



Board Agenda

Diversion Board of Authority

June 22, 2023 @ 3:30 p.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 May 25, 2023
[Attachment 00.01] (Pg. 3)
3. Approve Order of Agenda

CONSENT AGENDA – APPROVE THE FOLLOWING:

- a. Finance Report [Attachment 01.00] (Pg. 8)
- b. Voucher Approval [Attachment 02.00] (Pg. 32)
- c. DA Board Approval Contract Actions [Attachment 03.00] (Pg. 46)
 - i. HMG, Task Order 102, Amendment
[Attachment 03.01] (Pg. 48)
 - ii. C Three Media 2023 Services Agreement, Amendment 1
[Attachment 03.02] (Pg. 51)
- d. MOUs and Agreements [Attachment 04.00] (Pg. 54)
 - i. Salem (Wolverton) Cemetery Agreement [Attachment 04.01] (Pg. 56)
 - ii. BNSF Construction & Maintenance Agreement for SWDCAI
[Attachment 04.02] (Pg. 102)

REGULAR AGENDA:

4. Executive Director Report
[Attachment 05.00] (Pg. 169)
5. General Counsel Update
6. Construction Project Updates
 - a. USACE Project Update
[Attachment 06.00] (Pg. 171)
 - b. SWDCAI Project Update
[Attachment 07.00] (Pg. 173)
 - c. Drone Footage Video

7. Communications Team Update
 8. Land Management Update
 - a. Property Acquisition Status Report
[Attachment 08.00] (Pg. 174)
 9. Finance Update
 10. Other Business
 11. Next Meeting: July 27, 2023
 12. Adjournment
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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 Board of Authority Meeting Minutes

3:30 P.M. – May 25, 2023

City of Fargo Commission Chambers

A regular meeting of the Metro Flood Diversion Authority Board of Authority was held on May 25, 2023. The following members were present: Dr. Tim Mahoney, Mayor, City of Fargo; Bernie Dardis, Mayor, City of West Fargo; Shelly Carlson, Mayor, City of Moorhead; Chuck Hendrickson, Moorhead City Council; Dave Piepkorn, Fargo City Commissioner; David Ebinger, Clay County Commissioner; John Strand, Fargo City Commissioner; Kevin Campbell, Clay County Commissioner; Mary Scherling, Cass County Commissioner; Tony Grindberg, Cass County Commissioner and Larry Seljevold, Moorhead City Council.

Member(s) absent: Chad Peterson, Cass County Commissioner and Rodger Olson, Cass County Joint Water Resource District.

1. CALL TO ORDER
Mayor Mahoney called the meeting to order at 3:30 PM. Roll call was taken, and a quorum was present.
 2. APPROVE MINUTES FROM THE APRIL 2023 MEETING
MOTION PASSED
Mr. Piepkorn moved to approve the minutes from the April 2023 meeting and Mr. Ebinger seconded the motion. On a voice vote, the motion carried.
 3. APPROVE ORDER OF AGENDA
MOTION PASSED
Mayor Carlson moved to approve the order of the agenda as amended to include items a., b., and c., under item 10, Other Business, and Mr. Hendrickson seconded the motion. On a voice vote, the motion carried.
- CONSENT AGENDA
MOTION PASSED
Mr. Grindberg moved to approve the Consent Agenda and Mr. Piepkorn seconded the motion. On a roll call vote, the motion carried.
4. EXECUTIVE DIRECTOR REPORT
Mr. Paulsen provided the following updates:
Happenings
Speaking & Outreach Highlights
 - NDSU CE408 Tour: About 50 engineering students toured project May 1
 - National Association of Floodplain Managers Conference: MFDA/HMG presentation on Dam Operation to Minimize Project-Induced Floodplain Impacts

- USACE Senior Leadership Conference: Director of Engineering part of panel on MFDA partnership; Board members/mayors presented on project leadership

5. GENERAL COUNSEL UPDATE

Mr. Shockley did not have an update to report.

6. CONSTRUCTION PROJECT UPDATES

a. USACE Project Update

Mr. Fuchs provided the following USACE update:

1 Diversion Inlet Structure (DIS) – Construction

Structure includes 3-50 ft. wide Tainter gates. Construction is 93% complete and remains on schedule. Construction completion date is 7 June 2023. Installation of the 3 gates complete. Bridge beams/deck being installed. Schedule for remaining primary features:

2023: Install bridge and mechanical platform deck, gates, operating machinery, seeding.

2024: Turf established.

2 Wild Rice River Structure (WRRS) – Construction

Structure includes 2-40 ft. wide Tainter gates. Construction is 85% complete and remains on schedule. The construction completion date is 3 December 2023. River diverted through the engineered channel. Install of mechanical platform/vehicle service bridge ongoing. Remaining schedule:

2023: Control building, install gate operating machinery, dam embankment, seeding.

2024: Turf established.

3 I-29 Raise – Construction

Includes approximately 4 miles of interstate raise between County Roads 16 and 18. Construction is 74% complete and remains on schedule. Construction completion date is 1 January 2024.

Constructing bridge deck, aprons and abutment walls. Paving of the mainline raise to be complete Summer 2023.

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

Construction was completed 10 November 2022. Partial turnover to the Diversion Authority for Operations and Maintenance occurred on 29 December 2022. O&M Manual being completed.

5 Red River Structure (RRS) - Construction

Structure includes 3-50 ft. wide Tainter gates. Construction is 11% complete. Construction completion date is 19 March 2026. Foundation pile driving is ongoing. Placed one of the largest concrete placements to date on any of the FMM projects.

6 Drain 27 Wetland Mitigation Project - Construction

Construction was completed 2 December 2022. Native plantings 5-year service contract was advertised for bids on 1 February 2023. Contract award anticipated in May 2023.

7 Drayton Dam Mitigation Project Design - Construction

Construction is 54% complete. Contractor notched existing dam to drawdown work area. Removal of the existing dam planned for Summer 2023. Construction completion is 30 September 2023.

8 Southern Embankment – Reach SE-2A - Construction

Construction is 12% complete. All work has paused for the winter. Scheduled completion date is 30 Sept. 2024.

9 Southern Embankment Design – All remaining reaches are being designed.

SE-1B: Final design review Aug 2023 Contract award: February 2024

SE-2B: BCOES review starts May 2023 Contract award: April 2024

SE-3: 65% review starts mid-Aug 2023..... Contract award: January 2025

SE-4: 65% review starts late-June 2023 Contract award: April 2024

SE-5: 65% review starts late-July 2023 Contract award: January 2025

OHB Reach 43B: 95% review starts mid-July 2023 Contract award: February 2024

b. SWDCAI Project Update

Mr. Fuchs provided an update of the construction map that shows current work in progress, 30 and 60 day projected progress:

Design Submittal & Review Progress

- Over 1,200 review cycles
- 77 Approved Designs
 - 58 Utility
 - 19 Other
- 63 Submittals In-Review

Construction Look Ahead

Channel Excavation

- Reach 3 - excavating resumed
- Reach 4 – 30 days
- Reach 5 – 60 days

Bridges

- CR 81
- CR 32
- I-29

Drain Inlets

- Drain 30
- Diversion outlet & Drain 29
- Maple River Aqueduct

c. Drone Footage

A drone video highlighting the progress that has been achieved since April was viewed.

7. COMMUNICATIONS UPDATE

Ms. Willson provided the following Communications update:

ND Professional Communicators Awards:

- The Diversion Current – 1st place
- Summer Construction Update Video – 2nd place
- MFDA LinkedIn – 3rd place

Videos:

- Faces of the Diversion: Katey Levihn (Jacobs/environment) released in May

Media Relations:

- Compliance specialist news release
- Benefits of diversion's passive features

8. LAND MANAGEMENT UPDATE

a. Property Acquisition Status Report

Ms. Smith provided the following property acquisition status report:

- 87.1% completion in the Construction Footprint
- 37.9% completion in the UMA Footprint
- 70.2% of the parcels in the Southern Embankment have been acquired
- 37.9% of the parcels in the Upstream Mitigation Area have been acquired
- 72.6% of the Environmental Easements have been signed
- 92.8% of the parcels in the Stormwater Diversion Channel have been acquired
- 97.4% of the Oxbow-Hickson-Bakke levee
- 100% MFDA constructed in-town levees and the Drayton Dam mitigation is completed

Key Activities

- Continue negotiating settlement agreements for existing eminent domain actions
- Batch #7 next steps letters and eminent domain filing action was requested on 2 property owners
- Reconfigured the future Batches schedule for remaining properties to extend through October 2023
- Initiated request for ROE from property owners for the Sheyenne River Habitat Improvement Project
- In the last month 5 parcels/4 landowners successfully closed
- 49 farmland leases have been completed for the upcoming season (40 in ND, 9 in MN)

9. FINANCE UPDATE

Finance Report

Mayor Dardis reported that the bills payable as of May 16, 2023, total \$10,965,389 and the current net position is \$185,180,375. Mayor Dardis also reported that all the utility relocations were approved as well as the City of Fargo work plan requesting an additional \$656,579.90 for project NR-23-A1.

a. City of Fargo Work Plan for Projects Bid in 2023

Mr. Bakkegard provided the following update and budget request for the City of Fargo work:

a. NR-23-A1 (Now will be NR-23-A2 & NR-23-A3): STS LS #47 & #48 Reconstruction

- This project scope includes reconstruction of storm sewer lift stations #47 and 48, I-29 ditch modifications adjacent to Drain 27, and two Drain 27 culvert replacements.

- In December 2022, the MFDA Board of Authority approved the 2023 cash budget which included \$4,900,000 for construction on this project in 2023. The overall project budget of \$6,200,000 was based on the 2018 project estimate and the scope of the overall project has not changed. It was estimated that only \$4,900,000 for the project would be spent in 2023.

- In January 2023, the MFDA Board of Authority approved a total project budget increase of \$4,808,250. This increased the previously approved total project budget from \$6,200,000 to \$11,008,250. The \$11,008,250 new project budget was based on the updated engineer's estimate and again the scope of the overall project has not changed. In January 2023, the 2023 cash budget was not amended, as the estimated spend of \$4,900,000 in 2023 did not change. The increase in the overall project budget was based on the following items:

- o The increase in the engineer's estimate from the 2018 cost estimate is due to the current bidding market and inflation impacts.

- o This project is projected to be bid in Q1 2023 and will be constructed in both 2023 and 2024.

- o At the time of the approved total project budget increase, the design of the project was 95% complete and property acquisition was 50% complete.

- The City of Fargo received bids for the project in April 2023, with the low bid coming in higher than the engineer's estimate. The new total project budget is \$11,664,829.90, which is approximately 6% higher than the previously approved project budget. The increase in the overall project budget is based on the following items:

- o The overall construction bid came in approximately 8% higher than the previously approved project budget which was based on the 95% design engineer's estimate.

- o The City of Fargo reduced the contingency down to 5%.

- o Construction services cost estimates were increased to reflect the additional inspection time required for the project.

- o The anticipated spend in 2023 did not change at \$4,900,000 and therefore a 2023 cash budget amendment is not required.

NR-23-A1: 2023 Total Project Budget including construction bid, construction services and contingencies = \$11,664,829.90 of which \$4,900,000 is projected to be spent in 2023.

MOTION PASSED

Mr. Grindberg moved to approve the requested total budget increase of \$656,579.90 for the City of Fargo project and Mayor Carlson seconded the motion. On a roll call vote, the motion carried.

10. OTHER BUSINESS

a. Sheyenne River Habitat Mitigation Project

Mr. Paulsen provided the following highlights of the Sheyenne River Habitat Mitigation Project:

- Updated design for fish passage
- Lowers velocities
- Adds engineered channel meanders downstream of the channel
- Incorporates channel benching upstream

b. Minnesota Legislative Update

Mayor Carlson reported that the Minnesota Legislature session has adjourned and \$11 million was awarded to the City of Moorhead for in-town flood mitigation projects.

c. Authority Administration Building (AAB) Fill Contract

Proposed Contract for Delivering Fill Material to the AAB Site

Mr. Barthel provided the following update and request for delivering fill to the AAB site:

BACKGROUND

During the design of the USACE Drain 27 project, the Authority Staff worked with the USACE to identify 180,000 cubic yards of excess material from that project that could be used to build the pad for the Authority Administration Building (AAB) site. Since the USACE contractor would be digging the material out of the Drain 27 project and hauling it to a designated disposal site which was on or adjacent to the AAB site, the Technical Requirements for the P3 only required the Developer to receive the material. During the construction of the Drain 27 project, an issue arose with the haul road to the disposal site and the USACE and their contractor stopped hauling the material to the original disposal site.

CURRENT STATUS

RRVA is planning on placing additional wick drains on the AAB site in mid-June and then will continue building the AAB site pad around the first of July. Since all the 180,000 cubic yards was never delivered from the Drain 27 project, the Authority is required to provide RRVA the remaining balance. RRVA has asked that this material be delivered starting on July 1, so that they can maintain their schedule. The Authority will have to hire a contractor to deliver material to RRVA at the AAB site.

AAB SITE FILL CONTRACT SCOPE AND FEE

The Authority Staff are still working with RRVA to verify the amount of fill material needed to be delivered. However, due to the timing of this work and the North Dakota bidding requirements, this contract cannot wait until the June Finance Committee and Board meeting. A pre-authorization from the Board is desired to bring this contractor on as quickly as possible and avoid a delay claim by RRVA.

MOTION PASSED

Mr. Grindberg moved to authorize the MFDA to proceed with advertising for bids and award a contract to the lowest responsible bidder upon concurrence from the executive director and chairman. Mr. Ebinger seconded the motion and on a roll call vote, the motion carried.

11. NEXT MEETING

The next meeting will be June 22, 2023.

12. ADJOURNMENT

The meeting adjourned at 4:01 PM.

FM Metropolitan Area Flood Risk Management Project
Statement of Net Position
May 31, 2023

	FM Diversion Project Fund	Budget Fund	Grand Total
Assets			
Cash	\$ 152,554,241	\$ 337,088	\$ 152,891,329
Cash Horace 3.01 MIT	5,094,870	-	5,094,870
Cash BRRWD	8,280,000	-	8,280,000
Cash Held In Trust at BND			
Excess Revenue Fund	222,112	-	222,112
Temp Debt Obligation Fund	144,710	-	144,710
Authority Loan Fund	37,964	-	37,964
P3 Reserve Fund	16,129,157	-	16,129,157
SRF Loan Reserve Fund	2,285,949	-	2,285,949
Revenue Fund	409	-	409
Prepaid Expense	523,862	-	523,862
Total assets	185,273,274	337,088	185,610,362
Liabilities			
Vouchers payable	258,680	110,474	369,155
Retainage payable	189,383	-	189,383
Rent Deposit	25,725	-	25,725
Deferred Revenue	11,500	-	11,500
Total liabilities	485,289	110,474	595,763
NET POSITION	\$ 184,787,985	\$ 226,614	\$ 185,014,599

Summary Of Expenses
EXP-2023-05

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
770-7910-429.11-00	5/11/2023	327426	Cass County Government	\$76,833.83	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
	6/1/2023	327907	Cass County Government	\$81,403.32	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
Full Time Staff / Salaries				\$158,237.15			
770-7910-429.20-01	5/11/2023	327426	Cass County Government	\$7,185.00	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
	6/1/2023	327907	Cass County Government	\$7,185.00	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
Employee Benefits / Health Insurance				\$14,370.00			
770-7910-429.20-03	5/11/2023	327426	Cass County Government	\$200.00	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
	6/1/2023	327907	Cass County Government	\$200.00	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
Employee Benefits / Dental Insurance				\$400.00			
770-7910-429.20-06	5/11/2023	327426	Cass County Government	\$36.50	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
	6/1/2023	327907	Cass County Government	\$36.50	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
Employee Benefits / Vision Insurance				\$73.00			
770-7910-429.21-01	5/11/2023	327426	Cass County Government	\$4,637.36	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
	6/1/2023	327907	Cass County Government	\$4,920.67	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
Employee Benefits / Social Security				\$9,558.03			
770-7910-429.21-02	5/11/2023	327426	Cass County Government	\$1,084.54	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
	6/1/2023	327907	Cass County Government	\$1,150.82	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
Employee Benefits / Medicare				\$2,235.36			
770-7910-429.22-07	5/11/2023	327426	Cass County Government	\$9,419.82	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
	6/1/2023	327907	Cass County Government	\$9,980.04	DIVERSION PAYROLL EXPENSE	V00106	ED & STAFF-PR/ADMIN EXP
Pension Benefits / Retirement				\$19,399.86			
770-7910-429.33-37	5/18/2023	327656	HighRoad Partners, LLC	\$700.00	MAY HR PARTNER FEES	V09701	HR SERVICES
Other Services / HR Services				\$700.00			
770-7910-429.34-15	5/11/2023	327518	Marco Technologies	\$629.20	IT SERVICE AGREEMENT	V10301	SERVICE AGREEMENT - IT
	5/18/2023	327683	Marco Technologies	\$1,891.52	DIVERSION IT SERVICES	V10301	SERVICE AGREEMENT - IT
	5/18/2023	327683	Marco Technologies	\$481.25	IT SERVICE AGREEMENT	V10301	SERVICE AGREEMENT - IT
Technical Services / Computer Services				\$3,001.97			

Data Through Date: Friday, May 26, 2023

Summary Of Expenses
EXP-2023-05

Monday, June 12, 2023

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
770-7910-429.38-99	6/1/2023	327907	Cass County Government	\$327.55	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
Other Services / Other Services				\$327.55			
770-7910-429.43-50	6/1/2023	327907	Cass County Government	\$395.47	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
Repair and Maintenance / Maintenance Service Contract				\$395.47			
770-7910-429.53-20	5/11/2023	327426	Cass County Government	\$420.12	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
	6/1/2023	327907	Cass County Government	\$1,308.65	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
Communications / Cellular Phone Service				\$1,728.77			
770-7910-429.56-60	5/11/2023	327426	Cass County Government	\$205.15	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
	6/1/2023	327907	Cass County Government	\$810.62	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
In State Travel / In State Travel Expenses				\$1,015.77			
770-7910-429.57-60	5/11/2023	327426	Cass County Government	\$1,289.58	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
	6/1/2023	327907	Cass County Government	\$1,392.40	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
Out of State Travel / Out of State Travel Exp				\$2,681.98			
770-7910-429.59-21	5/11/2023	327426	Cass County Government	\$1,120.00	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
	6/1/2023	327907	Cass County Government	\$50.00	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
Education / Seminar & Conf. Outstate				\$1,170.00			
770-7910-429.61-10	5/11/2023	327426	Cass County Government	\$375.00	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
	6/1/2023	327907	Cass County Government	\$1,313.32	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
General Supplies / Office Supplies				\$1,688.32			
770-7910-429.68-30	5/11/2023	327426	Cass County Government	\$363.17	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
Miscellaneous / Meeting Incidentals				\$363.17			
770-7910-429.74-12	5/11/2023	327426	Cass County Government	\$80.29	DIVERSION MISC EXPENSES	V00106	ED & STAFF-PR/ADMIN EXP
Capital Outlay / Computer Software				\$80.29			
770 Subtotal				\$217,426.69			
790-0000-206.10-00	5/25/2023	327863	Schmidt and Sons Inc.	\$2,000.00	Pay Vendor Retainage	V03804	WP50E-STRUCTURE REMOVALS
Retainage				\$2,000.00			

Data Through Date: Friday, May 26, 2023

Summary Of Expenses
EXP-2023-05

Monday, June 12, 2023

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7910-429.33-25	6/5/2023	1029	OHNSTAD TWICHELL PC	\$61,527.78	Ohnstad Twichell PC	V00102	General & Admin. WIK
Other Services / Legal Services				\$61,527.78			
790-7910-429.34-15	5/25/2023	327783	CONSOLIDATED COMMUNI	\$470.00	ACCT 701-150-0113/0	V00106	ED & STAFF-PR/ADMIN EXP
Technical Services / Computer Services				\$470.00			
790-7910-429.34-20	5/11/2023	327421	C THREE MEDIA, LLC	\$16,880.06	VIDEOGRAPHY SERVICES	V08601	VIDEOGRAPHY
	5/18/2023	327668	Michael H Klein	\$1,312.50	PUBLIC OUTREACH/COMM	V07201	COMMUNICATION CONSULTING
	5/18/2023	327699	Neon Loon Communications, LL	\$11,138.85	COMMUNICATIONS SUPPORT	V09601	COMMUNICATIONS SUPPORT
	6/1/2023	327902	C THREE MEDIA, LLC	\$7,534.43	VIDEOGRAPHY SERVICES	V08601	VIDEOGRAPHY
Technical Services / Marketing / Public Relat.				\$36,865.84			
790-7910-429.34-40	5/18/2023	327641	Flint Group	\$150.00	MFDA PR HARD COSTS	V10201	WEBSITE DESIGN
	5/18/2023	327641	Flint Group	\$750.00	MFDA QUARTERLY REPORTNG	V10201	WEBSITE DESIGN
Technical Services / Web Site Develop/Maintain				\$900.00			
790-7910-429.34-56	5/26/2023	ES05230	City of Fargo	\$16,974.00	FISCAL AGENT FEE - 05/23	V05902	MONTHLY FISCAL AGENT FEE
Technical Services / FMDA Fiscal Agent Fees				\$16,974.00			
790-7910-429.38-68	5/18/2023	327644	GA Group, PC	\$4,000.00	MAY GOV RELATIONS COUNSEL	V07601	2021 GOVERNMENT RELATIONS
Other Services / Lobbyist				\$4,000.00			
790-7910-429.42-05	5/18/2023	327601	Ambassador, Inc.	\$925.00	DIVERSION OFFICE CLEANING	V10501	JANITORIAL SERVICES
Cleaning Services / Custodial Services				\$925.00			
790-7910-429.54-40	5/18/2023	327642	FORUM COMMUNICATIONS	\$1,500.00	DIVERSION ADS	V11501	MARKETING SERVICES
Advertising / Other Advertising				\$1,500.00			
790-7915-429.33-05	5/18/2023	327598	AECOM	\$15,024.00	CULTURAL RESOURCES INVEST	V01004	SEAI CULTURAL RES INVEST
	5/18/2023	327621	Cass Rural Water	\$29,806.00	REIMB ADVANCED ENGINEERIN	V05005	CASS RURAL WATER US MOU
	5/25/2023	327814	HOUSTON-MOORE GROUP L	\$159,510.14	DIVERSION PROJECT	V01633	DESIGN & CONST. SUPPORT
	5/25/2023	327814	HOUSTON-MOORE GROUP L	\$64,811.25	DIVERSION PROJECT	V01634	H&H MITIG. & PERMIT SUPPORT
Other Services / Engineering Services				\$269,151.39			

Data Through Date: Friday, May 26, 2023

Summary Of Expenses
EXP-2023-05

Monday, June 12, 2023

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7920-429.33-05	5/25/2023	327814	HOUSTON-MOORE GROUP L	\$12,964.50	DIVERSION PROJECT	V01634	H&H MITIG. & PERMIT SUPPORT
	5/25/2023	327814	HOUSTON-MOORE GROUP L	\$89,347.08	DIVERSION PROJECT	V01633	DESIGN & CONST. SUPPORT
Other Services / Engineering Services				\$102,311.58			
790-7920-429.33-79	5/25/2023	327782	CH2M Hill Engineers Inc	\$689,908.99	SUPPORT SERVICES	V00212	P3 PROCUREMENT SUPPORT
	5/25/2023	327782	CH2M Hill Engineers Inc	\$668,492.55	PROGRAM MGMT & SERVICES	V00211	CH2M HILL-6/2019-12/2021
	6/1/2023	327980	MOORE ENGINEERING INC	\$1,228.35	REIMB MOORE ENGINEERING	V02421	OXBOW MOU-MOORE PROJ MG
Other Services / Construction Management				\$1,359,629.89			
790-7930-429.33-05	5/11/2023	327434	HDR Engineering, Inc.	\$35,324.74	HDR ENGINEERING INC	V01201	Cass Joint Water ROE
	5/11/2023	327434	Prosource Technologies, Inc	\$26,206.41	PROSOURCE TECHNOLOGIES	V01201	Cass Joint Water ROE
	5/11/2023	327434	SRF Consulting Group	\$42,131.33	SRF CONSULTING GROUP, INC	V01201	Cass Joint Water ROE
	5/11/2023	327434	ULTEIG ENGINEERS INC	\$14,704.30	ULTEIG ENGINEERS, INC	V01201	Cass Joint Water ROE
	5/18/2023	327597	ADVANCED ENGINEERING I	\$287,969.59	DIVERSION PROJECT	V00302	PROGRAM MGMT SERVICES
	5/25/2023	327814	HOUSTON-MOORE GROUP L	\$36,834.93	DIVERSION PROJECT	V01633	DESIGN & CONST. SUPPORT
	5/25/2023	327814	HOUSTON-MOORE GROUP L	\$37,717.88	DIVERSION PROJECT	V01634	H&H MITIG. & PERMIT SUPPORT
Other Services / Engineering Services				\$480,889.18			
790-7930-429.33-25	5/11/2023	327434	Larkin Hoffman Attorneys	\$19,182.75	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
	5/11/2023	327434	OHNSTAD TWICHELL PC	\$173,188.25	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
	5/11/2023	327434	OHNSTAD TWICHELL PC	\$115.60	OHNSTAD TWICHELL, P.C.	V01202	Cass Joint Water DPAC
	5/11/2023	327434	OHNSTAD TWICHELL PC	\$157.50	OHNSTAD TWICHELL, P.C.	V01203	Cass Joint Water OHB
Other Services / Legal Services				\$192,644.10			
790-7930-429.33-79	5/25/2023	327782	CH2M Hill Engineers Inc	\$42,525.92	PROPERTY ACQUISITION MGMT	V00210	CH2M HILL-LAND ACQUISITON
Other Services / Construction Management				\$42,525.92			
790-7930-429.38-99	5/11/2023	327434	Title Company	\$200.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	Vern Anderson	\$12,359.75	VERDEN ANDERSON	V01701	ND LAND PURCH-OUT OF TOWN
Other Services / Other Services				\$12,559.75			
790-7930-429.52-70	6/1/2023	328012	Watts and Associates, Inc.	\$2,244.73	CROP INSURANCE SERVICES	V06901	CROP INSURANCE DEVELOPMN
Insurance / Crop Insurance				\$2,244.73			

