

# Board Agenda

## Special Diversion Board of Authority Meeting

February 6, 2025 @ 4:00 p.m. CST

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

1. Call to Order
  - a. Roll Call of Members
2. Approve Order of Agenda
3. Consideration of Consulting Agreement between Jodi Smith and the MFDA [Attachment 01.00] (Pg. 2)
4. Next Meeting: February 27, 2025
5. Adjournment

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### **MEDIA AND PUBLIC PARTICIPATION INFORMATION**

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

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

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**CONSULTING AGREEMENT**

**BY AND BETWEEN**

**METRO FLOOD DIVERSION AUTHORITY**  
**as Authority**

**AND**

**JODI SMITH**  
**as Consultant**

**Dated as of \_\_\_\_\_, 2025**

**Relating to:**

**An Agreement outlining the terms and conditions for Jodi Smith to provide services as a Consultant to the Metro Flood Diversion Authority.**

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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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## CONSULTING AGREEMENT

**THIS CONSULTING AGREEMENT** (the “Agreement”) is made on \_\_\_\_\_, 2025 (the “Effective Date”), by and between METRO FLOOD DIVERSION AUTHORITY (the “Authority”), a political subdivision of the State of North Dakota, and JODI SMITH, an individual (the “Consultant”).

**WHEREAS**, Consultant was previously employed by the Authority as the Director of Lands and Compliance; and

**WHEREAS**, Consultant has been appointed by the State of North Dakota to the position of interim Executive Director of the North Dakota Retirement and Investment Office (RIO); and

**WHEREAS**, the Authority desires to retain Consultant’s experience and specialized knowledge and expertise relating to property acquisition; and

**WHEREAS**, the Parties mutually desire to establish an on-going consulting relationship and set forth the terms and conditions by which that relationship shall be governed in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

### ARTICLE I. DEFINITIONS AND INTERPRETATION

**Section 1.01** DEFINITIONS. All capitalized terms not otherwise defined shall have the meaning given to them in this Section.

“**Agreement**” means this Consulting Agreement by and between the Authority and the Consultant.

“**Applicable Law**” means, collectively, the Constitutions of the United States and of the State of North Dakota, all common law and principles of equity, and all federal, State, and local laws including, without limitation, all environmental laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation, or administration thereof, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations, and permits of, and agreements with, any governmental authority, and, with respect to any person, the articles of incorporation, bylaws, or other organizational or governing documents of such person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to the Authority or the Consultant.

“**Authority**” means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota and a permanent, joint powers entity formed through the Joint Powers Agreement to provide the Fargo-Moorhead metropolitan area with permanent and comprehensive flood protection.

“**Business Day**” means a day in which normal business is conducted and excludes weekends and federal holidays.

“**Cass County**” means Cass County, North Dakota, a North Dakota Home Rule County and political subdivision of the State of North Dakota.

“**Cass County Commission**” means the governing body of Cass County.

“**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.

“**Cass County Members**” means the three (3) individuals appointed by the Cass County Commission to serve on the Diversion Authority Board.

“**Chair**” means the individual of the Diversion Authority Board who is selected pursuant to the Joint Powers Agreement to preside over meetings of the Diversion Authority Board.

“**City of Fargo**” means the City of Fargo, North Dakota, a North Dakota Home Rule City and political subdivision of the State of North Dakota.

“**City of Fargo Members**” means the three (3) individual members of the Fargo City Commission representing the City of Fargo on the Diversion Authority Board, consisting of two (2) individuals appointed by the Fargo City Commission and the Mayor of the City of Fargo.

“**City of Moorhead**” means the City of Moorhead, Minnesota, a Minnesota Home Rule City and political subdivision of the State of Minnesota.

“**City of Moorhead Members**” means the two (2) individual members of the Moorhead City Council representing the City of Moorhead on the Diversion Authority Board, consisting of one (1) individual appointed by the Moorhead City Council and the Mayor of the City of Moorhead.

