



Finance Committee Agenda

Diversion Authority Finance Committee

June 26, 2024 @4:00pm CST

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

1. Call to Order
 - a. Roll call of Members
2. Approve minutes from May 22, 2024
[Attachment 00.01] (Pg. 3)
3. Approve Order of Agenda
4. Approval of Bills
[Attachment 00.02] (Pg. 6)
5. Finance Report
[Attachment 01.00] (Pg. 25)
6. Cash Budget Report
[Attachment 02.00] (Pg. 49)
7. MOUs and Agreements
[Attachment 03.00] (Pg. 56)
 - a. Minnkota Power Coop. & MFDA SWDCAI MOU Amendment 1 [Attachment 03.01] (Pg. 59)
 - b. Raymond Township & MFDA SWDCAI MOU [Attachment 03.02] (Pg. 62)
 - c. Clay County & MFDA 37-Foot Road Raises MOU [Attachment 03.03] (Pg. 96)
 - d. SEWUD & MFDA SEAI & UMA MURA [Attachment 03.04] (Pg. 127)
 - e. USACE, ND SHPO & MFDA MOA Log Cabin Relocation in the UMA
[Attachment 03.05] (Pg. 223)
8. DA Board Approval Contracting Actions
[Attachment 04.00] (Pg. 233)
 - a. C-Three Media New Agreement [Attachment 04.01] (Pg. 235)
9. Other Business
 - a. MFDA Audit Report
[Attachment 05.00] (Pg. 238)
10. Next Meeting: July 24, 2024
11. Adjournment

MEDIA AND PUBLIC PARTICIPATION INFORMATION

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

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



Metro Flood Diversion Authority Finance Committee Meeting Minutes

4:00 PM – May 22, 2024

City of Fargo Commission Chambers

A regular meeting of the Metro Flood Diversion Authority Finance Committee was held on May 22, 2024. The following members were present: Bernie Dardis, Mayor, City of West Fargo; Dr. Tim Mahoney, Mayor, City of Fargo; Susan Thompson, Finance Director, City of Fargo; Lori Johnson, Clay County Auditor/Treasurer; Chad Peterson, Cass County Commissioner; Shelly Carlson, Mayor, City of Moorhead; Mike Redlinger, Administrator, City of Fargo; Tony Grindberg, Cass County Commissioner; Mike Rietz, City of Moorhead Assistant City Manager and Brandy Madrigga, Cass County Finance Director.

Member(s) absent: Rick Steen, Cass County Joint Water Resource District and Dave Piepkorn, Fargo City Commissioner.

1. CALL TO ORDER

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

2. APPROVE MINUTES FROM THE APRIL 2024 MEETING

MOTION PASSED

Mayor Mahoney moved to approve the minutes from the April 2024 meeting and Mr. Grindberg seconded the motion. On a voice vote, the motion carried.

3. APPROVE ORDER OF THE AGENDA

MOTION PASSED

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

4. APPROVAL OF BILLS

Ms. Thompson reported that the bills payable through May 15, 2024, total \$4,714,017, and are payable to the usual vendors, with CCJWRD being the largest at \$3,678,621.

MOTION PASSED

Mr. Grindberg moved to approve the bills as presented and Mr. Reitz seconded the motion. On a roll call vote, the motion carried.

5. FINANCIAL REPORT

Ms. Thompson reported that the total assets as of April 30, 2024, are \$237,547,953; liabilities total (\$6,150,799), and the current net position is \$243,698,752.

MOTION PASSED

Mayor Carlson moved to approve the financial report as presented and Mr. Redlinger seconded the motion. On a voice vote, the motion carried.

6. CASH BUDGET REPORT

Mr. Barthel reported that the cash budget continues to track well. The sales tax revenues from the City of Fargo and Cass County are slightly underreported due to the lag in reporting. There have been no Legacy or SRF bond draws to date, and as anticipated, lands and utilities continue to be the largest expenses. The operations budget is also tracking on budget and costs to date are \$507,929.

7. DA BOARD APPROVAL CONTRACTING ACTIONS

Mr. Barthel provided an overview and summary of the following contracting actions:

Task Order 16, Amendment 0 – Utility Relocation - this task order will include burying approximately 2.2 miles of OH power out of the existing Oxbow substation from Main Avenue near Bakke, ND, to the SE-3 crossing on Highway 81 near the Red River Structure. Cass County Electric CO-OP, Inc., - \$556,020.

WP-47C, Change Order 2 – Test Holes and Wells – this Change order is required to increase the number of monitoring wells to allow for aquifer testing for five production well locations. It also accounts for changing the well casing material from SDR 21 PVC to SDR 17 PVC due to the change in well depth per the final design. LTP Enterprises, Inc., - \$142,993.

MOTION PASSED

Mayor Mahoney moved to approve the contracting actions as presented and Mr. Grindberg seconded the motion. On a roll call vote, the motion carried.

8. OTHER BUSINESS

a. WP52A Bid Award

The contract for Work Package 52A gravel resurfacing, Cass County, North Dakota, was publicly advertised, and three bids were received at the virtual public bid opening on April 25, 2024, at 1:00 PM.

Bids were received from Central Specialties, Inc., in the amount of \$501,551; Industrial Builders, Inc., in the amount of \$479,655 and Park Construction Company, in the amount of \$538,829. The engineers estimate for the project was \$459,002.

Jacobs (PMC), HMG LLC (EOR), and the Authority’s legal counsel have reviewed and evaluated the bid documents and recommend the Metro Flood Diversion Authority award the contract for WP52A to Industrial Builders, Inc., in the amount of \$479,655 as the lowest responsive bidder.

MOTION PASSED

Mayor Mahoney moved to award the bid to Industrial Builders, Inc., and Mayor Carlson seconded the motion. On a roll call vote, the motion carried.

b. Land Budget Allocation

Ms. Smith reported that the land budget was reevaluated and increased by \$1.5 million due to costs in SE 2B, 3, 4, & 5; there are additional funds in the diversion channel fund to cover this adjustment. The budget will be reviewed again in July, at which time a \$22 million increase in the Upstream Mitigation Area will be needed.

MOTION PASSED

Mayor Mahoney moved to approve the budget allocation and Mr. Grindberg seconded the motion. On a roll call vote, the motion carried.

c. Resolution Related to The Automatic Issuance and Exchange of Temporary Authority Loan Improvement Warrants

Mr. Shockley provided an overview and summary outlining the above-referenced resolution:

MOTION PASSED

Mayor Carlson moved to approve the resolution as presented and Mr. Peterson seconded the motion. On a roll call vote, the motion carried.

9. NEXT MEETING

The next meeting will be June 26, 2024.

10. ADJOURNMENT

The meeting adjourned at 4:19 PM.

Finance Committee Bills from June 2024

Vendor	Description		
City of Fargo	Reimburse complementary in-town flood projects	\$	1,341,182.99
City of Fargo	Reimburse complementary in-town flood projects	\$	1,330,597.88
Dorsey & Whitney	Legal services rendered through May 31, 2024	\$	273,441.82
Cass County Joint Water Resource District	Diversion bills – Request #121 CCJWRD	\$	224,559.85
Clay County	Diversion bills – Request #42 MCCJPA	\$	180,827.56
Ohnstad Twichell, P.C.	Legal services rendered through May 21, 2024	\$	147,339.49
Ankura Consulting	Consultant services rendered through May 31, 2024	\$	134,382.50
Dorsey & Whitney	Legal services rendered through May 31, 2024	\$	57,531.00
Ankura Consulting	Consultant services rendered through April 30, 2024	\$	48,107.50
Rush River Water Resource District	Reimburse engineering services related to MOU	\$	8,253.75
BNSF Railway	Preliminary engineering services from 2023	\$	5,052.60
City of Christine	Reimburse legal services related to MOU	\$	3,412.50
Cass County	Reimburse misc expenses from Diversion Authority office	\$	2,842.60
Total Bills Received through June 18, 2024		\$	<u>3,757,532.04</u>



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www.FargoND.gov

May 16, 2024

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 request #32 for reimbursement invoices paid totaling \$1,341,182.99. These costs are for work on complementary in-town flood protection projects for costs paid in January through April 2024.

Project Narrative, this request:

Project Number	Project Description	Amount
BR24C1	WM Rep St RCN	205,147.75
FLDBUY	Flood Buyouts - Property Acquisition Expense	23.25
FLDSPC	Tax Payments on Flood Buyout Properties	15,114.06
FM15J	Belmont Flood Risk Management Project	-1,288.06
FM19B	Royal Oaks Area - Flood Risk Management	2,186.25
FM19C	Woodcrest Drive Area - Flood Risk Management	8,467.85
FM21A	Red River Erosion Protection & Bank Stabilization	7,924.16
FM24A	South University Wall Rep	25,814.39
NR23A	Storm Lift Rehab - #27 & 38	1,028,093.60
NR24A	Storm Lift Rehab - #27	610.69
NR24B	Storm Lift Rehab - #11 & 57	49,089.05
Total Expense for Period		\$1,341,182.99

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

Sincerely,

Susan Thompson
 Director of Finance, City of Fargo

City of Fargo, North Dakota

Complementary In-Town Flood Protection Costs

January 1, 2024 - April 30, 2024

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name	Accounting Period Mo	Accounting Period Year	Bookmarked Invoice
BR24C1	WM REP ST RCN-woodcrest	4600002062000	Retainage and Retainage R	-10,797.25	335571	BR24C1 #1 026	05/02/2024	MASTER CONSTRUCTION CO INC	4	2024	20
460-0000-206.20-00 - Total				-10,797.25							
BR24C1	WM REP ST RCN-woodcrest	46035305107358	Flood Mitigation	190,020.00	335571	BR24C1 #1 014	05/02/2024	MASTER CONSTRUCTION CO INC	4	2024	20
460-3530-510.73-58 - Total				190,020.00							
BR24C1	WM REP ST RCN-woodcrest	46035305107361	Miscellaneous	2,500.00	335571	BR24C1 #1 020	05/02/2024	MASTER CONSTRUCTION CO INC	4	2024	20
460-3530-510.73-61 - Total				2,500.00							
BR24C1	WM REP ST RCN-woodcrest	46035305107366	Miscellaneous	3,500.00	335571	BR24C1 #1 018	05/02/2024	MASTER CONSTRUCTION CO INC	4	2024	20
460-3530-510.73-66 - Total				3,500.00							
BR24C1	WM REP ST RCN-woodcrest	46035305107369	Miscellaneous	19,925.00	335571	BR24C1 #1 019	05/02/2024	MASTER CONSTRUCTION CO INC	4	2024	20
460-3530-510.73-69 - Total				19,925.00							
BR24C1 - Total				205,147.75							
FLDBUY	FLOOD ACQUISITION	46035305103899	RECORDING FEES	23.25	334114	787488844714SFL	02/22/2024	SIMPLIFILE LC	2	2024	6
460-3530-510.38-99 - Total				23.25							
FLDBUY - Total				23.25							
FLDSPC	FLOOD SPECIALS PAYOFF	46035305208012	2023 TXS/2024 SPEC PAY	12,309.23	WP02240001	WP02240001	02/13/2024	City of Fargo	2	2024	22
460-3530-520.80-12 - Total				12,309.23							
FLDSPC	FLOOD SPECIALS PAYOFF	46035305208016	2023 TXS/2024 SPEC PAY	2,804.83	WP02240001	WP02240001	02/13/2024	City of Fargo	2	2024	22
460-3530-520.80-16 - Total				2,804.83							
FLDSPC - Total				15,114.06							
FM15J5	FLOOD MIT-Belmont Prk/intrk	46035305103305	FEMA LOCAL SHARE	-750.75	ES14230007	ES14230007	02/05/2024	City of Fargo	2	2024	21
460-3530-510.33-05 - Total				-750.75							
FM15J5	FLOOD MIT-Belmont Prk/intrk	46035305107410	FEMA LOCAL SHARE	-1,974.76	ES14230007	ES14230007	02/05/2024	City of Fargo	2	2024	21
460-3530-510.74-10 - Total				-1,974.76							
FM15J5 - Total				-2,725.51							
FM15J6	FLOOD MIT-Belmont Park	46035305103332	FLOOD MITIGATION	1,053.03	334115	13448.03-6	02/22/2024	SRF CONSULTING GROUP, INC	2	2024	7
FM15J6	FLOOD MIT-Belmont Park	46035305103332	ACQUISITION & RELOCATION	192.21	334584	13448.03-7	03/14/2024	SRF CONSULTING GROUP, INC	3	2024	10
FM15J6	FLOOD MIT-Belmont Park	46035305103332	FLOOD MITIGATION	192.21	335145	13448.03-8	04/11/2024	SRF CONSULTING GROUP, INC	4	2024	15
460-3530-510.33-32 - Total				1,437.45							
FM15J6 - Total				1,437.45							
FM19B0	FLOOD MIT-Royal Oaks Dr	46035305103305	ROYAL OAKS FLOOD MIT PROJ	2,186.25	334210	69443	02/29/2024	HOUSTON ENGINEERING INC	2	2024	8
460-3530-510.33-05 - Total				2,186.25							
FM19B0 - Total				2,186.25							
FM19C0	FLOOD MIT-Woodcrest	46035305103305	WOODCREST FLOOD MIT PROJ	8,467.85	334210	69444	02/29/2024	HOUSTON ENGINEERING INC	2	2024	8
460-3530-510.33-05 - Total				8,467.85							
FM19C0 - Total				8,467.85							
FM21A0	FLOOD MIT-RR Erosion SUInv	46035305103305	RED RIVER EROSION PROT	7,924.16	334210	69448	02/29/2024	HOUSTON ENGINEERING INC	2	2024	8
460-3530-510.33-05 - Total				7,924.16							
FM21A0 - Total				7,924.16							
FM24A0	FLOOD MIT-S Univ wall rep	46035305103305	UNIV DR FLOODWALL REPAIR	17,933.20	333947	10201966	02/15/2024	KLJ ENGINEERING, LLC	2	2024	5
FM24A0	FLOOD MIT-S Univ wall rep	46035305103305	UNIV DR FLOODWALL REPAIR	169.10	334832	10204487	03/28/2024	KLJ ENGINEERING, LLC	3	2024	13
FM24A0	FLOOD MIT-S Univ wall rep	46035305103305	UNIV DR FLOODWALL REPAIR	4,518.30	334934	10204593	04/04/2024	KLJ ENGINEERING, LLC	4	2024	14
FM24A0	FLOOD MIT-S Univ wall rep	46035305103305	UNIV DR FLOODWALL REPAIR	2,838.35	335392	10205656	04/25/2024	KLJ ENGINEERING, LLC	4	2024	18
FM24A0	FLOOD MIT-S Univ wall rep	46035305103305	UNIV DR FLOODWALL REPAIR	109.20	335392	10205657	04/25/2024	KLJ ENGINEERING, LLC	4	2024	18
460-3530-510.33-05 - Total				25,568.15							
FM24A0 - Total				25,568.15							
FM24A1	FLOOD MIT-S Univ wall rep	46035305105410	FORUM COMMUNICATIONS	246.24	1095	02/28-03/14/24	04/05/2024	P CARD BMO	3	2024	2
460-3530-510.54-10 - Total				246.24							
FM24A1 - Total				246.24							
NR23A0	STRM LFT RHAB DR 27 /38 S	46035305103305	STORM SEWER LS #47&48	29,505.95	334210	69449	02/29/2024	HOUSTON ENGINEERING INC	2	2024	8
460-3530-510.33-05 - Total				29,505.95							
NR23A0 - Total				29,505.95							
NR23A2	STRM LFT RHAB DR 27 /38 S	4600002062000	Retainage and Retainage R	-52,557.25	334669	NR23A2 #4 005	03/21/2024	KEY CONTRACTING INC	3	2024	12
460-0000-206.20-00 - Total				-52,557.25							
NR23A2	STRM LFT RHAB DR 27 /38 S	46035305107358	Lift Station #47	658,750.00	334669	NR23A2 #4 002	03/21/2024	KEY CONTRACTING INC	3	2024	12
NR23A2	STRM LFT RHAB DR 27 /38 S	46035305107358	Storm Sewer	350,130.00	334669	NR23A2 #4 004	03/21/2024	KEY CONTRACTING INC	3	2024	12
460-3530-510.73-58 - Total				1,008,880.00							
NR23A2	STRM LFT RHAB DR 27 /38 S	46035305107369	Change Order 1	2,681.90	334669	NR23A2 #4 001	03/21/2024	KEY CONTRACTING INC	3	2024	12
NR23A2	STRM LFT RHAB DR 27 /38 S	46035305107369	Miscellaneous	39,583.00	334669	NR23A2 #4 003	03/21/2024	KEY CONTRACTING INC	3	2024	12
460-3530-510.73-69 - Total				42,264.90							
NR23A2 - Total				999,587.65							
NR24A1	STRM LFT RHAB-#27	46035305103899	RECORDING FEES	23.50	333676	527680141141SFL	02/01/2024	SIMPLIFILE LC	1	2024	3
NR24A1	STRM LFT RHAB-#27	46035305103899	FEDEX73736443	89.35	1084	01/02-01/14/24	02/05/2024	P CARD BMO	1	2024	1
NR24A1	STRM LFT RHAB-#27	46035305103899	RECORDING FEE	92.00	334583	527684469887SFL	03/14/2024	SIMPLIFILE LC	3	2024	9
460-3530-510.38-99 - Total				204.85							
NR24A1	STRM LFT RHAB-#27	46035305105410	FORUM COMMUNICATIONS	405.84	1095	02/28-03/14/24	04/05/2024	P CARD BMO	3	2024	2
460-3530-510.54-10 - Total				405.84							
NR24A1 - Total				610.69							
NR24B0	STRM LFT RHAB-#11 & 57	46035305103305	STORM LS #119	41,084.25	334657	69846	03/21/2024	HOUSTON ENGINEERING INC	3	2024	11
460-3530-510.33-05 - Total				41,084.25							
NR24B0 - Total				41,084.25							
NR24B3	STRM LFT RHAB-#11 & 57	46035305106810	UPGRADE STORM WATER PUMP	8,004.80	335303	041624	04/18/2024	XCEL ENERGY	4	2024	17
460-3530-510.68-10 - Total				8,004.80							
NR24B3 - Total				8,004.80							
Overall - Total				1,341,182.99							



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June 13, 2024

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 request #33 for reimbursement invoices paid totaling \$1,330,597.88. These costs are for work on complementary in-town flood protection projects for costs paid in May 2024.

Project Narrative, this request:

Project Number	Project Description	Amount
BR24C1	WM Rep St RCN	449,043.35
FM15J	Belmont Flood Risk Management Project	45,128.12
FM16A	North Side - Flood Risk Management	-600.00
FM19B	Royal Oaks Area - Flood Risk Management	228.00
FM19C	Woodcrest Drive Area - Flood Risk Management	6,288.35
FM21A	Red River Erosion Protection & Bank Stabilization	6,901.19
NR23A	Storm Lift Rehab - #27 & 38	792,835.37
NR24B	Storm Lift Rehab - #11 & 57	30,773.50
Total Expense for Period		\$1,330,597.88

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

Sincerely,



Susan Thompson
 Director of Finance, City of Fargo



City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
May 1, 2024 - May 31, 2024

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name	Accounting Period	AP Accounting Period Year	Bookmarked Invoice
BR24C1	WM REP ST RCN-woodcrest	4600002062000	Retainage and Retainage R	-15,064.97	336108	BR24C1 #3 046	05/23/2024	MASTER CONSTRUCTION CO INC	5	2024	6
460-0000-206.20-00 - Total				-15,064.97							
BR24C1	WM REP ST RCN-woodcrest	46035305107358	Flood Mitigation	105,960.00	335955	BR24C1 #2 020	05/16/2024	MASTER CONSTRUCTION CO INC	5	2024	4
BR24C1	WM REP ST RCN-woodcrest	46035305107358	Flood Mitigation	298,148.45	336108	BR24C1 #3 029	05/23/2024	MASTER CONSTRUCTION CO INC	5	2024	6
460-3530-510.73-58 - Total				404,109.45							
BR24C1	WM REP ST RCN-woodcrest	46035305107363	Flood Mitigation	59,160.00	335955	BR24C1 #2 021	05/16/2024	MASTER CONSTRUCTION CO INC	5	2024	4
BR24C1	WM REP ST RCN-woodcrest	46035305107363	Miscellaneous	1,912.50	335955	BR24C1 #2 023	05/16/2024	MASTER CONSTRUCTION CO INC	5	2024	4
BR24C1	WM REP ST RCN-woodcrest	46035305107363	Retainage and Retainage R	-4,223.63	335955	BR24C1 #2 030	05/16/2024	MASTER CONSTRUCTION CO INC	5	2024	4
BR24C1	WM REP ST RCN-woodcrest	46035305107363	Flood Mitigation	3,150.00	336108	BR24C1 #3 030	05/23/2024	MASTER CONSTRUCTION CO INC	5	2024	6
460-3530-510.73-63 - Total				59,998.87							
BR24C1 - Total				449,043.35							
FM15J5	FLOOD MIT-Belmnt Prk/intk	46035305103305	DA TO FUND ELIGIBLE EXPEN	563.64	ES05240002	ES05240002	05/20/2024	City of Fargo	5	2024	8
460-3530-510.33-05 - Total				563.64							
FM15J5	FLOOD MIT-Belmnt Prk/intk	46035305107362	DA TO FUND ELIGIBLE EXPEN	43,721.65	ES05240002	ES05240002	05/20/2024	City of Fargo	5	2024	8
460-3530-510.73-62 - Total				43,721.65							
FM15J5 - Total				44,285.29							
FM15J6	FLOOD MIT-Belmont Park	46035305103332	FLOOD MITIGATION: BELMONT	842.83	335826	13448.03-9	05/09/2024	SRF CONSULTING GROUP, INC	5	2024	3
460-3530-510.33-32 - Total				842.83							
FM15J6 - Total				842.83							
FM16A1	FLOOD MIT-N Cass 20/129	46035305103899	LEASE APPLICATION FEE	-600.00	304060	5/13/2020	05/14/2020	BNSF RAILWAY COMPANY	5	2024	1
460-3530-510.38-99 - Total				-600.00							
FM16A1 - Total				-600.00							
FM19B0	FLOOD MIT-Royal Oaks Dr	46035305103305	ROYAL OAKS FLOOD MITIGATI	228.00	335754	70484	05/09/2024	HOUSTON ENGINEERING INC	5	2024	2
460-3530-510.33-05 - Total				228.00							
FM19B0 - Total				228.00							
FM19C0	FLOOD MIT-Woodcrest	46035305103305	WOODCREST FLOOD MITIGATIO	6,288.35	335754	70485	05/09/2024	HOUSTON ENGINEERING INC	5	2024	2
460-3530-510.33-05 - Total				6,288.35							
FM19C0 - Total				6,288.35							
FM21A0	FLOOD MIT-RR Erosion SUnv	46035305103305	RED RIVER EROSION PROT	6,901.19	335754	70488	05/09/2024	HOUSTON ENGINEERING INC	5	2024	2
460-3530-510.33-05 - Total				6,901.19							
FM21A0 - Total				6,901.19							
NR23A0	STRM LFT RHAB DR 27 /38 S	46035305103305	STORM LS #47 & 48	35,179.97	335754	70489	05/09/2024	HOUSTON ENGINEERING INC	5	2024	2
460-3530-510.33-05 - Total				35,179.97							
NR23A0 - Total				35,179.97							
NR23A2	STRM LFT RHAB DR 27 /38 S	4600002062000	Retainage and Retainage R	-39,876.60	336090	NR23A2 #5 040	05/23/2024	KEY CONTRACTING INC	5	2024	5
460-0000-206.20-00 - Total				-39,876.60							
NR23A2	STRM LFT RHAB DR 27 /38 S	46035305107358	Lift Station #47	106,250.00	336090	NR23A2 #5 001	05/23/2024	KEY CONTRACTING INC	5	2024	5
NR23A2	STRM LFT RHAB DR 27 /38 S	46035305107358	Lift Station #48	533,500.00	336090	NR23A2 #5 002	05/23/2024	KEY CONTRACTING INC	5	2024	5
NR23A2	STRM LFT RHAB DR 27 /38 S	46035305107358	Storm Sewer	135,330.00	336090	NR23A2 #5 004	05/23/2024	KEY CONTRACTING INC	5	2024	5
460-3530-510.73-58 - Total				775,080.00							
NR23A2	STRM LFT RHAB DR 27 /38 S	46035305107369	Miscellaneous	22,452.00	336090	NR23A2 #5 003	05/23/2024	KEY CONTRACTING INC	5	2024	5
460-3530-510.73-69 - Total				22,452.00							
NR23A2 - Total				757,655.40							
NR24B0	STRM LFT RHAB-#11 & 57	46035305103305	STORM LS# 11 & 57	30,773.50	336238	70840	05/30/2024	HOUSTON ENGINEERING INC	5	2024	7
460-3530-510.33-05 - Total				30,773.50							
NR24B0 - Total				30,773.50							
Overall - Total				1,330,597.88							

Jun 10, 2024

1

11:31:22 AM



MINNEAPOLIS OFFICE
612-340-2600

(Tax Identification No. 41-0223337)

STATEMENT OF ACCOUNT FOR PROFESSIONAL SERVICES

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

June 5, 2024
Invoice Number 3981329

Client-Matter No.: 491379-00004
Provide advice on potential construction litigation claims

For Legal Services Rendered Through May 31, 2024

INVOICE TOTAL

Total For Current Legal Fees	\$272,825.50
Total For Current Disbursement and Service Charges	\$616.32
Total Due This Invoice	\$273,441.82

Payment Methods

ACH/Wire (Preferred Method)

Beneficiary Bank	U.S. Bank National Association 800 Nicollet Mall Minneapolis, MN 55402
ABA Routing Number	091000022
Account Number	1047-8339-8282
Swift Code	USBKUS44IMT

Check

Dorsey & Whitney LLP
P.O. Box 1680
Minneapolis, MN 55480-1680

Online Options

Contact our Billing team for first time access credentials at onlinepayments@dorsey.com

Payment site:
[Dorsey Login \(e-billexpress.com\)](https://dorsey.com/billing)

Please make reference to the invoice number – send remittance to remittance@dorsey.com

Service charges are based on rates established by Dorsey & Whitney. A schedule of those rates has been provided and is available upon request. Disbursements and service charges, which either have not been received or processed, will appear on a later statement.

ALL INVOICES ARE DUE 30 DAYS FROM DATE OF INVOICE UNLESS OTHERWISE EXPRESSLY AGREED BY DORSEY & WHITNEY

Questions regarding this invoice? Please contact your Dorsey attorney or Accounts Receivable @ ARhelpdesk@dorsey.com or 612-492-5278.



SENT VIA EMAIL

**Cass County
Joint Water
Resource
District**

May 30, 2024

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

Rodger Olson
Chairman
Leonard, North
Dakota

Greetings:

Ken Lougheed
Manager
Gardner, North Dakota

RE: Metro Flood Diversion Project

Keith Weston
Manager
Fargo, North Dakota

Enclosed please find copies of bills totaling \$224,559.85 regarding the above referenced project.

Jacob Gust
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.

Rick Steen
Manager
Fargo, North Dakota

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

Thank you.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT

Melissa Hinkemeyer
Director, Secretary

1201 Main Avenue West
West Fargo, ND 58078-1301

Leilei Bao

**Leilei Bao
Treasurer**

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

Enclosures

METRO FLOOD DIVERSION RIGHT OF ENTRY/LAND ACQUISITION COST SHARE INVOICES							5/31/2024
Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description	
				-11,045.24	The Title Company	Closing Proceeds - Thoen	
				-28,164.49	The Title Company	Closing Proceeds - Otis, Julie Revocable Trust Et al	
4/15/2024				-180.00	Cass County	Land Purchase	
5/14/2024	5/3/2024	195910	247007	14,181.00	Ohnstad Twichell, PC	Aaland Law Open Records Requests	
5/14/2024	5/3/2024	195897	130007	21,064.01	Ohnstad Twichell, PC	Diversion Right of Way Acquisition	
5/14/2024	5/3/2024	195898	160007	780.00	Ohnstad Twichell, PC	Channel Phase I	
5/14/2024	5/3/2024	195899	160007	441.00	Ohnstad Twichell, PC	Channel Phase II	
5/14/2024	5/3/2024	195900	160007	1,485.00	Ohnstad Twichell, PC	Channel Phase III	
5/14/2024	5/3/2024	195901	170007	15,013.62	Ohnstad Twichell, PC	Upstream Mitigation Area	
5/14/2024	5/3/2024	195902	187007	1,468.00	Ohnstad Twichell, PC	Diversion - Southern Embankment	
5/14/2024	5/3/2024	195903	197007	180.00	Ohnstad Twichell, PC	Western Tie Back	
5/14/2024	5/3/2024	195904	207007	540.50	Ohnstad Twichell, PC	Wetland Mitigation Drain 27	
5/14/2024	5/3/2024	195905	237007	585.00	Ohnstad Twichell, PC	FM Diverson - MLGC Dispute	
5/10/2024	5/9/2024			22,372.00	Cass County Joint Water Resource District	Larry Richard OIN 1916 Relocation Reimbursement	
5/10/2024	5/10/2024			200.00	Metro Flood Diversion Authority	Ryan Richard OIN 1088Y	
5/10/2024	5/10/2024			100.00	Metro Flood Diversion Authority	Joe Valen OIN 233Y1	
5/10/2024	4/31/2024	3242	3775	9,525.07	ProSource Technologies LLC	ROW Services and relocation services	
5/10/2024	2/1/2024	5009		29,000.00	Crown Appraisals	FM Diversion Project - OIN 2184, 2183 & 2046,2047 & 2046	
5/10/2024	2/27/2024	5026		22,000.00	Crown Appraisals	FM Diversion Project - OIN 2040, 2044, 20245	
5/10/2024	5/10/2024			13,845.00	The Title Company - Flowage Easement	Flowage Easement in NE 1/4SE1/4 31-136-48 Richland ND	
5/29/2024	5/17/2024	196208	187007	150.00	Ohnstad Twichell, PC	BIO/GEO Easements	
5/29/2024	5/17/2024	196209	207007	12,642.50	Ohnstad Twichell, PC	Larry A. Brandt RLT (oin 9348) QT ED Action	
5/29/2024	5/17/2024	196210	207007	260.00	Ohnstad Twichell, PC	Janet Wanzek Estate (OIN 8672 8673 8674 8675 9747) QT ED Action	
5/29/2024	5/17/2024	196211	207007	130.00	Ohnstad Twichell, PC	Orten B. Perhus (OIN 747 751 5014 5015 5277) QT ED Action	
5/29/2024	5/17/2024	196212	207007	11,783.00	Ohnstad Twichell, PC	Orten B. Brodshaug RLT (OIN 5008 1930 1932 1940 1941 8517 8518) QT ED Action	
5/29/2024	5/17/2024	196213	217007	260.00	Ohnstad Twichell, PC	Charles F. Coster RE Trust (OIN 9736 9737) QT ED ACTION	
5/29/2024	5/17/2024	196214	227007	195.00	Ohnstad Twichell, PC	Varriano, John & Cythina (OIN 1130) ED Action	
5/29/2024	5/17/2024	196215	227007	227.50	Ohnstad Twichell, PC	Askegaard, Patrica (OIN 2051) ED Action	
5/29/2024	5/17/2024	196216	227007	2,239.50	Ohnstad Twichell, PC	Emden Partners, LLP (OIN 836 232 56016) ED Action	
5/29/2024	5/17/2024	196217	227007	962.50	Ohnstad Twichell, PC	Hamilton, D & Wittaker, R (OIN 1949 1956 5036) ED Action	
5/29/2024	5/17/2024	196218	227007	227.50	Ohnstad Twichell, PC	Hertsgaard Family LLLL (OIN 2042) ED Action	
5/29/2024	5/17/2024	196219	227007	617.50	Ohnstad Twichell, PC	Braaten, Riley (OIN 5032) ED Action	
5/29/2024	5/17/2024	196220	237007	455.00	Ohnstad Twichell, PC	KLF LLP (OIN 9347) Ed Action	
5/29/2024	5/17/2024	196221	237007	122.50	Ohnstad Twichell, PC	Andrew Cossette, Maximillion Cossette, Brianna Aarestad (OIN 1075) Ed Action	
5/29/2024	5/17/2024	196222	237007	3,997.50	Ohnstad Twichell, PC	Rick Bellemare & Ronald Bellemare (OIN 1080,1081) ED Action	
5/29/2024	5/17/2024	196223	237007	97.50	Ohnstad Twichell, PC	Christenson, Brendan & Daniel (OIN 7002) ED Action	
5/29/2024	5/17/2024	196224	237007	227.50	Ohnstad Twichell, PC	Brakken (OIN 1173N) ED Action	
5/29/2024	5/17/2024	196225	237007	9,067.50	Ohnstad Twichell, PC	2023 Consolidated Ed Action	
5/29/2024	5/17/2024	196226	237007	422.50	Ohnstad Twichell, PC	Turner, Scott & Vicki (OIN 5028) ED Action	
5/29/2024	5/17/2024	196227	247007	51.00	Ohnstad Twichell, PC	Brungard, Kirk (OIN 8781) ED Action	
5/29/2024	5/17/2024	196228	247007	51.00	Ohnstad Twichell, PC	Compson, Terry ED Action	
5/24/2024	5/7/2024			50.00	The Title Company-6 G Farms	Draw #2 6 G Farms	
5/24/2024	5/7/2024			200.00	The Title Company-Sauvageau	Draws 1,2,3 and 4 Joseph Sasuvageau	
5/24/2024	4/30/2024	5051		1,500.00	Crown Appraisals	Land Sales List per E. Dodds	
5/24/2024	5/1/2024	10058		400.00	Building & Grounds Management	Debris Removal, Horace ND	
5/24/2024	4/30/2024	13783.00-48		28,544.98	SRFConsulting Group	Project mgmt	
5/31/2024	5/16/2024	12300619968		15,727.50	HDR Engineering Inc	TO2 Property Acquisition Services	
5/24/2024	4/30/2024	3376	3775	3,309.60	ProSource Technologies LLC	ROW Services and relocation services	
5/30/2024	5/14/2024	1136126		136.31	Cass County Electric Cooperative	Service to 4005 124 Ave S Home	
5/30/2024	5/14/2024	1129748		5.60	Cass County Electric Cooperative	Service to 4005 124 Ave S Heat	
5/30/2024	5/14/2024	1160310		22.82	Cass County Electric Cooperative	Service to 4005 124 Ave S Storage add	
5/30/2024	5/14/2024	1122560		36.65	Cass County Electric Cooperative	service to 1701 14 St S	
5/30/2024	5/14/2024	1132241		48.92	Cass County Electric Cooperative	Service to 5251 174 1/2 AV SE	
5/24/2024	1/1/2024			17,000.00	L&L's Tree Service LLC	OIN 7234 Tree Removal Agreement	
			Total	224,559.85			
OXBOW-HICKSON-BAKKE RING LEVEE INVOICES							
Invoice Paid	Invoice Date	Invoice No.	Purchase Order No.	Project No.	Amount	Vendor	Description
				Total			
				Grand Total	224,559.85		



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

June 17, 2024
Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

RE: Metro Flood Diversion Project

Greetings:

Attached to these email(s), please find a spreadsheet summary of invoices/expense and 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	\$180,827.56
-----------------------	--------------

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

FM Diversion MCCJPA invoices					Processed			
Vendor	Invoice Date	Invoice Description	Invoice Amount	Invoice #	Date Approved	Date Paid	Check #	Reimb Request
Clay County Auditor-Treasurer		2024 prop tax 15.017.2101	\$2,470.00	1146604	5/10/24	5/15/24	119093	6/17/2024
Red River Valley Coop	5/2/24	svc 13689 3rd st s	\$55.16		5/15/24	5/22/24	565311	6/17/2024
Red River Valley Coop	5/2/24	3348 180th ave s	\$54.71		5/15/24	5/22/24	565311	6/17/2024
Larkin Hoffman	5/3/24	prof svc through 4/30/24	\$4,582.00	838253	5/15/24	5/22/24	119260	6/17/2024
SRF Consulting Group	4/30/24	prof svc through 4/30/24	\$25,404.44	13820.00-43	5/21/24	5/29/24	565429	6/17/2024
The Hawley Herald	4/15/24	jpa meeting 4/15/24	\$36.00	5416	5/21/24	5/29/24	565431	6/17/2024
Ohnstad Twichell	5/9/24	general 2024	\$13,423.61	195993	5/21/24	5/29/24	565423	6/17/2024
Ohnstad Twichell	5/9/24	eminent domain clay	\$19,872.32	195991	5/21/24	5/29/24	565423	6/17/2024
Ohnstad Twichell	5/9/24	Southern embankment	\$23,992.14	195990	5/21/24	5/29/24	565423	6/17/2024
Ohnstad Twichell	5/9/24	eminent domain wilkin	\$10,644.22	195992	5/21/24	5/29/24	565423	6/17/2024
Ohnstad Twichell	5/9/24	Upstream mitigation	\$31,680.20	195989	5/21/24	5/29/24	565423	6/17/2024
Larkin Hoffman	5/3/24	prof svc through 4/30/24	\$192.00	838254	5/25/24	6/5/24	119486	6/17/2024
Larkin Hoffman	6/4/24	prof svc through 5/31/24	\$592.50	839716	6/12/24	6/19/24	TBD	6/17/2024
Forum Communications	5/31/24	Certified mail postage	\$10.69	10069894	6/13/24	6/19/24	TBD	6/17/2024
SRF Consulting Group	5/31/24	prof svc through 5/31/24	\$22,139.17	13820.00-44	6/17/24	6/19/24	TBD	6/17/2024
The Hawley Herald	5/13/24	jpa meeting 5/13	\$36.00	5447	6/17/24	6/19/24	TBD	6/17/2024
Red River Valley Coop	6/4/24	13689 3rd st s	\$55.16		6/17/24	6/19/24	TBD	6/17/2024
Red River Valley Coop	6/4/24	3348 180th ave s (house)	\$53.01		6/17/24	6/19/24	TBD	6/17/2024
ProSource Technologies	4/30/24	prof svc through 4/30/24	\$25,534.23	3375		5/22/24	565308	6/17/2024

\$180,827.56

OHNSTAD TWICHELL, P.C.

Attorneys at Law
 P.O. Box 458
 West Fargo, ND 58078-0458
 (701) 282-3249

15-1395 (JTS) Invoice # 196537

Flood Diversion Board
 Bond Counsel Work - PPP

Date: June 10, 2024

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

PROFESSIONAL SERVICES RENDERED			
	Hours	Rate	Totals
JTS	121.7	\$398.00	\$48,436.60
CMM	1.7	\$398.00	\$676.60
SNW	3.2	\$398.00	\$1,273.60
LDA	5.7	\$398.00	\$2,268.60
KJS	48.6	\$398.00	\$19,342.80
TJL	1.2	\$398.00	\$477.60
LWC	21.7	\$398.00	\$8,636.60
DCP	0.4	\$398.00	\$159.20
KJM	72.2	\$345.00	\$24,909.00
SJH	0.5	\$325.00	\$162.50
TJF	9.7	\$265.00	\$2,570.50
BMK	0.7	\$310.00	\$217.00
AJR	28.1	\$235.00	\$6,603.50
LDS	1.4	\$225.00	\$315.00
Total Fees:	316.8		\$116,049.10
Monthly Credit Card Processing Fee			\$9,643.53
Westlaw			\$297.73
NDRIN			\$5.00
Prof Service Fee Gwendolyn			\$21,125.00
UPS			\$47.13
Recording Fees			\$172.00
Total Expenses:			\$31,290.39
Grand Total			\$147,339.49

	Rates
JTS John T. Shockley, Partner, Supervising Attorney	\$398.00
CMM Christopher M. McShane, Partner	\$398.00
ADC Andrew D. Cook, Partner	\$398.00
SNW Sarah M. Wear, Partner	\$398.00
LDA Lukas D. Andrud, Partner	\$398.00
KJS Katie J. Schmidt, Partner	\$398.00
MWM Marshall W. McCullough, Partner	\$398.00
TJL Tyler J. Leverington, Partner	\$398.00
LWC Lukas W. Croaker, Partner	\$398.00
BTB Brent T. Boeddeker, Partner	\$398.00
DCP David C. Piper, Partner	\$398.00
ABG Alexander B. Gruchala, Associate	\$365.00
JRS J.R. Strom, Associate	\$350.00
KJM Kathryn J. McNamara, Associate	\$345.00
JAM Jenna A. McPherson, Associate	\$310.00
SJH Stephen J. Hilfer, Associate	\$325.00
TJF Tiffany J. Findlay, Associate	\$265.00
MAN Morgan A. Nyquist, Associate	\$280.00
BMK Brittney M. Kelley, Associate	\$310.00
CAS Carol A. Stillwell, Paralegal	\$235.00
AJR Andrea J. Roman, Paralegal	\$235.00
CRR Christie R. Rust, Paralegal	\$225.00
TWS Tim W. Steuber, Paralegal	\$225.00
MRH Meghan R. Hockert, Paralegal	\$225.00
DLR Dena L. Ranum, Paralegal	\$180.00
ATW Amy T. White, Paralegal	\$205.00
LDS Lynne D. Spaeth, Paralegal	\$225.00

PROFESSIONAL SERVICES RENDERED

15-1395 JTS Invoice # 196537 Flood Diversion Board		Bond Counsel Work - P3
FILE NUMBER	MATTER DESCRIPTION	INVOICE - TOTAL FEES
151395-1	General Topics	\$51,022.70
151395-2	Executive Director	\$2,228.80
151395-4	Public Finance Issues	\$2,080.60
151395-5	Consultant Contract Review/Development	\$1,269.80
151395-9	Environmental Permitting Issues/NEPA	
151395-12	USACE Interface/Questions	\$771.80
151395-13	Third Party Utility MOU's	\$24,262.80
151395-17	EPA WIFIA Loan	\$714.50
151395-19	USACE WIFIA	\$931.50
151395-23	PRAM	\$2,359.10
151395-24	P3 Implementation	\$24,627.80
151395-27	UMA/Utility Review	\$1,432.80
151395-28	CCJWRD Temporary RIB 2024A	\$924.10
151395-30	Dispute Review Board Matters	\$3,422.80
TOTAL		\$116,049.10

*exp only



Ankura Consulting Group LLC
 PO Box 74007043
 Chicago, IL 60674-7043

INVOICE

Date	Invoice Number
06/17/2024	CI-115539

Payment Terms	Due Date
Net 30	07/17/2024

FEIN NO.:	47-2435218
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Bill To:
John Shockley Metro Flood Diversion Authority c/o John Shockley 444 Sheyenne Street, Suite 102 Wells Fargo, ND 58078 United States of America

Project Information:	
Project Name:	P-013258 Metro Flood Diversion Authority - Fargo-Moorhead Flood Risk Management Project
Project Number:	P-013258
PO Number:	

Professional Services rendered, see attached.

Net Amount:	134,382.50
Tax:	
Total Invoice Amount:	USD 134,382.50

For any questions regarding billing, wire or ACH payments, please contact accounting@ankura.com.

Remittance Information:	
Electronic Payment Info	
<u>Wire Instructions</u> Account Name: Ankura Consulting Group LLC Account Number: 226005697768 Bank of America 222 Broadway New York, NY 10038 United States ABA# 026009593 SWIFT: BOFAUS3N	<u>ACH Instructions</u> Account Name: Ankura Consulting Group LLC Account Number: 226005697768 Bank of America 1455 Market Street San Francisco, CA 94109 United States ABA# 054001204 SWIFT: BOFAUS3N
Please include the invoice number and/or Ankura project number to your remittance to ensure prompt application of funds.	



MINNEAPOLIS OFFICE
612-340-2600

(Tax Identification No. 41-0223337)

STATEMENT OF ACCOUNT FOR PROFESSIONAL SERVICES

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

June 5, 2024
Invoice Number 3981330

Client-Matter No.: 491379-00006
Employment advice

For Legal Services Rendered Through May 31, 2024

INVOICE TOTAL

Total For Current Legal Fees	\$57,531.00
Total Due This Invoice	\$57,531.00

Payment Methods

ACH/Wire (Preferred Method)

Beneficiary Bank	U.S. Bank National Association
	800 Nicollet Mall
	Minneapolis, MN 55402
ABA Routing Number	091000022
Account Number	1047-8339-8282
Swift Code	USBKUS44IMT

Check

Dorsey & Whitney LLP
P.O. Box 1680
Minneapolis, MN 55480-1680

Online Options

Contact our Billing team for first time access credentials at onlinepayments@dorsey.com

Payment site:
[Dorsey Login \(e-billexpress.com\)](https://dorsey.com/billing)

Please make reference to the invoice number – send remittance to remittance@dorsey.com

Service charges are based on rates established by Dorsey & Whitney. A schedule of those rates has been provided and is available upon request. Disbursements and service charges, which either have not been received or processed, will appear on a later statement.

ALL INVOICES ARE DUE 30 DAYS FROM DATE OF INVOICE UNLESS OTHERWISE EXPRESSLY AGREED BY DORSEY & WHITNEY

Questions regarding this invoice? Please contact your Dorsey attorney or Accounts Receivable @ ARhelpdesk@dorsey.com or 612-492-5278.



Ankura Consulting Group LLC
 PO Box 74007043
 Chicago, IL 60674-7043

INVOICE

Date	Invoice Number
05/31/2024	CI-114467

Payment Terms	Due Date
Net 30	06/30/2024

FEIN NO.:	47-2435218
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Bill To:
John Shockley Metro Flood Diversion Authority c/o John Shockley 444 Sheyenne Street, Suite 102 Wells Fargo, ND 58078 United States of America

Project Information:	
Project Name:	P-013258 Metro Flood Diversion Authority - Fargo-Moorhead Flood Risk Management Project
Project Number:	P-013258
PO Number:	

Professional Services rendered, see attached.

Net Amount:	48,107.50
Tax:	
Total Invoice Amount:	USD 48,107.50

For any questions regarding billing, wire or ACH payments, please contact accounting@ankura.com.