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790-7930-429.61-50	5/11/2023	327434	CASS COUNTY JOINT WATE	\$176.16	CASS COUNTY JOINT WRD	V01201	Cass Joint Water ROE
General Supplies / Postage				\$176.16			
790-7930-429.62-51	5/11/2023	327434	Cass County Electric Cooperativ	\$247.81	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	6/1/2023	327905	Cass County Electric Cooperativ	\$256.00	ACCT 1184422 ENERGY	V01701	ND LAND PURCH-OUT OF TOWN
Energy / Electricity				\$503.81			
790-7930-429.67-11	5/11/2023	327434	1127 - GORDON & ELIZABET	\$7,176.92	GORDON BAKER	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	2014 - ODEGAARD 4	\$94,750.00	BRENT & HEIDI ODEGAARD	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	8385 - ERIC J SCORE	\$84,525.89	ERIC SCORE	V01701	ND LAND PURCH-OUT OF TOWN
Relocation / Residential Buildings				\$186,452.81			
790-7930-429.67-12	5/11/2023	327434	0220 - ANDERSON 2	\$52,500.00	VERDEN ANDERSON	V01701	ND LAND PURCH-OUT OF TOWN
Relocation / Commercial Buildings				\$52,500.00			
790-7930-429.68-10	5/11/2023	327434	CASS COUNTY JOINT WATE	\$29.25	CASS COUNTY JOINT WRD	V01201	Cass Joint Water ROE
Miscellaneous / Miscellaneous				\$29.25			

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790-7930-429.71-30	5/11/2023	327434	0896Y - CASS COUNTY JOIN	(\$343,807.70)	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	0898Y - CASS COUNTY JOIN	(\$343,807.68)	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	0899Y - CASS COUNTY JOIN	(\$343,807.68)	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	0901Y - CASS COUNTY JOIN	(\$343,807.68)	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	0922Y1 - STUART W JOHNSO	(\$343,807.68)	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	1181N - EDWARD O SAMUEL	\$198,751.54	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	1182N - EDWARD O SAMUEL	\$198,751.53	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	5000 - JASON SJOSTROM	\$188,347.31	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	5001 - JASON SJOSTROM	\$188,347.31	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	5004Y - CASS COUNTY JOIN	(\$200,795.17)	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	5009Y - CASS COUNTY JOIN	(\$200,795.15)	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	5012Y - CASS COUNTY JOIN	(\$200,795.15)	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	5054 - RONALD M & BRAUN	\$64,760.22	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	5055Y - CASS COUNTY JOIN	(\$200,795.15)	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	9054Y - CASS COUNTY JOIN	(\$200,795.15)	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	9055Y - CASS COUNTY JOIN	(\$200,795.15)	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	9056Y - CASS COUNTY JOIN	(\$200,795.15)	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
Land / Land Purchases				(\$2,285,646.58)			
790-7930-429.71-31	5/11/2023	327434	0833 - GERDOT	\$241,120.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	1541 - TOMMERAUS	\$43,985.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	1596 - ANDERSON, PEARL B	\$11,603.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	1615 - ANDERSON, PEARL B	\$11,603.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	2010 - NIPSTAD 5	\$888,584.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	5016X - CHERYL EVERT ET	\$267,603.60	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	5017 - CHERYL EVERT ETAL	\$267,603.60	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	5019 - CHERYL EVERT ETAL	\$267,603.60	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	5027 - CHERYL EVERT ETAL	\$267,603.60	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	5029 - CHERYL EVERT ETAL	\$267,603.60	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/11/2023	327434	5034 - LTD PRTN MONTPLAI	\$268,952.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
Land / Easements				\$2,803,865.00			

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790-7930-429.73-20	5/25/2023	327863	Schmidt and Sons Inc.	\$2,000.00	PROPERTY STRUCTURE MITIGA	V03804	WP50E-STRUCTURE REMOVALS
	5/25/2023	327863	Schmidt and Sons Inc.	\$37,500.00	PROPERTY STRUCTURE MITIGA	V03806	WP-50G PROP STRUCT MITIG
Infrastructure / Site Improvements				\$39,500.00			
790-7930-429.80-17	5/11/2023	327434	CASS COUNTY TREASURER	\$6,249.59	CASS COUNTY FINANCE	V01701	ND LAND PURCH-OUT OF TOWN
Debt Service / Property Tax - FMDA				\$6,249.59			
790-7931-429.33-05	5/4/2023	327256	Prosource Technologies, Inc	\$12,934.50	PROSOURCE TECHNOLOGIES	V06201	MCCJPA - MN ROE
	5/4/2023	327256	SRF Consulting Group	\$17,562.35	SRF CONSULTING GROUP	V06201	MCCJPA - MN ROE
	6/1/2023	327912	Prosource Technologies, Inc	\$14,572.50	PROSOURCE TECHNOLOGIES	V06201	MCCJPA - MN ROE
	6/1/2023	327912	SRF Consulting Group	\$37,519.87	SRF CONSULTING GROUP	V06201	MCCJPA - MN ROE
Other Services / Engineering Services				\$82,589.22			
790-7931-429.33-25	5/4/2023	327256	OHNSTAD TWICHELL PC	\$45,392.29	OHNSTAD TWICHELL	V06201	MCCJPA - MN ROE
	6/1/2023	327912	OHNSTAD TWICHELL PC	\$44,073.02	OHNSTAD TWICHELL	V06201	MCCJPA - MN ROE
Other Services / Legal Services				\$89,465.31			
790-7931-429.33-32	5/4/2023	327256	CROWN APPRAISALS	\$5,500.00	CROWN APPRAISALS, INC	V06201	MCCJPA - MN ROE
Other Services / Appraisal Services				\$5,500.00			
790-7931-429.42-20	6/1/2023	327912	Building & Grounds Managemen	\$375.00	BUILDINGS & GROUNDS MANAG	V02301	MN LAND PURCHASES
Cleaning Services / Snow Clearing				\$375.00			
790-7931-429.54-10	5/4/2023	327256	BARNESVILLE RECORD-RE	\$48.00	BARNESVILLE RECORD REVIEW	V06201	MCCJPA - MN ROE
	6/1/2023	327912	BARNESVILLE RECORD-RE	\$36.00	BARNESVILLE RECORD REVIEW	V06201	MCCJPA - MN ROE
Advertising / Legal Publications				\$84.00			
790-7931-429.62-51	6/1/2023	327912	RED RIVER VALLEY COOPE	\$51.94	RED RIVER VALLEY COOP	V02301	MN LAND PURCHASES
Energy / Electricity				\$51.94			
790-7931-429.71-31	6/1/2023	327912	7211 - TODD KLEIN FAMILY	\$2,193.00	THE TITLE CO.	V02301	MN LAND PURCHASES
Land / Easements				\$2,193.00			
790-7931-429.80-17	6/1/2023	327912	CLAY COUNTY AUDITOR	\$10,416.00	CLAY COUNTY AUDITOR-TREAS	V02301	MN LAND PURCHASES
	6/1/2023	327912	WILKIN COUNTY AUDITOR	\$60.00	WILKIN COUNTY AUDITOR	V02301	MN LAND PURCHASES
Debt Service / Property Tax - FMDA				\$10,476.00			

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790-7940-429.33-06	5/18/2023	327614	BRAUN INTERTEC CORP	\$7,664.66	MATERIALS TESTING	V00407	TASK ORDER #5
Other Services / Quality Testing				\$7,664.66			
790-7941-429.33-05	6/1/2023	327900	BUFFALO-RED RIVER WATE	\$770.90	CITY OF WOLVERTON PROTECT	V10901	WOLVERTON-FLOOD CONTROL
	6/1/2023	327900	HOUSTON ENGINEERING IN	\$41,740.75	REIMB HOUSTON ENGINEERING	V10801	GEORGETOWN-LEEVE CERTIFI
	6/1/2023	327900	HOUSTON ENGINEERING IN	\$95,607.88	CITY OF WOLVERTON PROTECT	V10901	WOLVERTON-FLOOD CONTROL
Other Services / Engineering Services				\$138,119.53			
790-7950-429.33-05	5/25/2023	327814	HOUSTON-MOORE GROUP L	\$3,399.00	DIVERSION PROJECT	V01633	DESIGN & CONST. SUPPORT
Other Services / Engineering Services				\$3,399.00			
790-7950-429.33-06	5/18/2023	327614	BRAUN INTERTEC CORP	\$37,393.50	PROJECT TESTING	V00406	TASK ORDER #4
Other Services / Quality Testing				\$37,393.50			
790-7950-429.41-05	5/11/2023	327435	Cass Rural Water	\$29.70	ACCOUNT #18789 DIVERSION	V05006	DIVERSION INLET UTILITY
Utility Services / Water and Sewer				\$29.70			
790-7950-429.73-70	5/18/2023	327689	Minnkota Power Cooperative	\$330,159.34	#4 FRONTIER TO WAHPETON	V08205	TO #4 FRONTIER TO WAHPETO
Infrastructure / Utilities				\$330,159.34			
790-7952-429.33-05	5/25/2023	327814	HOUSTON-MOORE GROUP L	\$6,174.98	DIVERSION PROJECT	V01633	DESIGN & CONST. SUPPORT
Other Services / Engineering Services				\$6,174.98			
790-7990-429.33-05	5/11/2023	327434	MOORE ENGINEERING INC	\$3,757.50	MOORE ENGINEERING, INC	V01201	Cass Joint Water ROE
	5/25/2023	327814	HOUSTON-MOORE GROUP L	\$136,310.95	DIVERSION PROJECT	V01633	DESIGN & CONST. SUPPORT
Other Services / Engineering Services				\$140,068.45			
790-7990-429.33-25	6/5/2023	1029	OHNSTAD TWICHELL PC	\$27,116.50	Ohnstad Twichell PC	V00102	General & Admin. WIK
Other Services / Legal Services				\$27,116.50			
790-7990-429.33-47	5/25/2023	327853	Program Advisor Services, LLC	\$46,322.98	DIVERSION PROGRAM CONSULT	V05801	CONSULTING SERVICES
Other Services / Consulting Services				\$46,322.98			
790-7990-429.34-55	5/18/2023	327603	AON RISK SERVICES CENTR	\$1,168.75	RISK ADVISORY SERVICES	V03201	PRE-AWARD P3 RISK ADVISOR
Technical Services / Financial Advisor				\$1,168.75			

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790-7990-429.34-57	5/30/2023	11892	BANK OF NORTH DAKOTA	\$16,974.00	BND TRUSTEE FEE - 04/2023	V08502	MONTHLY TRUSTEE FEE
Technical Services / FMDA Trustee Fees BND				\$16,974.00			
790-7990-520.80-20	6/6/2023	ES05230	CASS COUNTY JOINT WATE	\$432,000.00	REC 5.1.23 INTEREST PMT	V01207	CCJWRD-TEMPORARY RIBS 21A
Debt Service / Interest On Bonds				\$432,000.00			
790-7998-555.90-81	5/26/2023	ES05230	Diversion Admin Budget Transfe	\$0.00	ANNUAL ADMIN BDT TRF-MAY	VADMIN	Diversion Administration
FMDA Admin. Budget Fund				\$0.00			
790 Subtotal				\$4,768,075.06			

Total Amount Invoiced this period:	\$4,985,501.75	
	\$2,000.00	Less Paid Retainage
	\$4,983,501.75	Total Less Paid Retainage

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Cumulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
LAND PURCHASE	\$311,371,178.55	\$311,371,178.55	\$0.00	Land Purchase
CH2M HILL ENGINEERS INC	\$152,240,026.12	\$104,769,147.92	\$47,470,878.20	Project & Construction Management
HOUSTON-MOORE GROUP LLC	\$92,225,504.39	\$67,118,260.99	\$25,107,243.40	Engineering Services
INDUSTRIAL BUILDERS INC	\$61,558,207.03	\$61,049,501.69	\$508,705.34	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	\$31,491,435.00	\$31,491,435.00	\$0.00	Debt Service
OHNSTAD TWICHELL PC	\$19,280,309.17	\$19,280,309.17	\$0.00	Legal Services
MEYER CONTRACTING	\$19,244,280.80	\$19,244,280.80	\$0.00	WP-43CD and Gatewell - PVD & Surcharge Installation
INDUSTRIAL CONTRACT SERVICES INC	\$18,419,743.64	\$18,419,743.64	\$0.00	4th St Pump Station and 2nd Street Floodwall
KEY CONTRACTING INC	\$14,436,924.72	\$14,436,924.72	\$0.00	FM1413 - Oakcreek and Copperfield Court Levee
ADVANCED ENGINEERING INC	\$14,379,176.00	\$10,389,383.91	\$3,989,792.09	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
CITY OF FARGO	\$7,258,997.07	\$7,253,358.32	\$5,638.75	Utility Relocation, Accounting Svcs, Interest on Deficit Funds
MOORE ENGINEERING INC	\$6,492,401.54	\$5,880,589.02	\$611,812.52	Engineering Services
ASHURST LLP	\$6,352,853.01	\$6,352,853.01	\$0.00	PPP Legal Counsel
SRF CONSULTING GROUP	\$5,953,366.44	\$2,553,573.22	\$3,399,793.22	Engineering Services
NUSTAR PIPELINE OPERATING PARTNERSHIP	\$5,836,208.35	\$5,819,359.23	\$16,849.12	Utility Relocation
AON RISK SERVICES CENTRAL INC	\$5,778,765.42	\$5,699,828.92	\$78,936.50	Risk Advisory Services P3 Pre-Award
ERNST & YOUNG	\$5,377,000.00	\$5,003,678.20	\$373,321.80	P3 Financial Advisory Services
CASS RURAL WATER	\$5,365,072.77	\$5,265,236.82	\$99,835.95	Utilities and Utility Relocation
BRAUN INTERTEC CORP	\$4,839,908.75	\$1,239,434.31	\$3,600,474.44	Materials Testing
HOUSTON ENGINEERING INC	\$4,328,337.27	\$4,328,337.27	\$0.00	Engineering Services

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Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
PROSOURCE TECHNOLOGIES, INC	\$4,198,291.71	\$3,072,956.67	\$1,125,335.04	Land Acquisition Services
RILEY BROS	\$3,656,841.67	\$3,656,841.67	\$0.00	Construction - OHB Ring Levee & WP-28A
MAGELLAN PIPELINE	\$3,607,000.00	\$2,413,376.08	\$1,193,623.92	Utility Relocation
CENTURYLINK COMMUNICATIONS	\$3,598,480.71	\$3,598,480.61	\$0.10	Utility Relocation
RED RIVER VALLEY & WESTERN RAILROAD C	\$3,589,388.46	\$3,589,388.46	\$0.00	Railroad Facilities and the Rail Property
CASS COUNTY GOVERNMENT	\$3,146,977.28	\$3,146,977.28	\$0.00	Gravel on County Rd 17 Bypass
CHS INC.	\$3,049,153.37	\$3,049,153.37	\$0.00	Purchase Agreement (DB-1011)
PLENARY AMERICAS USA LTD	\$3,000,000.00	\$3,000,000.00	\$0.00	Stipend Payment for P3 RFP
SELLIN BROS INC	\$2,814,909.59	\$2,814,909.59	\$0.00	Riverwood Flood Risk Project - Construction
MINNESOTA DNR	\$2,636,755.60	\$2,617,681.40	\$19,074.20	EIS Scoping and Permit Application
CROWN APPRAISALS	\$2,414,230.00	\$1,735,030.00	\$679,200.00	Flowage Easements Valuation and Appraisal Services
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
SCHMIDT AND SONS INC.	\$2,283,070.60	\$1,802,504.36	\$480,566.24	Residential Demolition in Oxbow
CASS COUNTY ELECTRIC COOPERATIVE	\$2,257,345.59	\$1,473,183.09	\$784,162.50	Electrical Services
HDR ENGINEERING, INC.	\$2,192,783.68	\$1,583,696.09	\$609,087.59	Engineering Services
HOUGH INC	\$2,088,832.83	\$2,088,832.83	\$0.00	Construction WP-42F.2 and Oxbow River Intake & Pumping Syst
PROGRAM ADVISOR SERVICES, LLC	\$2,006,282.87	\$1,652,088.00	\$354,194.87	Program Consulting Services
URS CORPORATION	\$1,805,670.90	\$1,805,670.90	\$0.00	Cultural Resources Investigations
ULTEIG ENGINEERS INC	\$1,744,157.63	\$1,385,621.99	\$358,535.64	Land Acquisition Services
ACONEX (NORTH AMERICA) INC	\$1,670,793.92	\$1,207,471.01	\$463,322.91	Electronic Data Mgmt and Record Storage System
CASS COUNTY JOINT WATER RESOURCE DI	\$1,618,248.46	\$1,618,248.46	\$0.00	O/H/B Ring Levee, DPAC, Postage, Miscellaneous
REINER CONTRACTING INC	\$1,599,646.21	\$1,599,646.21	\$0.00	El Zagal Flood Risk Management
BNSF RAILWAY CO	\$1,597,425.00	\$1,548,261.72	\$49,163.28	Permits for In-Town Levee Projects
CASS COUNTY TREASURER	\$1,348,595.40	\$1,348,595.40	\$0.00	Property Taxes
UNITED STATES GEOLOGICAL SURVEY	\$1,332,840.00	\$281,365.00	\$1,051,475.00	Water Level Discharge Collection & Stage Gage Installation
AECOM	\$1,283,995.14	\$874,076.62	\$409,918.52	Cultural Resources Investigations

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Cumulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
XCEL ENERGY-FARGO	\$1,250,919.49	\$1,204,319.49	\$46,600.00	Utility Relocation
US BANK	\$1,205,546.13	\$1,205,546.13	\$0.00	Loan Advance Debt Service Payments
CONSOLIDATED COMMUNICATIONS	\$1,076,897.97	\$1,076,897.97	\$0.00	Utility Relocation
KPH, INC.	\$1,025,640.12	\$1,025,640.12	\$0.00	WP-43D5 Construction
CLERK OF DISTRICT COURT	\$939,044.32	\$939,044.32	\$0.00	FLDBUY - COF Flood Home Buyouts
TERRACON CONSULTING ENGINEERS	\$887,718.41	\$887,718.41	\$0.00	Materials Testing
MINNKOTA POWER COOPERATIVE	\$840,269.48	\$565,269.48	\$275,000.00	Utility Relocation
COMPASS LAND CONSULTANTS, INC	\$804,820.00	\$627,389.43	\$177,430.57	Property Appraisal Services
MASTER CONSTRUCTION CO INC	\$739,364.30	\$739,364.30	\$0.00	Flood Mitigation - Royal Oaks Area - Construction
UNITED STATES ENVIRONMENTAL PROTECTI	\$736,686.35	\$736,686.35	\$0.00	WIFIA LOAN APPLCATION FEE
DAKOTA CARRIER NETWORK	\$727,348.58	\$727,348.58	\$0.00	Utility Relocation
RED RIVER VALLEY ALLIANCE LLC	\$695,113.30	\$695,113.30	\$0.00	P3 Developer payments
ERIK R JOHNSON & ASSOCIATES	\$686,572.23	\$686,572.23	\$0.00	Legal Services
PATCHIN MESSNER VALUATION COUNSELORS	\$675,025.00	\$413,933.75	\$261,091.25	Property Appraisal Services
LARKIN HOFFMAN ATTORNEYS	\$645,836.22	\$645,836.22	\$0.00	Legal Services
METROPOLITAN COUNCIL OF GOVERNMENTS	\$637,390.01	\$637,390.01	\$0.00	Digital Aerial Photography
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
RED RIVER VALLEY COOPERATIVE ASSOC	\$546,982.67	\$336,982.67	\$210,000.00	Electricity - Home Buyouts
LINCO, INC.	\$534,003.11	\$534,003.11	\$0.00	House Demo and Removal
MIDCONTINENT COMMUNICATIONS	\$527,490.41	\$527,490.41	\$0.00	Utility Relocation
RED RIVER BASIN COMMISSION	\$501,000.00	\$501,000.00	\$0.00	Retention Projects - Engineering Services
HOFFMAN & MCNAMARA CO.	\$491,334.67	\$491,334.67	\$0.00	General Landscaping and Planting (WP-42G)
BUFFALO-RED RIVER WATERSHED DISTRICT	\$473,287.89	\$473,287.89	\$0.00	Retention Projects - Engineering Services
ROBERT TRENT JONES	\$440,431.73	\$440,431.73	\$0.00	Oxbow MOU - Golf Course Consulting Agreement
NEON LOON COMMUNICATIONS, LLC	\$437,065.00	\$213,702.10	\$223,362.90	Communications Support
BANK OF NORTH DAKOTA	\$409,597.09	\$409,597.09	\$0.00	Legal review fees

Data Through Date: Friday, May 26, 2023

Cumulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
MBA	\$380,636.36	\$380,636.36	\$0.00	Golf course and pump house - Oxbow Country Club
BEAVER CREEK ARCHAEOLOGY	\$369,370.25	\$369,370.25	\$0.00	Engineering Services
NDSU BUSINESS OFFICE-BOX 6050	\$356,145.00	\$356,145.00	\$0.00	Ag Risk Study Services
WATTS AND ASSOCIATES, INC.	\$350,000.00	\$289,644.48	\$60,355.52	Crop insurance product development services
MVM CONTRACTING	\$339,448.03	\$339,448.03	\$0.00	Fiber Relocation
SWANSON HEALTH PRODUCTS, INC.	\$337,059.00	\$337,059.00	\$0.00	FM1471 - Storm Lift Stations #55 and #56 - Drain 27
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
C THREE MEDIA, LLC	\$294,510.00	\$217,804.28	\$76,705.72	Videography Services
GARY KILLEBREW	\$279,500.00	\$279,500.00	\$0.00	Project Manager Services - Oxbow Country Club
TURMAN & LANG	\$277,139.55	\$277,139.55	\$0.00	Legal Services
MOODYS INVESTORS SERVICE, INC.	\$274,375.00	\$274,375.00	\$0.00	WIFIA loan fees
INTEGRA REALTY RESOURCES	\$267,300.00	\$257,750.00	\$9,550.00	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
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
FORUM COMMUNICATIONS	\$237,305.67	\$233,805.67	\$3,500.00	Advertising Services
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
WILLIAM D. SCEPANIAC, INC.	\$226,235.21	\$226,235.21	\$0.00	ROADWAY RESHAPING & AGGREGATE SURFACING
PLEASANT TOWNSHIP	\$208,207.85	\$208,207.85	\$0.00	Building Permit Application
CC STEEL, LLC	\$202,385.35	\$202,385.35	\$0.00	Lift Station Improvements
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
DAWSON INSURANCE AGENCY	\$198,596.18	\$198,596.18	\$0.00	Property Insurance - Home Buyouts

Data Through Date: Friday, May 26, 2023

Cumulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
EXECUTIVE MANAGEMENT SYSTEMS, INC.	\$196,763.96	\$196,763.96	\$0.00	Executive Coaching
CLAY COUNTY AUDITOR	\$190,911.34	\$190,911.34	\$0.00	Property Taxes - MN
MICHAEL H KLEIN	\$189,965.25	\$77,421.10	\$112,544.15	Communications Support
SERKLAND LAW FIRM	\$185,470.21	\$185,470.21	\$0.00	Legal services
MAPLETON, CITY OF	\$179,605.00	\$87,870.22	\$91,734.78	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
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
GA GROUP, PC	\$156,229.32	\$128,229.32	\$28,000.00	Government Relations
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	\$143,075.16	\$143,075.16	\$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
EIDE BAILLY LLP	\$131,643.25	\$81,643.25	\$50,000.00	Audit Services
SENTRY SECURITY, INC.	\$121,212.85	\$121,212.85	\$0.00	Security Services
AFFINITEXT INC	\$118,630.00	\$68,168.13	\$50,461.87	Document Management Services
ENVENTIS	\$115,685.62	\$115,685.62	\$0.00	Utility Relocation
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
JT LAWN SERVICE LLC	\$109,600.00	\$40,000.00	\$69,600.00	Mowing and weed control
TINJUM APPRAISAL COMPANY, INC.	\$108,050.00	\$92,900.00	\$15,150.00	Property Appraisal Services
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

133 Vendors

Report Totals:

