretion to advise what operation and maintenance is required, in accordance with reasonable standards of infrastructure and Project management. This may, from time to time, include extraordinary maintenance items as warranted in the discretion of the District.

ARTICLE XIII. INVOICING AND AUDIT

Section 13.01 INVOICES.

(a) The District 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 District will also submit copies of the invoices to the Authority electronically at APInvoicesFMDiv@jacobs.com, copied to jpaulsen@fmdiversion.gov.

(b) The District'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 District's name and address;
- (2) The District'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 District discovers an error in the amount of payment following the receipt of payment, the District 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 District 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 District from the Authority will be available at all reasonable times to allow the Authority to check and

audit the invoices submitted by the District. The ability of the Authority to audit the District's invoices will extend for a period of three (3) years from the date final payment has been received by the District.

ARTICLE XIV. TERM AND TERMINATION

Section 14.01 TERM. This MOU will continue in full force and effect for ten (10) years following the Effective Date and will automatically renew for successive 10-year periods unless a Party gives written notice as provided herein of termination.

Section 14.02 TERMINATION. This MOU will terminate upon termination of the Settlement Agreement. The Authority's obligations under this Agreement to pay for the District's design, construction, litigation, eminent domain expenses, or operation and maintenance of the Projects that occurred prior to the termination of this Agreement shall remain in place following termination of this Agreement.

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 DISPUTE RESOLUTION PROCESS. 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 District, until one (1) name remains. The Parties will equally split any fees of the mediator.

(b) Litigation. If the dispute is not resolved within thirty (30) calendar days after the end of mediation proceedings, the Parties may litigate the matter.

(c) Legal Fees. Each Party will be responsible for its own attorney's fees in connection with a dispute under this MOU.

(d) 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 MOU, OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS MOU, 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 MOU. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS MOU. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS.

ARTICLE XVI. MISCELLANEOUS

Section 16.01 AUTHORIZED REPRESENTATIVES. Each of the Authority and the District 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) District Representative: Kristine Altrichter, Administrator

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
4784 Amber Valley Parkway South, Suite 100
Fargo, ND 58104
Bakkegardk@fmdiversion.gov

- (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
4784 Amber Valley Parkway South, Suite 100
Fargo, North Dakota 58104
Paulsenj@fmdiversion.gov

(c) All notices to the District will be marked as regarding the Comprehensive Project and will be delivered to the following address or as otherwise directed by the District's authorized representative:

Buffalo-Red River Watershed District
Attention: Administrator
1303 4th Avenue Northeast
Barnesville, Minnesota 56514
KAltrichter@BRRWD.org

(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. Each Party 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, even if the injuries are caused wholly or partially by the negligence of any other Party or its officers, employees, or volunteers. Each Party will require its consultants and contractors to similarly be responsible to maintain workers' compensation for their own employees.

Section 16.04 INSURANCE. The District shall list the Authority (including its agents and contractors) as an additional insured on any insurance policy obtained in connection with the Projects. No Project Work may be done until a certificate of insurance listing the additional insured 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 insured, the formerly insured shall give notice to the additional insureds as soon as is reasonably possible. The District shall obtain a general liability insurance policy providing no less than two million dollars (\$2,000,000) of coverage in connection with the Projects.

Section 16.05 INDEMNIFICATION. The District shall require all of its contractors on the Projects to indemnify, save, and hold the 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 obligations under this MOU or by anyone for whom they are in law responsible.

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 each Party is solely responsible for its own actions or omissions.

Section 16.07 GOVERNING LAW. This MOU shall be interpreted and construed in accordance with and be governed by the laws of the State of North Dakota. However, this Section 16.07 is to be interpreted to only apply to this MOU itself, and the Parties do not intend that North Dakota law should apply to interpretations of Federal or Minnesota statutes, regulations, or permit conditions. Issues that are not governed by this Section 16.07 include, but are not limited to, the construction and application of state and local permitting standards in Minnesota, constitutional and statutory requirements in Minnesota with regard to eminent domain, and Federal FEMA and USACE requirements and regulations.

Section 16.08 CONFLICT. In the event of conflict between this MOU and any other agreement, this MOU shall control and govern the Projects.

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 District 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 District 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 District 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 Projects. Suspension and debarment information can be accessed at <http://www.sam.gov>. The District 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 District 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 District 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 District acknowledges to and for the benefit of the Authority and the EPA that it understands the goods and services under this MOU 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 Projects to be produced in the United States (“American Iron and Steel Requirement”), including iron and steel products provided by the District pursuant to this MOU. The District hereby represents, warrants, and covenants to and for the benefit of the Authority and the EPA that (a) the District has reviewed and understands the American Iron and Steel Requirements; (b) all of the iron and steel products used in the Projects 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 District 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 District shall permit the Authority or the EPA to recover as damages against the District 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 District 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 District 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 District 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. In no event shall a Party be liable for any failure or delay in performance of its obligations hereunder resulting from an event beyond its reasonable control, including but not limited to acts of God or of the public enemy, fire, floods, embargoes, war, acts of war (whether war is declared or not), terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, sabotage, vandalism, epidemic or pandemic declared by the State of Minnesota, or adverse and extreme weather conditions not reasonably anticipated; provided, however, that the Party so affected must (a) provide prompt written notice to the other Party regarding the impacts on the performance of its obligations and the causes thereof, and (b) use reasonable commercial efforts to mitigate the impacts on its performance and resume performance as soon as it is practicable under the circumstances.

Section 16.24 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.

IN WITNESS WHEREOF, the Authority and the District 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 Buffalo-Red River Watershed District

The governing body of the Buffalo-Red River Watershed District approved this MOU on the ____ day of _____, 2022.

**BUFFALO-RED RIVER WATERSHED
DISTRICT**

By: _____
Peter Fjestad, President

ATTEST:

Catherine Affield, Vice President

**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
4784 Amber Valley Parkway South, Suite 100
Fargo, ND 58104

**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
4784 Amber Valley Parkway South, Suite 100
Fargo, ND 58104

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

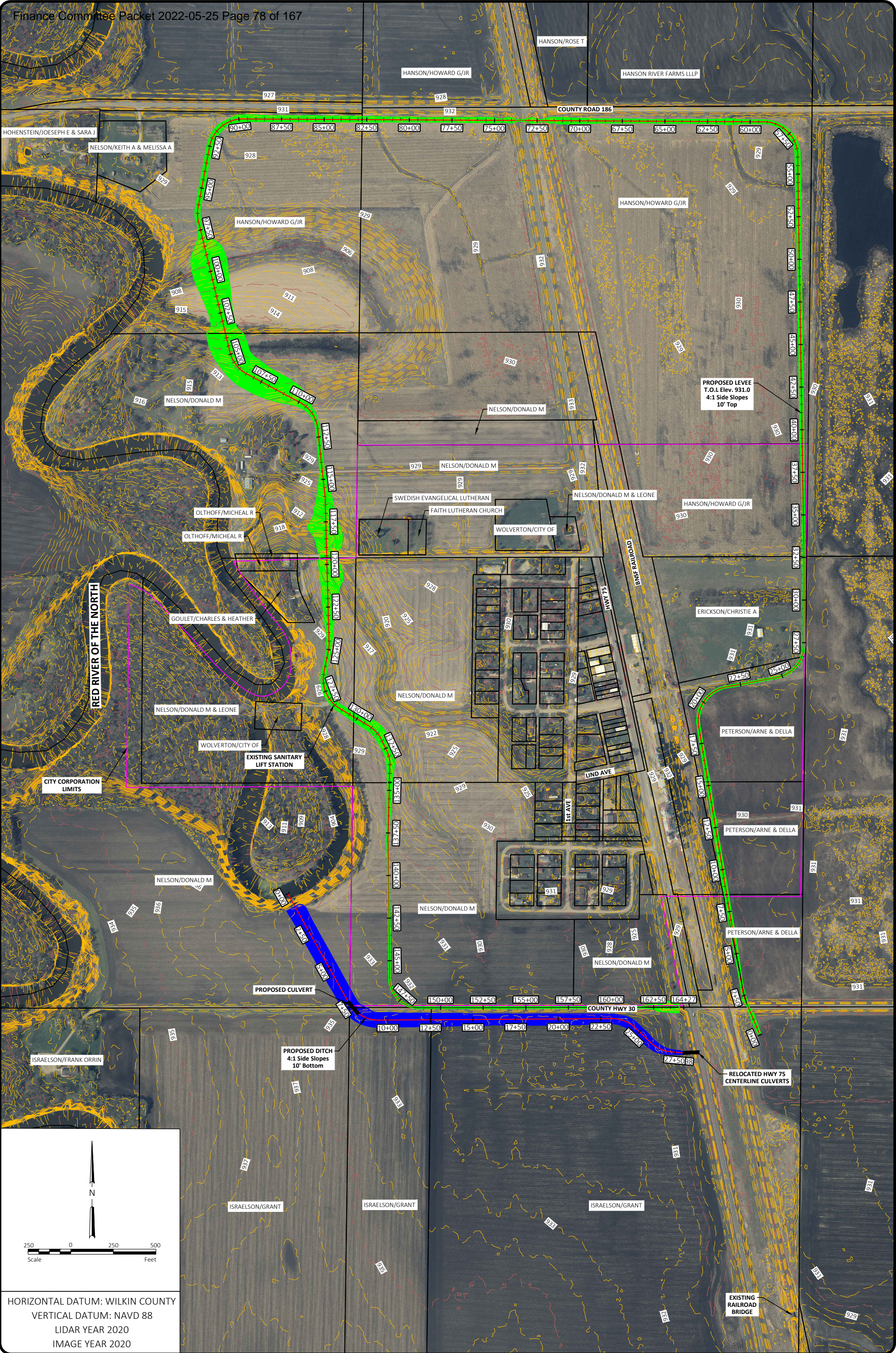
City, State, Zip Code

PLEASE RETURN TO:

Metro Flood Diversion Authority
4784 Amber Valley Parkway South, Suite 100
Fargo, ND 58104

Office Email Address

EXHIBIT B
WOLVERTON PROJECT MAP



N

250

0

250

500

Scale

Feet

HORIZONTAL DATUM: WILKIN COUNTY

VERTICAL DATUM: NAVD 88

LIDAR YEAR 2020

IMAGE YEAR 2020

EXHIBIT C
SIGN TEMPLATE

18.1in



METRO
FLOOD
DIVERSION
AUTHORITY

5.0in

7.0in

This project is funded by the
Metro Flood Diversion Authority

9.1in

Visit **www.fmdiversion.gov** for more information

11.8in

5.0in



This project is funded by the
Metro Flood Diversion Authority

Visit **www.fmdiversion.gov** for more information

MASTER UTILITY RELOCATION AGREEMENT

By and Between

METRO FLOOD DIVERSION AUTHORITY

and

DAKOTA CARRIER NETWORK

Dated as of _____, 2022

Relating to:

**Utility Relocation in the Southern Embankment and Associated
Infrastructure and the Upstream Mitigation Area
for the Fargo-Moorhead Metropolitan
Area Flood Risk Management Project**

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

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS AND INTERPRETATION	2
SECTION 1.01 DEFINITIONS.....	2
SECTION 1.02 TERMS GENERALLY	8
SECTION 1.03 SURVIVAL OF TERMS	8
ARTICLE II. PURPOSE OF MASTER UTILITY RELOCATION AGREEMENT	8
SECTION 2.01 PURPOSE.....	8
SECTION 2.02 COORDINATION BETWEEN ENGINEERS.....	9
SECTION 2.03 COORDINATION WITH USACE.....	9
ARTICLE III. REAL PROPERTY INTERESTS	9
SECTION 3.01 INTENT	9
SECTION 3.02 ACQUISITION OF PRIOR PROPERTY INTERESTS.....	9
SECTION 3.03 UNDISCLOSED PRIOR PROPERTY INTERESTS	10
SECTION 3.04 DISCOVERY OF UNDISCLOSED PRIOR PROPERTY INTERESTS	10
SECTION 3.05 COOPERATION IN PLATTING.....	10
ARTICLE IV. RESPONSIBILITY FOR UNDISCLOSED PRIOR PROPERTY INTERESTS.....	10
SECTION 4.01 UTILITY RESPONSIBILITY	10
SECTION 4.02 REQUESTS FOR RELIEF	10
ARTICLE V. RIGHT OF SITE ACCESS.....	10
SECTION 5.01 RIGHT OF SITE ACCESS	10
SECTION 5.02 NON-REVOCABLE RIGHT OF THE METRO FLOOD DIVERSION AUTHORITY	11
SECTION 5.03 NO NOTICE REQUIRED	11
SECTION 5.04 DELAY FOR SAFETY PURPOSES.....	11
SECTION 5.05 FAILURE TO ALLOW ACCESS, ENTRY, AND INSPECTION	11
ARTICLE VI. REQUIRED REPORTS	11
SECTION 6.01 REQUIRED REPORTS.....	11
SECTION 6.02 DEADLINES.....	11
SECTION 6.03 FAILURE TO TIMELY PRODUCE	11
SECTION 6.04 APPEAL OF FEES ASSESSED.....	11
ARTICLE VII. PERFORMANCE AND CONSTRUCTION.....	12
SECTION 7.01 UTILITY ADJUSTMENT DESIGN WORK.....	12
SECTION 7.02 UTILITY ADJUSTMENT CONSTRUCTION WORK	12
SECTION 7.03 ADDITIONAL RIGHT-OF-WAY OUTSIDE THE PROJECT FOOTPRINT	12
SECTION 7.04 TECHNICAL SPECIFICATIONS	12
SECTION 7.05 COORDINATION FOR UTILITY ADJUSTMENT IN THE UMA	12
SECTION 7.06 PROPOSALS AND PLANS	13
SECTION 7.07 REQUIREMENT OF APPROVAL	14
SECTION 7.08 SHOP DRAWING AND SAMPLE SUBMITTALS	14
SECTION 7.09 ADJUSTMENTS TO THE PROJECT	14
SECTION 7.10 ADJUSTMENTS TO THE UTILITY ADJUSTMENT WORK	15
SECTION 7.11 INSPECTION	15

SECTION 7.12	UTILITY COMPLETION.....	15
SECTION 7.13	THIRD PARTY CONTRACTORS.....	15
SECTION 7.14	INVOICING REQUIREMENTS.....	15
ARTICLE VIII. PAYMENT OF COSTS.....		15
SECTION 8.01	NECESSITY TO KEEP COSTS LOW.....	15
SECTION 8.02	GENERALLY	15
SECTION 8.03	REPORTING OF COSTS	16
SECTION 8.04	REJECTION OF COSTS	16
SECTION 8.05	APPEAL OF A DECISION TO REJECT COSTS	16
SECTION 8.06	PAYMENT OF ACCEPTED COSTS.....	16
SECTION 8.07	BETTERMENTS.....	16
ARTICLE IX. FUTURE RIGHTS AND RESPONSIBILITIES.....		16
SECTION 9.01	RIGHT OF WAY.....	16
SECTION 9.02	USE OF EXISTING EASEMENT	17
SECTION 9.03	RECORD KEEPING	17
SECTION 9.04	FUTURE PERMITS	17
ARTICLE X. DISPUTES WITH CONTRACTORS AND OTHER THIRD PARTIES		18
SECTION 10.01	COORDINATION	18
ARTICLE XI. DISPUTES AMONG THE UTILITY AND THE METRO FLOOD DIVERSION AUTHORITY		18
SECTION 11.01	INTENT AND PROCEDURE.....	18
SECTION 11.02	PROCEDURE TO COMMENCE DISPUTE RESOLUTION PROCESS	18
SECTION 11.03	TIME TO CORRECT	18
SECTION 11.04	MEDIATION	18
SECTION 11.05	ARBITRATION.....	19
SECTION 11.06	RIGHT OF SETOFF	19
SECTION 11.07	LITIGATION IF DISPUTE NOT RESOLVED	19
SECTION 11.08	LEGAL FEES	19
SECTION 11.09	WAIVER OF JURY TRIAL.....	19
ARTICLE XII. USE OF EMINENT DOMAIN.....		19
SECTION 12.01	EMINENT DOMAIN.....	19
SECTION 12.02	NULLIFICATION BY EMINENT DOMAIN.....	19
SECTION 12.03	NULLIFICATION AFTER COSTS INCURRED	20
ARTICLE XIII. MISCELLANEOUS.....		20
SECTION 13.01	NOTICE.....	20
SECTION 13.02	ASSIGNMENT	21
SECTION 13.03	WORKERS' COMPENSATION.....	21
SECTION 13.04	INSURANCE.....	21
SECTION 13.05	INDEMNIFICATION.....	21
SECTION 13.06	RELATIONSHIPS CREATED	21
SECTION 13.07	GOVERNING LAW	21
SECTION 13.08	CONFLICT	21
SECTION 13.09	SEVERABILITY.....	22

SECTION 13.10	MODIFICATIONS	22
SECTION 13.11	BINDING EFFECT	22
SECTION 13.12	REPRESENTATION	22
SECTION 13.13	HEADINGS	22
SECTION 13.14	COUNTERPARTS	22
SECTION 13.15	REPRESENTATION OF AUTHORITY	22
SECTION 13.16	FEES	22
SECTION 13.17	ELECTRONIC SIGNATURES	22
SECTION 13.18	FEDERAL LOBBYING RESTRICTIONS	22
SECTION 13.19	DEBARMENT AND SUSPENSION	23
SECTION 13.20	DAVIS-BACON ACT AND OTHER LABOR LAWS	23
SECTION 13.21	CIVIL RIGHTS OBLIGATIONS	23
SECTION 13.22	CERTIFICATION	24
SECTION 13.23	TERMINATION	24
SIGNATURE PAGES		S-1, S-2

EXHIBIT A - PRIOR PROPERTY INTERESTS

EXHIBIT B - MAP OF UPSTREAM MITIGATION AREA

EXHIBIT C - MFR-023

EXHIBIT D - FEDERAL CERTIFICATIONS

EXHIBIT E - AUTHORITY INVOICING REQUIREMENTS

MASTER UTILITY RELOCATION AGREEMENT

THIS MASTER UTILITY RELOCATION AGREEMENT (the “Agreement”) is made and entered into this ___ day of _____, 2022 (the “Effective Date”), 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 (the “Authority”), and Dakota Carrier Network, whose post office address 3901 Great Plains Drive, Fargo, ND 58108 (the “Utility”) (collectively, the Authority and the Utility are referred to as the “Parties”).