Remittance Information:	
Electronic Payment Info	
<u>Wire Instructions</u>	<u>ACH Instructions</u>
Account Name: Ankura Consulting Group LLC	Account Name: Ankura Consulting Group LLC
Account Number: 226005697768	Account Number: 226005697768
Bank of America	Bank of America
222 Broadway	1455 Market Street
New York, NY 10038	San Francisco, CA 94109
United States	United States
ABA# 026009593	ABA# 054001204
SWIFT: BOFAUS3N	SWIFT: BOFAUS3N
<i>Please include the invoice number and/or Ankura project number to your remittance to ensure prompt application of funds.</i>	



Rush River
Water Resource
District

SENT VIA EMAIL

William A. Hejl
Chairman
Amenia, North Dakota

May 23, 2024

Dick Sundberg
Manager
Harwood, North Dakota

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

Jacob Gust
Manager
Fargo, North Dakota

Greetings:

RE: Metro Flood Diversion Project

Enclosed please find a copy of invoices totaling \$8,253.75 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

Leilei Bao
Treasurer

Melissa Hinkemeyer
Director, Secretary

Enclosure

1201 Main Avenue West
West Fargo, ND 58078-1301

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



INVOICE

CUSTOMER NUMBER : 1011188
INVOICE NUMBER : 90261380
AMOUNT : \$5,052.60
DATE : 12/18/2023

MAKE CHECKS PAYABLE TO:
BNSF RAILWAY COMPANY
3115 SOLUTIONS CENTER
CHICAGO, ILLINOIS 60677-3001

METRO FLOOD DIVERSION
AUTHORITY
4784 AMBER VALLEY PKWY S
FARGO ND 58104
USA

FOR FURTHER INFORMATION:
VERONICA GONZALES
(817)352-0719
VERONICA.GONZALES@BNSF.COM

BNSF TIN NO.41-6034000

CONTRACT NO: BF10017381

TO PAY BY WIRE/ACH:
BANK: NORTHERN TRUST-CHICAGO IL
SWIFT # CNORUS 44
BANK ABA # 071000152
BNSF ACCOUNT # 31099171

If paying by wire/ACH, please send the remit detail to cashapps@bnsf.com

** PLEASE SHOW ABOVE INVOICE NUMBER ON YOUR REMITTANCE TO ASSURE PROPER CREDIT TO YOUR ACCOUNT **

FARGO-MOORHEAD FLOOD DIVERSION PROJECT THIRD PARTY DESIGN REVIEW; VARIOUS LOCATIONS; 0220-0034.900;
0034-0009.100; 0026-0015.900. LS 9000, MP 00000.0 TO 09998.0.

WBS 7-0279-22

100% METRO FLOOD DIVERSION AUTHORITY

PARTIAL#10

Total Costs:	\$5,052.60
Billable Pct :	100.00 %
Invoice Total :	\$5,052.60

This bill represents only charges posted to the identified WBS as of the last day of the month preceding the invoice date. Unless otherwise explicitly stated, further billings may be issued, should additional costs be identified for this WBS or other WBS' related to work at this location.

5/20/2024

**City of Christine - SUMMARY OF INVOICING
Reimbursement Request #14
May 20, 2024**

<u>Vendor</u>	<u>Invoice Date</u>	<u>Invoice #</u>	<u>Invoice Amount</u>	
Swanson & Warcup	2/29/2024	1888	\$605.00	
Swanson & Warcup	3/31/2024	1988	\$27.50	
Total Swanson & Warcup			\$632.50	
Lies, Bullis & Hatting	2/21/2024	67569	\$7,900.63	\$2,500.00
Lies, Bullis & Hatting	3/25/2024	67781	\$160.00	
Lies, Bullis & Hatting	4/23/2024	67998	\$120.00	
Total Lies, Bullis & Hatting			\$8,180.63	\$2,780.00
Moore Engineering, Inc.	3/26/2024	37711	\$9,037.67	
Moore Engineering, Inc.	4/8/2024	37878	\$14,098.75	
Total Moore Engineering, Inc.			\$23,136.42	
Total Invoiced This Reimbursement Request			\$31,949.55	\$26,548.92



INVOICE: INV010946

Date 06/05/2024
 Invoice account 198

CITY OF FARGO
 PO BOX 49
 Fargo, ND

Description	Quantity	Unit price	Amount
FM DIVERSION MISC	1.00	2,842.60	2,842.60
FM DIVERSION PAYROLL	1.00	94,926.18	94,926.18

Sales subtotal amount	Total discount	Total charges	Net amount	Sales tax	Round-off	Currency	Total
97,768.78	0.00	0.00	97,768.78	0.00	0.00	USD	97,768.78

Due date 07/05/2024



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: **INV010946**

Date: 06/05/2024

Total: 97,768.78

Name: CITY OF FARGO

Account #: 198

Due date 07/05/2024

**FM Metropolitan Area Flood Risk Management Project
Statement of Net Position
May 31, 2024**

	FM Diversion Project Fund	Budget Fund	Grand Total
Assets			
Cash	\$ 229,475,698	\$ 256,377	\$ 229,732,075
Cash Horace 3.01 MIT	4,339,882	-	4,339,882
Cash BRRWD	8,645,371	-	8,645,371
Cash Held In Trust at BND			
Excess Revenue Fund	695,578	-	695,578
Temp Debt Obligation Fund	1,866,838	-	1,866,838
Authority Loan Fund	76,764	-	76,764
P3 Reserve Fund	16,133,951	-	16,133,951
SRF Loan Reserve Fund	2,289,468	-	2,289,468
Revenue Fund	1,913	-	1,913
Prepaid Expense	4,633,885	-	4,633,885
Refundable Deposit	50,000	-	50,000
Total assets	268,209,349	256,377	268,465,725
Liabilities			
Vouchers payable	-	-	-
Retainage payable	138,488	-	138,488
Rent Deposit	18,750	-	18,750
Deferred Revenue	5,500	-	5,500
Total liabilities	162,738	-	162,738
 NET POSITION	 \$ 268,046,610	 \$ 256,377	 \$ 268,302,987

Data Through Date: Friday, May 31, 2024

Summary Of Expenses
EXP-2024-05

Monday, June 17, 2024

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
770-7910-429.11-00	5/30/2024	336193	Cass County Government	\$77,087.70	DIVERSION PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Full Time Staff / Salaries				\$77,087.70			
770-7910-429.20-01	5/30/2024	336193	Cass County Government	\$7,352.00	DIVERSION PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Employee Benefits / Health Insurance				\$7,352.00			
770-7910-429.20-03	5/30/2024	336193	Cass County Government	\$160.00	DIVERSION PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Employee Benefits / Dental Insurance				\$160.00			
770-7910-429.20-06	5/30/2024	336193	Cass County Government	\$29.20	DIVERSION PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Employee Benefits / Vision Insurance				\$29.20			
770-7910-429.21-01	5/30/2024	336193	Cass County Government	\$4,655.89	DIVERSION PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Employee Benefits / Social Security				\$4,655.89			
770-7910-429.21-02	5/30/2024	336193	Cass County Government	\$1,088.89	DIVERSION PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Employee Benefits / Medicare				\$1,088.89			
770-7910-429.22-07	5/30/2024	336193	Cass County Government	\$10,221.83	DIVERSION PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Pension Benefits / Retirement				\$10,221.83			
770-7910-429.33-37	5/9/2024	335750	HighRoad Partners, LLC	\$600.00	MAY HR PARTNER	V09701	HR SERVICES
Other Services / HR Services				\$600.00			
770-7910-429.34-15	5/23/2024	336107	Marco Technologies	\$2,042.84	DIVERSION IT SERVICES	V10301	SERVICE AGREEMENT - IT
	5/30/2024	336204	CONSOLIDATED COMMUNI	\$470.00	701-150-0113/0 INTERNET	V00106	EXECUTIVE DIRECTOR
Technical Services / Computer Services				\$2,512.84			
770-7910-429.43-50	5/30/2024	336193	Cass County Government	\$392.00	DIVERSION MISC EXPENSES	V00106	EXECUTIVE DIRECTOR
Repair and Maintenance / Maintenance Service Contract				\$392.00			
770-7910-429.53-20	5/30/2024	336193	Cass County Government	\$1,417.60	DIVERSION MISC EXPENSES	V00106	EXECUTIVE DIRECTOR
Communications / Cellular Phone Service				\$1,417.60			
770-7910-429.56-60	5/30/2024	336193	Cass County Government	\$1,552.00	DIVERSION MISC EXPENSES	V00106	EXECUTIVE DIRECTOR
In State Travel / In State Travel Expenses				\$1,552.00			

Data Through Date: Friday, May 31, 2024

Summary Of Expenses
EXP-2024-05

Monday, June 17, 2024

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
770-7910-429.61-10	5/30/2024	336193	Cass County Government	\$94.70	DIVERSION MISC EXPENSES	V00106	EXECUTIVE DIRECTOR
General Supplies / Office Supplies				\$94.70			
770-7910-429.68-30	5/30/2024	336193	Cass County Government	\$82.00	DIVERSION MISC EXPENSES	V00106	EXECUTIVE DIRECTOR
Miscellaneous / Meeting Incidentals				\$82.00			
770 Subtotal				\$107,246.65			
790-7910-429.33-20	5/9/2024	335722	EIDE BAILLY LLP	\$622.75	DIVERSION CONSULTING	V00102	General & Admin. WIK
	5/9/2024	335722	EIDE BAILLY LLP	\$12,336.25	DIVERSION AUDIT SERVICES	V06406	2023 AUDIT
Other Services / Accounting Services				\$12,959.00			
790-7910-429.33-25	6/5/2024	1104	OHNSTAD TWICHELL PC	\$96,464.47	AFP Ohnstad Twichell P	V00102	General & Admin. WIK
	5/30/2024	336210	DORSEY & WHITNEY LLP	\$179,726.22	DIVERSION LEGAL SERVICES	V00101	Dorsey Whitney Legal
Other Services / Legal Services				\$276,190.69			
790-7910-429.34-20	5/23/2024	336123	Neon Loon Communications, LL	\$22,125.50	COMMUNICATIONS SUPPORT	V09601	COMMUNICATIONS SUPPORT
	5/30/2024	336190	C THREE MEDIA, LLC	\$8,340.35	VIDEOGRAPHY SERVICES	V08601	VIDEOGRAPHY
	5/30/2024	336245	Michael H Klein	\$1,050.00	COMMUNICATIONS SUPPORT	V07201	COMMUNICATION CONSULTING
Technical Services / Marketing / Public Relat.				\$31,515.85			
790-7910-429.34-56	5/24/2024	ES05240	City of Fargo	\$17,483.00	FISCAL AGENT FEE - 05/24	V05902	MONTHLY FISCAL AGENT FEE
Technical Services / FMDA Fiscal Agent Fees				\$17,483.00			
790-7910-429.42-05	5/23/2024	336024	Ambassador, Inc.	\$925.00	DIVERSION OFFICE CLEANING	V10501	JANITORIAL SERVICES
Cleaning Services / Custodial Services				\$925.00			
790-7915-429.33-05	5/23/2024	336081	HOUSTON-MOORE GROUP L	\$149,704.55	DIVERSION PROJECT	V01633	DESIGN & CONST. SUPPORT
	5/23/2024	336081	HOUSTON-MOORE GROUP L	\$75,025.99	DIVERSION PROJECT	V01634	H&H MITIG. & PERMIT SUPPO
	5/30/2024	336197	MOORE ENGINEERING INC	\$315.00	MOORE ENGINEERING, INC	V01201	Cass Joint Water ROE
Other Services / Engineering Services				\$225,045.54			
790-7920-429.33-05	5/23/2024	336081	HOUSTON-MOORE GROUP L	\$312,973.16	DIVERSION PROJECT	V01633	DESIGN & CONST. SUPPORT
	5/23/2024	336081	HOUSTON-MOORE GROUP L	\$39,872.45	DIVERSION PROJECT	V01634	H&H MITIG. & PERMIT SUPPO
Other Services / Engineering Services				\$352,845.61			

Data Through Date: Friday, May 31, 2024

Summary Of Expenses
EXP-2024-05

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7920-429.33-79	5/16/2024	335900	CH2M Hill Engineers Inc	\$547,528.91	PROGRAM MGMT	V00211	CH2M HILL-6/2019-12/2021
	5/16/2024	335900	CH2M Hill Engineers Inc	\$971,489.99	SUPPORT SERVICES	V00212	P3 PROCUREMENT SUPPORT
Other Services / Construction Management				\$1,519,018.90			
790-7930-429.33-05	5/2/2024	335496	DKJ Appraisal LLC	\$6,903.55	DKJ APPRAISAL	V01201	Cass Joint Water ROE
	5/2/2024	335496	HDR Engineering, Inc.	\$24,738.53	HDR ENGINEERING INC	V01201	Cass Joint Water ROE
	5/2/2024	335496	Prosource Technologies, Inc	\$9,260.46	PROSOURCE TECHNOLOGIES	V01201	Cass Joint Water ROE
	5/2/2024	335496	SRF Consulting Group	\$32,169.65	SRF CONSULTING GROUP, INC	V01201	Cass Joint Water ROE
	5/2/2024	335496	ULTEIG ENGINEERS INC	\$1,701.00	ULTEIG ENGINEERS, INC.	V01201	Cass Joint Water ROE
	5/23/2024	336022	ADVANCED ENGINEERING I	\$162,379.15	DIVERSION PROJECT	V00302	PROGRAM MGMT SERVICES
	5/23/2024	336081	HOUSTON-MOORE GROUP L	\$25,950.07	DIVERSION PROJECT	V01633	DESIGN & CONST. SUPPORT
	5/23/2024	336081	HOUSTON-MOORE GROUP L	\$25,616.00	DIVERSION PROJECT	V01634	H&H MITIG. & PERMIT SUPPO
	5/30/2024	336197	HDR Engineering, Inc.	\$14,198.75	HDR ENGINEERING	V01201	Cass Joint Water ROE
	5/30/2024	336197	SRF Consulting Group	\$47,236.87	SRF CONSULTING GROUP	V01201	Cass Joint Water ROE
Other Services / Engineering Services				\$350,154.03			
790-7930-429.33-25	5/2/2024	335496	Larkin Hoffman Attorneys	\$9,414.35	LARKIN HOFFMAN	V01201	Cass Joint Water ROE
	5/2/2024	335496	OHNSTAD TWICHELL PC	\$75,887.28	OHNSTAD TWICHELL, PC	V01201	Cass Joint Water ROE
	5/2/2024	335496	OHNSTAD TWICHELL PC	\$2,890.50	OHNSTAD TWICHELL, PC	V01202	Cass Joint Water DPAC
	5/2/2024	335496	OHNSTAD TWICHELL PC	\$10,287.00	OHNSTAD TWICHELL, PC	V01203	Cass Joint Water OHB
	5/30/2024	336197	Larkin Hoffman Attorneys	\$6,438.50	LARKIN HOFFMAN	V01201	Cass Joint Water ROE
	5/30/2024	336197	OHNSTAD TWICHELL PC	\$4,085.50	OHNSTAD TWICHELL, PC	V01203	Cass Joint Water OHB
	5/30/2024	336197	OHNSTAD TWICHELL PC	\$117,572.06	OHNSTAD TWICHELL, PC	V01201	Cass Joint Water ROE
Other Services / Legal Services				\$226,575.19			
790-7930-429.33-32	5/30/2024	336197	CROWN APPRAISALS	\$4,000.00	CROWN APPRAISAL	V01201	Cass Joint Water ROE
	5/30/2024	336197	CROWN APPRAISALS	\$6,000.00	CROWN APPAISAL	V01201	Cass Joint Water ROE
Other Services / Appraisal Services				\$10,000.00			
790-7930-429.33-79	5/16/2024	335900	CH2M Hill Engineers Inc	\$28,602.89	PROPERTY ACQUISITION MGMT	V00210	CH2M HILL-LAND ACQUISITON
Other Services / Construction Management				\$28,602.89			
790-7930-429.34-65	5/2/2024	335496	0859 - BACKLUND 1	\$1,350.00	IRENE BACKLUND	V01701	ND LAND PURCH-OUT OF TOWN
Technical Services / Right of Entry Requests				\$1,350.00			

Data Through Date: Friday, May 31, 2024

Summary Of Expenses
EXP-2024-05

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7930-429.38-99	5/2/2024	335496	Building & Grounds Managemen	\$3,500.00	BUILDING AND GROUNDS	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	Title Company	\$50.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/16/2024	335966	NDSU BUSINESS OFFICE-BO	\$116,010.59	WEATHER GAUGE AGREEMENT	V02703	WEATHER GAUGE AGREEMENT
Other Services / Other Services				\$119,560.59			
790-7930-429.52-70	5/23/2024	336171	Watts and Associates, Inc.	\$39,349.62	CROP LOSS PROGRAM	V06901	CROP INSURANCE DEVELOPMN
Insurance / Crop Insurance				\$39,349.62			
790-7930-429.61-50	5/2/2024	335496	CASS COUNTY JOINT WATE	\$11.36	CASS COUNTY JOINT WRD	V01201	Cass Joint Water ROE
	5/2/2024	335496	CASS COUNTY JOINT WATE	\$22.10	UPS	V01201	Cass Joint Water ROE
General Supplies / Postage				\$33.46			
790-7930-429.62-51	5/2/2024	335496	Cass County Electric Cooperativ	\$558.46	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336192	Cass County Electric Cooperativ	\$113.00	ACCT #1184422 DIVERSION	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	Cass County Electric Cooperativ	\$676.02	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
Energy / Electricity				\$1,347.48			
790-7930-429.67-11	5/30/2024	336197	1912 - DUVAL 7	\$1,035.00	DARWIN & SANDRA DUVAL	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	8386 - LEO A & AMY M COSS	\$1,000.00	ALLIANCE	V01701	ND LAND PURCH-OUT OF TOWN
Relocation / Residential Buildings				\$2,035.00			
790-7930-429.67-12	5/2/2024	335496	1093N - RICHARD FARM ENT	\$104,644.00	GLASS IMPRESSIONS	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	1112 - TERRY M & KRISTIE	\$2,803.80	JOSEPH SAUVAGEAU	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	1113 - TERRY M & KRISTIE	\$2,500.00	TERRY SAUVAGEAU	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	1916 - RICHARD 1	\$14,702.37	LARRY RICHARD	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	2014 - ODEGAARD 4	\$22,453.00	CRATE CONSTRUCTION	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	1093N - RICHARD FARM ENT	\$47,440.74	GLASS IMPRESSION	V01701	ND LAND PURCH-OUT OF TOWN
Relocation / Commercial Buildings				\$194,543.91			
790-7930-429.68-10	5/30/2024	336197	Evan Holmen	\$3,142.13	EVAN HOLMAN	V01201	Cass Joint Water ROE
Miscellaneous / Miscellaneous				\$3,142.13			
790-7930-429.68-22	5/30/2024	336234	HARWOOD TOWNSHIP	\$2,364.00	LOST TAX REVENUE	V09001	LOST TAX REVENUE
Miscellaneous / Lost Tax Revenue				\$2,364.00			

Data Through Date: Friday, May 31, 2024

Summary Of Expenses
EXP-2024-05

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7930-429.71-30	5/2/2024	335496	0809N - KAREN OFFUTT	\$817,875.70	KAREN G OFFUTT TRUST	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	0830 - OFFUTT	\$817,875.69	KAREN G OFFUTT TRUST	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	0846 - BRANDT 6	\$817,875.69	KAREN G OFFUTT TRUST	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	1883 - OFFUTT	\$817,875.69	KAREN G OFFUTT TRUST	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	9348 - BRANDT 6	\$817,875.69	KAREN G OFFUTT TRUST	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	9993 - BJMLANDINC	\$541,183.99	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	9994 - MITCHELL	\$541,184.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	0233Y - CASS COUNTY JOIN	\$53,441.67	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	0507Y1 - CASS COUNTY JOIN	(\$19,939.14)	CASS COUNTY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	0510Y1 - CASS COUNTY JOIN	(\$19,939.14)	CASS COUNTY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	0574Y1 - CASS COUNTY JOIN	(\$19,939.14)	CASS COUNTY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	0885Y1 - CASS COUNTY JOIN	(\$19,939.14)	CASS COUNTY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	0897Y1 - CASS COUNTY JOIN	(\$19,939.14)	CASS COUNTY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	0922Y3 - CASS COUNTY JOIN	(\$19,939.15)	CASS COUNTY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	1088Y - CASS COUNTY JOIN	\$53,441.66	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	1173N - HARVEY BRAKKEN	\$53,441.67	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	1185Y2 - CASS COUNTY JOIN	(\$19,939.15)	CASS COUNTY	V01701	ND LAND PURCH-OUT OF TOWN
Land / Land Purchases				\$5,192,497.45			
790-7930-429.71-31	5/2/2024	335496	1912 - DUVAL 7	\$748,455.92	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	7209 - SCHMIDT AND SONS I	\$56,370.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	8678X - ALLEN & DAWN PRI	\$66.00	ALLEN AND DAWN	V01701	ND LAND PURCH-OUT OF TOWN
	5/2/2024	335496	9744X - BETTE J DEEDE TRU	\$367.08	PTJ LLLP	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	0232 - HOLMEN 2	\$812,435.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	0836 - RHEAULT 1	\$812,435.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	1949 - HAMILTON	\$321,691.66	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	1956 - HAMILTON	\$321,691.67	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	5013 - MILTON ELLIS HOLM	\$812,435.00	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	5/30/2024	336197	5036 - DALE L HAMILTON E	\$321,691.67	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
Land / Easements				\$4,207,639.00			

Data Through Date: Friday, May 31, 2024

Summary Of Expenses
EXP-2024-05

Monday, June 17, 2024

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7931-429.33-05	5/30/2024	336201	Prosource Technologies, Inc	\$15,921.68	PROSOURCE TECHNOLOGIES	V06201	MCCJPA - MN ROE
	5/30/2024	336201	SRF Consulting Group	\$12,473.45	SRF CONSULTING GROUP	V06201	MCCJPA - MN ROE
Other Services / Engineering Services				\$28,395.13			
790-7931-429.33-25	5/30/2024	336201	Larkin Hoffman Attorneys	\$21,508.90	LARKIN HOFFMAN	V06201	MCCJPA - MN ROE
	5/30/2024	336201	OHNSTAD TWICHELL PC	\$100,078.34	OHNSTAD TWICHELL	V06201	MCCJPA - MN ROE
Other Services / Legal Services				\$121,587.24			
790-7931-429.54-10	5/30/2024	336201	The Hawley Herald	\$36.00	THE HAWLEY HERALD	V06201	MCCJPA - MN ROE
Advertising / Legal Publications				\$36.00			
790-7931-429.61-50	5/30/2024	336201	FORUM COMMUNICATIONS	\$21.38	FORUM COMMUNICATIONS	V06201	MCCJPA - MN ROE
General Supplies / Postage				\$21.38			
790-7931-429.62-51	5/30/2024	336201	RED RIVER VALLEY COOPE	\$114.41	RED RIVER VALLEY COOP	V02301	MN LAND PURCHASES
Energy / Electricity				\$114.41			
790-7931-429.67-11	5/30/2024	336201	1665 - ROOD	\$1,863.00	MORGAN BUTH & DAVID DOBIS	V02301	MN LAND PURCHASES
Relocation / Residential Buildings				\$1,863.00			
790-7931-429.71-30	5/29/2024	12726	1650N - TODD A & JANE M B	(\$417,000.00)	RTRN LAND PMTS-SPLIT OIN	V02301	MN LAND PURCHASES
	5/29/2024	12726	1815N - MOORHEAD CLAY C	(\$200.00)	RTRN LAND PMTS-SPLIT OIN	V02301	MN LAND PURCHASES
	5/29/2024	12726	1829N - MOORHEAD CLAY C	(\$200.00)	RTRN LAND PMTS-SPLIT OIN	V02301	MN LAND PURCHASES
	5/29/2024	12726	1836 - BLILIE 3	(\$291,830.00)	RTRN LAND PMTS-SPLIT OIN	V02301	MN LAND PURCHASES
	5/29/2024	12726	1839 - CROWE 1	(\$430,700.00)	RTRN LAND PMTS-SPLIT OIN	V02301	MN LAND PURCHASES
	5/30/2024	336201	7215 - SCHMIDT AND SONS I	\$302,260.08	THE TITLE CO	V02301	MN LAND PURCHASES
Land / Land Purchases				(\$837,669.92)			
790-7931-429.80-17	5/30/2024	336201	CLAY COUNTY AUDITOR	\$9,042.00	CLAY COUNTY AUDITOR-TREAS	V02301	MN LAND PURCHASES
	5/30/2024	336201	WILKIN COUNTY AUDITOR	\$72.00	WILKIN COUNTY AUDITOR	V02301	MN LAND PURCHASES
Debt Service / Property Tax - FMDA				\$9,114.00			
790-7940-429.33-06	5/16/2024	335890	BRAUN INTERTEC CORP	\$213.00	MATERIAL TESTING	V00407	TASK ORDER #5
Other Services / Quality Testing				\$213.00			

Data Through Date: Friday, May 31, 2024

Summary Of Expenses
EXP-2024-05

Monday, June 17, 2024

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
790-7950-429.33-05	5/23/2024	336081	HOUSTON-MOORE GROUP L	\$10,513.00	DIVERSION PROJECT	V01633	DESIGN & CONST. SUPPORT
	5/30/2024	336267	MOORE ENGINEERING INC	\$17,503.35	REIMB MOORE ENGINEERING	V08801	RUSH RIVER-DRAIN EXPENSE
Other Services / Engineering Services				\$28,016.35			
790-7950-429.33-06	5/23/2024	336035	BRAUN INTERTEC CORP	\$43,229.25	MATERIALS TESTING	V00406	TASK ORDER #4
Other Services / Quality Testing				\$43,229.25			
790-7950-429.41-05	5/9/2024	335702	Cass Rural Water	\$29.70	ACCT #18789 DIVERSION	V05006	DIVERSION INLET UTILITY
Utility Services / Water and Sewer				\$29.70			
790-7951-429.73-70	5/23/2024	336103	LTP Enterprises Inc.	\$13,919.00	DIVERSION PROJECT	V12301	WP47C AGREEMENT
Infrastructure / Utilities				\$13,919.00			
790-7952-429.33-05	5/23/2024	336081	HOUSTON-MOORE GROUP L	\$17,511.95	DIVERSION PROJECT	V01633	DESIGN & CONST. SUPPORT
Other Services / Engineering Services				\$17,511.95			
790-7955-429.33-05	5/23/2024	336081	HOUSTON-MOORE GROUP L	\$3,591.75	DIVERSION PROJECT	V02827	IN TOWN LEVY MAINTENANCE
Other Services / Engineering Services				\$3,591.75			
790-7990-429.33-05	5/2/2024	335496	MOORE ENGINEERING INC	\$4,292.50	MOORE ENGINEERING, INC	V01201	Cass Joint Water ROE
	5/23/2024	336081	HOUSTON-MOORE GROUP L	\$94,991.28	DIVERSION PROJECT	V01633	DESIGN & CONST. SUPPORT
	5/30/2024	336197	MOORE ENGINEERING INC	\$2,350.00	MOORE ENGINEERING, INC	V01201	Cass Joint Water ROE
Other Services / Engineering Services				\$101,633.78			
790-7990-429.33-25	6/5/2024	1104	OHNSTAD TWICHELL PC	\$50,645.11	AFP Ohnstad Twichell P	V00102	General & Admin. WIK
Other Services / Legal Services				\$50,645.11			
790-7990-429.34-57	5/28/2024	12552	BANK OF NORTH DAKOTA	\$17,483.00	BND TRUSTEE FEE 5/24	V08502	MONTHLY TRUSTEE FEE
	5/21/2024	ES05240	BANK OF NORTH DAKOTA	\$2,041.08	CORRECT BND TRUSTEE FEE	V08502	MONTHLY TRUSTEE FEE
Technical Services / FMDA Trustee Fees BND				\$19,524.08			
790-7998-555.90-81	5/24/2024	ES05240	Diversion Admin Budget Transfe	\$0.00	ANNUAL ADMIN BDGT TRF-MAY	VADMIN	Diversion Administration
FMDA Admin. Budget Fund				\$0.00			
790 Subtotal				\$12,416,953.55			

Data Through Date: Friday, May 31, 2024

Summary Of Expenses
EXP-2024-05

Monday, June 17, 2024

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description	Project Number	Project Description
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Total Amount Invoiced this period:	\$12,524,200.20	
	\$0.00	Less Paid Retainage
	\$12,524,200.20	Total Less Paid Retainage

Data Through Date: Friday, May 31, 2024

Cumulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
LAND PURCHASE	\$387,505,032.97	\$387,505,032.97	\$0.00	Land Purchase
CH2M HILL ENGINEERS INC	\$153,344,991.12	\$119,180,214.49	\$34,164,776.63	Project & Construction Management
HOUSTON-MOORE GROUP LLC	\$94,554,195.48	\$73,548,433.57	\$21,005,761.91	Engineering Services
INDUSTRIAL BUILDERS INC	\$62,857,057.56	\$62,857,057.56	\$0.00	2nd St N Pump Station Project and 2nd St Floodwall, South of Pu
ARMY CORP OF ENGINEERS	\$53,183,800.00	\$53,183,800.00	\$0.00	Local Share
NORTH DAKOTA PUBLIC FINANCE AUTHORIT	\$37,785,300.00	\$37,785,300.00	\$0.00	Debt Service
RICHLAND-WILKIN JPA	\$35,000,000.00	\$35,000,000.00	\$0.00	Economic Impact Relief Fund
OHNSTAD TWICHELL PC	\$23,294,980.20	\$23,294,980.20	\$0.00	Legal Services
KEY CONTRACTING INC	\$20,315,278.41	\$20,315,278.41	\$0.00	FM1413 - Oakcreek and Copperfield Court Levee
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
ADVANCED ENGINEERING INC	\$14,379,176.00	\$12,588,424.04	\$1,790,751.96	Lands Management and Public Outreach
DORSEY & WHITNEY LLP	\$11,715,913.73	\$11,715,913.73	\$0.00	Legal Services
WELLS FARGO	\$11,607,080.05	\$11,607,080.05	\$0.00	Debt Service
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	\$7,863,647.73	\$7,858,008.98	\$5,638.75	Utility Relocation, Accounting Svcs, Interest on Deficit Funds
MOORE ENGINEERING INC	\$7,814,729.35	\$6,396,776.10	\$1,417,953.25	Engineering Services
ASHURST LLP	\$6,352,853.01	\$6,352,853.01	\$0.00	PPP Legal Counsel
SRF CONSULTING GROUP	\$6,331,729.08	\$3,279,493.82	\$3,052,235.26	Engineering Services
CASS RURAL WATER	\$6,286,446.51	\$6,220,273.35	\$66,173.16	Utilities and Utility Relocation
NUSTAR PIPELINE OPERATING PARTNERSHIP	\$5,884,100.74	\$5,867,251.62	\$16,849.12	Utility Relocation
HOUSTON ENGINEERING INC	\$5,597,480.73	\$5,597,480.73	\$0.00	Engineering Services
ERNST & YOUNG	\$5,377,000.00	\$5,017,370.30	\$359,629.70	P3 Financial Advisory Services
BRAUN INTERTEC CORP	\$4,774,098.26	\$2,055,289.16	\$2,718,809.10	Materials Testing
CASS COUNTY GOVERNMENT	\$4,583,462.89	\$4,583,462.89	\$0.00	Gravel on County Rd 17 Bypass

Data Through Date: Friday, May 31, 2024

Cumulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
PROSOURCE TECHNOLOGIES, INC	\$3,906,009.55	\$3,438,374.43	\$467,635.12	Land Acquisition Services
RED RIVER VALLEY ALLIANCE LLC	\$3,776,558.86	\$3,776,558.86	\$0.00	P3 Developer payments
CENTURYLINK COMMUNICATIONS	\$3,735,501.33	\$3,605,328.31	\$130,173.02	Utility Relocation
RILEY BROS	\$3,656,841.67	\$3,656,841.67	\$0.00	Construction - OHB Ring Levee & WP-28A
MAGELLAN PIPELINE	\$3,607,000.00	\$2,852,375.85	\$754,624.15	Utility Relocation
RED RIVER VALLEY & WESTERN RAILROAD C	\$3,589,388.46	\$3,589,388.46	\$0.00	Railroad Facilities and the Rail Property
BNSF RAILWAY CO	\$3,581,295.20	\$3,581,295.20	\$0.00	Permits for In-Town Levee Projects
SCHMIDT AND SONS INC.	\$3,170,164.25	\$2,920,822.83	\$249,341.42	Residential Demolition in Oxbow
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
CROWN APPRAISALS	\$2,851,230.00	\$2,223,030.00	\$628,200.00	Flowage Easements Valuation and Appraisal Services
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
CASS COUNTY ELECTRIC COOPERATIVE	\$2,632,181.15	\$2,182,689.77	\$449,491.38	Electrical Services
HDR ENGINEERING, INC.	\$2,574,791.12	\$1,935,489.87	\$639,301.25	Engineering Services
PROGRAM ADVISOR SERVICES, LLC	\$2,510,982.87	\$2,150,463.90	\$360,518.97	Program Consulting 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
HOUGH INC	\$2,088,832.83	\$2,088,832.83	\$0.00	Construction WP-42F.2 and Oxbow River Intake & Pumping Syst
CASS COUNTY JOINT WATER RESOURCE DI	\$2,051,172.83	\$2,051,172.83	\$0.00	O/H/B Ring Levee, DPAC, Postage, Miscellaneous
EXCAVATING INC - FARGO	\$2,018,659.41	\$2,018,659.41	\$0.00	Excavation and Utilities
ACONEX (NORTH AMERICA) INC	\$2,010,595.97	\$1,547,273.06	\$463,322.91	Electronic Data Mgmt and Record Storage System
URS CORPORATION	\$1,805,670.90	\$1,805,670.90	\$0.00	Cultural Resources Investigations
XCEL ENERGY-FARGO	\$1,702,121.19	\$1,306,121.19	\$396,000.00	Utility Relocation
ULTEIG ENGINEERS INC	\$1,659,901.59	\$1,491,659.09	\$168,242.50	Land Acquisition Services
REINER CONTRACTING INC	\$1,599,646.21	\$1,599,646.21	\$0.00	El Zagal Flood Risk Management
WAGNER CONSTRUCTION INC.	\$1,476,462.45	\$770,028.50	\$706,433.95	Utility Relocation

Data Through Date: Friday, May 31, 2024

Cumulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
CASS COUNTY TREASURER	\$1,464,203.58	\$1,464,203.58	\$0.00	Property Taxes
AECOM	\$1,401,419.14	\$1,034,026.35	\$367,392.79	Cultural Resources Investigations
UNITED STATES GEOLOGICAL SURVEY	\$1,332,840.00	\$546,145.00	\$786,695.00	Water Level Discharge Collection & Stage Gage Installation
AON RISK SERVICES CENTRAL INC	\$1,328,940.33	\$1,250,003.83	\$78,936.50	Risk Advisory Services P3 Pre-Award
US BANK	\$1,205,546.13	\$1,205,546.13	\$0.00	Loan Advance Debt Service Payments
CONSOLIDATED COMMUNICATIONS	\$1,082,548.57	\$1,082,548.57	\$0.00	Utility Relocation
KPH, INC.	\$1,025,640.12	\$1,025,640.12	\$0.00	WP-43D5 Construction
CITY OF HORACE	\$990,496.15	\$990,496.15	\$0.00	Infrastructure Fund
MINNKOTA POWER COOPERATIVE	\$940,269.48	\$565,269.48	\$375,000.00	Utility Relocation
CLERK OF DISTRICT COURT	\$939,044.32	\$939,044.32	\$0.00	FLDBUY - COF Flood Home Buyouts
LARKIN HOFFMAN ATTORNEYS	\$923,298.01	\$923,298.01	\$0.00	Legal Services
TERRACON CONSULTING ENGINEERS	\$887,718.41	\$887,718.41	\$0.00	Materials Testing
SBA COMMUNICATIONS	\$851,648.91	\$851,648.91	\$0.00	Utility Relocation
SPRINT COMMUNICATIONS COMPANY L.P.	\$812,034.58	\$812,034.58	\$0.00	Fiber Optic Relocation
COMPASS LAND CONSULTANTS, INC	\$804,820.00	\$635,689.43	\$169,130.57	Property Appraisal Services
UNITED STATES ENVIRONMENTAL PROTECTI	\$767,386.35	\$767,386.35	\$0.00	WIFIA LOAN APPLCATION FEE
BANK OF NORTH DAKOTA	\$764,439.58	\$764,439.58	\$0.00	Legal review fees
BORDER STATES PAVING, INC	\$762,980.64	\$762,980.64	\$0.00	Street repairs
CC STEEL, LLC	\$755,550.09	\$755,550.09	\$0.00	Lift Station Improvements
MASTER CONSTRUCTION CO INC	\$739,364.30	\$739,364.30	\$0.00	Flood Mitigation - Royal Oaks Area - Construction
DAKOTA CARRIER NETWORK	\$727,348.58	\$727,348.58	\$0.00	Utility Relocation
ERIK R JOHNSON & ASSOCIATES	\$686,572.23	\$686,572.23	\$0.00	Legal Services
PATCHIN MESSNER VALUATION COUNSELORS	\$641,462.50	\$490,383.75	\$151,078.75	Property Appraisal Services
METROPOLITAN COUNCIL OF GOVERNMENTS	\$637,390.01	\$637,390.01	\$0.00	Digital Aerial Photography
NEON LOON COMMUNICATIONS, LLC	\$635,958.00	\$367,836.53	\$268,121.47	Communications Support
CLAY COUNTY AUDITOR	\$622,754.50	\$622,754.50	\$0.00	Property Taxes - MN
NDSU BUSINESS OFFICE-BOX 6050	\$606,145.00	\$570,626.84	\$35,518.16	Ag Risk Study Services

Data Through Date: Friday, May 31, 2024

Cumulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
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
LINCO, INC.	\$534,003.11	\$534,003.11	\$0.00	House Demo and Removal
MIDCONTINENT COMMUNICATIONS	\$531,980.41	\$527,490.41	\$4,490.00	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	\$474,032.90	\$474,032.90	\$0.00	Retention Projects - Engineering Services
RICK ELECTRIC INC	\$455,200.00	\$455,200.00	\$0.00	Riverwood Flood Risk Project - Electrical
LTP ENTERPRISES INC.	\$452,519.00	\$69,775.00	\$382,744.00	Test Holes and Test Well Drilling
RED RIVER VALLEY COOPERATIVE ASSOC	\$451,191.99	\$451,191.99	\$0.00	Electricity - Home Buyouts
ROBERT TRENT JONES	\$440,431.73	\$440,431.73	\$0.00	Oxbow MOU - Golf Course Consulting Agreement
WATTS AND ASSOCIATES, INC.	\$400,000.00	\$384,638.59	\$15,361.41	Crop insurance product development services
BEAVER CREEK ARCHAEOLOGY	\$396,970.25	\$369,370.25	\$27,600.00	Engineering Services
C THREE MEDIA, LLC	\$394,063.70	\$354,123.41	\$39,940.29	Videography Services
MBA	\$380,636.36	\$380,636.36	\$0.00	Golf course and pump house - Oxbow Country Club
MVM CONTRACTING	\$339,448.03	\$339,448.03	\$0.00	Fiber Relocation
SWANSON HEALTH PRODUCTS, INC.	\$337,059.00	\$337,059.00	\$0.00	FM1471 - Storm Lift Stations #55 and #56 - Drain 27
INTEGRA REALTY RESOURCES	\$320,750.00	\$260,725.00	\$60,025.00	Property Appraisal Services
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
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
JR FERCHE INC.	\$277,004.58	\$277,004.58	\$0.00	Water System Improvements
MOODYS INVESTORS SERVICE, INC.	\$274,375.00	\$274,375.00	\$0.00	WIFIA loan fees
702 COMMUNICATIONS	\$266,892.07	\$266,892.07	\$0.00	Utility Relocation
FORUM COMMUNICATIONS	\$248,935.13	\$248,935.13	\$0.00	Advertising Services

Data Through Date: Friday, May 31, 2024

Cumulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
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
PLEASANT TOWNSHIP	\$238,722.25	\$238,722.25	\$0.00	Building Permit Application
NORTHERN IMPROVEMENT COMPANY	\$235,531.95	\$235,531.95	\$0.00	CR-17 asphalt paving
MICHAEL H KLEIN	\$234,965.25	\$90,471.10	\$144,494.15	Communications Support
DAWSON INSURANCE AGENCY	\$232,155.45	\$232,155.45	\$0.00	Property Insurance - Home Buyouts
GRAY PANNELL & WOODWARD LLP	\$231,300.68	\$231,300.68	\$0.00	Legal Services
APEX ENGINEERING GROUP INC	\$227,256.79	\$227,256.79	\$0.00	Engineering
WILLIAM D. SCEPANIAC, INC.	\$226,235.21	\$226,235.21	\$0.00	ROADWAY RESHAPING & AGGREGATE SURFACING
GA GROUP, PC	\$204,229.32	\$164,229.32	\$40,000.00	Government Relations
AMERICAN ENTERPRISES, INC.	\$200,281.00	\$200,281.00	\$0.00	Construction/Demolition
CITY OF OXBOW MOU	\$200,000.00	\$200,000.00	\$0.00	Oxbow Park Relocation MOU Amendment
EXECUTIVE MANAGEMENT SYSTEMS, INC.	\$196,763.96	\$196,763.96	\$0.00	Executive Coaching
SERKLAND LAW FIRM	\$189,803.71	\$189,803.71	\$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
LANDVEST, INC.	\$167,000.00	\$0.00	\$167,000.00	Appraisal 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
RED RIVER COMMUNICATIONS	\$160,943.20	\$0.00	\$160,943.20	Fiber Relocation
KLJ ENGINEERING, LLC	\$156,242.25	\$156,242.25	\$0.00	Lift Station Improvements
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
EIDE BAILLY LLP	\$139,270.75	\$120,220.75	\$19,050.00	Audit Services

Data Through Date: Friday, May 31, 2024

Cumulative Vendor Payments Since Inception (Paid Only)

Vendor Name	Approved Contract/Invoiced Amount	Liquidated	Outstanding Encumbrance	Purpose
QUANTUM SPATIAL, INC.	\$139,061.35	\$139,061.35	\$0.00	Digital Aerial Photography
JT LAWN SERVICE LLC	\$137,044.00	\$137,044.00	\$0.00	Mowing and weed control
FUGRO USA LAND, INC.	\$130,396.52	\$130,396.52	\$0.00	Digital Aerial Photography
MARCO TECHNOLOGIES	\$125,554.72	\$79,242.05	\$46,312.67	IT Services
SENTRY SECURITY, INC.	\$121,212.85	\$121,212.85	\$0.00	Security Services
AFFINITEXT INC	\$118,630.00	\$74,413.20	\$44,216.80	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
TINJUM APPRAISAL COMPANY, INC.	\$112,100.00	\$112,100.00	\$0.00	Property Appraisal Services
OXBOW COUNTRY CLUB	\$110,391.68	\$110,391.68	\$0.00	Golf Course - Oxbow
JORGE PAGAN	\$109,500.00	\$109,500.00	\$0.00	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

148 Vendors

Report Totals:

\$1,150,051,183.23

\$1,076,544,459.98

\$73,506,723.25

METRO FLOOD DIVERSION AUTHORITY

Data Through Date: Friday, May 31, 2024

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired / Sold	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
	9	0	0	0%	9	\$0
UMA-W2	9	0	0	0%	9	\$0
BIOGEO	429	262	130	91%	37	\$1,515,551
BIOGEO	299	261	1	88%	37	\$743,866
HC	130	1	129	100%	0	\$771,685
CHANNEL	708	501	206	100%	1	\$98,977,759
ENV	1	0	0	0%	1	\$0
HC	255	49	206	100%	0	\$3,561,866
LAP01	115	115	0	100%	0	\$7,872,311
LAP02	95	95	0	100%	0	\$13,522,797
LAP03	84	84	0	100%	0	\$22,878,282
LEGACY	156	156	0	100%	0	\$51,141,254
SE-1B	1	1	0	100%	0	\$0
SheyMit	1	1	0	100%	0	\$1,250
DOWNSTREAM	7	0	7	100%	0	\$0
HC	7	0	7	100%	0	\$0
Habitat Improve	22	6	0	27%	16	\$2,000
ENV	5	5	0	100%	0	\$0
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

METRO FLOOD DIVERSION AUTHORITY

Data Through Date: Friday, May 31, 2024

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired / Sold	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
SEAILAND	507	447	41	96%	19	\$96,305,429
DRAIN 27	41	41	0	100%	0	\$22,657,154
HC	60	19	41	100%	0	\$458,806
LEGACY	127	127	0	100%	0	\$21,954,522
SE_I29	10	10	0	100%	0	\$4,383,360
SE-1	20	20	0	100%	0	\$6,259,028
SE-1B	2	2	0	100%	0	\$0
SE-2A	13	13	0	100%	0	\$3,968,087
SE-2B	73	68	0	93%	5	\$11,318,469
SE-3	12	12	0	100%	0	\$1,009,802
SE-4	70	59	0	84%	11	\$11,445,809
SE-5	24	21	0	88%	3	\$1,406,309
SE-INLET	8	8	0	100%	0	\$2,952,107
SE-RRCS	37	37	0	100%	0	\$8,053,018
SE-WRCS	10	10	0	100%	0	\$438,958
Sheyenne Mitigatio	3	1	0	33%	2	\$1,750
SheyMit	3	1	0	33%	2	\$1,750
WP36	2	2	0	100%	0	\$2,750
WRDAM	2	2	0	100%	0	\$2,750
WP38	1,032	338	377	69%	317	\$95,591,687
HC	381	4	377	100%	0	\$1,283,123
LEGACY	3	3	0	100%	0	\$750
UMA	575	330	0	57%	245	\$94,290,660
UMA-C	56	0	0	0%	56	\$0
UMA-W	14	1	0	7%	13	\$17,153
UMA-W2	3	0	0	0%	3	\$0
WP40	18	8	10	100%	0	\$48,923
DRAYTON	7	7	0	100%	0	\$48,923
HC	10	0	10	100%	0	\$0
LEGACY	1	1	0	100%	0	\$0
WP42	66	49	4	80%	13	\$37,850,061
HC	4	0	4	100%	0	\$0
LEGACY	6	6	0	100%	0	\$18,014,935
WP42	56	43	0	77%	13	\$19,835,126

METRO FLOOD DIVERSION AUTHORITY

Data Through Date: Friday, May 31, 2024

Parcel (OIN) Physical Location Summary

Project / Physical Location	Parcels	Acquired / Sold	Cancelled OIN's (HC)	PCT Acquired / Cancelled	Remaining OIN's	Cost To Date
WP43	268	121	147	100%	0	\$79,807,670
Non-OIN Hard Land Cost	0	0	0	0%	0	\$22,598,547
HC	148	1	147	100%	0	\$500
LEGACY	6	6	0	100%	0	\$3,589,519
WP43A	1	1	0	100%	0	\$0
WP43B	11	11	0	100%	0	\$1,942,138
WP43C	74	74	0	100%	0	\$45,142,769
WP43D	14	14	0	100%	0	\$5,271,226
WP43D5	5	5	0	100%	0	\$1,175,055
WP43G	9	9	0	100%	0	\$87,915
Totals	3,194	1,735	923	83%	536	\$410,103,580

**FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of May 31, 2024**

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		7,604,598.67	-	595,320.88	-	8,199,919.55
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		312,462,228.04	-	5,109,571.44	(19,216,329.99)	170,515,960.27

**FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of May 31, 2024**

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
Land Purchases		177,281,546.85	-	2,563,701.41	(9,356,287.99)	170,515,960.27
5515 174th St SE, Christine, ND Section 12-136N-49W, Richland County, ND	2/29/2024	962,175.56				
Part of SW1/4 29-137-48 Clay County MN	2/8/2024	221,165.40				
Part of the SW 1/4 SE1/4 34-137-48 Clay County MN	2/29/2024	210,070.00				
SW 1/4 Sec 5-137N-48W Holy Cross Clay County MN	4/11/2024	225,877.76				
Part of the South Half of the Northeast Quarter of Section 29, Township 137 North, Range 48 West of the 5th Principal Meridian, Clay County, Minnesota	4/11/2024	391,183.71				
31 137N 48W, Holy Cross Twp, Clay County, MN	5/2/2024	408,266.15				
NE1/4 Section 12, Pleasant Township, Cass County, ND	5/2/2024	1,082,367.99				
Government Lot One, of Section Thirteen, Township One Hundred Forty North of Range Forty-nine West of the Fifth Principal Meridian, situated in the County of Clay and the State of Minnesota	5/30/2024	302,260.08				
		<u>377,229,002.15</u>	-	39,880,699.23	(19,594,037.86)	397,515,663.52
				Property Management Expense		6,321,263.65
					Grand Total	<u>\$ 403,836,927.17</u>

**FM Metropolitan Area Flood Risk Management Project
In-Town Levee Work
as of May 31, 2024**

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	\$ 406,921.54	\$ 406,921.54
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	\$ 30,283,715.00	\$ 30,283,715.00
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>\$ 181,371,867.72</u>	<u>\$ 180,154,428.21</u>

**Legacy Bond Fund Balance Report
As of 05/31/2024**

Total Authorized \$ 435,500,000.00

Current Allocation \$ 435,500,000.00

Available funds remaining \$ 169,759,165.27

Funds Requested					
	2021	2022	2023	2024	Total
January	\$ -	\$ 2,942,906.60	\$ 9,981,188.76	\$ 6,088,699.53	\$ 19,012,794.89
February	\$ -	\$ 4,564,036.17	\$ 8,921,227.42	\$ 9,838,208.63	\$ 23,323,472.22
March	\$ -	\$ 5,302,899.35	\$ 17,730,945.56	\$ 14,687,498.12	\$ 37,721,343.03
April	\$ -	\$ 1,472,504.37	\$ 11,046,323.21	\$ -	\$ 12,518,827.58
May	\$ -	\$ 1,450,140.38	\$ 4,548,883.57	\$ -	\$ 5,999,023.95
June	\$ -	\$ 4,423,864.76	\$ 14,466,204.50	\$ -	\$ 18,890,069.26
July	\$ -	\$ 2,663,992.40	\$ 3,974,515.98	\$ -	\$ 6,638,508.38
August	\$ 5,059,974.19	\$ 13,491,974.29	\$ 13,633,750.92	\$ -	\$ 32,185,699.40
September	\$ 2,970,327.95	\$ 8,406,666.33	\$ 965,586.18	\$ -	\$ 12,342,580.46
October	\$ 6,089,707.34	\$ 4,618,116.80	\$ 23,248,333.49	\$ -	\$ 33,956,157.63
November	\$ 6,415,461.09	\$ 11,768,061.46	\$ 8,921,783.21	\$ -	\$ 27,105,305.76
December	\$ 6,854,966.95	\$ 17,496,559.97	\$ 11,695,525.26	\$ -	\$ 36,047,052.18
Total	\$ 27,390,437.51	\$ 78,601,722.88	\$ 129,134,268.06	\$ 30,614,406.28	\$ 265,740,834.73

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		\$ 29,264,621.43
Apr 2023			\$ 18,902,416.18		\$ 18,902,416.18
Aug 2023			\$ 47,792,356.84		\$ 47,792,356.84
Nov 2023			\$ 18,573,853.08		\$ 18,573,853.08
Feb 2024				\$ 43,865,641.96	\$ 43,865,641.96
May 2024				\$ 30,614,406.28	\$ 30,614,406.28
					\$ -
Total	\$ 27,390,437.51	\$ 49,337,101.45	\$ 114,533,247.53	\$ 74,480,048.24	\$ 265,740,834.73

State Revolving Fund (SRF) Status Report
As of 05/31/2024

Total Authorized	\$	51,634,000.00
Funds Received to Date	\$	12,320,801.21
Available Balance Remaining	\$	39,313,198.79

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
4	11-Feb through 30-Apr. 2023	\$ 1,600,121.65	25-Jul-23
5	11-July through 28-Sept. 2023	\$ 2,052,271.94	24-Oct-23
6	11-July through 28-Sept. 2023	\$ 2,731,423.54	07-Feb-24
7	1-Nov 2023 through 31-Jan. 2024	\$ 1,112,125.48	23-May-24
Total		\$ 13,432,926.69	

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	21-Apr-23
4	11-Feb through 30-Apr. 2023	\$ 1,600,121.65	21-Aug-23
5	11-July through 28-Sept. 2023	\$ 2,052,271.94	08-Nov-23
6	11-July through 28-Sept. 2023	\$ 2,731,423.54	22-Feb-24
Total		\$ 12,320,801.21	



Diversion Authority Finance Committee Meeting

June 26, 2024

Cash Budget Report

Annual Revenue Status



Revenue Sources	2024 Approved Budget (Thousands)	Current Month (Thousands)	Fiscal Year To Date (Thousands)
City of Fargo Sales Tax	\$44,000	\$4,363	\$17,869
Cass County Sales Tax	\$22,000	\$2,140	\$8,959
State of ND - Legacy Bond Fund Draws	\$118,891	\$30,614	\$30,614
State of ND - SRF	\$15,000	\$0	\$2,731
Financing Proceeds	\$7,500	\$10	\$4,120
Reimbursements	\$25	\$0	\$0
Sales of Assets	\$1,000	\$0	\$304
Property Income	\$500	\$2	\$9
Miscellaneous	\$100	\$0	\$1
Horace Infrastructure Escrow Account	\$4,298	\$0	\$0
BRRWD Escrow Account	\$3,000	\$0	\$0
MIT Inter-Fund Transfers	\$0	\$138	\$693
Total Revenue Sources	\$216,314	\$37,266	\$65,299



Overall Status – Level 1 Summary

Data Through Date: Friday, May 31, 2024

Schedule Budget Categories (Non-Federal Work)	OVERALL PROGRAM FINANCIAL PLAN (\$MM)			CURRENT FISCAL YEAR		
	Program EAC	Actual Cost to Date	Program ETC	FY 2024 Budget	FY 2024 Cost	FY Remaining
CHANNEL / P3	\$96.4	\$58.9	\$37.5	\$14,528,000	\$4,726,845	\$9,801,155
MILESTONE PAYMENTS TO THE DEVELOPER	\$867.0	\$0.0	\$867.0	\$34,854,159	\$0	\$34,854,159
OTHER MITIGATION / CONSTRUCTION	\$39.5	\$36.2	\$3.3	\$800,000	\$193,948	\$606,052
ND / MN RIVER STAGE 37' PROJECTS	\$213.3	\$163.6	\$49.7	\$28,700,000	\$3,497,354	\$25,202,646
LANDS AND IMPACTED PROPERTY MITIGATION	\$571.7	\$466.9	\$104.8	\$64,000,000	\$30,005,724	\$33,994,276
ENGINEERING & DESIGN FEES	\$98.5	\$61.3	\$37.2	\$8,315,850	\$3,020,924	\$5,294,926
PROG. MANAGEMENT/LEGAL/FINANCIAL/PROCUREMENT	\$165.4	\$113.4	\$52.1	\$19,790,200	\$6,012,769	\$13,777,431
DA CONSTRUCTION CONTINGENCY	\$163.9	\$3.8	\$160.1	\$5,040,841	\$17,441	\$5,023,401
3RD PARTY MOU MITIGATION	\$153.4	\$70.6	\$82.8	\$32,920,677	\$3,175,362	\$29,745,315
NET CURRENT INTEREST / FINANCING FEES PAID	\$75.7	\$50.1	\$25.6	\$6,300,000	\$91,366	\$6,208,634
P3 RESERVE FUND	\$16.1	\$0.0	\$16.1	\$0	\$0	\$0
WIFIA/ SRF DSRA FUNDING	\$15.1	\$0.0	\$15.1	\$0	\$0	\$0
DA PAYMENT TO USACE	\$70.7	\$53.2	\$17.5	\$0	\$0	\$0
DA O&M (PRE-SC)	\$14.9	\$0.4	\$14.5	\$200,000	\$84,036	\$115,964
DEBT TRANSFERS TOTAL	\$330.3	\$2.0	\$178.0	\$864,000	\$0	\$864,000
Report Totals	\$2,892.0	\$1,080.4	\$1,661.3	\$216,313,727	\$50,825,768	\$165,487,959



Overall Status – Level 2 Detail

Data Through Date: Friday, May 31, 2024

Schedule Budget Categories (Non-Federal Work)	Program Level (Millions)			Fiscal Year		
	Financial Plan	Cost to Date	Balance Remaining	FY Budget 2024	Cost to Date	Balance Remaining
Program Execution						
Channel / P3	\$96.40	\$58.90	\$37.50	\$14,528,000	\$4,726,845	\$9,801,155
Management, Legal, Financial, Procurement P3	\$96.40	\$58.90	\$37.50	\$14,528,000	\$4,726,845	\$9,801,155
Milestone Payments to the Developer	\$867.05	\$0.00	\$867.05	\$34,854,159	\$0	\$34,854,159
Milestone Payments to the Developer	\$865.80	\$0.00	\$865.80	\$32,854,159	\$0	\$32,854,159
Non-Contingency Change Events	\$1.25	\$0.00	\$1.25	\$2,000,000	\$0	\$2,000,000
Other Mitigation / Construction	\$39.51	\$36.17	\$3.34	\$800,000	\$193,948	\$606,052
WP-26 Diversion Inlet	\$0.07	\$0.07	\$0.00	\$0	\$0	\$0
WP-27 Red River - West Embankment	\$0.00	\$0.00	\$0.00	\$0	\$0	\$0
WP-28 - Cass County Road 16 and 17 Bridge	\$1.90	\$1.62	\$0.28	\$0	\$0	\$0
WP-29 Red River - East Embankment	\$0.00	\$0.00	\$0.00	\$0	\$0	\$0
WP-30 Wild Rice River Control Structure	\$0.00	\$0.00	\$0.00	\$0	\$0	\$0
WP-31 I-29 Grade Raise	\$3.20	\$2.86	\$0.34	\$0	\$0	\$0
WP-35 Red River Control Structure	\$0.00	\$0.00	\$0.00	\$0	\$0	\$0
WP-43 Oxbow-Hickson-Bakke	\$31.04	\$28.50	\$2.54	\$800,000	\$0	\$800,000
WP-50 Phase II Demo	\$3.30	\$3.13	\$0.17	\$0	\$193,948	(\$193,948)
ND / MN River Stage 37' Projects	\$213.30	\$163.63	\$49.67	\$28,700,000	\$3,497,354	\$25,202,646
WP-42 In-Town Levees	\$91.00	\$90.48	\$0.52	\$0	\$0	\$0
Fargo- River Stage 37' Projects	\$107.30	\$73.15	\$34.15	\$28,700,000	\$3,497,354	\$25,202,646
Clay County - River Stage 37' Projects	\$6.00	\$0.00	\$6.00	\$0	\$0	\$0
Cass County - River stage 37' Projects	\$9.00	\$0.00	\$9.00	\$0	\$0	\$0
Lands and Impacted Property Mitigation	\$571.70	\$466.86	\$104.84	\$64,000,000	\$30,005,724	\$33,994,276
Management, Legal, Financial, Procurement Lands	\$87.20	\$47.30	\$39.90	\$7,250,000	\$2,536,195	\$4,713,805
Diversion Channel & Assoc. Infrastructure	\$100.62	\$99.09	\$1.53	\$100,000	(\$32,258)	\$132,258
Southern Embankment & Assoc. Infrastructure	\$73.03	\$63.14	\$9.89	\$14,050,000	\$12,247,412	\$1,802,588
Mitigation & Assoc. Infrastructure	\$110.01	\$107.77	\$2.24	\$100,000	\$454,805	(\$354,805)
WP-38 Upstream Staging	\$161.84	\$111.54	\$50.29	\$42,500,000	\$14,799,569	\$27,700,431
In-Town Flood Protection	\$39.00	\$38.02	\$0.98	\$0	\$0	\$0



Overall Status – Level 2 Detail

Data Through Date: Friday, May 31, 2024

Schedule Budget Categories (Non-Federal Work)	Program Level (Millions)			Fiscal Year		
	Financial Plan	Cost to Date	Balance Remaining	FY Budget 2024	Cost to Date	Balance Remaining
Non-Construction						
Engineering & Design Fees	\$98.50	\$61.34	\$37.16	\$8,315,850	\$3,020,924	\$5,294,926
Management, Legal, Financial, Procurement	\$37.47	\$22.65	\$14.81	\$7,550,000	\$2,585,421	\$4,964,579
Work-In-Kind Programs (WIK) Studies	\$17.13	\$14.72	\$2.41	\$280,000	\$66,086	\$213,914
Indicative Design	\$7.19	\$7.13	\$0.06	\$0	\$0	\$0
Land, Easements, ROW, Relocation & Disposal Areas	\$0.47	\$0.46	\$0.01	\$0	\$0	\$0
Permitting	\$7.84	\$5.20	\$2.65	\$35,850	\$20,000	\$15,850
Certification	\$2.05	\$0.00	\$2.05	\$0	\$0	\$0
FMDA Detention Funding	\$3.00	\$0.72	\$2.28	\$0	\$0	\$0
Other Mitigation Projects	\$23.35	\$10.46	\$12.89	\$450,000	\$349,417	\$100,583
Prog. Management/Legal/Financial/Procurement	\$165.43	\$113.35	\$52.08	\$19,790,200	\$6,012,769	\$13,777,431
Program Management Costs	\$103.23	\$70.05	\$33.18	\$9,603,000	\$3,472,356	\$6,130,644
Diversion Authority Operations	\$11.47	\$4.71	\$6.76	\$1,679,200	\$630,162	\$1,049,038
Program Financial Services	\$6.52	\$3.34	\$3.18	\$165,000	\$12,168	\$152,833
DA Legal Services	\$20.35	\$19.22	\$1.13	\$3,500,000	\$1,043,584	\$2,456,416
CCJWRD Legal Services	\$16.86	\$10.76	\$6.10	\$3,900,000	\$542,753	\$3,357,247
Outreach Costs	\$7.00	\$5.28	\$1.72	\$943,000	\$311,747	\$631,254
DA Construction Contingency	\$163.90	\$3.78	\$160.12	\$5,040,841	\$17,441	\$5,023,401
System Wide and P3 Comp Events Contingency	\$95.90	\$3.78	\$92.12	\$145,841	\$17,441	\$128,401
Diversion Channel & Assoc. Infrastructure (MOU's & Utilities) Contingency	\$17.60	\$0.00	\$17.60	\$0	\$0	\$0
Other Mitigation Projects Contingency	\$2.00	\$0.00	\$2.00	\$0	\$0	\$0
In-Town Flood Protection Contingency	\$6.80	\$0.00	\$6.80	\$4,895,000	\$0	\$4,895,000
Land Acquisition Contingency	\$41.60	\$0.00	\$41.60	\$0	\$0	\$0



Overall Status – Level 2 Detail

Data Through Date: Friday, May 31, 2024

Schedule Budget Categories (Non-Federal Work)	Program Level (Millions)			Fiscal Year		
	Financial Plan	Cost to Date	Balance Remaining	FY Budget 2024	Cost to Date	Balance Remaining
Stakeholder Coordination						
3rd Party MOU Mitigation	\$153.41	\$70.64	\$82.77	\$32,920,677	\$3,175,362	\$29,745,315
Channel - Utility Relocations & Other Mitigation	\$35.10	\$19.56	\$15.54	\$0	\$851,649	(\$851,649)
WP-40 Drayton Dam Mitigation	\$0.00	\$0.00	\$0.00	\$0	\$0	\$0
WP-41 Future Stream Mitigation - Surrounding Counties	\$36.00	\$35.37	\$0.63	\$0	\$0	\$0
WP-46 SEAI / UMA Utility Relos	\$27.94	\$10.98	\$16.96	\$10,112,722	\$561,527	\$9,551,195
WP-47 Contracted Utility Relocations	\$0.00	\$1.15	(\$1.15)	\$4,140,525	\$1,134,167	\$3,006,358
WP-52 Township & City MOU Agreements	\$54.37	\$3.58	\$50.79	\$18,667,430	\$628,020	\$18,039,410
Financing						
Net Current Interest / Financing Fees Paid	\$75.70	\$50.14	\$25.56	\$6,300,000	\$91,366	\$6,208,634
Net Current Interest / Financing Fees Paid	\$75.70	\$50.14	\$25.56	\$6,300,000	\$91,366	\$6,208,634
P3 Reserve Fund	\$16.10	\$0.00	\$16.10	\$0	\$0	\$0
P3 Reserve Fund	\$16.10	\$0.00	\$16.10	\$0	\$0	\$0
WIFIA/ SRF DSRA Funding	\$15.10	\$0.00	\$15.10	\$0	\$0	\$0
WIFIA/ SRF DSRA Funding	\$15.10	\$0.00	\$15.10	\$0	\$0	\$0
DA Payment to USACE	\$70.70	\$53.16	\$17.54	\$0	\$0	\$0
DA Payment to USACE	\$70.70	\$53.16	\$17.54	\$0	\$0	\$0
DA O&M (pre-SC)	\$14.90	\$0.41	\$14.49	\$200,000	\$84,036	\$115,964
DA O&M (pre-SC)	\$14.90	\$0.41	\$14.49	\$200,000	\$84,036	\$115,964
Debt Transfers Total	\$330.30	\$2.04	\$177.96	\$864,000	\$0	\$864,000
Debt Transfers Total WF	\$150.30	\$0.00	\$0.00	\$0	\$0	\$0
Debt Transfers Total TRIBR	\$180.00	\$2.04	\$177.96	\$864,000	\$0	\$864,000
Report Totals	\$2,892.00	\$1,080.41	\$1,661.29	\$216,313,727	\$50,825,768	\$165,487,959

Diversion Authority Operations – Budget Summary



Expense Category	FY2024 Budget	Cost to Date	Remaining Budget
Salary	\$1,164,188	\$420,577	\$743,611
Benefits	\$326,612	\$131,438	\$195,174
Office	\$72,200	\$31,065	\$41,135
Other	\$87,000	\$26,655	\$60,345
Totals *	\$1,650,000	\$609,735	\$1,040,265

* Includes pending costs



Diversion Authority Finance Committee Meeting

June 26, 2024

MOU and Agreement Actions for Consideration
John Shockley

MFDA MOUs & Agreements (Action)



MOU Parties	Project	MOU or Agreement Cost and Summary
Minnkota Power Cooperative, Inc. & MFDA MOU Amendment 1	SWDCAI	<p>This is the first amendment to the MOU between Minnkota Power Cooperative, Inc. and the Metro Flood Diversion Authority. The amendment revises the definition of “Approved Subcontractors” in Section 1.01 of the MOU. There is no cost to the Authority from approval of this amendment to the MOU.</p> <p>The amended definitions changes some of the approved subcontractors as follows:</p> <p>“Approved Subcontractors” means contractors approved by the Utility to be hired by the P3 Developer to complete work on the Utility Relocation Project. Approved Subcontractors include only the following: Key Contracting, Inc., whose address is 245 7th Ave NE, West Fargo, ND 58078; Brink Constructors, Inc., whose address is 2950 N Plaza Dr., Rapid City, SD 57702; and M.J. Electric, LLC, whose address is P.O. Box 686, Iron Mountain, MI 49801-0686.”</p>
Raymond Township & MFDA MOU	SWDCAI	<p>The MOU addresses design, construction, operating and maintenance, future changes or additions, etc. in respect to any impacts that the Fargo-Moorhead Metropolitan Area Flood Risk Management Project will have on township roadways. Design, construction, and maintenance costs will be covered by the Developer through the Project Agreement. Reimbursement includes the following: Construction costs and expenses up to \$3,000 annually from the effective date until project substantial completion; Post-construction costs and expenses up to \$1,500 annually after project substantial completion; a lost tax revenue payment of \$4,360 (this will be divided into ten equal payments and paid out annually over ten years); and a \$30,000 payment for fire protection funds. This MOU was approved by the MFDA Board in April 2023. However, the township requested the addition a gravel road mobility improvement to offset the project impacts. Costs associated with the mobility improvement are to be determined.</p>

MFDA MOUs & Agreements (Action)



MOU Parties	Project	MOU or Agreement Cost and Summary
Clay County & MFDA 37-Foot MOU	Local Flood Protection and Associated Infrastructure (37-foot Road Raises)	The Clay County 37-foot Improvement MOU sets forth the roles and responsibilities for raises to specified county roadways on the north side of Moorhead that will allow the road to remain passable during comprehensive project operation. Pursuant to the terms of the MOU, the County will be responsible for designing, bidding, and constructing the road raises, with oversight and approval from the Authority. The County will require its contractor to secure insurance for the work and to indemnify the Authority. The Authority is responsible for reimbursing the County for all salaries, services, and/or related costs and expenses for surveying, land acquisition, design, construction, construction material, utilities, and inspections for the road raises.
Southeast Water Users District (SEWUD) & MFDA MURA	SEAI & UMA	The purpose of this Agreement is to ensure a coordinated, time-efficient, and cost-effective process for completing the Utility Relocation Project, for coordinating operations and maintenance activities after completion of the Utility Relocation Project, and for the development of individual Task Orders issued in conjunction with, and subject to, the terms and conditions of the Agreement.
USACE, ND SHPO & MFDA	UMA	The purpose of this Memorandum of Agreement (MOA) is to relocate a historic log cabin within the Upstream Mitigation Area that would otherwise be impacted by the Project. The MOA outlines process and responsibilities to both document and relocate the historic property.

**FIRST AMENDMENT
TO THE
MEMORANDUM OF UNDERSTANDING**

This First Amendment to the Memorandum of Understanding is made and entered into this ____ day of May, 2024 (hereinafter referred to as the “Effective Date”), by and between the Metro Flood Diversion Authority, a North Dakota political subdivision, whose post office address is 4784 Amber Valley Pkwy S, Ste 100, Fargo, ND 58104-5022, and Minnkota Power Cooperative, Inc., whose post office address is 5301 - 32nd Avenue South, Grand Forks, ND 58201 (hereinafter referred to as the “Utility”). Metro Flood Diversion Authority and Utility may be collectively referred to herein as the “Parties.”

WHEREAS, the Parties entered into the Memorandum of Understanding, dated May 18, 2021 (the “MOU”), regarding the diversion channel and associated infrastructure for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project;

WHEREAS, the Parties wish to amend the definition of “Approved Subcontractors” in Section 1.01 of the MOU.

NOW, THEREFORE, for the mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged and may not be challenged, the Parties hereby agree as follows:

1. Amended Definition. The Parties agree that the definition of “Approved Subcontractors” in Section 1.01 of the MOU is amended to read as follows:

“**Approved Subcontractors**” means contractors approved by the **Utility** to be hired by the P3 Developer to complete work on the **Utility Relocation Project**. **Approved Subcontractors** include only the following: Key Contracting, Inc., whose address is 245 7th Ave NE, West Fargo, ND 58078; Brink Constructors, Inc., whose address is 2950 N Plaza Dr., Rapid City, SD 57702; and M.J. Electric, LLC, whose address is P.O. Box 686, Iron Mountain, MI 49801-0686.”

Signature Pages to Follow

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

METRO FLOOD DIVERSION AUTHORITY

By:

Its:

By:

Its:

MINNKOTA POWER COOPERATIVE



By: WAYNE LEMBKE
Its: ENGINEERING MANAGER

By:
Its:

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

METRO FLOOD DIVERSION AUTHORITY

AND

RAYMOND TOWNSHIP, NORTH DAKOTA

Dated as of _____, 2024

Relating to:

A Memorandum of Understanding outlining the respective roles and responsibilities of the Parties in regard to the impacts resulting from construction of the Storm Water Diversion Channel and Associated Infrastructure of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (hereinafter the “MOU”) is made and entered into this _____ day of _____, 2024, by and between the METRO FLOOD DIVERSION AUTHORITY (the “Authority”) and RAYMOND TOWNSHIP, NORTH DAKOTA (the “Township”).

NOW, THEREFORE, in consideration of the faithful performance of each Party of the mutual covenants and agreements herein set forth, it is mutually agreed as follows:

ARTICLE I. DEFINITIONS AND INTERPRETATION

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

“**Compensation Event**” means as defined in the Project Agreement.

“**Comprehensive Project**” means the project commonly known as the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, which includes the SWDCAI.

“**Design Documents**” means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details, and diagrams), specifications, reports, studies, working drawings, shop drawings, calculations, electronic files, records, and submittals necessary for, or related to, the design of the SWDCAI.

“**Developer**” means Red River Valley Alliance, LLC, a limited liability company formed under the laws of the State of Delaware that entered the Project Agreement with the Authority to design, finance, build, operate, and maintain the SWDCAI. References to the Developer throughout this MOU include references to other entities engaged by the Developer to complete such work.

“**Diversion Inlet Structure**” means the hydraulic control structures being constructed by USACE at the confluence of County Road 16 and County Road 17.

“**Force Majeure Flood Event**” means (i) until Project Substantial Completion, an officially declared federal flood disaster occurring in the Fargo-Moorhead metropolitan area; and (ii) on or after Project Substantial Completion, more than 45,000 cfs is permitted to flow through the Diversion Inlet Structure.

“**Indemnified Party**” means a party identified by the Project Agreement as such.

“**Insurance Policies**” means the insurance policies the Authority is required to carry or ensure are carried by the Developer.

“Intellectual Property” means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United States or any part of the world together with all or any goodwill relating or attached thereto which is created, brought in existence, acquired, used, or intended to be used by the Authority for the purposes of carrying out the work or otherwise for the purposes of this MOU.

“Losses” means any loss, damage, injury, liability, obligation, costs, response cost, expense, fee, charge, judgment, penalty, or fine. Losses include injury to or death of Persons, damage or loss of property, and harm or damage to natural resources.

“MAI” means mitigation and associated infrastructure.

“Material Change or Modification” means a change or modification affecting the operation or performance of a New Gravel Roadway.

“Milestone One Limits” means the portion of the SWDCAI from the new Drain 14 inlet structure (including the Drain 14 inlet facilities) to the Red River, including the SWDCAI outlet (i.e., between the Indicative Design Station 0+00 and approximately 920+00 as shown on Exhibit A attached hereto).

“Mobility Improvement” means a gravel improvement to an ancillary unimproved road to facilitate increased mobility due to realignments caused by construction of the SWDCAI.

“New Gravel Road” means a gravel road or field access that will be opened and constructed to provide access to a Parcel Without Access.

“Parcel Without Access” means a parcel of land that, as a result of the construction of the SWDCAI, will be left without an access point or whose access will be severed, excluding property that can be accessed by adjoining parcels with a matching owner.

“Party” means the Authority or the Township, as the context may require, and their respective legal representatives, successors, and permitted assigns, and wherever a reference in this MOU is made to any Parties hereto, **“Parties”** means the Authority and the Township, collectively, and their respective legal representatives, successors, and permitted assigns.

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

“Project Agreement” means the contract to design, build, finance, operate, and maintain the SWDCAI that the Authority entered with the Developer.

“Project Data” means

- (a) Design Documents; and

(b) Any other information, documents, or data required or brought into existence or used in relation to the work or this MOU;

in each case, that is used by or on behalf of the Authority in connection with the provision of the work or the performance of the Authority's obligations under this MOU.

“Project Limits” means the approximate right-of-way for the SWDCAI, as currently projected in Exhibit A.

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

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

“Relief Event” means as defined in the Project Agreement.

“Routine Maintenance” means re-striping, snow plowing, and ice and snow control (e.g., application of salts, chlorides, or sand).

“SEAI” means the southern embankment and associated infrastructure portion of the Comprehensive Project, to be procured by USACE.

“Storm Water Diversion Channel and Associated Infrastructure” or **“SWDCAI”** means the approximately thirty (30) mile, 20,000 cubic feet per second (cfs) during a 100-year event channel and associated features, including the outlet, river and drain inlets, road bridges, railroad bridges, aqueducts, and recreational features, to be constructed as part of the Comprehensive Project.

“Substantial Completion” means a New Gravel Road or Mobility Improvement is functional to its intended use.

“Third Party Claims” means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, investigations or administrative proceedings brought by a Person that is not an Indemnified Party, including the Township, with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines, or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

“Traffic Mitigation Route” means existing roads that may be used as detour routes during construction of the SWDCAI.

ARTICLE II. INTENT

Section 2.01 INTENT. The Authority, in conjunction with the United States Army Corps of Engineers (“USACE”), is designing, constructing, operating, and maintaining the Comprehensive Project. One element of the Comprehensive Project is the SWDCAI, which the Authority will deliver through a public-private partnership with the Developer. The Authority transferred the majority of the obligations set forth in this MOU to the Developer through the entrance of the Project Agreement. If an obligation is not transferred to the Developer, the Authority will undertake such obligation itself or assign the same to a third party. References to the Authority throughout this MOU include references to other entities engaged by the Authority, including the Developer, to complete such work. Regardless of whether the Authority assigns any of the work described in this MOU, it will remain liable for the obligations assigned by this MOU.

Section 2.02 DEVELOPER AND AUTHORITY CONTACT. Following the selection of the Developer, an Authority appointed and Developer selected contact within the agency and prime contractor (“Point of Contact”) will be assigned to the Township Representative. The intended purpose of this Point of Contact is to allow the Township Representative to provide information to the Authority and the Developer regarding Township-related activities that may be occurring on property near the Project Limits that may have an impact on the Developer’s work, as well as to allow the Township Representative to inform the Authority and the Developer of conflicts or concerns the Township may have. The Authority will work with the Township to remedy any such conflicts or concerns.

ARTICLE III. SWDCAI AND OPENING

Section 3.01 DESIGN AND CONSTRUCTION. The Authority is responsible for designing and constructing the SWDCAI. Once the Authority has prepared plans and specifications for the SWDCAI, the Authority will open New Gravel Roads as set forth in this Article.

Section 3.02 NEW GRAVEL ROADS.

- (a) The Authority will seek authorization to establish a New Gravel Road from 35th Street Southeast to landlocked parcel number 938.
- (b) In the event the Authority’s design creates any additional Parcels Without Access, the Authority will be responsible for establishing a New Gravel Road to provide access to those parcels as well.
- (c) A New Gravel Road will be constructed as a Two-Lane Township Gravel Section Road in accordance with the standards attached hereto as Exhibit B.
- (d) The Authority will open New Gravel Roads through platting.

ARTICLE IV. PROPERTY INTEREST ACQUISITION

Section 4.01 ACQUISITION. The Authority will, at its sole cost and expense, obtain all easements, rights-of-way, or other interests in real property necessary for the opening of New Gravel Roads and the Mobility Improvements.

Section 4.02 TRANSFER OF INTEREST. For those portions of New Gravel Roads and Mobility Improvements outside of the Project Limits and acquired by the Authority, the Authority will convey to the Township, at the time set forth herein, the necessary right-of-way and/or easement interests needed to operate and maintain the New Gravel Roads and Mobility Improvements. The Authority will maintain ownership of those portions of New Gravel Roads and Mobility Improvements located within the Project Limits.

Section 4.03 WEED CONTROL. On property in which the Authority has obtained an interest for the development of the Comprehensive Project, the Authority will designate personnel to monitor and maintain control of weeds in accordance with all applicable noxious weed control ordinances.

Section 4.04 PLATTING. The Authority intends to plat the Project Limits. Cass County, pursuant to N.D.C.C. § 24-05-09, will declare, by resolution, those portions of Township roads, as determined by the Project Limits, that will be impacted by construction to be part of the Cass County highway system. The section line road rights-of-way that the Authority anticipates will be impacted by the construction are included in the Project Limits Map, attached as Exhibit E.

ARTICLE V. PRELIMINARY PLANNING AND ENGINEERING ACTIVITIES

Section 5.01 SITE TESTING. The Authority will perform all preliminary engineering activities for New Gravel Roads and Mobility Improvements, including: (a) technical studies and analyses; (b) geotechnical, seismic, flooding, and biological investigations; (c) right-of-way mapping, surveying, and appraisals; (d) utility subsurface investigations and mapping; (e) hazardous materials investigations; and (f) archeological, paleontological, and cultural investigations.

Section 5.02 MITIGATION. The Authority is responsible, at its sole cost and expense, for the remediation and removal of all hazardous materials unearthed as a result of the construction of the SWDCAI, New Gravel Roads, and the Mobility Improvements.

Section 5.03 ENVIRONMENTAL REVIEWS. The Authority will coordinate with USACE to ensure that all work described in this MOU complies with applicable environmental laws and regulations and receives all necessary environmental clearances.

Section 5.04 UTILITY RELOCATION. The Authority is responsible for coordinating and/or performing utility relocations and will be responsible for costs incurred for these relocations.

Section 5.05 PERMITS AND APPROVALS. The Authority will secure any necessary permits and/or approvals for construction of the SWDCAI from the State of North Dakota and is

responsible for carrying out any requirements of those permits and/or approvals, including environmental requirements. From the Township, the Authority will apply for and secure conditional use permits for recreational features of the SWDCAI as required under the Township’s ordinances. Currently, there are no recreational features included in the Authority’s technical requirements for the SWDCAI. The current features of the SWDCAI include the following:

- (a) Diversion channel;
- (b) Low flow channel;
- (c) Diversion channel outlet;
- (d) Maintenance roads and trails;
- (e) Drainage inlets;
- (f) Aqueducts;
- (g) Project access points;
- (h) Excavated material berms;
- (i) Diversion channel line of protection;
- (j) Local drainage;
- (k) Highway crossings;
- (l) Railroad crossings; and
- (m) Utility crossings.

In the event recreational features are added to the SWDCAI, the Authority will apply for and secure a conditional use permit from the Township for their construction. Except as otherwise specifically set forth herein, the Authority is not required to obtain any other permits from the Township.

**ARTICLE VI.
DESIGN AND CONSTRUCTION**

Section 6.01 DESIGN. The Authority will submit all designs for New Gravel Roads and the Mobility Improvements to the County for review and approval in accordance with the terms of the memorandum of understanding entered between the County and the Authority for the SWDCAI. Any designs resulting from this MOU will be the property of the Authority. The provisions of this section do not preclude the Township from hiring its own engineer (the “Township Engineer”) to be consulted during the design phase. If the Township desires to have

the Township Engineer consulted, it will notify the Authority Representative, who will coordinate with the Township Engineer on design reviews. The Township is authorized to submit any engineering expenses incurred for design to the Authority for reimbursement pursuant to Article XII.

Section 6.02 CONSTRUCTION.

(a) The Authority will be responsible for constructing New Gravel Roads, the Mobility Improvements, and any other physical alterations necessary for construction, operation, and maintenance of the SWDCAI.

(b) Construction of a New Gravel Road will be in accordance with the plat and will be constructed as a Two-Lane Gravel Section road in accordance with the standards attached hereto as Exhibit B.

(c) The Authority will construct the following Mobility Improvements:

(1) Improve 166th Avenue Southeast from 34th Street Southeast to 35th Street Southeast in accordance with the specifications included in Exhibit B attached hereto.

(2) Improve 34th Street Southeast from 166th Avenue Southeast to 38th Street Northwest in accordance with the specifications included in Exhibit B attached hereto.

Section 6.03 CREATION OF DEAD-ENDS. At each location where construction of the SWDCAI creates a dead-end of a section line road, the Authority will construct a cul-de-sac of material consistent with the material of the remaining section line road and according to the design attached hereto as Exhibit D. The cul-de-sac may be constructed outside the Project Limits or inside the Project Limits, as the design for the SWDCAI allows in the discretion of the Authority, with the preference being that it is constructed outside the Project Limits.

Section 6.04 TRAFFIC MITIGATION ROUTES. The Authority will utilize Traffic Mitigation Routes to maintain adequate mobility and construction access along the SWDCAI during construction. Once the Authority has identified Traffic Mitigation Routes, it will inform the Township. The use of Traffic Mitigation Routes may or may not entail upgrading an existing earthen or dirt road to a gravel road. During the time that traffic is detoured on a Traffic Mitigation Route, the Authority will maintain the Traffic Mitigation Route in a condition that is smooth and free from holes, ruts, ridges, bumps, and standing water. The Township will be responsible for Routine Maintenance on Traffic Mitigation Routes. Once the detour along the Traffic Mitigation Route is terminated, the Authority will either remove the road for construction of the SWDCAI or will restore the detour route to a condition that is equivalent to that which existed prior to its use.

Section 6.05 HAUL ROADS. Prior to beginning construction, the Authority will identify existing roads that it may utilize as haul roads and inform the Township. The Authority will comply with seasonable and other load restrictions on existing public roads. The Authority will use its best efforts to utilize County roads, in lieu of Township roads, as haul routes and will work with the County Engineer in doing so. The Authority will operate and maintain the

condition of these roads during construction and make any necessary adjustments to the existing public roads to accommodate the vehicles hauling construction material. The Township will provide Routine Maintenance on haul routes. In the event the Township believes maintenance is not being performed or is being underperformed, it will notify the Point of Contact, and the Authority will coordinate maintenance, which may include, if agreed upon, the Township performing the maintenance and receiving reimbursement from the Authority. By completion of the Milestone One Limits, the Authority will have restored those roads used as haul roads to a condition equivalent to that which existed prior to their use. Any changes to haul routes will be forwarded to the Township for review and comment.

Section 6.06 SIGNAGE AND LANE CLOSURES. The Authority will be responsible for traffic flow impacted by its construction and will place and maintain appropriate signage during construction of New Gravel Roads, the Mobility Improvements, and the SWDCAI, as necessary. The Authority will maintain traffic control devices in like new condition and located in positions required by the Manual on Uniform Traffic Control Devices. Additionally, the Authority will provide advanced notification to the Township and the public of road closures, lane closures, and/or traffic switches.

Section 6.07 CHANGES OR MODIFICATIONS. Any material changes or modifications to the location of a New Gravel Road will be subject to approval following the procedure outlined in Article III for opening a New Gravel Road. Any changes or modifications to the locations of the Mobility Improvements will be subject to written approval by the Township. Any Material Changes or Modifications to the Released for Construction Documents of a New Gravel Road or Mobility Improvement will also be subject to review and approval by the County in accordance with the terms of the memorandum of understanding entered between the County and the Authority for the SWDCAI. If the Township hired a Township Engineer to be engaged during design review, as described in Section 6.01, the Authority Representative will also consult with the Township Engineer for any Material Change or Modification to the Released for Construction Documents of a New Gravel Road or a Mobility Improvement.

Section 6.08 CONSTRUCTION SCHEDULE. To facilitate scheduling for construction work of New Gravel Roads and the Mobility Improvements, the Authority will provide the Township Representative a proposed construction schedule for New Gravel Roads and Mobility Improvements, as well as a map of designated haul routes. The Point of Contact will provide schedule updates to the Township Representative as they become available.

Section 6.09 SUBSTANTIAL COMPLETION. The Authority will provide the Township Representative, the County Engineer, and the Township Engineer, if applicable, with written notice of any anticipated Substantial Completion of a New Gravel Road or Mobility Improvement: (i) no later than sixty (60) calendar days and (ii) no later than fifteen (15) Business Days prior to the anticipated date for Substantial Completion. No later than ten (10) Business Days prior to the anticipated date for Substantial Completion, the County Engineer, and the Township Engineer, if applicable, and the Authority will conduct a final inspection of the New Gravel Road or Mobility Improvement to determine whether the structure meets the requirements as provided in this MOU. If the County Engineer or the Township Engineer finds the construction is insufficient, whether due to it being incomplete or non-compliant with the requirements as provided in this MOU, as applicable, the County Engineer or the Township

Engineer will notify the Authority of such fact and the Authority will correct such deficiency in the construction work and re-notify for inspection.

Section 6.10 OWNERSHIP.

(a) Upon substantial completion of the Milestone One Limits, the Authority will transfer ownership and control of New Gravel Roads and Mobility Improvements outside of the Project Limits to the Township (“Turnover”). The Authority will maintain ownership and control of New Gravel Roads and Mobility Improvements within the Project Limits.

(b) The Authority will warrant that the work on New Gravel Roads and Mobility Improvements is complete and conforms to good industry practice and that all materials and equipment furnished as a part of the work are of good quality and free of defects in materials and workmanship. This warranty will be effective for a period of one (1) year beginning on the date of Project Substantial Completion.

Section 6.11 INSPECTION AND ACCESS. The Township will have the right to inspect the construction work to be performed hereunder at any time during its progress and to make final inspection upon notification of anticipated Substantial Completion. The Authority will permit and facilitate reasonable access for the Township for the reasonable inspection of the New Gravel Roads and the Mobility Improvements and shall cooperate fully with Township inspection personnel. Inspections may only be made upon reasonable notice to the Authority and during business hours, and the Township must comply with the Authority’s site safety requirements. In an emergency, the Township may access the site as needed and provide notice as soon as reasonably possible to the Authority. The presence or absence of a Township inspector does not relieve the Authority from any requirement in this MOU, nor is any inspector authorized to issue instructions to the Developer or change any term or condition of this MOU.

Section 6.12 EXTRA MATERIAL PILE. By Project Substantial Completion, the Authority will have stockpiled approximately twenty-five thousand (25,000) cubic yards of excavated material near the County Road 22 crossing of the SWDCAI. The Township will have the opportunity to utilize these materials, in the discretion of the Authority. If the Township desires to utilize these materials, it must contact the Authority for authorization. The Township may request access to the extra material pile no more than fifteen (15) times. The Township will be responsible for all costs associated with removal of the excavated materials from the deposit site.

**ARTICLE VII.
MAINTENANCE**

Section 7.01 NEW GRAVEL ROADS. Between completion of a New Gravel Road and Turnover, the Authority will perform maintenance, aside from Routine Maintenance, on the New Gravel Road, whether inside or outside the Project Limits, in good condition. At all times following Turnover of a New Gravel Road, the Township, at its sole cost and expense, will maintain the New Gravel Road located outside of the Project Limits and the Authority, at its sole cost and expense, will perform maintenance, aside from Routine Maintenance, on all portions of the New Gravel Road located within the Project Limits. The Township will be responsible for

Routine Maintenance of a New Gravel Road at all times, whether located inside or outside the Project Limits.

Section 7.02 MOBILITY IMPROVEMENTS. Between completion of a Mobility Improvement and Turnover, the Authority will perform maintenance, aside from Routine Maintenance, on the Mobility Improvements, whether located inside or outside the Project Limits, in good condition. At all times following Turnover of a Mobility Improvement, the Township, at its sole cost and expense, will maintain the Mobility Improvement located outside of the Project Limits, and the Authority, at its sole cost and expense, will perform maintenance, aside from Routine Maintenance, on all portions of the Mobility Improvement located within the Project Limits. The Township will be responsible for Routine Maintenance of a Mobility Improvement at all times, whether located inside or outside the Project Limits.

Section 7.03 SWDCAI. The Township will have no responsibilities for maintenance associated with the SWDCAI.

Section 7.04 SIGNAGE. If the Authority installs any permanent signage outside of the Project Limits during the work outlined in the MOU, the Township may repair or replace the signage, as necessary, and submit an invoice to the Authority, in accordance with Exhibit C attached hereto, for the expense of such repair or replacement.

Section 7.05 GARBAGE DUMPING. In the event the dumping of garbage on roads that have been dead ended due to the construction of the SWDCAI becomes an issue, the Township has the authority to clean up the dumped garbage and submit the same for reimbursement from the Authority pursuant to Article XII.

ARTICLE VIII. FUTURE CHANGES OR ADDITIONS

Section 8.01 TOWNSHIP ROADS. In the event the Township desires to add a crossing of the SWDCAI, the Township must secure written approval from the Authority. Low water crossings of the SWDCAI will neither be considered nor allowed by the Authority.

Section 8.02 SWDCAI.

(a) The Authority retains the ability, at its sole cost and expense, to adjust or alter the SWDCAI to the extent such may be accomplished without adversely affecting, changing, or altering any open section lines.

(b) If it becomes necessary or desirable to discontinue, close, or open a section line to accommodate the SWDCAI project, the cost of such work, including any incidental costs made necessary by any such changes, will be the expense of the Authority.

Section 8.03 COORDINATION. In the event the Authority desires to discontinue, close, or reopen a section line to accommodate future changes or additions of the SWDCAI, the Authority and the Township will work in Good Faith, with the understanding that time is of the

essence, to agree to terms regarding the accommodation of a future change or addition of the SWDCAI through an addendum to this MOU.

**ARTICLE IX.
INSURANCE AND LIABILITY**

Section 9.01 INSURANCE.

(a) The Authority will procure and maintain the following insurance coverage until Turnover of all New Gravel Roads and Mobility Improvements:

(1) Commercial General Liability Insurance including coverage for premises and operations, bodily injury (including death), personal injury, property damage (including loss of use), product and completed operations, explosion, collapse and underground, and contractual liability of limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The Township is to be named as additional insured on a primary, non-contributory basis.

(2) Workers' Compensation and Employer's Liability Insurance including coverage for, but not limited to, the statutory liability under the State of North Dakota's workers' compensation laws and employer's liability with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, and \$500,000 by disease each employee.

(3) Claims Made Project Specific Errors & Omissions (Professional Liability) Insurance in connection with design and construction with a minimum combined total period of ten (10) years for design, construction, and extended reporting with limits of at least \$2,000,000 per claim and in the aggregate.

(4) All Risk Insurance in completed value form including coverage for permanent and/or temporary works executed and in the course of execution, materials, supplies, equipment, and other goods of at least \$10,000,000.

(b) The Authority will procure and maintain the following insurance coverage after Substantial Completion of all New Gravel Roadways and Mobility Improvements throughout the warranty term provided in Section 6.11(b) of this MOU:

(1) Commercial General Liability Insurance including coverage for premises and operations, bodily injury (including death), personal injury, property damage (including loss of use), product and completed operations, explosion, collapse and underground, and contractual liability of limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The Township is to be named as additional insured on a primary, non-contributory basis.

(2) Workers' Compensation and Employer's Liability Insurance including coverage for, but not limited to statutory liability under the State of North Dakota's workers' compensation laws and employer's liability with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, and \$500,000 by disease each employee.

