



Diversion Board of Authority

AGENDA

3:30 P.M. - Thursday, February 25, 2021

Virtual Meeting Only

Permanent, Reliable Flood Protection

This meeting will be held online only.

1. Call to order
2. Approve minutes from previous meeting
 - a. Meeting Minutes from January 28, 2021
[Attachment 00.01] (Pg. 3)
 - b. Meeting Minutes from February 11, 2021
[Attachment 00.02] (Pg. 9)
3. Approve order of Agenda

CONSENT AGENDA – APPROVE THE FOLLOWING:

- c. Financial Report [Attachment 01.00] (Pg. 11)
- d. Voucher Approval [Attachment 02.00] Pg. 30)
- e. DA Board Approval MOU and Agreement Actions [Attachment 03.00] (Pg. 53)
 - i. Cass County MOU for SEAI
[Attachment 03.01] (Pg. 57)
 - ii. SECWRD MOU for SEAI
[Attachment 03.02] (Pg. 98)

REGULAR AGENDA:

4. Executive Director Report [Attachment 04.00] (Pg. 173)
5. General Counsel Update
 - a. Formal Settlement Agreement for Upstream JPA
[Attachment 05.00] (Pg. 176)
 - b. Resolution Confirming Committees
Attachment 06.00] (Pg. 238)
 - c. Resolution Appointing Vice Chair & Secretary of DA Board
[Attachment 07.00] (Pg. 241)
6. USACE Project Update
7. Public Outreach Update
 - a. Communications Director Update
[Attachment 08.00] (Pg. 244)
 - b. MFDA Org Chart
[Attachment 09.00] (Pg. 245)

8. Land Management Update
 - a. Property Acquisition Status Report
[Attachment 10.00] (Pg. 248)
9. Finance Update
 - a. Board Approval Contract Actions
[Attachment 11.00] (Pg. 258)
 - i. PR for Good, New Contract
[Attachment 11.01] (Pg. 265)
 - ii. Crown Appraisal, New MSA
[Attachment 11.02] (Pg. 290)
10. Other Business
 - a. Policy on the Disposition and Management of Comprehensive Project Lands
[Attachment 12.00] (Pg. 329)
11. Next Meeting: March 25, 2021
12. Adjournment

Meeting Documents are available at www.FMDiversion.gov

Media and Public Participation Information

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

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

**Metro Flood Diversion Authority
Board of Authority
Meeting Minutes
3:30 PM - January 28, 2021**



A virtual meeting of the Metro Flood Diversion Authority was held on January 28, 2021, at 3:30 PM with the following members present: Dr. Tim Mahoney, Mayor, City of Fargo; Bernie Dardis, Mayor, City of West Fargo; Chad Peterson, Cass County Commissioner; Chuck Hendrickson, Moorhead City Council Member; Dave Piepkorn, Fargo City Commissioner; Dave Ebinger, Clay County Commissioner; John Strand, Fargo City Commissioner; Kevin Campbell, Clay County Commissioner; Mary Scherling, Cass County Commissioner; Rick Steen, Cass County Commissioner; Rodger Olson, Cass County Joint Water Resource District and Shelly Carlson, Moorhead City Council Member.

Member absent: Johnathan Judd, Mayor, City of Moorhead.

1. CALL TO ORDER

Vice Chairman Peterson called the meeting to order at 3:30. Roll call was taken and a quorum was present.

Mr. Paulsen asked Mr. Shockley to provide an update on the recent appointment of Mayor Judd to judgeship and how this will affect his role with the MFDA. Mr. Shockley indicated that the Vice Chairman will chair the meetings until the City of Moorhead appoints a new mayor.

2. APPROVAL OF MINUTES

MOTION PASSED

Mr. Steen moved and Mayor Dardis seconded to approve the minutes from the December 2020 meeting as presented. Motion carried.

3. APPROVAL ORDER OF AGENDA

Mr. Paulsen asked that items 5b and 10a be removed from the agenda as they were tabled at the Finance Committee meeting.

MOTION PASSED

Mr. Steen moved to approve the order of the agenda as amended and Mr. Campbell seconded the motion to remove items 5b and 10a. Motion carried.

CONSENT AGENDA APPROVAL

MOTION PASSED

Mr. Strand moved to approve the consent agenda as presented and Mrs. Scherling seconded the motion. On a roll call vote, the motion carried.

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REGULAR AGENDA

4. EXECUTIVE DIRECTOR REPORT

Mr. Paulsen reported that he was in Bismarck in December to testify in support of the \$850 million from the State of North Dakota for the Project. He felt that it went well and was well received.

Mr. Paulsen also reported that the final RFP went out on January 15, 2021. Additionally, approval was received from the EPA for the WIFIA loan and the USACE work plan was also released and \$115 million was approved for the Project.

Mr. Piepkorn inquired as to when the funds would be available and Mr. Paulsen indicated that the actual date is March 26, at which time, it will be released.

5. GENERAL COUNSEL UPDATE

WIFIA Term Sheet

Mr. Shockley indicated that the OMB and EPA signed off on the WIFIA loan on January 15, 2021, and we are currently awaiting closing. It is anticipated that the final interest rate will be one basis point above the US Treasury rate which would equate to approximately 1.6-1.9% over the term of the loan. The loan is anticipated to be paid in full by 2062.

MOTION PASSED

Dr. Mahoney moved to approve the WIFIA term sheet as presented by Mr. Shockley and Mr. Steen seconded the motion. On a roll call vote, the motion carried.

6. USACE PROJECT UPDATE

Ms. Williams provided the following project update:

1 Diversion Inlet Structure Construction

Structure includes 3-50 ft. wide Tainter gates. Winter shutdown began on 18 December; work could resume mid-February. Construction is 46% complete with a required completion date of 7 June 2023. Anticipated remaining schedule:

2020: Foundations/site work, control structure, dam walls.

2021: Concrete piers/abutments, control building.

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

2023: Paint gates, seed.

2024: Turf established.

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2 Wild Rice River Structure Construction

Structure includes 2-40 ft. wide Tainter gates. Winter shutdown began on 18 December. Construction is 14% complete with a required completion date of 22 October 2023.

Anticipated schedule:

2020: Foundations/site work, control structure, approach walls, dam embankment.

2021: Dam walls, control building, dam embankment.

2022: Control building, dam embankment.

2023: Complete excavation, dam embankment, gate installation, seed.

2024: Turf established.

3 Red River Structure Design

Structure includes 3-50 ft. wide Tainter gates. The design of this critical-path feature remains on schedule. The 95% review is scheduled to begin late-April 2021. Final plans and specs are scheduled to be completed in late-August 2021.

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

This reach was advertised for bids on 15 January; bids are currently due 17 February.

Construction contract award is scheduled for 2nd quarter FY21.

5 Southern Embankment – Reach SE-1B Design. Detailed design began November 2020.

6 Southern Embankment – Reach SE-2A and 2B Design

The 65% design review by the DA is scheduled to begin early-February 2021. Final plans and specifications are scheduled for November 2021. Reach SE-2B design is scheduled to start in February 2021.

7 I-29 Raise Design

Being designed by Houston Moore Group (HMG) and constructed by the Corps. The Prequalification of Sources is complete and advertise for bids is currently on hold.

8 Drain 27 Wetland Mitigation Project Design

The 65% design review is complete and the 95% is scheduled to begin early-March 2021.

Award of a construction contract is scheduled for September 2021.

9 Drayton Dam Mitigation Project

The design has re-commenced with the goal of having final plans and specs in August 2021. This mitigation project includes replacing the existing dam to incorporate fish passage. An Environmental Assessment was completed in 2013.