RECITALS

WHEREAS, construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Comprehensive Project”) in the Fargo, North Dakota, and Moorhead, Minnesota, Metropolitan Area was authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-121; and

WHEREAS, the Authority, the City of Fargo, North Dakota, and the City of Moorhead, Minnesota, are the Non-Federal Sponsors (“NFS”) for the Comprehensive Project and have entered into a Project Partnership Agreement (“PPA”) on July 11, 2016, and amended as of March 19, 2019, with the United States Army Corps of Engineers (“USACE”) for the construction, operation, and maintenance of the Comprehensive Project; and

WHEREAS, the PPA sets forth a split delivery method for the Comprehensive Project, establishing the respective responsibilities of both the NFS and the USACE; and

WHEREAS, the Authority was created to undertake and fulfill the NFS’ obligations under the PPA; and

WHEREAS, pursuant to the PPA, the NFS will be responsible for completing the Upstream Mitigation Area (“UMA”), the area where the Authority is required to obtain property rights as mitigation for the temporary storage of floodwaters during Comprehensive Project operations; and all mitigation features that are not the responsibility of the USACE; and

WHEREAS, pursuant to Article II of the PPA, the NFS shall be responsible for all real property interests and relocations required for construction, operation, and maintenance of the Comprehensive Project; 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 Agreement and further described in **Exhibit A**; and

WHEREAS, it will be necessary for the Prior Property Interests to be relocated, protected, removed, or adjusted (hereinafter referred to as the “Utility Relocation Project”) by either the Authority or Utility in coordination with construction of the Comprehensive Project; and

WHEREAS, the Authority and the Utility 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 Utility Relocation Project; and

WHEREAS, this Agreement is only intended to bind the parties in regard to the portion of the Comprehensive Project south of the Storm Water Diversion Channel and Associated Infrastructure ("SWDCAI") and shall have no implications for or binding power in regard to the Parties work, efforts, or relations in the SWDCAI. The Parties interactions with one another in the SWDCAI 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.

"Age Discrimination Act of 1975" means the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-6107).

"Agreement" means this **Master Utility Relocation Agreement**.

"Authority" means the **Metro Flood Diversion Authority**, a **North Dakota** political subdivision created by the **Joint Powers Agreement** dated June 1, 2016.

"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**.

"Cass County" means **Cass County, North Dakota**.

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

"CFR" means the Code of Federal Regulations.

“Civil Rights Act of 1964” means the Civil Rights Act of 1964 (Pub.L. 88-352, 78 Stat. 241, enacted July 2, 1964).

“Clay County” means **Clay County, Minnesota**.

“Certificate of Comprehensive Project Substantial Completion” means a written certificate issued by the **Director of Engineering** indicating that the **Comprehensive Project** has been completed and no elements remain to be completed.

“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.

“Congress” means the **Congress** of the United States of America.

“Contract Work Hours and Safety Standards Act” means the **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701 et seq.).

“Copeland (Anti-Kickback) Act” means the **Copeland Act** (18 U.S.C. 874 and 40 U.S.C. 3145).

“Costs” means all costs, expenses, and fees of whatever nature and kind, excluding internal costs that would have been incurred by the **Utility** regardless of the existence of the **Comprehensive Project**.

“Davis-Bacon Act” means the **Davis-Bacon Act** of 1931 (40 U.S.C. 3141 et seq.).

“Diversion Inlet Structure” means the hydraulic control structure to control the flow of water entering the **SWDCAI** north of the **SEAI** as detailed in the documented entitled the “FMM Diversion Inlet Structure Red River of the North River Basin Fargo, ND.”

“Dilworth” means **Dilworth, Minnesota**.

“Director of Engineering” means the individual or his/her designee who is officially appointed by the **Executive Director** as the **Director of Engineering** for the **Authority**.

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

“Executive Director” means the chief administrative officer of the **Metro Flood Diversion Authority**.

“Executive Order No. 11246” means **Executive Order No. 11246**, dated September 24, 1965.

“Fargo” or **“City of Fargo”** means **Fargo, North Dakota**.

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

“Fargo-Moorhead Metropolitan Area Flood Risk Management Project” has the same definition as **“Comprehensive Project.”**

“Fargo-Moorhead Metropolitan Area Southern Embankment – MFR-023, Utility Guidelines and References” or **“MFR-023”** means the **Fargo-Moorhead Metropolitan Area Southern Embankment – MFR-023, Utility Guidelines and References** drafted by the USACE for the relocation of components in the SEAI.

“Federal Water Pollution Control Act Amendments of 1972” means the **Federal Water Pollution Control Act Amendments of 1972** (Pub.L. 92-500, 86 Stat. 816, enacted October 18, 1972).

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

“Final Feasibility Report and Environmental Impact Statement” or **“FEIS”** means the **Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project**, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, **Fargo-Moorhead Metropolitan Area Flood Risk Management Project**, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013, as amended by the Final Supplemental Environmental Assessment #2, Modifications to the **Fargo-Moorhead Metropolitan Area Flood Risk Management Project**, dated February 2019, approved by the District Engineer, St. Paul District on February 28, 2019, and which may be further amended by future supplemental environmental assessments.

“Frontier” or **“City of Frontier”** means **Frontier, North Dakota**.

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

“Harwood” or **“City of Harwood”** means **Harwood, North Dakota**.

“Horace” or the **“City of Horace”** means **Horace, North Dakota**.

“Joint Powers Agreement” or “JPA” means the **Joint Powers Agreement** dated as of June 1, 2016, by and between the **Member Entities**, as amended from time to time, which created and continued the **Authority**.

“Master Utility Relocation Agreement” or “Agreement” means this **Master Utility Relocation Agreement** by and between the **Authority** and **Utility**.

“Member Entities” shall mean **Moorhead, Fargo, Clay County, Cass County, and CCJWRD**.

“Metro Flood Diversion Authority” has the same definition as **“Authority.”**

“Minnesota” means the **State of Minnesota**.

“Moorhead” or “City of Moorhead” means **Moorhead, Minnesota**.

“Non-Federal Project Costs” means the local cost share of the total cost of the **Comprehensive Project** not provided by the U.S. Government.

“Non-Federal Sponsors” or “NFS” means the entities providing the **Non-Federal Project Costs** for the **Comprehensive Project**, which includes the **City of Fargo**, the **City of Moorhead**, and the **Authority** created pursuant to the **JPA**.

“North Dakota” means the **State of North Dakota**.

“Parties” means the entities to this **Agreement**, specifically the **Authority** and the **Utility**.

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

“PPA” means the **Project Partnership Agreement** executed by and between the Department of the Army and the **City of Fargo, North Dakota**, the **City of Moorhead, Minnesota** and the **Metro Flood Diversion Authority** for construction of the **Fargo-Moorhead Metropolitan Area Flood Risk Management Project**, dated July 11, 2016.

“Preliminary Design Submittal” means the design submittal described in Section 7.05(a) of this **Agreement**.

“Prior Property Interest(s)” means any property interest(s) owned by the **Utility** that the **Authority** deems necessary to **Relocate**.

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

“Project Footprint” means the physical area within which the **SEAI** and the **UMA** will be contained.

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

“Protected Area” means generally the area north of the **SEAI** and east of the **Project** including the communities of **Moorhead, Minnesota, Frontier, North Dakota, Horace, North Dakota, Fargo, North Dakota, West Fargo, North Dakota, Reile’s Acres, North Dakota, and Harwood, North Dakota.**

“Red River” means the **Red River of the North.**

“Red River Communications” or **“RRC”** means a Red River Communications, a North Dakota business providing telephone communications, wireline, wireless broadband service, and video services.

“Red River Control Structure” means the hydraulic control structure to be procured by **USACE**, and located within the **SEAI**, designed to control and/or meter the flow of the **Red River** through the **Protected Area.**

“Reile’s Acres” or **“City of Reile’s Acres”** means **Reile’s Acres, North Dakota.**

“Rehabilitation Act of 1973” means the **Rehabilitation Act of 1973** (Pub.L. 93-112, 87 Stat. 355, enacted September 26, 1973).

“Relocate” or **“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.

“Richland County” means **Richland County, North Dakota.**

“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 **Utility Adjustment Construction Work** is being done, has been done, or will be done as part of the **Utility Relocation Project.**

“Southern Embankment and Associated Infrastructure” or **“SEAI”** consisting of the **Diversion Inlet Structure, Wild Rice and Red River Control Structure**, associated road raises, and earthen dam embankment reaches.

“Substantial Completion Date of the Comprehensive Project” means the date on which the **Director of Engineering** issues a **Certificate of Comprehensive Project Substantial Completion**.

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

“SWDCAI” means the approximately thirty (30) mile, twenty thousand (20,000) cubic feet per second (cfs) 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**.

“Task Order” means a document executed by the **Authority** and **Utility**, including any amendments, stating the scope of services, times for performance of services, compensation, and any other relevant information for a specific project.

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

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

“Upstream Mitigation Area” or **“UMA”** means the area where the **Authority** is required to obtain property rights as mitigation for the temporary storage of floodwaters during **Comprehensive Project** operations, as shown in **Exhibit B**.

“U.S. EPA” means the United States Environmental Protection Agency.

“Utility” means **Dakota Carrier Network**.

“Utility Adjustment” means each **Relocation** (temporary or permanent), abandonment, protection 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 Adjustment Completion” means that the **Utility Adjustment Construction Work** for a **Utility Adjustment** is sufficiently complete in the opinion of the **Authority** and the **Utility**.

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

“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 the **Authority** or by the **Utility**.

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

“Water Resources Reform and Development Act” means the Water Resources Reform and Development Act of 2014, Public Law 113-121.

“West Fargo” means **West Fargo, North Dakota**.

“Wild Rice River” means the river of the same name located in the **State of North Dakota**.

“Wild Rice River Control Structure” or **“WRRCS”** means the control structure for the **Wild Rice River** located southeast of the **City of Horace, North Dakota**.

“Wilkin County” means **Wilkin County, North Dakota**.

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 survive through the **Substantial Completion Date of the Comprehensive Project** and for successive ten-year terms until one of the **Parties** hereto terminates this **Agreement** as provided for herein.

ARTICLE II.

PURPOSE OF MASTER UTILITY RELOCATION 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 Relocation Project**, for coordinating operations and maintenance activities after completion of the **Utility Relocation**

Project, and for the development of individual **Task Orders** issued in conjunction with, and subject to, the terms and conditions of this **Agreement**.

Section 2.02 COORDINATION BETWEEN ENGINEERS. The **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 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 **Agreement**, without the prior written authorization of the **Authority**, except as required by Section 9.01 (a) of this **Agreement**.

ARTICLE III. REAL PROPERTY INTERESTS

Section 3.01 INTENT. It is the intent of the **Parties** hereto that all **Prior Property Interests** shall be identified herein. Specifically, **Prior Property Interests** shall be detailed in the table contained in Section 3.02 and further documented in **Exhibit A** to this **Agreement**.

Section 3.02 ACQUISITION OF PRIOR PROPERTY INTERESTS. The **Prior Property Interests** to be **Relocated** pursuant to the terms and conditions of this **Agreement** include, but are not limited to, the **Prior Property Interests** documented in **Exhibit A** and described in the table below:

Location (Section-Township-Range)	Utility Owner	Location	Existing Crossing Type/Info	Other Attributes	Right-of-Way Document
27-137-49 & 26-137-49	DCN	UMA	Fiber to AT&T and Verizon cell tower	Along 173 rd Ave SE, south from Cass County Road 18 to the Verizon cell tower site	
Various	DCN/RRC	UMA/WRRCS	N/S along 173 rd Ave SE and underneath the WRRCS	Shared with RRC	County Permit – CCJWRD Easement
Various	DCN/RRC	UMA	E/W along Cass County Road 18 and Clay County Road 18 and Clay Count Road 2 – from Comstock, MN to 173 rd Ave SE	Shared with RRC	County Permit – CCJWRD Easement

Section 3.03 UNDISCLOSED PRIOR PROPERTY INTERESTS. If the **Authority**, for any reason, determines **Undisclosed Prior Property Interests** should be **Relocated**, such **Relocation** shall occur pursuant to the terms of this **Agreement**.

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. The **Utility** shall endeavor to submit a **Supplemental Plan** for approval within sixty (60) days. Should the **Utility** fail to submit a **Supplemental Plan** by the applicable deadline, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall follow the dispute resolution process pursuant to Article XI of this **Agreement**.

Section 3.05 COOPERATION IN PLATTING. The **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 the **Authority**.

ARTICLE IV. RESPONSIBILITY FOR UNDISCLOSED PRIOR PROPERTY INTERESTS

Section 4.01 UTILITY RESPONSIBILITY. The **Utility** shall bear the costs of **Relocating** all **Undisclosed Prior Property Interests**.

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 **Authority** to request payment or partial payment for costs of the **Relocating Undisclosed Property Interests**. This request for relief shall be a separate document from the reports required by Article VII but shall be submitted to the **Authority** in conjunction with the reports 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 **Authority** is able to proceed with construction of the **Project** in a timely and efficient manner, as well as to properly monitor and ensure completion of the **Utility Relocation Project**, the **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 5.02 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 **Authority**.

Section 5.03 NO NOTICE REQUIRED. No notice shall be required for the **Authority** to exercise the rights described in this Article.

Section 5.04 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 **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** safety for access, entry, and inspection, as determined by the **Party** desiring to access, enter, and inspect the **Site**.

Section 5.05 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 5.04, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall follow the dispute resolution process pursuant to Article XI of this **Agreement**.

ARTICLE VI. REQUIRED REPORTS

Section 6.01 REQUIRED REPORTS. The **Utility** shall prepare any reports, analysis, plans, cost estimates, or other information and materials within the scope identified in a **Task Order** pertaining to the utility infrastructure, the **Utility Relocation Project**, or the **Project**, as requested by the **Authority**.

Section 6.02 DEADLINES. All reports, analysis, plans, cost estimates, and other information and materials requested by the **Authority** shall be provided before the expiration of a reasonable deadline determined by the **Authority** and/or identified in a **Task Order** pertaining to the utility infrastructure, the **Utility Relocation Project**, or the **Project**.