Section 9.02 RELEASE OF LIABILITY AND INDEMNITY.

(a) Except as set forth in the following Section, to the fullest extent permitted by Applicable Law, the Authority will require that the Developer release, defend, indemnify, and hold harmless the Township on demand and from and against any and all liability for Losses arising from Third Party Claims, in each case, to the extent such Losses arise out of, or as a consequence of, any breach of the MOU by the Developer or any negligence of the Developer. Additionally, the Authority will retain responsibility of the following key decisions and matters relating to the scope of the SWDCAI and the Comprehensive Project and the interaction of the SWDCAI with the SEAI and MAI (“Authority-Retained Responsibilities”):

- (1) The decision to undertake the SWDCAI and the Comprehensive Project;
- (2) The decision to deliver the Comprehensive Project through a split procurement model with the Authority procuring the SWDCAI and USACE procuring the SEAI and the MAI;
- (3) The decision as to the location and alignment of the Project Limits;
- (4) The decision as to the form of the flood management system and the level of flood protection to be delivered through the SWDCAI and the Comprehensive Project;
- (5) The design, construction, operation, and maintenance of the SEAI and the MAI; and
- (6) From time to time, the decision as to whether or not to operate the control structure on the Red River, the control structure on the Wild Rice River, or the Diversion Inlet Structure.

Section 9.03 EXCLUSIONS FROM INDEMNIFICATION. The Authority will not require the Developer to be responsible or to be obliged to release, defend, indemnify, or hold harmless the Township with respect to any liability or Losses to the extent that the same arise as a direct result of:

- (a) The Authority-Retained Responsibilities;
- (b) A Compensation Event or Relief Event;
- (c) The presence of Hazardous Materials for which the Authority is responsible under the terms of the Project Agreement;
- (d) The fraud, negligence, recklessness, bad faith, or willful misconduct of the Township;
- (e) Any Losses suffered by the Township under a contract with a third party;

(f) Any breach of the MOU by the Authority; or

(g) Any Losses suffered by the Township with respect to use of the Project Data, or any Intellectual Property related to the Project Data, other than any use specifically for the SWDCAI.

Section 9.04 CONDUCT ON THIRD PARTY CLAIMS.

(a) Where the Township is entitled to make a claim under this MOU against the Developer in relation to a Third Party Claim, the Township shall give notice of the relevant claim to the Developer promptly, setting out the full particulars of the claim.

(b) Subject to the rights of the insurers under the Insurance Policies, the Developer may at its own expense, and with the assistance and cooperation of the Township, conduct and control the Third Party Claim including its settlement and the Township shall not, to the extent that the Developer has elected to conduct and control the relevant Third Party Claim, take any action to settle or prosecute the Third Party Claim.

(c) The Developer shall, if it wishes to have conduct and control of any Third Party Claim, reimburse the Township for any cost or liability arising out of the conduct and control of the Third Party Claim by the Developer within thirty (30) calendar days of receiving an invoice from the Township with respect to such costs.

(d) The Township shall at all times take all reasonable steps to minimize and mitigate any loss for which the Township is entitled to bring a claim against the Developer pursuant to this MOU.

Section 9.05 CERTIFICATES OF INSURANCE. Prior to commencing construction work under this MOU, the Authority will furnish to the Township Representative certificates of insurance evidencing the coverages, endorsements, and amendments described herein. The Authority will notify the Township in writing at least five (5) Business Days prior to any cancellation, non-renewal, substitution, or material alteration of insurance.

Section 9.06 NO WAIVER OF LIMITATION ON LIABILITY. The indemnity and hold harmless provisions herein shall not be deemed as a waiver by the Authority of the limits of liability set forth in N.D.C.C. § 32-12.1-03, as amended from time to time, or a waiver of any available immunities or defenses.

**ARTICLE X.
TERM AND TERMINATION**

Section 10.01 TERM. This MOU will continue in full force and effect for ten (10) years following the Effective Date and will automatically renew for successive 1-year terms unless a Party gives a 1-year advanced written notice of a desire to not renew to the other Party.

Section 10.02 TERMINATION. The Parties must mutually agree, in writing, to terminate this MOU.

**ARTICLE XI.
THIRD PARTY BENEFICIARIES**

Section 11.01 DEVELOPER. The Authority and the Township specifically agree, acknowledge, and covenant that portions of the Township’s property or right-of-way will be used by the Developer in order to construct, operate, and maintain the SWDCAI. As a result, the Authority and the Township agree and acknowledge that, at any time during which one or more of the Parties is in breach or default of its respective obligations arising out of or related to this MOU, the Developer may enforce the terms and conditions of this MOU including, without limitation, by securing a court order directing the Party to perform its obligations under the MOU. In addition to the foregoing, the Developer shall have all other rights available to it at law or in equity, and all of the rights and remedies provided hereunder are deemed cumulative and not exclusive of any rights or remedies provided by law or otherwise available to the Developer. The Developer, however, will have no rights to utilize the Township’s property or right-of-way beyond what is available to the general public or what has been granted to the Authority by this MOU.

**ARTICLE XII.
REIMBURSEMENT**

Section 12.01 CONSTRUCTION COSTS AND EXPENSES. Between the Effective Date and Project Substantial Completion, the Township may seek reimbursement from the Authority for any costs and expenses incurred as a result of work provided under this MOU, in an amount up to \$3,000.00 annually. The first annual period shall run from the Effective Date until the date preceding the first anniversary of the Effective Date. Annual periods thereafter shall run from the anniversary of the Effective Date until the earlier of: (i) the date preceding the next anniversary of the Effective Date or (ii) Project Substantial Completion. The Township will submit an invoice for such costs and expenses in accordance with the procedure outlined in Exhibit C attached hereto or as otherwise instructed by the Point of Contact.

Section 12.02 POST-CONSTRUCTION COSTS AND EXPENSES. Following Project Substantial Completion, in addition to any reimbursable costs and expenses set forth herein, the Township may seek reimbursement from the Authority for any costs or expenses incurred in relation to the Comprehensive Project in an amount up to \$1,500.00 annually. The first annual period shall run from the date of Project Substantial Completion until the date preceding the first anniversary of the date of Project Substantial Completion. Annual periods thereafter shall run from the anniversary of the date of Project Substantial Completion until the date preceding the next anniversary of the date of Project Substantial Completion. The Township will submit an invoice for such costs and expenses in accordance with the procedure outlined in Exhibit C attached hereto or as otherwise instructed by the Point of Contact.

Section 12.03 EXTRAORDINARY EXPENSES. In addition to the allowable reimbursements set forth in Sections 12.01 and 12.02, the Township may seek reimbursement from the Authority for extraordinary expenses if prior to incurring the expense, the Township receives written authorization from the Authority. The Authority will not unreasonably withhold approval of these requests.

Section 12.04 LOST TAX REVENUE. Due to the construction of the SWDCAI and ownership thereof by the Authority, the Authority recognizes that the Township will experience a loss of revenue from ad valorem taxes. The Authority estimates that one thousand five hundred eighty-four (1,584) acres in the Township will be owned by the Authority for the SWDCAI. For the 2020 general tax levy, the billed ad valorem tax per aggregate acre was \$2.75. In order to assist the Township in recouping some of this loss of revenue, the Authority will remit funds to the Township annually for a period of ten (10) years, each year remitting the amount of lost revenue from the above-mentioned one thousand five hundred eighty-four (1,584) acres at \$2.75 per acre for a total of \$4,360.00 (the “Lost Tax Revenue Payment”). The Authority will make its first Lost Tax Revenue Payment to the Township within sixty (60) calendar days following the Effective Date and on or before July 1 of each year during the remainder of the 10-year period described herein.

Section 12.05 FIRE PROTECTION FUNDS. Due to the potential increase in funds that the Township may be required to expend on fire protection as a result of construction of the SWDCAI, the Authority will, within sixty (60) calendar days following the Effective Date, remit \$30,000.00 to the Township to be utilized for future fire protection.

ARTICLE XIII. MISCELLANEOUS

Section 13.01 AMENDMENTS. This MOU may be amended only by written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this MOU.

Section 13.02 SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this MOU is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this MOU.

Section 13.03 FORCE MAJEURE. Neither the Authority nor the Township will be liable to the other during any period in which its performance is delayed or prevented, in whole or in part, by any of the following circumstances: war, civil war, invasion, violent act of foreign enemy, or armed conflict; nuclear, chemical, or biological contamination; ionizing radiation; Force Majeure Flood Event; or any act of terrorism. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Party of the same.

Section 13.04 AUTHORIZED REPRESENTATIVES. Each of the Authority and the Township hereby designates the following individual as its initial authorized representative, respectively, to administer this MOU on its respective behalf:

- (a) Authority Representative: Kris Bakkegard, Director of Engineering
- (b) Township Representative: Barry Bowman, Clerk of Board of Supervisors

Section 13.05 NOTICE.

(a) All notices under the MOU 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 facsimile or email communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses.

(b) All notices to the Authority will be marked as regarding the SWDCAI and will be delivered to the following address or as otherwise directed by the Authority Representative:

Jacobs
4784 Amber Valley Parkway South, Suite 200
Fargo, North Dakota 58104

and

Director of Engineering
4784 Amber Valley Parkway South, Suite 100
Fargo, North Dakota 58104

(c) All notices to the Township will be marked as regarding the SWDCAI and will be delivered to the following address or as otherwise directed by the Township Representative:

3261 166th Avenue SE
Harwood, North Dakota 58042-9742

Section 13.06 GOVERNING LAW. This MOU will be governed and construed in accordance with the laws of the State of North Dakota.

Section 13.07 CONFLICT WITH MOU REGARDING OTHER COMPREHENSIVE PROJECT WORK. Nothing in this MOU is intended to supersede, amend, or otherwise modify any other memorandum of understanding or agreement entered by and between the Authority and the Township for work regarding other aspects of the Comprehensive Project.

Section 13.08 FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for the United States Environmental Protection Agency (“EPA”) in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. On or prior to the Effective Date, the Township will complete and submit to the Authority the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 23, which are attached within Exhibit F to this MOU. In the event the Authority solicits assistance from the Township to complete an element of the Comprehensive Project and funds made available to the Authority by the Water

Infrastructure Finance and Innovation Act are utilized to finance such element, the Township will also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

Section 13.09 DEBARMENT AND SUSPENSION. In the event the Authority solicits assistance from the Township to complete an element of the Comprehensive Project and funds made available to the Authority by the Water Infrastructure Finance and Innovation Act are utilized to finance such element, the Township certifies it will not knowingly enter into a contract with anyone who is ineligible under 40 CFR Part 32 to participate in the Comprehensive Project. Suspension and debarment information can be accessed at <http://www.sam.gov>. The Township represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this MOU. On or prior to the Effective Date, the Township will complete and submit to the Authority the federal certification form regarding debarment and suspension, which is attached within Exhibit F to this MOU.

Section 13.10 CIVIL RIGHTS OBLIGATIONS. In the event the Authority solicits assistance from the Township to complete an element of the Comprehensive Project and funds made available to the Authority by the Water Infrastructure Finance and Innovation Act are utilized to finance such element, the Township will comply with the following, federal non-discrimination requirements:

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

On or prior to the Effective Date, the Township will complete and submit to the Authority the federal certification form regarding civil rights, which is attached within Exhibit F to this MOU.

Section 13.11 LITIGATION; VENUE. All litigation between the Parties arising out of or pertaining to this MOU or its breach will be filed, heard, and decided in the State District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue. If there is litigation, regardless of the outcome, each Party will be responsible for its own attorney's fees.

Section 13.12 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 Parties hereto have caused this MOU to be duly executed on the dates indicated below.

(Remainder of page intentionally left blank.)

Signature Page for Metro Flood Diversion Authority

The Governing Body of the Metro Flood Diversion Authority approved this MOU on the _____ of _____, 2024.

METRO FLOOD DIVERSION AUTHORITY

By: _____
Michelle (Shelly) A. Carlson, Chair

By: _____
Robert Wilson, Co-Deputy Executive Director

By: _____
Michael Redlinger, Co-Deputy Executive Director

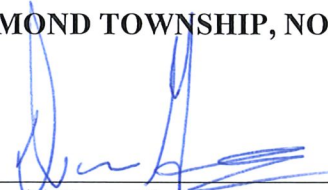
ATTEST:

By: _____
Dawn Lindblom, Secretary

Signature Page for Raymond Township, North Dakota

The Governing Body of Raymond Township, North Dakota, approved this MOU on the 21st
of May, 2024.

RAYMOND TOWNSHIP, NORTH DAKOTA

By: 
David Gust, Chair

ATTEST:

By: 
Barry Bowman, Clerk/Treasurer

**EXHIBIT B
MINIMUM DESIGN STANDARDS**

Two-Lane Township Gravel Section Road

<i>Minimum Design Standards for New or Reconstruction of Existing Infrastructure</i>							
Typical Section	Design Speed	Right of Way Width	Roadway Width	Turn Lanes	Minimum Section Thickness	Access Controls	Bike/Ped Facilities
Two-Lane Township Gravel Section	55 mph	66 feet	24 feet	No	4 inches gravel	¼ mile spacing	Not Applicable

Reinforced Culvert

1. NDDOT *Design Manual, Chapter IV*
2. NDDOT *Design Manual, Chapter V*
3. NDDOT *Standard Specifications for Road and Bridge Construction*
4. AASHTO *LRFD Bridge Design Specifications*
5. AASHTO *LRFD Bridge Construction Specifications*
6. Cass County *Comprehensive Highway Plan*

For cases where AASHTO specifications conflict with NDDOT standards and policies, the NDDOT standards and policies take precedence.

Mobility Improvements

<i>Minimum Design Standards for Mobility Improvements</i>							
Typical Section	Design Speed	Right of Way Width	Roadway Width	Turn Lanes	Minimum Section Thickness	Access Controls	Bike/Ped Facilities
Township Gravel	40 mph	66 feet	15-20 feet*	Not Applicable	4 inches gravel	¼ mile spacing	Not Applicable

*Roadway width may be reduced to match existing width to avoid drainage issues or to stay within ROW limits.

EXHIBIT C
AUTHORITY INVOICING REQUIREMENTS

(a) The Township will remit hard copy invoices to the Authority at the Authority's main office, and the invoices will be processed by the Authority for the following month. The Township will also submit copies of the invoices to the Authority electronically at APInvoicesFMDiv@jacobs.com, copied to bakkegardk@fmdiversion.gov. Each invoice should include the identification of the Township, a description of the activity included in the invoice, and the address where payment should be remitted. The Township may (i) initially pay for work included in an invoice and then seek reimbursement from the Authority for the payment or (ii) submit invoices directly to the Authority for initial payment. In either instance, the Authority will remit payment to the Township.

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

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

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

(e) The Authority will be charged interest at the rate of one-half percent (1/2%) per month, or the maximum amount permitted by North Dakota law if a lesser amount, on all past-due amounts thirty (30) days after receipt of invoice. Payments will first be credited to interest and then to principal.

(Remainder of page intentionally left blank.)

EXHIBIT D CUL-DE-SAC DESIGN

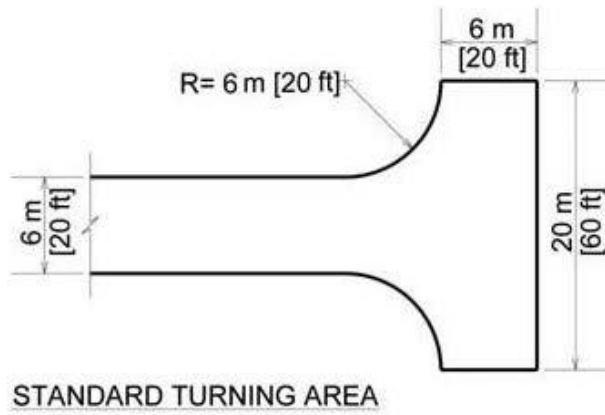
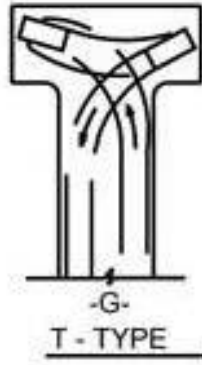
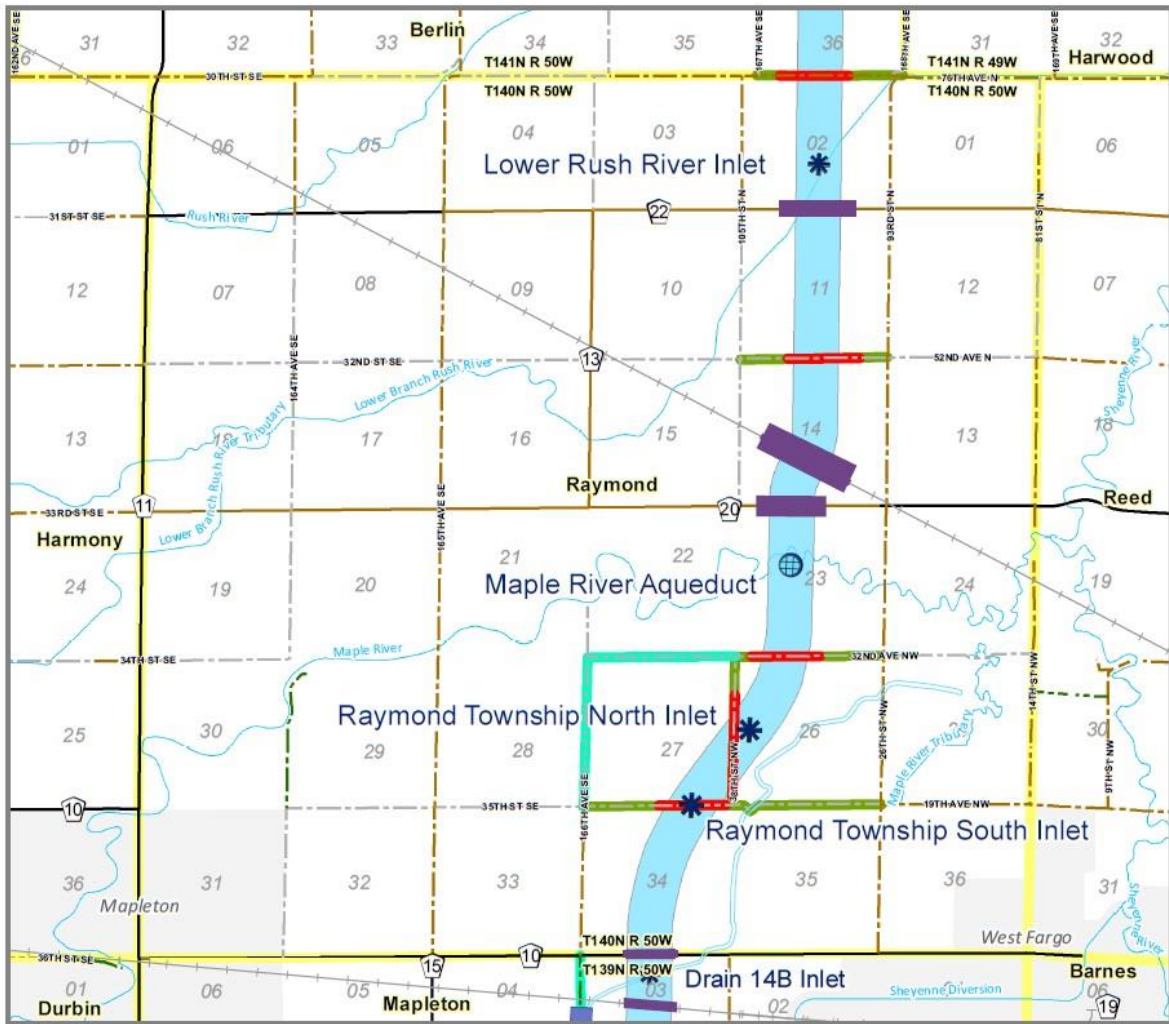
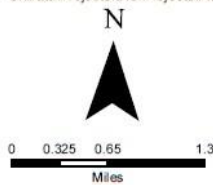


EXHIBIT E PROJECT IMPACTS MAP



Legend			
	Aqueduct		Township Road Closures
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		Other Agency Roadway Improvements
	Channel		Railroad
	Township - Trail/Grass		County Road - Gravel
	Township - Unimproved		County Road - Paved
	Township - Dirt		State or US Highway
	Township - Gravel		Interstate
	Township - Paved		Township Boundary

Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown herein are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: hrecords - AE2S, Inc. | C:\Data\Projects\GIS\Projects\FM Area a Diversion\012 Lands Program\Property Acquisition\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



Raymond

FM Area Diversion
Map Date: 4/11/2024



**EXHIBIT F
FEDERAL CERTIFICATION FORMS**

CERTIFICATION REGARDING FEDERAL LOBBYING

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

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

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

Company/
Entity Name: _____

Signed: _____

Its: _____

Date: _____

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

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

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

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)

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

Official Business Name _____

Date: _____

By: _____

Name and Title of Authorized
Representative

PLEASE RETURN TO:

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

Signature of Authorized Representative

INSTRUCTIONS FOR CERTIFICATION

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

ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE

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

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

The undersigned assures that it will comply with:

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

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

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

Signature of Authorized Official

Title

Print Name

Name of Institution or Agency

Date

Street

City, State, Zip Code

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

Office Email Address

MEMORANDUM OF UNDERSTANDING

**BY AND BETWEEN
METRO FLOOD DIVERSION AUTHORITY
AND
CLAY COUNTY, MINNESOTA**

Dated as of _____, 2024

Relating to:

A Memorandum of Understanding outlining respective roles and responsibilities for the design and construction of Road Raises in conjunction with 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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SIGNATURE PAGESS-1 THROUGH S-2

EXHIBIT A – PROJECT IMPACTS MAP
EXHIBIT B – IMPACTED ROADS
EXHIBIT C – RECONSTRUCTION STANDARDS
EXHIBIT D – DEVELOPMENT PLAN SUMMARY SHEET
EXHIBIT E – 37-FOOT IMPROVEMENT MEMO

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (hereinafter the “MOU”) is made and entered into this ____ day of _____, 2024 (the “Effective Date”), by and between METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota (the “Authority”), and CLAY COUNTY, MINNESOTA, a political subdivision of the State of Minnesota (the “County”).

WHEREAS, the Authority is the local entity responsible for delivering the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Comprehensive Project”); and

WHEREAS, when the Comprehensive Project is operating, the Authority will allow a flow of thirty-seven (37) feet of floodwater to pass through the USGS gage at Fargo, between the Cities of Fargo and Moorhead (hereinafter the “In-town Water”); and

WHEREAS, the County has jurisdiction over roads north of Moorhead that may be inundated by the In-town Water during operation of the Comprehensive Project; and

WHEREAS, a memorandum describing the possible inundation is attached hereto as Exhibit E;

WHEREAS, due to the potential impacts from operation of the Comprehensive Project, road raises need to be constructed on those segments of the County’s roads identified on Exhibit B that may be impacted (the “Impacted Roads”); and

WHEREAS, the Authority and the County now desire to enter into this MOU to set forth their respective roles and responsibilities for the Road Raises.

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 County 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.

“100-Year Flood Event” means the flood event that has a one percent (1%) chance of being met or exceeded in any year. The 100-Year Flood Event is used to establish the regulatory floodplain boundary for the Comprehensive Project. The regulatory floodplain boundary will be updated when the Comprehensive Project is completed within an area referred to as the Revision Reach.

“Applicable Law” means, collectively, the Constitutions of the United States and of the State of Minnesota, all common law and principles of equity, and all Federal, State, and local laws

including, without limitation, all environmental laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with enforcement, interpretation, or administration, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations, and permits of, and agreements with, any governmental authority and, with respect to any Person, the articles of incorporation, bylaws, or other organizational or governing documents, in each case whether or not having the force of law, that are applicable now or are applicable at any time to the Authority, the County, or the work described herein.

“Assignment” means the transfer and acceptance of the roles and responsibilities of a Party under this MOU to a third party.

“Authority” means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota.

“Authority Representative” means the individual identified in Section 14.06.

“Business Day” means any day that is not a Saturday, a Sunday, or a federal public holiday.

“Capital Improvement Plan” means the plan of the County for capital infrastructure improvements, including any Road Raises, to be completed within the jurisdiction of the County during the County’s subsequent fiscal year.

“Change Order” means a document that is signed by a Contractor and the County and authorizes an addition, deletion, or revision in the work or an adjustment in the contract price or contract times, or other revisions to the contract, issued on or after the effective date of the contract.

“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.

“Comprehensive Project Operation” means operation by the Authority of the Red River Control Structure or the Wild Rice River Structure to restrict flow into the Fargo-Moorhead metropolitan area.

“Contractor” means the individual or entity with which the County has contracted for performance of the work.

“County” means Clay County, Minnesota, a political subdivision of the State of Minnesota.

“County Representative” means the individual identified in Section 14.06.

“Development Plan Summary Sheet” means as defined in Section 2.02 hereof.

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

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

“Engineering Consultant” means any engineering firm hired by the County to serve as the County’s engineer of record.

“Engineering Staff” means a County employee who has been designated as the County’s engineer.

“Estimated Total Project Cost” means an estimate of all costs attributed to the design and construction of a Road Raise including surveying, geotechnical investigations, utility relocations, mapping, property acquisition, legal and administrative services, design, construction, construction management, and construction inspections.

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

“FEMA” means the Federal Emergency Management Agency.

“Final Design” means the design has reached ninety-five percent (95%) completion as determined by the County.

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

“Fiscal Year” means one year beginning on January 1 and ending December 31 of each and every year of the Joint Powers Agreement.

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

“Impacted Roads” means those specific segments of roads under the jurisdiction of the County, as identified, that will be raised in accordance with this MOU.

“In-town Water” means thirty-seven (37) feet of floodwater that will be allowed to pass through the USGS gage at Fargo, between the Cities of Fargo and Moorhead, while the Comprehensive Project operates.

“Joint Powers Agreement” means the agreement entered into by and between the City of Moorhead, Minnesota; the City of Fargo, North Dakota; Clay County, Minnesota; Cass County, North Dakota; and the Cass County Joint Water Resource District, dated as of June 1, 2016, to create the Authority.

“Member Entities” means the City of Fargo, North Dakota; Cass County, North Dakota; the City of Moorhead, Minnesota; Clay County, Minnesota; and the Cass County Joint Water Resource District.

“Party” means the Authority or the County, as the context may require, and its respective legal representatives, successors, and permitted assigns.

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

“PMC” means the Program Management Consultant.

“Preliminary Design” means a design that has reached thirty-five percent (35%) completion as determined by the Authority.

“Reconstruction Standards” means the standards set forth in Exhibit C attached to this MOU.

“Revision Reach” means the Revision Reach defined in the USACE/FEMA Coordination Plan as, “The extent of the revision is defined by an effective tie-in at the upstream and downstream limits for each flooding source. An effective tie-in is obtained when the revised base flood elevations from the post-project conditions are within 0.5 feet of the pre-project conditions model at both the upstream and downstream limits.”

“Road Raise” means the construction of a raise of an Impacted Road in accordance with the technical specifications identified herein.

“Road Raise Standard” means the centerline of the Impacted Roadway is raised to be at least six (6) inches higher than the water surface elevation during a 100-Year Flood Event.

“State” means the State of Minnesota.

“TAG” means the Technical Advisory Group of the Authority.

“Total Project Budget Amount” means a budget of all costs attributed to the design and construction of a Road Raise including surveying, geotechnical investigations, utility relocations, mapping, property acquisition, legal and administrative services, design, construction,

construction management, construction materials, and construction inspections, as set forth on a Development Plan Summary Sheet. The Total Project Budget Amount includes contingency.

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

“WIFIA” means the Water Infrastructure Finance and Innovation Act program, as administered by the U.S. Environmental Protection Agency.

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

ARTICLE II. INITIAL DEVELOPMENT

Section 2.01 ESTIMATED TOTAL PROJECT COST. Following the Effective Date, the County will develop an Estimated Total Project Cost for each of the Road Raises. The Estimated Total Project Cost will be developed through the completion of a Development Plan Summary Sheet, described in the following section. The County will present the Estimated Total Project Cost and the Development Plan Summary Sheet to the Executive Director for review. Following his/her review, the Executive Director will then seek review and approval of the Estimated Total Project Cost and Development Plan Summary Sheet from the Diversion Authority Board. Once this Estimated Total Project Cost is accepted by the Diversion Authority Board, unless specifically set forth herein, the County will not seek additional budget approvals from the Diversion Authority Board.

Section 2.02 DEVELOPMENT PLAN SUMMARY SHEET.

(a) As set forth in the preceding section, the County will prepare, and update as described herein, a Development Plan Summary Sheet for each Road Raise. The Development Plan Summary Sheet, as included in Exhibit D, will include at least the following:

(1) The County’s approach for procuring professional services for the design of the Road Raise, e.g., competitive procurement or use of an existing professional services contract;

(2) The estimated cost and schedule for design professional services, including any surveying, geotechnical investigations, mapping, and legal and administrative services required for the design (Line Item (A) from the Development Plan Summary Sheet);

(3) The estimated cost and schedule for property acquisition and property acquisition services (Line Items (B) + (C) from the Development Plan Summary Sheet);

(4) The estimated cost and schedule for construction (Line Item (D) from the Development Plan Summary Sheet);

(5) The estimated cost for construction professional services, including construction contract management, engineering, and inspection services, surveying, site inspections, and testing required during construction (Line Item (E) from the Development Plan Summary Sheet);

(6) Estimated Total Project Cost, which includes the total of the items in subsections (2), (3), (4), and (5);

(7) Identification and compliance with the County’s adopted procurement and/or purchasing procedures;

(8) A mutually approved contingency (10%), which is based on the Estimated Total Project Cost, is applied to each Road Raise; and

(9) The Total Budget Amount, which includes the total of the items in subsections (6) and (8).

(b) Once the County has executed a professional services contract, including for construction management and inspections services; a construction contract; or amendments or Change Orders of the same, the County will update the Development Plan Summary Sheet with the name of the professional services or construction firm, the firms subcontracted to the professional services or construction firm, and the contracted values. The County will provide the updated Development Plan Summary Sheet to the Authority within fifteen (15) Business Days of the execution of the contract for professional services, of construction commencement, or of amendment or Change Order of the same, as applicable.

Section 2.03 SCOPE. The scope of the Road Raises is set forth in this MOU, and any change in that scope must be approved by the Diversion Authority Board. The County will proceed with the development of the Road Raises in accordance with the Development Plan Summary Sheets and the Joint Powers Agreement. Approval for reimbursement to the County will not be delayed provided work on the Road Raises coincides with the approved scope of such projects. The County will exercise Good Faith to ensure scope consistency.

**ARTICLE III.
CAPITAL IMPROVEMENT PLAN**

Section 3.01 ANNUAL ASSESSMENT. On an annual basis, prior to the County seeking official approval from its governing body of the annual Capital Improvement Plan, the County and the Authority’s Director of Engineering or his/her designee will mutually review and update the plan for Road Raises to be developed in the new Fiscal Year. Updates for each Road Raise will be set forth on a revised Development Plan Summary Sheet.

Section 3.02 BUDGET ADJUSTMENTS.

(a) Following the updates described in the preceding section, if the budget for the cost of a Road Raise exceeds the initial Estimated Total Project Cost determined in accordance with Section 2.01, then the County and the Authority’s Director of Engineering or his/her designee will present the updates to the Road Raise to the Finance Committee and Diversion Authority Board for review and approval. Following approval of the updates to each Road Raise, the Authority will incorporate the updated Estimated Total Project Cost for the Road Raise into the annual Authority budget for the new Fiscal Year until all Road Raises have been constructed.

(b) Following the updates described in the preceding section, if the budget for the cost of a Road Raise does not exceed the initial Estimated Total Project Cost, then the Authority will incorporate the initial Estimated Total Project Cost for the Road Raise into the annual Authority budget for the new Fiscal Year for approval by the Diversion Authority Board. The Executive Director will present the updated plan for the Road Raise to the Diversion Authority Board in conjunction with the annual Authority budget until all Road Raises have been constructed.

**ARTICLE IV.
DESIGN**

Section 4.01 GENERALLY. The County is responsible for designing the Road Raises and may utilize its own Engineering Consultants or in-house Engineering Staff for the design of each Road Raise. The County will design the Road Raises in accordance with the Road Raise Standard and the Reconstruction Standards. The completed designs for any Road Raise will be the property of both the Authority and the County.

Section 4.02 DESIGN REPORTS. The County will provide the Authority with a biannual progress report for each Road Raise, outlining the design status. The County will provide a copy of such biannual progress report to the PMC. The biannual progress report will also provide a cost to date and estimated completion costs. Any project costs that may be approaching the Estimated Total Project Cost plus contingency provided in the Development Plan Summary Sheet will be flagged for further discussion and possible budget amendment.

Section 4.03 AUTHORITY REVIEW. The County will provide to the Authority, for concurrence, a Preliminary Design and a Final Design for each Road Raise, concurrent with when these plans are distributed by the Engineering Consultant, if applicable, for review and comment by the County. The County can proceed with the development of the Road Raise provided the

Authority does not object to the plans and specifications within ten (10) Business Days of being provided the Final Design.

Section 4.04 ENGINEERING SERVICES. All engineering services procured by the County for a Road Raise must be provided by a professional engineer licensed in the State of Minnesota.

ARTICLE V. BIDDING AND CONTRACTS

Section 5.01 BIDDING. The County will let bids for the Road Raises in accordance with the Joint Powers Agreement, WIFIA requirements, Section 471.345 of the Minnesota Statutes Annotated, and any other applicable State procurement and/or bidding laws.

Section 5.02 REVIEW. General Counsel for the Authority will review all bid documents prior to release to ensure compliance with WIFIA and other laws and agreements applicable to the Road Raises.

Section 5.03 CONTRACT FORM. Contracts for Road Raises will identify the County as the owner under the contract and will contain provisions as required by the Joint Powers Agreement, applicable WIFIA requirements, and applicable state law, as appropriate. The form of the contract must be approved by the Executive Director.

Section 5.04 CONTRACT AWARD LIMITATION. The County will not proceed with the award of a construction contract if the Total Project Budget Amount, when considering the construction bids and updated costs for elements of the Estimated Total Project Cost, exceeds the approved Total Project Budget Amount unless the newly calculated Total Project Budget Amount is approved and the Development Plan Summary Sheet is amended. The Executive Director or his/her designee may approve an increase in the Total Project Budget Amount for a Road Raise of up to and including \$200,000. The Diversion Authority Board must approve an increase in the Total Project Budget Amount for a Road Raise greater than \$200,000. The Diversion Authority Board will make a Good Faith effort to approve or disapprove of the budget increase within forty-five (45) calendar days of notice from the County.

Section 5.05 APPROVAL. The County will approve all contracts for Road Raises at a public meeting and by resolution of its governing body. Additionally, the County will supply electronic copies of all public bidding documents and contracts for Road Raises in accordance with the provisions of the Joint Powers Agreement.

Section 5.06 DISPUTES. The County and the Authority will coordinate with respect to any disputes with contractors for Road Raises in accordance with the Joint Powers Agreement.

ARTICLE VI. CONSTRUCTION

Section 6.01 GENERALLY. The County will construct the Road Raises in accordance with the Joint Powers Agreement and all related documents.

Section 6.02 CONSTRUCTION REPORTS. The County will provide the Authority with a biannual progress report for each Road Raise, outlining the construction status. The County will provide a copy of such biannual progress report to the PMC. The biannual progress report will also provide a cost to date and estimated completed costs. Any project costs that may be approaching the Estimated Total Project Cost plus contingency provided in the Development Plan Summary Sheet will be flagged for further discussion and possible budget amendment.

Section 6.03 PAY REQUESTS AND CHANGE ORDERS. Pay requests and Change Orders relating to contracts for Road Raises will be reviewed and approved by the County provided the Total Project Budget Amount, when considering the amount of the proposed pay request or Change Order, exceeds the approved Total Project Budget Amount unless the newly calculated Total Project Budget Amount is approved. If the approved Total Project Budget Amount is exceeded by the proposed pay request or Change Order, the County will submit a request for the Executive Director's approval to exceed the approved Total Project Budget Amount. The request must state the amount by which the approved Total Project Budget Amount is exceeded and justification for the increase. The Authority will respond to the County within ten (10) Business Days of receipt of request. The Authority will not unreasonably withhold approval of a Change Order if the Authority determines that it is within the scope of the Road Raise.

Section 6.04 CLOSE OUT. Close out of a Road Raise will occur in accordance with section 12.16 of the Joint Powers Agreement.

Section 6.05 ACCESS. The County will permit and facilitate reasonable access to the PMC and TAG for reasonable inspection and monitoring of the Road Raises and will cooperate fully with the PMC and TAG. Inspections may only be made upon reasonable notice to the County, during business hours, and the PMC and TAG must comply with the County's site safety requirements. In an emergency, the PMC and TAG may access the site as needed and provide notice as soon as reasonably possible to the County.

Section 6.06 AS-BUILT DRAWINGS. Within ninety (90) calendar days following the completion of construction of a Road Raise, the County will provide final as-built drawings in electronic format to the Secretary of the Authority and to the PMC.

ARTICLE VII. OWNERSHIP AND MAINTENANCE

Section 7.01 IMPACTED ROADS. The County will maintain ownership of County roads that are impacted and/or raised according to this MOU.

Section 7.02 MAINTENANCE. The County will be responsible for maintaining County roads that have been improved with Road Raises. The Parties acknowledge and agree that maintenance and/or repairs necessary as a result of Comprehensive Project Operation will be handled in accordance with the Property Rights Acquisition and Mitigation Plan (PRAM) and any procedures adopted by the Authority or any agreements between the Authority and the County with respect to Comprehensive Project Operation.

**ARTICLE VIII.
FUTURE CHANGES OR ADDITIONS**

Section 8.01 FUTURE CHANGES. The County may make future changes to the Impacted Roads in its sole discretion, assuming all risks of how future Comprehensive Project operation may affect the Impacted Roads following alteration.

**ARTICLE IX.
PROFESSIONAL SERVICES CONTRACTS**

Section 9.01 WIFIA REQUIREMENTS. To comply with WIFIA requirements, all professional services contracts must require the Contractor to (i) complete and submit the certification and disclosure forms in Appendix A and Appendix B to 40 CFR 34 pertaining to federal lobbying restrictions; (ii) comply with the federal non-discrimination requirements set forth in Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act of 1972, 40 CFR Part 7, and Executive Order No. 11246; and (iii) certify the Contractor is not federally debarred. The County will provide copies of all executed certifications and/or documents received by the County in accordance with this subsection to the Authority unless the Authority already has these certifications on file from the Engineering Consultant.

Section 9.02 ASSIGNMENT. All professional services contracts, subsequent to the Effective Date, will not preclude Assignment. Assignment may only occur, however, through written consent of the Contractor and the County. The County additionally agrees to seek consent of the Contractor for Assignment to the Authority, when necessary and appropriate.

**ARTICLE X.
INSURANCE AND LIABILITY**

Section 10.01 INSURANCE.

(a) The County will require its Contractor, prior to commencing construction, to secure and keep in force during the term of construction the following insurance coverages for not less than the following amounts:

(1) Commercial general liability insurance (including completed operations, contractual, and products coverage) with minimum liability limits of \$1,000,000 per person and \$2,000,000 per occurrence.

(2) Automobile liability (any auto, including owned, non-owned, and hired) with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.

(3) Excess or umbrella liability insurance with minimum liability limits of \$1,000,000 and \$2,000,000 aggregate.

(4) Workers compensation insurance in compliance with all applicable statutory requirements.

(b) The above-listed insurance coverages will meet the following additional requirements:

(1) Any deductible or self-insured retention amount or other similar obligation under the policies will be the Contractor's sole responsibility.

(2) The policies must be from insurers rated "A-" or better by A.M. Best Company, Inc.

(3) All policies will name the Contractor as the insured and the Authority and the County as additional insured parties.

(4) The Contractor's policies will be primary and noncontributory regarding any other insurance available to the Authority and the County.

(5) The Contractor's policies must each contain a "waiver of subrogation" that waives any right to recover any of the Contractor's insurance companies might have against the Authority or the County.

(6) The Contractor's policies will contain a provision that the policies and any endorsements may not be cancelled or modified without thirty (30) calendar days' prior written notice to the Authority and the County.

(7) The Contractor's policies, either in the policies or in the endorsements, will each contain a provision that the Contractor's insolvency or bankruptcy will not release the insurer from payment under the policy, even when the Contractor's insolvency or bankruptcy prevents the Contractor from meeting the retention limit under the policy.

(8) The Contractor's policies, either in the policies or in the endorsements, will contain cross liability/severability of interests to ensure that all additional insured parties are covered as if they were all separately covered.

(9) The Contractor's policies, either in the policies or in the endorsements, must contain a provision that the legal defense provided to the Authority and the County will be free of any conflicts of interest, even if retention of separate legal counsel is necessary.

(10) The Contractor's policies will not limit in any way the Contractor's duties to defend, indemnify, and hold harmless the Authority and the County and those parties' officers, employees, agents, consultants, subcontractors, and representatives, as set forth herein.

(c) Before commencing work, the County will require the Contractor to deliver copies of the insurance policies and endorsements required under this MOU to the County, and the Contractor will provide all requisite evidence that the insurance required under this MOU is in full force and effect.

(d) The County will require the Contractor to release, defend, indemnify, protect, and hold harmless the Authority, the County, and their officers, agents, representatives, employees, or contractors, and such duties include anything in excess of the minimum insurance requirements described above and anything not otherwise covered or insured. The Authority's receipt of any certificates, policies, or endorsements required under this MOU will not in any way affect the Contractor's duties and obligations to maintain the insurance required under this MOU. The County must require all of the Contractor's subcontractors to purchase and maintain the same insurance with the same conditions and terms required of the Contractor under the MOU.

ARTICLE XI. REIMBURSEMENT

Section 11.01 REIMBURSABLE COSTS. The Authority will reimburse the County for all salaries, services, and/or related costs and expenses for surveying, land acquisition, design, construction, construction material, utilities, and inspections for the Road Raises highlighted in Exhibit A. The County will submit pay requests to the Authority to receive reimbursement throughout the course of development of the Road Raises. The Authority will reimburse the County within sixty (60) calendar days of the submission of a pay request.

Section 11.02 OTHER PROJECT FUNDING. The County and the Authority will cooperate in Good Faith if either entity pursues additional funding sources for the Road Raises. If either entity is successful in securing alternative funding sources for the Road Raises, the Authority will pay one hundred percent (100%) of the local cost share.

ARTICLE XII. TERM AND TERMINATION

Section 12.01 TERM. This MOU will commence on the Effective Date and will terminate upon the completion of construction of the Comprehensive Project.

Section 12.02 TERMINATION. The Parties may mutually agree in writing to terminate this MOU prior to the end of the term described in Section 12.01.

ARTICLE XIII. DISPUTE RESOLUTION

Section 13.01 INTENT AND PROCEDURE. The Parties will cooperate and use their best efforts to ensure that the various 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, the following procedure will be used.

Section 13.02 MEDIATION. If there is a failure between the Parties to resolve a dispute on their own, the Parties will first attempt to mediate the dispute. The Parties will agree upon a single mediator or, if an agreement cannot be reached within ten (10) calendar days, the mediator shall be selected by the American Arbitration Association ("AAA") in accordance with its Commercial Industry Mediation Rules and Procedures then in effect. Any mediator selected by

mutual agreement of the Parties or through the AAA selection process must have no current or on-going relationship with either Party. The Parties agree that only one (1) mediator shall be selected as the AAA mediator, and the Parties will each pay fifty percent (50%) of any costs for mediation services.

Section 13.03 LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within forty-five (45) calendar days after the selection of the mediator pursuant to the preceding section, the Parties may litigate the matter.

Section 13.04 LITIGATION; VENUE. All litigation between the Parties arising out of or pertaining to this MOU or its breach will be filed, heard, and decided in the District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

Section 13.05 WAIVER OF JURY TRIAL. The Parties hereby knowingly, irrevocably, voluntarily, and intentionally waive any rights that any may have to a trial by jury with respect to any action, proceeding, counterclaim, or defense based on this 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 XIV. MISCELLANEOUS

Section 14.01 COMPLETE AGREEMENT. This MOU 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.

Section 14.02 COUNTERPARTS. This instrument may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 14.03 AMENDMENTS. This MOU may be amended only by written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this MOU.

Section 14.04 SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this MOU is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this MOU.

Section 14.05 FORCE MAJEURE. Neither the Authority nor the County will be liable to the other during any period in which its performance is delayed or prevented, in whole or in part, by any of the following circumstances: war, civil war, invasion, violent act of foreign enemy, or

armed conflict; nuclear, chemical, or biological contamination; ionizing radiation; or any act of terrorism.

Section 14.06 AUTHORIZED REPRESENTATIVES. The Authority and the County hereby designate the following individuals as their initial authorized representatives, respectively, to administer this MOU on their respective behalf:

- (a) Authority Representative: Kris Bakkegard, Director of Engineering
- (b) County Representative: Justin Sorum, County Engineer

Section 14.07 NOTICE.

(a) All notices under the MOU 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 requested; or (iv) sent by email communication followed by a hard copy, to the following addresses.

(b) All notices to the Authority will be marked as regarding the Road Raises and will be delivered to the following address or as otherwise directed by the Authority Representative:

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

(c) All notices to the County will be marked as regarding the Road Raises and will be delivered to the following address or as otherwise directed by the County Representative:

Clay County Highway Department
2951 41½ Street South
Moorhead, Minnesota 56560

(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 Central Time will be deemed received on the first Business Day following delivery.

Section 14.08 GOVERNING LAW. This MOU will be governed by and construed in accordance with the laws of the State of North Dakota. This section, however, is to be interpreted to only apply to this MOU itself, and the Parties do not intend that North Dakota law shall apply to interpretations of Federal or State statutes, regulations, or permit conditions. Issues that are not governed by this section include, but are not limited to, the construction and application of State and local permitting standards in the State, constitutional and statutory requirements in the State with regard to eminent domain, and Federal FEMA and USACE requirements and regulations.

Section 14.09 CONFLICT WITH MOU REGARDING OTHER COMPREHENSIVE PROJECT WORK. Nothing in this MOU is intended to supersede, amend, or otherwise modify any other memorandum of understanding or agreement entered by and between the Authority and the County for work regarding other aspects of the Comprehensive Project.

Section 14.10 JOINT POWERS AGREEMENT. Nothing in this MOU is intended to conflict with the terms and conditions of the Joint Powers Agreement; rather, the terms and conditions set forth herein are intended to supplement the Joint Powers Agreement. In the event the terms and conditions described in this MOU conflict with the Joint Powers Agreement, the Joint Powers Agreement will control.