7. PUBLIC OUTREACH UPDATE

Mr. Olson indicated that the Public Outreach meeting meet yesterday, and Ms. Darling gave an overview of the Communication Approach going forward. Following are the purpose, communication principles and stages:

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Purpose

As the Metro Flood Diversion Authority (MFDA) moves from preparation to construction, communication will drive each of the upcoming stages:

- **SUCCESS:** securing the crucial funding commitment from the ND Legislature, along with continued funding appropriations from the federal government and the State of Minnesota in order to keep all components of the project to stay on track
- **BUILD:** supporting the crucial interactions to enable the safe and rapid construction of MFDA – listening to and addressing the expectations of community and various stakeholders to enable performance within the project itself
- **DELIVER:** seamless transition from construction to long-term operation and maintenance of the project

Communication Principles

- **INTERACTIVE:** transparent base communications on what we learn from our conversations with leaders and the community while staying true to our commitment to safe and rapid delivery
- **STRATEGIC:** focus efforts on an efficient portfolio of channels and interventions that reinforce positive views of MFDA with key constituencies, as opposed to “communication for communication’s sake”
- **PROACTIVE:** be aware, responsive, and accurate in the communications we generate and in our engagement with community, political and media stakeholders

Stage 1: Success

Securing the funding package from the ND Legislature to deliver the lifesaving and economy-saving benefits of flood prevention to the region.

Stage 2: Build

Immediately following the conclusion of the legislative session, the communication focus will turn towards a very different range of activities - those required to enable and then support the safe construction of MFDA and to keep its stakeholder universes informed.

Strategically, the landscape changes considerably. North Dakota taxpayers will need to feel reassured about their tax spend. The MFDA construction effort will need to be connected with its internal audiences (contractors and staff in particular) and with its broader community of suppliers, neighbors, and civic and business leaders. Clay County and, to an extent, the Minnesota legislative and media world, needs to be connected to the conversation.

There also needs to be concern about the realities - and the optics - when the progress of the project may appear upsetting to some. Those that are unavoidable like evictions require context and a coherent, consistent approach. Those that are avoidable - like workplace safety incidents - require an unwavering commitment to avoid them.

Stage 3: Deliver

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Moving from construction to operation and maintenance requires yet another different approach - a sustainable approach for supporting a very focused multi-municipal entity over the course of its working life.

The number of people involved will be far smaller, the mechanics of its operation will be known and established, and its communication efforts will focus mainly on operations, according to its stakeholders the appropriate level of information for effective oversight and maintaining the confidence of the public in its function and safety.

The main focus of this stage will be to develop a long-term charter for a communication role or function, whether it is standalone or as part of another entity, and in ensuring that this role is adequately and sustainably staffed and serviced.

Ms. Darling also indicated that there will be upcoming educational sessions/updates of the P3 and the Project in general.

MOTION PASSED

Mr. Campbell moved to approve the Communication Approach as presented and Mr. Ebinger seconded the motion. On a roll call vote, the motion carried.

8. LAND MANAGEMENT UPDATE

Mrs. Scherling provided an update on the Land Management meeting and stated that things are tracking on time and on budget.

496 parcels have been acquired and there are ten currently in LRED.

The appraisal is underway on Drain 27 and the excess lands policy is anticipated to go before the Board in February.

Mr. Campbell commented that three more acquisitions have been approved on the Minnesota side and that discussions continue on the easements.

Mr. Olson commented that the CCJWRD continues to close on properties and that there are approximately 700 flowage easements that need to be acquired. A letter will be mailed to those that will be affected and negotiations will continue.

9. FINANCE UPDATE

Mayor Dardis provided an update from the Finance Committee meeting indicating that the \$872,509.45 Aconex MSA contract was approved. The following contracting actions were also approved:

- Contract Award for WP-50D.1 – Demo Package - Industrial Builders Inc. \$186,437.50
- Contract Award for WP-50D.2 – Demo Package - Industrial Builders Inc. \$289,655.00

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- TO 1, Amendment 17 – 2021 Services for Project Management, Public Involvement Assistance, Project Controls, and On-call Services. This reflects 2021 rates and extends PoP to December 31, 2021- HMG \$852,780
- New Services Agreement – Government Relations - GA Group, PC \$60,000
- New Services Agreement – 2021 Audit Services - Eide Bailly \$20,000

The Eide Bailly audit agreement was discussed and going forward, an RFP will be sent out prior to selecting an auditor.

Dr. Mahoney inquired if an RFP was done for the GA Group as their rate is double of what the city currently pays for the same services. Mayor Dardis and Mr. Paulsen both indicated that an RFP was not submitted but that they are retained on a fee for service basis and the contract can be terminated at any time.

MOTION PASSED

Mayor Dardis moved to approve the financial update as presented and discussed and Dr. Mahoney seconded the motion. On a roll call vote, the motion carried.

10. OTHER BUSINESS

There was no additional business to discuss. Mr. Steen moved to adjourn the meeting and Mr. Campbell seconded the motion. The meeting adjourned at 4:22 PM.

**Metro Flood Diversion Authority
Special Board of Authority Meeting Minutes
3:30 PM – February 11, 2021**



A special virtual meeting of the Metro Flood Diversion Authority Board of Authority was held on February 11, 2021. The following members were present: Shelly Carlson, Mayor, City of Moorhead; Dr. Tim Mahoney, Mayor, City of Fargo; Bernie Dardis, Mayor, City of West Fargo; Chad Peterson, Cass County Commissioner; Chuck Hendrickson, Moorhead City Council Member; Dave Piepkorn, Fargo City Commissioner; Dave Ebinger, Clay County Commissioner; John Strand, Fargo City Commissioner; Kevin Campbell, Clay County Commissioner; Mary Scherling, Cass County Commissioner; Rick Steen, Cass County Commissioner and Rodger Olson, Cass County Joint Water Resource District.

No members were absent.

1. CALL TO ORDER

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

2. APPROVE ORDER OF AGENDA

Mr. Paulsen asked that item 4a sub item ii, be removed from the agenda.

MOTION passed

Mr. Steen moved to approve the agenda as amended and Mr. Campbell seconded the motion. On a roll call vote, the motion carried.

3. GENERAL COUNSEL UPDATE

Mr. Shockley provided an overview of the contracting resolution that would increase the executive director's signature approval from \$150,000 to \$200,000. This will be revisited again when we are in construction phase and will likely restore to the original agreement. The executive director will continue to report approvals to the Finance Committee.

MOTION passed

Mayor Dardis moved to approve the contracting resolution and Mr. Ebinger seconded the motion. On a roll call vote, the motion carried.

4. FINANCE UPDATE

Mayor Dardis reported that there were five executive director approved actions and that there were no CCJWRD or MCCJPA contracting items to review. The contracting resolution passed and items iii and iv passed as well. There was considerable discussion on items i and ii due to lack of information at the time. Since then, there has been additional communication.

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Mayor Dardis asked Mr. Paulsen to address item i, PR for Good.

MOTION passed

Mr. Strand moved to revisit the Communications Approach at the next Public Outreach and Finance Committee meetings and re-present the new service agreement to the Finance Committee for approval. Dr. Mahoney seconded the motion and on a roll call vote, the motion carried.

MOTION passed

Mayor Dardis moved to approve items iii and iv and Mr. Steen seconded the motion. On a roll call vote, the motion carried.

5. OTHER BUSINESS

Presentation by the GrandFarm

Mr. Greg Tehven gave an overview of the GrandFarm and indicated that they are interested in renting land from the DA (via Pifer's) at market rates. They currently only have 45 acres and need more to move forward with their plans. They are interested in the parcel that will not be utilized for construction in the Wild Rice area until 2022.

Lengthy conversation transpired with input from the majority of the members. Mr. Nicholson indicated that the parcel is in the footprint of a USACE construction contract and that Ames Construction and the Corps are in control of the parcel; the DA has no authority to do anything with the land without their concurrence until the project is over.

Mr. Dodds concurred with Mr. Nicholson and indicated that Ames takes care of the land via the USACE and to gain access to the parcel, GrandFarm would have to work directly with Ames and the Corps.

6. NEXT MEETING

The next meeting will be February 25, 2021.

7. ADJOURNMENT

Mr. Peterson made a motion to adjourn the meeting and Mr. Steen seconded the motion. The meeting adjourned at 4:29 pm.