Section 6.03 FAILURE TO TIMELY PRODUCE. Should the **Utility** fail to produce any reports, analysis, plans, cost estimates, or other information and materials requested of them by the **Authority**, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall follow the dispute resolution process pursuant to Article XI of this **Agreement**.

Section 6.04 APPEAL OF FEES ASSESSED. Within thirty (30) days of submitting requested information after the due date, the **Utility** may appeal the assessment of fees provided for in Section 6.03, by submitting a written appeal to the **Authority**. Within thirty (30) days of submission of a written appeal of assessed fees explaining the reasons for failure and other mitigating factors which the board should consider when deciding whether to waive the fee, the **Authority** shall, at its own discretion, approve or deny the appeal of assessed fees.

ARTICLE VII. PERFORMANCE AND CONSTRUCTION

Section 7.01 UTILITY ADJUSTMENT DESIGN WORK. The **Utility** shall be responsible for the completion of all **Utility Adjustment Design Work**. The **Utility** shall complete all **Utility Adjustment Design Work** prior to reasonable deadline identified in a **Task Order** pertaining to the utility infrastructure, the **Utility Relocation Project**, or the **Project**, provided to **Utility** by the **Authority**.

Section 7.02 UTILITY ADJUSTMENT CONSTRUCTION WORK. The **Utility Adjustment Construction Work** shall be as follows:

- a. The **Utility** shall be responsible for the completion of all **Utility Adjustment Construction Work**. The **Utility** shall complete all **Utility Adjustment Construction Work** prior to reasonable deadline provided to **Utility** by the **Authority**.
- b. If a portion of the **Utility Adjustment Construction Work** is outside of the **Project Property**, the **Utility** shall be responsible for that portion of the **Utility Adjustment Construction Work**. The **Utility** shall meet the requirements of federal law in regard to any **Work** contracted out to third parties, for which the **Authority** will reimburse the **Utility**.

Section 7.03 ADDITIONAL RIGHT-OF-WAY OUTSIDE THE PROJECT FOOTPRINT. Should the **Utility** require additional right-of-way to complete the **Utility Relocation Project**, the **Utility** shall notify the **Authority** of said needs as soon as reasonably possible after discovering the need. The **Authority** shall use its **Best Efforts** to acquire the necessary right-of-way but shall not be responsible for any damages related to time delays associated with the acquisition of additional right-of-way needed to accommodate betterments. In the event the **Utility Relocation Project** directly or indirectly causes the **Utility** to acquire additional property interests, the **Utility** shall consult with the **Authority** prior to determining the price at which they will offer to purchase said property interests. The **Utility** will only offer to purchase additional property interests at a price consented to by the **Authority**.

Section 7.04 TECHNICAL SPECIFICATIONS. The **Utility Relocation Project** must be designed in accordance with the **Fargo-Moorhead Metropolitan (“FMM”) Area Southern Embankment – MFR-023, Utility Guidelines for the Southern Embankment and References (“MFR-023”)** which is hereby incorporated by reference and attached as **Exhibit C** to this **Agreement**. The requirements set forth in **MFR-023** shall only apply to **Utility Adjustment Work** within the **SEAI**. All **Utility Adjustment Work** in the **UMA** shall be conducted in accordance with Section 7.05 of this **Agreement**.

Section 7.05 COORDINATION FOR UTILITY ADJUSTMENT IN THE UMA. All **Utility Adjustment Work** in the **UMA** shall be designed, constructed, and completed in accordance with federal, state, and local regulations and guidelines. In the event **Utility Adjustment Work** shall be completed in the **UMA**, the **Utility** will work in conjunction with the **Authority**, in **Good Faith**,

to design and submit a **Utility Adjustment** plan for the **Authority** to review, comment and approve.

Section 7.06 PROPOSALS AND PLANS. Anytime following execution of this **Agreement**, the **Utility** may submit to the **Authority**, for each **Utility Adjustment**, a **Preliminary Design Submittal**, a **Final Design Submittal**, and a **Post Construction Submittal** for review, comment, and approval by the **Authority** as defined and at the specific timelines specified in **MFR-023**.

- (a) Preliminary Design Submittal. The **Utility** shall complete a **Preliminary Design Submittal** to a minimum of approximately thirty-five percent (35%) 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 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 in **MFR-023**. The **Preliminary Design Submittal** shall include, at a minimum, sketches and/or relocation plans, text defining the general proposed plan, and a scoping estimate of construction costs.
- (b) Final Design Submittal. The **Utility** shall complete a **Final Design Submittal** including, but not limited to, fully developed design and relocation plan, drawings, specifications, and all other supporting information, design documentation, etc. The **Final Design Submittal** shall also contain complete applicable technical specifications. In addition to the aforementioned information, the **Final Design Submittal** shall include fully developed design and relocation plans, drawings, specifications, design documentation including calculations for the expected volume of grout needed to fill the annular spaces and all other supporting information, design documentation, and a final estimate of construction costs. The **Final Design Submittal** shall be utilized to develop individual **Task Orders** for consideration and approval by the **Authority** prior to completion of the **Utility Adjustment Work**.
- (c) Post Construction Submittal. The **Utility**, in coordination with the **NFS** shall complete and provide a **Post Construction Submittal**. The **Utility** acknowledges and agrees that **Post Construction Submittals** shall be conducted in accordance with the **MFR-023**. The **Post Construction Submittal** shall include, but is not limited to:
 - 1. Acceptance testing documentation and inspection records, including standard proctor and field moisture density results.
 - 2. Pipe inspection schedule and maintenance plan for future recurring inspections.
 - 3. Design documentation that includes calculations for the expected volume of grout needed to fill the annular space.

4. Post-Construction Report that includes the amount that the expected amount of grout was used for filling the annular space.
 5. As-Built Drawings: Submit As-Built drawings for the complete utility line relocation showing complete detail, including trench dimensions, pipe profile, pipe alignment, valve locations, connection box locations, manholes and all other pertinent as-built information.
 6. As-Built Surveys
- (d) Review. The **Authority** shall complete a full review of each submittal and provide comments and/or approval.
1. 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 **Agreement**.
 2. The **Authority** shall complete a full review and provide comments on submittals within twenty (20) **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 **Agreement**, and the **Utility** resubmits a previously submitted submittal, the **Authority** shall review the submittal and respond within ten (10) **Business Days**. The **Authority's** review of the re-submittal 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. In the event that the **Authority** does not provide comments within the period prescribed by this **Agreement**, the **Utility** shall provide written notice of the failure to respond. If the **Authority** does not respond within five (5) **Business Days** of receiving written notification, the submittal shall be deemed approved.

Section 7.07 REQUIREMENT OF APPROVAL. No **Utility Adjustment Construction Work** may begin until the **Authority** approves the **Final Design Submittal**.

Section 7.08 SHOP DRAWING AND SAMPLE SUBMITTALS. The **Utility** shall submit **Shop Drawings and Samples** that detail the **Utility Adjustment Construction Work** to be performed by the **Utility** on the **Utility Relocation Project** within the **Project Footprint**. The **Authority** shall review the **Shop Drawings and Samples** in accordance with the procedure and timelines in Section 7.06 for the review of submittals.

Section 7.09 ADJUSTMENTS TO THE PROJECT. Should the planned route of the **SEAI** change in a material manner, the **Utility** and the **Authority** shall immediately interface to adjust plans for the **Utility Relocation Project**, as necessary.

Section 7.10 ADJUSTMENTS TO THE UTILITY ADJUSTMENT WORK. Any changes or modifications to the **Post Construction Submittal** during construction that materially affect the performance or construction of the **Utility Adjustment Work** will be subject to written approval by the **Authority**. The **Utility** will submit the proposed changes or modifications to the **Authority** for review and approval. The **Authority** shall review the submittals in accordance with procedure and timelines in Section 7.06. **Authority** lines not required to be moved prior to the adjustment of **Post Construction Submittal**, which need to be **Relocated** after changes are made to **Post Construction Submittal** shall not be treated as **Undisclosed Prior Property Interests** for purposes of assigning responsibility for costs.

Section 7.11 INSPECTION. The **Utility** shall be responsible for inspection of all **Utility Adjustment Construction Work**.

Section 7.12 UTILITY COMPLETION. Within ten (10) **Business Days** of the anticipated date for **Utility Adjustment Completion**, the **Utility** and the **Authority** will schedule a final inspection, whereby the **Utility** shall be responsible for holding an inspection of the **Utility's** portion of **Utility Adjustment Construction Work** to determine whether the **Utility Adjustment** meets the **Post Construction Submittal** and any material changes or modifications made per Section 7.09 and 7.10. If the **Authority** finds the construction is not in conformance with the **Post Construction Submittal** or any approved material changes or modifications, the **Authority** will notify the **Utility** of such fact and the **Utility** will correct such nonconformance in the construction work and re-notify for inspection. Once the **Authority** finds the **Utility Adjustment** has reached **Utility Adjustment Completion**, the **Authority** will provide a certificate of **Utility Adjustment Completion**.

Section 7.13 THIRD PARTY CONTRACTORS. Should the **Utility** engage any third-party contractor to fulfill, contribute to, or otherwise act in regard to an obligation assigned to **Utility** in this **Agreement**, the **Utility** shall abide by all restrictions and requirements provided for in Article XIII and as provided in the federal lobbying restrictions which is attached as **Exhibit D** to this **Agreement**.

Section 7.14 INVOICING REQUIREMENTS. All invoices provided to the **Authority** pursuant to or arising from this **Agreement** shall comply with invoicing requirements provided in the **Authority** invoicing requirements which is as attached as **Exhibit E** to this **Agreement**.

ARTICLE VIII. PAYMENT OF COSTS

Section 8.01 NECESSITY TO KEEP COSTS LOW. The **Utility** and the **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** customer. The **Utility** and the **Authority** shall be diligent in keeping costs as low as reasonably possible.

Section 8.02 GENERALLY. The **Authority** shall pay all reasonable costs of the **Utility Relocation Project** approved under Section VII and actually incurred, whether those costs are incurred by the **Utility** or the **Authority**, excluding the **Utility's** internal costs.

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 of the **Utility Relocation Project** to the **Authority** for review.

Section 8.04 REJECTION OF COSTS. The **Authority** may reject reported costs and expenses to the extent that it deems any specific costs or expenses are unreasonable. Notice of rejection of any costs or expenses must be provided to the **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 **Authority** written notice of the appeal and justification for its expenses within twenty (20) days of its receipt of the rejection notice.

Section 8.06 PAYMENT OF ACCEPTED COSTS. Within thirty (30) days of the determination of the **Authority's** full liability to the **Utility**, the **Authority** shall issue a single, full payment of the amount owed to the **Utility**.

Section 8.07 BETTERMENTS. In no situation shall any **Party** other than the **Utility** be responsible for costs and expenses of betterments installed during the **Utility Relocation Project**.

ARTICLE IX. FUTURE RIGHTS AND RESPONSIBILITIES

Section 9.01 RIGHT OF WAY. Should the **Authority** deem it necessary for the purpose of the **Utility Relocation Project**, the **Authority** shall grant the **Utility** a right-of-way below, above, and across the **Project Footprint** so the **Utility** can properly maintain its facilities in the right-of-way, subject to the following restrictions and obligations:

- a. Coordination with USACE. In the event the **Utility** deems it necessary to perform **Utility Adjustment Work**, within the right-of-way, beyond operation and maintenance for the **Utility Relocation Project**, **Utility** shall be responsible for coordination with the **USACE** to obtain appropriate review and approval.
- b. 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. The **NFS** and **Utility** shall be responsible for preparing an operation and maintenance agreement that sets forth the roles and responsibility of each **Party**. The **Utility** shall be responsible for preparing a maintenance and abandonment plan for all utilities located within the work limits of the **SEAI** and/or **UMA**. The **Utility** acknowledges and agrees that all maintenance of the **Utility** property and associated infrastructure shall be conducted in accordance with the **MFR-023**.
- c. Post Construction Access. Following completion of the **Utility Relocation Project**, the **Utility** shall provide the **Authority** with seven (7) days' written notice of any maintenance it intends to do within the **Project Footprint**.

- d. 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 **Authority**.
- e. 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.
- f. Metro Flood Diversion Authority Access. In the event that **Utility** property malfunctions, destructs, or otherwise begins to cause on-going damage to the **SEAI** and/or the **UMA**, the **Authority** shall have the authority to access the damage-causing **Utility** property and take any action necessary to stop on-going damage to the **SEAI**.
- g. Access. The **Authority** shall have unrestricted access in, over, and across the right-of-way.
- h. Damage to the SEAI or UMA. Should **Utility** property malfunction, deconstruct, or otherwise cause damage to the **SEAI** and/or the **UMA**, the **Utility** shall take immediate action to stop on-going damage to the **SEAI** and/or the **UMA** and will consult with the **Authority** on how to repair all damage that occurs.
- i. 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 9.02 USE OF EXISTING EASEMENT. In the event **Utility** property 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 property located within the **Project Footprint**.

Section 9.03 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 **Agreement** and the laws of **North Dakota**.

Section 9.04 FUTURE PERMITS. Should the **Utility** file a formal permit application with the **Authority**, pertaining to the **Utility** line **Relocated** pursuant to this **Agreement**, with the **Authority** after the **Effective Date**, the **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 **SEAI** or the **UMA** or interfere with other facilities already contained within the **Project Footprint**, as determined by the **Authority**. In addition to the permit application granted by the

Authority, Utility shall be responsible for obtaining all other permits necessary and required by the **USACE**. Should an existing **Utility** line be modified in the future, the **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 X. DISPUTES WITH CONTRACTORS AND OTHER THIRD PARTIES

Section 10.01 COORDINATION. The **Parties** shall coordinate with respect to any dispute with third parties. Such coordination shall include any potential or ongoing litigation.

ARTICLE XI. DISPUTES AMONG THE UTILITY AND THE METRO FLOOD DIVERSION AUTHORITY

Section 11.01 INTENT AND PROCEDURE. The **Utility** and the **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 11.02 PROCEDURE TO COMMENCE DISPUTE RESOLUTION PROCESS. The **Parties** agree that in the event of an alleged breach of any of the terms of this **Agreement**, the **Parties** making such allegation shall, except as provided in Section 13.01 (Notices) of this **Agreement**, provide thirty (30) days written notice to the other **Party** of the alleged breach. The written notice shall contain reasonable description of the underlying facts and an explanation of why the **Party** providing notice believe those facts constitute a breach. Following transmittal of the notice, the **Party** alleged to have caused the breach shall be given a reasonable time (as provided in Section 12.03 of this **Agreement**), not less than ten (10) days to correct or remedy the alleged breach, to meet and confer with the other **Party**, and/or to participate in mediation with the other **Party** prior to initiating any litigation, arbitration, or any administrative proceeding, unless the alleged breach has the potential to cause immediate and irreparable harm, in which case the **Party** alleging the harm may initiate litigation prior to complying with the provisions of this Section 11.02 while, at the same time, following the procedures set forth in Sections 11.01, 11.02, and 13.01 of this **Agreement** as applicable.

Section 11.03 TIME TO CORRECT. The reasonableness of the time afforded to the **Party** alleged to have breached this **Agreement** pursuant to Section 11.02 of this **Agreement** to cure the alleged breach and engage in dispute resolution processes shall be determined by considering the circumstances, including the potential harm, injury, or damages that are or may result from the alleged breach and the extent to which the harm, injury, or damages may worsen with the passage of time.

Section 11.04 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 **Authority** shall strike the first name, followed by the **Utility**, in that recurring order until one name remains.

Section 11.05 ARBITRATION. If there is a failure between the **Parties** to resolve a dispute on their own, the **Parties** shall first attempt to arbitrate the dispute. The **Parties** shall agree upon a single arbitrator, that is mutually agreeable to the **Parties**. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Section 11.06 RIGHT OF SETOFF. If there is a failure between the **Parties** to resolve a dispute on their own, and the **Parties** have attempted to utilize the dispute resolution process pursuant to Article XI of this **Agreement**, and such dispute, including but not limited to those identified in Sections 3.04, 5.05, and 6.03, results in the unreasonable delay of the **Utility Relocation Project**, the **Authority** is hereby authorized, to the fullest extent permitted by law to setoff, and may apply any and all deposits at any time held and owing to or for the credit of any **Party** to this **Agreement** against any and all obligations existing under this **Agreement**.