\$1,030,651,976.10

\$936,049,948.20

\$94,602,027.90

METRO FLOOD DIVERSION AUTHORITY

Monday, June 12, 2023

Data Through Date: Friday, May 26, 2023

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
BIOGEO	423	211	131	81%	81	\$1,093,981
BIOGEO	293	210	2	72%	81	\$322,296
HC	130	1	129	100%	0	\$771,685
CHANNEL	693	442	217	95%	34	\$101,144,084
ENV	1	0	0	0%	1	\$0
HC	227	10	217	100%	0	\$3,559,111
LAP01	132	119	0	90%	13	\$7,940,780
LAP02	94	89	0	95%	5	\$13,364,816
LAP03	82	67	0	82%	15	\$25,136,874
LEGACY	156	156	0	100%	0	\$51,141,254
SheyMit	1	1	0	100%	0	\$1,250
Habitat Improve	17	1	0	6%	16	\$2,000
Habitat_Shey	17	1	0	6%	16	\$2,000
MOBILITY	123	0	1	1%	122	\$0
DA_MOB37_MN	51	0	0	0%	51	\$0
DA_MOB37_ND	19	0	0	0%	19	\$0
DA_MOB38TH	52	0	0	0%	52	\$0
HC	1	0	1	100%	0	\$0
NA	7	0	7	100%	0	\$0
HC	7	0	7	100%	0	\$0
SEAILAND	381	293	35	86%	53	\$61,026,327
DRAIN 27	36	36	0	100%	0	\$14,871,573
HC	39	4	35	100%	0	\$458,806
LEGACY	69	69	0	100%	0	\$11,181,449
SE_I29	10	10	0	100%	0	\$3,887,958
SE-1	42	39	0	93%	3	\$6,502,256
SE-2A	13	13	0	100%	0	\$3,369,529
SE-2B	55	44	0	80%	11	\$7,919,250
SE-3	7	6	0	86%	1	\$25,000
SE-4	38	19	0	50%	19	\$3,550,089
SE-5	16	0	0	0%	16	\$2,750
UMA	2	0	0	0%	2	\$500
WP26	9	8	0	89%	1	\$2,952,107
WP30	8	8	0	100%	0	\$0
WP35	37	37	0	100%	0	\$6,305,062

METRO FLOOD DIVERSION AUTHORITY

Monday, June 12, 2023

Data Through Date: Friday, May 26, 2023

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
Sheyenne Mitigatio	3	0	0	0%	3	\$1,750
SheyMit	3	0	0	0%	3	\$1,750
WP36	2	0	0	0%	2	\$2,750
WRDAM	2	0	0	0%	2	\$2,750
WP38	1,020	217	356	56%	447	\$53,007,179
BIOGEO	2	2	0	100%	0	\$4,500
HC	357	1	356	100%	0	\$1,283,123
LEGACY	2	2	0	100%	0	\$750
UMA	569	212	0	37%	357	\$51,718,806
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	8	0	0	0%	8	\$0
UMA-W3	7	0	0	0%	7	\$0
WP40	18	6	10	89%	2	\$48,923
DRAYTON	7	5	0	71%	2	\$48,923
HC	10	0	10	100%	0	\$0
LEGACY	1	1	0	100%	0	\$0
WP42	66	50	3	80%	13	\$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	11	0	85%	2	\$5,852,463
WP42H1	4	4	0	100%	0	\$76,000
WP42H2	8	8	0	100%	0	\$2,463,170
WP42I2	13	7	0	54%	6	\$1,092,111

Data Through Date: Friday, May 26, 2023

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
WP43	267	117	148	99%	2	\$79,792,670
Non-OIN Hard Land Cost	0	0	0	0%	0	\$22,598,547
HC	147	0	147	100%	0	\$500
LEGACY	4	2	0	50%	2	\$2,422,914
WP43A	1	1	0	100%	0	\$0
WP43B	6	6	0	100%	0	\$1,927,138
WP43C	74	74	0	100%	0	\$45,142,769
WP43D	21	20	1	100%	0	\$6,437,831
WP43D5	5	5	0	100%	0	\$1,175,055
WP43G	9	9	0	100%	0	\$87,915
Totals	3,020	1,337	908	74%	775	\$333,969,726

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of May 31, 2023

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		7,603,598.67	-	595,320.88	-	8,198,919.55
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		259,765.00	-	-	-	259,765.00
Easements - Minesota		1,542,370.79	-	-	-	1,542,370.79
Farmland Purchases		265,193,343.84	-	5,109,571.44	(10,221,319.77)	132,433,974.33
Land Purchases		134,358,655.80	-	2,563,701.41	(4,515,382.88)	132,433,974.33
That part of the SE¼SW¼ of Section 22, Township 137 North of Range 49 West of the 5th Principal Meridian, Cass County, North Dakota, described as: Commencing at the Southeast corner of the Southwest Quarter of Section 22; thence West along the South line of Section 22 a distance of 10 rods to the point of beginning; thence North parallel to the West line of Section 22, 40 rods; thence West parallel to the South line of Section 22 to the center of the Wild Rice River; thence left upstream along the center line of the Wild Rice River Cass County Joint Water Resource District Upstream Mitigation Area Purchase Agreement— Graham OIN No. 858 — Parcel No. 57-0000-10350-017 Page 2 to a point of intersection with the South line of Section 22; thence east along the South line of Section 22 to the point of beginning.	9/1/2022	521173.1				521,173.10

**FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of May 31, 2023**

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
Lot 1, Block 1, of Sauvageau Subdivision, a portion of Section 4, Township 137 North, Range 49 West, Pleasant Township, Cass County, North Dakota.	9/1/2022	369,108.46				369,108.46
Part of NW 1/4, 4-137-49 Cass County ND	11/3/2022	2,020,662.70				
Government Lot 7 and Part of Government Lots 3&4, Section 31, Township 137 North, Range 48 West of the Fifth Principle Meridian, Cass County ND	2/2/2023	1,144,004.05				
Auditor's Lot One, a part of the Southeast Quarter of Section Twenty-four, in Township One Hundred Thirty-nine North of Range Fifty West of the Fifth Principal Meridian, situated in the County of Cass and the State of North Dakota.	3/30/2023	15,170.78				
The SE1/4 of Section 17, Township 137, Range 48, Clay County, Minnesota, LESS highway right-of-way.	3/9/2023	153,937.37				
Northeast Quarter of Section 27, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota,	5/11/2023	441,454.84				
		<u>329,959,117.95</u>	-	39,880,699.23	(10,599,027.64)	<u>359,240,789.54</u>
				Property Management Expense		4,908,869.49
				Grand Total	\$	<u><u>364,149,659.03</u></u>

**FM Metropolitan Area Flood Risk Management Project
In-Town Levee Work
as of May 31, 2023**

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	\$ 3,756,545.64	\$ 3,756,545.64
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	\$ 323,023.74	\$ 323,023.74
V02823	Hoffman & McNamara	WP-42G General Landscaping and Planting	\$ 491,334.67	\$ 491,334.67
V02824	City of Fargo	COF – In-Town Flood Protection Debt Payments	\$ 23,989,850.00	\$ 23,989,850.00
V01703	Various	In-Town Property Purchases	\$ 21,176,116.94	\$ 19,958,677.43
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>\$ 174,994,104.92</u>	<u>\$ 173,776,665.41</u>

Legacy Bond Fund Balance Report
As of 05/31/2023

Total Authorized \$ 435,500,000.00

Current Allocation \$ 219,000,000.00

Available funds remaining \$ 142,272,461.04

Funds Requested

	2021	2022	2023	Total
January	\$ -	\$ 2,942,906.60	\$ 9,981,188.76	\$ 12,924,095.36
February	\$ -	\$ 4,564,036.17	\$ 8,921,227.42	\$ 13,485,263.59
March	\$ -	\$ 5,302,899.35		\$ 5,302,899.35
April	\$ -	\$ 1,472,504.37		\$ 1,472,504.37
May	\$ -	\$ 1,450,140.38		\$ 1,450,140.38
June	\$ -	\$ 4,423,864.76		\$ 4,423,864.76
July	\$ -	\$ 2,663,992.40		\$ 2,663,992.40
August	\$ 5,059,974.19	\$ 13,491,974.29		\$ 18,551,948.48
September	\$ 2,970,327.95	\$ 8,406,666.33		\$ 11,376,994.28
October	\$ 6,089,707.34	\$ 4,618,116.80		\$ 10,707,824.14
November	\$ 6,415,461.09	\$ 11,768,061.46		\$ 18,183,522.55
December	\$ 6,854,966.95	\$ 17,496,559.97		\$ 24,351,526.92
Total	\$ 27,390,437.51	\$ 78,601,722.88	\$ 18,902,416.18	\$ 124,894,576.57

Funds Received

May 2022	\$ 27,390,437.51		\$ 27,390,437.51
Jul 2022		\$ 12,809,842.12	\$ 12,809,842.12
Sep 2022		\$ 7,346,509.51	\$ 7,346,509.51
Dec 2022		\$ 29,180,749.82	\$ 29,180,749.82
Jan 2023			\$ 29,264,621.43
Apr 2023			\$ 18,902,416.18
			\$ -
			\$ -
Total	\$ 27,390,437.51	\$ 49,337,101.45	\$ 48,167,037.61
			\$ 124,894,576.57

State Revolving Fund (SRF) Status Report
As of 05/31/2023

Total Authorized	\$	51,634,000.00
Funds Received to Date	\$	<u>5,936,984.08</u>
Available Balance Remaining	\$	<u>45,697,015.92</u>

Funds Requested			
Draw Request Number	Period Covered	Amount	Date Submitted
1	12-Aug through 17-Oct-2022	\$ 1,272,651.90	19-Dec-22
2	09-Dec through 16-Dec-2022	\$ 2,125,033.67	17-Jan-23
3	03-Feb through 10-Feb-2023	\$ 2,539,298.51	03-Apr-23
Total		\$ 5,936,984.08	

Funds Received			
Draw Request Number	Period Covered	Amount	Date Received
1	12-Aug through 17-Oct-2022	\$ 1,272,651.90	23-Dec-22
2	09-Dec through 16-Dec-2022	\$ 2,125,033.67	10-Feb-23
3	03-Feb through 10-Feb-2023	\$ 2,539,298.51	4/21/2023
Total		\$ 5,936,984.08	

Finance Committee Bills from June 2023

Vendor	Description	
Cass County Joint Water Resource District	Diversion bills – Request #109 CCJWRD	\$2,579,280.14
Clay County	Diversion bills – Request #30 MCCJPA	\$141,240.07
Ohnstad Twichell, P.C.	Legal services rendered through May 21, 2023	\$105,722.45
City of Fargo	Reimburse complementary in-town flood projects	\$98,626.74
Cass County	Reimburse misc expenses from Diversion Authority office	\$9,023.69
City of Christine	Reimburse legal services related to MOU	\$4,764.00
Rush River Water Resource District	Reimburse engineering services related to MOU	\$1,865.00
		<hr/>
Total Bills Received through June 14, 2023		<hr/> \$ 2,940,522.09 <hr/>



Cass County
Joint Water
Resource
District

SENT VIA EMAIL

June 5, 2023

Rodger Olson
Chairman
Leonard, North Dakota

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

Ken Lougheed
Manager
Gardner, North Dakota

Greetings:

Keith Weston
Manager
Fargo, North Dakota

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

Enclosed please find copies of bills totaling \$2,579,280.14 regarding the above referenced projects. The breakdown is as follows:

Jacob Gust
Manager
Fargo, North Dakota

Metro Flood Diversion	\$2,578,516.14
Oxbow-Hickson-Bakke Ring Levee	764.00

Rick Steen
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
wrđ@casscountynđ.gov
casscountynđ.gov

METRO FLOOD DIVERSION RIGHT OF ENTRY/LAND ACQUISITION COST SHARE INVOICES							6/5/2023
Invoice	Invoice	Invoice	Project	Amount	Vendor	Description	
Paid	Date	No.	No.				
				(686,800.00)	Clerk of District Court	Return on deposit OIN 27/1083 (Richard)	
				10.08	Cass County Joint WRD	Postage on Diversion-related mailings	
				9.96	Cass County Joint WRD	Postage on Flowage Easement letters	
5/17/2023	5/8/2023	188696	130007	26,089.71	Ohnstad Twichell, P.C.	Legal-Diversion Right of Way Acquisition	
5/17/2023	5/8/2023	188698	160007	350.00	Ohnstad Twichell, P.C.	Legal-Channel Phase I	
5/17/2023	5/8/2023	188699	160007	8,603.50	Ohnstad Twichell, P.C.	Legal-Channel Phase III	
5/17/2023	5/8/2023	188700	170007	52,151.49	Ohnstad Twichell, P.C.	Legal-Upstream Mitigation Area	
5/17/2023	5/8/2023	188701	187007	6,085.50	Ohnstad Twichell, P.C.	Legal-Diversion - Southern Embankment	
5/17/2023	5/8/2023	188702	207007	350.00	Ohnstad Twichell, P.C.	Legal-I-29 Grade Raise	
5/17/2023	5/8/2023	188703	207007	7,048.00	Ohnstad Twichell, P.C.	Legal-Wetland Mitigation Drain 27	
5/17/2023	5/8/2023	188704	187007	67.50	Ohnstad Twichell, P.C.	Legal-Bio/Geo Easements	
5/17/2023	5/8/2023	188705	207007	2,047.50	Ohnstad Twichell, P.C.	Legal-Brandt RLT (OIN 9348) QTED	
5/17/2023	5/8/2023	188706	207007	283.50	Ohnstad Twichell, P.C.	Legal-Germanson (OIN 5004/5009-5012/9054-9056) QTED	
5/17/2023	5/8/2023	188707	207007	2,289.00	Ohnstad Twichell, P.C.	Legal-Janet Wanzek Estate (OIN 8672-8675, 9747) QTED	
5/17/2023	5/8/2023	188708	207007	8,876.00	Ohnstad Twichell, P.C.	Legal-Libbrecht, Glen (OIN 698/9756-9759) QTED	
5/17/2023	5/8/2023	188709	207007	94.50	Ohnstad Twichell, P.C.	Legal-Perhus (OIN 747/751/5014-5015/5277) QTED	
5/17/2023	5/8/2023	188710	207007	1,921.50	Ohnstad Twichell, P.C.	Legal-Brodshaug RLT (OIN 5008/1930/1932/1940-1941/8517-8518) QT	
5/17/2023	5/8/2023	188711	207007	7,176.50	Ohnstad Twichell, P.C.	Legal-Samuelson RLT (OIN 1181/1182) QTED	
5/17/2023	5/8/2023	188712	217007	2,614.50	Ohnstad Twichell, P.C.	Legal-Coster RET (OIN 9736-9737) QTED	
5/17/2023	5/8/2023	188713	217007	6,461.00	Ohnstad Twichell, P.C.	Legal-Richard (OIN 27 1083) QTED	
5/17/2023	5/8/2023	188714	217007	2,012.50	Ohnstad Twichell, P.C.	Legal-Richard Farms (OIN 1087/1093/1095/5002) QTED	
5/17/2023	5/8/2023	188715	227007	913.50	Ohnstad Twichell, P.C.	Legal-Varriano (OIN 113) ED	
5/17/2023	5/8/2023	188716	227007	70.00	Ohnstad Twichell, P.C.	Legal-Emden Partners, LLP ED	
5/17/2023	5/8/2023	188717	227007	70.00	Ohnstad Twichell, P.C.	Legal-Storvick (OIN 860/2005) ED	
5/17/2023	5/8/2023	188718	227007	25.00	Ohnstad Twichell, P.C.	Legal-Cossette, Lawrence (OIN 1946) ED	
5/17/2023	5/8/2023	188719	227007	52.50	Ohnstad Twichell, P.C.	Legal-Hertsgaard Family LLLP (OIN 2042) ED	
5/17/2023	5/8/2023	188720	237007	52.50	Ohnstad Twichell, P.C.	Legal-Erickson, Jeff (OIN 2025) ED	
5/17/2023	5/8/2023	188721	237007	164.50	Ohnstad Twichell, P.C.	Legal-K-F Farm Partnership (OIN 1996X/2001) ED	
5/17/2023	5/8/2023	188722	237007	1,176.00	Ohnstad Twichell, P.C.	Legal-Eleanor Brandt Trust (OIN 1922/1927) ED	
5/17/2023	5/8/2023	188723	237007	52.50	Ohnstad Twichell, P.C.	Legal-Trottier (OIN 1958) ED	
5/17/2023	5/8/2023	188724	237007	2,159.50	Ohnstad Twichell, P.C.	Legal-Hanson, Ryan (OIN 1898) ED	
5/17/2023	5/8/2023	188725	237007	2,152.50	Ohnstad Twichell, P.C.	Legal-Evert, Charles (OIN 1895/1991) ED	
5/17/2023	5/8/2023	188726	237007	304.50	Ohnstad Twichell, P.C.	Legal-Loffelmacher (OIN 831) ED	
5/17/2023	5/8/2023	188727	237007	2,625.00	Ohnstad Twichell, P.C.	Legal-KLF LLP (OIN 9347) ED	
5/17/2023	5/8/2023	188728	237007	2,033.45	Ohnstad Twichell, P.C.	Legal-Cossettes (OIN 1075) ED	
5/17/2023	5/8/2023	188729	237007	2,704.50	Ohnstad Twichell, P.C.	Legal-Bellemare (OIN 1080/1081) ED	
5/17/2023	5/8/2023	188730	237007	1,764.30	Ohnstad Twichell, P.C.	Legal-KLC Holdings LLC (OIN 7225) ED	
5/17/2023	5/8/2023	188731	237007	2,811.23	Ohnstad Twichell, P.C.	Legal-Schultz/Southwind Asset Mgmt LLC (OIN 8359) ED	
5/17/2023	5/8/2023	188732	237007	1,730.00	Ohnstad Twichell, P.C.	Legal-Christenson (OIN 7002) ED	
5/17/2023	5/8/2023	188733	237007	1,724.50	Ohnstad Twichell, P.C.	Legal-Ihle, Peter (OIN 1949) ED	
5/17/2023	5/8/2023	188734	237007	2,032.50	Ohnstad Twichell, P.C.	Legal-Richard Trust (OIN 850/1901-1902/1952) ED	
5/17/2023	5/8/2023	188735	237007	2,410.50	Ohnstad Twichell, P.C.	Legal-Johnson, Ted (OIN 9423) ED	
5/12/2023	5/3/2023	820641	38810.00028	158.00	Larkin Hoffman Attorneys	Legal-Alm Flowage Easement	
5/12/2023	5/3/2023	820643	38810.00013	158.00	Larkin Hoffman Attorneys	Legal-Berg Flowage Easement	
5/12/2023	5/3/2023	820642	38810.00014	158.00	Larkin Hoffman Attorneys	Legal-Brungard/Nelson Flowage Easement	
5/12/2023	5/3/2023	820645	38810.00007	4,200.75	Larkin Hoffman Attorneys	Legal-CCJT v Daniel Flaten	
5/12/2023	5/3/2023	820639	38810.00033	237.00	Larkin Hoffman Attorneys	Legal-Corey and Amy Johnson	
5/12/2023	5/3/2023	820638	38810.00036	118.50	Larkin Hoffman Attorneys	Legal-Denise Johnson	
5/12/2023	5/3/2023	820644	38810.00009	79.00	Larkin Hoffman Attorneys	Legal-CCJT v Steve and Lisa Loberg	
5/12/2023	5/3/2023	820640	38810.00031	1,264.00	Larkin Hoffman Attorneys	Legal-CCJT v Larry and Susan Richard	
5/12/2023	5/3/2023	820646	38810.00004	20,283.50	Larkin Hoffman Attorneys	Legal-Richland/Cass Cos/apps for Permit to Enter Land	

Invoice Paid	Invoice Date	Invoice No.		Project No.	Amount	Vendor	Description
5/12/2023	5/3/2023	820647		38810.00001	987.50	Larkin Hoffman Attorneys	Legal-Acquisition of Property from Sauvageaus
5/12/2023	4/25/2023	33224		19706	2,952.50	Moore Engineering, Inc.	Engineering - Task 2-P3 Legal Drain Inlet Tech Reviews
5/17/2023	4/30/2023	13783.00-36			27,498.61	SRF Consulting Group, Inc.	Project mgmt, ROW Services and relocation services
5/12/2023	4/25/2023	ARIV1009747		R12.00049	16,191.25	Ulteig Engineers, Inc.	Task Order 2 - Proj Mgmt, ROW and relocation Services
5/12/2023	5/12/2023				18,585.00	The Title Company	Rogne Flowage Easement
5/12/2023	5/12/2023				25,685.00	The Title Company	Bolton Flowage Easement
5/17/2023	4/24/2023				6,226.00	A-1 Services Goes Anywhere, LLC	OIN 1112/1113 moving (Sauvageau)
5/12/2023	5/12/2023				1,512,465.50	The Title Company	Pronovost Property Purchase
5/26/2023	5/17/2023	1200522808			44,386.03	HDR Engineering Inc	TO 1 Property Acquisition Services
5/26/2023	4/28/2023	4910			1,000.00	Crown Appraisals, Inc.	TO 7 Land Sales List
5/26/2023	5/26/2023				930,185.00	The Title Company	K-F Farm Partnership Flowage Easement
5/26/2023	5/26/2023				151,777.60	The Title Company	Mueller Property Purchase
5/26/2023	5/26/2023				304,720.00	The Title Company	Roise Trust Flowage Easement
5/26/2023					21,797.38	Edward O Samuelson Revocable LT	Additional fees for OIN 1181/1182
5/26/2023					10,809.60	Raymond and Katherin Kvalvog	Temp Construction Easement OIN 1975/8856
5/26/2023	5/12/2023				1,600.00	Michael Tchida	lease deposit oIN 822
5/26/2023	5/12/2023	1132241			79.86	Cass County Electric Cooperative	Service to 5251 174 1/2 AV SE
5/26/2023	5/12/2023	1108711			141.34	Cass County Electric Cooperative	Service to 17505 54 ST SE
				Total	2,578,516.14		
OXBOW-HICKSON-BAKKE RING LEVEE INVOICES							
Invoice Paid	Invoice Date	Invoice No.	Purchase Order No.	Project No.	Amount	Vendor	Description
5/17/2023	5/8/2023	188697		140007	764.00	Ohnstad Twichell, P.C.	legal-OHB Levee project
				Total	764.00		
				Grand Total	2,579,280.14		



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

June 13, 2023
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	\$141,240.07
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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

	Invoice		Invoice		Date			Reimb
Vendor	Date		Amount	Invoice #	Approved	Date Paid	Check #	Request
SRF Consulting Group	4/30/23	prof svc thru 4/30/23	\$20,246.59	13820.00-31	5/12/23	5/17/23	113549	6/13/2023
William Bye	5/15/23	enviro easement & sign incentive	\$1,795.04	19.032.3200	5/15/23	5/24/23	113597	6/13/2023
William Bye	5/15/23	enviro easement & sign incentive	\$816.34	19.031.4700	5/15/23	5/24/23	113597	6/13/2023
William Bye	5/15/23	enviro easement & sign incentive	\$638.62	19.031.1100	5/15/23	5/24/23	113597	6/13/2023
Ohnstad Twichell	4/21/23	Upstream mitigation	\$12,652.55	188777	5/15/23	5/24/23	113641	6/13/2023
Ohnstad Twichell	4/21/23	Southern embankment	\$3,569.20	188778	5/15/23	5/24/23	113641	6/13/2023
Ohnstad Twichell	4/21/23	general 2023	\$12,413.90	188783	5/15/23	5/24/23	113641	6/13/2023
Ohnstad Twichell	4/21/23	relocation appeal kragerud	\$464.40	188779	5/15/23	5/24/23	113641	6/13/2023
Ohnstad Twichell	4/21/23	relocation appeal dubois & both	\$116.10	188780	5/15/23	5/24/23	113641	6/13/2023
Ohnstad Twichell	4/21/23	relocation appeal both	\$1,857.60	188781	5/15/23	5/24/23	113641	6/13/2023
Ohnstad Twichell	4/21/23	relocation appeal leech	\$116.10	188782	5/15/23	5/24/23	113641	6/13/2023
State of Minnesota	4/30/23	relocation assist	\$294.00	521798	5/15/23	5/24/23	113656	6/13/2023
State of Minnesota	4/30/23	relocation assist	\$24.50	521799	5/15/23	5/24/23	113656	6/13/2023
State of Minnesota	4/30/23	relocation assist	\$24.50	521800	5/15/23	5/24/23	113656	6/13/2023
State of Minnesota	4/30/23	relocation assist	\$24.50	521801	5/15/23	5/24/23	113656	6/13/2023
Crown Appraisals, Inc.	4/28/23	cancellations	\$1,500.00	4913	6/5/23	5/24/23	113773	6/13/2023
Crown Appraisals, Inc.	2/28/23	cancellations	\$7,500.00	4885	6/5/23	5/24/23	113773	6/13/2023
Patchin Messner Appraisals Inc.	6/1/23	task 2, amend 1	\$4,500.00	21923-af	6/12/23	5/24/23	113956	6/13/2023
Barnesville Record Review	4/17/23	jpa meeting	\$48.00	4114	5/15/23	5/24/23	530790	6/13/2023
Red River Valley Coop	5/2/23	svc 13689 3rd st s	\$53.94		5/15/23	5/24/23	530823	6/13/2023
ProSource Technologies	5/12/23	prof svcs thru 4/30/23	\$14,315.55	1442	5/25/23	6/7/23	560967	6/13/2023
Ohnstad Twichell	6/6/23	enviro monitoring	\$20.00	189273	6/12/23	6/14/23	561087	6/13/2023
Ohnstad Twichell	6/6/23	Upstream mitigation	\$27,183.55	189274	6/12/23	6/14/23	561087	6/13/2023
Ohnstad Twichell	6/6/23	Southern embankment	\$6,816.10	189275	6/12/23	6/14/23	561087	6/13/2023
Ohnstad Twichell	6/6/23	general 2023	\$13,254.59	189280	6/12/23	6/14/23	561087	6/13/2023
Ohnstad Twichell	6/6/23	relocation appeal kragerud	\$387.00	189276	6/12/23	6/14/23	561087	6/13/2023
Ohnstad Twichell	6/6/23	relocation appeal dubois & both	\$3,213.60	189277	6/12/23	6/14/23	561087	6/13/2023
Ohnstad Twichell	6/6/23	relocation appeal both	\$7,006.80	189278	6/12/23	6/14/23	561087	6/13/2023
Ohnstad Twichell	6/6/23	relocation appeal leech	\$387.00	189279	6/12/23	6/14/23	561087	6/13/2023