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

“**Clay County Commission**” means the governing body of Clay County.

“**Clay County Members**” means the two (2) individual members of the Clay County Commission appointed by the Clay County Commission to serve on the Diversion Authority Board.

“**Co-Executive Director**” means the individual(s) selected pursuant to the Joint Powers Agreement who are designated to act as the Executive Director in the event a vacancy exists in the office of the Executive Director.

“**Commencement Date**” means February 1, 2025.

“**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 the Final Supplemental

Environmental Assessment #2, Fargo Moorhead Metropolitan Area Flood Risk Management Project, dated February 2019, and approved by the District Engineer, St. Paul District, on February 28, 2019.

“**Consultant**” means Jodi Smith, an individual.

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

“**Effective Date**” means February 1, 2025.

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

“**Fargo City Commission**” means the governing body of the City of Fargo.

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

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

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

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

“**MCCJPA**” means the Moorhead-Clay County Joint Powers Authority, the joint powers entity created to acquire land rights in Minnesota on behalf of the Authority for the Comprehensive Project.

“**Member Entity**” means the City of Moorhead, the City of Fargo, Clay County, Cass County, or the Cass County Joint Water Resource District, or their successors and assigns, as the context may require; references to “**Member Entities**” means the City of Moorhead, the City of Fargo, Clay County, Cass County, and the Cass County Joint Water Resource District, and their successors or assigns, collectively.

“**Minnesota Board Member**” includes the Clay County Members and the City of Moorhead Members.

“**Moorhead City Council**” means the governing body of the City of Moorhead.

“**Non-Federal Sponsors**” means the City of Fargo, the City of Moorhead, and the Authority.

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

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

“**Term**” means the term of this Agreement as defined by Section 5.01 hereof.

## **ARTICLE II. EMPLOYMENT**

**Section 2.01** INDEPENDENT CONTRACTOR. In providing the Services under this Agreement, Consultant is acting as an independent contractor and not as an employee. The Consultant and Authority acknowledge that this Agreement does not create a partnership or joint venture between them and is exclusively a contract for service.

**Section 2.01** DUTIES. During the Term of this Agreement, and subject to her availability, Consultant will perform a range of duties and tasks, including, but not limited to, the following:

- A. Assist with the ongoing negotiations relating to the Authority’s Member Entities, including Cass County Joint Water Resource District (CCJWRD) and the MCCJPA’s land acquisition programs relating to acquiring property rights necessary for the construction, operation, and maintenance of the Comprehensive Project;
- B. Provide reports and updates to the Executive Director regarding Consultant’s performance of the Duties performed in this Section;
- C. Coordinate with legal counsel for CCJWRD, the MCCJPA, and General Counsel for the Authority;
- D. Provide work on Environmental Monitoring Easement (EME) issues and forest mitigation;
- E. Assist the CCJWRD, the MCCJPA, and the Authority with property acquisition activities; and
- F. Assist with transition activities as needed.

Collectively, the duties described in this Section are referred to herein as the “Services” provided by the Consultant under this Agreement.

**Section 2.02** POLICY DECISIONS. All policy decisions regarding the Authority shall be made by the Diversion Authority Board, not by the Consultant.

**Section 2.03** TIME REQUIREMENTS. Consultant shall not be required to perform any specified number of hours of Services to the Authority. However, Consultant intends to work approximately 12 to 15 hours per week through July 31, 2025, and then will be available on an as-needed basis while the Comprehensive Project is under construction and until such time as it is declared substantially complete. Consultant shall devote such time as may be necessary to handle and complete those matters which she undertakes for the Authority or for which her Services are engaged by clients of the Authority, and otherwise discharge her duties as set forth in Article V of this Agreement.