Section 11.07 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 11.08 LEGAL FEES. Each **Party** will be responsible for their own attorney's fees in connection with a dispute under this Article.

Section 11.09 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 THE **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 XII. USE OF EMINENT DOMAIN

Section 12.01 EMINENT DOMAIN. Nothing in this **Agreement** shall be construed as limiting the **Authority**, or its **Member Entities'** ability to exercise its powers of eminent domain.

Section 12.02 NULLIFICATION BY EMINENT DOMAIN. Should the **Authority** initiate eminent domain proceedings to accomplish the goals of the **Utility Relocation Project**, the terms of the **Agreement** shall be null and void at the option of the **Authority**.

Section 12.03 NULLIFICATION AFTER COSTS INCURRED. Should the terms of this **Agreement** be nullified under Section 12.02, after plans and proposals described in Section VII have been approved as required by Article VII, 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 **Authority** in the same manner it would have submitted a report of costs pursuant to Article VII had the **Utility Relocation Project** been completed.

ARTICLE XIII. MISCELLANEOUS

Section 13.01 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 deliver 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 **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 **Authority's** authorized representative:
Jacobs Engineering Group, Inc.
4784 Amber Valley Parkway South, Suite 200
Fargo, North Dakota 58104
- b. All legal notices to the **Authority**, in addition to being provided to the **Authority's** representative as provided above, 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
Attn: Executive Director
4784 Amber Valley Parkway South, Suite 200
Fargo, North Dakota 58104
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:
Dakota Carrier Network
3901 Great Plains Drive
Fargo, North Dakota 58108

- 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 13.02 ASSIGNMENT. Neither **Party** may transfer or assign this **Agreement**, nor any rights or obligations under this **Agreement**, without the express written consent of the other **Party**. Each **Party** shall only be permitted to transfer or assign rights or obligations under this **Agreement** by giving thirty (30) days' written notice pursuant to Section 13.01 to the other **Party** of its intent to transfer or assign.

Section 13.03 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 13.04 INSURANCE. The **Utility** shall list the **Authority** as additional insureds 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 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 13.05 INDEMNIFICATION. The **Utility** shall indemnify and hold harmless the **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 13.06 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 13.07 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 13.08 CONFLICT. In the event of a conflict between the **Parties** pertaining to the terms and conditions of this **Agreement**, this **Agreement** shall control and govern the relocation

of **Utility** infrastructure, lines, and property for purposes of the **SEAI** and the **UMA**, but not the relocation of **Utility** infrastructure, lines, and property for purposes of the **SWDCAI**.

Section 13.09 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 13.10 MODIFICATIONS. Any modifications or amendments to this **Agreement** must be in writing and signed by both **Parties** to this **Agreement**.

Section 13.11 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 13.12 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 13.13 HEADINGS. Headings in this **Agreement** are for convenience only and will not be used to interpret or construe its provisions.

Section 13.14 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 13.15 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 13.16 FEES. The fees provided for herein shall not be interpreted or deemed to be the **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 **Authority** shall have all remedies available to it at law in addition to any fees paid to the **Authority** by **Utility** pursuant to this **Agreement**.

Section 13.17 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 13.18 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, member of **Congress**, an officer or employee of **Congress**, or any 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 U.S.

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 **Authority** the certification and disclosure forms in Appendix A and Appendix B to 40 **CFR** Part 34, which are attached as **Exhibit D** to this **Agreement**. **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 13.19 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 **Agreement**. Upon award of this contract, **Utility** shall complete and submit to the **Authority**, the federal certification form regarding debarment and suspension, which is attached as **Exhibit D** to this **Agreement**.

Section 13.20 DAVIS-BACON ACT AND OTHER LABOR LAWS. **Utility** shall comply with the following federal labor requirements:

- a. **Davis-Bacon Act**, which requires the payment of prevailing wage rates to all laborers and mechanics on construction projects in excess of \$2,000. **Utility** and the **Authority** acknowledge and agree that the **Davis-Bacon Act** shall apply if the **Authority** is performing **Utility Adjustment Construction Work**. **Utility** and the **Authority** acknowledge and agree that the **Davis-Bacon Act** shall not apply if any party other than the **Authority** is performing **Utility Adjustment Construction Work**.
- b. The **Contract Work Hours and Safety Standards Act**, which requires time and one-half pay for overtime hours worked in excess of forty hours in any workweek.
- c. The **Copeland Act** (Anti-Kickback Act), which prohibits employers from inducing an employee to give up any part of compensation to which he or she is entitled.

Section 13.21 CIVIL RIGHTS OBLIGATIONS. The **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 13.22 CERTIFICATION. **Utility** shall complete and submit to the **Authority**, the federal certification form regarding civil rights, which is attached as **Exhibit D** to this **Agreement**.

Section 13.23 TERMINATION. This **Agreement** may be terminated by the **Authority**, at any time and for any reason with three (3) calendar days written notice to the **Utility**.

IN WITNESS WHEREOF, the **Parties** executed this **Agreement** on the date first written above.

AUTHORITY:

Metro Flood Diversion Authority

Joel Paulsen, Executive Director

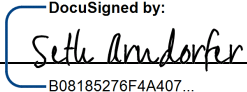
Chad Peterson, Chair

ATTEST:

Dawn Lindblom, Secretary

UTILITY:

Dakota Carrier Network

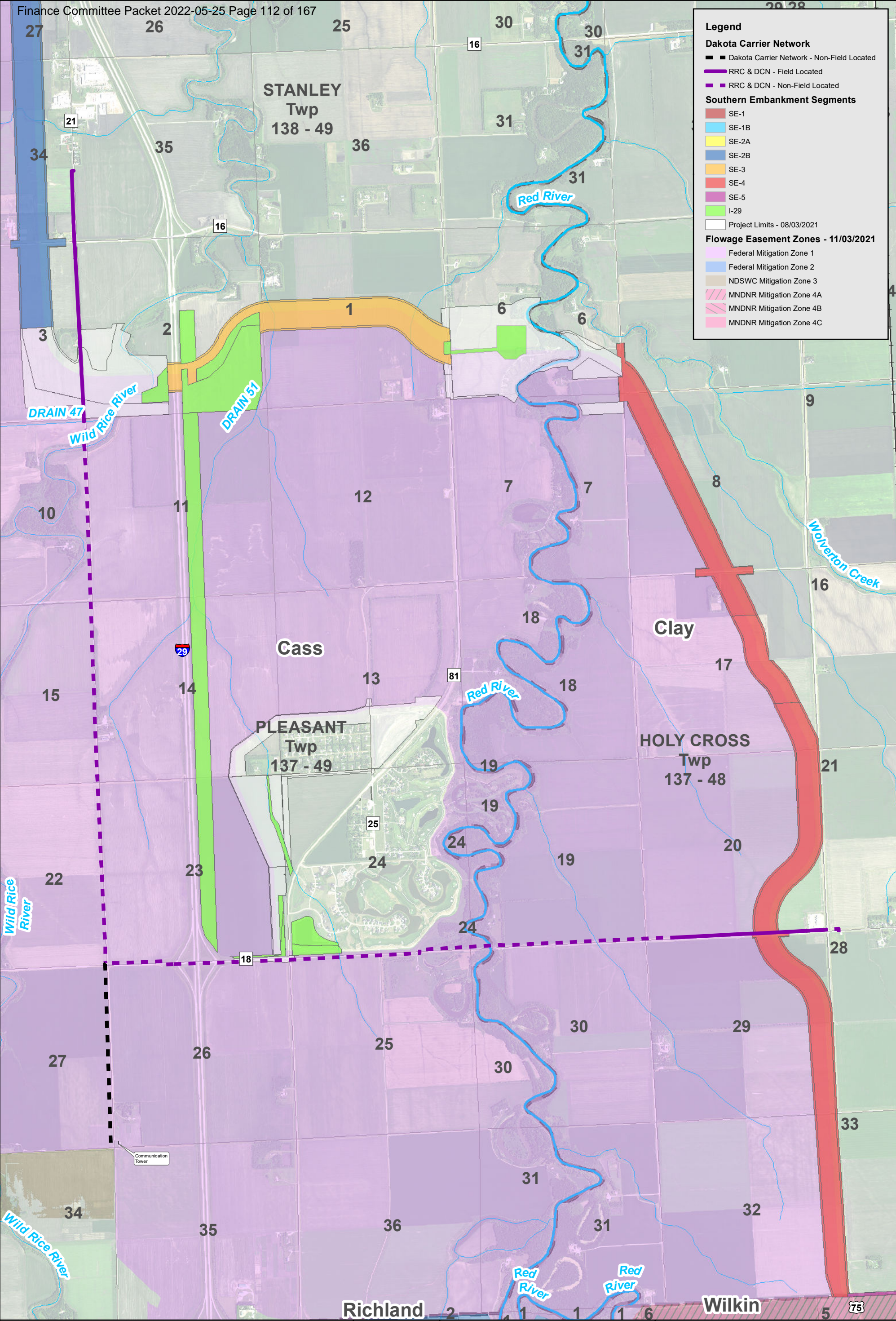
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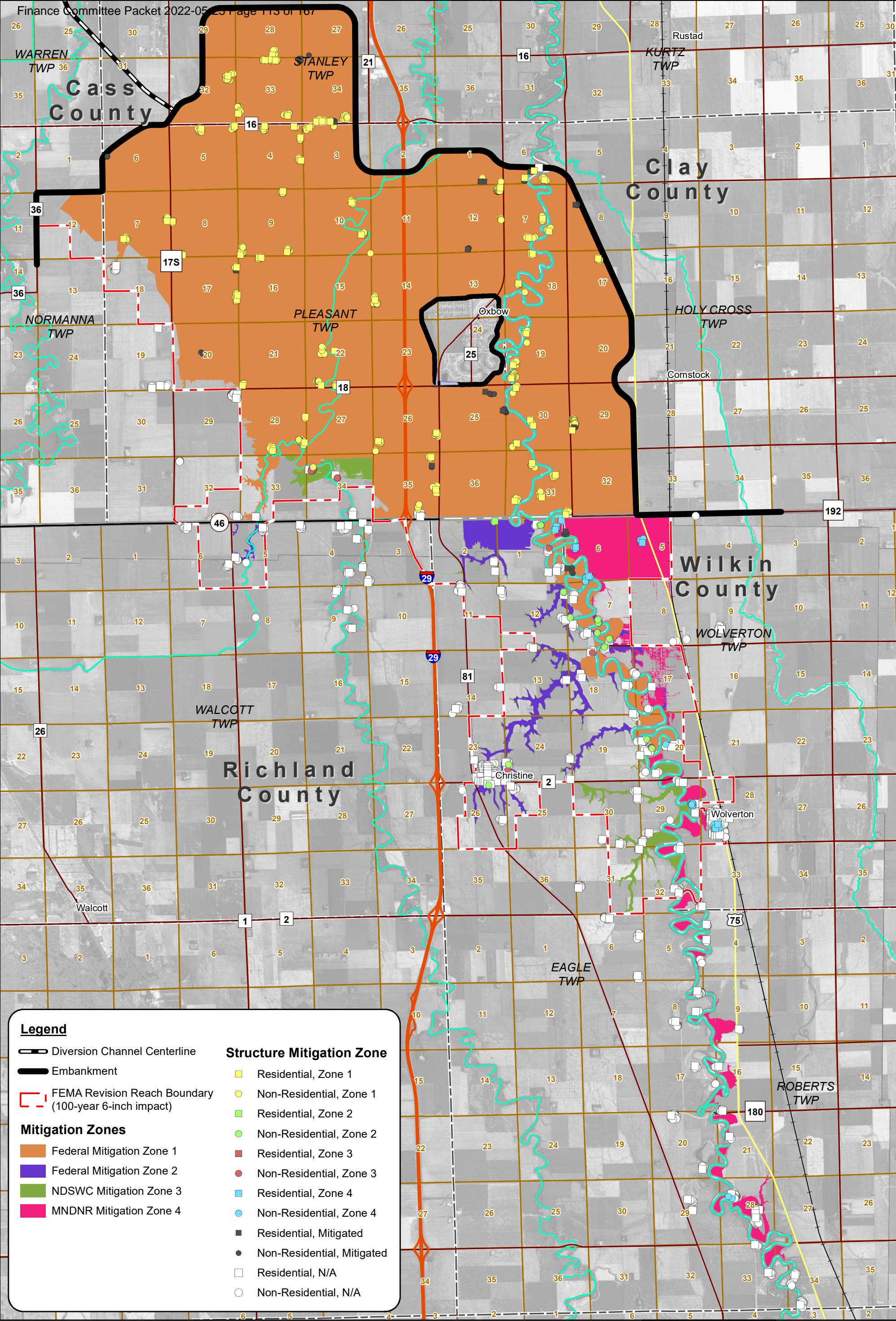
Its: CEO _____

ATTEST:

By: _____

Its: _____





Legend

- Diversion Channel Centerline
- Embankment
- FEMA Revision Reach Boundary (100-year 6-inch impact)

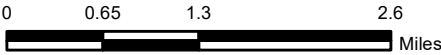
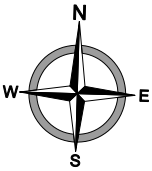
Mitigation Zones

- Federal Mitigation Zone 1
- Federal Mitigation Zone 2
- NDSWC Mitigation Zone 3
- MNDNR Mitigation Zone 4

Structure Mitigation Zone

- Residential, Zone 1
- Non-Residential, Zone 1
- Residential, Zone 2
- Non-Residential, Zone 2
- Residential, Zone 3
- Non-Residential, Zone 3
- Residential, Zone 4
- Non-Residential, Zone 4
- Residential, Mitigated
- Non-Residential, Mitigated
- Residential, N/A
- Non-Residential, N/A

FM AREA DIVERSION PROJECT
UPSTREAM MITIGATION AREA &
MITIGATION ZONES



Source: CLOMR FEMA Case Number 19-08-0683R



MEMORANDUM FOR RECORD

SUBJECT:

Fargo-Moorhead Metropolitan (FMM) Area Southern Embankment - MFR-023, Utility Guidelines for the Southern Embankment

1. REFERENCES

- a. USACE. Engineering Manual 1110-2-2902 *Conduits, Culverts and Pipes*. 22 May 2020.
- b. USACE. Engineering Pamphlet No. 1110-2-18, *Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures*. 1 May 2019.
- c. ANSI/IEEE C2 – National Electric Safety Code.

2. PURPOSE

Requirements for pipelines¹ and other utility lines crossing the dam are primarily defined in References under paragraph 1. As noted in Chapter 2 of Reference 1a, internal erosion accounts for nearly half of all embankment dam failures with many of those failures occurring along pipelines. These potential failure modes are also discussed at length in Chapter 2 of Ref 1a. Understanding how these failures occur and the risks associated with these failures is key in designing the proposed utility crossings and was the basis of this MFR to minimize risks to the dam and allow the dam to perform as intended.

Ideally, all utilities would be relocated around the Fargo-Moorhead Metropolitan Area (FMM) Southern Embankment (SE) Project and would not cross the dam embankment or be placed within the Project work limits. However, given the length of the Project, (21 miles of dam), utilities will need to cross the line of the protection. Therefore, these guidelines will aid impacted utility owners and the Non-Federal Sponsor (NFS) in developing an approved utility relocation plan. These guidelines are general; each proposed utility relocation within the SE Project work limits shall be reviewed by the United States Army Corps of Engineers (USACE) on a case-by-case basis.

3. PROJECT DESCRIPTION

The FMM SE Project is a “dry dam” consisting of a 21-mile long earthen dam embankment and three gated structures. The SE Project will be constructed to meet USACE dam safety criteria and is to be built under several contracts spanning multiple years. The three gated structures are located at the inlet to the diversion channel near the intersection of Cass County Road 16 (CR

¹ Conduits, pipes, and culverts that convey fluids or gases, or serve as encasements for utility lines, or intercept seepage.