FM Metropolitan Area Flood Risk Management Project
 Fiscal Accountability Report Design Phase (Fund 790)
 As of 01/31/21

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Cumulative Totals
Revenues												
City of Fargo	443,138	7,652,681	7,072,961	19,373,131	28,310,373	42,565,943	30,112,100	30,150,091	32,835,957	28,101,722	-	226,618,097
Cass County	443,138	7,652,681	7,072,961	19,373,131	28,310,373	115,636,848	13,925,658	14,305,401	15,637,755	14,357,120	-	236,715,066
State Water Commission	-	-	3,782,215	602,918	31,056,740	104,501,111	25,892,783	9,227,010	26,655,616	69,249,584	-	270,967,976
Other Agencies	98,475	1,700,595	1,571,769	4,305,140	6,291,194	(13,260,368)	-	-	-	-	-	706,805
City of Oxbow MOU Repayment	-	-	-	-	-	428,392	1,158,044	-	358,178	878,020	-	2,822,634
Reimbursements	-	-	-	-	-	33,880	44,719	27,396	22,600	40,007	-	168,602
Lease/Rental Payments	-	-	17,358	154,180	180,341	260,806	354,466	527,903	653,883	800,035	-	2,948,972
Asset Sales	-	-	-	616,774	315,892	175,190	114,479	-	-	13,234	-	1,235,569
Interest Income	-	-	-	-	-	-	505,157	1,246,875	1,885,896	1,152,843	50,577	4,841,349
Miscellaneous	-	-	226	626	427	-	2,600	356	-	-	-	4,235
Total Revenues	984,750	17,005,957	19,517,491	44,425,900	94,465,339	250,341,802	72,110,007	55,485,032	78,049,884	114,592,567	50,577	747,029,306
Expenditures												
7905 Army Corp Payments	-	-	875,000	1,050,000	2,725,000	47,279,000	1,230,000	-	-	-	-	53,159,000
7910 WIK - Administration	107,301	331,321	77,614	169,019	282,227	309,020	729,947	849,081	1,201,725	1,890,716	182,487	6,130,458
7915 WIK - Project Design	149,632	5,366,147	3,220,859	9,118,723	4,660,226	2,975,689	2,907,309	2,142,880	2,516,133	3,019,935	-	36,077,533
7920 WIK - Project Management	679,037	7,223,650	4,695,477	3,579,339	4,500,955	9,315,429	15,211,372	6,817,589	8,326,357	9,442,911	-	69,792,119
7925 WIK - Recreation	-	163,223	-	-	-	-	-	-	40,000	75,000	-	278,223
7930 LERRDS - North Dakota	48,664	3,843,620	2,763,404	17,013,358	55,948,209	52,472,770	38,286,144	8,114,895	30,223,861	57,552,196	301,300	266,568,421
7931 LERRDS - Minnesota	-	27,996	287,907	13,068	32,452	1,815,566	25,949	4,914	5,352	2,372,076	-	4,585,280
7940 WIK Mitigation - North Dakota	-	-	-	587,180	-	-	256,326	69,283	12,357	95,544	1,341	1,022,031
7941 WIK Mitigation - Minnesota	-	-	-	-	-	-	-	-	-	-	-	-
7950 Construction - North Dakota	-	-	-	1,738,638	19,269,055	43,084,726	5,267,083	4,384,090	18,183,794	9,612,051	-	101,539,437
7951 Construction - Minnesota	-	-	-	-	-	-	-	-	-	-	-	-
7952 Construction - O/H/B	-	-	-	11,282,504	5,044,001	791,619	10,907,637	4,111,617	369,936	1,087,027	-	33,594,342
7955 Construction Management	-	-	-	556,209	2,867,422	5,746,224	1,002,575	296,092	685,741	432,613	-	11,586,875
7980 Operations & Maintenance	-	-	-	-	-	6,403	28,538	41,493	35,328	8,824	-	120,586
7990 Project Financing	-	50,000	70,000	216,376	566,600	6,944,623	6,914,504	9,879,405	11,434,046	11,627,145	224,678	47,927,377
7995 Project Eligible - Off Formula Costs	-	-	-	-	-	-	-	-	-	-	-	-
7999 Non Federal Participating Costs	116	(0)	-	-	-	-	221,568	-	-	-	-	221,684
Total Expenditures	984,750	17,005,957	11,990,261	45,324,414	95,896,147	170,741,069	82,988,952	36,711,339	73,034,630	97,216,039	709,806	632,603,365

FM Metropolitan Area Flood Risk Management Project
Statement of Net Position
January 31, 2021

	Amount
Assets	
Cash	\$ 102,425,570
Receivables	
State Water Commission *	12,927,737
Prepaid Expense	95,934
Total assets	115,449,241
 Liabilities	
Vouchers payable	527,319
Retainage payable	485,030
Rent Deposit	10,950
Total liabilities	1,023,300
 NET POSITION	 \$ 114,425,942

* Receivable balance is as of 12/31/2020

FM Metropolitan Area Flood Risk Management Project
 FY 2019 Summary Cash Budget Report (In Thousands)
 As of 31 Jan 2021

	2021 Approved Budget	Current Month	Fiscal Year To Date	% Expended	Outstanding Encumbrances	Remaining Budget Balance
Revenue Sources						
City of Fargo	32,000	2,808	2,808			
Cass County	16,000	3,026	3,026			
State of ND - 50 % Match	109,900	10,126	10,126			
State of ND - 100% Match	-	2,802	2,802			
State of Minnesota	-	-	-			
Other Agencies	-	-	-			
City of Oxbow MOU Reimbursement	-	-	-			
Financing Proceeds	200	125	125			
Reimbursements	-	-	-			
Sales of Assets	-	-	-			
Property Income	1,100	87	87			
Miscellaneous	60,712	-	-			
Total Revenue Sources	219,912	18,974	18,974	-	-	200,939
Funds Appropriated						
Diversion Channel & Assoc. Infrastructure	52,010	625	625	1%	2,406	48,979
Southern Embankment & Assoc. Infrastructure	1,410	115	115	8%	371	924
Other Mitigation Projects	38,500	290	290	1%	3,301	34,909
In-Town Flood Protection	35,249	9	9	0%	170	35,070
Enabling Work / Other	62	-	0	0%	-	62
Land Acquisition & Mitigation	69,096	310	310	0%	41,773	27,012
Engineering & Design Fees	3,035	195	195	6%	4,006	(1,166)
Program Management	12,421	828	828	7%	64,394	(52,801)
Contingency	-	-	0	0%	-	-
Debt Service	8,000	91	91	1%	1,094	6,815
Maintenance	130	-	0	0%	-	130
Total Appropriations	219,912	2,463	2,463	1%	117,515	99,934