**Section 2.04** SUPPORT. The Authority shall provide Consultant with a temporary workspace, equipment as provided in Section 3.01, administrative support, and other such facilities and services suitable to the position and the performance of Consultant’s duties. The assignment of personnel shall be at the discretion of the Authority, upon consultation with Consultant, based upon the availability, qualifications, abilities, and experience of other personnel.

**Section 2.05** CONFIDENTIALITY.

- A. Consultant agrees to continue to be bound by any prior obligations of confidentiality arising from Consultant's previous employment by the Authority, specifically including, but not limited to: Sections 110 ("Confidentiality and Non-Disclosure") and 513 ("Electronic Communication Devices & Services) of the Cass County Handbook, the Non-Disclosure Certificate signed by Consultant on June 26, 2022 (the "Non-Disclosure Certificate"), and the fiduciary duty provisions of N.D.C.C. § 34-02-14. Consultant reaffirms that she will: (a) protect the confidentiality of all Confidential Information, as defined below; (b) not disclose or communicate any Confidential Information to any third party or unauthorized party without the express prior written consent of an authorized officer of the Authority; and (c) not make use of Confidential Information on Consultant's own behalf or on behalf of or for the benefit of any third party or unauthorized party, in any manner or for any reason. As used in this Agreement, "*Confidential Information*" means the Authority's trade secrets; know-how; research and development; inventions; processes; formulae; technology; business operations methods and systems; compliance efforts; attorney-client privileged communications; attorney work product; attorney thoughts and impressions; settlement communications; information concerning finances, investments, profits, procurement, pricing, costs, settlements, claims, disputes, negotiations, products, services, vendors, suppliers, supply chain, customers, clients, partners, investors, personnel, compensation, recruiting, training, advertising, sales, marketing, distribution, promotions, government and regulatory activities and approvals; and any other non-public information regarding the Authority's current, planned, or prospective operations, whether or not expressly designated as "Confidential." This obligation shall specifically extend to, but is not limited to, the sharing of the Authority's attorney-client privileged information or other Confidential Information with any person or entity, including but not limited to the landowner defendants in eminent domain proceedings involving the Authority, the Authority's developer, Red River Valley Alliance (the "Developer"), the Developer's Design and Construct Contractor, ASN Constructors (the "D&C Contractor"), and any of their respective contractors, consultants, or counsel. The foregoing obligations of confidentiality shall not apply to any knowledge or information that is: (a) now or subsequently becomes generally publicly known for reasons other than a direct or indirect result of the breach of this Agreement by Consultant; or (b) required to be disclosed by legal process or the North Dakota Open Records Law, other than as a direct or indirect result of the breach of this Agreement by Consultant.
- B. Consultant acknowledges that her violation of this Section 2.05 and disclosure of Confidential Information will result in immediate and irreparable harm to the Authority. In any action the Authority brings to seek temporary, preliminary, or permanent injunctive relief arising from a violation of this Section 2.05 or Consultant's disclosure of Confidential Information, Consultant shall not oppose the Authority's requested relief on grounds that the requested injunction will not prevent the infliction of immediate and irreparable harm to the Authority.
- C. Pursuant to Section 7 of the Defend Trade Secrets Act of 2016 (which added 18 U.S.C. § 1833(b)), Consultant further acknowledges that she shall not have criminal or civil liability under any federal or state trade secret law for the disclosure of a trade secret that: (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and (ii) solely for the purpose of reporting or investigating a suspected



violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by Section 7 of that statute. Consultant hereby represents that she is not aware of any violation of law as outlined in this Section 2.05 herein.

**Section 2.06** NO CONFLICT WITH OTHER EMPLOYMENT. Consultant represents and warrants that at the time of execution of this Agreement, the terms of this Agreement are consistent with any other contractual or legal obligations Consultant may have and with the policies, laws, rules and, procedures of any institution or company with which Consultant is associated, including but not limited to the State of North Dakota. If Consultant should become aware of any conflict between her provision of Services and her position with the State of North Dakota or any other entity with which Consultant is associated, Consultant shall promptly, but in no event more than ten (10) Business Days after becoming aware of a conflict, notify the Authority in writing pursuant to Section 7.03 of this Agreement.