**FEDERAL CERTIFICATION FORMS
CERTIFICATION REGARDING FEDERAL LOBBYING**

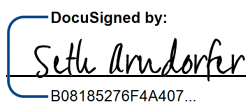
The undersigned certifies to the best of his or her knowledge and belief that:

- (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: DCN, LLC

Signed:  Seth Anderson
B08185276F4A407...

Its: CEO

Date: 4/22/2022

PLEASE RETURN TO:
Metro Flood Diversion Authority
4784 Amber Valley Parkway South, Suite 100
Fargo, ND 58104

**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 DCN, LLC (dba) Dakota Carrier Network

Date: 4/22/2022

By: Seth Arndorfer CEO

Name and Title of Authorized
Representative

DocuSigned by:

Seth Arndorfer

B08185276F4A407...

Signature of Authorized
Representative

PLEASE RETURN TO:

Metro Flood Diversion Authority
4784 Amber Valley Parkway South, Suite 100
Fargo, ND 58104

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

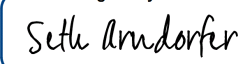
The undersigned provides this assurance for the purpose of entering into a contract with the Metro Flood Diversion Authority (Authority) related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project), which is receiving federal financial assistance. Specifically, the US EPA WIFIA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

DocuSigned by:

B08185276F4A407...

Signature of Authorized Official

CEO

Title

Seth Arndorfer

Print Name

DCN, LLC

Name of Institution or Agency

4/22/2022

Date

3901 Great Plains Drive S.

Street

Fargo, ND, 58104

City, State, Zip Code

sarndorfer@dakotacarrier.com

Office Email Address

PLEASE RETURN TO:

Metro Flood Diversion Authority

4784 Amber Valley Parkway South, Suite 100

Fargo, ND 58104

AUTHORITY INVOICING REQUIREMENTS

Utility will submit copies of the invoice to:

Bakkegardk@FMDiversion.gov and APInvoicesFMDiv@jacobs.com

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

- i. Utility's name and address;
- ii. Utility'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," including 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 the Authority receives Utility's invoice, the Authority will either process the invoice for payment or give Utility specific reasons, in writing within fifteen (15) business days, why part of all of the Authority's payment is being withheld and what actions Utility must take to receive the withheld amount. In the event of disputed billing, only the disputed portion will be withheld from payment and the 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, Utility must credit any payment in error from any payment that is due or that may become due to Utility under this Agreement or return the overpayment to the Authority within thirty (30) calendar days of the identification of the error.

And any other information referenced within this Agreement.

MASTER UTILITY RELOCATION AGREEMENT

By and Between

METRO FLOOD DIVERSION AUTHORITY

and

RED RIVER RURAL TELEPHONE ASSOCIATION

Dated as of _____, 2022

Relating to:

**Utility Relocation in the Southern Embankment and Associated
Infrastructure and the Upstream Mitigation Area
for the Fargo-Moorhead Metropolitan
Area Flood Risk Management Project**

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

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS AND INTERPRETATION	2
SECTION 1.01 DEFINITIONS.....	2
SECTION 1.02 TERMS GENERALLY	8
SECTION 1.03 SURVIVAL OF TERMS	8
ARTICLE II. PURPOSE OF MASTER UTILITY RELOCATION AGREEMENT	8
SECTION 2.01 PURPOSE.....	8
SECTION 2.02 COORDINATION BETWEEN ENGINEERS.....	9
SECTION 2.03 COORDINATION WITH USACE.....	9
ARTICLE III. REAL PROPERTY INTERESTS	9
SECTION 3.01 INTENT	9
SECTION 3.02 ACQUISITION OF PRIOR PROPERTY INTERESTS.....	9
SECTION 3.03 UNDISCLOSED PRIOR PROPERTY INTERESTS	9
SECTION 3.04 DISCOVERY OF UNDISCLOSED PRIOR PROPERTY INTERESTS	10
SECTION 3.05 COOPERATION IN PLATTING.....	10
ARTICLE IV. RESPONSIBILITY FOR UNDISCLOSED PRIOR PROPERTY INTERESTS.....	10
SECTION 4.01 UTILITY RESPONSIBILITY	10
SECTION 4.02 REQUESTS FOR RELIEF	10
ARTICLE V. RIGHT OF SITE ACCESS.....	10
SECTION 5.01 RIGHT OF SITE ACCESS	10
SECTION 5.02 NON-REVOCABLE RIGHT OF THE METRO FLOOD DIVERSION AUTHORITY	11
SECTION 5.03 NO NOTICE REQUIRED	11
SECTION 5.04 DELAY FOR SAFETY PURPOSES.....	11
SECTION 5.05 FAILURE TO ALLOW ACCESS, ENTRY, AND INSPECTION	11
ARTICLE VI. REQUIRED REPORTS	11
SECTION 6.01 REQUIRED REPORTS.....	11
SECTION 6.02 DEADLINES.....	11
SECTION 6.03 FAILURE TO TIMELY PRODUCE	11
ARTICLE VII. PERFORMANCE AND CONSTRUCTION.....	11
SECTION 7.01 UTILITY ADJUSTMENT DESIGN WORK.....	11
SECTION 7.02 UTILITY ADJUSTMENT CONSTRUCTION WORK	12
SECTION 7.03 ADDITIONAL RIGHT-OF-WAY OUTSIDE THE PROJECT FOOTPRINT	12
SECTION 7.04 TECHNICAL SPECIFICATIONS	12
SECTION 7.05 COORDINATION FOR UTILITY ADJUSTMENT IN THE UMA	12
SECTION 7.06 PROPOSALS AND PLANS	12
SECTION 7.07 REQUIREMENT OF APPROVAL	14
SECTION 7.08 SHOP DRAWING AND SAMPLE SUBMITTALS	14
SECTION 7.09 ADJUSTMENTS TO THE PROJECT	14
SECTION 7.10 ADJUSTMENTS TO THE UTILITY ADJUSTMENT WORK	14
SECTION 7.11 INSPECTION	14
SECTION 7.12 UTILITY COMPLETION.....	15

SECTION 7.13	THIRD PARTY CONTRACTORS.....	15
SECTION 7.14	INVOICING REQUIREMENTS.....	15
ARTICLE VIII. PAYMENT OF COSTS.....		15
SECTION 8.01	NECESSITY TO KEEP COSTS LOW.....	15
SECTION 8.02	GENERALLY	15
SECTION 8.03	REPORTING OF COSTS	16
SECTION 8.04	REJECTION OF COSTS	16
SECTION 8.05	APPEAL OF A DECISION TO REJECT COSTS	16
SECTION 8.06	PAYMENT OF ACCEPTED COSTS.....	16
SECTION 8.07	BETTERMENTS.....	16
ARTICLE IX. FUTURE RIGHTS AND RESPONSIBILITIES.....		16
SECTION 9.01	RIGHT OF WAY.....	16
SECTION 9.02	USE OF EXISTING EASEMENT	17
SECTION 9.03	RECORD KEEPING	17
SECTION 9.04	FUTURE PERMITS	18
ARTICLE X. DISPUTES WITH CONTRACTORS AND OTHER THIRD PARTIES		18
SECTION 10.01	COORDINATION	18
ARTICLE XI. DISPUTES AMONG THE UTILITY AND THE METRO FLOOD DIVERSION AUTHORITY		18
SECTION 11.01	INTENT AND PROCEDURE.....	18
SECTION 11.02	PROCEDURE TO COMMENCE DISPUTE RESOLUTION PROCESS	18
SECTION 11.03	TIME TO CORRECT	18
SECTION 11.04	MEDIATION	19
SECTION 11.05	ARBITRATION.....	19
SECTION 11.06	LITIGATION IF DISPUTE NOT RESOLVED	19
SECTION 11.07	LEGAL FEES	19
SECTION 11.08	WAIVER OF JURY TRIAL.....	19
ARTICLE XII. USE OF EMINENT DOMAIN.....		19
SECTION 12.01	EMINENT DOMAIN.....	19
SECTION 12.02	NULLIFICATION BY EMINENT DOMAIN.....	19
SECTION 12.03	NULLIFICATION AFTER COSTS INCURRED	20
ARTICLE XIII. MISCELLANEOUS.....		20
SECTION 13.01	NOTICE.....	20
SECTION 13.02	ASSIGNMENT	21
SECTION 13.03	WORKERS' COMPENSATION.....	21
SECTION 13.04	INSURANCE.....	21
SECTION 13.05	INDEMNIFICATION	22
SECTION 13.06	RELATIONSHIPS CREATED	22
SECTION 13.07	GOVERNING LAW	22
SECTION 13.08	CONFLICT	22
SECTION 13.09	SEVERABILITY.....	22
SECTION 13.10	MODIFICATIONS	22
SECTION 13.11	BINDING EFFECT	22

SECTION 13.12 REPRESENTATION 22

SECTION 13.13 HEADINGS 22

SECTION 13.14 COUNTERPARTS 22

SECTION 13.15 REPRESENTATION OF AUTHORITY 22

SECTION 13.16 FEES 23

SECTION 13.17 ELECTRONIC SIGNATURES 23

SECTION 13.18 FEDERAL LOBBYING RESTRICTIONS 23

SECTION 13.19 DEBARMENT AND SUSPENSION 23

SECTION 13.20 DAVIS-BACON ACT AND OTHER LABOR LAWS 23

SECTION 13.21 CIVIL RIGHTS OBLIGATIONS 24

SECTION 13.22 CERTIFICATION 24

SECTION 13.23 TERMINATION 24

SIGNATURE PAGES-1

EXHIBIT A - PRIOR PROPERTY INTERESTS

EXHIBIT B - MAP OF UPSTREAM MITIGATION AREA

EXHIBIT C - MFR-023

EXHIBIT D - FEDERAL CERTIFICATIONS

EXHIBIT E - AUTHORITY INVOICING REQUIREMENTS

MASTER UTILITY RELOCATION AGREEMENT

THIS MASTER UTILITY RELOCATION AGREEMENT (the “Agreement”) is made and entered into this ___ day of _____, 2022 (the “Effective Date”), by and between the Metro Flood Diversion Authority, a North Dakota political subdivision, whose post office address is 4784 Amber Valley Parkway South, Suite 100, Fargo, ND 58104 (the “Authority”), and Red River Rural Telephone Association, whose post office address is 510 Broadway, P.O. Box 136, Abercrombie, ND 58001 (the “Utility”) (collectively, the Authority and the Utility are referred to as the “Parties”).

RECITALS

WHEREAS, construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Comprehensive Project”) in the Fargo, North Dakota, and Moorhead, Minnesota, Metropolitan Area was authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-121; and

WHEREAS, the Authority, the City of Fargo, North Dakota, and the City of Moorhead, Minnesota, are the Non-Federal Sponsors (“NFS”) for the Comprehensive Project and have entered into a Project Partnership Agreement (“PPA”) on July 11, 2016, and amended as of March 19, 2019, with the United States Army Corps of Engineers (“USACE”) for the construction, operation, and maintenance of the Comprehensive Project; and

WHEREAS, the PPA sets forth a split delivery method for the Comprehensive Project, establishing the respective responsibilities of both the NFS and the USACE; and

WHEREAS, the Authority was created to undertake and fulfill the NFS’ obligations under the PPA; and

WHEREAS, pursuant to the PPA, the NFS will be responsible for completing the Upstream Mitigation Area (“UMA”), the area where the Authority is required to obtain property rights as mitigation for the temporary storage of floodwaters during Comprehensive Project operations; and all mitigation features that are not the responsibility of the USACE; and

WHEREAS, pursuant to Article II of the PPA, the NFS shall be responsible for all real property interests and relocations required for construction, operation, and maintenance of the Comprehensive Project; 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 Agreement and further described in **Exhibit A**; and

WHEREAS, it will be necessary for the Prior Property Interests to be relocated, protected, removed, or adjusted (hereinafter referred to as the “Utility Relocation Project”) by either the Authority or Utility in coordination with construction of the Comprehensive Project; and

WHEREAS, the Authority and the Utility 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 Utility Relocation Project; and

WHEREAS, this Agreement is only intended to bind the parties in regard to the portion of the Comprehensive Project south of the Storm Water Diversion Channel and Associated Infrastructure ("SWDCAI") and shall have no implications for or binding power in regard to the Parties work, efforts, or relations in the SWDCAI. The Parties interactions with one another in the SWDCAI 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.

"Age Discrimination Act of 1975" means the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-6107).

"Agreement" means this **Master Utility Relocation Agreement**.

"Authority" means the **Metro Flood Diversion Authority**, a **North Dakota** political subdivision created by the **Joint Powers Agreement** dated June 1, 2016.

"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**.

"Cass County" means **Cass County, North Dakota**.

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

"CFR" means the Code of Federal Regulations.

“Civil Rights Act of 1964” means the Civil Rights Act of 1964 (Pub.L. 88-352, 78 Stat. 241, enacted July 2, 1964).

“Clay County” means **Clay County, Minnesota**.

“Certificate of Comprehensive Project Substantial Completion” means a written certificate issued by the **Director of Engineering** indicating that the **Comprehensive Project** has been completed and no elements remain to be completed.

“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.

“Congress” means the **Congress** of the United States of America.

“Contract Work Hours and Safety Standards Act” means the **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701 et seq.).

“Copeland (Anti-Kickback) Act” means the **Copeland Act** (18 U.S.C. 874 and 40 U.S.C. 3145).

“Costs” means all costs, expenses, and fees of whatever nature and kind, excluding internal costs that would have been incurred by the **Utility** regardless of the existence of the **Comprehensive Project**.

“Davis-Bacon Act” means the **Davis-Bacon Act** of 1931 (40 U.S.C. 3141 et seq.).

“Diversion Inlet Structure” means the hydraulic control structure to control the flow of water entering the **SWDCAI** north of the **SEAI** as detailed in the documented entitled the “FMM Diversion Inlet Structure Red River of the North River Basin Fargo, ND.”

“Dilworth” means **Dilworth, Minnesota**.

“Director of Engineering” means the individual or his/her designee who is officially appointed by the **Executive Director** as the **Director of Engineering** for the **Authority**.

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

“Executive Director” means the chief administrative officer of the **Metro Flood Diversion Authority**.

“Executive Order No. 11246” means **Executive Order No. 11246**, dated September 24, 1965.

“Fargo” or **“City of Fargo”** means **Fargo, North Dakota**.

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

“Fargo-Moorhead Metropolitan Area Flood Risk Management Project” has the same definition as **“Comprehensive Project.”**

“Fargo-Moorhead Metropolitan Area Southern Embankment – MFR-023, Utility Guidelines and References” or **“MFR-023”** means the **Fargo-Moorhead Metropolitan Area Southern Embankment – MFR-023, Utility Guidelines and References** drafted by the USACE for the relocation of components in the SEAI.

“Federal Water Pollution Control Act Amendments of 1972” means the **Federal Water Pollution Control Act Amendments of 1972** (Pub.L. 92-500, 86 Stat. 816, enacted October 18, 1972).

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

“Final Feasibility Report and Environmental Impact Statement” or **“FEIS”** means the **Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project**, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, **Fargo-Moorhead Metropolitan Area Flood Risk Management Project**, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013, as amended by the Final Supplemental Environmental Assessment #2, Modifications to the **Fargo-Moorhead Metropolitan Area Flood Risk Management Project**, dated February 2019, approved by the District Engineer, St. Paul District on February 28, 2019, and which may be further amended by future supplemental environmental assessments.

“Frontier” or **“City of Frontier”** means **Frontier, North Dakota**.

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

“Harwood” or **“City of Harwood”** means **Harwood, North Dakota**.

“Horace” or the **“City of Horace”** means **Horace, North Dakota**.

“Joint Powers Agreement” or “JPA” means the **Joint Powers Agreement** dated as of June 1, 2016, by and between the **Member Entities**, as amended from time to time, which created and continued the **Authority**.

“Master Utility Relocation Agreement” or “Agreement” means this **Master Utility Relocation Agreement** by and between the **Authority** and **Utility**.

“Member Entities” shall mean **Moorhead, Fargo, Clay County, Cass County, and CCJWRD**.

“Metro Flood Diversion Authority” has the same definition as **“Authority.”**

“Minnesota” means the **State of Minnesota**.

“Moorhead” or “City of Moorhead” means **Moorhead, Minnesota**.

“Non-Federal Project Costs” means the local cost share of the total cost of the **Comprehensive Project** not provided by the U.S. Government.