Section 14.11 ELECTRONIC SIGNATURES. The Authority and the County agree that an electronic signature to this MOU shall be valid as an original signature of the Authority or the County and shall be effective to bind the signatories of this MOU.

IN WITNESS WHEREOF, the Authority and the County caused this MOU to be executed.

(Remainder of page intentionally left blank.)

Signature Page for the Metro Flood Diversion Authority

The Governing Body of the Metro Flood Diversion Authority approved this MOU on the ____ day of _____, 2024.

**METRO FLOOD DIVERSION
AUTHORITY**

By: _____
Michelle (Shelly) A. Carlson, Chair

By: _____
Robert Wilson, Co-Deputy Executive
Director

By: _____
Michael Redlinger, Co-Deputy
Executive Director

ATTEST:

Dawn Lindblom, Secretary

Signature Page for the Clay County, Minnesota

The Governing Body of Clay County, Minnesota, approved this MOU on the 28 day of May, 2024.

CLAY COUNTY, MINNESOTA

By: 
David Ebinger, Chair of the Board of
County Commissioners

ATTEST:



Stephen Larson, County Administrator

EXHIBIT B

Impacted Roads

County Road	Letter Designation on Exhibit A	County Reconstruction Standard
Clay County Highway 1	6	Two-Lane Rural Paved Section
Clay County Highway 26	8	Two-Lane Rural Paved Section
Clay County Road 99	10	Two-Lane Rural Gravel Section
Clay County Road 100 – South Segment	14	Two-Lane Rural Gravel Section
Clay County Road 100 – Middle Segment	15	Two-Lane Rural Gravel Section
Clay County Road 100 – North Segment	16	Two-Lane Rural Gravel Section

EXHIBIT C

County Reconstruction Standards

<i>County Minimum Design Standards for Reconstructed Impacted Roads</i>							
Typical Section	Design Speed	Right of Way	Road Width	Turn Lanes	Minimum Section Thickness	Access Controls	Bike/Ped Facilities
Two-Lane Rural Gravel Section	55 mph	200 feet	36 feet	No	6 inches gravel	¼ mile spacing	Not applicable
Two-Lane Rural Paved Section	55 mph	200 feet	32 feet	No	12 inches base + HBP	¼ mile spacing	4-foot paved shoulder

EXHIBIT D

Development Plan Summary Sheet

(Please see the following two (2) pages.)



Development Plan Summary Sheet

Contract Number _____
 Project Name _____
 Member Entity _____
 Date Submitted: _____ Member Entity Contact _____

Design Services

Approach: Competitive Existing Firm: _____ Contract value: _____

Subconsultants

Services

Estimated Cost for Design Professional Services (A) \$ _____

Start of Design: _____

Design Completion: _____

Property Acquisition

Estimated Cost for Property Acquisition (B) \$ _____

Estimated Cost for Property Acquisition Services (C) \$ _____

Start of Property Acquisition: _____

Property Acquisition Needed by: _____

Acquisition Complete: _____

Construction

Estimated Cost for Construction (D) \$ _____

Start of Construction: _____

Construction Complete: _____

Construction Services

Approach: Competitive Existing Firm: _____ Contract value: _____

Subconsultants

Services

Estimated Cost for Construction Professional Services (E) \$ _____

ESTIMATED TOTAL PROJECT COST (A+B+C+D+E) \$ _____

CONTINGENCY (10%) \$ _____

FY20__ TOTAL PROJECT BUDGET AMOUNT: \$ _____

- Compliant with (Member entity) _____ procurement and/or purchasing procedures.
 Compliant with WIFIA requirements.



Development Plan Summary Sheet for Construction

Contract Number _____

Project Name _____

Member Entity _____

Date Submitted: _____ Member Entity Contact _____

Construction

Contractor _____

Contract Value \$ _____

Change Order __: _____

Change Order __: _____

Change Order __: _____

Change Order __: _____

Subconsultants

Services

Start of Construction: _____

Construction Complete: _____

<p>FY20__ TOTAL PROJECT BUDGET AMOUNT: _____</p> <p>____ Compliant with (Member entity) _____ procurement and/or purchasing procedures.</p> <p>____ Compliant with WIFIA requirements.</p>	<p>\$ _____</p>
--	-----------------

EXHIBIT E

37-Foot Improvement Memo

(Please see the following four (4) pages.)

Memorandum



To: Kris Bakkegard, PE

From: Greg Thompson, PE, CFM, Adam Ruud, PE

Date: April 1, 2024

Project: FM Area Diversion Project

CLAY COUNTY RIVER STAGE 37 ROADWAY IMPROVEMENTS

1 Background

The FM Area Diversion Project (project) operation includes storing floodwater in the Upstream Mitigation Area as well as conveying floodwater through the Stormwater Diversion Channel and Flood Damage Reduction Area (a.k.a. through town).

During preliminary planning efforts, flows through town equated to a 35-foot river stage (RS) at USGS Gage 05054000, Red River at Fargo. Through subsequent permitting efforts, a Governor's Task Force was created to help balance impacts and benefits, working toward a permissible project. Through this process, the flows through town increased from RS 35 feet to RS 37 feet. Passing additional water through town changed the project's flow characteristics and associated locations, including benefits and impacts, when compared to the prior design concept.

At RS 37 feet, much of the metro area will be free from flood inundation, however some rural roadways throughout Cass and Clay Counties will continue to be inundated. The Governor's Task Force requested identification of roadways that would be overtopped with the increased flow through town (from RS 35 feet to RS 37 feet) as well as the associated costs to raise the roadways to ensure access during a 100-year flood event, during which the project will operate.

Within Clay County, the primary area that requires road raises to maintain access is within Oakport Township. As listed below and shown in Figure 1, these roadways include:

- Clay County Road 1
- Clay County Road 26
- Clay County Road 98
- Clay County Road 99
- Clay County Road 100
- 100th Ave. N.
- 120th Ave. N.
- 130th Ave. N.
- 140th Ave. N.

2 Purpose of Memorandum

As the project moves toward design and construction, the Clay County transportation network has been reviewed with more detail than what was used when drafting concepts to support the Governor's Task Force efforts, particularly related to the hydraulic conveyance as well as floodplain and floodway requirements. This Technical Memorandum documents changes from the roads identified to be raised during initial Governor's Task Force efforts compared to needs identified after additional design was completed.

3 Investigation

The Oakport Coulee area is composed of two natural drainage channels. The channels convey local drainage to the Red River during rainfall and snowmelt events. However, they also convey large breakout flows from the Red River during high Red River floods. During these flooding times, flood flows often take different paths (breakouts) compared to the local drainage paths. As shown in Figure 1, the Red River will typically break out at Wall Street (Clay County Road 22) and flow north through Oakport Coulee to Clay County Road 26, at which point some floodwater will interconnect with the Red River and additional floodwater will break out north over Clay County Road 26 and flow for approximately three miles prior to entering the Red River near the Sheyenne River confluence.

The concepts that were developed for the initial Governor's Task Force included raising roadways to maintain access at RS 37 feet. At that time, detailed hydraulics had not yet been performed so a single line of 8' x 8' box culverts were assumed to be used. As the floodplain and floodway analyses were further detailed, it became apparent that larger structures were required for the road raises to be permissible. Due to the cost increases associated with the larger structures as well as inflation, further review of the road raises was completed to assess each segment's benefits.

Significant Red River and Oakport Coulee flows pass over 120th Ave. N., 130th Ave. N., and 140th Ave. N. as these roads are perpendicular to the Red River floodway and conveyance corridors. It would be necessary to raise thousands of feet of these roads, and the equivalent conveyance replacement would require a long bridge or numerous lines of box culverts. To determine the benefit of raising these corridors, overall accessibility to existing residences was considered. Many of the residences through this area are along Clay County Road 100, which is west of the primary north-south floodway corridor. As Clay County Road 100 parallels the flood flows, improvements to this corridor resulted in less hydraulic impact and smaller structure sizes. Overall structure sizes, construction cost and associated detour route lengths during flood events were considered to determine the benefit of raising each corridor. Ultimately it was determined that the benefits resulting from reduced detour lengths with raising 120th Ave. N., 130th Ave. N., and 140th Ave. N. did not outweigh the associated costs. Therefore, raising these roadways was not carried forward. Instead, improvements along Clay County Road 100 will be implemented to provide access to existing residences.

100th Ave. N. and 10th St. N./CR 98 were removed from the plan since these two roadways are relatively low in elevation and intersect the creek at multiple locations, requiring multiple hydraulic structures or the need to reroute the roads or creek. These improvements would also have significant impacts on the floodway resulting in permitting concerns. Additionally, access can be provided to the west along 100th

Ave. N. and south along 10th St. N./CR 98. Improvements being incorporated along Clay County Road 100 will provide accessibility to residences in the area.

CR 26 (90th Ave. N.) west of CR 1 was removed because the flooding overtopped by 0.75 feet over a length of nearly 900 feet. At this location, lower flows are directed west to the Red River and only breakout flows are conveyed north over CR 26, therefore this crossing doesn't have a channel or means for providing hydraulic conveyance through a culvert or bridge.

4 Road Improvement Impact

Table 1 outlines the various considerations used when evaluating the roadway improvements within Oakport Township.

Table 1

Roadway	Annual Frequency of Flooding	Annual Duration of Flooding (1% Annual Exceedance Probability, Days)	Floodway Impacts	Provides Direct Access to Residents	Cost
CR 1	20-Year	19		Yes	\$1,037,000
CR 26	20-Year	11.5		Yes	\$1,578,000
CR 98			Yes	Yes	NA
CR 99	10-Year	37.5		Yes	\$669,000
CR 100	10-Year	37.5		Yes	\$2,102,000
100 th Ave. N.			Yes	Yes	NA
120 th Ave. N.			Yes	No	NA
130 th Ave. N.			Yes	No	NA
140 th Ave. N.			Yes	No	NA

Due to implications associated with development of a project with floodway impacts, the CR 98 and 100th Ave. N. corridors were eliminated from consideration. The 120th Ave. N., 130th Ave. N., and 140th Ave. N. corridors were eliminated as the road raises provided minimal to no benefit to residence accessibility during flood events, and they would each require either long bridges or multiple lines of box culverts to provide the necessary conveyance.

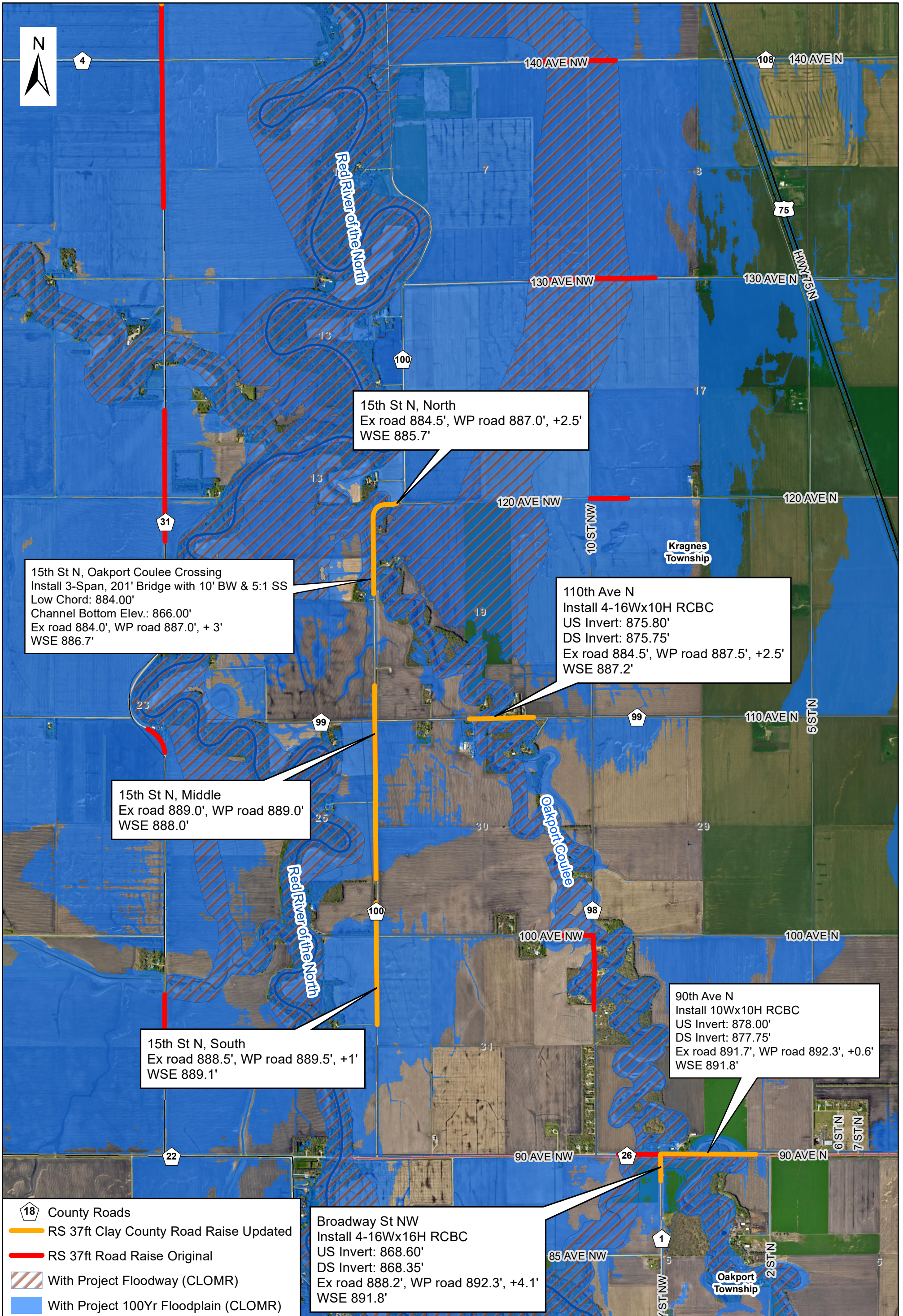
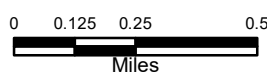


Figure 1 - Clay County RS 37 FT Transportation Improvements FM Area Diversion Project



MASTER UTILITY RELOCATION AGREEMENT

By and Between

METRO FLOOD DIVERSION AUTHORITY

and

SOUTHEAST WATER USERS DISTRICT

Dated as of June 27, 2024

Relating to:

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

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

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- EXHIBIT D** - FEDERAL CERTIFICATIONS
- EXHIBIT E** - AUTHORITY INVOICING REQUIREMENTS

MASTER UTILITY RELOCATION AGREEMENT

THIS MASTER UTILITY RELOCATION AGREEMENT (the “Agreement”) is made and entered into this 27th day of June, 2024 (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 Southeast Water Users District, whose post office address P.O. Box 10, Mandator, ND 58058 (the “Utility”) (collectively, the Authority and the Utility are referred to as the “Parties”).

RECITALS

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

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

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

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

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

WHEREAS, pursuant to Article II of the PPA, the NFS shall be responsible for all real property interests and relocations required for construction, operation, and maintenance of the Comprehensive Project; and

WHEREAS, the Utility has real property interests (hereinafter referred to as “Prior Property Interests”) within the area generally described in **Exhibit A**; and

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

WHEREAS, the Authority and the Utility desire to set forth in writing their mutual understandings and to define the terms and conditions and each Party’s rights and obligations in connection with the Utility Relocation Project; and

WHEREAS, this Agreement is only intended to bind the Parties in regard to the portion of the Comprehensive Project south of the Storm Water Diversion Channel and Associated Infrastructure (“SWDCAI”) and shall have no implications for, or having binding power in regard to the Parties’ work, efforts, or relations in the SWDCAI, which is governed by a separate agreement between the Parties.

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

ARTICLE I. DEFINITIONS AND INTERPRETATION

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

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

“**Agreement**” means this **Master Utility Relocation Agreement**.

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

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

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

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

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

“**CFR**” means the Code of Federal Regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Relocate**” or “**Relocated**” or “**Relocation**” means providing a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding railroad bridges and approaches thereto required for construction of the **Comprehensive Project**), or public facility when such action is authorized in accordance with applicable legal principles of just compensation; or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a **Relocation** in the authorizing legislation for the **Project** or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, rising, or replacement and attendant demolition of the affected facility or part thereof.

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

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

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

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

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

“**Supplemental Plan**” means a plan submitted for approval pursuant to Article III, in the event that **Undisclosed Prior Property Interests** are identified after one (1) or more plans have already been approved pursuant to Article III.

“**SWDCAI**” means the approximately thirty (30) mile, twenty thousand (20,000) cubic feet per second (cfs) channel and associated features, including the outlet, river and drain inlets, road bridges, railroad bridges, aqueducts, and recreational features, to be constructed as part of the **Comprehensive Project**.

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

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

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

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

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

“**Utility**” means **Southeast Water Users District**.

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

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

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

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

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

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

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

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

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

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

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

Section 1.03 SURVIVAL OF TERMS. The terms of this **Agreement** shall survive through the **Substantial Completion Date of the Comprehensive Project** and for successive ten-year terms until one of the **Parties** hereto terminates this **Agreement** as provided for herein. The provisions of Section 3.06 (“Utility Property Interests”), Section 3.07 (“Co-Existing Property Interests”), 13.05 (“Liability Limitations”), Section 13.24 (“Rapid Closure Valves”), Article VIII (“Payment of Costs”), and Article IX (“Future Rights and Responsibilities”), shall survive the termination of this **Agreement** and bind the **Parties** for as long as the Utility has property on, over, or across the **Project Property**.

ARTICLE II. PURPOSE OF MASTER UTILITY RELOCATION AGREEMENT

Section 2.01 PURPOSE. The purpose of this **Agreement** is to ensure a coordinated, time-efficient, and cost-effective process for completing the **Utility Relocation Project**, for coordinating operations and maintenance activities after completion of the **Utility Relocation Project**, and for the development of individual **Task Orders** issued in conjunction with, and subject to, the terms and conditions of this **Agreement**.

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

Section 2.03 COORDINATION WITH USACE. The **Utility** shall not communicate directly with the **USACE** regarding any aspect of the **Comprehensive Project** or any other subject-matter referenced in, related to, or arising from this **Agreement**, without the prior written authorization of the **Authority**, except as required by Section 9.01(a) of this **Agreement**. The **Authority** shall keep the **Utility** reasonably informed about its communications with the **USACE** regarding the **Project, Relocation** of the **Utility's** infrastructure, and the **Project Property**.

ARTICLE III. REAL PROPERTY INTERESTS

Section 3.01 INTENT. It is the intent of the **Parties** hereto that all **Prior Property Interests** shall be documented in **Exhibit A** to this **Agreement**.

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

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

Section 3.04 DISCOVERY OF UNDISCLOSED PRIOR PROPERTY INTERESTS. **Undisclosed Prior Property Interests** identified for **Relocation** prior to the request for submission of the first submittal required by Article VII shall be **Relocated** through the same process as if the **Undisclosed Prior Property Interests** were disclosed herein. A separate accounting and recording of costs shall be maintained for **Undisclosed Prior Property Interests** and **Prior Property Interests** disclosed herein. Should **Undisclosed Prior Property Interests** be identified after the submission of one (1) or more submittals pursuant to Article VII, the **Utility** shall, within sixty (60) calendar days of discovering an **Undisclosed Prior Property Interest** to be **Relocated** if discovered by the **Utility** or within sixty (60) calendar days of written notification from the **Authority** identifying the **Undisclosed Prior Property Interests** to be **Relocated** if discovered by the **Authority**, submit a **Supplemental Plan** meeting the requirements of Article VII for the

Relocation of Undisclosed Prior Property Interests. Each **Party** shall have the same rights and responsibilities as they would have if the **Supplemental Plan** were included in previously approved plans, as detailed in Article VII, unless explicitly provided otherwise herein. The **Utility** shall endeavor to submit a **Supplemental Plan** for approval within sixty (60) days. Should the **Utility** fail to submit a **Supplemental Plan** by the applicable deadline, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall follow the dispute resolution process pursuant to Article XI of this **Agreement**.

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

Section 3.06 UTILITY PROPERTY INTERESTS. The **Utility** owns easements and rights-of-way in, on, over, and across the **Project Property**. The easements and rights-of-way shall continue in force and effect after the **Effective Date** and shall survive termination of this **Agreement**, except as explicitly provided otherwise by written agreement, though the **Utility's** rights under these property interests are subject to Article IX.

Section 3.07 CO-EXISTING PROPERTY INTERESTS. The **Authority**, via its **Member Entities**, is required to obtain property rights, in the form of a flowage easement, from property where additional flood water is temporarily stored when the **Comprehensive Project** operates. The **Parties** agree and acknowledge that the storage of additional flood water will flood the property where the **Utility** owns easements and rights-of-way. The **Utility** authorizes the **Authority**, via its **Member Entities**, to temporarily store additional flood water in, on, over, and across its easements across **Project Property**.

ARTICLE IV.

RESPONSIBILITY FOR UNDISCLOSED PRIOR PROPERTY INTERESTS

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

Section 4.02 REQUESTS FOR RELIEF.

- a. Within thirty (30) calendar days of **Utility Adjustment Completion**, the **Utility** may file a written request for relief with the **Authority** to request payment or partial payment for costs of the **Relocating Undisclosed Prior Property Interests**. This request for relief shall be a separate document from the reports required by Article VII but shall be submitted to the **Authority** in conjunction with the reports required by Article VII. All requests for relief shall include an itemized list of costs, the total amount requested, and justification for **Utility's** failure to identify the **Undisclosed Prior Property Interest**. Requests for relief may be approved, approved in part and denied in part, or denied.
- b. The **Authority** recognizes that many of **Utility's** services lines were installed prior to 1980, at which time the use of GPS was not available. **Utility** believes that it has

disclosed all pertinent **Prior Property Interests**, but the locations are based on old maps and handwritten field notes rather than current technology. As a result, the **Parties** agree and acknowledge that exact locations may be difficult to determine.

ARTICLE V. RIGHT OF SITE ACCESS

Section 5.01 RIGHT OF SITE ACCESS. To ensure the **Authority** is able to proceed with construction of the **Project** in a timely and efficient manner, as well as to properly monitor and ensure completion of the **Utility Relocation Project**, the **Authority** shall have a right-of-way in, on, over, and across any and all **Sites**, as well as the right to access, enter, and inspect any **Site**.

Section 5.02 NON-REVOCABLE RIGHT OF THE METRO FLOOD DIVERSION AUTHORITY. Nothing herein shall be construed as limiting or providing for the termination of the rights described herein as it pertains to the **Authority**.

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

Section 5.04 DELAY FOR SAFETY PURPOSES. If the **Authority** attempts to exercise the rights described in this Article, but doing so would pose a safety hazard, the **Party** shall be kept from accessing, entering, or inspecting the **Site** in question only for as long as is reasonably required to make the **Site** safety for access, entry, and inspection, as determined by the **Party** desiring to access, enter, and inspect the **Site**.

Section 5.05 FAILURE TO ALLOW ACCESS, ENTRY, AND INSPECTION. Should any **Party** having authority to access, enter, and inspect a **Site** be denied access for more than twenty-four (24) hours, other than when the same **Party** deems such a delay appropriate under Section 5.04, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall follow the dispute resolution process pursuant to Article XI of this **Agreement**.

ARTICLE VI. REQUIRED REPORTS

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

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

Section 6.03 FAILURE TO TIMELY PRODUCE. Should the **Utility** fail to produce any reports, analysis, plans, cost estimates, or other information and materials requested of them by

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

ARTICLE VII. PERFORMANCE AND CONSTRUCTION

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

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

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

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

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

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

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

- (a) Preliminary Design Submittal. The **Utility** shall complete a **Preliminary Design Submittal** to a minimum of approximately thirty-five percent (35%) level of design completion and define the basis of design for all aspects of each **Utility Adjustment** of the **Utility Relocation Project**. The **Preliminary Design Submittal** shall include calculations demonstrating that the proposed configuration meets and satisfies the technical requirements contained herein. The **Preliminary Design Submittal** shall also provide sufficient detail to demonstrate compliance with all design and construction requirements as described in **MFR-023**. The **Preliminary Design Submittal** shall include, at a minimum, sketches and/or relocation plans, text defining the general proposed plan, and a scoping estimate of construction costs.
- (b) Final Design Submittal. The **Utility** shall complete a **Final Design Submittal** including, but not limited to, fully developed design and relocation plan, drawings, specifications, and all other supporting information, design documentation, etc. The **Final Design Submittal** shall also contain complete applicable technical specifications. In addition to the aforementioned information, the **Final Design Submittal** shall include fully developed design and relocation plans, drawings, specifications, design documentation, and all other supporting information, design documentation, and a final estimate of construction costs. The **Final Design Submittal** shall be utilized to develop individual **Task Orders** for consideration and approval by the **Authority** prior to completion of the **Utility Adjustment Work**.
- (c) Post Construction Submittal. The **Utility**, in coordination with the **NFS** shall complete and provide a **Post Construction Submittal**. The **Utility** acknowledges and agrees that **Post Construction Submittals** shall be conducted in accordance with the **MFR-023** or as agreed upon by the **Utility** and the **Authority**. The **Post Construction Submittal** shall include, but is not limited to:
 1. Acceptance testing documentation and inspection records, including standard proctor and field moisture density results.
 2. Pipe inspection schedule and maintenance plan for future recurring inspections.

3. **As-Built Drawings:** Submit As-Built drawings for the complete utility line relocation showing complete detail, including trench dimensions, pipe profile, pipe alignment, valve locations, connection box locations, manholes and all other pertinent as-built information.
 4. **As-Built Surveys.**
- (d) **Review.** The **Authority** shall complete a full review of each submittal and provide comments and/or approval.
1. The **Authority's** review of submittals shall be restricted to a determination of whether the submittal complies with the specifications and requirements set forth in this **Agreement**.
 2. The **Authority** shall complete a full review and provide comments on submittals within twenty (20) **Business Days** of the date on which the **Authority** receives a full and complete submittal. Should the **Authority** determine that a submittal is not in compliance with the terms and specifications provided in this **Agreement**, and the **Utility** resubmits a previously submitted submittal, the **Authority** shall review the submittal and respond within ten (10) **Business Days**. The **Authority's** review of the re-submittal shall be limited to the portions of the initial submittal deemed insufficient as well as any other portions of the submittal which have been amended or added since the initial submission. In the event that the **Authority** does not provide comments within the period prescribed by this **Agreement**, the **Utility** shall provide written notice of the failure to respond. If the **Authority** does not respond within five (5) **Business Days** of receiving written notification, the submittal shall be deemed approved.

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

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

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

Section 7.10 ADJUSTMENTS TO THE UTILITY ADJUSTMENT WORK. Any changes or modifications to the **Construction Documents Submittal** during construction that materially affect the performance or construction of the **Utility Adjustment Work** will be subject to written approval by the **Authority**. The **Utility** will submit the proposed changes or modifications to the

Authority for review and approval. The **Authority** shall review the submittals in accordance with procedure and timelines in Section 7.06. **Authority** lines not required to be moved prior to the adjustment of **Post Construction Submittal**, which need to be **Relocated** after changes are made to **Post Construction Submittal** shall not be treated as **Undisclosed Prior Property Interests** for purposes of assigning responsibility for costs.

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

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

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

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

ARTICLE VIII. PAYMENT OF COSTS

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

Section 8.02 PAYMENT OF COSTS.

- (a) The **Authority** shall pay all **Costs** it incurs regarding the **Project, Utility Adjustment, Utility Adjustment Work**, and the **Utility Relocation Project**.
- (b) The **Authority** shall reimburse the **Utility** for all reasonable **Costs** the **Utility** has incurred since January 1, 2021, including those incurred in reviewing and

negotiating this **Agreement**, and all reasonable **Costs** the **Utility** will incur in carrying out, dealing with, and responding to matters directly related to the **Utility Adjustment, Utility Adjustment Work, and Utility Relocation Project**. **Costs** incurred by the **Utility** and payable or reimbursable by the **Authority** include those incurred for right-of-way acquisition, design work, engineering, construction, inspection, and monitoring (including inspecting and monitoring **Utility Adjustment, Utility Adjustment Work, and the Utility Relocation Project**), legal advice, administration, and insurance that would not have been necessary, obtained, or incurred absent the **Project**. The **Utility's** field personnel shall be billed at a rate of \$75 per hour and its administrator and supervisor time shall be billed at \$90 per hour; both sums are inclusive of wages, overhead, mileage, etc. No additional sums or fees shall be billed for field personnel or administrator, supervisor time, or otherwise except as specifically provided otherwise herein or pursuant to a **Task Order**.

Section 8.03 REPORTING OF COSTS. The **Utility** shall submit detailed itemized reports of the costs and expenses of the **Utility Relocation Project** to the **Authority** for review, subject to invoicing requirements set forth in **Exhibit E** to this Agreement.

Section 8.04 REJECTION OF COSTS. The **Authority** may reject reported costs and expenses to the extent that it deems any specific costs or expenses are unreasonable. Notice of rejection of any costs or expenses must be provided to the **Utility** in writing.

Section 8.05 APPEAL OF A DECISION TO REJECT COSTS. The **Utility** may appeal a decision rejecting any cost by providing the **Authority** written notice of the appeal and justification for its expenses within twenty (20) calendar days of its receipt of the rejection notice.

Section 8.06 PAYMENT OF ACCEPTED COSTS. Within thirty (30) calendar days of the determination of the **Authority's** full liability to the **Utility**, the **Authority** shall issue full payment of the amount owed to the **Utility** pursuant to the invoice in question. Any failure to make payment owed to the **Utility** when due under this **Agreement** shall have interest added to the amount owed at the annual rate of six percent (6%) or the maximum amount permitted by North Dakota law if a lesser amount. Interest shall not be paid for any time period during which the reasonableness of a **Cost** is disputed.

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

ARTICLE IX. FUTURE RIGHTS AND RESPONSIBILITIES

Section 9.01 USE WITHIN THE PROJECT PROPERTY. The **Utility's** use of property rights it may hold within the **Project Property** is subject to the following restrictions and obligations:

- a. Coordination with USACE. Notwithstanding anything in Section 2.03, if the **Utility** deems it necessary to perform any work on **Utility** property located within or on

the **Project Property**, beyond operation and maintenance, it shall first consult with the **USACE**.

- b. Maintenance of Utility Property. Following completion of the **Utility Relocation Project**, the **Utility** shall be responsible for all maintenance of **Utility** property and associated infrastructure. The **NFS** and **Utility** shall be responsible for preparing an operation and maintenance agreement that sets forth the roles and responsibility of each **Party**. The **Utility** shall be responsible for preparing a maintenance plan for all utilities located within the work limits of the **SEAI** and/or **UMA**. The **Utility** acknowledges and agrees that all maintenance of the **Utility** property and associated infrastructure shall be conducted in accordance with the **MFR-023** or as agreed upon by the **Utility** and the **Authority**.
- c. Post Construction Access. Following completion of the **Utility Relocation Project**, the **Utility** shall provide the **Authority** with seven (7) calendar days' written notice of any maintenance it intends to do within the **Project Footprint**; provided, however, that the **Utility** shall provide the **Authority** with one (1) hour's verbal and emailed notice of any maintenance required due to a water pipeline leak.
- d. Approval for Ground Disturbing Maintenance, Repairs, or Installation of New Service Lines. The **Utility** must submit and obtain approval for any and all plans for maintenance, repair, or installation of new service lines, that require the ground within the **Project Footprint** to be disturbed, from the **Authority**. Approval shall not be unreasonably withheld by the **Authority**. To the extent the **Utility** and the **Authority** agree in writing, certain ground disturbing maintenance may be exempted from the approved requirements of this Section.
- e. Clean Up. The **Utility** shall ensure that after any maintenance or repairs to **Utility** property, the ground within the **Project Footprint** is returned to the state in which it existed prior to the maintenance or repair that caused the ground within the **Project Footprint** to be disturbed.
- f. Metro Flood Diversion Authority Access. In the event that **Utility** property malfunctions, destructs, or otherwise begins to cause on-going damage to the **SEAI** and/or the **UMA**, the **Authority** shall have the authority to access the damage-causing **Utility** property within the **Project Property** and take any action necessary to stop on-going damage to the **SEAI**. Before exercising this right, the **Authority** shall, if time and circumstances allow, attempt to notify the **Utility** of the problem and coordinate a response with the **Utility**. If the **Authority** exercises the access right given in this Section, it shall promptly submit to the **Utility** a report explaining the action taken.
- g. Access. The **Authority** shall have unrestricted access in, over, and across the right-of-way.

- h. Damage to the SEAI or UMA. Should **Utility** property malfunction, deconstruct, or otherwise cause damage to the **SEAI** and/or the **UMA**, the **Utility** shall take immediate action to stop on-going damage to the **SEAI** and/or the **UMA** and will consult with the **Authority** on how to repair all damage that occurs.
- i. Abandonment. Should the **Utility** abandon or remove a utility line within the easement and fail to replace the line within three (3) years of removal, the **Utility** shall forfeit and extinguish said easement.

Section 9.02 USE OF EXISTING EASEMENT. In the event **Utility** property is **Relocated** within the **Utility's** currently existing easement or right-of-way, the **Utility** shall be bound to exercise its rights under said easement, subject to the requirements and obligations contained in this Article. The requirements of this Article shall survive so long as the **Utility** has property located within the **Project Footprint**.

Section 9.03 RECORD KEEPING. The **Utility** shall maintain or cause to be maintained (by way of contract and enforcement of such contract) a complete set of records detailing all costs it incurs in the **Utility Relocation Project**, in accordance with the recordkeeping and audit requirements of this **Agreement** and the laws of **North Dakota**.

Section 9.04 FUTURE PERMITS. Should the **Utility** file a formal permit application with the **Authority**, pertaining to the **Utility** line **Relocated** pursuant to this **Agreement**, with the **Authority** after the **Effective Date**, the **Authority** shall grant, at no cost to the **Utility**, the permit application so long as the permit application meets all reasonable requirements listed in the instructions to said permit application and the proposed crossing would not unreasonably risk harm to the **SEAI** or the **UMA** or interfere with other facilities already contained within the **Project Footprint**, as determined by the **Authority**. In addition to the permit application granted by the **Authority**, the **Utility** shall be responsible for obtaining all other permits necessary and required by the **USACE**. Should an existing **Utility** line be modified in the future, or should the **Utility** need to install a new service line, the **Authority**, in its sole discretion, shall determine whether the modification is allowable under a previously existing permit or whether the modification is significant enough in its nature or effect to require the **Utility** to apply for a new permit, which the **Authority** shall grant so long as the permit application meets all reasonable requirement listed in the instructions to said permit application and the modification or addition would not risk harm to the **SEAI** or the **UMA** or interfere with other facilities already contained within the **Project Property**, as determined by the **Authority**.

Section 9.05 DAMAGE TO THE UTILITY. Should any part of the **Project** malfunction, deconstruct, or otherwise cause damage to property owned by the **Utility**, including damage caused by **Utility's** lines being under water, the **Authority** shall take reasonable action to stop ongoing damage to the **Utility's** property as soon as reasonably possible and, after consulting with the **Utility**, repair all damage resulting from said malfunction or deconstruction or other cause.

**ARTICLE X.
DISPUTES WITH CONTRACTORS AND OTHER THIRD PARTIES**

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

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

Section 11.01 INTENT AND PROCEDURE. The **Utility** and the **Authority** shall use their **Best Efforts** to ensure that the provisions of this **Agreement** are fulfilled. The **Parties** agree to act in **Good Faith** to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this **Agreement**. If disputes cannot be resolved informally by the **Parties** or under other, situation-specific dispute resolution mechanisms contained herein, the following procedure shall be used.

Section 11.02 PROCEDURE TO COMMENCE DISPUTE RESOLUTION PROCESS. The **Parties** agree that in the event of an alleged breach of any of the terms of this **Agreement**, the **Parties** making such allegation shall, except as provided in Section 13.01 (Notices) of this **Agreement**, provide thirty (30) calendar days' written notice to the other **Party** of the alleged breach. The written notice shall contain reasonable description of the underlying facts and an explanation of why the **Party** providing notice believe those facts constitute a breach. Following transmittal of the notice, the **Party** alleged to have caused the breach shall be given a reasonable time (as provided in Section 11.03 of this **Agreement**), not less than ten (10) calendar days to correct or remedy the alleged breach, to meet and confer with the other **Party**, and/or to participate in mediation with the other **Party** prior to initiating any litigation, arbitration, or any administrative proceeding, unless the alleged breach has the potential to cause immediate and irreparable harm, in which case the **Party** alleging the harm may initiate litigation prior to complying with the provisions of this Section 11.02 while, at the same time, following the procedures set forth in Sections 11.01, 11.02, and 13.01 of this **Agreement** as applicable.

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

Section 11.04 MEDIATION. If there is a failure between the **Parties** to resolve a dispute on their own, the **Parties** shall first attempt to mediate the dispute. The **Parties** shall agree upon a single mediator or, if they cannot agree, shall obtain a list of court-appointed mediators from the Cass County District Court Administrator, and select a mediator by alternately striking names until one remains. The **Authority** shall strike the first name, followed by the **Utility**, in that recurring order until one name remains.

Section 11.05 RIGHT OF SETOFF. If there is a failure between the **Parties** to resolve a dispute on their own, and the **Parties** have attempted to utilize the dispute resolution process pursuant to Article XI of this **Agreement**, and such dispute, including but not limited to those identified in Sections 3.04, 5.05, and 6.03, results in the unreasonable delay of the **Utility Relocation Project**, the **Authority** is hereby authorized, to the fullest extent permitted by law to setoff, and may apply any and all deposits at any time held and owing to or for the credit of any **Party** to this **Agreement** against any and all obligations existing under this **Agreement**.

Section 11.06 LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within thirty (30) days after the end of mediation proceedings, the **Parties** may litigate the matter.

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

Section 11.08 WAIVER OF JURY TRIAL. THE **PARTIES** HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS **AGREEMENT**, OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS **AGREEMENT**, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS **AGREEMENT**. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL **MEMBER ENTITIES** ENTERING INTO THIS **AGREEMENT**. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE **UTILITY** AND THE **AUTHORITY** ARISING OUT OF OR RELATED TO THIS **AGREEMENT** AND DOES NOT APPLY TO THIRD-PARTY CLAIMS OR SUITS BY OR ON BEHALF OF THE **PARTIES** FOR **PROJECT PROPERTY** ACQUISITION AND/OR CONSTRUCTION CONTRACT CLAIMS AND DEFENSES.

ARTICLE XII. USE OF EMINENT DOMAIN

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

Section 12.02 NULLIFICATION BY EMINENT DOMAIN. Should the **Authority** initiate eminent domain proceedings to accomplish the goals of the **Utility Relocation Project**, the terms of the **Agreement** shall be null and void at the option of the **Authority**. However, the **Authority** will initiate eminent domain proceedings against the **Utility** only if (1) the **Utility** has failed to fulfill a duty under this **Agreement** and that failure has or is like to cause material and substantial disruption to timely completion of the design or construction of the **SEAI**; and (2) the **Authority** has given the **Utility** at least fourteen (14) days written notice of its intent to initiate eminent domain proceedings and the **Utility** has failed within those fourteen (14) days to fulfill its duty or to make substantial progress in doing so as reasonably determined by the **Authority**.

Section 12.03 NULLIFICATION AFTER COSTS INCURRED. Should the terms of this **Agreement** be nullified under Section 12.02 or terminated under Section 13.23 (Termination"), after the **Utility** has begun work for which it would otherwise be entitled to reimbursement under

this **Agreement**, the **Utility** shall, within thirty (30) days of being served with notice of the nullification or termination, submit a report of its **Costs** to the **Authority** in the same manner it would have submitted a report of **Costs** pursuant to Article VII had the **Agreement** not been nullified or terminated. In the event of nullification or termination, the **Utility** and the **Authority** shall have all the rights and obligations created by Article VIII of this **Agreement**.

ARTICLE XIII. MISCELLANEOUS

Section 13.01 NOTICE. All notices under the **Agreement** will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with deliver receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses:

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

Jacobs Engineering Group, Inc.
4784 Amber Valley Parkway, Suite 200
Fargo, North Dakota 58104

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

Metro Flood Diversion Authority
Attn: Executive Director
4784 Amber Valley Parkway, Suite 100
Fargo, North Dakota 58104

and

APIInvoicesFMDiv@jacobs.com
wilsonro@casscountynd.gov
mredlinger@FargoND.gov

- c. All notices to the **Utility** will be marked as regarding the **Project** and will be delivered to the following address or as otherwise directed by the **Utility's** authorized representative:

Southeast Water Users District
 Attn: General Manager
 P.O. Box 10
 Mandator, North Dakota 58058

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

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

Section 13.03 WORKERS' COMPENSATION. Each **Party** shall be responsible for injuries or deaths of its own personnel. Each **Party** will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are providing assistance pursuant to this **Agreement**. Notwithstanding any other provision of this **Agreement**, each **Party** waives the right to pursue a legal action against one of the other **Parties** for any workers' compensation benefits paid to its own employee or volunteer or their dependents, even if the injuries are caused wholly or partially by the negligence of any other **Party** or its officers, employees, or volunteers.

Section 13.04 INSURANCE. The **Utility** shall list the **Authority** as additional insureds on any insurance policy obtained in connection with the **Utility Relocation Project**. No **Utility Adjustment Work** may be done until a certificate of insurance listing the aforementioned entities as additional insureds is produced. An additional insured shall be given notice at least thirty (30) days before an insurance policy on which it is an additional insured is canceled or allowed to expire. In the event that the policy is terminated for any reason and notice has not been previously given to the additional insureds, the formerly insured shall give notice to the additional insureds as soon as is reasonably possible.

Section 13.05 LIABILITY LIMITATIONS. Nothing in the **Agreement** shall be deemed a waiver by either **Party** of any limitation on liability set forth in any statute, including N.D.C.C. Section 32-12.1-03, and as any such statutes may be amended from time to time, or a waiver of any available immunities or defenses.

Section 13.06 RELATIONSHIPS CREATED. The **Parties** agree this **Agreement** does not create any agency, partnership, joint venture, or any other relationship between the **Parties** and that the **Utility** is solely responsible for its own actions or omissions.

Section 13.07 GOVERNING LAW. This **Agreement** shall be controlled by the laws of the **State of North Dakota**. Any action brought as a result of any claim, demand, or cause of action

arising under the terms of this **Agreement** shall be venued in **Cass County** in the **State of North Dakota**, and the **Parties** waive any objection to personal jurisdiction.

Section 13.08 CONFLICT. In the event of a conflict between the **Parties** pertaining to the terms and conditions of this **Agreement**, this **Agreement** shall control and govern the relocation of **Utility** infrastructure, lines, and property for purposes of the **SEAI** and the **UMA**, but not the relocation of **Utility** infrastructure, lines, and property for purposes of the **SWDCAI**.

Section 13.09 SEVERABILITY. Each provision, section, sentence, clause, phrase, and word of this **Agreement** is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this **Agreement**.

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

Section 13.11 BINDING EFFECT. This **Agreement** shall be binding upon and inure to the benefit of the **Parties** hereto and their respective personal representatives, successors, and assigns.

Section 13.12 REPRESENTATION. The **Parties**, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this **Agreement**, and agree they have not been influenced by any representations or statements made by any other parties.

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

Section 13.14 COUNTERPARTS. This **Agreement** may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the **Parties** and delivered to the other **Party**.

Section 13.15 REPRESENTATION OF AUTHORITY. Each **Party** signing this **Agreement** represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this **Agreement** and that the **Agreement** is a valid and legal agreement binding on such **Party** and enforceable in accordance with its terms.

Section 13.16 FEES. The fees provided for herein shall not be interpreted or deemed to be the **Authority's** sole source of recovery for damages in any way arising from or related to **Utility's** delay, actions, or failure to act. The **Authority** shall have all remedies available to it at law in addition to any fees paid to the **Authority** by **Utility** pursuant to this **Agreement**.

Section 13.17 ELECTRONIC SIGNATURES. The **Parties** acknowledge and agree that this **Agreement** may be executed by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature.

Section 13.18 FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, member of **Congress**, an officer or employee of **Congress**, or any employee of a member of **Congress** with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for **U.S. EPA** in 40 **CFR** Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, **Utility** shall complete and submit to the **Authority** the certification and disclosure forms in Appendix A and Appendix B to 40 **CFR** Part 34, which are attached as **Exhibit D** to this **Agreement**. **Utility** shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 **CFR** 34.110.

Section 13.19 DEBARMENT AND SUSPENSION. **Utility** certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 **CFR** Part 32 to participate in the **Project**. Suspension and debarment information can be accessed at <http://www.sam.gov>. **Utility** represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this **Agreement**. Upon award of this contract, **Utility** shall complete and submit to the **Authority**, the federal certification form regarding debarment and suspension, which is attached as **Exhibit D** to this **Agreement**.

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

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

Section 13.21 CIVIL RIGHTS OBLIGATIONS. The **Utility** shall comply with the following, federal non-discrimination requirements:

- a. Title VI of the **Civil Rights Act of 1964**, which prohibits discrimination based on race, color, and national origin, including Limited English Proficiency (“LEP”).
- b. Section 504 of the **Rehabilitation Act of 1973**, which prohibits discrimination against persons with disabilities.

- c. The **Age Discrimination Act of 1975**, which prohibits age discrimination.
- d. Section 13 of the **Federal Water Pollution Control Act Amendments of 1972**, which prohibits discrimination on the basis of sex.
- e. 40 **CFR** Part 7, as it relates to the foregoing.
- f. **Executive Order No. 11246**.

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

Section 13.23 TERMINATION. This **Agreement** may be terminated by the **Authority**, at any time and for any reason with three (3) calendar days written notice to the **Utility**. If this **Agreement** is terminated, Section 12.03 (Nullification After Costs Incurred”) applies to allow the **Utility** the right to recover its **Costs**.

Section 13.24 RAPID CLOSURE VALVES. Section 5.5 of **Exhibit C** (MFR-023, Utility Guidelines for the Southern Embankment) contains a requirement that certain pipes have a valve that allows rapid closure in certain events. This requirement is met by installation of new manual isolation valves for rapid emergency closure in accordance with the **Utility’s** standard specifications and Section 5.5 of **Exhibit C** on either side of the dam embankment in locations consistent with the **Utility’s** safety requirements and approved by the **USACE**.

(Signatures appear on the following pages.)