**Section 2.07** AUTHORITY'S COOPERATION. With respect to all Services provided by Consultant, as well as the Comprehensive Project, Authority shall conduct its operations in a prudent and reasonable fashion. Authority agrees to cooperate with Consultant and shall provide her with all information and resources needed for Consultant's Services under this Agreement.

### **ARTICLE III. COMPENSATION AND BENEFITS**

**Section 3.01** COMPENSATION. The Authority shall pay Consultant a flat monthly retainer of twelve thousand dollars (\$12,000) per month for Consultant's services for the months of February, 2025 through July, 2025. On August 1, 2025, and thereafter consultant will be paid the hourly rate of one hundred and thirty dollars (\$130.00) per hour on an as needed basis. Consultant will submit invoices to the Authority in accordance with Section 4.01. As additional reimbursement for costs incurred by Consultant, the Authority shall:

- A. Reimburse Consultant for all reasonable out-of-pocket expenses (including travel costs) incurred or advanced by Consultant in connection with the Services, including mileage at current IRS rates; however, any travel outside of the State of North Dakota, Clay County or Wilkin County must be preapproved by the Executive Director;
- B. Provide, at no cost to Consultant, an Authority laptop, associated equipment, software, and support as more fully set forth in Section 2.04.

**Section 3.02** NO VACATION OR BENEFITS. Consultant shall not accrue nor be paid vacation, holiday, or sick time during the term of this Agreement. Consultant shall not be entitled to any benefits, including health insurance, retirement, North Dakota Public Employees Retirement System, or any other benefits accruing to Authority employees.

**Section 3.03** COOPERATION WITH THIRD PARTIES.

- A. Consultant agrees to cooperate with the Authority with respect to any matters reasonably requested by the Authority, including, but not limited to, any claims or lawsuits brought or threatened to be brought against the Authority, CCJWRD and MCCJPA, which relate to or involve Consultant's employment with the Authority or any decisions or actions of the

Authority in which Consultant was involved or of which she had knowledge while she was an employee of the Authority (the “Covered Subjects”). As part of the agreement to cooperate, Consultant agrees to be available upon reasonable notice at mutually agreeable times to consult with the Authority. After August 1, 2025, the Authority will reimburse Consultant at an hourly rate of one hundred thirty dollars (\$130.00) for all time reasonably incurred, as well as the reasonable and customary expenses that are incurred, while cooperating with the Authority pursuant to this Section 3.03, in accordance with the Authority’s regular expense-reimbursement practices. Nothing in this provision shall be construed as a waiver of the Authority’s confidentiality or attorney-client privileges.

- B. To the extent Consultant receives any request for information from a third party regarding the Covered Subjects (“Request”), Consultant will promptly bring the Request to the attention of the Authority before responding. The Authority and its counsel will then advise Consultant, and work with her, to assess whether information sought by the Request is confidential, privileged, or otherwise not subject to disclosure. Consultant will comply with the Authority’s direction regarding any response to the Request. To the extent the Authority requires Consultant to spend time assessing and responding to a Request on after August 1, 2025, the Authority agrees to pay Consultant for her time spent at the hourly rate of one hundred thirty dollars (\$130.00), in accordance with the Authority’s regular expense-reimbursement practices.