“Non-Federal Sponsors” or “NFS” means the entities providing the **Non-Federal Project Costs** for the **Comprehensive Project**, which includes the **City of Fargo**, the **City of Moorhead**, and the **Authority** created pursuant to the **JPA**.

“North Dakota” means the **State of North Dakota**.

“Other Approvals” means all approvals and permits legally required to complete the approved **Utility Adjustment Construction Work** on the **Utility Relocation Project**.

“Parties” means the entities to this **Agreement**, specifically the **Authority** and the **Utility**.

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

“PPA” means the **Project Partnership Agreement** executed by and between the Department of the Army and the **City of Fargo, North Dakota**, the **City of Moorhead, Minnesota** and the **Metro Flood Diversion Authority** for construction of the **Fargo-Moorhead Metropolitan Area Flood Risk Management Project**, dated July 11, 2016.

“Preliminary Design Submittal” means the design submittal described in Section 7.05(a) of this **Agreement**.

“Prior Property Interest(s)” means any property interest(s) owned by the **Utility** that the **Authority** deems necessary to **Relocate**.

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

“Project Footprint” means the physical area within which the **SEAI** and the **UMA** will be contained.

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

“Protected Area” means generally the area north of the **SEAI** and east of the **Project** including the communities of **Moorhead, Minnesota, Frontier, North Dakota, Horace, North Dakota, Fargo, North Dakota, West Fargo, North Dakota, Reile’s Acres, North Dakota, and Harwood, North Dakota.**

“Red River” means the **Red River of the North.**

“Red River Control Structure” means the hydraulic control structure to be procured by **USACE**, and located within the **SEAI**, designed to control and/or meter the flow of the **Red River** through the **Protected Area.**

“Red River Rural Telephone Association” has the same meaning as the **Utility.**

“Reile’s Acres” or **“City of Reile’s Acres”** means **Reile’s Acres, North Dakota.**

“Rehabilitation Act of 1973” means the **Rehabilitation Act of 1973** (Pub.L. 93-112, 87 Stat. 355, enacted September 26, 1973).

“Relocate” 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.

“Richland County” means **Richland County, North Dakota.**

“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 **Utility Adjustment Construction Work** is being done, has been done, or will be done as part of the **Utility Relocation Project.**

“Southern Embankment and Associated Infrastructure” or **“SEAI”** consisting of the **Diversion Inlet Structure, Wild Rice and Red River Control Structure**, associated road raises, and earthen dam embankment reaches.

“Substantial Completion Date of the Comprehensive Project” means the date on which the **Director of Engineering** issues a **Certificate of Comprehensive Project Substantial Completion**.

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

“SWDCAI” means the approximately thirty (30) mile, twenty thousand (20,000) cubic feet per second (cfs) 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**.

“Task Order” means a document executed by the **Authority** and **Utility**, including any amendments, stating the scope of services, times for performance of services, compensation, and any other relevant information for a specific project.

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

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

“Upstream Mitigation Area” or **“UMA”** means the area where the **Authority** is required to obtain property rights as mitigation for the temporary storage of floodwaters during **Comprehensive Project** operations, as shown in **Exhibit B**.

“U.S. EPA” means the United States Environmental Protection Agency.

“Utility” means **Red River Rural Telephone Association**.

“Utility Adjustment” means each **Relocation** (temporary or permanent), abandonment, protection 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 Adjustment Completion” means that the **Utility Adjustment Construction Work** for a **Utility Adjustment** is sufficiently complete in the opinion of the **Authority** and the **Utility**.

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

“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 the **Authority** or by the **Utility**.

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

“Water Resources Reform and Development Act” means the Water Resources Reform and Development Act of 2014, Public Law 113-121.

“West Fargo” means **West Fargo, North Dakota**.

“Wild Rice River” means the river of the same name located in the **State of North Dakota**.

“Wild Rice River Control Structure” means the control structure for the **Wild Rice River** located southeast of the **City of Horace, North Dakota**.

“Wilkin County” means **Wilkin County, North Dakota**.

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 survive through the **Substantial Completion Date of the Comprehensive Project** and for successive ten-year terms until one of the **Parties** hereto terminates this **Agreement** as provided for herein.

ARTICLE II.

PURPOSE OF MASTER UTILITY RELOCATION 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 Relocation Project**, for coordinating operations and maintenance activities after completion of the **Utility Relocation**

Project, and for the development of individual **Task Orders** issued in conjunction with, and subject to, the terms and conditions of this **Agreement**.

Section 2.02 COORDINATION BETWEEN ENGINEERS. The **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 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 **Agreement**, without the prior written authorization of the **Authority**, except as required by Section 9.01 (a) of this **Agreement**.

ARTICLE III. REAL PROPERTY INTERESTS

Section 3.01 INTENT. It is the intent of the **Parties** hereto that all **Prior Property Interests** shall be identified herein. Specifically, **Prior Property Interests** shall be detailed in the table contained in Section 3.02 and further documented in **Exhibit A** to this **Agreement**.

Section 3.02 ACQUISITION OF PRIOR PROPERTY INTERESTS. The **Prior Property Interests** to be **Relocated** pursuant to the terms and conditions of this **Agreement** include, but are not limited to, the **Prior Property Interests** documented in **Exhibit A** and described in the table below:

Location (Section-Township-Range)	Location	Existing Crossing Type/Info	Right-of-Way Document
33-137-49	Wild Rice River Structure	48 Count Fiber	Requested easement
Various	Upstream Mitigation Area – North Dakota	Various	Various
20-137-48	SE-4	E/W Line along County Road 2 – North Side	Clay County Permit 05-T21
33-137-48	SE-4 & SE-5	4 Count Fiber – East side of 75	
Various	Upstream Mitigation Area – Minnesota	Various	Various

Section 3.03 UNDISCLOSED PRIOR PROPERTY INTERESTS. If the **Authority**, for any reason, determines **Undisclosed Prior Property Interests** should be **Relocated**, such **Relocation** shall occur pursuant to the terms of this **Agreement**.

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. The **Utility** shall endeavor to submit a **Supplemental Plan** for approval within sixty (60) days. Should the **Utility** fail to submit a **Supplemental Plan** by the applicable deadline, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall follow the dispute resolution process pursuant to Article XI of this **Agreement**.

Section 3.05 COOPERATION IN PLATTING. The **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 the **Authority**.

ARTICLE IV. RESPONSIBILITY FOR UNDISCLOSED PRIOR PROPERTY INTERESTS

Section 4.01 UTILITY RESPONSIBILITY. The **Utility** shall bear the costs of **Relocating** all **Undisclosed Prior Property Interests**.

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 **Authority** to request payment or partial payment for costs of the **Relocating Undisclosed Property Interests**. This request for relief shall be a separate document from the reports required by Article VII but shall be submitted to the **Authority** in conjunction with the reports 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**. The **Authority** shall review all written requests for relief, and within thirty (30) days of receipt, shall inform the **Utility** if the requests for relief are 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 **Authority** is able to proceed with construction of the **Project** in a timely and efficient manner, as well as to properly monitor and ensure completion of the **Utility Relocation Project**, the **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 5.02 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 **Authority**.

Section 5.03 NO NOTICE REQUIRED. No notice shall be required for the **Authority** to exercise the rights described in this Article.

Section 5.04 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 **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** safety for access, entry, and inspection, as determined by the **Party** desiring to access, enter, and inspect the **Site**.

Section 5.05 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 5.04, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall follow the dispute resolution process pursuant to Article XI of this **Agreement**.

ARTICLE VI. REQUIRED REPORTS

Section 6.01 REQUIRED REPORTS. The **Utility** shall prepare any reports, analysis, plans, cost estimates, or other information and materials within the scope identified in a **Task Order** pertaining to the utility infrastructure, the **Utility Relocation Project**, or the **Project**, as requested by the **Authority**.

Section 6.02 DEADLINES. All reports, analysis, plans, cost estimates, and other information and materials requested by the **Authority** shall be provided before the expiration of a reasonable deadline determined by the **Authority** and/or identified in a **Task Order** pertaining to the utility infrastructure, the **Utility Relocation Project**, or the **Project**.

Section 6.03 FAILURE TO TIMELY PRODUCE. Should the **Utility** fail to produce any reports, analysis, plans, cost estimates, or other information and materials requested of them by the **Authority**, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall follow the dispute resolution process pursuant to Article XI of this **Agreement**.

ARTICLE VII. PERFORMANCE AND CONSTRUCTION

Section 7.01 UTILITY ADJUSTMENT DESIGN WORK. The **Utility** shall be responsible for the completion of all **Utility Adjustment Design Work**. The **Utility** shall complete all **Utility Adjustment Design Work** prior to reasonable deadline identified in a **Task Order** pertaining to the utility infrastructure, the **Utility Relocation Project**, or the **Project**, provided to **Utility** by the **Authority**.

Section 7.02 UTILITY ADJUSTMENT CONSTRUCTION WORK. The **Utility Adjustment Construction Work** shall be as follows:

- a. The **Utility** shall be responsible for the completion of all **Utility Adjustment Construction Work**. The **Utility** shall complete all **Utility Adjustment Construction Work** prior to reasonable deadline provided to **Utility** by the **Authority**.
- b. If a portion of the **Utility Adjustment Construction Work** is outside of the **Project Property**, the **Utility** shall be responsible for that portion of the **Utility Adjustment Construction Work**. The **Utility** shall meet the requirements of federal law in regard to any **Work** contracted out to third parties, for which the **Authority** will reimburse the **Utility**.

Section 7.03 ADDITIONAL RIGHT-OF-WAY OUTSIDE THE PROJECT FOOTPRINT. Should the **Utility** require additional right-of-way to complete the **Utility Relocation Project**, the **Utility** shall notify the **Authority** of said needs as soon as reasonably possible after discovering the need. The **Authority** shall use its **Best Efforts** to acquire the necessary right-of-way but shall not be responsible for any damages related to time delays associated with the acquisition of additional right-of-way needed to accommodate betterments. In the event the **Utility Relocation Project** directly or indirectly causes the **Utility** to acquire additional property interests, the **Utility** shall consult with the **Authority** prior to determining the price at which they will offer to purchase said property interests. The **Utility** will only offer to purchase additional property interests at a price consented to by the **Authority**.

Section 7.04 TECHNICAL SPECIFICATIONS. The **Utility Relocation Project** must be designed in accordance with the **Fargo-Moorhead Metropolitan (“FMM”) Area Southern Embankment – MFR-023, Utility Guidelines for the Southern Embankment and References (“MFR-023”)** which is hereby incorporated by reference and attached as **Exhibit C** to this **Agreement**. The requirements set forth in **MFR-023** shall only apply to **Utility Adjustment Work** within the **SEAI**. All **Utility Adjustment Work** in the **UMA** shall be conducted in accordance with Section 7.05 of this **Agreement**.

Section 7.05 COORDINATION FOR UTILITY ADJUSTMENT IN THE UMA. All **Utility Adjustment Work** in the **UMA** shall be designed, constructed, and completed in accordance with federal, state, and local regulations and guidelines. In the event **Utility Adjustment Work** shall be completed in the **UMA**, the **Utility** will work in conjunction with the **Authority**, in **Good Faith**, to design and submit a **Utility Adjustment** plan for the **Authority** to review, comment and approve.

Section 7.06 PROPOSALS AND PLANS. Anytime following execution of this **Agreement**, the **Utility** may submit to the **Authority**, for each **Utility Adjustment**, a **Preliminary Design Submittal**, a **Final Design Submittal**, and a **Post Construction Submittal** for review, comment, and approval by the **Authority** as defined and at the specific timelines specified in **MFR-023**.

- (a) Preliminary Design Submittal. The **Utility** shall complete a **Preliminary Design Submittal** to a minimum of approximately thirty-five percent (35%) 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 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 in **MFR-023**. The **Preliminary Design Submittal** shall include, at a minimum, sketches and/or relocation plans, text defining the general proposed plan, and a scoping estimate of construction costs.

- (b) Final Design Submittal. The **Utility** shall complete a **Final Design Submittal** including, but not limited to, fully developed design and relocation plan, drawings, specifications, and all other supporting information, design documentation, etc. The **Final Design Submittal** shall also contain complete applicable technical specifications. In addition to the aforementioned information, the **Final Design Submittal** shall include fully developed design and relocation plans, drawings, specifications, design documentation including calculations for the expected volume of grout needed to fill the annular spaces and all other supporting information, design documentation, and a final estimate of construction costs. The **Final Design Submittal** shall be utilized to develop individual **Task Orders** for consideration and approval by the **Authority** prior to completion of the **Utility Adjustment Work**.
- (c) Post Construction Submittal. The **Utility**, in coordination with the **NFS** shall complete and provide a **Post Construction Submittal**. The **Utility** acknowledges and agrees that **Post Construction Submittals** shall be conducted in accordance with the **MFR-023**. The **Post Construction Submittal** shall include, but is not limited to:
 - 1. Acceptance testing documentation and inspection records, including standard proctor and field moisture density results.
 - 2. Pipe inspection schedule and maintenance plan for future recurring inspections.
 - 3. Design documentation that includes calculations for the expected volume of grout needed to fill the annular space.
 - 4. Post-Construction Report that includes the amount that the expected amount of grout was used for filling the annular space.
 - 5. As-Built Drawings: Submit As-Built drawings for the complete utility line relocation showing complete detail, including trench dimensions, pipe profile, pipe alignment, valve locations, connection box locations, manholes and all other pertinent as-built information.
 - 6. As-Built Surveys

- (d) Review. The **Authority** shall complete a full review of each submittal and provide comments and/or approval.
1. 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 **Agreement**.
 2. The **Authority** shall complete a full review and provide comments on submittals within twenty (20) **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 **Agreement**, and the **Utility** resubmits a previously submitted submittal, the **Authority** shall review the submittal and respond within ten (10) **Business Days**. The **Authority's** review of the re-submittal 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. In the event that the **Authority** does not provide comments within the period prescribed by this **Agreement**, the **Utility** shall provide written notice of the failure to respond. If the **Authority** does not respond within five (5) **Business Days** of receiving written notification, the submittal shall be deemed approved.

Section 7.07 REQUIREMENT OF APPROVAL. No **Utility Adjustment Construction Work** may begin until the **Authority** approves the **Final Design Submittal**.

Section 7.08 SHOP DRAWING AND SAMPLE SUBMITTALS. The **Utility** shall submit **Shop Drawings and Samples** that detail the **Utility Adjustment Construction Work** to be performed by the **Utility** on the **Utility Relocation Project** within the **Project Footprint**. The **Authority** shall review the **Shop Drawings and Samples** in accordance with the procedure and timelines in Section 7.06 for the review of submittals.

Section 7.09 ADJUSTMENTS TO THE PROJECT. Should the planned route of the **SEAI** change in a material manner, the **Utility** and the **Authority** shall immediately interface to adjust plans for the **Utility Relocation Project**, as necessary.

Section 7.10 ADJUSTMENTS TO THE UTILITY ADJUSTMENT WORK. Any changes or modifications to the **Post Construction Submittal** during construction that materially affect the performance or construction of the **Utility Adjustment Work** will be subject to written approval by the **Authority**. The **Utility** will submit the proposed changes or modifications to the **Authority** for review and approval. The **Authority** shall review the submittals in accordance with procedure and timelines in Section 7.06. **Authority** lines not required to be moved prior to the adjustment of **Post Construction Submittal**, which need to be **Relocated** after changes are made to **Post Construction Submittal** shall not be treated as **Undisclosed Prior Property Interests** for purposes of assigning responsibility for costs.

Section 7.11 INSPECTION. The **Utility** shall be responsible for inspection of all **Utility Adjustment Construction Work**.

Section 7.12 UTILITY COMPLETION. Within ten (10) **Business Days** of the anticipated date for **Utility Adjustment Completion**, the **Utility** and the **Authority** will schedule a final inspection, whereby the **Utility** shall be responsible for holding an inspection of the **Utility's** portion of **Utility Adjustment Construction Work** to determine whether the **Utility Adjustment** meets the **Post Construction Submittal** and any material changes or modifications made per Section 7.09 and 7.10. If the **Authority** finds the construction is not in conformance with the **Post Construction Submittal** or any approved material changes or modifications, the **Authority** will notify the **Utility** of such fact and the **Utility** will correct such nonconformance in the construction work and re-notify for inspection. Once the **Authority** finds the **Utility Adjustment** has reached **Utility Adjustment Completion**, the **Authority** will provide a certificate of **Utility Adjustment Completion**.