METRO FLOOD DIVERSION AUTHORITY							Sunday, February 14, 2021
Data Through Date:		Sunday January, 31 2021		Summary of Expenses			
EXP-2021-01							
Account_Number	Check Date	Check Number	Vendor_Name	Transaction Amount	Description	Project Number	Project_Description
790-7910-429.33-20	2/1/2021	JB01210015	CITY OF FARGO-AUDITORS OFFICE	\$5,378.31	CHARGE FOR COF TIME-01/21	V00102	General & Admin. WIK
Other Services / Accounting Services				\$5,378.31			
790-7910-429.33-25	1/7/2021	308827	OXBOW, CITY OF	\$1,145.00	TURMAN & LANG	V02407	OXBOW MOU-LEGAL SERVICES
	2/5/2021	841	P CARD BMO	\$137,266.00	OHNSTAD TWICHELL PC	V00102	General & Admin. WIK
Other Services / Legal Services				\$138,411.00			
790-7910-429.38-68	2/5/2021	841	P CARD BMO	\$3,000.00	FREDRIKSON AND BYRON P	V00102	General & Admin. WIK
Other Services / Lobbyist				\$3,000.00			
790-7910-429.43-50	12/8/2020	MZ20201301	CITY OF FARGO-AUDITORS OFFICE	\$177,108.48	ADJ PREPAID EXPENSE	V01401	8 Year Service Agreement
Repair and Maintenance / Maintenance Service Contracts				\$177,108.48			
790-7915-429.33-05	1/7/2021	308827	OXBOW, CITY OF	\$5,054.35	MOORE ENGINEERING, INC.	V02416	OXBOW MOU-MISC INFRA ENG
	1/7/2021	308827	OXBOW, CITY OF	\$3,005.45	MOORE ENGINEERING, INC	V02416	OXBOW MOU-MISC INFRA ENG
	1/7/2021	308727	AECOM TECHNICAL SERVICES, INC	\$6,675.50	CULTURAL RESOURCES INVEST	V01004	SEAI CULTURAL RES INVEST
	1/14/2021	308907	HOUSTON-MOORE GROUP LLC	\$10,757.00	DRAFT OPERATIONS PLAN	V01615	DRAFT OPERATIONS PLAN
	1/14/2021	308907	HOUSTON-MOORE GROUP LLC	\$13,989.75	PERMIT SUBMITTAL PREP	V01616	PERMIT SUBMITTAL PREP
	1/14/2021	308907	HOUSTON-MOORE GROUP LLC	\$62,009.81	I29 GRADE RAISE DESIGN	V01620	SEAI-I29 GRADE RAISE DSGN
	1/14/2021	308907	HOUSTON-MOORE GROUP LLC	\$9,140.88	TASK ORDER #22	V01622	MITIGATION SUPPORT SRVCS
	1/14/2021	308907	HOUSTON-MOORE GROUP LLC	\$2,882.75	HYDROLOGY MODELING	V01625	HYDROLOGY/HYDRAULIC MODEL
	1/14/2021	308907	HOUSTON-MOORE GROUP LLC	\$52,120.88	WORK IN KIND	V01626	WORK-IN-KIND (WIK)
	1/14/2021	308907	HOUSTON-MOORE GROUP LLC	\$2,351.50	PERMIT COMPLIANCE MONITOR	V01631	PERMIT COMPLIANCE MONITOR
Other Services / Engineering Services				\$167,987.87			
790-7920-429.33-05	1/14/2021	308907	HOUSTON-MOORE GROUP LLC	\$71,021.55	PROJECT MGMT	V01601	HMG - PROJECT MANAGEMENT
Other Services / Engineering Services				\$71,021.55			
790-7920-429.33-79	1/7/2021	308827	OXBOW, CITY OF	\$1,657.50	MOORE ENGINEERING, INC.	V02421	OXBOW MOU-MOORE PROJ MGMT
	1/7/2021	308827	OXBOW, CITY OF	\$1,072.50	MOORE ENGINEERING, INC.	V02421	OXBOW MOU-MOORE PROJ MGMT
	1/7/2021	308749	CH2M HILL ENGINEERS INC	\$411,584.18	PROGRAM MGMT & SERVICES	V00211	CH2M HILL-6/2019-12/2021
	1/7/2021	308749	CH2M HILL ENGINEERS INC	\$388,955.92	SUPPORT SERVICES	V00212	P3 PROCUREMENT SUPPORT
Other Services / Construction Management				\$803,270.10			
790-7930-429.33-05	1/7/2021	308781	HOUSTON-MOORE GROUP LLC	\$10,644.68	PROPERTY STRUCTURE MITIGA	V01630	PROPERTY STRUCTURE MITGTN
	1/14/2021	308907	HOUSTON-MOORE GROUP LLC	\$18,806.28	BOUNDARY SURVEYING	V01628	BOUNDARY SURVEYING SRVCS
	1/14/2021	308907	HOUSTON-MOORE GROUP LLC	\$26,778.68	PROPERTY STRUCTURE MITIGA	V01630	PROPERTY STRUCTURE MITGTN
	2/4/2021	309563	ADVANCED ENGINEERING INC	\$301,300.08	11/28-12/25 ENG SERVICES	V00302	PROGRAM MGMT SERVICES

METRO FLOOD DIVERSION AUTHORITY							Sunday, February 14, 2021
Data Through Date:		Sunday January, 31 2021		Summary of Expenses			
EXP-2021-01							
Account_Number	Check Date	Check Number	Vendor_Name	Transaction Amount	Description	Project Number	Project_Description
Other Services / Engineering Services				\$357,529.72			
790-7930-429.33-25	2/5/2021	841 P CARD BMO		\$782.20	OHNSTAD TWICHELL PC	V00103	General & Admin. LERRDS
Other Services / Legal Services				\$782.20			
790-7930-429.33-79	1/7/2021	308749 CH2M HILL ENGINEERS INC		\$5,414.86	PROPERTY ACQUISITION	V00210	CH2M HILL-LAND ACQUISITON
Other Services / Construction Management				\$5,414.86			
790-7930-429.71-30	2/8/2021	JB14200019	CITY OF FARGO-AUDITORS OFFICE	-\$19,000.00	5214 CLERK OF COURT REFND	V01701	ND LAND PURCH-OUT OF TOWN
	2/8/2021	JB14200019	CITY OF FARGO-AUDITORS OFFICE	-\$6,830.00	0566 CLERK OF COURT REFND	V01701	ND LAND PURCH-OUT OF TOWN
Land / Land Purchases				-\$25,830.00			
790-7930-429.73-20	1/7/2021	308840 SCHMIDT AND SONS CONSTRUCTION INC		\$39,200.00	PROPERTY STRUCTURE MITIGA	V03803	WP50C-STRUCTURE REMOVALS
Infrastructure / Site Improvements				\$39,200.00			
790-7940-429.33-06	1/28/2021	309182 BRAUN INTERTEC CORP		\$2,157.00	MATERIALS TESTING	V00402	TESTING - WP-43 & WP-28A
	1/28/2021	309182 BRAUN INTERTEC CORP		\$7,270.00	MATERIALS TESTING	V00402	TESTING - WP-43 & WP-28A
	2/4/2021	309583 BRAUN INTERTEC CORP		\$1,341.00	MATERIALS TESTING	V00402	TESTING - WP-43 & WP-28A
Other Services / Quality Control Testing				\$10,768.00			
790-7950-429.33-25	2/5/2021	841 P CARD BMO		\$1,116.00	OHNSTAD TWICHELL PC	V00102	General & Admin. WIK
Other Services / Legal Services				\$1,116.00			
790-7952-429.33-05	1/14/2021	308907 HOUSTON-MOORE GROUP LLC		\$16,514.56	SERVICES DURING CONST	V01623	CONSTRUCTN/BID SVCS WP43
Other Services / Engineering Services				\$16,514.56			
790-7952-429.73-52	1/14/2021	308910 INDUSTRIAL BUILDERS INC		\$81,890.00	OHB WETLAND MITIGATION	V06002	WP43G-OHB WETLAND MITIGTN
	1/21/2021	309076 KPH, INC		\$182,876.00	OXBOW/HICKSON/BAKKE LEVEE	V06601	OHB RING LEVEE WP-43D5
Infrastructure / Flood Control				\$264,766.00			
790-7955-429.33-05	1/14/2021	308907 HOUSTON-MOORE GROUP LLC		\$8,555.83	SERVICES DURING CONST	V02806	CONSTRUCTION SVCS WP42
Other Services / Engineering Services				\$8,555.83			
790-7990-429.33-05	1/14/2021	308907 HOUSTON-MOORE GROUP LLC		\$14,528.35	PROCUREMENT SUPPORT	V01621	P3 RFP PROCUREMENT SUPPRT
Other Services / Engineering Services				\$14,528.35			
790-7990-429.33-25	2/5/2021	841 P CARD BMO		\$38,309.50	OHNSTAD TWICHELL PC	V00102	General & Admin. WIK
	2/4/2021	309574 ASHURST LLP		\$78,090.30	DEC=LEGAL COUNSEL	V03001	P3 LEGAL COUNSEL-ASHURST
Other Services / Legal Services				\$116,399.80			