\$141,240.07

OHNSTAD TWICHELL, P.C.
Attorneys at Law

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

15-1395

JTS Invoice # 189357

Flood Diversion Board
 Bond Counsel Work - PPP

Date: June 12, 2023

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

PROFESSIONAL SERVICES RENDERED			
	Hours	Rate	Totals
JTS	97.1	\$387.00	\$37,577.70
CMM	38.5	\$387.00	\$14,899.50
LDA	4.5	\$387.00	\$1,741.50
KJS	69.7	\$387.00	\$26,973.90
TJL	0.3	\$387.00	\$116.10
JRS	5.1	\$330.00	\$1,683.00
KJM	37.9	\$320.00	\$12,128.00
DCP	0.7	\$340.00	\$238.00
ZDW	4.3	\$240.00	\$1,032.00
TJF	9.7	\$240.00	\$2,328.00
TJH	15.0	\$240.00	\$3,600.00
AJR	15.5	\$215.00	\$3,332.50
Total Fees:	298.3		\$105,650.20
Westlaw			\$62.25
Recording Fees			\$10.00
Total Expenses:			\$72.25
Grand Total			\$105,722.45

	Rates
JTS John T. Shockley, Partner, Supervising Attorney	\$387.00
CMM Christopher M. McShane, Partner	\$387.00
ADC Andrew D. Cook, Partner	\$387.00
SNW Sarah M. Wear, Partner	\$387.00
LDA Lukas D. Andrud, Partner	\$387.00
RGH Robert G. Hoy, Partner	\$387.00
KJS Katie J. Schmidt, Partner	\$387.00
MWM Marshall W. McCullough, Partner	\$387.00
TJL Tyler J. Leverington, Partner	\$387.00
LWC Lukas W. Croaker, Partner	\$387.00
BTB Brent T. Boeddeker, Partner	\$387.00
JRS J.R. Strom, Associate	\$330.00
KJM Kathryn J. McNamara, Associate	\$320.00
LRC Leah R. Carlson, Associate	\$340.00
DCP David C. Piper, Associate	\$340.00
JAM Jenna A. McPherson, Associate	\$290.00
SJH Stephen J. Hilfer, Associate	\$265.00
ZDW Zachary D. Wall, Associate	\$240.00
TJF Tiffany J. Findlay, Associate	\$240.00
TJH Tatiana J. Hackman, Associate	\$240.00
CAS Carol A. Stillwell, Paralegal	\$215.00
AJR Andrea J. Roman, Paralegal	\$215.00
CRD Christie R. Dettling, Paralegal	\$195.00
KK Kiara J. Klinkhammer, Paralegal	\$195.00
TWS Tim W. Steuber, Paralegal	\$200.00
MRH Meghan R. Hockert, Paralegal	\$195.00
ATW Amy T. White, Paralegal	\$195.00
DLR Dena L. Ranum, Legal Administrative Assistant	\$170.00
KMM Karla M. Maertens, Legal Administrative Assistant	\$100.00

PROFESSIONAL SERVICES RENDERED

15-1395 JTS Invoice # 189357 Flood Diversion Board Bond Counsel Work - PPP		
FILE NUMBER	MATTER DESCRIPTION	INVOICE - TOTAL FEES
151395-1	General Topics (Includes General Governance Questions, Notices, etc.)	\$18,102.80
151395-2	Executive Director	\$838.50
151395-4	Public Finance Issues	\$920.20
151395-5	Consultant Contract Review/Development	\$1,758.70
151395-8	MNDNR Permit Issues	\$86.00
151395-9	Environmental Permitting Issues/NEPA	\$193.50
151395-12	USACE Interface/Questions	\$645.00
151395-13	Third Party Utility MOU's	\$36,318.90
151395-19	USACE WIFIA	\$116.10
151395-23	PRAM	\$2,283.30
151395-24	P3 Implementation	\$23,714.50
151395-26	Appraisal Review	\$16,061.40
151395-27	UMA/Utility Review	\$4,611.30
TOTAL		\$105,650.20



FINANCE OFFICE

PO Box 2083
 225 4th Street North
 Fargo, ND 58102
 Phone: 701.241.1333 | Fax: 701.476.4188
 www.FargoND.gov

June 13, 2023

Metro Flood Diversion Board of Authority
 PO Box 2806
 Fargo, ND 58108-2806

Dear Metro Flood Diversion Board of Authority,

The City of Fargo is submitting for reimbursement invoices paid totaling \$98,626.74. These costs are for work on complementary in-town flood protection projects for costs paid in May 2023.

Project Narrative, this request:

Project Number	Project Description	Amount
FLDSPC	Tax Payments on Flood Buyout Properties	-2,918.63
FM1471	Drain 27 Lift Station #56 Flood Risk Management	40,929.59
FM19A	Riverwood Addition Area - Flood Risk Management	1,085.00
FM19B	Royal Oaks Area - Flood Risk Management	542.50
FM19C	Woodcrest Drive Area - Flood Risk Management	3,927.33
FM19E	Elm Circle Area - Flood Risk Management	542.50
FM19F	Oak Grove Area - Flood Risk Management	928.00
FM19H	University Drive Floodwall - Geotechnical Evaluation	0.00
FM21A	Red River Erosion Protection & Bank Stabilization	10,677.32
FM22B	Geotechnical Design - Flood Mitigation	17.09
FM22C	Lift Station 55 & 56 - Flood Mitigation	13,528.00
NR23A	Storm Lift Rehab - #27 & 38	29,368.04
Total Expense for Period		\$98,626.74

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

Sincerely,

Susan Thompson
 Assistant Director of Finance, City of Fargo

City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
May 1, 2023 - May 31, 2023

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name	Description	Bookmarked Invoice
FLDSPC	FLOOD SPECIALS PAYOFF	46035305208012	PROP TAX DUP PMT	-2,918.63	0009518	0009518	05/01/2023	Cash receipt		1
			460-3530-520.80-12- Total	-2,918.63						
FLDSPC - Total				-2,918.63						
FM1471	FLOOD MIT-Dr 27 42st+29	46035305103305	PROJ6228 DRAIN 27	40,929.59	327492	64946	05/11/2023	HOUSTON ENGINEERING INC	Engineering - Project 6228 - Drain 27	2
			460-3530-510.33-05- Total	40,929.59						
FM1471 - Total				40,929.59						
FM19A0	FLOOD MIT-Riverwood Addn	46035305103305	RIVERWOOD FLOOD MITIGATIO	1,085.00	327813	65101	05/25/2023	HOUSTON ENGINEERING INC	Engineering - Riverwood Flood Mitigation Project	3
			460-3530-510.33-05- Total	1,085.00						
FM19A0 - Total				1,085.00						
FM19B0	FLOOD MIT-Royal Oaks Dr	46035305103305	ROYAL OAKS FLOOD MITIGATI	542.50	327813	65102	05/25/2023	HOUSTON ENGINEERING INC	Engineering - Royal Oaks Flood Mitigation	3
			460-3530-510.33-05- Total	542.50						
FM19B0 - Total				542.50						
FM19C0	FLOOD MIT-Woodcrest	46035305103305	WOODCREST FLOOD MITIGATIO	3,786.00	327813	65103	05/25/2023	HOUSTON ENGINEERING INC	Engineering - Woodcrest Flood Mitigation	3
			460-3530-510.33-05- Total	3,786.00						
FM19C0 - Total				3,786.00						
FM19C1	FLOOD MIT-Woodcrest Dr N	46035305103899	XCEL ENERGY	141.33	327751	827665678	05/18/2023	XCEL ENERGY	Electricity - 173 S Woodcrest Dr N	4
			460-3530-510.38-99- Total	141.33						
FM19C1 - Total				141.33						
FM19E0	FLOOD MIT-Elm Circle	46035305103305	ELM CIRCLE FLOOD MITIGATI	542.50	327813	65104	05/25/2023	HOUSTON ENGINEERING INC	Engineering - Elm Circle Flood Mitigation	3
			460-3530-510.33-05- Total	542.50						
FM19E0 - Total				542.50						
FM19F0	FLOOD MIT-Oak Grove Area	46035305103305	OAK GROVE FLOOD MITIGATIO	928.00	327813	65105	05/25/2023	HOUSTON ENGINEERING INC	Engineering - Oak Grove Flood Mitigation	3
			460-3530-510.33-05- Total	928.00						
FM19F0 - Total				928.00						
FM21A0	FLOOD MIT-RR Erosion SUnv	46035305103305	RED RIVER EROSION PROTECT	10,677.32	327813	65107	05/25/2023	HOUSTON ENGINEERING INC	Engineering - Red River Erosion and Bank Stabi	3
			460-3530-510.33-05- Total	10,677.32						
FM21A0 - Total				10,677.32						
FM22B1	FLOOD MIT-Geo Tech Design	46035305103899	XCEL ENERGY	17.09	327381	826152666	05/04/2023	XCEL ENERGY	Electricity - 520 Southwood Drive S	5
			460-3530-510.38-99- Total	17.09						
FM22B1 - Total				17.09						
FM22C3	FLOOD MIT-Lift Starn55/56	4600002062000	Retainage and Retainage R	-712.00	327553	FM22C3 #5 013	05/11/2023	RICK ELECTRIC INC	Electrical - Lift Station Repah LS #55 & 56	6
			460-0000-206.20-00- Total	-712.00						
FM22C3	FLOOD MIT-Lift Starn55/56	46035305107358	Lift Station #56 Electric	14,240.00	327553	FM22C3 #5 001	05/11/2023	RICK ELECTRIC INC	Electrical - Lift Station Repah LS #55 & 56	6
			460-3530-510.73-58- Total	14,240.00						
FM22C3 - Total				13,528.00						
NR23A0	STRM LFT RHAB DR 27 /38 S	46035305103305	SSLS #47&48	29,025.25	327813	65108	05/25/2023	HOUSTON ENGINEERING INC	Engineering - LS #47 and 48	3
			460-3530-510.33-05- Total	29,025.25						
NR23A0 - Total				29,025.25						
NR23A1	STRM LFT RHAB DR 27 /38 S	46035305103899	RECORDING FEE	23.25	327996	527680506379SFL	06/01/2023	SIMPLIFILE LC	Recording Fee	7
NR23A1	STRM LFT RHAB DR 27 /38 S	46035305103899	ABSTRACT CONTINUATION	230.00	327987	500805	06/01/2023	RED RIVER TITLE SERVICES INC	Abstract Continuation	8
NR23A1	STRM LFT RHAB DR 27 /38 S	46035305103899	FEDEX90043226	89.54	1029	04/28-05/14/23	06/05/2023	P CARD BMO	Postage - Send Plans to NDDEQ	9
			460-3530-510.38-99- Total	342.79						
NR23A1 - Total				342.79						
Overall - Total				98,626.74						

Jun 12, 2023



INVOICE: INV001283

Date 06/13/2023
 Invoice account 198

CITY OF FARGO
 PO BOX 2083
 FARGO, ND 58107-2083

Description	Quantity	Unit price	Amount
FM DIVERSION MISC EXPENSES	1.00	9,023.69	9,023.69
AUDITOR - MISCELLANEOUS	1.00	109,372.93	109,372.93

Sales subtotal amount	Total discount	Total charges	Net amount	Sales tax	Round-off	Currency	Total
118,396.62	0.00	0.00	118,396.62	0.00	0.00	USD	118,396.62

Due date 07/13/2023



Please detach and send this copy with remittance.

MAKE CHECK

PAYABLE TO:

Cass County Government
 211 9th Street South
 P.O Box 2806
 Fargo, ND 58108-2806

Invoice: INV001283

Date: 06/13/2023

Total: 118,396.62

Name: CITY OF FARGO

Account #: 198

Due date 07/13/2023

5/22/2023

City of Christine - SUMMARY OF INVOICING
Reimbursement Request #8
May 22, 2023

<u>Vendor</u>	<u>Invoice Date</u>	<u>Invoice #</u>	<u>Invoice Amount</u>
Swanson & Warcup	4/30/2023	9991	\$4,764.00
Total Swanson & Warcup			\$4,764.00
Lies, Bullis & Hatting			
Total Lies, Bullis & Hatting			\$0.00
Moore Engineering, Inc.	4/24/2023	33209	\$62,225.45
Total Moore Engineering, Inc.			\$62,225.45
 Total Invoiced This Reimbursement Request			 \$66,989.45



Rush River
Water Resource
District

SENT VIA EMAIL

June 5, 2023

William A. Hejl
Chairman
Amenia, North Dakota

Dick Sundberg
Manager
Harwood, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

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

Greetings:

RE: Metro Flood Diversion Project

Enclosed please find a copy of an invoice totaling \$1,865 regarding the Metro Flood Diversion project.

At this time, we respectfully request 100% reimbursement per the Memorandum of Understanding between Metro Flood Diversion Authority and Rush River Water Resource District dated December 21, 2020.

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

Sincerely,

RUSH RIVER WATER RESOURCE DISTRICT

A handwritten signature in blue ink that reads "Carol Harbeke Lewis".

Carol Harbeke Lewis
Secretary-Treasurer

Carol Harbeke Lewis
Secretary-Treasurer

Enclosure

1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrд@casscountynд.gov
www.casscountynд.gov



925 10th Avenue East • West Fargo, ND 58078
 T: 701.282.4692 • F: 701.282.4530
 mooreengineeringinc.com

Cass County - Rush River WRD
 Carol Lewis
 1201 West Main Ave
 West Fargo, ND 58078-1301

Invoice number 33411
 Date 05/04/2023

Project **23216 Cass County Drain 30 FM Div Transition**

Professional Services

Cass County Drain 30 FM Div Transition
 Time Thru 04-30-2023

311 Topographic Survey

Labor

Survey Manager

Hours	Rate	Billed Amount
0.50	150.00	75.00

320 Final Design

Labor

Graduate Engineer
 Senior Professional Engineer
 Professional Engineer I
 Project Manager

Hours	Rate	Billed Amount
7.00	145.00	1,015.00
1.00	200.00	200.00
0.50	175.00	87.50
2.50	195.00	487.50

Phase subtotal 1,790.00

Invoice total **1,865.00**

DUE UPON RECEIPT

PLEASE REMIT PAYMENT - ATTENTION ACCOUNTING



METRO
FLOOD
DIVERSION
AUTHORITY

Diversion Board of Authority Meeting

June 22, 2023

Contracting Actions

Joel Paulsen, Executive Director

DA Board Approval Contract Actions

(ACTION)



Description	Company	Budget/ Estimate (\$)
Task Order 102, Amendment 5 – H & H, Mitigation and Permitting Support - Revise Section 3.3, Upstream Mitigation by removing reference to updating “mitigation concepts” for Christine and Wolverton (future work will be done by others), add language for preliminary engineering for UMA ring levees/site improvements, and add Section 4.3, Wetland and Forest Mitigation Monitoring scope and fee.	HMG	\$360,000.00
Services Agreement 2023, Amendment 0 – Videography Services – Provide videography services for the FM Area Diversion project from July 1, 2023 to June 30, 2024. Includes providing time-lapse cameras for the Maple and/or Sheyenne River Aqueducts.	C Three Media	\$167,000.00

Executive Director Contracting Recommendation

Date: 6/07/2023

RECOMMENDATION FOR ACTION:

The Executive Director have reviewed and recommended approval of the following Contract Action(s).

SUMMARY OF CONTRACTING ACTION:

Per the contract review and approval procedures that were adopted by the Diversion Authority on November 10, 2016 and amended December 16, 2021, the Owner's Program Management Consultant (PMC) or Engineer of Record (EOR) is directed to prepare task orders and task order amendments for existing Master Services Agreements (MSA) and submit them to the Executive Director and the Member Entity Technical Representative (METR) for review. The Member Entity Technical Representatives will provide comments to the PMC who will combine the comments for the Director of Engineering. The Director of Engineering (DOE) shall also review and provide recommendations to the Executive Director for review and action.

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

Houston-Moore Group, LLC*Task Order 102, Amendment 5 –**H&H, Mitigation and Permitting Support***\$360,000.00**

- Remove reference to updating "mitigation concepts" for Christine and Wolverton (from this point forward this will be done by others)
- Preliminary engineering for UMA residential ring levees/site improvements
- Additional Wetland and Forest Mitigation Monitoring

BACKGROUND AND DISCUSSION:

Houston-Moore Group, LLC (HMG) has a MSA with the Diversion Authority to provide Engineering services for the Project.

This task order amendment revises Section 3.3 Upstream Mitigation. The amendment also adds Section 4.3 Wetland and Forest Mitigation and Monitoring. The changes include the following:

- Subtask 3.3 Upstream Property Mitigation
 - i. Remove reference to updating "mitigation concepts" for Christine and Wolverton (from this point forward these will be done by others)
 - ii. Added language for preliminary engineering for UMA residential ring levees/site improvements (Kay-Jay Ag, Blilie etc)
- Subtask 4.3 Wetland and Forest Mitigation Monitoring – scope and fee

See the table below for a summary of this task order's contracting history, including this amendment.

Summary of Contracting History and Current Contract Action:

Original Agreement or Amendment	Budget Change \$	Original or Revised Budget \$	Agreement Execution Date	Project Completion	Comments
TO102-A0	0	610,000.00	09/01/2021	12/31/2021	Original scope and budget.
TO102-A1	10,489,441	11,099,441.00	09/01/2021	12/31/2026	Scope and budget up to Dec 2026.
TO102-A2	(43,287.22)	11,056,153.78	09/01/2021	12/31/2026	Update Budgets to cover actual spend in 2021.
TO102-A3	0.00	11,056,153.78	09/01/2021	12/31/2026	
TO102-A4	(54,048.83)	11,002,104.95	09/01/2021	12/31/2026	Balances 2022 budgets and reallocates budget between subtasks.
TO102-A5	360,000.00	11,362,104.95	09/01/2021	12/31/2026	Revise Section 3.3 and add Section 4.3

FINANCIAL CONSIDERATIONS:

The Budget Cost Proposal is in the Task Order document.

The PMC has reviewed the proposal and found that the labor rates are consistent with the 2021 allowed rates and the level of effort is reasonable for this scope of work.

Budgets by Subtasks:

Subtask	Title	Activity ID	Current Budget (\$)	Change (\$)	Revised Budget (\$)
1	<i>Project Management and Controls</i>	SW-1165	1,904,082.55	0	1,904,082.55
2.1	H&H Support	SW-1165	2,633,094.75	0	2,633,094.75
2.2	Operations Plan and Water Control Manual	SW-1165	771,534.75	0	771,534.75
3.1	Land Surveying	SW-1165	1,426,518.03	0	1,426,518.03
3.2	Cemeteries	SW-1165	854,618.54	0	854,618.54
3.3	Upstream Property Mitigation	SW-1165	816,969.99	0	816,969.99
4.1	Permit Acquisition Support	SW-1165	1,567,055.17	0	1,567,055.17
4.2	Permit Compliance Monitoring	SW-1165	1,028,231.17	0	1,028,231.17

Subtask	Title	Activity ID	Current Budget (\$)	Change (\$)	Revised Budget (\$)
4.3	Wetland and Forest Mitigation Monitoring	SW-1165	0.00	360,000.00	360,000.00
	Task Order 102-A5 - Total Budget Amount		11,002,104.95	360,000.00	11,362,104.95

Summary of Budget Allocation – Per Year 2021 to 2026

Year	Original Agreement or Amendment	Cost account code	Estimated cost (\$)	Budget Allocated (\$)	Actual Paid to date (\$)	Budget Remaining (\$)	Comments
2021	TO101-A0	SW-1165	566,708.78	566,708.78	566,708.78	0.00	Paid 2021.
2022	TO101-A1	SW-1165	1,297,956.17	1,297,956.17	1,297,956.17	0.00	Paid 2022.
2023	TO101-A1	SW-1165	2,240,000.00	2,240,000.00	369,865.00	2,030,135.00	Actual paid through April 2023
2024	TO101-A1	SW-1165	2,274,200.00	2,274,200.00	0.00	2,274,200.00	
2025	TO101-A1	SW-1165	2,406,000.00	2,406,000.00	0.00	2,406,000.00	
2026	TO101-A1	SW-1165	2,577,240.00	2,577,240.00	0.00	2,577,240.00	
	Total	SW-1165	11,362,104.95	11,362,104.95	2,234,529.95	9,287,575.00	

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

ATTACHMENT(S):

- HMG Task Order 102 Amendment 5

Prepared by: Program Management Consultant

Ian Joynes

Dated: 6/07/2023

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

Dated: 6/13/2023



604 PMC SCA - EDCR

Executive Director Contracting Recommendation

1. Recommendation for action:

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

2. Summary of Contracting action:

Per the contract review and approval procedures that were adopted by the Diversion Authority on November 10, 2016 and amended December 16, 2021 the Owner’s Program Management Consultant (PMC) or Engineer of Record (EOR) is directed to prepare Task Orders and Task Order amendments for existing Master Services Agreements (MSA) and submit them to the Deputy Executive Directors and the Executive Director. Deputy Executive Directors will provide comments which will be consolidated in one form by the PMC and provided to the Director of Engineering. The Director of Engineering shall review the comments and provide recommendations to the Executive Director for review and approval.

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

C Three Media Services Agreement 2023 Amendment 0 – Revision 1 Videography Services	\$167,000.00
<ul style="list-style-type: none"> Perform videography services for the FM Area Diversion Project from July 1, 2023 to June 30, 2024 	

3. Reason why it is required

C Three Media will provide the Diversion Authority video updates of the FM Area Diversion project via drone video. These videos will be used to inform board members and the public of construction updates of the various projects. The videos will be used for social media, website, marketing purposes to name a few. C Three media will also video special events that are either hosted or attended by the Diversion Authority. C Three Media will conduct other videography services that are further outlined in the attachment of the Services Agreement. Aside from the monthly drone flights, this is an “on call” type of contract where C Three will be directed by the Authority to do the video work.

4. Background and discussion:

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

In accordance with Section 5 of the Master Professional Services Agreement by and between the Metro Flood Diversion Authority (the “Authority”) and C Three Media (the “Consultant”) dated July 1, 2023 (the “Agreement”), the Authority and the Consultant agreed to the above services.

Governance Doc Ref:	Form Ref:	Aconex Reference:	Date:	Revision:
	604 PMC SCA - EDCR		06/17/2022	00



604 PMC SCA - EDCR

See the table below for a summary of this task order’s contracting history, including this amendment.

Table 1 - Summary of Contracting History and Current Contract Action

Original Agreement or Amendment	Budget Change \$	Original or Revised Budget \$	Agreement Execution Date	Project Completion	Comments
SA2023-A0	0.00	167,000.00	7/01/2023	6/30/2024	Initial work authorization
Total		167,000.00			

Table 2 - Summary of Subtask Budgets

Subtask	Item	Current Budget (\$)	Change (\$)	Revised Budget (\$)
1	Photo Sentinel Timelapse Camera	15,000.00		15,000.00
2	Brinno BCC2000 Plus Construction Camera Bundle	2,000.00		2,000.00
3	Planning and Pre-Production	30,000.00		30,000.00
4	Production / Filming	60,000.00		60,000.00
5	Post-Production and Distribution	60,000.00		60,000.00
	Total	167,000.00		167,000.00

5. Financial considerations:

The Budget Cost Proposal is attached or in the Task Order document.

Cost account code is required for accounting purposes to match the invoicing in Source for the Diversion Authority to reconcile.

Table 3 - Summary of Annual Budget Allocation – Per Year

Original Agreement or Amendment	Cost account code	Estimated Cost (\$)	Budget Allocated (\$)	Actual Paid to date (\$)	Budget Remaining (\$)	Comments
2023	SW-1180	83,500.00	83,500.00	0.00	83,500.00	Within budget
2024	SW-1180	83,500.00	83,500.00	0.00	83,500.00	Within budget
Totals		167,000.00	167,000.00		167,000.00	

Governance Doc Ref:	Form Ref:	Aconex Reference:	Date:	Revision:
	604 PMC SCA - EDCR		06/17/2022	00

604 PMC SCA - EDCR



6. Attachments:

- Services Agreement 2023

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

Recommendation: Kris Bakkegard, Director of Engineering recommends approval of this contract.

The Executive Director has approved in Workflow and granted permission to add his name to the document.

Approved by: Joel Paulsen, Executive Director

Date: 6/13/2023

Governance Doc Ref:	Form Ref:	Aconex Reference:	Date:	Revision:
	604 PMC SCA - EDCR		06/17/2022	00



Diversion Board of Authority Meeting

June 22, 2023

MOU and Agreement Actions for Consideration
John Shockley

MFDA MOUs & Agreements (Action)

MOU Parties	Project	MOU or Agreement Cost and Summary
Salem Cemetery (Wolverton) & MFDA Agreement	Cemetery Mitigation	In accordance with the Settlement Agreement and the PRAM, the Authority adopted a Cemetery Protection Plan to identify potential impacts and mitigation measures for cemeteries within the staging area. The Authority and Salem Cemetery Board have determined that the Wolverton Project mitigates potential impacts from the Comprehensive Project operations. The Funds for the Wolverton Project have been previously approved as part of the BRRWD District MOU for the Wolverton Project.
BNSF Construction & Maintenance Agreement	SWDCAI	The BNSF Construction and Maintenance Agreement outlines roles and responsibilities of BNSF and the MFDA during the design and construction of the BNSF infrastructure at all three crossings over the SWDCAI. This agreement also provides the MFDA with a permanent easement across BNSF land for the SWDCAI and Temporary Easements to construct the infrastructure. Finally, this agreement outlines the roles and maintenance responsibilities of BNSF and the MFDA for all future maintenance on all three crossings over the SWDCAI. The fee for this agreement includes Administrative fees, Temporary Construction License fees, Permanent Easement fees, site personnel fees and Lifespan Maintenance fees.