Section 7.13 THIRD PARTY CONTRACTORS. Should the **Utility** engage any third-party contractor to fulfill, contribute to, or otherwise act in regard to an obligation assigned to **Utility** in this **Agreement**, the **Utility** shall abide by all restrictions and requirements provided for in Article XIII and as provided in the federal lobbying restrictions which is attached as **Exhibit D** to this **Agreement**.

Section 7.14 INVOICING REQUIREMENTS. All invoices provided to the **Authority** pursuant to or arising from this **Agreement** shall comply with invoicing requirements provided in the **Authority** invoicing requirements which is as attached as **Exhibit E** to this **Agreement**.

ARTICLE VIII. PAYMENT OF COSTS

Section 8.01 NECESSITY TO KEEP COSTS LOW. The **Utility** and the **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** customer. The **Utility** and the **Authority** shall be diligent in keeping costs as low as reasonably possible.

Section 8.02 GENERALLY. The **Authority** shall pay all reasonable costs of the **Utility Relocation Project** approved under Section VII, whether those costs are incurred by the **Authority** or the **Utility**. The **Utility** shall be entitled to reimbursement or payment of all out-of-pocket costs and expenses actually incurred and paid to third-parties, including but not limited to **Utility's** reasonable costs and expenses for this **Agreement**, the **Utility's** reasonable costs and expenses for obtaining **Other Approvals**, and any reasonable costs or expenses made necessary by the **Utility Relocation Project**, and as approved under Section VII. **Utility** shall not seek any reimbursement for general overhead, administrative costs, or lost revenue of any nature. If the **Authority** determines any such costs appear to be excessive, unreasonable, or outside of the appropriate scope of reimbursed costs, the **Authority** may, within thirty (30) business days of receipt of the itemized report, provide the **Utility** with written notice rejecting specific line items as excessive, unreasonable, or outside the scope of reimbursable costs, but shall not withhold payment for any line items not so identified or beyond the extent so identified. In the exercise of its discretion hereunder, the **Authority** shall not act unreasonably.

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 of the **Utility Relocation Project** to the **Authority** for review.

Section 8.04 REJECTION OF COSTS. The **Authority** may reject reported costs and expenses to the extent that it deems any specific costs or expenses are unreasonable. Notice of rejection of any costs or expenses must be provided to the **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 **Authority** written notice of the appeal and justification for its expenses within twenty (20) days of its receipt of the rejection notice. The **Authority** shall, upon such written notice of the appeal and justification, reevaluate its decision in light of the appeal and issue a written determination approving or rejecting, in part or in whole, the previously rejected costs or expenses. For any costs or expenses not approved in full, the **Authority** shall provide the **Utility** with a detailed written basis for the denial. Any line items approved for payment, in part or in whole, in connection with or after such an appeal, shall be paid within thirty (30) business days of the **Authority's** decision.

Section 8.06 PAYMENT OF ACCEPTED COSTS. Within thirty (30) days of the determination of the **Authority's** full liability to the **Utility**, the **Authority** shall issue a single, full payment of the amount owed to the **Utility**.

Section 8.07 BETTERMENTS. In no situation shall any **Party** other than the **Utility** be responsible for costs and expenses of betterments installed during the **Utility Relocation Project**.

ARTICLE IX. FUTURE RIGHTS AND RESPONSIBILITIES

Section 9.01 RIGHT OF WAY. Should the **Authority** deem it necessary for the purpose of the **Utility Relocation Project**, the **Authority** shall grant the **Utility** a right-of-way below, above, and across the **Project Footprint** so the **Utility** can properly maintain its facilities in the right-of-way, subject to the following restrictions and obligations:

- a. Coordination with USACE. In the event the **Utility** deems it necessary to perform **Utility Adjustment Work**, within the right-of-way, beyond operation and maintenance for the **Utility Relocation Project**, **Utility** shall be responsible for coordination with the **USACE** to obtain appropriate review and approval.
- b. 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. The **NFS** and **Utility** shall be responsible for preparing an operation and maintenance agreement that sets forth the roles and responsibility of each **Party**. The **Utility** shall be responsible for preparing a maintenance and abandonment plan for all utilities located within the work limits of the **SEAI** and/or **UMA**. The **Utility** acknowledges and agrees that all maintenance of the **Utility**

property and associated infrastructure shall be conducted in accordance with the **MFR-023**.

- c. Post Construction Access. Following completion of the **Utility Relocation Project**, the **Utility** shall provide the **Authority** with seven (7) days' written notice of any maintenance it intends to do within the **Project Footprint**.
- d. 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 **Authority**.
- e. 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.
- f. Metro Flood Diversion Authority Access. In the event that **Utility** property malfunctions, destructs, or otherwise begins to cause on-going damage to the **SEAI** and/or the **UMA**, the **Authority** shall have the authority to access the damage-causing **Utility** property and take reasonable action necessary to stop on-going damage to the **SEAI**.
- g. Access. The **Authority** shall have unrestricted access in, over, and across the right-of-way.
- h. Damage to the SEAI or UMA. Should **Utility** property malfunction, deconstruct, or otherwise cause damage to the **SEAI** and/or the **UMA**, the **Utility** shall take immediate action to stop on-going damage to the **SEAI** and/or the **UMA** and will consult with the **Authority** on how to repair all damage that occurs.
- i. 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 9.02 USE OF EXISTING EASEMENT. In the event **Utility** property 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 property located within the **Project Footprint**.

Section 9.03 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 **Agreement** and the laws of **North Dakota**.

Section 9.04 FUTURE PERMITS. Should the **Utility** file a formal permit application with the **Authority**, pertaining to the **Utility** line **Relocated** pursuant to this **Agreement**, with the **Authority** after the **Effective Date**, the **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 **SEAI** or the **UMA** or interfere with other facilities already contained within the **Project Footprint**, as determined by the **Authority**. In addition to the permit application granted by the **Authority**, **Utility** shall be responsible for obtaining all other permits necessary and required by the **USACE**. Should an existing **Utility** line be modified in the future, the **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 X. DISPUTES WITH CONTRACTORS AND OTHER THIRD PARTIES

Section 10.01 COORDINATION. The **Parties** shall coordinate with respect to any dispute with third parties. Such coordination shall include any potential or ongoing litigation.

ARTICLE XI. DISPUTES AMONG THE UTILITY AND THE METRO FLOOD DIVERSION AUTHORITY

Section 11.01 INTENT AND PROCEDURE. The **Utility** and the **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 11.02 PROCEDURE TO COMMENCE DISPUTE RESOLUTION PROCESS. The **Parties** agree that in the event of an alleged breach of any of the terms of this **Agreement**, the **Parties** making such allegation shall, except as provided in Section 13.01 (Notices) of this **Agreement**, provide thirty (30) days written notice to the other **Party** of the alleged breach. The written notice shall contain reasonable description of the underlying facts and an explanation of why the **Party** providing notice believe those facts constitute a breach. Following transmittal of the notice, the **Party** alleged to have caused the breach shall be given a reasonable time, not less than ten (10) days to correct or remedy the alleged breach, to meet and confer with the other **Party**, and/or to participate in mediation with the other **Party** prior to initiating any litigation, arbitration, or any administrative proceeding, unless the alleged breach has the potential to cause immediate and irreparable harm, in which case the **Party** alleging the harm may initiate litigation prior to complying with the provisions of this Section 11.02 while, at the same time, following the procedures set forth in Sections 11.01, 11.02, and 13.01 of this **Agreement** as applicable.

Section 11.03 TIME TO CORRECT. The reasonableness of the time afforded to the **Party** alleged to have breached this **Agreement** pursuant to Section 11.02 of this **Agreement** to cure the alleged breach and engage in dispute resolution processes shall be determined by considering the

circumstances, including the potential harm, injury, or damages that are or may result from the alleged breach and the extent to which the harm, injury, or damages may worsen with the passage of time.

Section 11.04 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 **Authority** shall strike the first name, followed by the **Utility**, in that recurring order until one name remains.

Section 11.05 ARBITRATION. If there is a failure between the **Parties** to resolve a dispute on their own, the **Parties** shall first attempt to arbitrate the dispute. The **Parties** shall agree upon a single arbitrator, that is mutually agreeable to the **Parties**. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Section 11.06 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 11.07 LEGAL FEES. Each **Party** will be responsible for their own attorney's fees in connection with a dispute under this Article.

Section 11.08 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 THE **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 XII. USE OF EMINENT DOMAIN

Section 12.01 EMINENT DOMAIN. Nothing in this **Agreement** shall be construed as limiting the **Authority's**, or its **Member Entities'**, ability to exercise its powers of eminent domain.

Section 12.02 NULLIFICATION BY EMINENT DOMAIN. Should the **Authority** initiate eminent domain proceedings to accomplish the goals of the **Utility Relocation Project**, the terms of the **Agreement** shall be null and void at the option of the **Authority**.

Section 12.03 NULLIFICATION AFTER COSTS INCURRED. Should the terms of this **Agreement** be nullified under Section 12.02, after plans and proposals described in Section VII have been approved as required by Article VII, 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 **Authority** in the same manner it would have submitted a report of costs pursuant to Article VII had the **Utility Relocation Project** been completed.

ARTICLE XIII. MISCELLANEOUS

Section 13.01 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 deliver 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 **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 **Authority's** authorized representative:
Jacobs Engineering Group, Inc.
4784 Amber Valley Parkway South, Suite 200
Fargo, North Dakota 58104
and
Metro Flood Diversion Authority
Attn: Director of Engineering
4784 Amber Valley Parkway South, Suite 100
Fargo, North Dakota 58104
- b. All legal notices to the **Authority**, in addition to being provided to the **Authority's** representative as provided above, 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
Attn: Executive Director
4784 Amber Valley Parkway South, Suite 100
Fargo, North Dakota 58104
- 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:
Red River Rural Telephone Association
Attn: Matt Ihland, Director of Operations

P.O. Box 136
Abercrombie, North Dakota 58001
(701) 553-8398

Red River Rural Telephone Association
Attn: Dennis Mitchell, OSP Manager
P.O. Box 136
Abercrombie, North Dakota 58001
(701) 553-8398

Red River Rural Telephone Association
Attn: Deb Syvertsen, Plant Maintenance Manager
P.O. Box 136
Abercrombie, North Dakota 58001
(701) 553-8398

- 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 13.02 ASSIGNMENT. Neither **Party** may transfer or assign this **Agreement**, nor any rights or obligations under this **Agreement**, without the express written consent of the other **Party**. Each **Party** shall only be permitted to transfer or assign rights or obligations under this **Agreement** by giving thirty (30) days' written notice pursuant to Section 13.01 to the other **Party** of its intent to transfer or assign.

Section 13.03 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 13.04 INSURANCE. The **Utility** shall list the **Authority** as additional insureds 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 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 13.05 INDEMNIFICATION. The **Utility** shall indemnify and hold harmless the **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 13.06 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 13.07 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 13.08 CONFLICT. In the event of a conflict between the **Parties** pertaining to the terms and conditions of this **Agreement**, this **Agreement** shall control and govern the relocation of **Utility** infrastructure, lines, and property for purposes of the **SEAI** and the **UMA**, but not the relocation of **Utility** infrastructure, lines, and property for purposes of the **SWDCAI**.

Section 13.09 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 13.10 MODIFICATIONS. Any modifications or amendments to this **Agreement** must be in writing and signed by both **Parties** to this **Agreement**.

Section 13.11 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 13.12 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 13.13 HEADINGS. Headings in this **Agreement** are for convenience only and will not be used to interpret or construe its provisions.

Section 13.14 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 13.15 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 13.16 FEES. The fees provided for herein shall not be interpreted or deemed to be the **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 **Authority** shall have all remedies available to it at law in addition to any fees paid to the **Authority** by **Utility** pursuant to this **Agreement**.

Section 13.17 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 13.18 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, member of **Congress**, an officer or employee of **Congress**, or any 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 **U.S. 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 **Authority** the certification and disclosure forms in Appendix A and Appendix B to 40 **CFR** Part 34, which are attached as **Exhibit D** to this **Agreement**. **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 13.19 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 **Agreement**. Upon award of this contract, **Utility** shall complete and submit to the **Authority**, the federal certification form regarding debarment and suspension, which is attached as **Exhibit D** to this **Agreement**.

Section 13.20 DAVIS-BACON ACT AND OTHER LABOR LAWS. **Utility** shall comply with the following federal labor requirements:

- a. **Davis-Bacon Act**, which requires the payment of prevailing wage rates to all laborers and mechanics on construction projects in excess of \$2,000. **Utility** and the **Authority** acknowledge and agree that the **Davis-Bacon Act** shall apply if the **Authority** is performing **Utility Adjustment Construction Work**. **Utility** and the **Authority** acknowledge and agree that the **Davis-Bacon Act** shall not apply if any party other than the **Authority** is performing **Utility Adjustment Construction Work**.
- b. The **Contract Work Hours and Safety Standards Act**, which requires time and one-half pay for overtime hours worked in excess of forty hours in any workweek.

- c. The **Copeland Act** (Anti-Kickback Act), which prohibits employers from inducing an employee to give up any part of compensation to which he or she is entitled.

Section 13.21 CIVIL RIGHTS OBLIGATIONS. The **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 13.22 CERTIFICATION. **Utility** shall complete and submit to the **Authority**, the federal certification form regarding civil rights, which is attached as **Exhibit D** to this **Agreement**.

Section 13.23 TERMINATION. This **Agreement** may be terminated by the **Authority**, at any time and for any reason with three (3) calendar days written notice to the **Utility**.

(Signatures appear on the following pages.)

IN WITNESS WHEREOF, the **Parties** executed this **Agreement** on the date first written above.