METRO FLOOD DIVERSION AUTHORITY							Sunday, February 14, 2021
Data Through Date:		Sunday January, 31 2021		Summary of Expenses			
EXP-2021-01							
Account_Number	Check Date	Check Number	Vendor_Name	Transaction Amount	Description	Project Number	Project_Description
790-7990-429.33-47	1/28/2021	309431	PROGRAM ADVISOR SERVICES, LLC	\$49,500.00	DEC PROGRAM CONSULTING	V05801	CONSULTING SERVICES
Other Services / Consulting Services				\$49,500.00			
790-7990-429.34-55	2/4/2021	309613	ERNST & YOUNG INFASTRUCTURE	\$82,374.10	NOV FINANCIAL ADVISORY	V03301	PPP FINANCL ADVISORY SVCS
	2/4/2021	309613	ERNST & YOUNG INFASTRUCTURE	\$64,213.80	DEC FINANCIAL ADVISORY	V03301	PPP FINANCL ADVISORY SVCS
Technical Services / Financial Advisor				\$146,587.90			
790-7990-520.80-20	1/28/2021	309202	CASS COUNTY FINANCE	\$56,081.11	DIVERSION INTEREST	V02906	\$100M 2017 CASS WF ADVANC
Debt Service / Interest on Bonds				\$56,081.11			
790-7990-520.80-30	1/28/2021	309462	S&P GLOBAL RATINGS	\$35,000.00	RATING EVALUATION SERVICE	V07001	WIFIA BOND RATING
Debt Service / Fiscal Agent Fees				\$35,000.00			
Total Amount Invoiced this period				\$2,463,091.64			
				<u>\$0.00</u>	Less Paid Retainage		
				\$2,463,091.64	Total Less Paid Retainage		

FM Metropolitan Area Flood Risk Management Project				
Cumulative Vendor Payments Since Inception				
As of January 31, 2021				
Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
CASS COUNTY JOINT WATER RESOUR	\$ 288,477,923.26	\$ 247,858,073.58	\$ 40,619,849.68	O/H/B Ring Levee, DPAC, Postage, Miscellaneous
CH2M HILL ENGINEERS INC	\$ 116,576,718.02	\$ 66,043,750.82	\$ 50,532,967.20	Project & Construction Management
HOUSTON-MOORE GROUP LLC	\$ 54,954,102.59	\$ 50,999,902.96	\$ 3,954,199.63	Engineering Services
ARMY CORP OF ENGINEERS	\$ 53,159,000.00	\$ 53,159,000.00	\$ -	Local Share
INDUSTRIAL BUILDERS INC	\$ 50,764,123.44	\$ 48,460,112.65	\$ 2,304,010.79	2nd St N Pump Station Project and 2nd St Floodwall, South of Pu
CITY OF FARGO	\$ 46,640,152.45	\$ 46,640,152.45	\$ -	Utility Relocation, Accounting Svcs, Interest on Deficit Funds
INDUSTRIAL CONTRACT SERVICES I	\$ 17,605,821.19	\$ 17,493,762.16	\$ 112,059.03	4th St Pump Station and 2nd Street Floodwall
ADVANCED ENGINEERING INC	\$ 16,110,194.11	\$ 3,096,850.41	\$ 13,013,343.70	Public Outreach
OXBOW, CITY OF	\$ 15,530,001.94	\$ 15,197,025.97	\$ 332,975.97	OXBOW MOU - LAND ADVANCE
MEYER CONTRACTING INC	\$ 12,097,879.84	\$ 12,097,879.84	\$ -	WP-43CD and Gatewell - PVD & Surcharge Installation
DORSEY & WHITNEY LLP	\$ 10,406,999.91	\$ 10,406,999.91	\$ -	Legal Services
CASS COUNTY FINANCE	\$ 8,874,062.42	\$ 8,790,251.00	\$ 83,811.42	Property Taxes and Bank Loan Advance DS Payments
ASHURST LLP	\$ 7,795,542.81	\$ 5,519,668.21	\$ 2,275,874.60	PPP Legal Counsel
OHNSTAD TWICHELL PC	\$ 5,606,148.11	\$ 5,606,148.11	\$ -	Legal Services
INFRASTRUCTURE	\$ 5,377,000.00	\$ 4,282,842.90	\$ 1,094,157.10	P3 Financial Advisory Services
CLAY COUNTY AUDITOR	\$ 2,895,055.18	\$ 2,362,544.88	\$ 532,510.30	Property Taxes - MN
MINNESOTA DNR	\$ 2,613,681.40	\$ 2,613,681.40	\$ -	EIS Scoping and Permit Application
CENTURYLINK	\$ 2,586,742.00	\$ 2,586,742.00	\$ -	Utility Relocation
OXBOW MOU LAND ADVANCE	\$ 2,383,317.16	\$ 2,383,317.16	\$ -	Land Purchase
LANDWEHR CONSTRUCTION INC	\$ 2,304,622.16	\$ 2,304,622.16	\$ -	In-Town and WP-43 Demolition Contracts
URS CORPORATION	\$ 1,805,670.90	\$ 1,805,670.90	\$ -	Cultural Resources Investigations
KENNELLY & OKEEFFE	\$ 1,729,110.56	\$ 1,729,110.56	\$ -	Home Buyouts
HOUGH INCORPORATED	\$ 1,639,524.33	\$ 1,639,524.33	\$ -	Construction WP-42F.2 and Oxbow River Intake & Pumping Syst
REINER CONTRACTING INC	\$ 1,599,646.21	\$ 1,599,646.21	\$ -	EI Zagal Flood Risk Management
CROWN APPRAISALS INC	\$ 1,181,500.00	\$ 532,500.00	\$ 649,000.00	Flowage Easements Valuation and Appraisal Services
CONSOLIDATED COMMUNICATIONS	\$ 1,063,096.11	\$ 1,063,096.11	\$ -	Utility Relocation
KPH, INC	\$ 1,038,423.86	\$ 864,278.00	\$ 174,145.86	WP-43D5 Construction
ORACLE AMERICA, INC	\$ 1,015,290.00	\$ 565,139.20	\$ 450,150.80	Electronic Data Mgmt and Record Storage System
TERRACON CONSULTING ENGINEERS	\$ 909,149.49	\$ 884,070.41	\$ 25,079.08	Materials Testing
SCHMIDT AND SONS CONSTRUCTION	\$ 867,196.86	\$ 580,631.86	\$ 286,565.00	Residential Demolition in Oxbow
RILEY BROTHERS CONSTRUCTION	\$ 807,871.82	\$ 807,871.82	\$ -	Construction - OHB Ring Levee & WP-28A
XCEL ENERGY	\$ 753,515.88	\$ 753,515.88	\$ -	Utility Relocation
MOORE ENGINEERING INC	\$ 662,468.17	\$ 662,468.17	\$ -	Engineering Services
PROGRAM ADVISOR SERVICES, LLC	\$ 650,000.00	\$ 535,777.97	\$ 114,222.03	Program Consulting Services
US BANK	\$ 626,849.03	\$ 626,849.03	\$ -	Loan Advance Debt Service Payments
DUCKS UNLIMITED	\$ 587,180.00	\$ 587,180.00	\$ -	Wetland Mitigation Credits
HOUSTON ENGINEERING INC	\$ 576,669.57	\$ 576,669.57	\$ -	Engineering Services
ERIK R JOHNSON & ASSOCIATES	\$ 563,902.03	\$ 563,902.03	\$ -	Legal Services