#### **ARTICLE IV. INVOICING**

##### **Section 4.01** INVOICING.

- A. Consultant shall deliver invoices to the Authority on the fifteenth day (15th) day of each month for all Services provided (fees and expenses). If expenses are included, copies of receipts must accompany the invoice on which the expenses appear. Consultant must review each invoice before it is sent to the Authority to determine its accuracy and to ensure the invoice complies with the requirements in this Agreement. Each invoice will be entered into the Aconex system and processed by the Authority for the following month.
- B. Consultant must submit each original invoice to:  
  
Metro Flood Diversion Authority  
c/o Jason Benson  
[BensonJ@Diversion.gov](mailto:BensonJ@Diversion.gov)  
  
and  
  
[APIInvoicesFMDiv@jacobs.com](mailto:APIInvoicesFMDiv@jacobs.com)
- C. Consultant invoices must be detailed and precise. Consultant invoices must clearly indicate fees and expenses for the current billing period month and include at least the following information:
  - i. Consultant’s name and address;
  - ii. Consultant’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. Total amount of fees and costs “billed to date,” including the preceding months; and
  - vii. Preferred remittance address, if different from the address on the invoice’s coversheet.
- D. After the Authority receives Consultant’s invoice, the Authority will either process the invoice for payment or give Consultant specific reasons, in writing within fifteen (15) business days, why part or all of the Authority’s payment is being withheld and what actions Consultant must take to receive the withheld amount.
- E. In the event of a disputed billing, only the disputed portion will be withheld from payment, and the Authority shall pay the undisputed portion within thirty (30) days of receipt of the invoice. 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 Consultant.
- F. Payment does not imply acceptance of Services or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, Consultant must credit any payment in error from any payment that is due or that may become due to Consultant under this Agreement.
- G. The Authority will be charged interest at the rate of one and three quarters percent (1 3/4%) per month, or that permitted by law if lesser, on all past-due amounts starting thirty (30) days after receipt of invoice. Payments will be first credited to interest and then to principal. Any unpaid interest will be added to the principal amount and will thereafter accumulate interest.
- H. If the Authority fails to make payment in full within thirty (30) days of the date due for any undisputed billing, Consultant may, after giving seven (7) days’ written notice to the Authority, suspend Services under this Agreement until paid in full, including interest. In the event of suspension of Services, Consultant will have no liability to the Authority for delays or damages caused by the Authority because of such suspension.

**Section 4.02 TAXES.** It is expressly understood and agreed that the Authority shall not withhold any of the following taxes or sums from compensation paid to Consultant: social security, local, state, or federal tax, unemployment compensation, workers’ compensation, insurance premium, profit-sharing, pension, or any other employee benefit for Consultant during the Term of this Agreement. Consultant is solely responsible for paying, and complying with reporting requirements for, all local, state, and federal taxes (including but not limited to income taxes and FICA taxes) related to payments made to Consultant under this Agreement.

## **ARTICLE V. TERM AND TERMINATION**

**Section 5.01 TERM.** The term of this Agreement shall commence on the Effective Date and shall continue until terminated by either Party pursuant to Section 5.02, or upon such time the Comprehensive Project is declared substantially complete by the Authority, whichever occurs first (the “Term”).

**Section 5.02** TERMINATION. This Agreement may be terminated at the discretion of either Party, with or without cause, if the terminating Party provides the other Party with at least thirty (30) days' advance written notice of the termination, in accordance with Section 7.03 of this Agreement. If this Agreement is terminated, Consultant shall be entitled to receive payment from the Authority of all sums that may thereafter become due for Services performed by Consultant during the term of this Agreement.

**ARTICLE VI.  
CONSULTANT'S INSURANCE**

**Section 6.01** INSURANCE. Consultant agrees to purchase and maintain throughout this Agreement such insurance coverage as is appropriate for the Services being provided under this Agreement:

A. The limits of liability for the insurance required by this Section will provide coverage for not less than the following amounts or greater where required by Applicable Law:

(1) Consultants General Liability:

(a) General Aggregate:	\$1,000,000
Property Damage:	\$350,000

(2) Automobile Liability will include coverage for any auto, including owned, non-owned, and hired:

(a) Bodily injury:	
i. Each person:	\$1,000,000
ii. Each accident:	\$350,000
(b) Property Damage:	
i. Each accident:	\$350,000

OR

(c) Combined Single	
i. Limit of:	\$1,000,000

(3) The following will be included as additional insured on all of Consultant's insurance policies required under this Agreement:

- (a) Cass County Joint Water Resource District;
- (b) Diversion Authority; and
- (c) State of North Dakota.