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

AUTHORITY:

Metro Flood Diversion Authority

Michael Redlinger, Co-Executive Director

Robert Wilson, Co-Executive Director

Michelle (Shelly) A. Carlson, Chair

ATTEST:

Dawn Lindblom, Secretary

UTILITY:

Southeast Water Users District

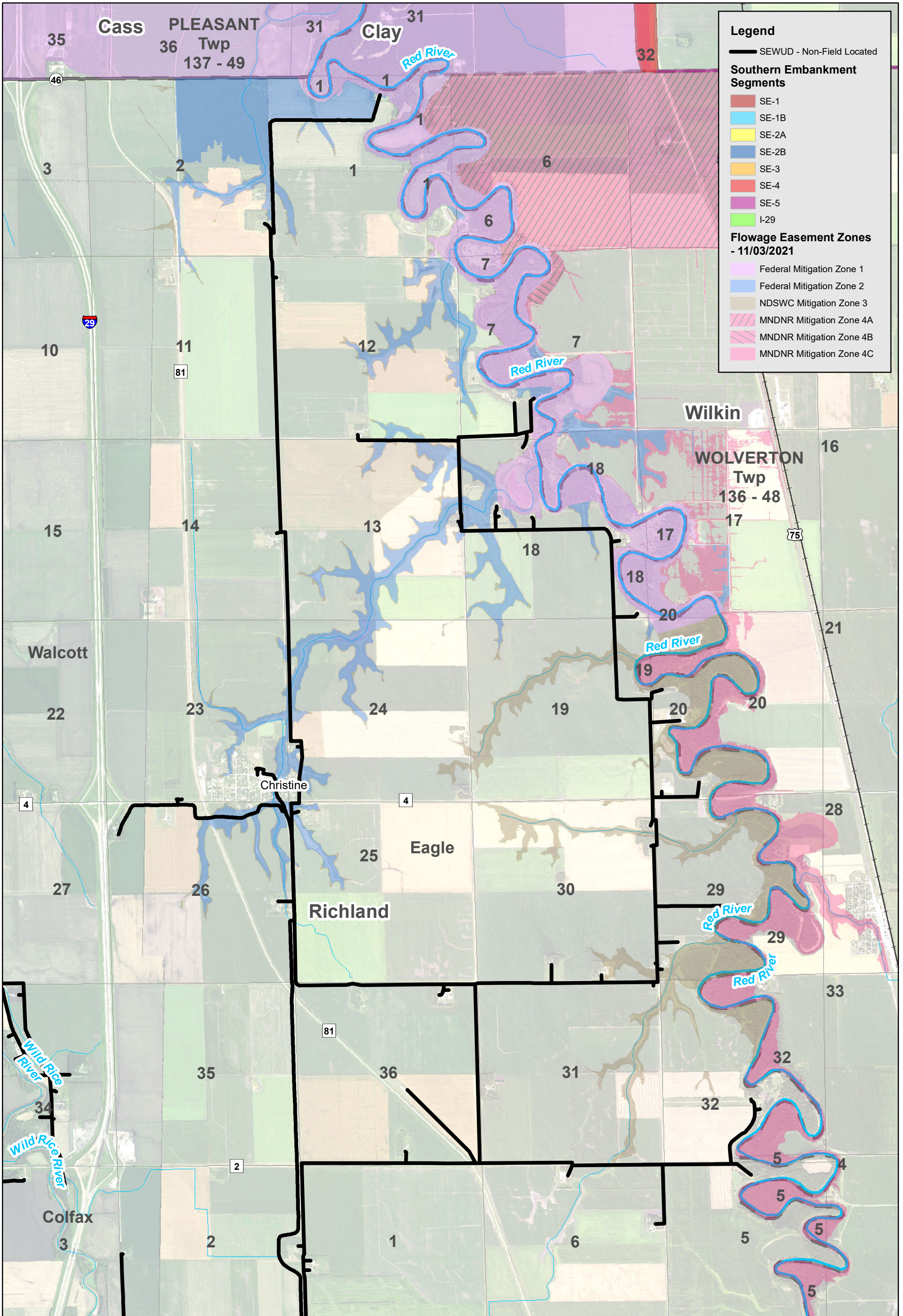
By: _____

Its: _____

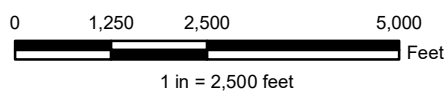
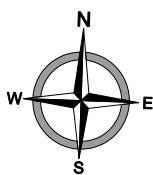
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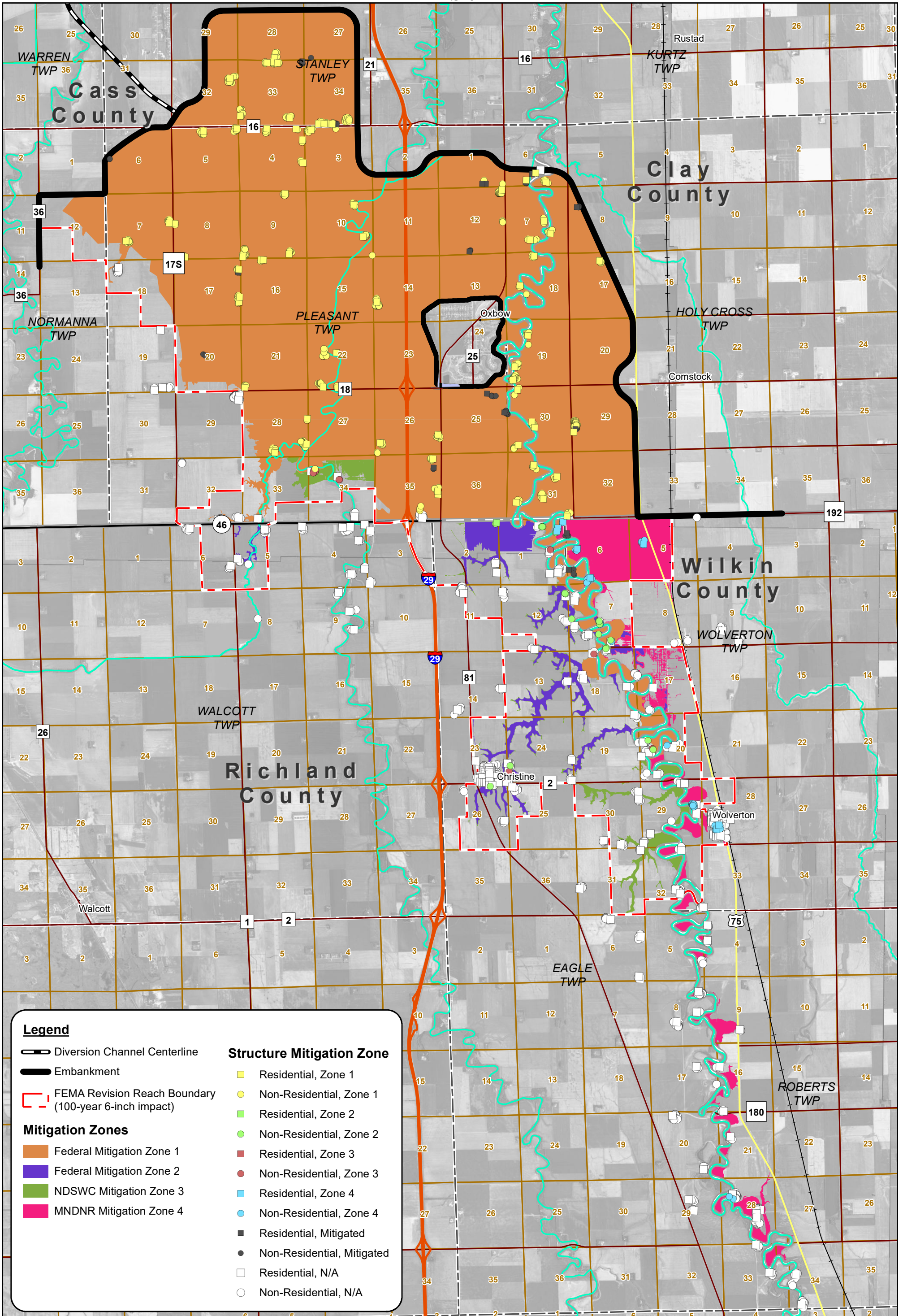
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**SEWUD
FLOWAGE EASEMENT AREA
FM AREA DIVERSION PROJECT**



Created By: TJS Date Created: 12/03/21 Date Saved: 02/24/22 Date Plotted: 03/28/16 Date Exported: 02/24/22
 Plotted By: Tanner.Schmidt Parcel Date: N/A Aerial Image: 2019 County NAIP SIDS Elevation Data: Lidar
 Horizontal Datum: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet Vertical Datum: NAVD1988
 T:\Projects\21900\21900\101_3_5_Uilities\Flowage_Easement_Map_Book\Utility_Specific\SEWUD_Portrait_SP.mxd



Legend

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

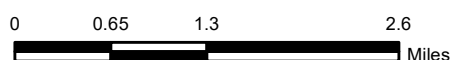
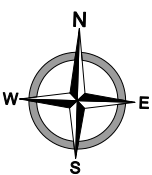
Mitigation Zones

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

Structure Mitigation Zone

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

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



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



Exhibit C

EMVP-EC-D

February 10, 2021

MEMORANDUM FOR RECORD

SUBJECT:

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

1. REFERENCES

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

2. PURPOSE

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

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

3. PROJECT DESCRIPTION

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

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

16) and Cass County Road 17 (CR 17) south of Horace, North Dakota; at the Wild Rice River; and at the Red River of the North. These three structures are referred to as the Diversion Inlet Structure (DIS), Wild Rice River Structure (WRRS), and Red River Structure (RRS), respectively.

4. EXISTING UTILITY REMOVAL AND ABANDONMENT

In general, existing utilities within the SE Project work limits and/or that cross the proposed dam embankment alignment shall be removed and or abandoned prior to the USACE issuing a notice to proceed for an awarded construction contract.

Existing utility lines may remain in place until the relocated utility becomes operational or may be temporarily relocated provided its design is coordinated in line with the USACE design and construction schedule. Temporary utility relocations shall be coordinated with the USACE prior to the SE Project 65% plans and specifications and may be placed within the SE Project work limits.

4.1. Overhead Utilities

In general, overhead utility lines and poles shall be removed from the SE Project work limits by the responsible utility owner prior to construction. Above ground appurtenances, utility pedestals and boxes, or any other utility related infrastructure shall also be removed by the utility owner prior to award of the USACE construction contract. Existing overhead power may be allowed to stay in place based upon approval from the USACE.

4.2. Underground Utilities

Responsible utility companies shall disconnect, cap, and abandon existing underground utility lines located within the SE Project work limits. Abandoned underground utility lines will be removed as necessary by the USACE construction contractor.

Any remaining abandoned underground utility lines, abandoned above ground utility lines, and any related utility infrastructure within the SE Project work limits shall be described and listed with enough detail to include as part of the SE Project 65% plans and specifications ahead of contract award.

5. PROPOSED UTILITY CROSSINGS OF THE DAM EMBANKMENT

The paragraphs below provide the general guidance for utilities crossing the FMM SE Project.

5.1. Alignment and Utility Corridor

Utility owners shall develop a plan for relocation of utilities (electric, water, sewer, communication, gas, etc.) that cross or lie within the SE Project work limits. Utility companies shall submit proposed utility relocation plans to the NFS and USACE for review and comment

prior to utility relocation construction. The number of utility crossing locations shall be minimized and the use of utility corridors where multiple utilities cross in the same general location is preferred. Final crossing location and orientation relative to the SE Project alignment shall be approved by the NFS and USACE during SE Project design stages.

Wherever possible, the utilities shall be rerouted to one of the nearest seven proposed utility corridors provided in Table 1 and Figure 1 below.

Table 1: List of Utility Corridors.

ID	Location	Description
1	Diversion Inlet Structure	Shoulder of County Road 16
2	45 th Street S	Shoulder of 45 th Street S
3	County Road 16	Shoulder of County Road 16
4	Wild Rice River Structure	173 rd Ave SE access ramp to Dam
5	Red River Structure	Roadway shoulder of County Road 81
6	Comstock, MN	Roadway shoulder of 160 th Ave S (County Road 2)
7	HWY 75 & 100 th Street Intersection	Roadway shoulder of U.S. Highway (HWY 75)

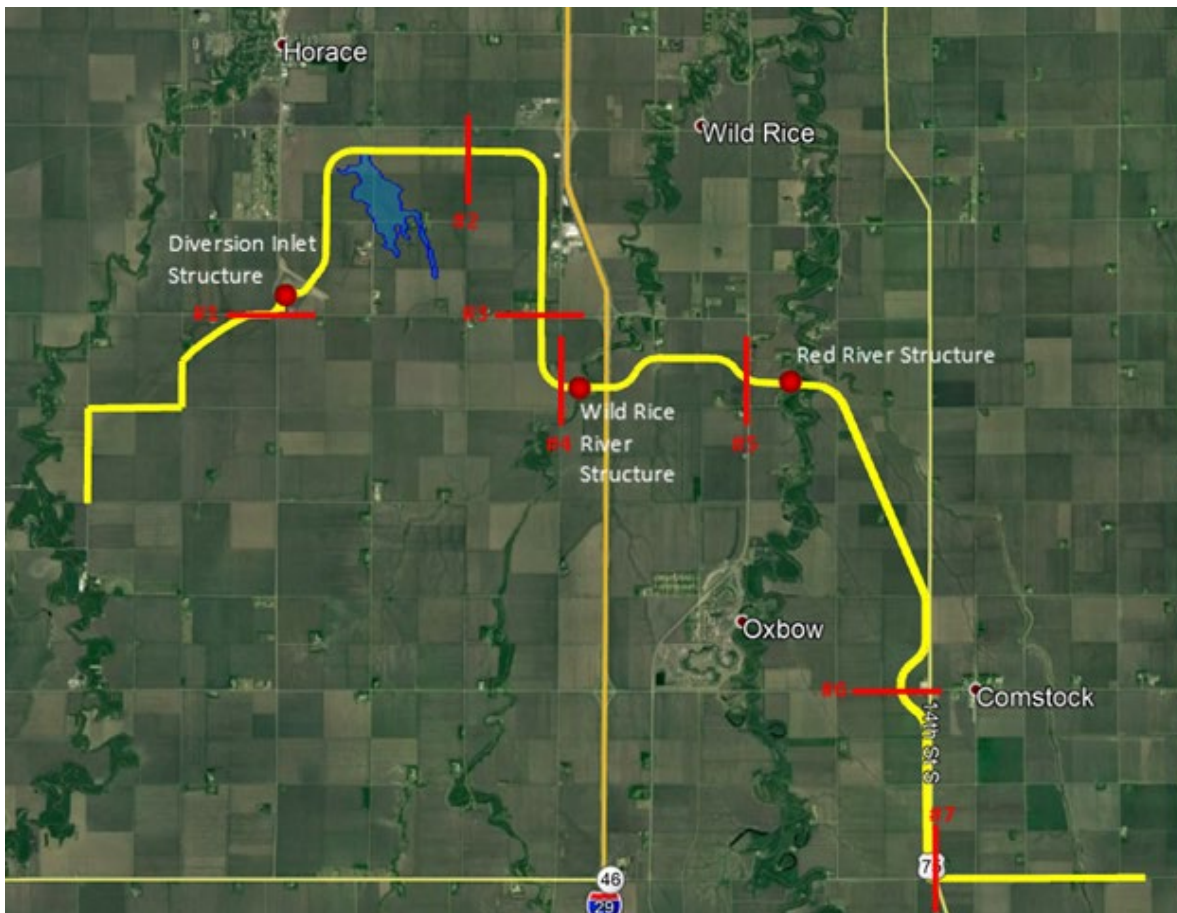


Figure 1: Locations of the utility corridors along the FMM Southern Embankment Project

5.2. Overhead Utilities

Poles, guy wires, and anchors shall be located 25 feet beyond the daylight of the SE Project borrow and local drainage ditches. Overhead work clearance requirements for dam construction shall be determined by Table 232-1 of Ref 1c, and dam embankments shall be considered “road, streets, and other areas subject to truck traffic,” as the dam will be regularly traversed for operation, maintenance, repair, rehabilitation, and emergency operations. Clearance distances shall be selected per voltage levels and the type of cable, conductor, or wire. Section 23 and sections C and D of Ref 1c have methods for calculating the required clearances for routing electrical lines with voltages exceeding 22 kV.

5.3. In-Ground Utilities Crossing the Dam Embankment

Utilities crossing the dam embankment shall be designed according to Ref 1a, as well as the guidance provided below. These guidelines apply to the portion of the utility located within the dam embankment footprint and within the SE Project work limits.

5.3.1. Up and Over Dam Embankment Crossing

Proposed utility crossings above the allowable crossing elevation of 925 feet (NAVD88) will be evaluated on a case by case basis, and drawings/calculations shall be submitted to fully document the design. The following are provided as guidelines:

- (1) Proposed utility crossings shall be aligned to cross as close to perpendicular as possible to the dam embankment centerline at the approved utility corridor crossing. Variations to the crossing angle may be dictated by field conditions and the location of connecting utilities. If possible, crossings shall be located where the existing ground is at its highest elevation. Final crossing location and orientation relative to the dam embankment alignment shall be approved by the NFS and USACE during SE Project design stages.
- (2) In general, non-pipeline utilities (Cable TV, Telecommunications and Underground Power lines) shall cross up and over the top of the dam embankment at an elevation above 925 feet (NAVD88). This elevation includes the 1.5 feet of expected settlement for most of the dam embankment reaches. Calculations are required to show that each utility line has adequate strength/flexibility to withstand the expected loading and settlement.
- (3) For pipelines that need to be protected from freezing (e.g. water lines and sanitary sewer force mains), additional dam embankment fill will be required to meet local requirements for 10 feet minimum cover. Earthen fill is the preferred alternative for frost protection, as it is more reliable than insulation.

- (4) Selecting the most appropriate pipe material for a specific environment is an essential step in reducing the risk associated with the long-term performance of a pipe. A list of applicable pipe materials by function along with potential concerns for each pipe function, is provided in Table 3-2 in Ref 1a.
- (5) Controlled Low-Strength Material (CLSM) backfill must be used to encapsulate pipes through its horizontal alignment when trenched within/through the crest of the dam to reduce the chance of seepage along or into the pipe. See Figure 5-40 of Ref 1a.

For pressurized utilities, the following guidelines also apply:

- (6) Pipeline material and joints shall be pressure rated to withstand all fluid pressures that may be encountered. Recommended viable pipe materials by pipe function are listed in Table 3-2 of Ref 1a.
- (7) Pipelines shall be evaluated for the need for air-release, air vacuum and combination valves at the crest of the dam embankment. If needed, the valves shall be adequately protected from frost.
- (8) Pipe bends shall have appropriately designed thrust restraints. See Section 5.5.13 of Ref 1a.
- (9) Calculations are required to show that each utility line has adequate strength and flexibility to withstand the expected loading and settlement.
- (10) If manholes are required for access to rapid closure valves and testing access points, watertight sealed manholes shall be located a minimum of 25 feet outside the upstream and downstream dam embankment toes.

5.3.2. *Under Dam Embankment Crossing*

Utilities crossing under the dam embankment shall be designed according to Ref 1a, as well as the guidance provided below. These crossings will also be evaluated on a case by case basis, and calculations shall be submitted to fully document the design. There are additional factors that must be considered and addressed in a site-specific engineering evaluation before any such crossing would be approved. Chapter 5 of Ref 1a discusses these factors and concerns. Pressure pipelines are of particular concern because of the damage that can occur to the dam embankment if a line fails in the foundation of the dam embankment. The guidelines in Paragraph 5.3.1 above will apply to crossings under the dam embankment as well as the following additional guidelines.

- (1) If open-cut methods are utilized, the crown of the pipeline must be at least 3 feet

below the bottom of the dam inspection trench and bottom of borrow/drainage ditches associated with the SE Project. This guideline serves to reduce the chance of damaging the utility during construction and/or during future maintenance activities. Utilities susceptible to freezing shall be located a minimum of 10 feet below the ditches or as required by local code.

- (2) If open cut is utilized, the trench shall extend under and 20 feet beyond the proposed dam embankment prism toes. Topsoil shall be stripped from the trench area and set aside separate from the excavated trench material. The utility pipeline will be required to be encased in CLSM (specification attached). The new pipeline shall be placed on supports to allow the CLSM to flow beneath the pipe and completely fill the pipe haunches. See Sections 5.5.7 and 5.5.18.1. of Ref 1a. Supports shall be placed from L/4 to L/5 from the pipe ends, where L is the pipe segment length. See Section 5.5 in Ref 1a for further detail. CLSM shall be placed in the trench to 1 foot above the crown of the pipe. The remaining trench shall be backfilled with compacted impervious fill from material excavated from the trench, excluding topsoil. Fill shall not be placed on any subgrade that is wet, muddy, frozen, containing frost, or covered with snow. Trenches shall be backfilled in maximum 12-inch (uncompacted) layers and compacted to a density of at least 95-percent of the maximum density obtained by standard proctor (ASTM D698). Fill shall be within the limits of 3 percentage points above the optimum and 1 percentage point below the optimum moisture content of the standard proctor as determined by field moisture density tests. Field moisture density tests shall be either by nuclear method (ASTM D6938) or the rubber balloon method (ASTM D2167). Testing frequency shall be at least one test per 250 lineal foot, for each lift.
- (3) If horizontal directional drilling is utilized, it shall be accomplished pursuant to Section 5.6 of Ref 1a and the attached “Guidelines for Installation of Utilities Beneath Corps of Engineers Levees Using Horizontal Directional Drilling”, June 2002, and the St. Paul District’s “Guidance Pertaining to Horizontal Directional Drilling Under a Flood Barrier/Channel.” The pipe entry and exit locations (pits) must be located so that they are a distance of at least 20 times the embankment height or 300 feet (whichever is greater) from the embankment centerline.
- (4) Utility relocation design shall include watertight sealed manholes on both sides of the dam embankment for access to rapid closure valves (see Section 5.5 below), regular operation and maintenance activities, and to facilitate recurring inspections of pressurized utilities passing under the dam embankment. Watertight sealed manholes shall be located a minimum of 25 feet outside the upstream and downstream embankment toes.

5.4. Casing for Utility Lines

- (1) All pressurized utility lines (sewer, water, and gas) crossing under the dam embankment shall be cased. The use of casing pipe should also be considered for other utility crossings.
- (2) USACE recommends the use of HDPE or steel pipe for casing pipe material. All casing specifications shall be submitted to USACE for review and comment prior to installation.
- (3) In general, if horizontal directional drilling is utilized casing pipe material shall be limited to one that can be joined together continuously, while maintaining sufficient strength to resist the high tensile stresses imposed during the pullback operation.
- (4) Casing shall extend a minimum of 20 feet beyond the proposed dam embankment prism toes if open cut method is utilized. If horizontal directional drilling is utilized casing pipe will extend from entry to exit pit.
- (5) The annular space between the casing and the carrier pipe must be grouted and sealed under the dam embankment prism and extend a minimum of 20 feet beyond the dam embankment prism toes to reduce the likelihood of future seepage or settlement related issues. The design documentation for the grouting must include calculations for the expected volume of grout needed to fill the annular space.

5.5. Rapid Closure Valves

All pressurized pipelines crossing above or below the dam embankment shall have positive shut-off valves installed on either side of the dam embankment. The purpose of the valves is to provide pipeline isolation in the event of leakage, rupture, repairs, or relocation. All pressurized pipes crossing the dam must be designed in a way that allows rapid closure in the event of a rupture to prevent gas or fluid from escaping within or beneath the dam embankment causing internal erosion; and to prevent backflow of floodwater into the benefitted area. The rapid closure valves shall be located a minimum of 25 feet beyond the toes of the dam embankment. If a utility company wants to relocate valves outside of SE Project limits, the utility company must submit a detailed plan with justification to USACE. USACE will review the plan and provide its decision on whether or not to grant a variance. Final valve type used shall be determined on a case by case basis.

5.6. Non-Pipeline Utility Crossings

Cable TV, Telecommunications and Underground Power lines are typically trenched into the ground at depths ranging from 3 to 4 feet below the ground surface. For non-pipeline utilities that will be relocated up and over the dam embankment, the utilities shall be relocated in the dam embankment above the allowable crossing elevation of 925 feet (NAVD 88).

When crossing underneath the dam embankment, the non-pipeline utility may be horizontally directionally drilled pursuant to Paragraph 5.3.2 (3). Any open annular space in the casing pipe must be grouted or filled, as noted in paragraph 5.4 (5) above.

6. UTILITY RELOCATIONS NOT CROSSING THE DAM EMBANKMENT BUT WITHIN PROJECT WORK LIMITS

Utility relocations within the SE Project work limits, but not crossing within the dam embankment or located underneath the dam embankment prism, shall be designed to meet all federal, state, and local requirements. Relocations shall be designed to withstand heavy loading from construction equipment and shall meet minimum frost protection depths as required. Consideration shall be given to prevent excavation of the dam embankment if the utility is required to be replaced or repaired. Utilities running parallel to the SE Project alignment must be located a minimum of 25 feet beyond the daylight of the SE Project borrow and local drainage ditches.

Existing utilities running parallel to the SE Project alignment and located within 25 feet of the daylight of the SE Project borrow and local drainage ditches will be evaluated on a case-by-case basis. The NFS and USACE will make a determination if the utility may remain in place.

7. INSPECTIONS

7.1. Acceptance Testing and Inspection

Pipelines crossing the dam embankment will require acceptance testing as described in Section 5.8 of Ref 1a following standards and guidance for pipe testing per Table 5-4 of Ref 1a. USACE requires that each joint be tested hydrostatically to determine whether it exceeds the maximum joint leakage specified by the pipe's applicable ASTM. Utility companies must submit a plan that outlines their proposed testing. Specifications shall be written to require testing after installation.

7.2. Post-Construction Inspection

A post-construction inspection of pipes within the inspection limits of the dam as determined in Section 6.3 of Ref 1a must be performed no sooner than 30 days after completion of the project to assess backfilling, grading, paving, placement of concrete structures, etc. See Section 5.8.3 of Ref 1a.

7.3. Recurring Inspections

Pipes must be inspected, and their conditions assessed on a recurring basis so that any potential impact to the integrity of a USACE dam can be evaluated regularly. Water distribution and sewer force main testing must include in-line inspection, hydrostatic pressure testing, direct assessment or other technology that is demonstrated to provide an equivalent understanding of the condition

of the pipe. Natural gas testing must include internal inspection tools, pressure tests, or direct assessment to address threats of external corrosion, internal corrosion and stress corrosion cracking; or other inspection technology that is demonstrated to provide an equivalent understanding of the condition of the pipe. Description of inspection methods and design of pipeline to accommodate recurring inspections shall be included in the design documentation.

Some third-party pipes/conduits serve as casings for utilities (e.g., electric, fiber optic) and will cross the dam within a larger casing pipe. Neither the utility conduit nor its larger casing pipe will require regular inspections provided these are designed in accordance with Sections 5.4 (4), 5.4 (5) and 5.6 above.

8. RESPONSIBILITIES

Per the Project Partnership Agreement (PPA), the NFS is required to perform relocations, which includes utilities. The NFS is thus responsible for:

- (1) Coordination with utility owners impacted by the proposed SE Project.
- (2) Development of a schedule to implement the relocations which includes at a minimum design, review, and construction.
- (3) Hold coordination meetings as needed during the design of relocations.
- (4) Development of draft and final demolition and relocation plans and design documentation that will be submitted to the USACE for review and comment, and inclusion into plans and specifications.
- (5) Evaluate USACE comments and coordinate with USACE reviewers to close out comments.
- (6) Depending on the type and location of proposed utilities within the Project work limits, some relocations may need to be constructed prior to dam embankment construction. For utility relocations that will need to be completed prior to the dam embankment construction, final approved relocation plans must be submitted to the appropriate USACE design team no later than 30 days prior to the 65% dam embankment design package submittal date.
- (7) Utility relocation plans shall be transmitted to the USACE Technical Lead.
- (8) Provide construction oversight of utility relocations and abandonments within the Southern Embankment Project footprint. Construction oversight shall be administered by a professional engineer. Construction reporting and documentation shall be in accordance with Section 5.9 of Ref 1a.
- (9) Facilitating recurring inspections of pipelines that are within the SE Project work limits. Schedule for recurring inspections must be coordinated with the Utility companies and USACE. All inspection reports shall be submitted to USACE.
- (10) Future utility relocations and coordination of new utilities after SE Project completion shall be in accordance with the SE Operations and Maintenance manual and pursuant

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to CFR 33 USC 408.

The USACE shall be responsible for:

- (1) Participation in coordination meetings.
- (2) Incorporating demolition and relocation plans into the dam embankment design packages, if applicable.
- (3) Timely review of draft and final demolition and relocation plans during the 65% and 95% dam embankment design packages. These will be reviewed with the dam embankment design packages in accordance with the FMM SE Project review plan.
- (4) For utilities to be relocated under the dam embankment prior to its construction, the USACE shall have 14 days to review the utility relocation documents per submittal. All comments shall be submitted in writing to the NFS and be routed through the USACE Technical Lead. Final utility relocation plans will require written approval from the USACE Design Branch chief prior to construction.
- (5) Utilize construction reporting and documentation for all utilities in the dam foundation for creation of the foundation report for the Southern Embankment.
- (6) Evaluate inspection reports from the NFS to assess the threat the pipe may represent to the structural integrity or operational adequacy of the SE Project, and ensure any recommended actions are communicated to the utility owner through the NFS.

9. DOCUMENTATION REQUIREMENTS

The section below contains the documentation requirements for utilities that are within the SE Project work limits.

9.1. DESIGN SUBMITTAL REQUIREMENTS

The NFS is required to provide submittals of their design documentation, plans, specifications, and all other supporting information for all utility relocations to the USACE for review and acceptance. At a minimum, two submittals shall be provided to the USACE for review. The first review will be a draft submittal that includes, at a minimum, sketches or relocation plans and text defining the general proposed plan. This review will be submitted to the USACE after the dam embankment's 35% project review but prior to the 65% review. The final utility submittal will include the fully developed design and relocation plan, drawings, specifications, design documentation including recurring inspection methods and access points as well as calculations for the expected volume of grout needed to fill the annular spaces, and all other supporting information, etc. This will be submitted to the USACE for approval after the SE Project's 95% review, but prior to the SE Project's final sign off. However, for utilities that will be relocated under the dam embankment prior to its construction, NFS and USACE approval must be obtained before the final ROW drawings are completed for the SE Project to ensure

adequate lands are acquired for the project. Coordinate with the Technical Lead to determine the final ROW submittal date.

9.2. MAINTENANCE AND ABANDONMENT PLAN

The NFS and the utility owners shall prepare an operation and maintenance agreement that at a minimum describes the roles and responsibility of each party. Responsible utility owners shall also prepare a maintenance and abandonment plan for all utilities located within the work limits of the SE Project. The plan shall address applicable facility maintenance, periodic valve testing, leakage, repair (if applicable), and abandonment.

9.3. POST CONSTRUCTION SUBMITTAL REQUIREMENTS

The NFS in coordination with the utility owners is required to provide construction reporting to the USACE in accordance with Section 5.9 of Ref 1a and the following:

- (1) Acceptance testing documentation and inspection records as described in Section 5.8 of Ref 1a, including standard proctor and field moisture density results.
- (2) Pipe inspection schedule and maintenance plan for future recurring inspections.
- (3) Design documentation that includes calculations for the expected volume of grout needed to fill the annular space.
- (4) Post-Construction Report that shows the actual volume of grout used for filling the annular space. This will include documentation that is quantifiable and verifies that the annular space in the pipe has been filled.
- (5) As-Built Drawings: Submit As-Built drawings for the complete utility line relocation showing complete detail, including trench dimensions, pipe profile, pipe alignment, valve locations, connection box locations, manholes and all other pertinent as-built information.
- (6) As-Built Surveys (see requirements listed in AS-BUILT REQUIREMENTS paragraph).

10. UTILITY MARKERS

Crossing identification and markings will be required for each utility that is within the SE Project work limits. Color coded fiberglass service line marker posts shall be provided for all underground utilities at each crossing point on both sides of the embankment. Markers (Length 72 in; width 1 in.) shall identify service lines, valves, and underground property. Marker posts shall be located 50 feet from the toe of the dam embankment.

Additionally, all piping shall be provided with tracer wire or other applicable passive marking system to facilitate utility location by field personnel for future maintenance and repair. For trenched pipe, the tracer wire shall be installed in the trench at a bury depth recommended by the

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manufacturer. For directionally drilled pipes, tracer wire shall be installed along the as-built pipe alignment at a bury depth recommended by the manufacturer.

Above-ground signing shall be included at each crossing with information including project stationing at pipe crossing, top of pipe elevation (including datum), pipe diameter, products that are carried in the pipe, and pipe owner and/or emergency contact.

11. AS BUILT REQUIREMENTS

As-Built plans and As-Built survey data is required for all relocations within the work limits of the SE Project. As-Built drawings shall be submitted in electronic format (drawing set in PDF format and CAD files in a format compatible with Bentley MicroStation). Survey point data (X, Y, Z, description) shall be submitted in ASCII text format. FGDC-compliant metadata files shall be submitted which describes, in general, when the as-built survey was conducted, who conducted the survey, how it was conducted, and the accuracy of the survey data. As-Built drawings and surveys shall be done in the project spatial reference system:

NAD83 (2011), North Dakota State Plane Coordinate System, South Zone
NAVD 88 (GEOID18)
US Survey Feet

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12. CONTACT

Any questions concerning this MFR should be directed to Renee McGarvey, PLA, FMM Technical Lead, St. Paul District.

13. SIGNATURES

CSAJKO.WILLIAM
M.L.1228659599

Digitally signed by
CSAJKO.WILLIAM.L.1228659599
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Date: 2021.02.17 08:05:14
-06'00'

Terry Williams
Program Manager
Project Management Branch



Kris Bakkegard, P.E.
Director of Engineering
Metro Flood Diversion Authority

SULLY.THOMAS
.B.1231345864

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Date: 2021.02.16 17:06:52
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Tom Sully, P.E.
Branch Chief
Design Branch



Chris Behling, P.E.
Branch Chief
Geology and Geotech Branch

Digitally signed by Michael J. Bart, PE
Date: 2021.02.24 07:09:19 -06'00'

Michael Bart, P.E.
Chief of Engineering and Construction
Engineering and Construction Division

ATTACHMENTS

1. Guidance Pertaining to Horizontal Directional Drilling Under a Flood Barrier/Channel
2. Draft Controlled Low-Strength Material (CLSM) Specification
3. Guidelines for Installation of Utilities Beneath Corps of Engineers Levees Using Horizontal Directional Drilling.

ATTACHMENT 1

Guidance Pertaining to Horizontal Directional Drilling Under a Flood Barrier/Channel

GUIDANCE

Pertaining to

Horizontal Directional Drilling Under a Flood Barrier/Channel

The following information and guidance pertains to horizontal directional drilling (HDD) under an engineered flood barrier (i.e floodwall, levee embankment, diversion channel).

The two primary concerns with horizontal directional drilling (HDD) beneath a levee or floodwall are:

1. Hydrofracturing (drilling fluid pressure exceeding the tensile strength of the soil) the foundation soils beneath the flood barrier during drilling operations.
2. Development of a preferential seepage path along the pipeline/utility after installation.

Generally, the COE would require the following information in the permit application for any utilities installed by HDD that pass beneath a flood barrier.

1. Proposed drill path alignment (both plan and profile views).
2. Location of entry and exit points.
3. Proposed depth of cover.
4. Diameter of the borehole, diameter of pipe and type of pipe to be installed, if used, or diameter of utility.
5. Proposed method to fill annulus.
6. Location, elevations, and clearances of all utility crossings and structures.

Based on our recent experience, we feel comfortable with the following recommendations/guidelines:

- Allow the Contractor to proceed without actively monitoring the drill pressures. Suggest that only fresh drilling mud be used. It may not be necessary to insist on this provision depending on the length of flood barrier to be traversed, however it will be easier to maintain a proper viscosity if clean mud is used.
- If “mud motor” HDD technology is used, hold the density of the drilling fluid as close as possible to 8.4 lbs/gallon (or 45seconds/quart in a Marsh Funnel).
- Bentonite can be used to fill the annulus.

- Generally, depth of burial should be at least 10 feet below grade where the utility passes under the flood barrier.
- Fluid jetting methods should not be used as a means of cutting beneath a flood protection project.
- The Contractor will be responsible for repairing any soil fracturing, drilling fluid reaching the surface, etc. as well as any slope failure resulting from the drilling process. The Contractor should note any spots where fluid loss occurs, and the COE should get a record of the amount of fluid loss as well as the location.
- Prior to commencing, the Contractor should explain their method for maintaining directional control during drilling operations. In other words, how will he/she verify where the bit is horizontally and vertically so that it does not accidentally wander beneath the levee foundation any more than absolutely necessary?
- The Contractor should provide an “as-built” drawing upon completion of the directional drilling and installation of the line. This drawing should include alignment & profile data.
- It should be plainly stated that any foundation or flood barrier damage resulting from the directional drilling will be repaired by the Contractor to City/Gov’t specifications at Contractor expense.
- The Contractor should be informed that the suspension of the requirement to actively monitor downhole pressures does not relieve them of the ultimate responsibility of leaving the flood barrier foundation in the same condition, as it was before the horizontal drilling procedure was undertaken.

ATTACHMENT 2

Draft Controlled Low-Strength Material (CLSM) Specification

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CONTROLLED LOW-STRENGTH MATERIAL (CLSM)
04/12

PART 1 GENERAL

1.1 REFERENCES

All publications referenced shall be the most current version, edition, standard, latest revision, or reapproval unless otherwise stated. The following publications and standards listed below will be referred to only by the basic designation thereafter, and shall form a part of this specification to the extent indicated by the references thereto:

ASTM INTERNATIONAL (ASTM)

ASTM C 33/C 33M	(2011a) Standard Specification for Concrete Aggregates
ASTM C 94	(2011b) Ready-Mixed Concrete
ASTM C 150	(2011) Standard Specification for Portland Cement
ASTM C 220	(1991; R 2009) Standard Specification for Flat Asbestos-Cement Sheets
ASTM C 618	(2008) Coal Fly Ash and Raw or Calcined Natural Pozzolan for Use as a Mineral Admixture in Portland Cement Concrete
ASTM C 685	(2010) Concrete Made by Volumetric Batching and Continuous Mixing
ASTM C 940	(2010a) Expansion and Bleeding of Freshly Mixed Grouts for Preplaced-Aggregate Concrete in the Laboratory
ASTM D 4832	(2010) Preparation and Testing of Controlled Low Strength Material (CLSM) Test Cylinders
ASTM D 5971	(2007) Standard Practice for Sampling Freshly Mixed Controlled Low-Strength Material
ASTM D 6023	(2007) Standard Test Method for Density (Unit Weight), Yield, Cement Content, and Air Content (Gravimetric) of Controlled Low-Strength Material (CLSM)
ASTM D 6103	(2004) Standard Test Method for Flow Consistency of Controlled Low Strength Material (CLSM)

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1.2 DESIGN REQUIREMENTS

Controlled Low-Strength Material (CLSM) mixture proportion shall consist of 100 pounds or less of portland cement plus fly ash per cubic yard; pozzolan; sand; water; and a fluidifier, if required to obtain the required slump. The CLSM fill mixture proportion shall have a flow consistency of more than 8 inches. The flow consistency shall be determined in accordance with ASTM D 6103. CLSM fill shall have a compressive strength of 100 psi at 28 days. The compressive strength of the CLSM shall be determined in accordance with ASTM D 4832 after being made and cured in accordance with ASTM D 4832. The mixture proportions shall be reported in accordance with ASTM C 94. If the CLSM is to be placed using a concrete pump, the mixture proportions shall be designed so that it will not segregate in the pump line under pressure or when there is an interruption in flow.

1.3 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. Submit the following in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-01 Data

On-Site Batching and Mixing

Water Reducing

Concrete Mixture Proportions

The Contractor shall submit manufacturer's literature from suppliers which demonstrates compliance with applicable specifications for all equipment and materials.

SD-07 Schedules

Placing

The methods and equipment for transporting, handling, and depositing the CLSM backfill and CLSM fill shall be submitted to the Contracting Officer prior to the first placement.

SD-08 Statements

Concrete Mixture Proportions

CLSM mixture proportions shall be the responsibility of the Contractor and shall be designed in accordance with the criteria in paragraph DESIGN REQUIREMENTS. Ten days prior to placement of CLSM, the Contractor shall submit to the Contracting Officer the mixture proportions that will produce CLSM of the qualities required. Mixture proportions shall include the dry weights of cementitious material(s); and saturated surface-dry weights of the fine aggregate; the quantities, types, and names of admixtures; and quantity of water per cubic yard of concrete. All materials included in the mixture proportions shall be of the same type and from the same source as will be used on the project.

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SD-09 Reports

CLSM Mixture Proportions Tests

Applicable test reports shall be submitted to verify that the CLSM mixture proportions selected will produce CLSM of the quality specified. The results of all tests and inspections conducted at the project site shall be reported informally at the end of each shift and in writing weekly and shall be delivered to the Contracting Officer within 3 days after the end of each weekly reporting period.

SD-13 Certificates

Cement

Cementitious Material will be accepted on the basis of a manufacturer's certificate of compliance.

Aggregates

Aggregates will be accepted on the basis of certificate of compliance that the aggregates meet the requirements of the specifications under which it is furnished.

PART 2 PRODUCTS

2.1 MATERIALS

2.1.1 Ready-Mixed Concrete

Ready-mixed concrete shall conform to ASTM C 94, except as otherwise specified.

2.1.1.1 Volumetric Batching and Continuous Mixing

Volumetric batching and continuous mixing shall conform to ASTM C 685.

2.1.1.2 On-Site Batching and Mixing

The Contractor shall have the option of using an on-site batching and mixing facility. The method of measuring materials, batching operation, and mixer shall be submitted for review by the Contracting Officer. On-site plant shall conform to the requirements of either ASTM C 94 or ASTM C 685.

2.1.2 Portland Cement

Portland Cement shall conform to ASTM C 150, Type I or II, low alkali.

2.1.3 Pozzolan

Pozzolan shall be Class F or C fly ash conforming to ASTM C 618.

2.1.4 Sand

Sand shall meet the requirements of fine aggregate of ASTM C 33/C 33M.

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2.1.5 Fluidifier

The fluidifier shall give the CLSM fill the following salient characteristics:

- a. must have less than 1 percent bleed water in accordance with ASTM C 940
- b. have an initial set time of more than 5 hours in accordance with ASTM C 220 modified by using a Ferioli apparatus
- c. have a flow consistency equal to or more than 8 inches in accordance with ASTM D 6103
- d. have a compressive strength of 100 psi at 28 days in accordance with ASTM D 4832
- e. maintain a homogeneous mixture during pumping
 1. Quantity of admixture(s) required in the mixture proportion is governed by the salient characteristics specified.
 2. The admixture shall be added as directed by the manufacturer, in most cases it added to the CLSM at the job site and mixed for a minimum of 5 minutes at mixing speed.

2.1.6 Water

Water shall be potable water that is fresh, clean, and free from sewage, oil, acid, alkali, salts, or organic matter.

2.2 MIXING AND TRANSPORTING

The CLSM shall be mixed and transported in accordance with ASTM C 94.

PART 3 EXECUTION

3.1 TRENCH PREPARATION

Once the trench has been dug it shall be cleaned of all loose material and debris to the satisfaction of the Contracting Officer before any CLMS fill is placed. The new utility pipeline shall be placed on firm ground at the bottom of the trench and a minimum of 1 foot of CLSM fill shall be placed above the top of the pipeline. The pipeline shall be securely anchored to maintain its position and prevent it from any movement during placement of the CLSM.

3.2 PLACEMENT

3.2.1 General

CLSM placement shall not be permitted when, in the opinion of the Contracting Officer, weather conditions prevent proper placement. When CLSM is mixed and/or transported by a truck mixer, the CLSM shall be delivered to the site of the work and discharge shall be completed within 1-1/2 hours (or 45 minutes when the placing temperature is 85 degrees F or greater unless a retarding admixture is used). The fluidifier shall not be added to the Ready Mix trucks until they have arrived onsite. The fluidifier shall be added to each truck at the proper dosage rate and mixed

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for 5 minutes and no more than 15 minutes before it is placed. CLSM shall be conveyed from the mixer to point of placement as rapidly as practicable by methods which prevent segregation or loss of ingredients.

3.2.2 Consolidation

Consolidation of the CLSM will not be required.

3.3 TESTS

3.3.1 General

The individuals who sample and test CLSM as required in this specification shall have demonstrated a knowledge and ability to perform the necessary test procedures equivalent to ACI minimum guidelines for certification of concrete Field Testing Technicians, Grade I.

3.3.2 Inspection Details and Frequency of Testing

3.3.2.1 Flow Consistency

Flow consistency shall be checked once during each shift that CLSM is produced for each class of concrete required. Samples shall be obtained in accordance with ASTM D 5971 and tested in accordance with ASTM D 6103. Whenever a test result is outside the specifications limits, the CLSM shall not be delivered to the placement and an adjustment should be made in the batch weights of water and fine aggregate. The adjustments are to be made so that the water-cement ratio does not exceed that specified in the submitted CLSM mixture proportion.

3.3.2.2 Compressive-Strength Specimens

At least one set of test specimens shall be made each day on CLSM placed during the day or every 10 cubic yards placed. Additional sets of test cylinders shall be made, as directed by the Contracting Officer, when the mixture proportions are changed or when low strengths are detected. A random sampling plan shall be developed by the Contractor and approved by the Contracting Officer prior to the start of construction. The plan shall assure that sampling is accomplished in a completely random and unbiased manner. A set of test specimens for concrete with strength as specified in paragraph DESIGN REQUIREMENTS shall consist of six cylinders, one tested at 7 days, one tested at 14 days, and two tested at 28 days. Two cylinders shall be tested as directed. Test specimens shall be molded and cured in accordance with ASTM D 4832 and tested in accordance with ASTM D 4832. All compressive strength tests shall be reported immediately to the Contracting Officer.

3.3.3 Density

At least one set of test specimens shall be made each day on CLSM placed during the day or every 20 cubic yards placed. A random sampling plan shall be developed by the Contractor and approved by the Contracting Officer prior to the start of construction. The plan shall assure that sampling is accomplished in a completely random and unbiased manner. Test procedures and calculations shall be in accordance with ASTM D 6023.

3.3.4 Reports

The Contractor shall prepare reports of all tests and inspections conducted

Fargo Moorhead Metro Flood Reduction Project
CLSM Requirements for Utility Relocations

at the project site.

-- End of Section --

ATTACHMENT 3

Guidelines for Installation of Utilities Beneath Corps of Engineers Levees Using Horizontal Directional Drilling

ERDC/GSL TR-02-9

Geotechnical and Structures
Laboratory



**US Army Corps
of Engineers®**
Engineer Research and
Development Center

Guidelines for Installation of Utilities Beneath Corps of Engineers Levees Using Horizontal Directional Drilling

Carlos A. Latorre, Lillian D. Wakeley, and
Patrick J. Conroy

June 2002

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The findings of this report are not to be construed as an official Department of the Army position, unless so designated by other authorized documents.