FM Metropolitan Area Flood Risk Management Project				
Cumulative Vendor Payments Since Inception				
As of January 31, 2021				
Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
BRAUN INTERTEC CORP	\$ 526,589.25	\$ 479,403.86	\$ 47,185.39	Materials Testing
RED RIVER BASIN COMMISSION	\$ 501,000.00	\$ 501,000.00	\$ -	Retention Projects - Engineering Services
HOFFMAN & MCNAMARA NURSERY&LAN	\$ 489,029.39	\$ 474,879.79	\$ 14,149.60	General Landscaping and Planting (WP-42G)
NORTHERN TITLE CO	\$ 484,016.00	\$ 484,016.00	\$ -	Land Purchases
AT & T	\$ 461,031.30	\$ 461,031.30	\$ -	Utility Relocation
NUSTAR PIPELINE OPERATING PTR,	\$ 459,693.17	\$ 442,844.05	\$ 16,849.12	Utility Relocation
BEAVER CREEK ARCHAEOLOGY	\$ 421,200.20	\$ 197,886.55	\$ 223,313.65	Engineering Services
CASS RURAL WATER USERS DIST	\$ 374,529.00	\$ 372,522.50	\$ 2,006.50	Utilities and Utility Relocation WP43CD
FARGO MOORHEAD METROPOLITAN	\$ 368,858.35	\$ 368,858.35	\$ -	Lidar Imaging
NDSU BUSINESS OFFICE	\$ 356,145.00	\$ 356,145.00	\$ -	Ag Risk Study Services
ACON RISK SERVICES CENTRAL, INC	\$ 330,000.00	\$ 219,163.50	\$ 110,836.50	Risk Advisory Services P3 Pre-Award
ACONEX (NORTH AMERICA) INC	\$ 306,856.00	\$ 306,856.00	\$ -	Electronic Data Mgmt and Record Storage System
AECOM TECHNICAL SERVICES, INC	\$ 304,626.00	\$ 129,630.60	\$ 174,995.40	Cultural Resources Investigations
702 COMMUNICATIONS	\$ 266,892.07	\$ 266,892.07	\$ -	Utility Relocation
SPRINT	\$ 256,409.37	\$ 256,409.37	\$ -	Fiber Optic Relocation for WP-43CD
WATTS AND ASSOCIATES, INC	\$ 250,000.00	\$ 101,316.88	\$ 148,683.12	Crop Insurance Product Development Services
FREDRIKSON & BYRON, PA	\$ 241,881.28	\$ 241,881.28	\$ -	Lobbying Services
BUFFALO-RED RIVER WATERSHED DI	\$ 221,568.00	\$ 221,568.00	\$ -	Retention Projects - Engineering Services
ROBERT TRENT JONES	\$ 200,000.00	\$ 200,000.00	\$ -	Oxbow MOU - Golf Course Consulting Agreement
CASS COUNTY ELECTRIC-4100 32 A	\$ 178,594.33	\$ 97,995.00	\$ 80,599.33	Electrical Services
SPRINGSTED INCORPORATED	\$ 178,010.15	\$ 178,010.15	\$ -	Financial Advisor
S & S LANDSCAPING CO INC	\$ 150,528.50	\$ 31,123.00	\$ 119,405.50	Seeding, Grading & Repairs WP-28A & WP-43A
PFM PUBLIC FINANCIAL MANAGEMEN	\$ 146,460.00	\$ 146,460.00	\$ -	Financial Advisor
GRAY PANNELL & WOODWARD LLP	\$ 143,800.68	\$ 143,800.68	\$ -	Legal Services
MOODYS INVESTORS SERV	\$ 127,500.00	\$ 127,500.00	\$ -	WIFIA loan fees
AT&T NETWORK OPERATIONS	\$ 125,238.30	\$ 125,238.30	\$ -	Utility Relocation
CENTURYLINK ASSET ACCOUNTING-B	\$ 118,871.82	\$ 118,871.82	\$ -	Utility Relocation
ENVENTIS	\$ 115,685.62	\$ 115,685.62	\$ -	Utility Relocation
UNITED STATES GEOLOGICAL SURVE	\$ 104,600.00	\$ 104,600.00	\$ -	Water Level Discharge Collection & Stage Gage Installation
US ENVIRONMENTAL PROTECTION AGENCY	\$ 100,000.00	\$ 100,000.00	\$ -	Permitting
EL ZAGAL TEMPLE HOLDING CO	\$ 76,000.00	\$ 76,000.00	\$ -	Easement Purchase for El Zagal Levee
HKA GLOBAL, INC	\$ 74,353.00	\$ 74,353.00	\$ -	Legal Services
EIDE BAILLY LLP (MANKATO)	\$ 63,650.00	\$ 43,650.00	\$ 20,000.00	Audit Services
GERSON LEHRMAN GROUP, INC.	\$ 60,819.00	\$ 60,819.00	\$ -	Legal Services
NIXON PEABODY LLC	\$ 60,000.00	\$ 60,000.00	\$ -	Legal Services
CPS HR CONSULTING	\$ 50,555.98	\$ 50,555.98	\$ -	Executive Director Recruitment Services
IN SITU ENGINEERING	\$ 47,973.00	\$ 47,973.00	\$ -	Quality Testing
US GEOLOGICAL SURVEY	\$ 46,920.00	\$ 46,920.00	\$ -	Stage Gage Installation
WARNER & CO	\$ 40,567.00	\$ 40,567.00	\$ -	General Liability Insurance
MIDCONTINENT COMMUNICATIONS	\$ 37,318.95	\$ 37,318.95	\$ -	Utility Relocation

FM Metropolitan Area Flood Risk Management Project				
Cumulative Vendor Payments Since Inception				
As of January 31, 2021				
Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
S&P GLOBAL RATINGS	\$ 35,000.00	\$ 35,000.00	\$ -	Financial Services
AMERICAN ENTERPRISES INC	\$ 34,000.00	\$ 34,000.00	\$ -	Construction/Demolition
GEOKON INC	\$ 33,815.36	\$ 33,815.36	\$ -	Vibrating Wire Piezometer Equipment
COLDWELL BANKER	\$ 33,066.02	\$ 33,066.02	\$ -	Property Management Services
ND WATER USERS ASSOCIATN	\$ 30,450.00	\$ 30,450.00	\$ -	Membership Dues
WESTERN AREA POWER ADMINISTRAT	\$ 30,000.00	\$ 30,000.00	\$ -	P3 Support Services
EXECUTIVE MANAGEMENT SYSTEMS,	\$ 27,627.33	\$ 27,627.33	\$ -	Executive Coaching
NAASTAD BROTHERS, INC	\$ 25,796.40	\$ 25,796.40	\$ -	Cass County Ditch Work
MARSH & MCLENNAN AGENCY LLC	\$ 19,344.52	\$ 19,344.52	\$ -	Property Insurance - Home Buyouts
XCEL ENERGY-FARGO	\$ 16,275.85	\$ 16,275.85	\$ -	Utility Relocation
PRIMORIS AEVENIA INC	\$ 16,230.00	\$ 16,230.00	\$ -	Utility Relocation
MOORHEAD, CITY OF	\$ 15,062.90	\$ 15,062.90	\$ -	ROE Legal Fees
MAP SERVICE CENTER	\$ 14,500.00	\$ 14,500.00	\$ -	Permit fee
BRIGGS & MORGAN PA	\$ 12,727.56	\$ 12,727.56	\$ -	Legal Services
PROSOURCE TECHNOLOGIES, INC	\$ 8,324.94	\$ 8,324.94	\$ -	Land Acquisition Services
NEWMAN SIGNS INC	\$ 5,816.00	\$ 5,816.00	\$ -	Propane Tank Vehicle Crash Protection
PLEASANT TOWNSHIP (PERMITS)	\$ 5,000.00	\$ 5,000.00	\$ -	Building Permit Application
HEARTLAND SEEDS, INC.	\$ 4,800.00	\$ 4,800.00	\$ -	Mowing Services
ONE	\$ 3,575.00	\$ 3,575.00	\$ -	Utility Relocation
ND WATER EDUCATION FOUNDATION	\$ 3,500.00	\$ 3,500.00	\$ -	Advertising
BUILDING & GROUNDS MANAGEMENT	\$ 3,422.50	\$ 3,422.50	\$ -	Mowing Services
MCKINZIE METRO APPRAISAL	\$ 3,200.00	\$ 3,200.00	\$ -	Appraisal Services
STUDIO 7 PRODUCTIONS	\$ 3,170.00	\$ 3,170.00	\$ -	Video Productions
BNSF RAILWAY COMPANY	\$ 2,925.00	\$ 2,925.00	\$ -	Permits for In-Town Levee Projects
SEIGEL COMMUNICATIONS SERVICE	\$ 2,345.00	\$ 2,345.00	\$ -	Public Outreach
TURF TAMERS	\$ 2,320.00	\$ -	\$ 2,320.00	Mowing Services
COUGAR TREE CARE INC	\$ 2,300.00	\$ 2,300.00	\$ -	Tree Removal
FORUM COMMUNICATIONS (LEGALS)	\$ 2,224.20	\$ 2,224.20	\$ -	Advertising Services
GLACIER ENTERPRISES	\$ 2,150.00	\$ 2,150.00	\$ -	CR-17 Ditch Spoil Grading
FORUM COMMUNICATIONS (ADVERT)	\$ 1,743.77	\$ 1,743.77	\$ -	Advertising Services
NORTH DAKOTA TELEPHONE CO	\$ 1,697.00	\$ 1,697.00	\$ -	Communication
CIVIL DESIGN INC	\$ 1,595.00	\$ 1,595.00	\$ -	Diversion technical assistance at Red River
ERBERT & GERBERTS SUBS	\$ 1,232.29	\$ 1,232.29	\$ -	Local Restaurant
HUBER, STEVE	\$ 1,056.43	\$ 1,056.43	\$ -	Home Buyouts
WARREN TOWNSHIP	\$ 1,023.72	\$ 1,023.72	\$ -	SEEDING, ROAD REPAIR, DUST CONTROL
DEPT OF NATURAL RESOUR	\$ 1,000.00	\$ 1,000.00	\$ -	DNR Dam Safety Permit Application Fee
FARGO-MOORHEAD SERTOMA CLUB	\$ 1,000.00	\$ 1,000.00	\$ -	Holiday Lights Display and Sponsorship
TRIO ENVIRONMENTAL CONSULTING	\$ 747.60	\$ 747.60	\$ -	Asbestos and LBP Testing - Home Buyouts
NDSU-DINING-STORE 685	\$ 701.75	\$ 701.75	\$ -	Meeting Incidentals
RED RIVER TITLE SERVICES INC	\$ 675.00	\$ 675.00	\$ -	Abstract Updates