**AGREEMENT RELATED TO IMPACTS, MITIGATION REQUIREMENTS, AND PROPOSED
MITIGATION MEASURES FOR SALEM CEMETERY**

THIS AGREEMENT (the “Agreement”) is made and entered into this ___ day of June, 2023 (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 the Salem Cemetery Association, whose post office address is 302 1st Street, Wolverton, MN 56594.

RECITALS

WHEREAS, the Authority is a joint powers entity consisting of Clay County, Minnesota; the City of Moorhead, Minnesota; Cass County, North Dakota; the City of Fargo, North Dakota; and the Cass County Joint Water Resource District, North Dakota (the “Member Entities”); and

WHEREAS, the United States Army Corps of Engineers (“USACE”), the City of Fargo, North Dakota, and the City of Moorhead, Minnesota, conducted studies to determine what flood protection could be developed to protect the Fargo-Moorhead metropolitan area; and

WHEREAS, on July 11, 2016, the City of Fargo, North Dakota, the City of Moorhead, Minnesota, and the Authority (the “Non-Federal Sponsors”) and the USACE entered into the Project Partnership Agreement (“PPA”) which sets forth the responsibilities of the Non-Federal Sponsors and the USACE for the implementation of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Comprehensive Project”); and

WHEREAS, the leaders and representatives of the Authority entered into a Joint Powers Agreement, dated June 1, 2016 (“JPA”) that established procedures and a governing structure to secure flood risk reduction for the Fargo-Moorhead metropolitan area; and

WHEREAS, Section 7.01(z) of the JPA allows the Authority to enter into contracts or other arrangements with cemetery associations or non-profit entities operating cemeteries for operation or assistance in the design and construction of the Comprehensive Project; and

WHEREAS, in 2014, USACE conducted a federal cemetery mitigation study that identified mitigation options for cemeteries impacted by the Comprehensive Project; and

WHEREAS, federal project operation requirements dictate that the Authority obtain flowage easements on land within USACE federal mitigation zones 1 and 2 for the Comprehensive Project, including cemeteries; and

WHEREAS, in addition, the Authority, Richland-Wilkin Joint Powers Authority, Buffalo-Red River Watershed District, and the Cities of Wolverton and Comstock, Minnesota entered into a settlement agreement for resolution of all claims, actions, disputes, and litigation pertaining to Plan B, the proposed flood protection project (the “Settlement Agreement”); and

WHEREAS, the Settlement Agreement requires the Authority to provide reasonably sufficient and annual funds to affected cemeteries located within the Staging Area to develop and construct reasonable cemetery protection plans, which may include ring dikes/levees, fencing, maintenance requirements, and/or internal water management and discharge system inside the ring dikes/levees surround the cemetery to eliminate and prevent any impact of the Comprehensive Project; and

WHEREAS, in addition, the Authority developed the Property Rights Acquisition and Mitigation Plan to document the property rights acquisition and mitigation policies to be followed for the Comprehensive Project (the “PRAM”); and

WHEREAS, the PRAM requires the Authority to develop a cemetery protection plan to identify impacts, mitigation requirements, and proposed mitigation for individual cemeteries affected by the Comprehensive Project; and

WHEREAS, in accordance with the Settlement Agreement and PRAM, the Authority adopted the Cemetery Protection Plan to identify potential impacts and mitigation measures for cemeteries within the Staging Area and with viewshed impacts as a result of the Comprehensive Project; and

WHEREAS, in accordance with Article 5, Section 1 of the Salem Cemetery Bylaws, the Salem Cemetery Association is operated by the Salem Cemetery Board of Trustees; and

WHEREAS, the Authority and the Salem Cemetery Board of Trustees desire to set forth in writing their mutual understandings and to define the terms and conditions of each party’s rights and obligations in connection with impacts and mitigation measures as a result of the Comprehensive Project.

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

AGREEMENT

1. **DEFINITIONS.** All capitalized and bolded terms used and not otherwise defined herein shall have the meanings given to them in the Cemetery Protection Plan unless a different meaning clearly applies from the context.

“Agreement” means this Agreement by and between the Authority and the Cemetery Association.

“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 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” means any day that is not a Saturday, a Sunday, or a public holiday under the laws of North Dakota.

“Buffalo-Red River Watershed District” or “BRRWD” means the Buffalo-Red River Watershed District, a Minnesota political subdivision, and watershed district in the Red River Basin.

“Buffalo-Red River Watershed District MOU” means the Memorandum of Understanding by and between the Authority and Buffalo-Red River Watershed District, dated May 26, 2022, as amended from time to time, and attached hereto as **Exhibit A**.

“Cemetery Protection Plan” means the cemetery mitigation plan of the Authority, approved February 11, 2022.

“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 with Finding of No Significant Impact (FONSI) signed September 19, 2013, and as amended by the Second Supplemental Environmental Assessment dated February 2019 with FONSI signed February 28, 2019, 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.

“Construction Work” means all work for the Project related to construction.

“Effective Date” means the date provided in the initial paragraph.

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

“Joint Powers Agreement” means the agreement entered 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.

“MDNR Permit” means the MDNR Dam Safety and Public Works Water Permit No. 2018-0819, and any amendments thereto.

“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.

“Mitigation Zone 1” means areas with a depth difference of one (1) foot or greater for the 100-Year or 500-Year Flood Events (whichever is greater) within Cass and Clay Counties and along the Red River corridor within Richland and Wilkin Counties.

“Mitigation Zone 2” means areas outside of Mitigation Zone 1 with a depth difference of one (1) foot or greater for the 100-Year or 500-year Flood Event (whichever is greater).

“Mitigation Zone 3” means the area in North Dakota beyond Mitigation Zone 1 and Mitigation Zone 2, where the Comprehensive Project causes a hydraulic effect of 0.5 feet or more at the 100-Year Flood Event.

“Mitigation Zone 4A” means the area in Minnesota beyond Mitigation Zone 1 and Mitigation Zone 2 where the Comprehensive Project causes a hydraulic effect of 0.1 feet or more at the PMF flood event.

“Mitigation Zone 4B” means the area in Minnesota beyond Mitigation Zone 1 and Mitigation Zone 2 where the Comprehensive Project causes a hydraulic effect of 0.1 feet or more at the 500-Year Flood Event.

“Mitigation Zone 4C” means the area in Minnesota beyond Mitigation Zone 1 and Mitigation Zone 2 where the Comprehensive Project causes a hydraulic effect of 0.1 feet or more at the 100-Year Flood Event.

“Party” means the Authority or Salem Cemetery Association, as the context requires, and its representatives, successors, and assigns.

“Project” means work to be completed to mitigate the effects of the Comprehensive Project on Salem Cemetery.

“Project Work” means all efforts necessary to accomplish the Project, including all coordination, design work, design review, permitting, construction work, inspection, and maintenance of records, whether provided by the Authority or the Cemetery Association.

“Salem Cemetery” or “Cemetery” means Salem Cemetery, located in Section 28, Township 136 N, Range 48 West, Wilkin County, Minnesota. Wilkin County PIN Nos. are 31-028-0050 and 31-28-0040.

“Salem Cemetery Association” means the cemetery association that operates Salem Cemetery.

“Salem Cemetery Board of Trustees” means the board of trustees that operates Salem Cemetery and the Salem Cemetery Association.

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

“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.

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

“Staging Area” means the area upstream of the Southern Embankment, Diversion Inlet Structure, Red river Structure, and the Wild Rice River Structure (both of which are being built as part of Plan B) that will be used to store floodwater when the Comprehensive Project is fully operational. The Staging Area includes Mitigation Zones 1 and 2.

“Upstream Mitigation Area” or “UMA” means the area where the Authority is required to obtain property rights for the temporary storage of floodwaters during Comprehensive Project operations. The UMA includes Mitigation Zone 1, Mitigation Zone 2, Mitigation Zone 3, and Mitigation Zone 4.

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

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

“Wolverton Project” means a project administered by Buffalo-Red River Watershed District for permanent 100-year FEMA Accredited Flood Protection (applying Period of Record Hydrology) for the City of Wolverton as more fully described in the Settlement Agreement by and between the Authority, Richland-Wilkin Joint Powers Authority, Buffalo-Red River Watershed District, City of Wolverton, and City of Comstock, dated February 1, 2021, and the Buffalo-Red River Watershed District MOU.

2. **PURPOSE.** The federal cemetery mitigation study conducted by USACE identified eleven (11) cemeteries in the Staging Area that would experience impacts from the Comprehensive Project. An illustration of the Staging Area is attached as **Exhibit B**. As a result of the approval of Plan B and changes to the Comprehensive Project, the Authority has determined that eight (8) of the eleven (11) cemeteries originally identified will potentially experience impacts as a result of the Comprehensive Project, including Salem Cemetery. The purpose of this Agreement is to identify potential impacts, to describe mitigation measures, and to ensure a coordinated, timely, and cost-effective process for completing the Project, which is defined further in Section 3.
3. **DESCRIPTION OF PROJECT.** The Cemetery is in Mitigation Zone 4C of the Comprehensive Project. Potential impacts to the Cemetery include increased flood water, with potential damage to grass if flooding occurs during growing season in the low southwest corner of the Cemetery. The Authority and Salem Cemetery Board of Trustees have determined that mitigation options to remedy or prevent potential impacts from the Comprehensive Project to the Cemetery will be addressed by the Wolverton Project.
4. **FUNDS PROVIDED BY THE AUTHORITY.** Funds provided for the Wolverton Project are set forth in the Buffalo-Red River Watershed District MOU. The Authority agrees to pay the costs of reasonable professional fees for the Project (e.g. legal fees) to the Salem Cemetery Board of Trustees.
5. **PERFORMANCE OF PROJECT WORK.** The performance of work for the Wolverton Project is set forth in the Buffalo-Red River Watershed District MOU. The Authority will not be responsible for burial or other activities on the Site.
6. **MAINTENANCE.** Maintenance for the Wolverton Project will be completed in accordance with the Buffalo-Red River Watershed District MOU.
7. **POST OPERATION REPAIR AND CLEAN-UP.** Post operation and maintenance for the Wolverton Project are set forth in the Buffalo-Red River Watershed District MOU.
8. **INVOICES.**
 - (a) The Salem Cemetery Board of Trustees 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 Salem Cemetery Board of Trustees will also submit copies of the invoices to the Authority electronically at APIInvoicesFMDiv@jacobs.com, copied to kbakkegard@fmdiversion.gov.
 - (b) The Salem Cemetery Board of Trustees'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 Salem Cemetery Board of Trustee's name and address;
 - (2) The Salem Cemetery Board of Trustee'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 Salem Cemetery Board of Trustees discovers an error in the amount of payment following the receipt of payment, the Salem Cemetery Board of Trustees 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 Salem Cemetery Board of Trustees under this Agreement or return the overpayment to the Authority within thirty (30) calendar days of the identification of the error.
9. **AUDIT.** All original timecards, payrolls, material records, and other accounts for all charges and expenditures for which reimbursement will be claimed by the Salem Cemetery Board of Trustees from the Authority will be available at all reasonable times to allow the Authority to check and audit the invoices submitted by the Salem Cemetery Board of Trustees. The ability of the Authority to audit the Salem Cemetery Board of Trustees' invoices will extend for a period of three (3) years from the date final payment has been received by the Salem Cemetery Board of Trustees.
10. **FLOWAGE EASEMENTS.** The Authority is required to obtain flowage easements for cemeteries in the Staging Area that have area within Mitigation Zone 1, Mitigation Zone 2, Mitigation Zone 3, or Mitigation Zone 4. Normal cemetery operations including burials, operation, and maintenance activities will not be restricted by the flowage easement. A flowage easement will not be required for Salem Cemetery because the impacts will be mitigated by the Wolverton Project in accordance with the Buffalo-Red River Watershed District MOU.
11. **MN DNR PERMIT CONDITIONS.** The Authority will abide by MN DNR permit conditions with respect to mutually agreed mitigation for Salem Cemetery. Pursuant to Permit Condition 25 of the MN DNR permit, prior to dam operation, the Authority shall provide to the MN DNR written, mutually agreed upon mitigation for impacts to Salem Cemetery. No impoundment of water is allowed by the MN DNR permit until all property rights are acquired and the MN DNR receives and approves signed agreements executed by the owners of Salem Cemetery and the Authority.
12. **RIGHT OF SITE ACCESS.**
- a. To ensure the Authority can monitor and ensure completion of the Project in a timely and efficient manner, the Cemetery shall, to the extent the Authority requests a grant of access, grant the Authority or its representatives the right to access, enter, and inspect any Site.
 - b. Nothing herein shall be construed as limiting or providing for the termination of the rights described herein as it pertains to the Authority.
 - c. Prior to exercising rights of Site access, the Authority shall provide the Cemetery 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 or its representatives must comply with any safety requirements of the Cemetery while on a Site.
 - d. If the Authority or its representatives attempts to exercise the rights described in this Section, but doing so would pose a safety hazard, the Authority or representatives 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.
13. **TERM.** This Agreement 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.
14. **TERMINATION.** This Agreement will terminate upon termination of the Settlement Agreement. The Authority's obligations under this Agreement to pay for the Cemetery'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.

15. **DISPUTES WITH 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.
16. **DISPUTE RESOLUTION PROCESS.** The Parties shall cooperate and 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.
 - 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 Cemetery, 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 Agreement.
 - 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 AGREEMENT, OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS
17. **AUTHORIZED REPRESENTATIVES.** Each of the Authority and the Cemetery hereby designates the following individual as its initial authorized representative, respectively, to administer this Agreement on its respective behalf:
 - (a) Authority Representative: Kris Bakkegard, Director of Engineering
 - (b) Cemetery Representative: Paul Israelson, President
18. **NOTICE.** All notices under the Agreement will be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) 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: Executive Director
4784 Amber Valley Pkwy S, Suite 100
Fargo, ND 58104

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

Salem Cemetery
Attention: Paul Israelson, President
302 1st Street
Wolverton, MN 56594

(c) 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.

19. **INDEMNIFICATION.** The Cemetery shall 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 their respective obligations under this Agreement or by anyone for whom they are in law responsible. The Parties agree that they shall cooperate with each other in the defense of any such action, including providing each other with prompt notice of any such action and the provision of all material documentation. The Parties further agree that they have a right to retain their own counsel to conduct a full defense of any such action. This indemnity and hold harmless provision shall not be deemed as a waiver by the Cemetery of the limits of liability set forth in Minnesota Statute § 466.04, as amended from time to time, or a waiver of any available immunities or defenses.
20. **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 Cemetery is solely responsible for its own actions or omissions.
21. **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.
22. **CONFLICT.** In the event of conflict between this Agreement and any other agreement, this Agreement shall control and govern the Projects.
23. **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.
24. **COMPLETE AGREEMENT.** This Agreement contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings,

statements, representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter.

25. **SEVERABILITY.** Each provision, section, sentence, clause, phrase, and word of this Agreement 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 Agreement.
26. **MODIFICATIONS.** Any modifications or amendments to this Agreement must be in writing and signed by both Parties to this Agreement.
27. **BINDING EFFECT.** This Agreement 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.
28. **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.
29. **HEADINGS.** HEADINGS in this Agreement are for convenience only and will not be used to interpret or construe its provisions.
30. **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.
31. **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.
32. **FORCE MAJEURE.** Neither the Cemetery nor the Authority shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control, and without the fault or negligence of the delayed or non-performing party. The affected party will notify the other party in writing within ten (10) calendar days after the beginning of any such cause that would affect its performance. Notwithstanding, if a party's performance is delayed for a period exceeding thirty (30) calendar days from the date the other Party receives notice under this Section, the non-affected Party will have the right, without any liability to the other Party, to terminate this Agreement.

IN WITNESS WHEREOF, the Authority and the Cemetery caused this Agreement to be executed.

(Signatures appear on the following pages.)

SALEM CEMETERY

Paul Israelson, President

METRO FLOOD DIVERSION AUTHORITY

By: _____
Dr. Tim Mahoney, Chair

By: _____
Joel Paulsen, Executive Director

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

METRO FLOOD DIVERSION AUTHORITY

AND

BUFFALO-RED RIVER WATERSHED DISTRICT

Dated as of May 26, 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

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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is made and entered into this 26th day of May, 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 26th day of May, 2022.

**METRO FLOOD DIVERSION
AUTHORITY**

By: *Chad Peterson*
Chad Peterson, Chair

By: *Joel Paulsen*
Joel Paulsen, Executive Director

ATTEST:

Dawn Lindblom
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 13th day of June, 2022.

**BUFFALO-RED RIVER WATERSHED
DISTRICT**

By: *Peter Fjestad*
Peter Fjestad, President

ATTEST:

Catherine Affield
Catherine Affield, Vice President

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: Buffalo-Red River Watershed District

Signed: Peter V. Fjestaad

Its: President

Date: June 21, 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)

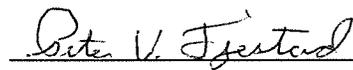
- (1) The official representative of the party contracting with the Metro Flood Diversion Authority certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered 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 Buffalo-Red River Watershed District

Date: June 21, 2022

By: Peter Fjestad, President

Name and Title of Authorized Representative



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.

Peter V. Fjestaad
Signature of Authorized Official

President
Title

Peter Fjestaad
Print Name

Buffalo-Red River Watershed District
Name of Institution or Agency

June 21, 2022
Date

1303 4th Ave. NE
Street

Barnesville, MN 56514
City, State, Zip Code

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

KAltrichter@brrwd.org
Office Email Address

**EXHIBIT B
WOLVERTON PROJECT MAP**



HORIZONTAL DATUM: WILKIN COUNTY
 VERTICAL DATUM: NAVD 88
 LIDAR YEAR 2020
 IMAGE YEAR 2020



Drawn by TMB	Date 2/10/2021
Checked by RGE	Scale AS SHOWN

WOLVERTON FLOOD MITIGATION
 BUFFALO RED-RIVER WATERSHED DISTRICT
 WOLVERTON, MN

OVERALL
 PROJECT NO. 1915-217

SHEET
 1 of 1

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 H:\1915\1915-217\2021\CAD\Eng\Wolverton Flood Mitigation - Option 2.dwg-Portrait (3)-2/10/2021 12:05 PM-(tkornkven)

EXHIBIT C
SIGN TEMPLATE

18.1in



METRO
FLOOD
DIVERSION
AUTHORITY

5.0in

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This project is funded by the

3.0in

Metro Flood Diversion Authority

9.1in

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Visit www.fmdiversion.gov for more information

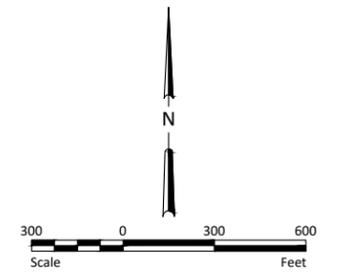
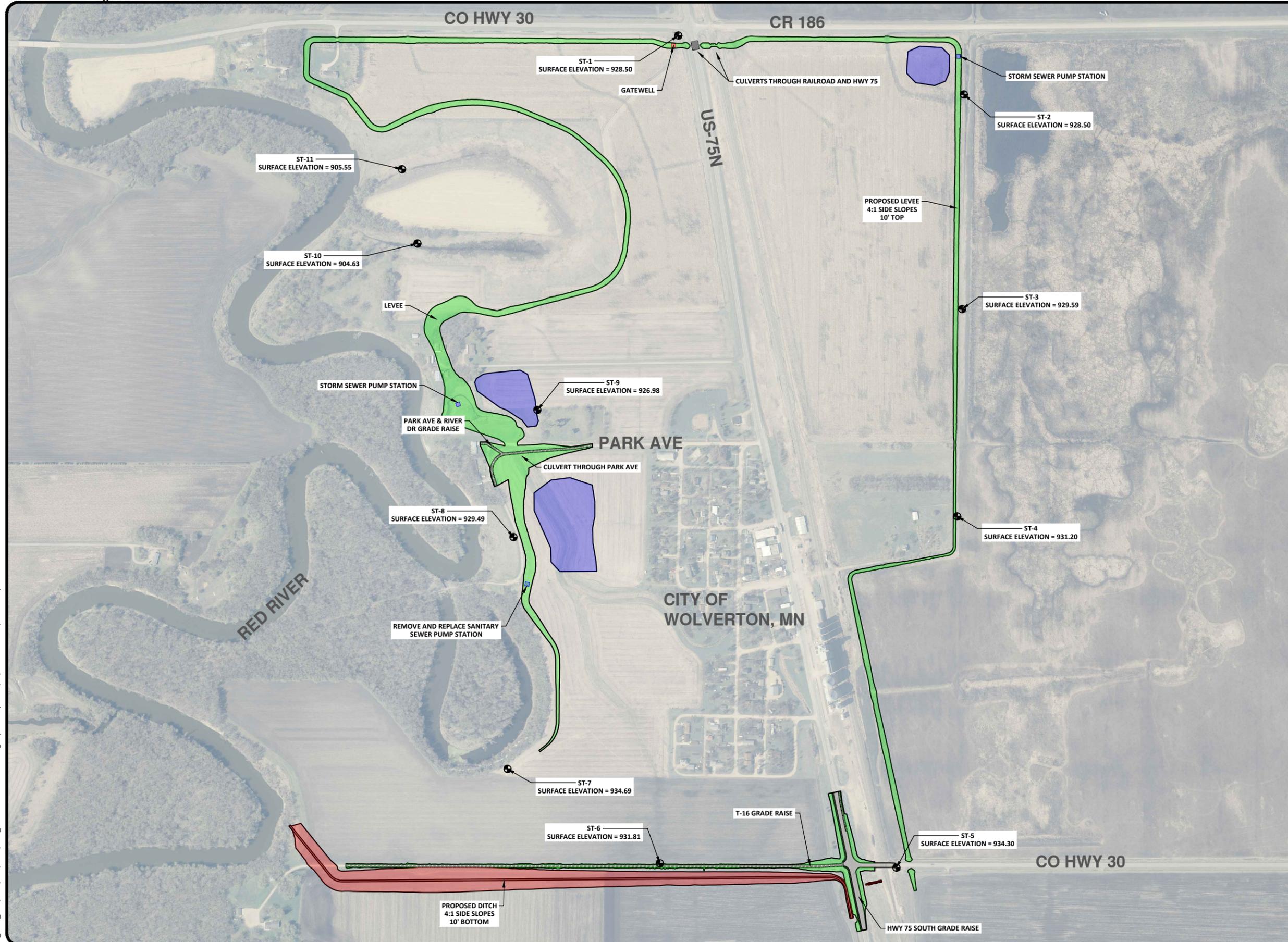
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This project is funded by the
Metro Flood Diversion Authority

Visit www.fmdiversion.gov for more information



LEGEND

PROPOSED LEVEE	
PROPOSED DITCH	

PRELIMINARY
NOT FOR CONSTRUCTION

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No.	Revision	Date	By

Exhibit B



Drawn by	Date
DDH	3-08-23
Checked by	Scale
RGE	AS SHOWN

CITY OF WOLVERTON FLOOD CONTROL
FLOOD MITIGATION PROJECT
WOLVERTON, MN

GENERAL SITE PLAN
PROJECT NO. 1915-0217

SHEET
2



CONSTRUCTION AND MAINTENANCE AGREEMENT

BNSF File No. BF-20256395

Fargo-Moorhead Flood Diversion Channel and Associated Infrastructure;
KO Sub (LS 26); Prosper Sub (LS 34); Hillsboro Sub (LS 220)
BNSF Bridges 0026-0015.900; 0034-0009.100; 0220-0034.870

This Agreement ("**Agreement**"), is executed to be effective as of _____ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**") and METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota ("**Authority**").

RECITALS:

WHEREAS, BNSF owns and operates a railroad in and through Cass County, City of Fargo, State of North Dakota; and

WHEREAS, BNSF owns and controls certain real property situated at or near the vicinity of Fargo, County of Cass, State of North Dakota, at Line Segment 26, Mile Post 15.9, and at Line Segment 34, Mile Post 9.1, and at Line Segment 220, Mile Post 34.87, as described or depicted on Exhibit A-1, attached hereto and made a part here (**the "Premises"**); and

WHEREAS, Authority desires to make improvements for flood mitigation by designing and constructing a flood Diversion Channel and Associated Infrastructure which includes new railroad bridges on BNSF owned and operated KO, Prosper, and Hillsboro Subdivisions, to be designated as BNSF Bridge numbers 0026-0015.900; and 0034-0009.100; and 0220-0034.870, respectively (**"Structures"**); and

WHEREAS, Authority will be responsible for designing and constructing the Structures; and

WHEREAS, Authority will further be responsible for designing, constructing, managing, operating, and maintaining approximately thirty (30) miles of channel and associated features; the channel outlet, two (2) aqueducts, two (2) hydraulic structures, various local drainage inlets, various levees, four (4) interstate bridges, twelve (12) county road bridges, as well as associated environmental mitigation and recreational features both upstream and downstream as they may affect the Structures (**the "Diversion Channel and Associated Infrastructure" or "DCAI"**); and



WHEREAS, Authority is responsible for acquisition of real estate interests and the temporary easements necessary for the Project; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein (**"Parties"**), the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I) SCOPE OF WORK

1. The term **"Project"** as used herein includes any and all work related to the construction of the proposed DCAI and Structures on BNSF lines. Project elements are to include levee construction, track relocation, shoofly construction, access roads and track raises, more particularly described on the Exhibit A, attached hereto and incorporated herein. Additionally, but not limited to, the Project shall include all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation, as made necessary by the Project. All rail traffic will be temporarily relocated to a shoofly in the existing Premises and/or acquired rights-of-way for consistent and unfettered operation of rail traffic during construction of the Project.