**ARTICLE VII.  
MISCELLANEOUS**

**Section 7.01** GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

**Section 7.02** NOTICE. All notices, requests, demands, or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties at the following addresses:

If to Authority:           Attn: Chair  
Metro Flood Diversion Authority  
4784 Amber Valley Parkway South, Suite 100  
Fargo, ND 58104

If to Consultant:        Jodi Smith  
2404 Langer Way  
Bismarck, ND 58504

Notice will be deemed to be properly delivered (a) immediately upon being served personally, (b) five days after being deposited with the postal service if served by registered mail, or (c) the following day after being deposited with an overnight courier.

**Section 7.03**    DEATH OR DISSOLUTION. In the event of Consultant’s death during the term of this Agreement, all sums that are then payable to Consultant or thereafter become payable to her for Services rendered prior to her death, shall be paid to Consultant’s personal representative in accordance with this Agreement as though Consultant were still alive.

**Section 7.04**    AMENDMENTS. Except as otherwise provided in this Agreement, any amendment or supplement to this Agreement shall be in writing and duly executed by both Parties.

**Section 7.05**    ASSIGNMENT. Neither Party may assign its rights, duties, or obligations under this Agreement to any person or entity, in whole or part, and any attempt to so shall be void and deemed a material breach of this Agreement.

**Section 7.06**    HEADINGS AND CAPTIONS. Headings and captions used in this Agreement are provided for convenience only and shall not be used to construe or interpret meaning or intent.

**Section 7.07**    MERGER. This Agreement supersedes all prior oral or written communications between the Parties.

**Section 7.08**    ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties with respect to the employment relationship between the Authority and the Consultant and replaces all prior agreements or understandings.

**Section 7.09**    PARTIAL INVALIDITY. It is expressly understood and agreed by the Parties that should any paragraph or any provision or portion of this Agreement be held invalid, illegal, or void, then and in such event, any paragraph, provision, or portion so held to be invalid, illegal, or void shall be deleted from this Agreement, and this Agreement shall be read as though such invalid, illegal, or void paragraph, provision, or portion was never included herein, and the remainder of such Agreement excluding such invalid, illegal, or void paragraph, provision, or portion shall nevertheless subsist and continue with force and effect.

**Section 7.10**    BINDING EFFECT. The terms and conditions of this Agreement are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective Parties.

**Section 7.11**    COUNTERPARTS. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**Section 7.12** ELECTRONIC SIGNATURES. The Parties agree that an electronic signature to this Agreement shall be as valid as an original signature of the Authority and Consultant and shall be effective to bind the signatories to this agreement. For purposes hereof: (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means or an electronic acknowledgment which provides the signatory the ability to validate and affix a digital signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”), *DocuSign*, or other replicating image attached to an electronic mail or internet message.

**IN WITNESS WHEREOF**, the Authority and the Consultant caused this Agreement 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 Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

AUTHORITY:

**METRO FLOOD DIVERSION  
AUTHORITY**

By: \_\_\_\_\_  
TONY GRINDBERG, Chair

By: \_\_\_\_\_  
MICHAEL J. REDLINGER  
Co-Executive Director

By: \_\_\_\_\_  
ROBERT W. WILSON  
Co-Executive Director

ATTEST:

\_\_\_\_\_  
DAWN LINDBLUM, Secretary

APPROVED AS TO FORM AND CONTENT

\_\_\_\_\_  
JOHN T. SHOCKLEY, General Counsel

*Signature Page for Consultant*

CONSULTANT:

\_\_\_\_\_  
Jodi Smith

Dated: \_\_\_\_\_, 2025