FM Metropolitan Area Flood Risk Management Project				
Cumulative Vendor Payments Since Inception				
As of January 31, 2021				
Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
RED RIVER VALLEY COOPERATIVE A	\$ 536.96	\$ 536.96	\$ -	Electricity - Home Buyouts
FERRELLGAS	\$ 496.00	\$ 496.00	\$ -	Propane - Home Buyouts
BROKERAGE PRINTING	\$ 473.33	\$ 473.33	\$ -	Custom Printed Forms
KOCHMANN, CARTER	\$ 315.00	\$ 315.00	\$ -	Lawn Mowing Services
GALLAGHER BENEFIT SERVICES INC	\$ 250.00	\$ 250.00	\$ -	Job Description Review
DONS PLUMBING	\$ 240.00	\$ 240.00	\$ -	Winterize - Home Buyouts
HARWOOD TOWNSHIP, CASS, ND	\$ 208.91	\$ 208.91	\$ -	Township Meeting Expenses
WALMART STORE #4352	\$ 161.97	\$ 161.97	\$ -	Meeting Incidentals
GOVERNMENT FINANCE OFFICERS	\$ 150.00	\$ 150.00	\$ -	Financial Services
CURTS LOCK & KEY SERVICE INC	\$ 138.10	\$ 138.10	\$ -	Service Call - Home Buyouts
GOOGLE LOVEINTHEOVEN	\$ 116.00	\$ 116.00	\$ -	Meeting Incidentals
LANE, BARRET	\$ 108.77	\$ 108.77	\$ -	Travel expense Executive Director recruitment
FEDERAL EXPRESS CORPORATION	\$ 71.89	\$ 71.89	\$ -	Postage
Grand Total	\$ 750,118,631.59	\$ 632,603,365.29	\$ 117,515,266.30	

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of January 31, 2021

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
Commercial Relocations - Fargo						
Park East Apartments - 1 2nd St S	6/23/2015	9,240,246.10	-	708,126.94	-	9,948,373.04
Howard Johnson - 301 3rd Ave N	11/2/2015	3,266,079.60	-	3,752,607.61	(1,100.00)	7,017,587.21
Fargo Public School District - 419 3rd St N	3/16/2016	1,903,475.78	-	6,469,727.55	-	8,373,203.33
Mid America Steel - NP Ave, North	6/21/2016	437,371.41	-	5,370,000.00	-	5,807,371.41
Case Plaza - 117 NP Ave N	1/12/2017	250,449.12	-	-	-	250,449.12
Shakey's Pizza - DFI AP LLC - 203 4th Ave N	3/21/2017	1,002,367.69	-	-	-	1,002,367.69
Home Buyouts - Fargo						
1322 Elm St N	11/19/2014	347,270.27	-	47,168.14	-	394,438.41
1326 Elm St N	12/23/2014	230,196.41	-	8,001.02	-	238,197.43
1341 N Oak St	1/29/2015	309,888.24	-	78,889.24	-	388,777.48
1330 Elm St N	2/12/2015	229,982.44	-	62,362.63	-	292,345.07
18 North Terrace N	4/2/2015	129,698.25	-	44,688.72	-	174,386.97
1318 Elm St N	5/29/2015	229,012.67	-	55,452.01	-	284,464.68
724 North River Road	6/8/2015	194,457.83	-	35,615.30	-	230,073.13
1333 Oak Street N	6/24/2015	238,513.23	-	5,249.00	-	243,762.23
26 North Terrace N	9/11/2015	138,619.58	-	12,620.00	-	151,239.58
16 North Terrace N	9/24/2015	227,987.50	-	96,717.14	-	324,704.64
24 North Terrace N	11/25/2015	182,437.38	-	29,269.60	-	211,706.98
1314 Elm Street N	12/18/2015	225,800.09	-	42,025.00	-	267,825.09
12 North Terrace N	2/9/2016	10,191.00	-	-	-	10,191.00
1313 Elm Street N	1/23/2017	350,000.00	-	3,360.00	-	353,360.00
Home Buyouts - Moorhead						
387 170th Ave SW	11/1/2013	281,809.91	-	-	(8,440.00)	273,369.91
16678 3rd St S		214,000.00	-	84,060.80	-	298,060.80
Home Buyouts - Oxbow						
105 Oxbow Drive	11/28/2012	216,651.85	-	-	(181,249.54)	35,402.31
744 Riverbend Rd	12/3/2012	343,828.30	-	2,435.00	-	346,263.30
121 Oxbow Drive	7/31/2013	375,581.20	-	-	(186,918.33)	188,662.87
333 Schnell Drive	9/20/2013	104,087.79	-	-	-	104,087.79
346 Schnell Drive	2/13/2014	512,970.73	-	7,200.00	-	520,170.73
345 Schnell Drive	10/24/2014	478,702.98	-	6,869.44	-	485,572.42
336 Schnell Drive	1/29/2015	310,888.51	-	185,620.00	-	496,508.51
5059 Makenzie Circle	5/21/2015	2,698,226.97	-	10,549.70	-	2,708,776.67
357 Schnell Dr / 760 River Bend Rd	6/18/2015	466,720.80	-	176,524.79	-	643,245.59
349 Schnell Dr / 761 River Bend Rd	6/26/2015	306,725.20	-	309,992.53	-	616,717.73
748 Riverbend Rd / 755 River Bend Rd	9/1/2015	480,783.92	-	205,699.82	-	686,483.74
361 Schnell Dr / 764 River Bend Rd	9/2/2015	490,091.32	-	267,757.65	-	757,848.97
752 Riverbend Rd / 768 River Bend Rd	9/4/2015	469,078.13	-	507,103.56	-	976,181.69
353 Schnell Dr / 772 River Bend Rd	9/11/2015	494,342.87	-	312,212.95	-	806,555.82
SE 1/4-23-137-49 & NW 1/4 SW 1/4 24-137-49 - Heitman	9/30/2015	1,328,151.00	-	-	-	1,328,151.00
350 Schnell Dr / 769 River Bend Rd	12/15/2015	491,024.01	-	279,237.35	-	770,261.36
365 Schnell Drive	1/7/2016	125,077.88	-	-	-	125,077.88
852, 856, 860, & 864 Riverbend Rd	1/11/2016	1,222,608.19	-	10,891.60	-	1,233,499.79
334 Schnell Dr / 751 River Bend Rd	1/15/2016	321,089.77	-	284,349.88	-	605,439.65
749 Riverbend Rd / 433 Trent Jones Dr	2/1/2016	598,885.43	-	469,875.64	-	1,068,761.07
326 Schnell Drive	2/19/2016	326,842.17	-	225,073.09	-	551,915.26
309 Schnell Dr / 325 Trent Jones Dr	5/12/2016	539,895.97	-	574,412.28	-	1,114,308.25
810 Riverbend Rd / 787 River Bend Rd	6/6/2016	672,125.84	-	640,625.43	-	1,312,751.27
833 Riverbend Rd / 446 Trent Jones Dr	7/14/2016	801,671.69	-	590,292.66	-	1,391,964.35
328 Schnell Dr / 347 Trent Jones Dr	7/14/2016	320,803.64	-	329,117.70	-	649,921.34
839 Riverbend Road	7/20/2016	1,775,311.60	-	10,631.50	-	1,785,943.10
332 Schnell Dr / 335 Trent Jones Dr	8/2/2016	328,639.47	-	356,643.81	-	685,283.28
317 Schnell Dr / 409 Trent Jones Dr	9/7/2016	548,393.52	-	558,413.52	-	1,106,807.04
330 Schnell Drive	10/4/2016	328,134.82	-	125,072.50	-	453,207.32
329 Schnell Dr / 417 Trent Jones Dr	10/4/2016	549,277.00	-	499,811.00	-	1,049,088.00
321 Schnell Dr / 410 Trent Jones Dr	10/7/2016	471,534.69	-	514,952.53	-	986,487.22
813 Riverbend Rd / 449 Trent Jones Dr	10/14/2016	660,997.62	-	797,937.65	-	1,458,935.27
325 Schnell Drive / 426 Trent Jones Dr	11/3/2016	403,498.66	-	402,935.97	-	806,434.63
844 Riverbend Road	11/11/2016	716,599.40	-	15,118.84	-	731,718.24
828 Riverbend Rd	11/30/2016	955,928.53	-	-	-	955,928.53
341 Schnell Dr / 343 Trent Jones Dr	12/8/2016	480,921.52	-	673,954.16	-	1,154,875.68
840 Riverbend Rd / 442 Trent Jones Dr	12/21/2016	547,075.19	-	423,662.02	-	970,737.21
816 Riverbend Rd / 441 Trent Jones Dr	12/27/2016	567,413.07	-	338,694.70	-	906,107.77
821 Riverbend Rd / 438 Trent Jones Dr	1/13/2017	580,617.35	-	331,100.87	-	911,718.22
805 Riverbend Rd / 776 River Bend Rd	2/10/2017	508,203.01	-	395,757.84	-	903,960.85
808 Riverbend Road / 254 South Schnell Dr	2/24/2017	713,814.95	-	533,475.96	-	1,247,290.91
338 Schnell Dr / 775 River Bend Rd	2/28/2017	560,402.15	-	407,961.34	-	968,363.49
313 Schnell Drive/ 413 Trent Jones Dr	4/7/2017	389,370.50	-	357,043.95	-	746,414.45
809 Riverbend Rd	5/3/2017	112,304.99	-	-	-	112,304.99
337 Schnell Dr / 353 Trent Jones Dr	5/17/2017	456,146.62	-	524,447.89	-	980,594.51
829 Riverbend Rd / 788 River Bend Rd	7/7/2017	1,056,438.13	-	1,396,004.59	-	2,452,442.72
848 Riverbend Rd / 783 River Bend Rd	7/27/2017	781,361.81	-	1,410,330.68	-	2,191,692.49
817 Riverbend Road / 421 Trent Jones Dr	7/18/2017	445,728.05	-	465,264.50	-	910,992.55
843 Riverbend Rd / 445 Trent Jones Dr	9/21/2017	978,292.23	-	1,207,474.57	-	2,185,766.80
477 Oxbow Drive - OIN 9614 - Henry & Suzanne Mertz	10/27/2017	25,020.58	-	-	-	25,020.58
354 & 358 Schnell Drive	12/6/2018	199,512.06	-	-	-	199,512.06
872 Riverbend Rd	10/17/2018	14,329.43	-	-	-	14,329.43