AUTHORITY:

Metro Flood Diversion Authority

Joel Paulsen, Executive Director

Chad Peterson, Chair

ATTEST:

Dawn Lindblom, Secretary

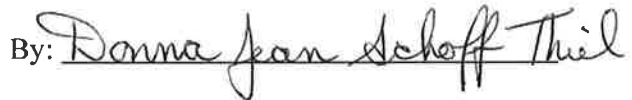
UTILITY:

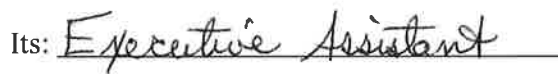
Red River Rural Telephone Association

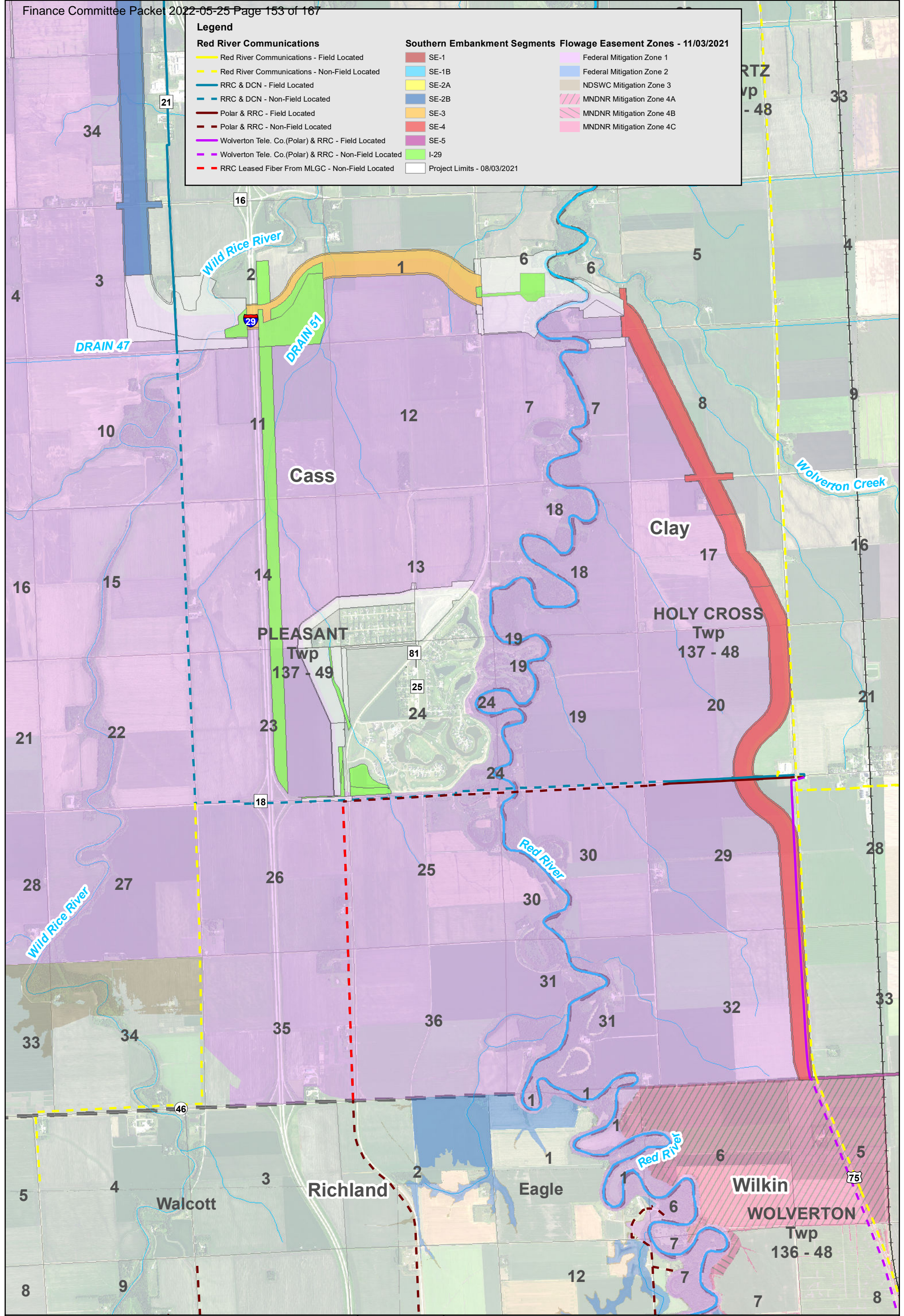

Tom Steinolfson, CEO


Matt Ihland, Director of Operations

ATTEST:

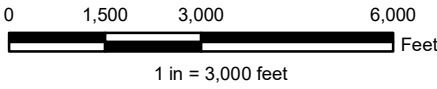
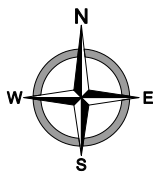
By: 

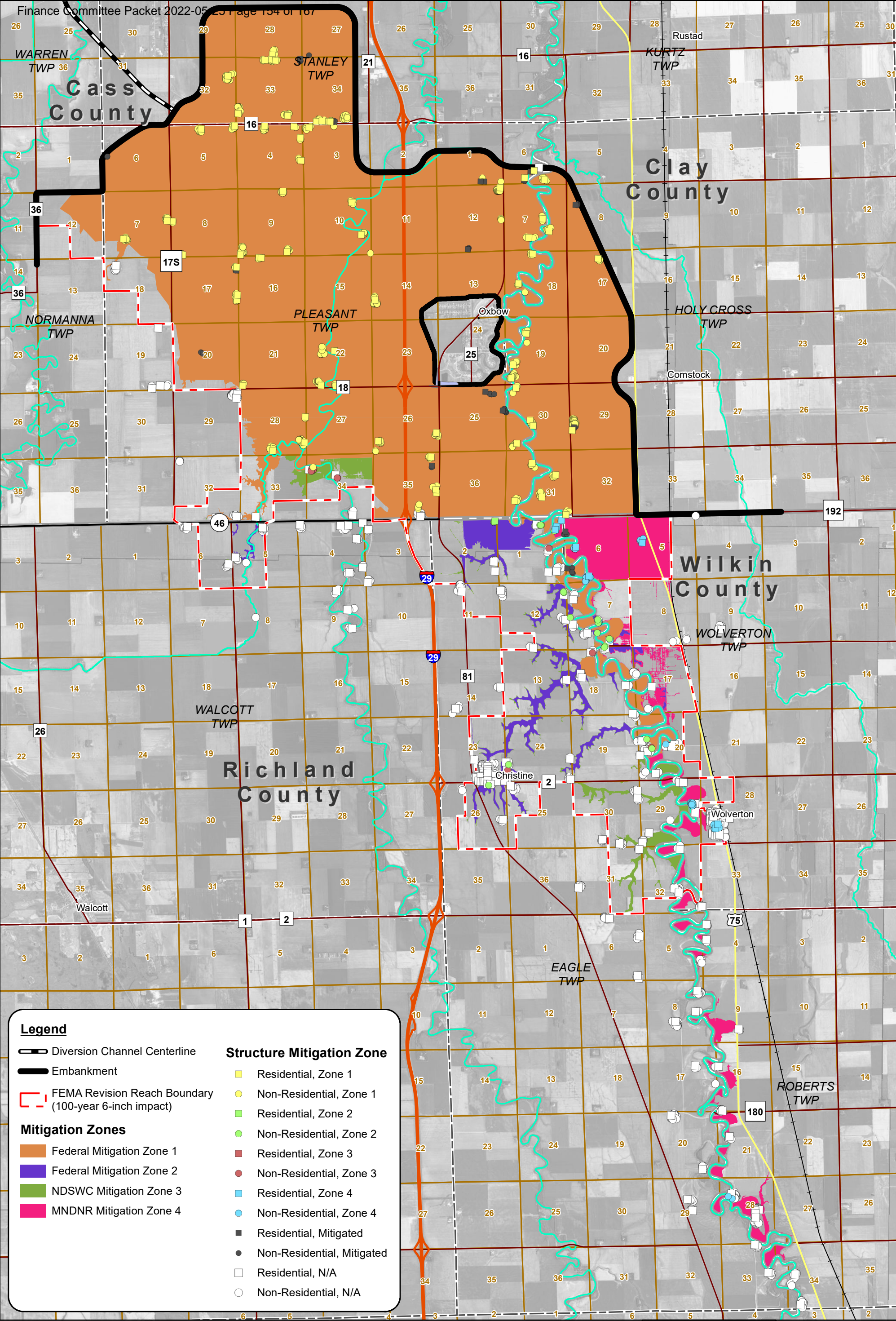
Its: 



**RED RIVER COMMUNICATIONS
FLOWAGE EASEMENT AREA
FM AREA DIVERSION PROJECT**

Created By: TJS Date Created: 12/03/21 Date Saved: 01/25/22 Date Plotted: 03/28/16 Date Exported: 01/25/22
Plotted By: tanner.schmidt Parcel Date: N/A Aerial Image: 2019 County NAIP SIDS Elevation Data: Lidar
Horizontal Datum: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet Vertical Datum: NAVD1988
T:\Projects\21900\21990\101_3_5_Uilities\Flowage_Easement_Map_Book\Utility_Specific\16478_Red_River_Communications_Portrait_SP.mxd





Legend

- Diversion Channel Centerline
- Embankment
- FEMA Revision Reach Boundary (100-year 6-inch impact)

Mitigation Zones

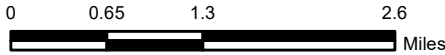
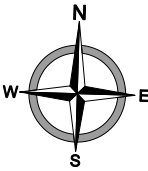
- Federal Mitigation Zone 1
- Federal Mitigation Zone 2
- NDSWC Mitigation Zone 3
- MNDNR Mitigation Zone 4

Structure Mitigation Zone

- Residential, Zone 1
- Non-Residential, Zone 1
- Residential, Zone 2
- Non-Residential, Zone 2
- Residential, Zone 3
- Non-Residential, Zone 3
- Residential, Zone 4
- Non-Residential, Zone 4
- Residential, Mitigated
- Non-Residential, Mitigated
- Residential, N/A
- Non-Residential, N/A

**FM AREA DIVERSION PROJECT
UPSTREAM MITIGATION AREA &
MITIGATION ZONES**

Created By: KMW Date Created: 06/18/18 Date Saved: 09/15/20 Date Exported: 09/15/20
Plotted By: kyle.volk Parcel Date: Varies Aerial Image: N/A Elevation Data: 2008 Lidar
Horizontal Datum: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet Vertical Datum: NAVD1988
T:\Projects\19100\19116\2020 Mitigation Plan Maps\2020_06_17\CLOMR5_UMA_Zones_Map_2020_09_15_Revision_Reach.mxd



Source: CLOMR FEMA Case Number 19-08-0683R



MEMORANDUM FOR RECORD

SUBJECT:

Fargo-Moorhead Metropolitan (FMM) Area Southern Embankment - MFR-023, Utility Guidelines for the Southern Embankment

1. REFERENCES

- a. USACE. Engineering Manual 1110-2-2902 *Conduits, Culverts and Pipes*. 22 May 2020.
- b. USACE. Engineering Pamphlet No. 1110-2-18, *Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures*. 1 May 2019.
- c. ANSI/IEEE C2 – National Electric Safety Code.

2. PURPOSE

Requirements for pipelines¹ and other utility lines crossing the dam are primarily defined in References under paragraph 1. As noted in Chapter 2 of Reference 1a, internal erosion accounts for nearly half of all embankment dam failures with many of those failures occurring along pipelines. These potential failure modes are also discussed at length in Chapter 2 of Ref 1a. Understanding how these failures occur and the risks associated with these failures is key in designing the proposed utility crossings and was the basis of this MFR to minimize risks to the dam and allow the dam to perform as intended.

Ideally, all utilities would be relocated around the Fargo-Moorhead Metropolitan Area (FMM) Southern Embankment (SE) Project and would not cross the dam embankment or be placed within the Project work limits. However, given the length of the Project, (21 miles of dam), utilities will need to cross the line of the protection. Therefore, these guidelines will aid impacted utility owners and the Non-Federal Sponsor (NFS) in developing an approved utility relocation plan. These guidelines are general; each proposed utility relocation within the SE Project work limits shall be reviewed by the United States Army Corps of Engineers (USACE) on a case-by-case basis.

3. PROJECT DESCRIPTION

The FMM SE Project is a “dry dam” consisting of a 21-mile long earthen dam embankment and three gated structures. The SE Project will be constructed to meet USACE dam safety criteria and is to be built under several contracts spanning multiple years. The three gated structures are located at the inlet to the diversion channel near the intersection of Cass County Road 16 (CR

¹ Conduits, pipes, and culverts that convey fluids or gases, or serve as encasements for utility lines, or intercept seepage.

Exhibit D**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:

Red River ^{Rural} Telephone Association

Signed:

Thomas Stenroos

Its:

CEO

Date:

5-6-22

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 Red River Rural Telephone Association

Date: 5-6-22

By: Thomas Steinhilber CEO
Name and Title of Authorized
Representative

Thomas Steinhilber
Signature of Authorized
Representative

PLEASE RETURN TO:
Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

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.

Thomas Steinglass
Signature of Authorized Official

CEO
Title

Thomas Steinglass
Print Name

Red River Telephone Association
Name of Institution or Agency

5-6-22
Date

510 Broadway
Street

Abercrombie ND 58001
City, State, Zip Code

PLEASE RETURN TO:
Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

toms@redrivercomm.com
Office Email Address

Exhibit E**AUTHORITY INVOICING REQUIREMENTS**

Utility will submit copies of the invoice to:

Bakkegardk@FMDiversion.gov and APInvoicesFMDiv@jacobs.com

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

- i. Utility's name and address;
- ii. Utility'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," including 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 the Authority receives Utility's invoice, the Authority will either process the invoice for payment or give Utility specific reasons, in writing within fifteen (15) business days, why part of all of the Authority's payment is being withheld and what actions Utility must take to receive the withheld amount. In the event of disputed billing, only the disputed portion will be withheld from payment and the 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, Utility must credit any payment in error from any payment that is due or that may become due to Utility under this Agreement or return the overpayment to the Authority within thirty (30) calendar days of the identification of the error.

And any other information referenced within this Agreement.

Moorhead - Clay County Joint Powers Authority



DATE: May 18, 2022

Memo Recommending the Disposal of Organic Farmland

To: Metro Flood Diversion Authority (MFDA) Land Management Committee and Board

From: Moorhead - Clay County Joint Powers Authority (MCCJPA)

Background/Key Points:

On April 28, 2022, the MCCJPA unanimously approved a recommendation from MFDA Executive Director Joel Paulsen regarding the disposal of MCCJPA-owned organic farmland. A copy of the recommendation letter is attached.

As noted in the letter, the recommended process for disposal of MCCJPA-owned organic farmland is:

1. Establish market value.

Step One has been completed. In November 2021, MCCJPA approved the appraisals establishing market value of the organic farmland.

2. Identify organic farmland owners and producers who are impacted by the comprehensive project. Offer the organic farmland to the impacted organic farmland owners and producers in exchange for necessary land rights.

Step Two has been partially completed. The Lands team has identified four organic farmland owners and producers. However, the organic farmland has NOT been offered to the impacted organic farmland owners and producers in exchange for necessary land rights.

3. If the impacted organic farmland owners and producers do not accept the exchange of land for necessary land rights, then offer the organic farmland to landowners impacted by the Southern Embankment and Associated Infrastructure component in a land exchange.
4. If landowners impacted by the Southern Embankment and Associated Infrastructure component are not interested in a land exchange, then the parcels will be reviewed by

the Metro Flood Diversion Authority executive director to determine if the parcels should be deemed excess lands.

5. Offer the organic farmland via public sale.

This memo shares the MCCJPA Board's support of Mr. Paulsen's recommendation, and we are seeking approval from the MFDA Board to dispose of the organic farmland following the sequence steps in the attached letter.

[Recommendation/Actions Needed:](#)

Authorize the MCCJPA to dispose of organic farmland following the steps in the attached recommendation letter.

[Attachments:](#)

- Recommendation Letter Regarding Organic Farmland
- Organic Farmland Exhibit



April 28, 2022

Moorhead Clay County Joint Powers Authority (MCCJPA) Board

RE: Recommendation regarding Organic Farmland

Dear MCCJPA Board,

There are two parcels of organic farmland currently owned by the MCCJPA. The two MCCJPA-owned organic farmland parcels, totaling approximately 240 acres, are located south of Comstock (Attachment 1) and were purchased through a voluntary acquisition in October 2016 as they were impacted by a previous configuration of the Comprehensive Project.

The MCCJPA and the Metro Flood Diversion Authority (MFDA) are still working to purchase organic farmland parcels in the Upstream Mitigation Area, totally approximately 350 acres, that are impacted by the Comprehensive Project (Attachment 2). Purchase offers have been made to acquire the impacted organic farmland in accordance with the permit condition from the Minnesota Department of Natural Resources, which outlines that the MFDA shall offer to purchase organic farmland that is impacted by the Comprehensive Project.

Organic farm owners and producers in the area are interested in the MFDA's plan for disposing of the MCCJPA-owned organic farmland.

Given the unique nature of organic farmland, I recommend allowing MCCJPA the opportunity to offer the MCCJPA-owned organic farmland to the impacted organic farmland owners and producers prior to a determination that these parcels are excess lands. A summary of the recommended process for disposal of MCCJPA-owned organic farmland is as follows:

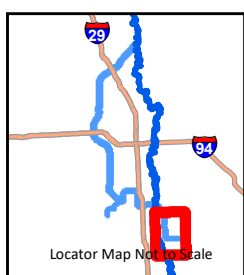
1. Establish market value (Note: MCCJPA approved appraisals establishing the market value of the organic farmland in November 2021)
2. Offer the organic farmland to the impacted organic farmland owners and producers (four parties that fit this classification) in exchange for the land rights needed from these organic farmland owners.
3. Offer the organic farmland in a land exchange to the property owners impacted by the Southern Embankment and Associated Infrastructure component.
4. If there are no exchanges, I would then determine the parcels to be excess lands.
5. Offer the organic farmland via public sale

If the MCCJPA agrees with this recommendation, a memo of support from MCCJPA to the MFDA Land Management Committee and the MFDA Board will be prepared for consideration in May.

Thank you,

A handwritten signature in blue ink, appearing to read 'Joel Paulsen', is written over a blue circular stamp.

Joel Paulsen, PE
Executive Director



FM AREA DIVERSION PROJECT
Map Date: 4/19/2022



FM AREA DIVERSION