Temporary controls during construction must comply with Section 8A-08, "Temporary Traffic Control Zones" of the Manual of Uniform Traffic Control Devices ("MUTCD"), U.S. Department of Transportation.

Authority must also install and maintain fencing as determined necessary and agreed upon in a mutually signed writing by the Authority and BNSF for routing vehicles and pedestrians around the construction site.

ARTICLE II) BNSF OBLIGATIONS

In consideration of the covenants of Authority set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. Upon Authority's payment to BNSF of an administrative fee in the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500), together with the Temporary Construction License Fee in the sum of _____ and No/100 Dollars (\$ _____), BNSF hereby grants to Authority, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Structures across or upon the portion of BNSF's Premises described further on Exhibit A-1, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:



- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said Premises; and
- (b) Construct, operate, maintain, renew and/or relocate upon said Premises, without limitation, such facilities as BNSF may from time to time deem appropriate, provided such facilities do not materially interfere with the DCAI; and
- (c) Otherwise use or operate the Premises as BNSF may from time to time deem appropriate, provided such use or operations does not materially interfere with Authority's use of the DCAI; and
- (d) Require the Authority or its contractor to execute a Temporary Construction Crossing Agreement for any temporary crossing requested to aid in the construction of the Project.

The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Structures, or (ii) 60 months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Authority in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Project only and shall not be used by Authority for any other purpose. Authority acknowledges and agrees that Authority shall not have the right, under the Temporary Construction License, to use the Premises for any purpose other than construction. In the event Authority is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Authority for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Authority herein.

Upon Authority's payment to BNSF of the additional **sum of _____ and No/100 Dollars (\$ _____)**, such payment to be made within thirty (30) calendar days of issuing the Notice to Proceed pursuant to Article III, Section 17 of this Agreement, and provided further that Authority is in compliance with the term and conditions of this Agreement, BNSF will grant to Authority, its successors and assigns, an easement (hereinafter called the "Easement") to enter upon and use that portion of BNSF's Premises as is necessary to construct, use, and maintain the DCAI, substantially in the form of Exhibit B attached to this Agreement. If Authority fails to pay BNSF within the thirty (30) calendar day time period set forth in the preceding sentence, BNSF may stop construction of the Project within or adjacent to BNSF Premises until full payment is received by BNSF.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required on the BNSF KO, Prosper, and Hillsboro Subdivisions. For the construction of the Project, such work by BNSF and the **ESTIMATED** cost thereof is shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project within



BNSF Premises has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Authority, which approval will not be unreasonably withheld. Construction of the Project must include the following work by BNSF ("**BNSF Work**"):

- (a) Procurement of materials, equipment and supplies necessary for the BNSF Work; and
- (b) Preliminary engineering, design review, and contract preparation; and
- (c) BNSF furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C for that work required within or adjacent to the BNSF KO, Prosper, and Hillsboro Subdivisions; and
- (d) Furnishing engineering and inspection services as required in connection with the construction of the Project, including for the advanced construction of the shoofly embankments; and
- (e) Construction and removal of a temporary shoofly track, including the tie-in to the existing track, on the BNSF KO, Prosper, and Hillsboro Subdivisions; and
- (f) If requested, construction of a temporary contractor at-grade construction crossing and appropriate warning devices, at Authority's expense, provided the contractor obtains the proper permit for the temporary construction crossing, to be removed with track restored at Authority's expense upon completion of the Structures; and
- (g) If required, removal, modification, and/or replacement of track and crossing surfaces through each existing road crossing, as needed to accommodate the Structures, track raise, and construction; and
- (h) If required, removal, modification, and/or replacement of temporary wayside signals or at-grade active warning signal systems, as needed to accommodate the structures, track raise, and construction of the Project; and
- (i) If required, reconstruction of BNSF maintenance facilities or staging areas as made necessary to accommodate the Project; and
- (j) If required, relocation and construction of railroad utilities for operation of the track on the Structures.



3. BNSF will do all BNSF Work set forth in Article II, Section 2 above on an actual cost basis, reimbursed by the Authority, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

4. In order to facilitate the construction of the Project, and where BNSF is not otherwise adequately staffed, Authority authorizes and BNSF shall hereby provide for a BNSF employed Project Engineer to coordinate the Work set forth in Article II, Section 2, including project schedule, design review, submittal approvals, right-of-way coordination, and contract preparation, to be paid for by the Authority in a lump sum of three hundred thousand dollars and 00/100 (\$300,000.00) upon execution of this Agreement, which shall cover the full duration of Project development, facilitation, construction coordination, phasing, Project closeout, and documentation.

5. Authority agrees to reimburse BNSF for work of an emergency nature caused by Authority or Authority's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Authority and Authority agrees to fully reimburse BNSF for all such emergency work.

6. BNSF may charge Authority for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

7. BNSF will send Authority an itemized lump sum invoice as set forth in Article II, Section 4, upon execution of this Agreement. Thereafter, during its performance of the BNSF Work pursuant to this Agreement, BNSF will send Authority progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Authority must reimburse BNSF for completed force-account work within sixty (60) calendar days of the date of the invoice for such work.

Upon completion of the Project, BNSF will send Authority a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Further, upon substantial completion and acceptance of the Structures, BNSF shall send Authority an invoice for Authority's Share pursuant to Article IV, Section 6. Pursuant to this section and Article IV, Section 7 herein, Authority must pay the final invoices within ninety (90) calendar days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made, or the date postmarked on the payment. Finance charges will be assessed on delinquent



sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Authority under this section.

BNSF will submit copies of the invoice to:

PaulsenJ@FMDiversion.gov
with copy to:
APInvoicesFMDiv@jacobs.com
P3-DocControl@jacobs.com

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

- i. BNSF's name and address;
- ii. BNSF's federal employer identification number;
- iii. Unique invoice number;
- iv. Billing period;
- v. Work order number; and
- vi. Preferred remittance address, if different from the address on the invoice coversheet.

After Authority receives BNSF's invoice, Authority will either process the invoice for payment or give BNSF specific reasons, in writing within thirty (30) business days, why part of all of Authority's payment is being withheld and what actions BNSF must take to receive the withheld amount. In the event of disputed billing, only the disputed portion will be withheld from payment and Authority shall pay the undisputed portion. Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified following the receipt of payment, BNSF must credit any payment in error from any payment that is due or that may become due to BNSF under this Agreement or return the overpayment to Authority within forty-five (45) calendar days of the identification of the error.

ARTICLE III) AUTHORITY OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Authority agrees as follows:

1. Authority must furnish to BNSF plans and specifications for the Structures and features affecting BNSF Premises. Four (4) sets of said plans (reduced size 11" x 17"), together with two (2) copies of calculations, and two (2) copies of specifications in **English Units**, must be submitted to BNSF for approval prior to commencement of any construction of work on or adjacent to BNSF Premises. All plans, calculations, and specifications must also be submitted electronically to BNSF. BNSF will give Authority final written acceptance of the plans and specifications substantially in the form of Exhibit



E, attached to this Agreement and made a part hereof. Upon BNSF's final written acceptance of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

2. Authority must make any required application and obtain all required permits and approvals for the construction of the Project.

3. Authority must provide for and maintain minimum vertical and horizontal clearances, as required in Exhibit C and as approved by BNSF as part of the plans and specifications for the Project affecting BNSF Premises.

4. Authority must acquire all rights-of-way and easements necessary for the staging and construction of the Project. In conjunction with BNSF's grant of an easement to Authority, its successors, and assigns, as outlined in Article II Section 1, Authority thereby grants BNSF a no cost right to stage material and equipment, at mutually agreed upon locations, and to perform the BNSF Work described in Article II, Section 2 on lands outside of BNSF Premises, as may be necessary for construction of the Structures or temporary shoofly tracks.

5. Authority must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<http://www.bnsf.com/communities/fags/pdf/utility.pdf>), for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

6. Authority must construct the Project as shown on the attached Exhibit A and do all work ("Authority Work") provided for in the plans and specifications for the Project, except BNSF Work that will be performed by BNSF hereunder. Authority must furnish all labor, materials, tools, and equipment for the performance of Authority Work. The principal elements of Authority Work are as follows:

- (a) Preliminary engineering activities including technical studies and analyses, geotechnical, seismic, flood, and biological investigations, utility subsurface investigations and mapping, hazardous substances investigations, and archeological, paleontological, and cultural investigations; and
- (b) Construct the Structures and associated infrastructure necessary to relocate or raise the tracks and/or related equipment to accommodate the Project; and



- (c) Procurement of certain materials for the shoofly track construction as detailed per Exhibit D.
- (d) Removal and/or relocation of any BNSF maintenance buildings, foundations, piers, abutments, culverts, and concrete aprons as needed to construct the Project within BNSF Premises; and
- (e) All necessary grading and embankments for the temporary shoofly alignments; and
- (f) All necessary grading and paving, including backfill of excavations, removal of shoofly embankments upon substantial completion of the Structures, and restoration of disturbed vegetation on and adjacent to BNSF Premises; and
- (g) Placement of a minimum twelve (12) inches of subballast for all track roadbeds; and
- (h) Placement of a minimum six (6) inches of subballast as may be necessary for an access road to construct the shooflys, as per Exhibit A; and
- (i) Maintain and keep in good repair all access roads, temporary and permanent; and
- (j) Placement of a waterproof membrane on the deck of the Structure; and
- (k) Provide suitable positive drainage, both temporary and permanent; and
- (l) Installation of chain link fencing between the tracks and any traveled roadways, both temporary and permanent, as necessary; and
- (m) At BNSF's discretion, temporary installation of a chain link fence barrier separating construction of the Structure from the shoofly track; and
- (n) Provide appropriate pedestrian and contractor control during construction; and
- (o) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter, and other waste materials to the satisfaction of BNSF.

7. Authority must apply related bridge number and year of bridge construction in a conspicuous location on the Structures.



8. Authority Work must be performed by Authority or Authority's contractor in a manner that will not endanger or interfere with the safe and timely operations and facilities of BNSF.

9. For all future maintenance of the DCAI, either routine or otherwise, performed by Authority or Authority Contractors that may affect the Structures or disturb BNSF Premises, Authority shall require the Authority Contractors to comply with the provisions of the attached Exhibit C and execute the agreement attached hereto as Exhibit C-1. Prior to performing any future maintenance with its own personnel, Authority shall: comply with all of BNSF's applicable safety rules and regulations; require any Authority employee performing maintenance to complete the safety training program at the BNSF's Internet Website "www.bnsfcontractor.com"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; and procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance as outlined in Exhibit C-1.

10. Authority must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Authority must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or within fifty (50) feet measured horizontally to the centerline of the nearest BNSF track.

11. Authority or its contractor(s) must submit copies of any plans (including calculations in **English Units**) for proposed shoring, falsework or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring, falsework or cribbing used by Authority's contractor shall comply with the BNSF Bridge Requirements set forth on Exhibit F and all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies. If necessary, Authority must submit for approval copies of a professionally engineered demolition plan, as set forth in Exhibit F, with applicable calculations to BNSF's Manager of Public Projects. Demolition of any existing or future structure will not proceed until BNSF approves Authority's demolition plan in writing.

12. Authority must include the following provisions in any contract with its provider(s) performing work on said Project ("**Provider**"):

- (a) The Provider is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The Provider will be responsible for contacting BNSF and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The Provider must also mark all Lines shown



on the plans or marked in the field in order to verify their locations. The Provider must also use all reasonable methods when working in or on the BNSF Premises to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

- (b) The Provider will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Provider must cooperate fully with any telecommunications company(ies) in performing such rearrangements.
- (c) Failure to mark or identify these Lines will be sufficient cause for BNSF to stop construction at no cost to the Authority or BNSF until these items are completed.
- (d) In addition to the liability terms contained elsewhere in this Agreement, the Provider hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Provider, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Provider, and/or its subcontractors, agents and/or employees, on or within BNSF's Premises, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on or within BNSF's Premises, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY PROVIDER WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

13. Authority must require compliance with the obligations set forth in this Agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III and IV; and (ii) the provisions set forth in Exhibit C, Exhibit C-1, and Exhibit F attached hereto and by reference made a part hereof.

14. Except as otherwise provided below in this Section 14, all construction work performed hereunder by Authority for the Project will be pursuant to a contract or contracts to be let by Authority, and all such contracts must include the following:



- (a) All work performed under such contract or contracts within the limits of BNSF's Premises must be performed in a good and workmanlike manner in accordance with plans and specifications accepted by BNSF; and
- (b) Changes or modifications during construction that affect safety or operations of BNSF must be subject to BNSF approval; and
- (c) No work will be commenced within BNSF's Premises until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF an agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance as set forth in Exhibit C-1; and
- (d) To facilitate scheduling for the Project within or adjacent to the BNSF Premises on the BNSF KO, Prosper, and Hillsboro Subdivisions, Authority shall have its contractor give BNSF's Project Engineering representative Sawyer Mosser (763-782-3057) 8-weeks advance notice of the proposed times and dates for work windows. BNSF will establish mutually agreeable work windows for the Project with Authority's contractor. It is understood that BNSF has the right at any time to revise or change the work windows due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.
- (e) The plans and specifications for the Project must be in compliance with the Bridge Requirements set forth on Exhibit F, attached to this Agreement and incorporated herein.

15. Authority must advise the appropriate BNSF Manager of Public Projects, in writing, of the completion date of the Structures within thirty (30) calendar days after such completion date. Additionally, Authority must notify BNSF's Manager of Public Projects, in writing, of the date on which Authority and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Structures prior to cutover and revenue service of the Structures.

16. TO THE FULLEST EXTENT PERMITTED BY LAW, AUTHORITY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY



ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AUTHORITY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE PREMISES, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AUTHORITY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AUTHORITY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AUTHORITY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AUTHORITY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AUTHORITY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AUTHORITY'S OCCUPATION AND USE OF BNSF'S PREMISES, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE DCAI BY AUTHORITY, OR (VII) AN ACT OR OMISSION OF AUTHORITY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AUTHORITY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

17. Authority must give BNSF's Manager of Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad work after receipt of necessary funds for the Temporary Construction License as provided in Article II, Section 1. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment, or materials) until written notice to proceed is received from Authority.

18. Authority agrees to comply with, and shall require its contractor to agree to comply with all Environmental Laws (defined below).

- (a) Authority shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws (as defined below), on the Premises. Authority will not handle, transport, release or suffer the release of Hazardous Materials (as defined below) on or about the Premises. Fueling or maintenance of vehicles or equipment on the Premises is prohibited.
- (b) Authority shall give immediate notice to BNSF's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials on, from, or affecting the Premises. Authority shall use its best efforts to immediately respond to any release on or from the Premises. Any violation of



Environmental Laws or any inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Authority's use of the Premises must be immediately reported to BNSF at EnvironmentalLeases@bnsf.com. Authority also shall give BNSF prompt notice of all measures undertaken on behalf of Authority to investigate, remediate, respond to, or otherwise cure a release or violation.

- (c) If BNSF has notice from Authority or otherwise of a release or violation of Environmental Laws arising in any way with respect to the work which occurred or may occur during the term of this Agreement, BNSF may require Authority, at Authority's sole risk and expense, to take timely measures to investigate, remediate, respond to, or otherwise cure such release or violation affecting the Premises.
- (d) If during the construction or subsequent maintenance of the Project or any other soil-disturbing activities, soils, or other materials considered to be environmentally impacted are encountered, Authority will stop work immediately and notify BNSF. After consultation with BNSF, Authority shall, at Authority's expense, characterize any such impacted soils. Upon receiving sampling results Authority shall, at the Authority's expense, in consultation with BNSF, manage, remove, and/or dispose any such impacted soils offsite at an appropriately licensed facility in accordance with Environmental Laws. Soil characterization and applicable disposal requirements shall be in accordance with applicable federal, state, and local Environmental Laws or in consultation with an agency having the capacity and authority to make such a determination.
- (e) All soils and materials to be removed from the Premises must be properly characterized, managed, transported, and disposed at an appropriately licensed facility, at the Authority's expense, in accordance with all Environmental Laws. Authority shall be the "Generator" of any and all such materials and waste, as such term is defined in Environmental Laws.
- (f) All fill materials to be imported to the Premises shall be certified clean fill or from a BNSF approved source, and supporting documentation shall be provided to BNSF upon request. BNSF shall provide a sampling plan as may be necessary for imported material.
- (g) Notwithstanding anything in this Section 18, Authority agrees that BNSF has no duty or obligation to monitor Authority's use of the Premises to determine Authority's compliance with Environmental Laws, it being solely the Authority's responsibility to ensure that Authority's use is compliant.



- (h) “Environmental Law(s)” shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., CERCLA; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.
- (i) “Hazardous Material(s)” shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as “hazardous chemicals,” “hazardous substances,” “hazardous materials,” “toxic substances,” or “hazardous wastes” in any Environmental Law.

19. Authority represents that the U.S. Army Corps of Engineers (“**USACE**”) has reviewed and stated no objection to the DCAI component of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. Authority shall coordinate the furnishment from USACE in accordance with 33 CFR § 208.10(a)(10). Authority, its successors, and assigns, shall comply with and may not remove, edit, or otherwise alter or accept any changes to those portions of the Project that relate to the railroad and the railroad’s right to use the property, without the prior express written consent of BNSF. The



Parties contemplate that those activities, further described per Article III, Section 20, will be undertaken without interference from Authority, and Authority agrees that it will fully cooperate, including but not limited to issuing Letters of No Objection, for those activities that require approval by USACE under Title 33 of the United States Code and when requested by BNSF.

20. The DCAI is permitted on the Premises by virtue of one or more easements granted to Authority and its Contractor. Except as permitted for flood emergency operations and for inspection and maintenance under this Agreement, the existence and operation of the DCAI shall not interfere with rail operations. BNSF's rail operations may routinely include (but are not limited to) the following activities over the area of the DCAI:

- i. adding, relocating, modifying, or removing tracks and their related substructures, including new double-track and/or sidings; and
- ii. adding, relocating, modifying, or removing signal equipment, including wires and bungalows; and
- iii. adding, relocating, modifying, or removing telecommunications equipment (including works routed outside of the DCAI); and
- iv. maintaining ballast and ties, including the complete replacement of those structures; and
- v. welding, replacing, or relaying rail; and
- vi. removing debris from the area; and
- vii. vegetation control; and
- viii. cleaning, adding, relocating, and maintaining ditches as necessary to prevent maintenance issues with railroad property, including track.

The foregoing rail operations, among others, may be conducted by BNSF as provided by and in accordance with this Agreement, without prior authorization, provided the foregoing operations do not change or alter the DCAI or its effective use.

ARTICLE IV) JOINT OBLIGATIONS

IN consideration of the premises, the Parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF written approval prior to the commencement of any such changes or modifications from the BNSF Project Engineer.

2. The work hereunder must be done in accordance with the Bridge Requirements set forth on Exhibit F and the detailed plans and specifications approved by BNSF.



3. Authority must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work that will affect the Premises. The Parties hereto mutually agree that BNSF's failure to complete the BNSF Work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the BNSF Work in the event of an emergency to provide for the immediate restoration of railroad operations of BNSF or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The Parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF and its assigns will have the right to stop construction work on the Project affecting the Premises if any of the following events take place: (i) Authority (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications accepted by BNSF for work within and adjacent to the Premises; (ii) Authority (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner that is hazardous to BNSF property, facilities, or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project affecting the Premises; or (iv) Authority fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Authority or its contractor to rectify the situation to the satisfaction of BNSF's Engineering Representative or until proof of additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, the Parties hereto agree to immediately notify the following individuals in writing:

Director of Engineering
4784 Amber Valley Parkway South, Suite 100 Fargo, ND 58104
701-412-3859

BakkegardK@fmdiversion.gov

5. Authority, or a representative of, must supervise and inspect the operations of all Authority contractors to ensure compliance with the plans and specifications accepted by BNSF, the terms of this Agreement and all safety requirements of BNSF. If BNSF determines that proper supervision and inspection are not being performed by Authority personnel at any time during construction of the Project, BNSF has the right to stop



construction (within or adjacent to its operating right-of-way). Construction of the Project within or adjacent to the Premises will not proceed until Authority corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify Authority for appropriate corrective action.

6. Pursuant to this section, Authority must reimburse BNSF in full for the actual costs of all work expenses, both direct and indirect, performed by BNSF under this Agreement (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes) in accordance with invoices submitted by BNSF to Authority per Article II, Section 6 of this Agreement.

Additionally, Authority shall contribute the Net Present Value of each Structure Cost for a total of nine million and No/100 Dollars (\$9,000,000.00) (**hereinafter referred to as "Authority's Share"**) towards the lifespan maintenance and future reconstruction of the Structures, to be paid to BNSF for the bridges BNSF will own and maintain under this agreement, upon substantial completion and acceptance of the Structures by BNSF. Authority's Share will be based on the following:

- (a) The 100-year Net Present Value of the Structures as follows: presently estimated to be three million and No/100 Dollars for each bridge, totaling nine million and No/100 Dollars (\$9,000,000.00), as detailed per Exhibit G attached hereto and incorporated herein.
- (b) BNSF accepts the ownership and maintenance of the Structures built under this agreement on the BNSF KO, Prosper, and Hillsboro Subdivisions, designated as BNSF Bridge Numbers 0026-0015.900; and 0034-0009.100; and 0220-0034.87 respectively, upon substantial completion as described in Article IV, Section 10, and Subsection (d).

In any action brought under this Agreement, the prevailing Party shall be entitled to recover its actual costs and attorney fees, as well as other litigation costs, including expert witness fees. The prevailing Party shall also be entitled to recover all actual attorney fees and litigation costs incurred in connection with the enforcement of a judgment arising from such action or proceeding.

7. All expenses detailed in statements sent to Authority pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Title 23 U.S. Code, Title 23 Code of Federal Regulations, and the Federal-Aid Policy Guide, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The Parties mutually agree that BNSF's preliminary engineering, design review, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.



8. The Parties mutually agree that neither construction activities for the Project affecting BNSF right-of-way, nor future maintenance of the DCAI as it affects BNSF right-of-way or the Structures, once completed, will be permitted during the fourth quarter of each calendar year without prior written approval by BNSF for Work activities that may occur. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800-832-5452). The Parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

9. Subject to the restrictions imposed by Article IV, Section 8 above, the construction of the Project will not commence until Authority gives BNSF's Manager of Public Projects thirty (30) calendar days' prior written notice of such commencement. The commencement notice will reference **BNSF File No. BF-20256395** and must state the time that construction activities will begin.

10. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF and Authority agree to the following terms upon completion of construction of the Project:

- (a) BNSF, its successors, and assigns, at its sole cost and expense, will accept, own, and maintain its roadbed, track, any access gates installed pursuant to the Project, railroad drainage, and all other railroad facilities located within the BNSF KO, Prosper, and Hillsboro Subdivision operating corridors.
- (b) Authority will own and maintain the DCAI and appurtenances thereto. BNSF may, at its option, perform maintenance on features of the DCAI in order to avoid conflicts with train operations. BNSF will notify Authority prior to performing any such maintenance on the DCAI. In the event such maintenance involves emergency repairs, BNSF will notify Authority at its earliest opportunity. Excluding the cost of maintaining the Structures pursuant to Article IV, Section 6, Authority must fully reimburse BNSF for the costs of maintenance performed pursuant to this subsection (b).
- (c) Pursuant to Authority's Share payment as described in Article IV, Section 6, BNSF will own and maintain, at BNSF sole cost and expense, the Structures constructed under this Agreement within the respective BNSF operating corridors.
- (d) It is expressly understood by Authority and BNSF that any right to install utilities within the Premises will be governed by a separate permit or license agreement between the Parties hereto.
- (e) If Authority (including its contractors and agents), or BNSF on behalf of Authority, performs any maintenance or other work on the DCAI with heavy tools, equipment, or machinery at ground surface level horizontally within



50'-0" of the centerline of the nearest track or any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then Authority or its contractors and/or agents must procure and maintain the following insurance coverage, which may be changed from time to time:

Railroad Protective Liability insurance naming only **BNSF** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to **BNSF** prior to performing any work or services under this Agreement
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

As used in this paragraph, "**BNSF**" means "Burlington Northern Santa Fe, LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Authority may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy if available to Authority or its contractors. The limits of coverage are the same as above.

11. Authority hereby grants to BNSF, at no cost or expense to BNSF, a permanent right of access from the DCAI to the tracks for maintenance purposes. In addition, Authority will hereby secure all necessary permanent access point permits from public roadways to the Structures.

12. Authority must provide one set of as-built plans (prepared in **English Units**) to BNSF, as well as one electronic set containing as built CAD drawings of the Structures and identifying the software used for the CAD drawings. The "as built plans" must comply with the Bridge Requirements set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The "as built plans" must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown.



13. Subject to the restrictions imposed by Article IV, Section 9 above and in accordance with the requirements of Article III, Section 9 above, Authority must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **INSPECTION OR MAINTENANCE** purposes, and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Authority must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Authority will be responsible for its contractors' compliance with such obligations.