ERDC/GSL TR-02-9
June 2002

Guidelines for Installation of Utilities Beneath Corps of Engineers Levees Using Horizontal Directional Drilling

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Final report

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Appendix A: Recommended Guidelines for Installation of Pipelines Beneath
 Levees Using Horizontal Directional Drilling A1

Preface

The work documented in this report was performed during May through October 2001 as part of the technology transfer component of the Geotechnical Engineering Research Program (GTERP), specifically in the work unit entitled Applications of Trenchless Technology to Civil Works. Funding for preparation and publication of this report was provided by the U.S. Army Corps of Engineers as part of its ongoing support of civil works research. Mr. Carlos Latorre, U.S. Army Engineer Research and Development Center (ERDC), Geotechnical and Structures Laboratory (GSL), is principal investigator for this work unit. The research team also includes Dr. Lillian D. Wakeley, GTERP Manager (ERDC, GSL), Mr. Patrick J. Conroy, U.S. Army Engineer District (USAED), St. Louis (MVS), and Mrs. Nalini Torres (ERDC, GSL). Mr. Jim Chang, CECW, is GTERP Technical Monitor.

The guidelines and specifications provided in this report are based on work completed previously by Dr. R. David Bennett, formerly GSL, ERDC; and Mr. Joseph M. Morones, State of California, Department of Transportation; and modified with their cooperation by Mr. Latorre. This report was prepared by Messrs. Latorre and Conroy and Dr. Wakeley. The authors gratefully acknowledge technical review of this document by Mr. George Sills, USAED, Vicksburg, Mr. Pete Cali, USAED, New Orleans; and Mr. John Wise, USAED, Fort Worth.

This report was completed at ERDC under the general supervision of Dr. Wakeley, Chief, Engineering Geology and Geophysics Branch, Dr. Robert L. Hall, Chief, Geosciences and Structures Division, GSL, and Dr. Michael J. O'Connor, Director, GSL.

At the time of publication of this report, Dr. James R. Houston was Director of ERDC, and COL John W. Morris III, EN, was Commander and Executive Director.

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1 Introduction

Background

Early methods of installing pipelines and utilities across rivers and streams involved excavation of trenches. After the placement of the pipeline, the trenches were backfilled to protect the pipeline from hazards. These early dredged crossings were generally sited at the channel crossing of the thalweg between bends of the river. Here the river is generally a wide, shallow rectangle. This location is chosen because of its hydraulic stability and the economic limitation of the dredging equipment.

In and across the U.S. Army Engineer Division, Mississippi Valley (MVD), lies the heart of the pipeline transmission network of the United States. Hundreds of individual pipelines traverse from Texas and out of the Gulf of Mexico across the numerous rivers, bayous, and wetlands of Louisiana to service the northeast population centers on the Atlantic coast. Along the leveed banks of the lower Mississippi River, pipeline crossings exist between almost every bendway. The crossings of these earthen flood control structures present a difficult and expensive construction problem resulting from concerns about the integrity of the levee which may be subjected to sliding, piping, and erosion failures.

Horizontal Directional Drilling Method

In the early 1970s, a new process was introduced to install pipelines by use of horizontal directional drilling (HDD) techniques acquired from the oil and gas industry. The method has steadily grown to achieve worldwide acceptance and has been used in over 3,000 installations totaling over 1,288 km (800 miles) of pipelines. Today pipeline installations increasingly rely upon HDD technology as the primary method for crossings of watercourses, wetlands, utility corridors, roads, railroads, shorelines, environmental areas, and urban areas.

The placement of pipelines by the HDD method requires the drilling of a guided pilot bore, generally using a 7.3- to 11.43-cm- (2-7/8- to 4-1/2-in.-) diam drill pipe. At the lead, or downhole, end of the pilot string is a fluid powered cutting tool. The cutting tool is either a drill motor to which a bit is connected or a jet bit with nozzles. Drilling fluid is pumped through the string, and fluid causes the motor to rotate which turns the bit to cut the hole. With jet bits, the velocity from the jet nozzle erodes the hole in front of the drill pipe. Located

behind the drill head is a section of the drill pipe with a small bend or angular deviation. This section, known as a bent sub or bent housing, allows the motor or jet nozzle to be directed. A steering tool is latched onto a locking tool on the drill pipe. In this steering tool are a magnetometer and other devices to determine the azimuth, inclination, and orientation of the tool or tool face. Position determinations are made, and the data from the steering tool are plotted in the field to determine the profile and alignment of the bore. Analysis of this position plot is then used to determine drilling progress and path. At a desired location, the pilot drill pipe exits the ground. The pilot bore is then enlarged by pulling reaming tools back through the bore. Once this operation is completed, the pipeline or conduit is attached to the drill pipe and pulled back through the predrilled bore. This is accomplished as the drill pipe is removed, joint by joint, from the drilled path until the pipeline reaches the ground surface at the entry end of the bore.

One of the primary parameters in horizontal directional drilling is the drilling fluid or mud. The drilling mud is usually comprised of a bentonite and water mixture with the main function to power the downhole cutting tool used to open the bore. Secondary functions of the drilling mud are to serve as a lubricant for the pipeline during installation and, in cases of rock or hard ground bores, to remove cuttings from the bore.

The use of HDD has been restricted, in part, by major misunderstandings of how the HDD process actually functions. It is assumed by many that it is similar to well drilling or tunneling in that an open bore is required. This is true only in hard geologic materials such as rock. The majority of HDD pipeline crossings installed to date have been performed in soft ground comprised chiefly of alluvial deposits of silts, sand, and clay. In these types of soils, the process begins with a small pilot bore from which various cutters are inserted to loosen the soil as it is mixed into a slurry by injection of the drilling mud. Once this slurry pathway has been made large enough, generally 25.4 to 30.5 cm (10 to 12 in.) greater than the diameter of the pipeline, the installation of the pipeline commences by pulling the pipeline back through the soft slurry pathway. Some of the in situ soil and fluid are then compressed into the formation, and the remainder of the soil is actually pumped out of the path.

The information in this report represents some of the experiences of the Corps of Engineer (CE) Districts involving HDD for installation of utilities under levees. The experience of the U.S. Army Engineer District (USAED), St. Louis, in dealing with installation of communications systems was identified as having wide applicability to the Corps. Engineering documentation from two St. Louis District projects, the set of guidelines presented in "Installation of Pipelines Beneath Levees Using Horizontal Directional Drilling" (Staheli et al. 1998), Engineer Manual (EM) 1110-2-1913 (Headquarters, Department of the Army (HQDOA) 2000), and the State of California Department of Transportation (CalTrans) Encroachment Permits, "Guidelines and Specifications for Horizontal Directional Drilling Installations" (Morones 2000), provided the basis for this report. A paper on the subject was presented at the Corps Infrastructure Systems Conference in August 2001.

Problem Identification

Although horizontal directional drilling could offer cost-effective, safe alternatives to installing pipelines with open trenching, the CE has no standard guidelines allowing the installation of pipelines with this construction method. As a result, permitting policies are extremely varied and some districts strictly prohibit the use of this technique. While recommended guidelines for pipeline installation using HDD were developed for use by the CE Districts through this work unit back in 1998, as part of a lengthy and detailed EM, the guidelines were not readily recognized by permitting offices as applicable to the questions they face. Also, there is growing pressure on Corps offices particularly by communications companies to install cables under levees.

Objectives

The objectives are to provide and distribute this information to targeted potential users like the CE District permitting offices and engineers that receive applications from utility companies to install utilities under levees. This report addresses those questions and helps CE offices with the growing pressure they are receiving from private companies to allow them to install cables/pipelines under levees. These guidelines are presented in a quick and organized manner that will provide criteria by which to evaluate proposals (e.g., application review, approving, disapproving, and/or making recommendations) for levee crossings, beneath rivers, and within levee rights-of-way using HDD techniques without endangering the levees; and the use of HDD for pipeline installation in areas where the installation technique might be applicable and capable of providing a tremendous cost savings to the Corps of Engineers and the pipeline industry. These guidelines will also help to demonstrate that, very often, these techniques offer substantial economic and operational advantages over current practices. Last but not least, these guidelines will help us stay involved in the development of this fast and fairly new emerging technology.

Potential Benefits

The pipeline industry would realize a tremendous benefit from the use of HDD in crossing of flood control levees. This benefit would include significant cost reduction in construction and maintenance presently required for levees and adjacent road crossings such as bridges, concrete boxes, earthen cover, and ramps. The use of the technique could also benefit the Corps of Engineers by: (a) eliminating blockage of levee crown from buried pipelines, pipeline bridges, or conduit boxes, (b) eliminating differential settlement imposed on levees by the construction of buried pipelines, pipeline bridges, or conduit boxes, (c) improving the operation and safety of grass cutting and other maintenance equipment on the levees, and (d) reducing risk of rupture of pipelines located above or near ground surface on levee slopes, (e) reducing disruption in urban areas, and (f) providing better public acceptance and increasing environmental consciousness.

Potential Problem

While considering any alteration request, the District's prime objective is to protect the integrity of the flood protection systems. In the case of HDD, designers must be aware and take into account during the design stage the following:

- a.* Hydrofracture during installation.
- b.* Preferred seepage path after construction.

To allow third parties to utilize HDD techniques, the District needed methods and processes to prevent these problems from occurring.

2 HDD Guidelines and Specifications

Permit Application Submittal

The permit application package should contain the following information in support of the permit application.

- a.* Location of entry and exit point.
- b.* Equipment and pipe layout areas.
- c.* Proposed drill path alignment (both plan and profile view).
- d.* Location, elevations, and proposed clearances of all utility crossings and structures.
- e.* Proposed depth of cover.
- f.* Soil analysis.
- g.* Product material (HDPE/steel), length, diameter-wall thickness, reamer diameter.
- h.* Detailed pipe calculations, confirming ability of product pipe to withstand installation loads, and long-term operational loads.
- i.* Proposed composition of drilling fluid (based on soil analysis) viscosity and density.
- j.* Drilling fluid pumping capacity, pressures, and flow rates proposed.
- k.* State right-of-way lines, property, and other utility right-of-way or easement lines.
- l.* Elevations.
- m.* Type of tracking method/system.

- n. Survey grid establishment for monitoring ground surface movement (settlement or heave) because of the drilling operation.
- o. Contractor’s work plan (see page 11 in this document).

All additional permit conditions shall be set forth in the special provisions of the permit.

Table 1 outlines recommended depths for various pipe diameters:

Table 1 Recommended Minimum Depth of Cover¹	
Diameter	Depth of Cover
50 mm (2 in.) to 150 mm (6 in.)	1.2 m (4 ft)
200 mm (8 in.) to 350 mm (14 in.)	1.8 m (6 ft)
375 mm (15 in.) to 600 mm (24 in.)	3.0 m (10 ft)
625 mm (25 in.) to 1,200 mm (48 in.)	4.5 m (15 ft)
¹ These depths do not apply for crossing under flood protection projects. (Permission to reprint granted by California Department of Transportation, Office of Encroachment Permits, January 10, 2001).	

The permittee/contractor shall, prior to and upon completion of the directional drill, establish a Survey Grid Line and provide monitoring.

Upon completion of the work, the permittee shall provide an accurate as-built drawing of the installed pipe.

Soil Investigations

A soil investigation should be undertaken. This investigation must be suitable for the proposed complexity of the installation to confirm ground conditions.

Soil analysis

Common sense must be utilized when requiring the extensiveness of the soil analysis. A soil analysis is required in order to obtain information on the ground conditions that the contractor will encounter during the HDD operation.

If the contractor can go to the project site and complete an excavation with a backhoe to 0.03 m (1 ft) below the proposed depth of the bore, that is a soil investigation. In all cases when an excavation is made in creating an entrance and exit pit for an HDD project, that is also an example of a soil investigation. The HDD process is in itself a continual and extensive soil analysis as the pilot bore is made. As the varying soils and formations are encountered, the drilling slurry will change colors, therefore providing the contractor with continual additional information.

The purpose and intent of the soil analysis is to assist the contractor in developing the proper drilling fluid mixture and to ensure the CE and the Levee Board that the contractor is aware of the conditions that do exist in the area of the proposed project. This prepares the contractor in the event they should encounter a zone of pretectionics and that they would need additives or preventive measures in dealing with inadvertent returns (hydrofractures).

The discretion on the extensiveness of the soil analysis is left to each individual CE District permitting office and/or Levee Board, respectfully, for their respective areas. The HDD inspector/geotechnical engineer plays a large role in assisting the District Permitting Office and Levee Board in making decisions on the extensiveness. Each individual HDD inspector/geotechnical engineer has a general knowledge of the soil conditions in their area of responsibility.

In many circumstances, the soil information has already been prepared, either by the CE District, Levee Board, or by City and County Entities. This information, if available, should be provided to the requesting permittee.

Determination of soil investigations

The CE District Geotechnical Engineer (DGE) should determine the extensiveness of the Soil Investigation to be performed based on the complexity of the HDD operation. DGE may recommend, according to the guidelines listed below, a combination of or modification to the guideline to fit the following respective areas:

- a. Projects less than 152 mm (500 ft) in length, where the product or casing is 20 cm (8 in.) or less in diameter.¹
 - (1) A field soil sampling investigation to a depth of 0.3 m (1 ft) below the proposed drilling.
 - (2) Subsurface strata, fill, debris, and material.
- b. Projects less than 244 m (800 ft) in length, where the product or casing is 36 cm (14 in.) or less in diameter.¹
 - (1) A field soil sampling investigation to a depth of 0.3 m (1 ft) below the proposed drilling.
 - (2) Subsurface strata, fill, debris, and material.
 - (3) Particle size distribution (particularly, percent gravel and cobble).
- c. Projects where the product or casing is 41 cm (16 in.) or greater in diameter. A geotechnical evaluation by a qualified soil engineer is necessary to determine the following:¹

¹ Does not apply when crossing a flood protection project.

- (1) Subsurface strata, fill, debris, and material.
 - (2) Particle size distribution (particularly percent gravel and cobble).
 - (3) Cohesion index, internal angle of friction, and soil classification.
 - (4) Plastic and liquid limits (clays), expansion index (clays), soil density.
 - (5) Water table levels and soil permeability.
- d.* Projects where the product or casing is 61 cm (24 in.) or greater in diameter, or when project crosses flood control projects. A geotechnical evaluation by a qualified soil engineer is required to determine the following:
- (1) Subsurface strata, fill, debris, and material.
 - (2) Particle size distribution (particularly, percent gravel and cobble).
 - (3) Cohesion index, internal angle of friction, and soil classification.
 - (4) Plastic and liquid limits (clays), expansion index (clays), soil density, and standard penetration tests.
 - (5) Rock strength, rock joint fracture and orientation, water table levels, and soil permeability.
 - (6) Areas of suspected and known contamination should also be noted and characterized.

Boreholes or test pits should be undertaken at approximately 75- to 125-m (250- to 410-ft) intervals where a proposed installations greater than 305 m (1,000 ft) in length and parallel to an existing road. Additional boreholes or test pits should be considered if substantial variations in soil conditions are encountered.

Should the soil investigation determine the presence of gravel, cobble, and/or boulders, care should be exercised in the selection of drilling equipment and drilling fluids. In such ground conditions, the use of casing pipes or washover pipes may be required or specialized drilling fluids utilized. Fluid jetting methods used as a means of cutting **should only be considered** where soils have a high cohesion such as stiff clays. Jetting should not be allowed when crossing under a flood protection project.

Preconstruction and Site Evaluation

The following steps should be undertaken by the permittee/contractor in order to ensure safe and efficient construction with minimum interruption of normal, everyday activities at the site:

- a. Notify owners of subsurface utilities along and on either side of the proposed drill path of the impending work through USA alert (the one-call program). All utilities along and on either side of the proposed drill path are to be located.
- b. Obtain all necessary permits or authorizations to carry construction activities near or across all such buried obstructions.
- c. Expose all utility crossings using a hydroexcavation, hand excavation, or other approved method (potholing) to confirm depth.
- d. Arrange construction schedule to minimize disruption (e.g., drilling under major highways and/or river crossings).
- e. Determine and document the proposed drill path, including horizontal and vertical alignments and location of buried utilities and substructures along the path.

The size of excavations for entrance and exit pits should be of sufficient size to avoid a sudden radius change of the pipe and consequent excessive deformation at these locations. Sizing the pits is a function of the pipe depth, diameter, and material. All pits, over 1.52 m (5 ft) in depth must abide by Occupational, Safety, and Health Administration (OSHA) regulations.

Prior to commencement of the project, the area should be physically walked over and visually inspected by District Geotechnical Engineer, the driller, and members of the Levee Board for potential entry/exit sites. The following should be addressed:

- a. When on CE/Levee Board property, it should be established whether or not there is sufficient room at the site for: entrance and exit pits; HDD equipment and its safe unimpeded operation; support vehicles; fusion machines; aligning the pipe to be pulled back in a single continuous operation.
- b. Suitability of soil conditions should be established for HDD operations. (The HDD method is ideally suited for soft subsoils such as clays and compacted sands. Subgrade soils consisting of large grain materials like gravel, cobble, and boulders make HDD difficult to use and may contribute to pipe damage.)
- c. The site should be checked for evidence of substructures, such as man-hole covers, valve box covers, meter boxes, electrical transformers, conduits or drop lines from utility poles, and pavement patches. HDD may be a suitable method in areas where the substructure density is relatively high.

Installation Requirements

The permittee shall ensure that appropriate equipment is provided to facilitate the installation: in particular, the drill rig shall have sufficient pulling capacity to meet the required installation loads determined by the detailed pipe calculations. The drill rig should have the ability to provide pull loads, push loads, torque, and the permittee shall ensure that they are monitored during the drilling operation. The permittee shall ensure the drill rod can meet the bend radii required for the proposed installation (a general rule of thumb is 100 times, in feet, the diameter of the installed pipe in inches).

During construction, continuous monitoring and plotting of pilot drill progress shall be undertaken. This is necessary to ensure compliance with the proposed installation alignment and allow for the undertaking of appropriate course corrections that would minimize “dog legs,” should the bore begin to deviate from the intended bore path. The actual path of the pilot hole should be plotted against the design drill path.

Monitoring shall be accomplished by manual plotting based on location and depth readings provided by the onboard locating/tracking system or by hand-held walkover tracking systems. These readings map the bore path based on information provided by the locating/tracking system. Readings or plot points shall be undertaken on every drill rod.

For installations where tight control of alignment and grade is required, readings shall be undertaken every 1.0 to 1.5 m (3 to 5 ft). At the completion of the bore, an as-built drawing shall be provided. Prior to commencement of a directional drilling operation, proper calibration of the sonde equipment shall be undertaken.

Monitoring of the drilling fluids such as the pumping rate, pressures at the drill rig and pressures in the annular space behind the drill bit (when drilling under flood control projects), viscosity, and density during the pilot bore, back reaming, and/or pipe installation stages shall be undertaken to ensure adequate removal of soil cuttings and the stability of the borehole is maintained. Excess drilling fluids shall be contained at entry and exit points until recycled or removed from the site. Entry and exit pits should be of sufficient size to contain the expected return of drilling fluids and soil cuttings.

The permittee shall ensure that all drilling fluids are disposed of in a manner acceptable to the appropriate local, state, or federal regulatory agencies. When drilling in contaminated ground, the drilling fluid shall be tested for contamination and disposed of appropriately. Restoration of damage to a levee caused by hydrofracture or any other aspect of the directional drilling operation shall be the responsibility of the permittee. Plans for all restoration or repair work shall be submitted for approval by the Levee District or Corps of Engineers District.

To minimize heaving during pullback, the pullback rate shall be determined by which maximizes the removal of soil cuttings and which minimizes compaction of the ground surrounding the borehole. The pullback rate shall also

minimize overcutting of the borehole during the back reaming operation to ensure that excessive voids are not created and result in postinstallation settlement.

The permittee shall, prior to and upon completion of the directional drill, establish a Survey Grid Line and provide monitoring as outlined in their submitted detailed monitoring plan. Subsurface monitoring points shall be established along the HDD centerline and along any flood protection project that the HDD crosses under to provide early indications of settlement, since large voids may not materialize during drilling as a result of pavement bridging.

Should settlement occur, all repairs would be the responsibility of the permittee. To prevent future settlement should the drilling operation be unsuccessful, the permittee shall ensure the backfill of any void(s) with grout or backfilled by other means. Plans for all restoration or repair work shall be submitted for approval.

Considerations

The following considerations must be taken into account.

- a. *Different ground conditions:* The availability of adequate geotechnical information is invaluable in underground construction; it acts to reduce the risk born by the permittee/contractor. However, even in the presence of good geotechnical data, unexpected ground conditions may be encountered. The Contractor's plan should describe the response to different ground conditions.
- b. *Turbidity of water and inadvertent returns:* During construction, events like drill bit lockup or being off the design drill path may lead to work stoppage. The permittee/contractor should offer a mechanism to mutually address and mitigate these problems if and when they should arise. For example, contingency plans for containment and disposal of inadvertent returns or hydrofractures.

Permittee/contractor responsibilities

The permittee/contractor should provide the following items: construction plan, site layout plan, project schedule, communication plan, safety procedures, emergency procedures, company experience record, contingencies plan, and drilling fluid management plan.

Construction plan requirements. The permittee shall identify in the construction plan:

- a. Location of entry and exit pits.
- b. Working areas and their approximate size.

- c.* Proposed pipe fabrication and layout areas.
- d.* State right-of-way lines, property lines.
- e.* Other utility right-of way and easement lines.
- f.* Pipe material and wall thickness.
- g.* Location of test pits or boreholes undertaken during the soil investigation.
- h.* Identify the proposed drilling alignment (both plan and profile view) from entry to exit.
- i.* Identify all grades and curvature radii.
- j.* All utilities (both horizontal and vertical).
- k.* Structures with their clearances from the proposed drill alignment.
- l.* Confirm the minimum clearance requirements of affected utilities and structures.
- m.* Required minimum clearances from existing utilities and structures.
- n.* Diameter of pilot hole, and number and size of prereams/backreams.
- o.* Access requirements to site (if required).
- p.* Crew experience.
- q.* Type of tracking equipment.

Locating and tracking. The permittee shall describe the method of locating and tracking the drillhead during the pilot bore. Systems include walkover, wire-line, or wireline with wire surface grid. The locating and tracking system shall be capable of ensuring the proposed installation can be installed as intended.

Typical walkover sondes have an effective range of 10 to 15 m, depending on the Electro-magnetic properties of the soil and the extent of local magnetic interference. Depending on the profile of the borehole, the driller may lose contact with the sondes over certain sections of the alignment. As much as practically possible, the sonde should maintain contact with the drill bit. If the “blind” section is expected to be too long or in the vicinity of a buried object, the project engineer may specify the use of a wire-line system or a magnetic navigation tool.

The locating and tracking system shall provide the following information:

- a.* Clock and pitch information.
- b.* Depth.

- c. Beacon temperature.
- d. Battery status.
- e. Position (x,y).
- f. Azimuth: Where direct overhead readings (walkover) are not possible.

Figure 1 shows a universal housing that will work with any drill-string on all HDD rigs. The placement of the sonde should be before the backreamer. This housing can be utilized in the initial pilot bore. After exiting, the cutting head can be removed and the reamer installed. This housing chamber can utilize any of the sonde batteries manufactured, regardless of manufacturer. There is also a 6-cm (2.5 in.) mini-sonde combination available for smaller rigs.

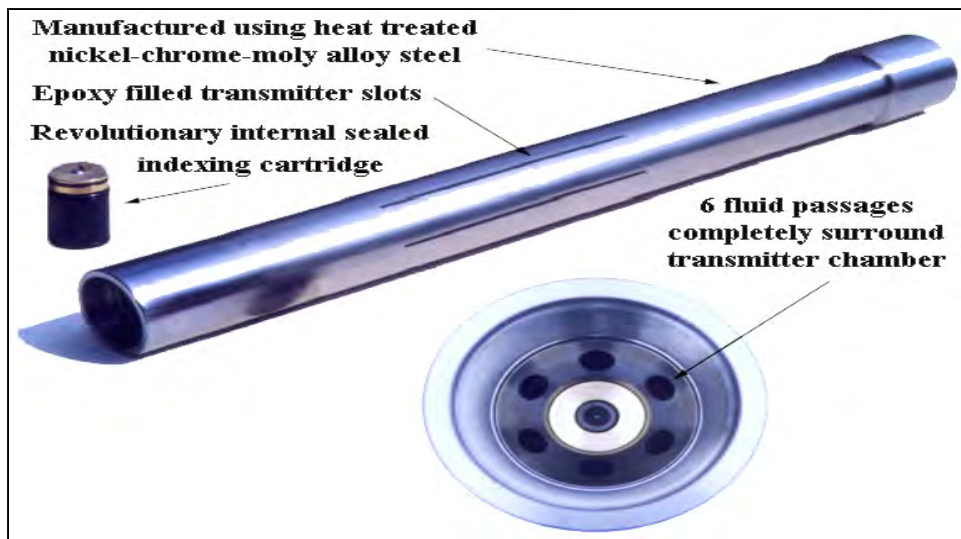


Figure 1. Universal housing for drill-string on HDD rigs (Permission to reprint granted by California Department of Transportation, Office of Encroachment Permits, January 10, 2001)

Drilling fluids management plan. The following information should be provided as part of the drilling fluid management plan. The proposed viscosities for soil transportation to the entry and exit pits are:

- a. Pumping capacity and pressures must be estimated.
- b. Source of fresh water for mixing the drilling mud must be identified. (Necessary approvals and permits are required for sources such as streams, rivers, ponds, or fire hydrants.)
- c. Method of slurry containment must be described and detailed.
- d. Method of recycling drilling fluid and spoils (if applicable) must be explained.

- e. Method of transporting drilling fluids and spoils offsite must be described.

Drilling fluid pressures in the borehole should not exceed that which can be supported by the foundation soils. Calculation of maximum allowable pressures shall be done for all points along the drill path, taking into account the shear strength of the foundation soils, the depth of the drill path, the bore diameter, and the elevation of the groundwater table. Drilling fluids serve the following functions:

- a. Remove cuttings from the bottom of the hole and transport them to the surface.
- b. Hold cuttings in suspension when circulation is interrupted.
- c. Release cuttings at the surface.
- d. Stabilize the hole with an impermeable cake.
- e. Cool and lubricate the drill bit and drill string.
- f. Control subsurface pressures.
- g. Transmit hydraulic horsepower.
- h. Cool the locating transmitter sonde preventing burnout.

Previous experience. The permittee's contractor should provide a list of projects completed by his company, location, project environment (e.g., urban work, river crossing), product diameter, and length of installation. The permittee's contractor should also provide a list of key personnel.

Safety. The drilling unit should be equipped with an electrical strike safety package. The package should include warning sound alarm, grounding mats (if required), and protective gear. The permittee/contractor should have a copy of the company safety manual that includes:

- a. Operating procedures that comply with applicable regulations, including shoring of pits and excavations when required.
- b. Emergency procedures for inadvertently boring into a natural gas line, live power cable, water main, sewer lines, or a fiber-optic cable, which comply with applicable regulations.
- c. Emergency evacuation plan in case of an injury.

Contingency plans. The Contingency plan should address the following:

- a. Inadvertent return, spill (e.g., drilling fluids, and hydraulic fluids), including measures to contain, clean, and repair the affected area.

- b.* Cleanup of surface seepage of drilling fluids and spoils (i.e., hydrofracture).

Communication plan. The communication plan should address the following:

- a.* The phone numbers for communication with owner or his representative on the site.
- b.* Identification of key person(s) who will be responsible for ensuring that the communications plan is followed.
- c.* Issues to be communicated including safety, progress, and unexpected technical difficulties.

Traffic control.

- a.* When required, the permittee/contractor is responsible for supplying and placing warning signs, barricades, safety lights, and flags or flagmen, as required for the protection of pedestrians and vehicle traffic.
- b.* Obstruction of the roadway, on major road, should be limited to off-peak hours.

Additional Requirements

Information that may be required, include other permits, bonding, and certification as listed in the following sections.

Additional permits

- a.* Obtaining water (i.e., hydrants, streams, etc.)
- b.* Storage, piling, and disposal of material.
- c.* Water/bentonite disposal.
- d.* Any other permits required carrying out the work.

Bonding and certification requirements

- a.* Payment bond (if required).
- b.* Performance bond (if required).
- c.* Certificate of insurance.
- d.* WCB certificate letter.

- e. ACSA certificate of recognition.

Drilling Operations

The following points provide general remarks and rules of thumb related to the directional boring method.

- a. Only operators who have “Proof of Training” by the North American Society of Trenchless Technology (NASTT) should be permitted to operate the drilling equipment in CE/Levee Board property.
- b. Drilling mud pressure in the borehole should not exceed that which can be supported by the foundation soils to prevent heaving or a hydraulic fracturing of the soil (i.e., hydrofracture). Allowing for a sufficient cover depth does not necessarily guarantee against hydrofracture. Sound, cautious drilling practice minimizes the chance of hydrofracture occurrence. Also, measuring mud pressures in the annular space behind the drill bit and comparing these mud pressures with the calculated maximum allowable pressures help minimize the occurrence of hydrofracture. Typical bore depth of 0.75 to 1.0 m gives pipes with an Outside Diameter (O.D.) of 50-200 mm a minimum cover of 0.65 m. While circumstances may dictate greater depths, shallower depths are not recommended.
- c. The drill path alignment should be as straight as possible to minimize the fractional resistance during pullback and to maximize the length of the pipe that can be installed during a single pull.
- d. It is preferable that straight tangent sections be drilled before the introduction of a long radius curve. Under all circumstances, a minimum of one complete length of drill rod should be utilized before starting to level out the borehole path.
- e. The radius of curvature is determined by the bending characteristics of the product line, and it is increasing with diameter.
- f. Entrance angle of the drill string should be between 8 and 20 deg, with 12 deg being considered optimal. Shallower angles may reduce the penetrating capabilities of the drilling rig, while steeper angles may result in steering difficulties, particularly in soft soils. A recommended value for the exit angle of the drill string is within the range of 5 to 10 deg.
- g. Whenever possible, HDD installation should be planned so that back reaming and pulling for a leg can be completed on the same day. If necessary, it is permissible to drill the pilot hole and preream one day, and complete both the final ream and the pullback on the following day.
- h. If a drill hole beneath a levee must be abandoned, the hole should be backfilled with grout or bentonite to prevent future subsidence.

- i.* Pipe installation should be performed in a manner that minimizes the over-stressing and straining of the pipe. This is of particular importance in the case of a polyethylene pipe.

Equipment setup and site layout

- a.* Sufficient space is required on the rig side to safely set up and operate the equipment. The workspace required depends on the type of rig to be used. A small rig may require as little as 3- by 3-m working space, while a large river crossing unit requires a minimum of 30- by 50-m working area. A working space of similar dimensions to that on the rig side should be allocated on the pipe side, in case there is a need to move the rig and attempt drilling from this end of the crossing.
- b.* If at all possible, the crossing should be planned to ensure that drilling proceed downhill, allowing the drilling mud to remain in the hole, minimizing inadvertent return.
- c.* Sufficient space should be allocated to fabricate the product pipeline into one string, thus enabling the pullback to be conducted in a single continuous operation. Tie-ins of successive strings during pullback may considerably increase the risk of an unsuccessful installation.

Drilling and back-reaming

- a.* Drilling mud should be used during drilling and back reaming operations. Using water exclusively may cause collapse of the borehole in unconsolidated soils. While in clays, the use of water may cause swelling and subsequent jamming of the product.
- b.* Heaving may occur when attempting to back-ream a hole that is too large. This can be avoided by using several prereams to gradually enlarge the hole to the desired diameter.
- c.* A swivel should be included between the reamer and the product pipe to prevent the transfer of rotational torque to the pipe during pullback.
- d.* In order to prevent over stressing of the product during pullback, a weak link, or break-away pulling head, may be used between the swivel and the leading end of the pipe. More details regarding breakaway pulling heads can be found in paragraph entitled “Break-away Pulling Head.”
- e.* The pilot hole must be back-reamed to accommodate and permit free sliding of the product inside the borehole. A rule of thumb is to have a borehole 1.5 times the outer diameter of the product. This rule of thumb should be observed particularly with the larger diameter installations (≥ 250 -mm O.D.). Some recommended values for final preream diameter

as a function of the product O.D. are given in Table 2. These values should be increased by 25 percent if excessive swelling of the soil is expected to occur or the presence of boulders/cobbles is suspected.

- f. The conduit must be sealed at either end with a cap or a plug to prevent water, drilling fluids, and other foreign materials from entering the pipe as it is being pulled back.
- g. Pipe rollers, skates, or other protective devices should be used to prevent damage to the pipe from the edges of the pit during pullback, eliminate ground drag, or reduce pulling force and subsequently reduce the stress on the product.
- h. The drilling mud in the annular region should not be removed after installation but permitted to solidify and provide support for the pipe and neighboring soil.

Table 2 Recommended Back-Ream Hole Diameter (after Popelar et al. 1997)	
Nominal Pipe Diameter, mm	Back-Ream Hole Diameter, mm
50	75 to 100
75	100 to 150
100	150 to 200
150	250 to 300
200	300 to 350
250	350 to 400
≥300	At least 1.5 times product OD

Drilling Fluid - Collection and Disposal Practices

The collection and handling of drilling fluids and inadvertent returns, along with the need to keep drilling fluids out of streams, streets, and municipal sewer lines, have been among the most debated topics. These points include:

- a. Drilling mud and additives to be used on a particular job should be identified in the permit package, and their Material Safety Data Sheets (MSDS) should be provided to the Permit Office.
- b. Excess drilling mud slurry shall be contained in a lined pit or containment pond at exit and entry points, until recycled or removed from the site. Entrance and exit pits should be of sufficient size to contain the expected return of drilling mud and spoils.
- c. Methods to be used in the collections, transportation, and disposal of drilling fluids, spoils, and excess drilling fluids should be in compliance with local ordinances, regulations, and environmentally sound practices in an approved disposal site.

- d. The slurry should be tested for contamination and disposed of in a manner which meets government requirements when working in an area of contaminated ground.
- e. Precautions should be taken to keep drilling fluids out of the streets, manholes, sanitary and storm sewers, and other drainage systems, including streams and rivers.
- f. Recycling drilling fluids is an acceptable alternative to disposal.
- g. All diligent efforts should be made by contractor to minimize the amount of drilling fluids and cuttings spilled during the drilling operation, and complete cleanup of all drilling mud overflows or spills shall be provided.

There are legitimate concerns associated with the fluid pressures used for excavation during the horizontal directional drilling process and the risk of hydraulic fracturing. Reasonable limits must be placed on maximum fluid pressures in the annular space of the bore to prevent inadvertent drilling fluid returns to the ground surface. However, it is equally important that drilling pressures remain sufficiently high to maintain borehole stability, since the ease in which the pipe will be inserted into the borehole is dependent upon borehole stability. Limiting borehole pressures are a function of pore pressure, the pressure required to counterbalance the effective normal stresses acting around the bore (depth), and the undrained shear strength of the soil.

Tie-Ins and Connections

Trenching may be used to join sections of conduits installed by the directional boring method. An additional pipe length, sufficient for joining to the next segment, should be pulled into the entrance pit. This length of the pipe should not be damaged or interfere with the subsequent drilling of the next leg. The contractor should leave a minimum of 1 m of conduit above the ground on both sides of the borehole.

Alignment and Minimum Separation

The product should be installed to the alignment and elevations shown on the drawings within the prespecified tolerances (tolerance values are application dependent, for example, in a major river crossing, a tolerance of ± 4 m from the exit location along the drill path center line may be an acceptable value). This tolerance is not acceptable when installing a product line between manholes. Similarly, grade requirements for a water forcemain are significantly different from those on a gravity sewer project.

When a product line is installed in a crowded right-of-way, the issue of safe minimum separation distance arises. Many utility companies have established regulations for minimum separation distances between various utilities. These

distances needed to be adjusted to account for possible minor deviation when a line product is installed using HDD technology. As a rule of thumb, if the separation distance between the proposed alignment and the existing line is 5 m or more, normal installation procedures can be followed. If the separation is 1.5 m or less, special measures, such as observation boreholes are required. The range between 1.5 and 5 m is a “gray” area, typically subject to engineering judgment (a natural gas transmission line is likely to be treated more cautiously than a storm water drainage line).

Break-Away Pulling Head

Recent reports from several natural gas utility companies reveal concerns regarding failure experienced on HDPE pipes installed by horizontal directional drilling. These failures were attributed to deformation of the pipe due to the use of excessive pulling force during installation. A mitigation measure adopted by some gas companies involves the use of break-away swivels to limit the amount of force used when pulling HDPE products. Some details regarding these devices and their applications are given below.

- a. The weak link used can be either a small diameter pipe (but same SDR) or specially manufactured break-away link. The latter consists of a breaking pin with a defined tensile strength incorporated in a swivel. When the strength of the pin is exceeded it will break, causing the swivel to separate. A summary of pulling head specifications is given in Table 3 (all products are SDR 11). Note that the values provided in Table 3 could be considered conservative.

Table 3 Pulling Head Specifications		
Pipe Diameter (in.)¹	Diameter of Break-Away Swivel (in.)	Maximum Allowable Pulling Force (lb)²
1-1/4	7/8	850
2	1-1/4	1,500
4	1 3/8	5,500
6	2-1/2	12,000
8	3	18,500

¹To convert inches to centimeters, multiply by 2.54.
²To convert pounds to kilograms, multiply by 0.4535.

- b. The use of break-away swivels is particularly warranted when installing small diameter HDPE pipes (up to 10-cm (4 in.) O.D.). Application of such devices in the installation of larger diameter products is not currently a common practice.
- c. If the drilling equipment-rated pulling capacity is less than the safe load, the use of a weak link may not be required.

- d. Exceeding the product elastic limit can be avoided simply by following good drilling practices, namely: regulating pulling force; regulating pulling speed; proper ream sizing; and using appropriate amounts of drilling slurry fluid.

Protective Coatings

In an HDD installation, the product may be exposed to extra abrasion during pullback. When installing a steel pipe, a form of coating which provides a corrosion barrier as well as an abrasion barrier is recommended during the operation, the coating should be well bonded and have a hard smooth surface to resist soil stresses and reduce friction, respectively. A recommended type of coating for steel pipes is mill applied Fusion Bonded Epoxy.

Site Restoration and Postconstruction Evaluation

All surfaces affected by the work shall be restored to their preconstruction conditions. Performance criteria for restoration work will be similar to those employed in traditional open excavation work. If required, the permittee/contractor shall provide a set of as-built drawings including both alignment and profile. Drawings should be constructed from actual field readings. Raw data should be available for submission at any time upon request. As part of the “As-Built” document, the contractor shall specify the tracking equipment used, including method or confirmatory procedure used to ensure the data were captured.

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REPORT DOCUMENTATION PAGE			<i>Form Approved</i> <i>OMB No. 0704-0188</i>	
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14. ABSTRACT Applications for permits to drill beneath levees are increasing in permitting offices of the U.S. Army Corps of Engineer Districts. This report provides a basis for consistent and science-based consideration of these permit applications. It describes methods of horizontal directional drilling (HDD) beneath levees and lists the types of geotechnical and other data that are essential to judging the safety of proposed drilling for infrastructure modifications and installation of utilities. Critical considerations include setback distances, levee toe stability, thickness and integrity of the top stratum, and other geotechnical parameters. Data provided for vertical and horizontal permeabilities, top stratum thickness, hydraulic gradient at levee toe, and other parameters are based on experience in the U.S. Army Engineer Districts, Vicksburg and St. Louis, and the California Department of Transportation. In appropriate geotechnical settings with appropriate operational care, utilities can be installed beneath flood-control levees using HDD without compromising the integrity and function of the levee.				
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Exhibit D

FEDERAL CERTIFICATION FORMS CERTIFICATION REGARDING FEDERAL LOBBYING

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

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

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

Company/
Entity Name: _____

Signed: _____

Its: _____

Date: _____

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

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

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

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)

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

Official Business Name _____

Date: _____

By: _____

Name and Title of Authorized
Representative

Signature of Authorized
Representative

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

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this certification, the prospective contracting party is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contracting party shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Metro Flood Diversion Authority's (the "Authority") determination whether to enter into this transaction. However, failure of the prospective contracting party to furnish a certification or an explanation shall disqualify such person from entering into contracts with the Authority.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Authority determined to enter into a contract with the prospective contracting party. In order to qualify for participation in the U.S. EPA WIFIA program the Authority is required to obtain this certification. If it is later determined that the prospective contracting party knowingly rendered an erroneous certification, in addition to other remedies available to both the Authority and the Federal Government, the Authority may terminate this transaction for cause or default.
4. The prospective contracting party shall provide immediate written notice to the Authority to which this Certificate is submitted if at any time the prospective contracting party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Authority for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective contracting party agrees by submitting this certification that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Authority.
7. The prospective contracting party further agrees by submitting this certification that it will require a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," from all sub-contractors without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A contracting party in a covered transaction may rely upon a certification of a prospective

participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A contracting party may decide the method and frequency by which it determines the ineligibility of its principals.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a contracting party is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a contracting party in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Authority may terminate this transaction for cause or default.

ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE

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

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

The undersigned assures that it will comply with:

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

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

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

Signature of Authorized Official

Title

Print Name

Name of Institution or Agency

Date

Street

City, State, Zip Code

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

Office Email Address

Exhibit E

AUTHORITY INVOICING REQUIREMENTS

Utility will submit copies of the invoice to:

Bakkegardk@FMDiversion.gov and APIInvoicesFMDiv@jacobs.com

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

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

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

And any other information referenced within this Agreement.

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT AND
THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICE,
REGARDING THE
RELOCATION OF A LOG CABIN WITHIN THE UPSTREAM MITIGATION AREA (UMA)
OF THE FMM PROJECT, CASS COUNTY, NORTH DAKOTA**

May 2024

WHEREAS, the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (FMM Project, the Undertaking) was authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), Public Law 113-121, citing the Report of the Chief of Engineers dated December 19, 2011 (Chief's Report); and

WHEREAS, the Chief's Report was based on the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management, dated July 2011, as approved by the U.S. Army Corps of Engineers, St. Paul District (Corps); and

WHEREAS, the Corps determined that the FMM Project is an Undertaking subject to review under 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act of 1966, as amended (54 USC § 306108); and

WHEREAS, a *Programmatic Agreement (PA) Among the U.S. Army Corps of Engineers, St. Paul District (Corps), the North Dakota State Historic Preservation Officer (SHPO), the Minnesota State Historic Preservation Officer Regarding the Fargo-Moorhead Metro Flood Risk Management Project, Cass County, North Dakota and Clay County, Minnesota (PA)*, was executed in 2011 and amended in 2013, pursuant to 36 CFR § 800.14(b)(1)(ii) due to the fact that identification of historic properties and the Undertaking's effects on historic properties could not be fully determined in advance of Corps approval of the FMM Project; and

WHEREAS, modifications to the FMM Project were analyzed in the September 2013 Supplemental Environmental Assessment (2013 SEA) and the 2019 SEA, and further design of the Plan B alignment for the FMM Project has resulted in impacts to additional areas not included in earlier evaluations; and

WHEREAS, the Corps, as stipulated in the PA, shall oversee completion of the identification of historic properties within the current Area of Potential Effect (APE), including evaluation of National Register of Historic Places (National Register) eligibility, assessment of potential adverse effects, and resolution of adverse effects for all identified historic properties in consultation with the SHPO, the Minnesota State Historic Preservation Officer, and other interested parties; and

WHEREAS, the currently defined Undertaking includes proposed use of approximately 22,000 acres of farmland in Cass County, North Dakota, south of the Southern Embankment as a Staging Area for water during operation of the FMM Project, located within the project feature known as the Upstream Mitigation Area (UMA); and

WHEREAS, the Undertaking requires the removal of all structures within Zone 1 and the possible modification to structures within Zone 2 of the UMA; and

WHEREAS, the Corps, in consultation with SHPO under Stipulation D of the PA, has determined that multiple historic properties within the UMA APE are either listed or are eligible for listing in the NRHP; and

WHEREAS, the Corps has notified the SHPO that structures will be removed from their original locations within the UMA, including the log cabin known as the Hanson Cabin (Inventory 32CS5346), and the SHPO has concurred with the Corps' finding that the Undertaking will have an adverse effect on the eligible property; and,

WHEREAS, when adverse effects caused by the Undertaking are unavoidable, pursuant to Stipulation E of the PA, the Corps, in consultation with the SHPO, is required to coordinate and implement a Memorandum of Agreement (MOA) to resolve the adverse effects through agreed-upon mitigation; and

WHEREAS, the Corps and SHPO have agreed that relocation of Hanson Cabin 32CS5346 to the Western Minnesota Steam Threshers Reunion (WMSTR) property in Rollag, Minnesota, would preserve the cabin and have invited the WMSTR and Mr. Michael Hanson (property owner) to participate in this MOA as concurring parties pursuant to 36 C.F.R. § 800.6(c)(3); and

WHEREAS, the Metro Flood Diversion Authority is one of the non-Federal sponsors for the FMM Project, and a concurring party signatory to the PA, and as such has an interest in the Undertaking and resolution of adverse effects; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(I), the Corps has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R § 800.6(a)(1)(iii); and

NOW THEREFORE, the Corps and SHPO (the signatories) agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of said Undertaking on historic properties.

STIPULATIONS

The Corps shall ensure that the following measures are carried out.

I. HISTORIC PROPERTY DOCUMENTATION

A. Mitigation will consist of Historic American Building Survey (HABS) documentation of the historic property: Inventory number 32CS5346, known as Hanson Cabin. The documentation shall follow HABS Level III standards for recording and be coordinated with the National Park Service for submission to the National Archives.

B. The Corps will contract with a professionally qualified architectural historian meeting the *Professional Qualification Standard in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (36 C.F.R. Part 61).

C. The architectural historian duties shall include completing two updates of the official North Dakota Cultural Resources Survey Architectural Site Form for the Hanson Cabin. The first update would

record the condition of the feature to include photos and information at the time of the HABS documentation, and the second update would follow removal of the Hanson Cabin, indicating the completion of relocation from the property.

D. All documentation shall be submitted by the Corps to the SHPO, who shall review all documentation prior to approval. The SHPO will have thirty (30) calendar days to review the documentation and provide any comments to the Corps. The Corps will ensure that its comments and those of the SHPO are incorporated into the final documentation submittal.

II. HISTORIC PROPERTY RELOCATION

A. The architectural historian will prepare a Move Plan for relocation of the Hanson Cabin. The Move Plan will contain a conditions analysis and evaluation of the relocation approach along with recommendations on procedures for moving. The plan will also include a narrative preservation plan and concept plans for the placement site at the WMSTR at Rollag, Minnesota. The Corps will submit the Move Plan to the SHPO for review, comment, and approval.

B. There will be an archaeological investigation of the placement site to assure that no adverse effect results to the WMSTR site as a consequence of the relocation efforts.

C. Following SHPO approval of the Move Plan, the Corps will ensure the Hanson Cabin is moved in accordance with the Move Plan.

D. Construction documentation for the relocation and preservation activities related to the Hanson Cabin will be prepared for submission to SHPO as part of the relocation.

E. A final comprehensive report addressing all activities taken to relocate and preserve the Hanson Cabin will be submitted to SHPO.

III. PUBLIC EDUCATION

A. In consultation with the signatories, the architectural historian shall develop a Public Education Plan to identify educational opportunities associated with the relocation of the Hanson Cabin. The Corps will submit the Public Education Plan to the SHPO for review and comment.

IV. UNANTICIPATED DISCOVERIES

A. If suspected historic properties, including sites that contain possible human remains, unidentified animal bone, or mortuary objects, are discovered during removal or placement of the Hanson Cabin, all activities shall cease within one hundred (100) feet of the discovery to avoid and/or minimize harm to the property.

1. The Contractor(s) moving the Hanson Cabin will immediately notify the Corps of the discovery and implement interim measures to protect the discovery from damage, looting, and vandalism.

Measures may include, but are not limited to, protective fencing, covering of the discovery with appropriate materials, and/or posting of security personnel.

2. For properties with suspected human remains, the Corps shall follow the requirements of North Dakota Century Code 23-06-27 and North Dakota Administrative Code 40-02-03 protecting prehistoric and historic burial sites, human remains and burial goods, and must coordinate with the state's Chief Archaeologist at SHPO.
3. The Corps shall then notify concurring parties and any Native American Tribes that may attach religious and cultural significance to the property.
4. The Contractor shall provide access to law enforcement and concurring parties onto the site and shall not resume work within the area until notified by the Corps.

B. The Corps shall contract with a professionally qualified archaeologist meeting the *Professional Qualification Standard in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (36 C.F.R. Part 61) to evaluate the newly discovered property for eligibility for inclusion in the National Register.

1. In lieu of a consultant's evaluation recommendation, the Corps may assume a property is eligible for inclusion in the National Register following consultation with, or based on input from, SHPO and concurring parties, as appropriate and sufficient to assess any potential adverse effects caused by the Undertaking.

2. If an evaluation is performed, the consulting archaeologist shall provide an eligibility recommendation to the Corps within seventy-two (72) hours.

3. The Corps shall make a National Register eligibility determination and submit it to the SHPO and concurring parties, as appropriate, for review and comment within 72 hours of receipt of the recommendation from the consulting archaeologist. When applicable, the Corps shall also carry out an appropriate level of consultation with interested Native American Tribes in relation to any properties that may have religious or cultural significance to Tribe(s).

- a. If the Corps determines that the discovery does not meet National Register criteria, the Corps will inform the SHPO of such determination, and removal and/or placement of the Hanson Cabin can resume.

- b. For all discoveries determined eligible for the National Register, the Corps shall make a finding of effect and propose measures to resolve adverse effects, if any. Removal and/or placement of the Hanson Cabin can resume upon receipt of SHPO's written concurrence with the Corps' finding of effect and resolution of adverse effect, if applicable.

V. DURATION

This MOA will be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, the Corps may consult with the other signatory to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below.

VI. DISPUTE RESOLUTION

Should either signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Corps shall consult with the SHPO to resolve the objection. If the Corps determines that such objection cannot be resolved, the Corps will:

A. Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP shall provide the Corps with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories and provide them with a copy of this written response. The Corps will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a decision, the Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the MOA and provide them and the ACHP with a copy of such written response.

C. The Corps' responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VII. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by both signatories. The amendment will be effective on the date a copy signed by both of the signatories is filed with the ACHP.

VIII. TERMINATION

If either signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other party to attempt to develop an amendment per Stipulation VII above. If within thirty (30) days (or another period agreed to by both signatories) an amendment cannot be reached, either signatory may terminate the MOA upon written notification to the other signatory.

Once the MOA is terminated, and prior to work continuing on the Undertaking, the Corps must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of ACHP under 36 C.F.R. § 800.7. The Corps shall notify the other signatory as to the course of action it will pursue.

Execution of this MOA by the Corps and SHPO and implementation of its terms evidence that the Corps has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT AND
THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICE,
REGARDING THE
RELOCATION OF A LOG CABIN WITHIN THE UPSTREAM MITIGATION AREA (UMA)
OF THE FMM PROJECT, CASS COUNTY, NORTH DAKOTA**

SIGNATORY:

UNITED STATES ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT



Digitally signed by
SWENSON.ERIC.RAYMOND.1032271894
Date: 2024.06.05 07:09:37 -05'00'

Date: _____

Colonel Eric Swenson, St. Paul District Commander

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT AND
THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICE,
REGARDING THE
RELOCATION OF A LOG CABIN WITHIN THE UPSTREAM MITIGATION AREA (UMA)
OF THE FMM PROJECT, CASS COUNTY, NORTH DAKOTA

SIGNATORY:

NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICE

 . Date: 6-6-24
William D. Peterson, PhD, North Dakota State Historic Preservation Officer

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT AND
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REGARDING THE
RELOCATION OF A LOG CABIN WITHIN THE UPSTREAM MITIGATION AREA (UMA)
OF THE FMM PROJECT, CASS COUNTY, NORTH DAKOTA**

**SIGNATORY:
METRO FLOOD DIVERSION AUTHORITY**

_____ . Date: _____
Michael Redlinger, Co-Executive Director

**SIGNATORY:
METRO FLOOD DIVERSION AUTHORITY**

_____ . Date: _____
Robert Wilson, Co-Executive Director

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT AND
THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICE,
REGARDING THE
RELOCATION OF A LOG CABIN WITHIN THE UPSTREAM MITIGATION AREA (UMA)
OF THE FMM PROJECT, CASS COUNTY, NORTH DAKOTA**

SIGNATORY:

WESTERN MINNESOTA STEAM THRESHERS REUNION, INC.

_____ . Date: _____

Mr. Roger Meyer, President

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT AND
THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICE,
REGARDING THE
RELOCATION OF A LOG CABIN WITHIN THE UPSTREAM MITIGATION AREA (UMA)
OF THE FMM PROJECT, CASS COUNTY, NORTH DAKOTA**

**SIGNATORY:
PROPERTY OWNER**

_____ . Date: _____
Mr. Michael T. Hanson



Diversion Authority Finance Committee Meeting

June 26, 2024

Contracting Actions

DA Board Approval Contract Actions

(ACTION)



Description	Company	Budget/ Estimate (\$)
New Agreement – Videography and Communications – This new agreement is for videography services from July 1, 2024, through June 30, 2025.	C-Three Media	\$162,940

Executive Director Contracting Recommendation



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

C Three Media Services Agreement 2024 Amendment 0 Videography Services	\$162,940.00
<ul style="list-style-type: none"> • New agreement and budget for 2024-2025 	

1 Recommendation for action:

The Co-Deputy 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 Metro Flood 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 task orders and task order amendments for existing Master Services Agreements (MSA) and submit them to the Co-Deputy Executive Director and Member Entity Technical Representative (METR) for review. The METR will provide comments to the PMC who will combine the comments for the Director of Engineering. The Director of Engineering (DOR) will review and provide recommendations to the Co-Deputy Executive Director for review and action.

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 Mater Professional Services Agreement by and between the Metro Flood Diversion Authority (the “Authority”) and C Three Media (“Consultant”) dated July 1, 2024 (the “Agreement”), the Authority and the Utility agree to the above services.

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	Contract Change \$	Original or Revised Contract \$	Agreement Execution Date	Project Completion	Comments
SA2024-A1	0.00	162,940.00	7/1/2024	6/30/2025	Initial scope of work
Total		162,940.00			

Table 2 – Summary of Subtask Budgets

Subtask	Item	Current Budget (\$)	Change (\$)	Revised Budget (\$)
1	Photo Sentinel Timelapse Camera	8,940.00		8,940.00
2	Planning and Pre-Production	20,000.00		20,000.00
3	Production / Filming	85,000.00		85,000.00
4	Post-Production and Distribution	49,000.00		49,00.00
	Total	162,940.00		162,9440.00

5 Financial considerations:

The Budget Cost Proposal is attached or in the Service Agreement 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
2024	SW-1180	81,470.00	81,470.00	50,967.33	30,502.67	Actual Cost through April-2024
2025	SW-1180	81,470.00	81,470.00	0.00	81,470.00	

6 Attachments:

- Services Agreement 2024 Amendment 0

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

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

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

Approved by: Michael Redlinger, Co-Deputy Executive Director **Date:** 6/6/2024



FINANCE OFFICE
225 4th Street North
Fargo, ND 58102
Phone: (701) 241-1333
E-Mail: Finance@FargoND.gov
www.FargoND.gov

**TO: METRO FLOOD DIVERSION AUTHORITY
FINANCE COMMITTEE**

FROM: CITY OF FARGO, FISCAL AGENT

**RE: 2023 FINANCIAL STATEMENTS AND INDEPENDENT AUDITOR'S
REPORT**

DATE: JUNE 26, 2024

The City of Fargo, as fiscal agent for the Metro Flood Diversion Authority has completed the annual financial statement audit for the year ending December 31, 2023. This includes the Independent Auditor report on our general purpose financial statements in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States (Government Auditing Standards). The independent auditing firm of Eide Bailly LLP completed the audit. An unmodified (clean) opinion was provided reflecting adherence to financial requirements and standards. This means that the Authority is following generally accepted accounting principles and has an appropriate level of internal controls in place to safeguard its assets.

The City would like to express appreciation to the Authority and staff that work with our financial systems throughout the year with a high degree of attention to detail and adherence to accounting policies and procedures.

City staff will provide an overview of the 2023 audit results.



Financial Statements
December 31, 2023

Metro Flood Diversion Authority

Metro Flood Diversion Authority

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December 31, 2023

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Metro Flood Diversion Authority
Board of Authority (Unaudited)
December 31, 2023

<u>Name</u>	<u>Title</u>	<u>Appointed By:</u>
Dr. Tim Mahoney	Fargo Mayor	City of Fargo
John Strand	Fargo Commissioner	City of Fargo
Dave Piepkorn	Fargo Commissioner	City of Fargo
Shelly Carlson	Moorhead Mayor	City of Moorhead
Chuck Hendrickson	Moorhead Councilor	City of Moorhead
Larry Seljevold	Moorhead Councilor	City of Moorhead
Mary Scherling	Cass County Commissioner	Cass County
Tony Grindberg	Cass County Commissioner	Cass County
Chad Peterson	Cass County Commissioner	Cass County
Kevin Campbell	Clay County Commissioner	Clay County
David Ebinger	Clay County Commissioner	Clay County
Rodger Olson	CCJWRD Manager	CCJWRD
Bernie Dardis	West Fargo Mayor	City of West Fargo

All board members are annual appointments by each entity.



Independent Auditor's Report

To the Board of Authority
of the Metro Flood Diversion Authority
Fargo, North Dakota

Report on the Audit of the Financial Statements

Opinions

We have audited the financial statements of the governmental activities and the major fund of the Metro Flood Diversion Authority ("the Authority"), as of and for the year ended December 31, 2023, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the major fund of the Authority as of December 31, 2023, and the respective changes in financial position for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States (*Government Auditing Standards*). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Authority, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America; and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS and *Government Auditing Standards*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Required Supplementary Information

Management has omitted the management's discussion and analysis as well as budget to actual – Governmental Funds that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinions on the basic financial statements are not affected by the missing information.

Other Information

Management is responsible for the other information included in the annual report. The other information comprises the listing of the board of authority but does not include the basic financial statements and our auditor's report thereon. Our opinions on the basic financial statements do not cover the other information, and we do not express an opinion or any form of assurance thereon.

In connection with our audit of the basic financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the basic financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated June 6, 2024 on our consideration of the Authority's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Authority's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Authority's internal control over financial reporting and compliance.

A handwritten signature in black ink that reads "Eide Bailly LLP". The signature is written in a cursive, flowing style.

Fargo, North Dakota
June 6, 2024

Metro Flood Diversion Authority
Statement of Net Position
December 31, 2023

Assets	
Cash	\$ 18,926,567
Equity in pooled investments	186,793,671
Intergovernmental receivables	
North Dakota Public Finance Authority	56,845,335
City of Fargo, North Dakota	8,042,185
Cass County, North Dakota	4,079,995
Other governments	649,784
Interest receivable	870,743
Prepaid items	<u>4,633,885</u>
Total assets	<u>280,842,165</u>
Liabilities	
Vouchers payable	15,403,813
Retainage payable	153,747
Deposits payable	13,750
Long-term liabilities	
Due within one year - accrued interest on settlement payable	2,400,000
Due in more than one year - bond payable	9,589,378
Due in more than one year - settlement payable	<u>40,000,000</u>
Total liabilities	<u>67,560,688</u>
Net Position	
Restricted for:	
Public protection	<u><u>\$ 213,281,477</u></u>

Metro Flood Diversion Authority
Statement of Activities
Year Ended December 31, 2023

<u>Functions/Programs</u>	<u>Expenses</u>	<u>Program Revenues</u>		<u>Capital Grants and Contributions</u>	Net (Expense) Revenue and Change in Net Position
		<u>Charges for Services</u>	<u>Operating Grants and Contributions</u>		<u>Governmental Activities</u>
Governmental Activities					
Public protection	\$ 140,782,398	\$ -	\$ 190,476,475	\$ -	\$ 49,694,077
General Revenues (Expenses) and Transfers					
Investment earnings					8,278,477
Interest expense					(800,000)
Miscellaneous revenue					4,956,407
Total general revenues (Expenses)					<u>12,434,884</u>
Change in Net Position					62,128,961
Net Position - Beginning					<u>151,152,516</u>
Net Position - Ending					<u>\$ 213,281,477</u>

Metro Flood Diversion Authority
Balance Sheet – Governmental Fund
December 31, 2023

	General
Assets	
Cash	\$ 18,926,567
Equity in pooled investments	186,793,671
Intergovernmental receivables	
State of North Dakota Public Finance Authority	56,845,335
City of Fargo, North Dakota	8,042,185
Cass County, North Dakota	4,079,995
Other governments	649,784
Interest receivable	870,743
Prepaid items	4,633,885
Total assets	\$ 280,842,165
Liabilities	
Vouchers payable	\$ 15,403,813
Retainage payable	153,747
Deposits payable	13,750
Total liabilities	15,571,310
Deferred Inflows of Resources	
Unavailable revenue	12,993,693
Fund Balance	
Nonspendable	4,633,885
Restricted	247,643,277
Total fund balance	252,277,162
Total liabilities, deferred inflows of resources, and fund balance	\$ 280,842,165

Metro Flood Diversion Authority
 Reconciliation of the Governmental Fund Balance Sheet to the Statement of Net Position
 December 31, 2023

Total Funds Balances - Governmental Fund	\$ 252,277,162
<p>Amounts reported for governmental activities in the statement of net position are different because:</p>	
Certain aids from other governments are not considered available for current financial resources and are therefore deferred in the funds. However, they are properly recognized as revenue in the entity-wide statements as soon as the appropriation has been made.	12,993,693
Long-term liabilities are not due and payable in the current period and therefore are not reported as liabilities in the funds.	<u>(51,989,378)</u>
Total Net Position - Governmental Activities	<u><u>\$ 213,281,477</u></u>

Metro Flood Diversion Authority
Statement of Revenue, Expenditures and Changes in Fund Balances – Governmental Fund
Year Ended December 31, 2023

Revenues	
Aid from other governments	
State of North Dakota	\$ 129,134,268
Cass County, North Dakota	21,720,075
City of Fargo, North Dakota	43,281,539
Investment earnings	8,278,477
Miscellaneous	4,956,407
	<u>207,370,766</u>
Expenditures	
Current	
Public protection	140,782,398
	<u>140,782,398</u>
Total expenditures	140,782,398
Excess of Revenues Over Expenditures	66,588,368
Other Financing Sources	
Proceeds from debt issuance	8,316,726
	<u>8,316,726</u>
Net Change in Fund Balances	74,905,094
Fund Balances, Beginning of Year	<u>177,372,068</u>
Fund Balances, End of Year	<u><u>\$ 252,277,162</u></u>

Metro Flood Diversion Authority

Reconciliation of the Changes in Fund Balance of Governmental Funds to the Statement of Activities
Year Ended December 31, 2023

Net Change in Funds Balances - Total Governmental Fund	\$ 74,905,094
Amounts reported for governmental activities in the statement of activities are different because	
Certain aids from other governments are not considered available for current financial resources and are therefore deferred in the fund. However, they are properly recognized as revenue in the statement of activities as soon as they have been appropriated.	(3,659,407)
Bond proceeds provides current financial resources to governmental funds, but issuing debt increases long-term liabilities in the Statement of Net Position	(8,316,726)
Repayment of long-term debt is reported as an expenditure in governmental funds, but the repayment reduces long-term liabilities on the statement of net position. In the current period these amounts consist of:	
Accrued interest on settlement payable	<u>(800,000)</u>
Change in Net Position of Governmental Activities	<u><u>\$ 62,128,961</u></u>

Note 1 - Reporting Entity**Definition of Reporting Entity and Governing Board**

The Metro Flood Diversion Authority (Authority) is a political subdivision of the State of North Dakota. It was created June 1, 2016, pursuant to a Joint Powers Agreement. Parties to this agreement are the following member entities: City of Fargo, North Dakota; Cass County, North Dakota; Cass County Joint Water Resource District; the City of Moorhead, Minnesota; and Clay County, Minnesota. The Metro Flood Diversion Authority was formed for the purpose of providing the Fargo-Moorhead Metropolitan Area with permanent and comprehensive flood protection.

The Authority is governed by a thirteen-member governing board, referred to as the Diversion Authority Board. Three members are appointed by the Fargo City Commission, three members by the Moorhead City Council, three members by the Cass County Commission, two members by the Clay County Commission, one member by the Cass County Joint Water Resource District, one member by the West Fargo City Commission and one member appointed jointly by the Wilkin County Commission and the Richland County Commission.

The Comprehensive Project

The Comprehensive Project consists of a southern embankment and associated infrastructure (SEAI) and a storm water diversion channel and associated infrastructure (SWDCAI). The SEAI consists of a Diversion Inlet Control Structure, Wild Rice River Control Structure, Red River Control Structure, one railroad bridge, and a 20-mile earthen embankment. The SWDCAI consists of a 30-mile channel, two four-lane interstate bridges, four railroad bridges, twelve county highway bridges, and two river aqueducts. The Comprehensive Project is designed to protect the Fargo-Moorhead metropolitan area from a 100-year flood event and provide the ability to defend to a 500-year flood event.

United States Army Corps of Engineers (USACE) has led the planning and development of the Comprehensive Project since 2008. USACE has identified the Comprehensive Project as a national pilot project and entered into a unique Project Partnership Agreement (PPA) with the Authority, the City of Fargo, and the City of Moorhead (Non-Federal Sponsors) whereby delivery of the Comprehensive Project is split into two major parts. The SEAI and mitigation features not associated with the Non-Federal Work will be constructed by USACE. The USACE, pursuant to the PPA, will contribute up to \$750,000,000 to the Comprehensive Project to be used primarily to fund the construction of the SEAI. The SWDCAI and associated mitigation, all lands, and easements, for the Comprehensive Project and levees within Fargo and Moorhead will be constructed by the Authority.

Note 2 - Summary of Significant Accounting Policies**Basis of Presentation***Government-wide Financial Statements*

The statement of net position and statement of activities display information about the primary government (Authority). These statements include the financial activities of the overall government. The statement of activities presents direct expenses and program revenues for each function of the Authority's governmental activities. Direct expenses are those that are specifically associated with a program or function and; therefore, are clearly identifiable to a particular function. Program revenues include grants and contributions that are restricted to meeting the operational or capital requirements of a particular program. Investment earnings and other items which are excluded from program revenues are reported instead as general revenues.

When both restricted and unrestricted resources are available, restricted resources are used first, then unrestricted resources as needed.

Fund Financial Statements

The fund financial statements provide information about the Authority's funds, which include only a governmental fund. The Authority reports the following major governmental fund: The *General Fund* is the main operating fund and is used to account for all revenues and expenditures necessary to carry out basic governmental activities of the Authority. For the Authority, the General Fund's activities include public protection only.

Measurement Focus and Basis of Accounting

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expense are recorded at the time liabilities are incurred, regardless of when the related cash flows take place. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Under this method, revenues are recognized in the accounting period in which they become both measurable and available to finance expenditures of the current period. Intergovernmental revenues are considered to be susceptible to accrual and so have been recognized as revenues of the current fiscal period to the extent they are collected in 90 days. Expenditures are generally recorded when a liability is incurred, as under accrual accounting.

Metro Flood Diversion Authority

Notes to Financial Statements

December 31, 2023

Cash

Cash consists of highly liquid investments with an original maturity of three months or less.

Equity in Pooled Investments

Pursuant to the joint powers agreement, the City of Fargo, North Dakota, as the fiscal agent of the Authority, has custody of all equity in pooled investments. The Authority's share of the equity in pooled investments is separately accounted for and interest earned is apportioned at the end of each month based upon the relationship of its daily cash balance to the total of the pooled account.

Receivables and Payables

Intergovernmental receivables in the governmental fund consist of aid from other governments related to sales tax dedicated to the Authority by Cass County and the City of Fargo. Reimbursement requests related to appropriated North Dakota State Water Commission funding is also reported as an Intergovernmental receivable.

Payables include work performed and/or goods and services received prior to year-end and paid to vendors subsequent to year end.

Prepaid Items

Certain payments to vendors reflect costs applicable to future accounting periods (consumption method) and are recorded as prepaid items in both government-wide and fund financial statements.

Deferred Inflows of Resources

In addition to liabilities, the financial statements will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, *deferred inflows of resources*, represents an acquisition of net position that applies to future period(s) and so will *not* be recognized as an inflow of resources (revenue) until that time. The Authority has one type of item that qualifies for reporting in this category, which is to report unavailable revenues from intergovernmental grants on the governmental funds balance sheet. The Authority reports unavailable revenues from intergovernmental grants on the governmental funds balance sheet. These amounts are deferred and recognized as an inflow of resources in the period that the amounts become available.

Long-Term Obligations

In the government-wide financial statements, long-term debt and other long-term obligations are reported as liabilities in the governmental activities statement of net position. In the fund financial statements, governmental fund types report the face amount of debt issued as other financing sources.

Revenue – Aid from Other Governments*Cass County, ND*

Pursuant to a joint powers agreement, Cass County has pledged 94% of its one-half cent countywide sales and use tax as pledged revenue to the Authority. Pursuant to Cass County Ordinance No. 2010-2, Cass County imposed a one-half of one percent (0.5%) sales and use tax upon the gross receipts of retailers from all sales at retail, including leasing or rental of tangible personal property, within the corporate limits of Cass County (“County 2010-2 Sales Tax”). The proceeds of the County 2010-2 Sales Tax are dedicated for payment of expenses incurred for the planning, engineering, land purchase, construction, and maintenance of a Red River diversion channel and other flood control measures or the payment of special assessments, or debt incurred for a Red River diversion and other flood control measures as authorized by the Board of Cass County Commissioners. Cass County has determined that it will legally pledge not less than ninety-four percent (94%) of the County 2010-2 Sales Tax to Authority Loans, Authority Revenue Bonds and all other expenses of the Authority including but not limited to refunding improvement bonds issued by CCJWRD, and milestone payments, availability payments, and other payments for the Comprehensive Project.

The County 2010-2 Sales Tax was anticipated to expire on March 31, 2031. The Cass County Commission, however, desired to extend the expiration date for the County 2010-2 Sales Tax until 2084, and voted unanimously to place such extension upon the November 8, 2016, ballot. The County 2010-2 Sales Tax was previously approved by sixty-four percent (64%) of the voters. On November 8, 2016, the extension of the County 2010-2 Sales Tax was approved by sixty-three percent (63%) of the voters (in both elections, a simple majority of voters was needed in order to pass). Pursuant to the ballot question presented to the voters, sales and use tax revenue generated by the County 2010-2 Sales Tax may be used for debt obligations including the authority loans, milestone payments, availability payments, and any other costs or charges associated with the SWDCAI and Comprehensive Project.

City of Fargo

Pursuant to a joint powers agreement, the City of Fargo has pledged one and a quarter cent of its sales and use tax as pledged revenue to the Authority. The City of Fargo adopted a sales and use tax (“City Flood Control Tax”) by enacting Article 3-21 of the City of Fargo Municipal Code. The City Flood Control Tax imposes a one-half of one percent (0.5%) sales and use tax upon the gross receipts of retailers from all retail sales, including the leasing or renting of tangible personal property, within the corporate limits of the City of Fargo. The proceeds of the City Flood Control Tax are dedicated for acquiring property; making, installing, designing, financing, and constructing improvements; engaging in projects that are necessary for the goal of achieving risk reduction and the ability to defend the community against a five hundred (500) year flood event; and servicing bonds or other debt instruments. The City of Fargo has determined that it will dedicate one hundred percent (100%) of its City Flood Control Tax to the Authority.

Metro Flood Diversion Authority

Notes to Financial Statements

December 31, 2023

In 2012, the City of Fargo adopted a second sales and use tax ("City Infrastructure Tax") by enacting Article 3-22 of the City of Fargo Municipal Code. The City Infrastructure Tax imposes a one-half of one percent (0.5%) sales and use tax upon the gross receipts of retailers from all retail sales, including the leasing or renting of tangible personal property, within the corporate limits of the City of Fargo. The proceeds of the City Infrastructure Tax are dedicated for such infrastructure capital improvements as the governing body of the City of Fargo selects, including streets and traffic management; water supply and treatment needs including construction or expansion of water treatment facilities; water distribution system needs; sewerage treatment and collection system needs, including construction or expansion of sewage treatment facilities; and flood protection or flood risk mitigation projects, and related improvements and activities. The City of Fargo has determined that it will dedicate one hundred percent (100%) of its City Infrastructure Tax not being utilized for present infrastructure projects to the Authority.

The City Flood Control Tax and the City Infrastructure Tax was anticipated to expire on December 31, 2029, and December 31, 2032, respectively. The City of Fargo City Commission, however, desired to extend the expiration dates for the City Flood Control Tax and the City Infrastructure Tax until 2084, and as a result, voted to place such extensions upon the November 8, 2016, ballot. The City Flood Control Tax was previously approved by ninety and seven/tenths percent (90.7%) of the vote, and the City Infrastructure Tax was previously approved by sixty and three/tenths percent (60.3%) of the vote. On November 8, 2016, the extension of the City Flood Control Tax and the City Infrastructure Tax was approved by sixty-six percent (66%) of the voters (a super majority, i.e. sixty percent (60%), was needed to pass). Pursuant to the ballot question presented to the voters, sales and use tax revenue generated by the City Flood Control Tax and the City Infrastructure Tax may only be used for debt obligations including authority loans, milestone payments, availability payments, and any and all other costs or charges associated with the Comprehensive Project.

The City of Fargo has additionally imposed a sales and use tax ("City Capital Improvements Tax") by enacting Article 3-20 of the City of Fargo Municipal Code. The City Capital Improvements Tax imposes a one percent (1%) sales and use tax upon the gross receipts of retailers from all retail sales, including the leasing or renting of tangible personal property, within the corporate limits of the City of Fargo. The proceeds of the City Capital Improvements Tax are also dedicated for such infrastructure capital improvements as the governing body of the City of Fargo selects, including streets and traffic management; water supply and treatment needs including construction or expansion of water treatment facilities; water distribution system needs; sewerage treatment and collection system needs, including construction or expansion of sewage treatment facilities; and flood protection or flood risk mitigation projects. The City of Fargo has dedicated and will dedicate, as part of the Fargo Pledge, one quarter of the one percent (0.25%) City Capital Improvement Tax to the Authority until 2028.

Metro Flood Diversion Authority

Notes to Financial Statements

December 31, 2023

North Dakota Legislative Session Appropriations

The Authority has been appropriated from the Legislative Sessions as summarized in the table below.

North Dakota State Water Commission Appropriations from 2009 Legislative Session	\$ 45,000,000
North Dakota State Water Commission Appropriations from 2011 Legislative Session	30,000,000
North Dakota State Water Commission Appropriations from 2013 Legislative Session	100,000,000
North Dakota State Water Commission Appropriations from 2015 Legislative Session	69,000,000
North Dakota State Water Commission Appropriations from 2015 Legislative Session - Interior Flood Control	60,000,000
North Dakota State Water Commission Appropriations from 2017 Legislative Session	66,500,000
North Dakota State Water Commission Appropriations from 2019 Legislative Session	<u>44,000,000</u>
Total North Dakota State Water Commission Appropriations	414,500,000
Legacy Bonds from 2021 Legislative Session	<u>435,500,000</u>
Total	<u><u>\$ 850,000,000</u></u>

Funds become appropriated at the legislature when a cost share agreement is approved.

Public Protection Expense

Although the Metro Flood Diversion Authority's sole purpose is to construct permanent and comprehensive flood protection for residents, the infrastructure is ultimately owned or maintained by one of the member entities, and as a result, the public protection costs of the flood protection infrastructure are shown as public protection expenses (not capital assets) in these financial statements.

Management of the Authority has analyzed this arrangement against the requirements of Governmental Accounting Standards Board (GASB) Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements* (GASB 94). Specific to the availability payment arrangements (APAs), defined by GASB 94 as "an arrangement in which a government compensates an operator for services that may include designing, constructing, financing, maintaining, or operating an underlying nonfinancial asset for a period of time in an exchange or exchange-like transaction," management has determined the APA accounting and reporting requirements under GASB 94 would apply to the project. This is due to payments by the Authority which will be based entirely on the asset's availability for use rather than on tolls, fees, or similar revenues or other measures of demand. The Authority will compensate the developer for services that include designing, constructing, and financing the infrastructure asset associated with the project, with ownership of the underlying asset transferring to the Authority by the end of the contract. As a result, the APA arrangement of the project will be reported as a financed purchase by the government of the underlying nonfinancial asset, when certain milestone payments for design and construction are made, which are scheduled to begin in 2024.

Net Position and Fund Balances

Net position represents the difference between (a) assets and deferred outflows of resources and (b) liabilities and deferred inflows of resources in the Authority's financial statements. Net investment in capital assets consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of any long-term debt attributable to the acquisition, construction, or improvement of those assets. Restricted net position consists of restricted assets reduced by liabilities related to those assets. Unrestricted net position is the net amount of assets and liabilities that are not included in the determination of net investment in capital assets or the restricted component of net position.

Fund balances are classified based on the spending constraints placed upon them. The following classifications describe the relative strength of the spending constraints:

- Nonspendable fund balance – amounts that are not in spendable form (such as prepaid amounts) or are required to be maintained intact.
- Restricted fund balance – amounts constrained to specific purposes by their providers (such as grantors, bondholders, and higher levels of government), through constitutional provisions, or by enabling legislation.
- Committed fund balance – amounts constrained to specific purposes by the Authority itself, using its highest level of decision-making authority (i.e. Diversion Authority Board). To be reported as committed, amounts cannot be used for any other purpose unless the Authority takes the same, or higher, level action to remove or change the constraint.
- Assigned fund balance – amounts the Authority intends to use for a specific purpose. Intent can be expressed by the Diversion Authority Board or by an official or body to which the Diversion Authority Board delegates the authority.
- Unassigned fund balance - amounts that are available for any purpose. Positive amounts are reported only in the general fund.

The Diversion Authority Board establishes (and modifies or rescinds) fund balance commitments by passage of a resolution. A resolution is the highest level of authority and requires another resolution to modify or rescind.

Assigned fund balance is established by the Diversion Authority Board through adoption or amendment of the budget as intended for specific purpose (such as the purchase of capital outlay, project construction, debt service, or other purposes).

The Authority's first priority is to utilize the restricted fund balance. Committed funds will be considered second with assigned fund balance third when expenditures are incurred for purposes for which amounts in any of those unrestricted fund balance classifications are eligible to be used.

Use of Estimates

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Note 3 - Equity in Investments

Authorized Investments

The Authority follows the City of Fargo's (the City) investment policy with respect to the management of cash and investments. As the Authority's cash and investments are held with the City as pooled funds, the disclosures within this report reflect the City's balances overall, which includes the Diversion Authority funds as a portion of them.

The City has an adopted investment policy, conforming to federal, state, and other legal requirements, including the City of Fargo Home Rule Charter, specifically Article 3.B – Powers of the City. This policy sets forth the City's investment objectives as well as authorized and suitable deposits and investments, and serves as a guide to proper diversification, maturity constraints, internal controls, and performance measurement. The foremost objective of the City's investment program as set forth by the investment policy is safety of principal. Investment decisions are made under the assumption that, except under limited circumstances, all investments within the pooled portfolios will be held to maturity.

Allowable deposits and investment include:

- Direct obligations of the United States of America
- Debt securities issued by government sponsored enterprises (GSE's), federal agencies, and federal financing banks
- Direct obligations of the state of North Dakota
- Commercial paper
- Bankers' acceptances
- Negotiable certificates of deposit
- Certificates of deposit and time deposits
- Obligations or notes issued by corporations organized and operating within the United States or by depository institutions licensed by the United States
- Investments in money-market funds rated "AAAm" by Standard & Poor's Corporation
- Repurchase agreements that are collateralized only by direct obligation of the U.S. government, GNMA, Fannie Mae, Freddie Mac, FFCB, and FHLB
- Asset-backed securities (ABS) rated a minimum of AA long-term or A-1 short-term, or its equivalent, from any nationally recognized statistical rating organization (NRSRO)

Deposits

In accordance with North Dakota Century Code, the City maintains deposits at those depository banks and brokerages authorized by the City Commission, all of which are covered by Federal Depository Insurance or Securities Investor Protection. Century Code requires that all City deposits be protected by insurance, collateral or surety bond. The market value of the collateral pledged must be equal to or greater than 110% of the deposits not covered by insurance or bonds. As of December 31, 2023, the carrying amount of the City's deposits was \$175,437,164 and the bank balance was \$191,179,624. The bank balance is covered by Federal Depository Insurance or Securities Investor Protection.

Custodial Credit Risk

Custodial credit risk is the risk that in the event of a bank failure, the government’s deposits may not be returned to it. Per the City’s investment policy, custodial credit risk will be minimized by using the following techniques; limiting investments to the safest type of securities, pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisors with which the City will do business; and diversifying the investment portfolio so that potential losses on individual securities will be minimized. As of December 31, 2023, the City’s deposits were either fully insured or properly collateralized, were held in the City’s name, and have no custodial credit risk.

Interest Rate Risk

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. The chart below summarizes the City’s investments using segmented time distribution. The City’s investment policy, limits investing funds primarily in short-term and intermediate-term liquid securities of high credit quality to ensure adequate liquidity and minimize the impact of changes in interest rates. Portfolios are structured so that securities mature concurrent with cash needs to meet anticipated demands.

Credit Risk

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. As outlined above, city policy limits the type of investments allowed to reduce the amount of credit risk to the portfolio. The chart below summarizes the credit quality of the City’s investment holdings for 2023.

Investment Type	Credit Rating	Fair Value	N/A	Investment Maturities			
				<1 year	1-5 years	5-10 years	>10 years
Corporate bonds	AAA	\$ 7,562,850	\$ -	\$ 3,773,430	\$ 3,789,420	\$ -	\$ -
Corporate bonds	AA2	1,018,675	-	-	1,018,675	-	-
Corporate bonds	AA3	2,136,032	-	624,173	1,511,859	-	-
Corporate bonds	A1	5,072,432	-	1,584,686	3,487,746	-	-
Corporate bonds	A2	3,602,562	-	1,350,121	2,252,441	-	-
Corporate bonds	A3	774,711	-	-	774,711	-	-
Money market funds	AAA	2,589,649	2,589,649	-	-	-	-
Money market funds	N/A	79,171,255	79,171,255	-	-	-	-
Municipal bond	AAA	1,475,837	-	427,737	1,048,100	-	-
Municipal bond	AA3	768,775	-	389,071	379,704	-	-
U.S. agencies	AAA	15,762,081	-	114,983	12,744,837	1,968,922	933,339
U.S. Treasury notes	AAA	57,072,425	-	11,731,291	45,341,134	-	-
Bond mutual funds	N/A	45,077,267	-	7,645,599	11,877,565	25,554,103	-
Equity mutual funds	N/A	82,982,003	82,982,003	-	-	-	-
Equity exchange traded funds	N/A	8,525,357	8,525,357	-	-	-	-
External investment pool*	N/A	43,024,223	43,024,223	-	-	-	-
Total		\$ 356,616,134	\$ 216,292,487	\$ 27,641,091	\$ 84,226,192	\$ 27,523,025	\$ 933,339

*The weighted average maturity of the portion of the external investment pool subject to maturity is 6.82 years

Concentration of Credit Risk

Concentration of credit risk is the risk of loss attributed to the magnitude of a government's investment in a single issuer. The City's investment policy diversifies the portfolios by limiting investments to avoid overconcentration in securities from a specific issuer or business sector (excluding U.S. Treasury securities). Investments in a single issuer shall not exceed 5 percent of the City's portfolio for any of the following types in total: commercial paper, corporate obligations or notes, bankers' acceptances, and negotiable CD's.

The City's investment policy also has limits on the following allowable deposits and investment; direct obligations of the State of North Dakota shall not exceed 5 percent of the City's portfolio, investments in money market funds rated "AAAm" by Standard & Poor's shall not exceed 25 percent of the City's portfolio, repurchase agreements shall not exceed 25 percent of the City's portfolio, and aggregate Asset-backed securities may not exceed 25 percent of the portfolio at the time of purchase. None of the established limits were exceeded as of December 31, 2023.

Fair Value

The framework for measuring fair value provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs. The three levels of the fair value hierarchy are described as follows:

Level 1 – Inputs to the valuation methodology are unadjusted quoted prices for identical assets in active markets that the City has the ability to access.

Level 2 – Inputs to the valuation methodology include:

1. Quoted prices for similar assets or liabilities in active markets;
2. Quoted prices for identical or similar assets or liabilities in active markets;
3. Inputs other than quoted prices that are observable for the asset or liability;
4. Inputs that are derived principally from or corroborated by observable market data by correlation or other means.

Level 3 – Inputs to the valuation methodology that are unobservable and significant to the fair value measurement.

The asset's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.

Metro Flood Diversion Authority
Notes to Financial Statements
December 31, 2023

The following table presents the City’s assets measure at fair value on a recurring basis, except those measured at cost as identified below, at December 31, 2023.

Investment Type	Total	Level 1	Level 2	Level 3
Pooled Investments				
U.S. government and agency securities	\$ 72,834,506	\$ 72,834,506	\$ -	\$ -
Money market mutual funds	81,760,904	81,760,904	-	-
Corporate bonds	20,167,262	-	20,167,262	-
Municipal bonds	2,244,612	-	2,244,612	-
Total	\$ 177,007,284	\$ 154,595,410	\$ 22,411,874	\$ -

U.S. Government and Agency securities, money market mutual funds, and certificates of deposit classified in Level 1 of the fair value hierarchy are valued using prices quoted in active markets for these securities. Corporate bonds, municipal bonds, corporate commercial paper, bond and equity mutual funds classified in Level 2 of the fair value hierarchy are valued using techniques such as quoted prices for similar investments in active and inactive markets as well as inputs other than quoted prices that are observable for these assets.

Note 4 - Long-Term Liabilities

Changes in long-term liabilities during the year ended December 31, 2023, are as follows:

	Beginning Balance	Additions	Deletions	Ending Balance	Due Within One Year
Notes Payable	\$ 1,272,652	\$ 8,316,726	\$ -	\$ 9,589,378	\$ -
Settlement Payable	40,000,000	-	-	40,000,000	-
	\$ 41,272,652	\$ 8,316,726	\$ -	\$ 49,589,378	\$ -

Note Payable

The following is a summary of notes payable as of December 31, 2023:

Note Description	Final Maturity	Interest Rate	Original Principal	Outstanding Balance
Clean Water State Revolving Fund Loan, Series 2022	2056	1.50%	\$ 9,589,378	\$ 9,589,378

During the year ended December 31, 2022, the Authority authorized the issuance of \$51,634,000 of Metro Flood Diversion Authority Clean Water State Revolving Fund Loan, Series 2022 to finance the payment of flood mitigation projects. \$9,589,378 of loan funds have been drawn down as of December 31, 2023. The note bears an interest rate of 1.50% and call for annual interest payments commencing September 2024 and annual principal payments commencing September 2027 through 2056.

Metro Flood Diversion Authority

Notes to Financial Statements

December 31, 2023

Remaining principal and interest payments on the note is as follows:

<u>Years Ending December 31,</u>	<u>Principal</u>	<u>Interest</u>
2024	\$ -	\$ 144,834
2025	-	144,834
2026	-	144,834
2027	393,931	144,834
2028	255,047	138,884
2029-2033	1,334,192	635,461
2034-2038	1,438,037	531,616
2039-2043	1,549,964	419,689
2044-2048	1,670,604	299,049
2049-2053	1,800,633	169,020
2054-2056	1,146,970	34,819
	<u>\$ 9,589,378</u>	<u>\$ 2,807,874</u>

Settlement payable

The Authority approved a Settlement Agreement on February 25, 2021, with the Richland-Wilkin Joint Powers Authority, Buffalo-Red River Watershed District, City of Wolverton, MN and the City of Comstock, MN. The express intent of the Parties per the Settlement Agreement is to acknowledge the Diversion Authority's need, ability, and authority to design, finance, develop, construct, operate, and maintain the Comprehensive Projects; to acknowledge and fairly protect and compensate the Non-Diversion Authority Parties and their constituencies and minimize, protect, and compensate upstream individuals, landowners, entities, and political subdivisions from the impacts of the Comprehensive Project; and, to ensure that the Non-Diversion Authority Parties do not engage in Interference Actions.

As approved in the Settlement Agreement, payments of Seventy-five Million Dollars (\$75,000,000) will be provided by the Authority to the Economic Impact Relief Fund held by the Richland County Auditor in its capacity as fiscal agent for the RWJPA, with an initial payment of Thirty-five Million Dollars (\$35,000,000) to be made not later than ten (10) days after the latter of the following events: (1) issuance of a permit by BRRWD for the Plan B project as provided for above, (2) entry of Judgement of Dismissal with Prejudice (or the reasonable equivalent thereof if such a judgement is not available in a Minnesota administrative matter) in the MN CCH and the issuance of the MDNR Permit, (3) entry of Judgment of Dismissal with Prejudice in the Federal Case, and (4) entry of judgement of dismissal with prejudice in the pending appeal to the Eight Circuit Court of Appeals. The initial payment has been made in 2021. The balance of Forty Million Dollars (\$40,000,000) will be paid as follows: (a) interest at the rate of two percent (2%) per annum shall accrue from December 31, 2020; (b) no actual payments shall be made until the first payment as set forth in subsection (c) is due, but in that interim between December 31, 2020, and the first payment date, interest does accrue at the 2% rate; and (c) thirty-three (33) equal annual payments sufficient to pay past accrued interest and all remaining principal and interest as it accrues shall be made with the first payment being made on the date of Substantial Completion of the Comprehensive Project or December 31, 2031, whichever event occurs first.

As of December 31, 2023, the Authority has accrued \$2,400,000 of interest payable on their settlement agreement and \$800,000 of interest was paid.

Metro Flood Diversion Authority

Notes to Financial Statements

December 31, 2023

Note 5 - Commitments

As of December 31, 2023, the Metro Flood Diversion Authority had commitments on various construction contracts totaling approximately \$1,185,149,884.

Note 6 - Affiliated Organizations

The Authority's affiliated organizations include its member entities: the City of Fargo, North Dakota; Cass County, North Dakota; Cass County Joint Water Resource District; the City of Moorhead, Minnesota; and Clay County, Minnesota.

Pursuant to a joint powers agreement, the City of Fargo serves as the fiscal agent for the Authority. The fiscal agent is responsible for the administration of financial and accounting functions for the Authority. Fees paid to the City of Fargo for these services totaled \$203,688 for the year ended December 31, 2023.

Pursuant to an interim memorandum of understanding that went into effect August of 2019, Cass County provides human resource services related to payroll and benefits to the Authority, for which no fees are charged. No amounts were recognized for these donated services in the financial statements.

The City of Fargo and Cass County both issued \$100 million loans to fund costs of the Metro Flood Diversion Authority. Pursuant to various agreements, the Authority is to reimburse these entities for the debt service expense of issuing this debt. Expense reimbursed to the City of Fargo for debt service expense totaled \$30,700 for the year ended December 31, 2023. Expense reimbursed to Cass County for debt service expense totaled \$864,000 for the year ended December 31, 2023.

The Authority, pursuant to a joint powers agreement, is to reimburse the City of Fargo for the debt service on \$83.887 million of Capital Financing Program bonds that were issued to finance the construction and installation of flood mitigation projects. Expense reimbursed to the City of Fargo for debt service expense totaled \$6,293,865 for the year ended December 31, 2023.

Metro Flood Diversion Authority

Notes to Financial Statements

December 31, 2023

Note 7 - Contingent Liabilities

The Diversion Project is the first project of the U.S. Army Corps of Engineers to use a public private partnership approach to project delivery. The Project's status carries with it all of the authority, immunities and limitations of liability associated with such federal authorization and implementation. There is a reasonable likelihood that the Authority will be named as a defendant in one or more claims or lawsuits related to the Project, its design, construction, financing, operations and/or maintenance.

Note 8 - Subsequent Events

On January 24, 2024, the Authority made a resolution consenting to the issuance of Cass County Joint Water Resource District, Temporary Refunding Improvement Bonds, Series 2024A in the amount of \$180,000,000. The bonds were issued on April 1, 2024.



Other Reports
December 31, 2023

Metro Flood Diversion Authority



**Independent Auditor’s Report on Internal Control over Financial Reporting and on
Compliance and Other Matters Based on an Audit of Financial Statements Performed in
Accordance with *Government Auditing Standards***

To the Board of Authority
of the Metro Flood Diversion Authority
Fargo, North Dakota

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, the financial statements of the governmental activities and the major fund of the Metro Flood Diversion Authority (“the Authority”), as of and for the year ended December 31, 2023, and the related notes to the financial statements, which collectively comprise the Authority’s basic financial statements and have issued our report thereon dated June 6, 2024.

Report on Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered the Authority's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority’s internal control. Accordingly, we do not express an opinion on the effectiveness of the Authority’s internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity’s financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that were not identified.

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Authority's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

The image shows a handwritten signature in cursive script that reads "Eide Bailly LLP".

Fargo, North Dakota
June 6, 2024