14. In the event that BNSF shall deem it necessary or desirable in the future, in the performance of its duty as a common carrier, to raise or lower the grade or change the alignment of its tracks or to lay additional track or tracks or to build other facilities in connection with the operation of its railroad, BNSF shall, at its expense, have full right to make such changes or additions, provided such changes or additions do not change or alter the Structures herein proposed to be constructed and provided. Further, that should it become necessary or desirable in the future to change, alter, widen or reconstruct the Structures to accommodate railroad projects, the cost of such work shall be the sole responsibility of BNSF. Any cost incidental to alteration of DCAI facilities made necessary by the alteration of the Structures, shall be the sole responsibility of Authority, its agents, successors, or assigns.

15. Authority may, at Authority's sole expense, alter or reconstruct the DCAI in the Premises, if necessary or desirable, provided, however, that any such alteration or reconstruction must receive BNSF prior written approval as evidenced by either a supplement to this Agreement, or execution of a new agreement that provides for the termination of this Agreement.

16. Any books, papers, records and accounts of the Parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the Parties hereto, as well as the State of North Dakota, for a period of one (1) year from the date of the final BNSF invoice under this Agreement.

17. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the Parties hereto. Notwithstanding the preceding sentence, neither Party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other Party.

18. In the event construction of the Project affecting the Premises does not commence within eighteen (18) months of the Effective Date, this Agreement will become null and void.

19. Neither termination nor expiration of this Agreement will release either Party from any liability or obligation under this Agreement, whether of indemnity or otherwise,



resulting from any acts, omissions or events happening prior to the date of termination or expiration.

20. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

21. This Agreement (including exhibits and other documents, manuals, etc., incorporated herein) is the full and complete agreement between BNSF and the Authority, with respect to the subject matter herein, and supersedes any and all other prior agreements between the Parties hereto.

22. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the Parties at the following addresses:

BNSF:

Manager of Public Projects
80—44th Avenue, NE
Minneapolis, MN 55421
(763) 782-3492

AUTHORITY:

Director of Engineering
4784 Amber Valley Parkway South, Suite 100
Fargo, ND 58104
701-412-3859

BakkegardK@fmdiversion.gov

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE 1 OF 1]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____

Printed Name: _____

Title: _____

WITNESS:

METRO FLOOD DIVERSION AUTHORITY

By: _____

Printed Name: _____

Title: _____

WITNESS:



EXHIBIT "A"

[PLAN OVERVIEW]



EXHIBIT "B"
EASEMENT AGREEMENT

FOR BNSF FILE No. BF-20256395
(Construction and Maintenance Agreement)

THIS EASEMENT AGREEMENT FOR **BF-20256395** ("**Easement Agreement**") is made and entered into as of the ____ day of _____, 2023 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), and Metro Flood Diversion Authority, a political subdivision of the State of North Dakota ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of Fargo, County of Cass, State of North Dakota, at Line Segment 26, Mile Post 15.9, and at Line Segment 34, Mile Post 9.1, and at Line Segment 220, Mile Post 34.87, as described or depicted on **Exhibit "A-1"** attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain Agreement dated as of _____ concerning improvements on or near the Premises (the "**Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "**Easement Purpose**" shall be for the purposes set forth in the Construction and Maintenance Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the Construction and Maintenance Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other



purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the Construction and Maintenance Agreement.

- 1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:
- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;
 - (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
 - (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 3 No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES



RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 Improvements. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near



Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction



or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an Authority having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

Section 8 Default and Termination.

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) calendar days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity



or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the Construction and Maintenance Agreement, at law, or in equity.

Section 9 Surrender of Premises.

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform **the following**:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other



action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 Tax Exchange. Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

Section 12 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the Construction and Maintenance Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B-1" (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within ninety (90) calendar days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 Miscellaneous.

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of [Texas] without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable



attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

Section 15 Administrative Fee.

15.1 Grantee acknowledges that a material consideration for this Easement Agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of **\$2,500.00** over and above the agreed upon Acquisition Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

[SIGNATURE PAGE FOLLOW]



Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____

Name: _____

Title: _____

GRANTEE:

METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota

By: _____

Name: _____

Title: _____

SAMPLE



EXHIBIT "A-1"

[EASEMENT PREMESIS]

SAMPLE



EXHIBIT "B-1"
Memorandum of Easement

THIS MEMORANDUM OF EASEMENT is hereby executed this ____ day of _____, 2023, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and Metro Flood Diversion Authority, a political subdivision of the State of North Dakota ("**Grantee**"), whose address for purposes of this instrument is _____, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Cass County, North Dakota as described on **Exhibit "A-1"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____ (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement, and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____

Name: _____

Title: _____

GRANTEE:

Metro Flood Diversion Authority, a political subdivision of the State of North Dakota

By: _____

Name: _____

Title: _____

SAMPLE



EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1) General:

- **A.** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of **work under AUTHORITY agreement BNSF File No. BF-20256395**.
- **B.** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to **Rosa Martinez** at Marsh, USA, 214-303-8519.
- **C.** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **D.** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

AUTHORITY:



Director of Engineering
4784 Amber Valley Parkway South, Suite 100
Fargo, ND 58104
701-412-3859
BakkegardK@fmdiversion.gov

- **E.** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **F.** The Contractor must notify **Metro Flood Diversion Authority** at bakkegardk@fmdiversion.gov and Railway's Manager Public Projects at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file **BF-20256395**.
- **G.** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.



- **H.** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

2) Contractor Safety Orientation

- **A.** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

3) Railway Requirements

- **A.** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Authority.
- **B.** The Contractor must notify the Railway's Manager of Engineering, David Johnson, at (763-782-3005) and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **C.** The Contractor must abide by the following temporary clearances during construction:
 - 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts



- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **D.** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
- **E.** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to **Metro Flood Diversion Authority** and must not be undertaken until approved in writing by the Railway, and until **Metro Flood Diversion Authority** has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **F.** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Authority.
- **G.** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by **Metro Flood Diversion Authority** for approval thirty(30) calendar days before work is undertaken and this work must not be undertaken until approved by the Railway.
- **H.** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **I.** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **J.** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said



Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

4) Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **A.** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFContractor.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.
- **B.** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion
 - a) to be on Railroad's property, or
 - b) that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.
 - i) The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at www.eVerifile.com, in addition to any other applicable regulatory requirements.
 - ii) Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.
 - iii) Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who



do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

- iv) Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

5) Railway Flagger Services:

- **A.** The Contractor must give Railway's **Project Engineer Sawyer Mosser (763-782-3057)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **B.** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **i)** When, upon inspection by Railway's Representative, other conditions warrant.
 - **ii)** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **iii)** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **iv)** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **v)** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.



- C. Flagging services will be performed by qualified Railway flaggers.
- i) Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- ii) Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - iii) The cost of flagger services provided by the Railway will be borne by **Metro Flood Diversion Authority**. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- iv) The average train traffic on these routes is 30 freight trains per 24-hour period at a timetable speed 60 MPH and 0 passenger trains.

6) Contractor General Safety Requirements

- A. Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- B. Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- C. Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway



flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

- **D.** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **E.** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **F.** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **G.** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **H.** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.BNSFContractor.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **I. THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL**



AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.

- **J.** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **K.** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **L.** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

7) Excavation:

- **A.** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative Sawyer Mosser (763-782-3057)**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **B.** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be



performed until the exact location has been determined. There will be no exceptions to these instructions.

- **C.** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **D.** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

8) Hazardous Waste, Substances and Material Reporting:

- **A.** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

9) Personal Injury Reporting

- **A.** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- Passenger on train (C)
- Non-employee (N)
(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)
- Contractor/safety sensitive (F)
- Contractor/non-safety sensitive (G)
- Volunteer/safety sensitive (H)
- Volunteer/other non-safety sensitive (I)
- Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-697-6736

or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name)

(Employee No.)

(Phone #)

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St: _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather: _____
(if non BNSF location)

Mile Post / Line Segment: _____

5. Driver's License No (and state) or other ID: _____ **SSN (required):** _____

6. Name (last, first, mi): _____

7. Address: _____ City: _____ St: _____ Zip: _____

8. Date of Birth: _____ and/or Age: _____ Gender: _____
(if available)

Phone Number: _____ Employer: _____

9. Injury: _____ 10. Body Part: _____
(i.e., Laceration, etc.) (i.e., Hand, etc.)

11. Description of Accident (To include location, action, result, etc.): _____

12. Treatment:
 First Aid Only _____
 Required Medical Treatment _____
 Other Medical Treatment _____

13. Dr. Name: _____ Date: _____

14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name: _____

16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis: _____

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490



EXHIBIT "C-1"

Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: _____

Authority Project: **BF-20256395 Metro Flood Diversion Authority
Diversion Channel and Associated Infrastructure Project**

< _____ > [Insert contractor’s legal name here] (hereinafter called “Contractor”), has entered into an agreement (hereinafter called “Agreement”) dated _____, 2023, with Metro Flood Diversion Authority for the performance of certain work in connection with the following project: **BNSF File No. BF-20256395**. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for Metro Flood Diversion Authority (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**



IT IS MUTUALLY NEGOTIATED BETWEEN THE PARTIES THAT THE INDEMNIFICATION OBLIGATION SHALL INCLUDE ALL CLAIMS BROUGHT BY CONTRACTOR'S EMPLOYEES AGAINST BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, AND CONTRACTOR EXPRESSLY WAIVES ANY IMMUNITY OTHERWISE PROVIDED UNDER APPLICABLE STATE WORKERS COMPENSATION OR SIMILAR LAWS AND ASSUMES POTENTIAL LIABILITY FOR ALL ACTIONS BROUGHT BY ITS EMPLOYEES.

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.



3) INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:



- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.



Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.



Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax



exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement



(<http://www.bnsf.com/communities/faqs/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

6) TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative Dave Johnson (763-782-3005) eight (8)-weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.



IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

< _____ >
Contractor Legal Name

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____
Manager Public Projects

Title: _____

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____



EXHIBIT "D"
[Cost Estimate for Railroad Work]



EXHIBIT “E”



Richard Scott
Asst. Dir. Public Projects

BNSF Railway Company
80—44th Avenue NE
Minneapolis, MN 55421
Phone: (763) 782-3492
richard.scott2@bnsf.com

[Date]

Re: Final Approval of Plans and Specifications dated _____, drafted by _____. (**hereinafter called, the “Plans and Specifications”**)

[Name]:

This letter serves as BNSF RAILWAY COMPANY’s (“BNSF”) final written approval of the Plans and Specifications covering the construction of the _____. This final written approval is given to Metro Flood Diversion Authority (“Authority”) pursuant to Article IV, Section 1 of that certain Agreement between BNSF and Authority **BF-20256395** of which this Exhibit E is attached to and made a part thereof.

If the Plans and Specifications are revised by Authority subsequent to the date set forth above, this letter shall no longer serve as final written approval of the Plans and Specifications and Authority must resubmit said Plans and Specifications to BNSF for final written approval.

It is understood that the approvals contained in this letter do not cover, the approvals of plans and specifications for any falsework, shoring, and demolition that may be subsequently submitted to BNSF by Authority or its contractor for approval.

BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design of the project.

Regards,

Richard Scott
BNSF Railway
Assistant Director Public Projects



EXHIBIT "F"

BNSF PROCESS REQUIREMENTS FOR DESIGN & CONSTRUCTION OF PROJECTS BY A PUBLIC AUTHORITY ON BNSF RIGHT OF WAY, WHICH IMPACT BNSF PROPERTY OR OPERATIONS

1.01 General:

- 1.01.01 The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the Project described herein.
- 1.01.02 Definitions:
 - **Operationally Critical, (OC):** defined as Work that requires a submittal and acceptance by BNSF, which impacts, or could impact BNSF operations, on BNSF right-of-way or adjacent to it.
 - **Acceptance:** BNSF's response to plan submittals indicating a notice to proceed with work in the field; **Disclaimer for Acceptance:** ***BNSF has reviewed these submittals and no exceptions are taken with regard to BNSF's ability to use or accommodate the project as intended. BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design or execution of the project.**
 - **Inspector/Coordinator, (I/C):** A third party consultant which BNSF hires to assist in the coordination of the project on BNSF's behalf. When referenced, "I/C" refers to the I/C team consisting of I/C-I, I/C-II, and the Resident Engineer (RE). The I/C team's role is to ensure the project is constructed per accepted* plans and specifications for that portion of the project on BNSF right of way, as it affects BNSF. The I/C will monitor construction activities to ensure that improvements used by BNSF meet all requirements of BNSF, and accommodate railroad operations.
- 1.01.03 The following submittals and actions are required by BNSF prior to Operationally Critical, (OC) Work being performed on BNSF property or above tracks being operated by BNSF Railway:

2.01 Submittals and Actions Required During the Project Design Phase:

- 2.01.01 The Authority shall be the main contact for BNSF throughout the project. Authority shall be included on all correspondence relating to BNSF.
- 2.01.02 Required Design Submittals: (Allow for 4 weeks for BNSF to review design submittals)



Authority shall refer to the requirements of the UP/BNSF Guidelines on Grade Separation Projects when designing a grade separation which will impact BNSF Railway. Authority will be required to submit plans for BNSF review and comment. Plans shall not be labeled “final” until all comments have been addressed and BNSF has accepted* the plans.

Examples of required design submittals may be, but are not limited to:
Concept, vertical profile of Top of Rail, 30% plans and final plans

The following submittals will require a Professional Engineer, (PE) stamp:

- Overpass design
- Underpass design
- Hydraulic study
- Any non-standard design of a structure which will carry train loading

Work covered by a submittal shall not be performed in field without receiving Acceptance from BNSF.

Work windows will not exceed 6 hours, so project should be designed accordingly.

The following Disclaimer applies to BNSF acceptance of Authority design plans:

**BNSF has reviewed these submittals and no exceptions are taken with regard to BNSF's ability to use or accommodate the project as intended. BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design or execution of the project.*

3.01 Submittals and Actions Required During the Construction Phase:

- 3.01.01 The Authority shall be the main contact for BNSF throughout the project. Authority shall be included on all correspondence relating to BNSF. **BNSF will NOT accept submittals directly from the Authority’s Contractor.**
- 3.01.02 BNSF will hire a consultant team to perform the duties of an Inspector/Coordinator, (I/C) on behalf of BNSF for the duration of the field construction of the project. The cost of the I/C will be reimbursable to BNSF by the Authority or their Contractor.

BNSF requires the I/C team be involved in the project throughout the construction phase to represent BNSF.

The I/C has authority to remove a contractor’s employee from BNSF property if that employee fails to comply with the BNSF safety policy, does not have proper PPE or otherwise ignores instructions regarding work on BNSF right-of-way. The I/C has authority to shut down work on BNSF right-of-way if the contractor works in a manner that is in violation of BNSF’s safety policy or FRA regulations.



Anytime instructions to the contractor by BNSF or the I/C are not complied with, the project may be shut down. All equipment and personnel will be removed from BNSF property until issues causing the shutdown are resolved to BNSF's satisfaction.

- 3.01.03 Authority must hold a pre-construction meeting with contractor and BNSF prior to work beginning on BNSF property.

The Pre-Construction meeting shall not be held until 30 days after I/C has been selected – this allows time for the I/C to become familiar with the project.

Recommend scheduling two weeks prior to construction commencing to allow for adjustment to work plans, if needed.

- 3.01.04 Required Construction Submittals: : (Allow for 4 weeks for BNSF to review submittals)

All submittals should flow from the Contractor to the Authority, to the I/C Consultant, to the BNSF Project Engineer, (PE), and to BNSF Structures with responses back through the same communication chain. **BNSF will not accept submittals directly from the Contractor.**

Any changes to the work governed by a submittal requires that the submittal be re-accepted* by BNSF before the work commences.

Examples of construction submittals required include but are not limited to:
Contractors Safety Action Plan, Fire Prevention Plan, Proposed Project Schedule, Demolition, Shoring, Falsework and Lifting of Materials.

The following submittals will require a Professional Engineer, (PE) stamp:

- Critical Pick Plan (75% of capacity of crane, or multi-crane pick)
- Lifted Material Plan (Placement or Removal) – When lift is within temporary construction clearances and when lift is within 25' of the centerline of the nearest track
- Demolition Plan
- Temporary Shoring Plan
- Bracing Design Plan (non-standard only per DOT)

For overpasses, Authority shall submit as-built plans of the structure, including final clearance dimensions to the I/C. Vertical clearance must be measured from the Top of Rail, horizontal clearance must be measured from the nearest track centerline.

OPERATIONALLY CRITICAL WORK AND SUBMITTALS: (4 to 6 weeks review timeline)
All OC work requires a submittal and acceptance* by BNSF.



- Operationally Critical (OC) submittals are those that have the potential to affect the safe operation of trains and will need to be reviewed carefully. Work must be monitored to ensure it conforms to the submitted/accepted* plan.
- In-person safety review meetings will be required with BNSF representative, I/C, Contractor and Authority representative for all OC work and must be documented. The purpose of the meeting is to ensure all parties understand BNSF requirements and are following the applicable submittals. When a track work window is required the meeting shall occur at least 48 hours in advance of work starting.
- **Submittals must meet the requirements of the UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects. Submittals must also follow the requirements outlined in BNSF Review Comment Sheets, Use of Cranes & Lifting of Materials Submittal Schedule, BNSF Guidelines for Preparation of Bridge Demolition & Removal Plan and the BNSF-UPRR Guidelines for Temporary Shoring. Some submittals are required to be sealed by a licensed professional engineer.**
 - i. See Table 3-1 for Overhead Structures in UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects
 - ii. See Table 3-2 for Underpass Structures UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects
 - iii. Examples of OC submittals included in the above are:
 1. Shoring (Follow BNSF-UPRR Guidelines for Temporary Shoring)
 2. Falsework
 3. Demolition (Need plans for substructure and superstructure. Follow BNSF Guidelines for Preparation of Bridge Demolition & Removal Plan)
 4. Erection (overhead and underpass structures)
 5. Construction Phasing Plans
 - iv. Additional OC submittals required, but not included in the Guidelines are:
 1. All work plans that remove tracks from service (track outage windows require a detailed Gantt chart when greater than 2 hours)
 2. Contingency plans
 3. Additional OC submittals may be required on a project by project basis.

For underpasses and other railroad bridges, as required in Sections 4.11 and 4.12 of the UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects, a RE will be on site full-time during construction, at the cost of the project. At the discretion of the RE, as accepted by BNSF, an I/C-I or I/C-II maybe assigned for field duties where the work is not critical to ensuring the bridge is built to accepted project plans and specification.

- BNSF requires temporary and new track and railroad bridges be inspected by an FRA qualified BNSF employee prior to being placed into service. Two week advanced notice to BNSF structures department is



required. For underpasses, all pile driving records are to be provided within 3-days of driving to the BNSF PE.

- Authority shall submit an as-built survey of shoo-fly final alignments. Alignments must conform to BNSF Shoo-fly procedures.

- 3.01.05 Prior to any work commencing on BNSF right of way: Contractors C/C-1 or Right of Entry must be fully executed and their insurance must be approved before they can perform work on BNSF property. Proof of Contractors insurance approval must be produced to the BNSF PE and the I/C.

- 3.01.06 Contractor must adhere to all other BNSF policies and procedures not specifically mentioned in this agreement.

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BNSF Bridge Requirements

BRIDGE DESIGN, PLANS & SPECIFICATIONS:

Except for the design of temporary falsework and shoring, BNSF review of the Structure plans will be limited to the vertical and horizontal clearances, sight distance for existing train signals, foundation dimensions and drainage characteristics as they relate to existing and future tracks. BNSF will not review structural design calculations for the permanent Structure unless a member or members are influenced by railroad live loads.

Temporary falsework and shoring plans and calculations must be reviewed and approved by BNSF prior to beginning construction. The Authority shall perform an independent review of the design calculations for temporary falsework and shoring prior to submitting them to BNSF for approval. Temporary construction clearances must be no less than 15 feet measured horizontally from the centerline of the nearest track and 21 feet-6 inches measured vertically from the top of rail of the most elevated track to the bottom of lowest temporary falsework member. State regulatory agencies may have more restrictive requirements for temporary railroad clearances.

For the permanent Structure, the Authority will submit plans showing the least horizontal distance from the centerline of existing and future tracks to the face of the nearest member of the proposed Structure. The location of the least horizontal distance must be accurately described such that BNSF can determine where it will occur in both the horizontal and vertical plane. If the permanent member is within 25 feet of the nearest track (or future track), collision walls shall be incorporated into the permanent Structure design according to American Railway Engineering and Maintenance Association Manual of Recommended Practice - Chapter 8 - Article 2.1.5.

For the permanent Structure, the Authority will submit plans showing the least vertical clearance from top of the most elevated rail of existing and future tracks to the lowest point of the proposed Structure. A profile of the existing top of rail elevation shall be plotted on the bridge plans. The profile shall extend for 500 feet in each direction of the proposed overpass and a separate profile shall be plotted for each track. If the existing top of rail profile(s) is not uniform such that a sag exists in the vicinity of the proposed Structure, the permanent Structure vertical clearance shall be increased sufficiently to accommodate a raise in the track profile to remove the sag. Prior to beginning construction of the permanent Structure, the top of rail elevations should be checked and verified that they have not changed from the assumed elevations utilized for the design of the bridge.

BRIDGE CONSTRUCTION:

After awarding the bid, but prior to the Provider entering BNSF's right-of-way or property, the Authority should conduct a pre-construction meeting with BNSF personnel in attendance to reiterate the safety requirements of construction activity adjacent to live tracks.

During construction, BNSF may require an independent engineering inspector to be present during certain critical activities of the Project, including but not limited to: driving foundation piles, erecting falsework, construction of shoring and retaining walls, placing concrete, placing soil backfill and compaction processes. The Authority shall reimburse BNSF for all costs of supplemental inspection services.

Within 90 days of the conclusion of the Project and final acceptance by BNSF, the Authority will provide BNSF with a complete electronic set of the bridge plans labeled "As Built". Those plans will reflect any and all deviations from the original plans that occurred during construction. The "As Built" plans will be submitted in Micro Station *.dgn electronic format (preferred) or AutoCAD *.dwg format. Electronic plans



are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. Actual measured "as constructed" clearances shall be shown as well as depth, size and location of all foundation components. The plans shall show dimensioned locations of existing and relocated utilities.

BRIDGE MAINTENANCE:

BNSF will be responsible for maintenance and repair of the Structure including the earth retention components, embankment slopes, erosion control, surface drainage, deck drains, walkways, and handrails.

Fencing and other pedestrian access controls within BNSF's right-of-way and incorporated into the Project shall be designed and maintained by the Authority. Trespasser control shall be the responsibility of the Authority. Graffiti removal on the substructure will be the responsibility of the Authority.

BRIDGE INSPECTION:

BNSF will conduct routine structural inspections. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, BNSF will provide an immediate inspection by qualified personnel and notify Authority of damage that may affect safe passage of trains. If necessary the BNSF will embargo weights or provide lane closures or other such measures to protect the structural integrity of the Structure such that there can be continuous safe passage of trains until repairs are made.

BRIDGE ALTERATIONS:

Except as provided otherwise by this Agreement, there will be no alterations made to the Structure that will alter the railroad vertical or horizontal clearances provided by the original design. Pipelines will be not be added or attached to the Structure without first submitting plans and calculations to BNSF for review and approval.



EXHIBIT "G"

Estimated Bridge Project Cost





METRO
FLOOD
DIVERSION
AUTHORITY

Diversion Authority Board Meeting

JUNE 22, 2023

Executive Director Report

Joel Paulsen, Executive Director

Happenings

-  Team meeting with RRVA and reviewing plans
-  Working with USACE on future designs
-  Meeting with utility owners and local governments on MOUs
-  Met with FEMA to provide best management practices that can be used at the national level for flood risk management
-  FEMA Mitigation Course attendees toured project
-  Met with City of Denver regarding best management practices for a P3 project in coordination with USACE



US Army Corps
of Engineers®
St. Paul District

FARGO MOORHEAD DIVERSION PROJECT

MONTHLY UPDATE

22 June 2023

1 Diversion Inlet Structure (DIS) – Construction

Structure includes 3-50 ft. wide Tainter gates. Construction is 94% complete. Construction completion date of 7 June 2023 being delayed into July due to PT bar fix modification. Installation of the 3 gates complete. Bridge beams/deck being installed. Schedule for remaining primary features:

2023: Install bridge and mechanical platform deck, operating machinery, seeding.

2024: Turf established.

2 Wild Rice River Structure (WRRS) – Construction

Structure includes 2-40 ft. wide Tainter gates. Construction is 86% complete and remains on schedule. The construction completion date is 3 December 2023. Preparations being made to construct earthen dam across old Wild Rice River channel. Installation of mechanical platform/vehicle service bridge ongoing. Remaining schedule:

2023: Control building, install gate operating machinery, dam embankment, seeding.

2024: Turf established.

3 I-29 Raise – Construction

Includes approximately 4 miles of interstate raise between County Roads 16 and 18. Construction is 74% complete. Constructing bridge deck, aprons and abutment walls. Paving of the mainline raise to be complete Summer 2023.

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

Construction was completed 10 November 2022. Partial turnover to the Diversion Authority for Operations and Maintenance occurred on 29 December 2022. O&M Manual being completed.

5 Red River Structure (RRS) - Construction

Structure includes 3-50 ft. wide Tainter gates. Construction is 20% complete. Construction completion date is 19 March 2026. Placement of foundation and stilling basin stabilization slabs ongoing. FMM Project's largest mass concrete placement occurred on 9 June at over 2600 cy.

6 Drain 27 Wetland Mitigation Project - Construction

Construction was completed 2 December 2022. Native plantings 5-year service contract was awarded 17 May 2023, with a completion date of 1 December 2027.

7 Drayton Dam Mitigation Project Design - Construction

Construction is 54% complete. Contractor notched existing dam to drawdown work area. Removal of the existing dam planned will restart 19 June 2023. Construction completion is 30 September 2023.

8 Southern Embankment – Reach SE-2A - Construction

Construction is 27% complete. Contractor is back on site and is remobilizing equipment. Scheduled completion date is 30 September 2024.

9 Southern Embankment Design – All remaining reaches are being designed.

SE-1B: BCOES review Aug 2023..... Contract award: February 2024

SE-2B: BCOES review complete 9 June 2023..... Contract award: April 2024

SE-3: 65% review starts Aug 2023 Contract award: January 2025

SE-4: 65% review starts Aug 2023 Contract award: April 2024

SE-5: 65% review starts late-July 2023 Contract award: January 2025

OHB Reach 43B: 95% review starts July 2023 Contract award: February 2024

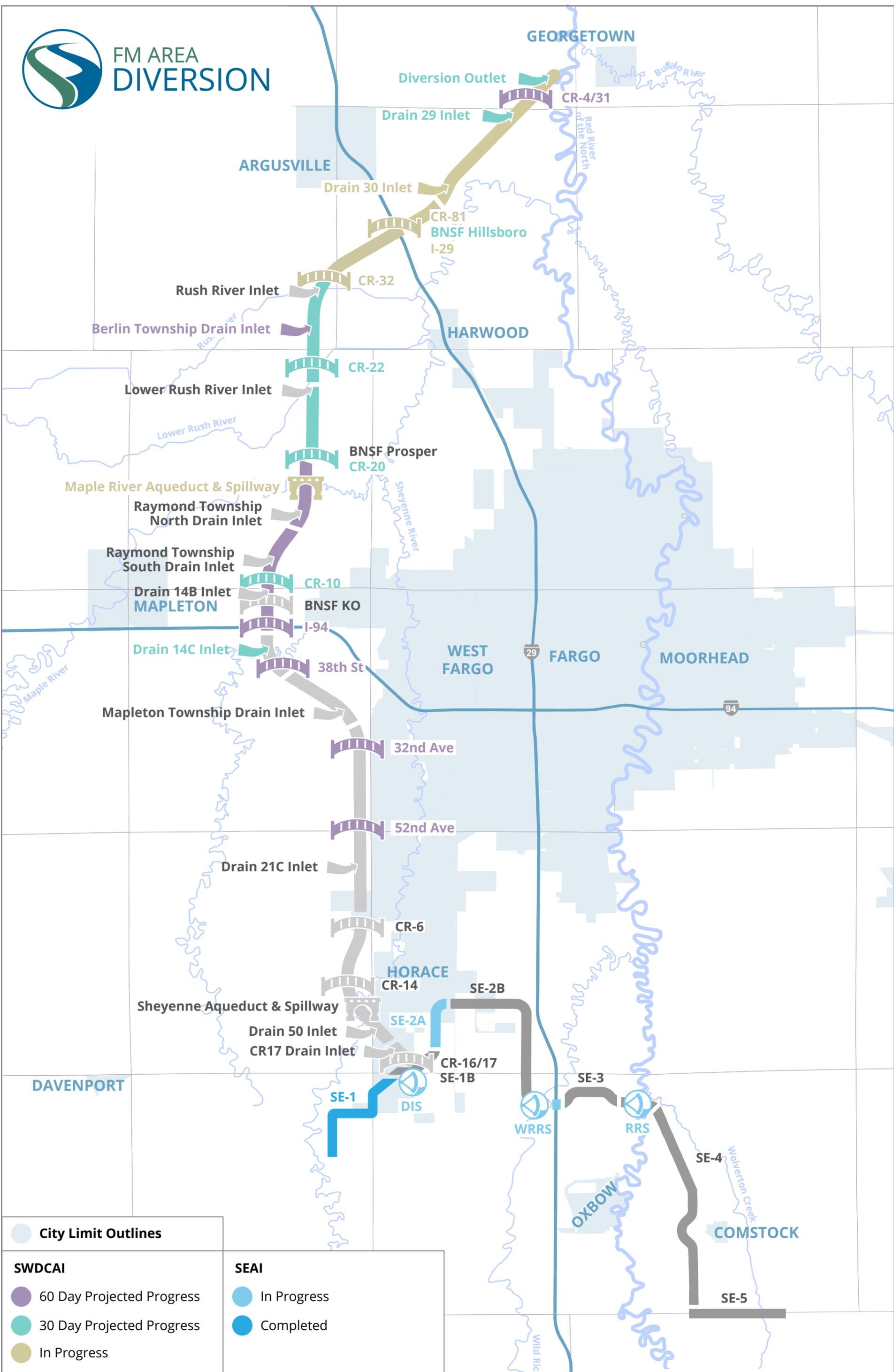


June 9, 2023: Red River Structure: Final of 4 mass concrete placements for 10-ft thick structure slab; also the largest concrete placement for the entire FMM Project. Photo from C Three Media



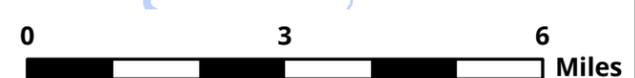


FM AREA DIVERSION



City Limit Outlines	SWDCAI	SEAI
60 Day Projected Progress	30 Day Projected Progress	In Progress
In Progress	Completed	

Progress Tracking: June 2023

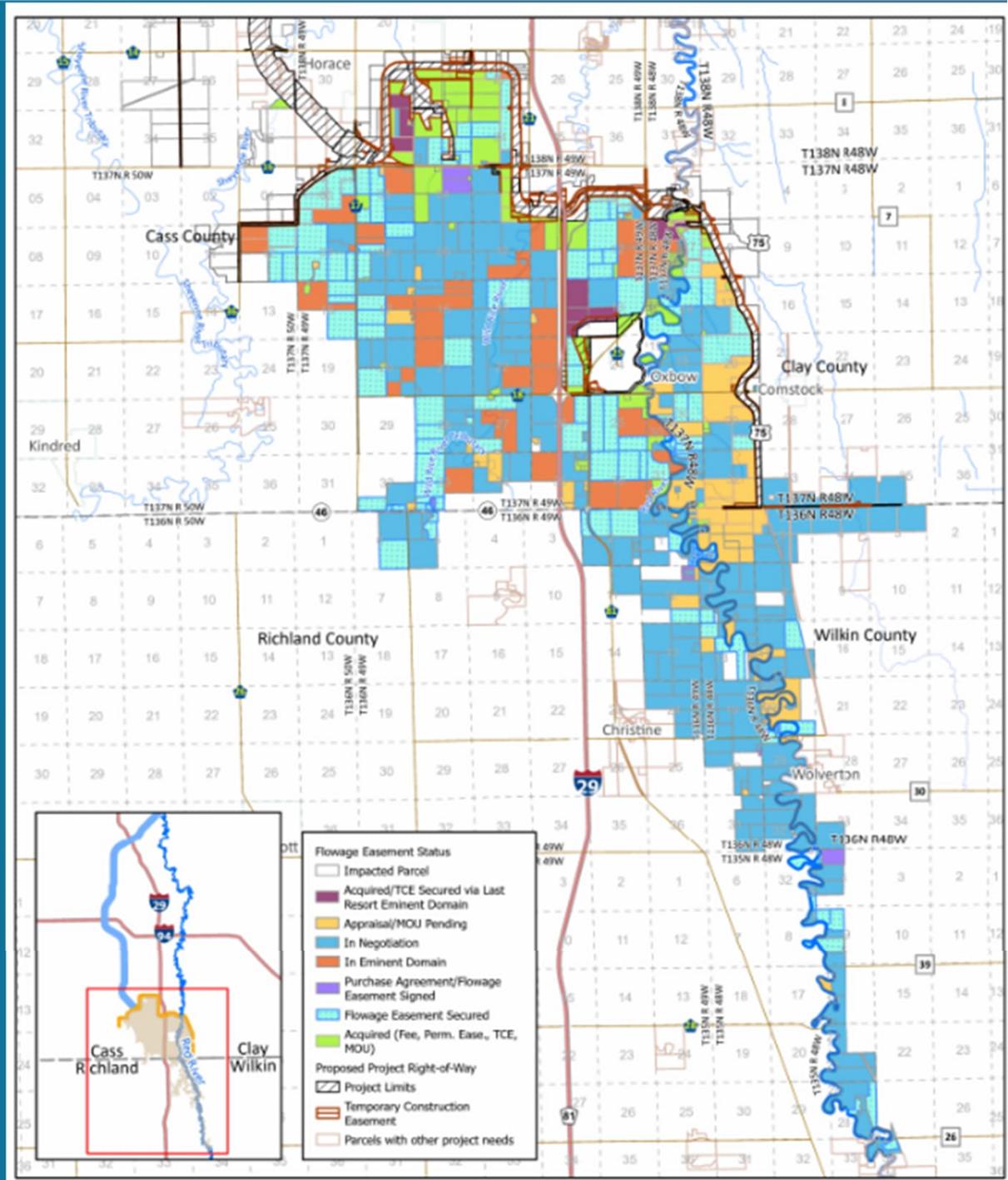
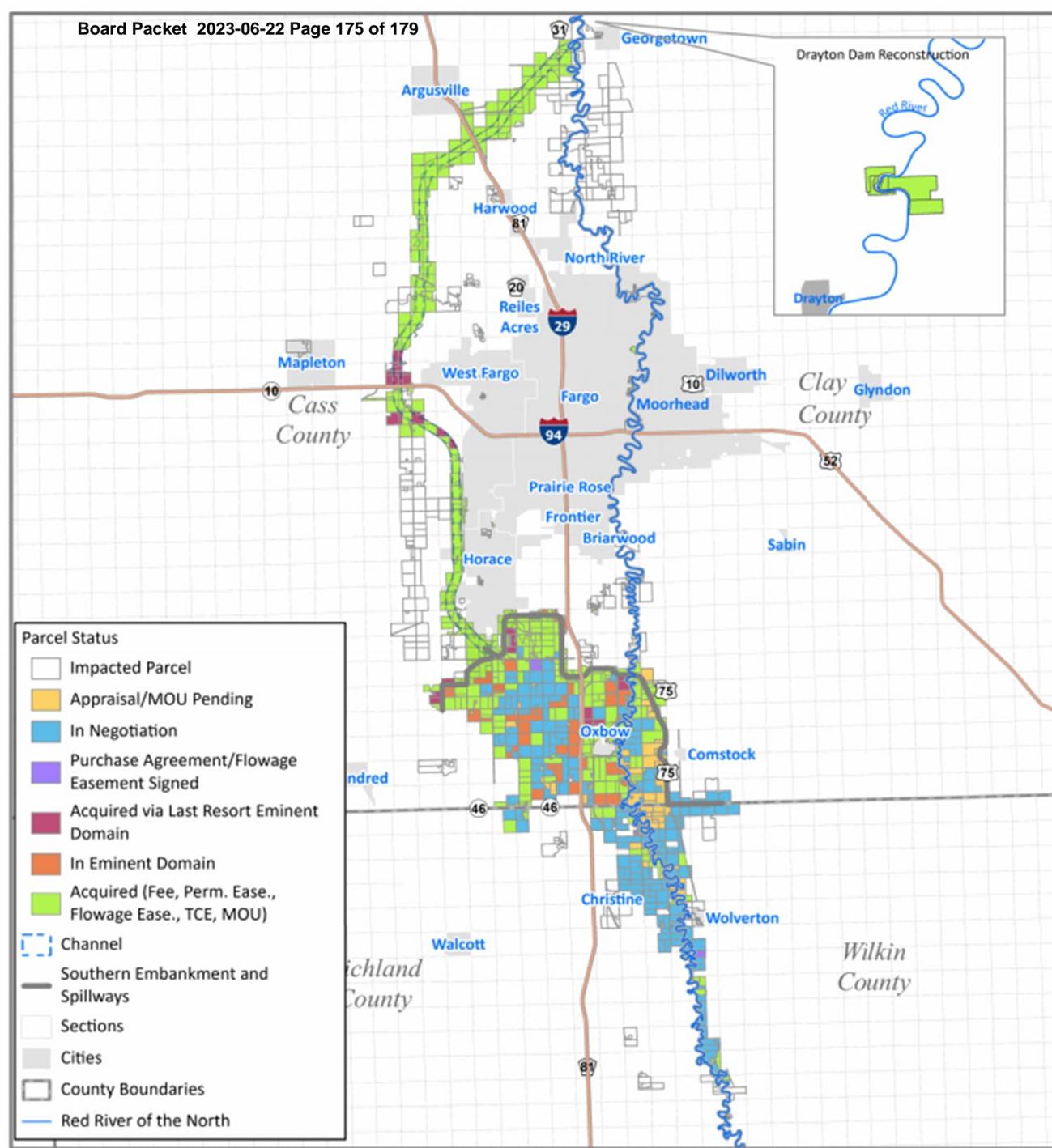




METRO
FLOOD
DIVERSION
AUTHORITY

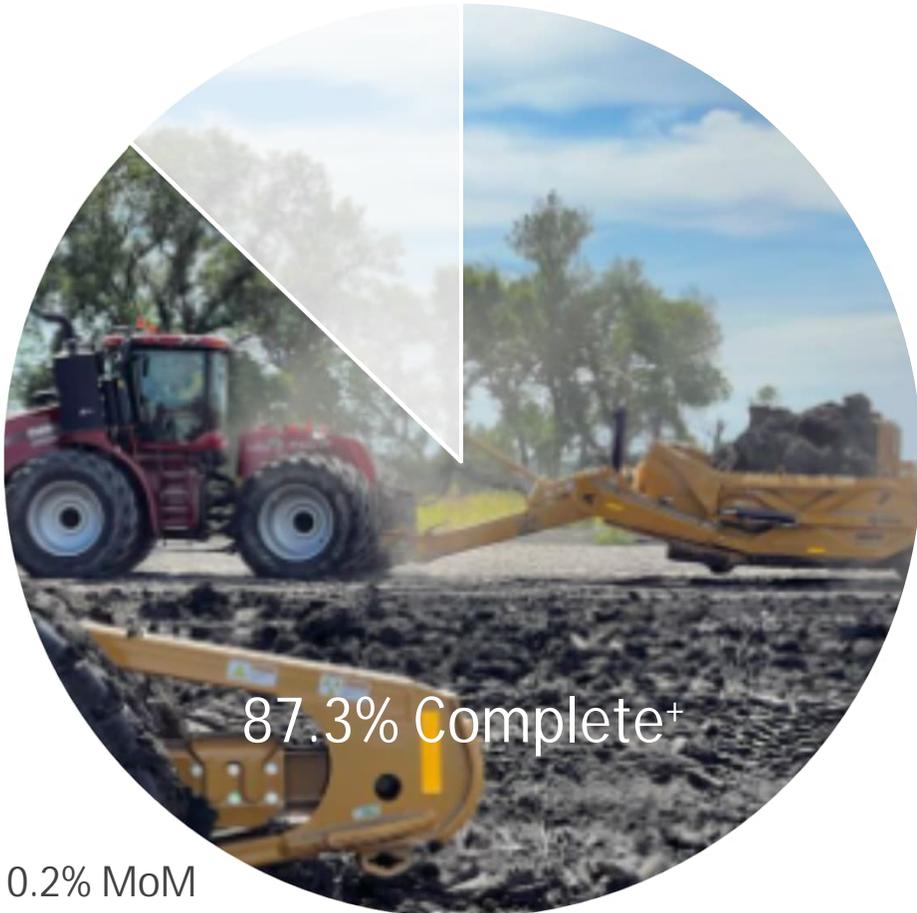
June 2023





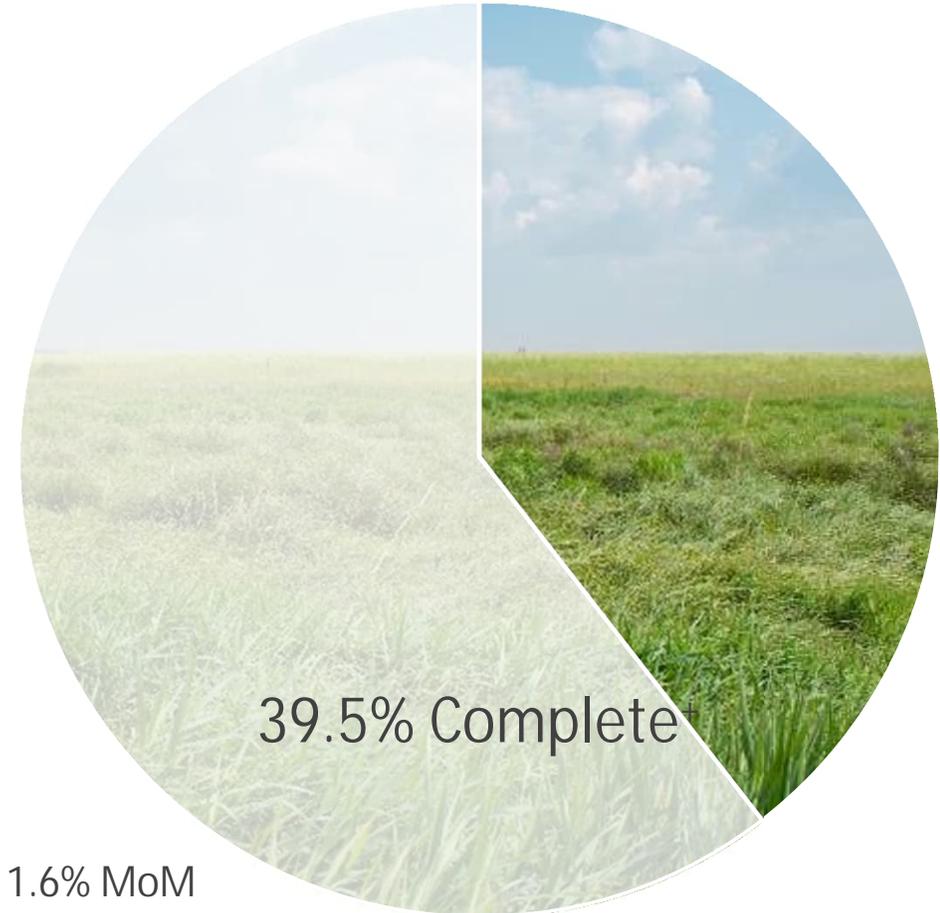
Property Acquisition Progress

Construction Footprint*



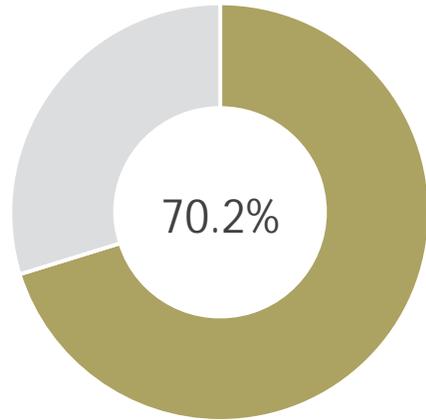
* Includes SWDCAI, SEAI, In-Town, Oxbow and Drayton
⁺ Parcels needed increased slightly since May 2023 due to SE-4 design

UMA Footprint**

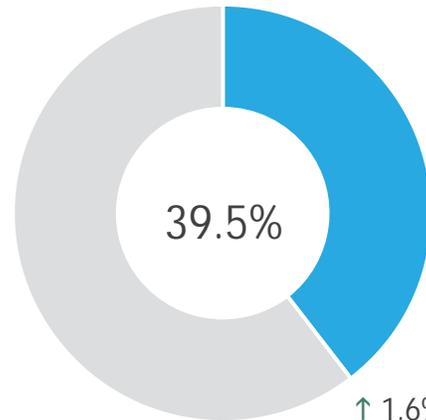


** Does not include parcels affected by or within Christine or Wolverton ring levees
As of June 12, 2023

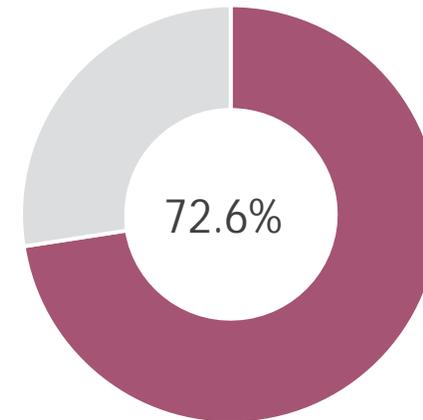
Property Acquisition Progress by Location



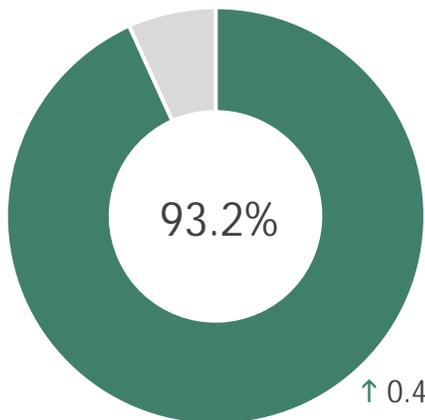
Southern Embankment & Associated Infrastructure



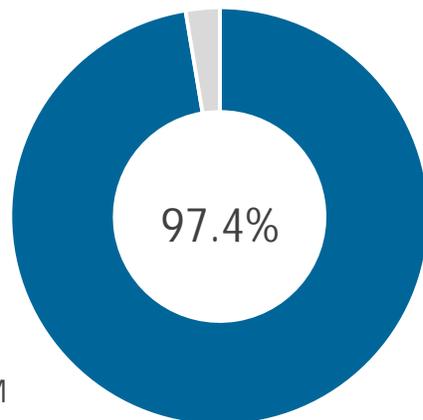
Upstream Mitigation Area



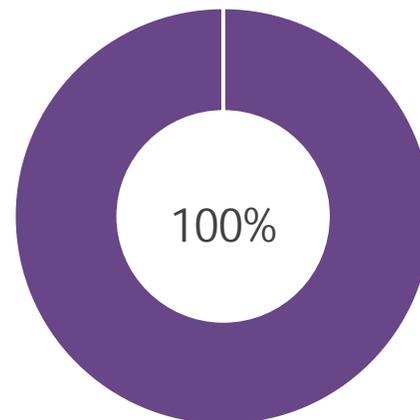
Environmental Monitoring Easements



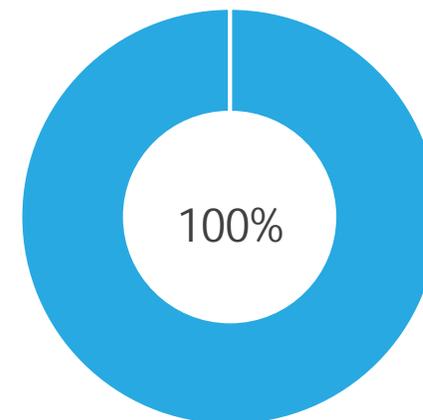
Stormwater Diversion Channel



Oxbow-Hickson-Bakke



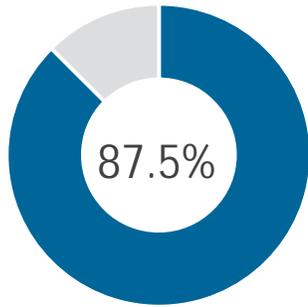
MFDA-Constructed In-Town Levees



Drayton Dam Mitigation

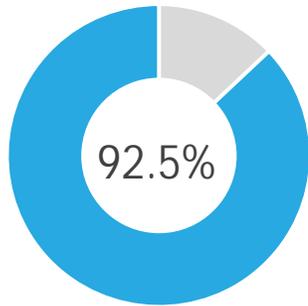
Landowner Overview

Construction Footprint*



303 Owner Groups
265 settlements achieved
23 ongoing negotiations
15 in litigation

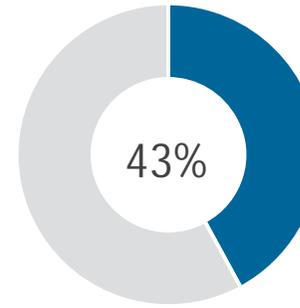
87.5% of owner groups have settled



573 Parcels
500 settlements achieved
38 ongoing negotiations
35 in litigation

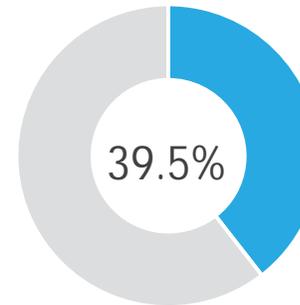
92.5% of parcels have been acquired

UMA Footprint**



254 Owner Groups
109 settlements achieved
120 ongoing negotiations
30 in litigation

43% of owner groups have settled



567 Parcels
224 settlements achieved
295 ongoing negotiations
48 in litigation

39.5% of parcels have been acquired

* Includes SWDCAI, SEAI, In-Town, Oxbow and Drayton

** Does not include parcels affected by or within Christine or Wolverton ring levees

Property Acquisition Status Report

Key Activities:

- Continue negotiating settlement agreements for existing eminent domain actions
- In the last month, successfully closed 23 parcels / 11 landowners
- Batch #8 next steps letters and eminent domain filing authorization requested from CCJWRD for 3 property owners
- Focused on coordinating completion of appraisals for remaining property needs in UMA and Southern Embankment
- Prepared the first plat of project land for the SWDCAI (for lands in Wiser Township)
- Initiated home removal/demo work under WP38A (5 properties (4 in ND, 1 in MN))