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Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
869 Riverbend Rd	10/17/2018	13,029.43	-	-	-	13,029.43
873 Riverbend Rd	10/17/2018	13,029.43	-	-	-	13,029.43
Home Buyouts - Hickson						
17495 52nd St SE	4/28/2015	785,747.66	-	27,604.74	-	813,352.40
4985 and 4989 Klitzke Drive, Pleasant Twp	7/20/2016	245,926.71	-	92,817.44	-	338,744.15
Home Buyouts - Horace						
2914 124th Ave S	12/29/2016	50,981.00	-	-	-	50,981.00
17471 49th St SE - Campbell - OIN 9403	2/16/2017	883,581.00	-	155,896.55	-	1,039,477.55
17465 49th St SE - Campbell - OIN 9411	2/21/2017	828,561.00	-	190,389.56	-	1,018,950.56
17474 52nd St SE - Leher - OIN 1889/1990/2182	7/11/2017	909,905.00	-	29,301.96	-	939,206.96
17449 50th Street SE - Scott Young	9/1/2017	398,936.66	-	-	-	398,936.66
4848 CR 81 S, Horace, ND _ OIN 9405	9/15/2017	451,185.00	-	36,153.08	-	487,338.08
17568 Pfiffer Drive - OIN 9387	3/6/2018	505,925.70	-	3,590.00	-	509,515.70
15-0000-02690-010 & 15-0000-02690-020 - Cossette _ OIN 229 & 230	11/29/2017	2,433,020.59	-	-	-	2,433,020.59
5021 171st Ave. Southeast, Horace, ND _ OIN 1955	12/18/2017	248,677.89	-	-	-	248,677.89
17554 Pfiffer Drive _OIN 9382	1/14/2019	736,781.09	-	101,579.21	-	838,360.30
4961 KLITZKE DR & 4957 KLITZKE DR	12/26/2019	6,320.00	-	-	-	6,320.00
KLITZKE BROTHERS LOT 1A BLK 1	12/26/2019	520.00	-	-	-	520.00
Home Buyouts - Argusville						
2351 173rd Ave SE - Johnson - OIN 1222	2/6/2017	215,030.91	-	6,912.57	-	221,943.48
Easements - Fargo						
Part of Lot 5 El Zagal Park	10/9/2014	76,000.00	-	-	-	76,000.00
72 2nd St N - Bortnem	4/13/2016	37,020.00	-	-	-	37,020.00
Oak Terrace Condos - 2 N Terrace N	3/30/2016	5,588.00	-	-	-	5,588.00
Fercho Family Farms,	3/25/2015	50,000.00	-	-	-	50,000.00
Part of Lot 3 Block 4 R2 Urban Renewal Addition	3/15/2018	336,108.00	-	-	-	336,108.00
Easements - Hickson						
Hickson Village Lot 8 BLK 11	5/11/2016	500.00	-	-	-	500.00
Easements - Oxbow						
Oxbow Parcel 57-0000-10356-070 - Pearson	10/13/2014	55,500.00	-	-	-	55,500.00
Easements - Diversion Inlet Control Structure						
15-0000-02690-020 - Cossette	6/1/2016	-	-	-	-	-
64-0000-02730-000 - Sauvageau	6/1/2016	1,113,101.57	-	-	-	1,113,101.57
64-0000-027400-000 - Duboard	9/15/2016	177,399.29	-	-	-	177,399.29
64-0000-02700-010 - Rheault	1/31/2017	2,243.06	-	-	-	2,243.06
15-141-49 NW1/4 160.00 AC **12-31-98 COMB FRM 44-0000-00580-000 & 44-0000-00570-000 - Larson Trust (Nygren)	6/20/2017	32,340.00	-	-	-	32,340.00
Southwest corner of County Road 17 S and 112th Avenue S (condemnation) - SAUVAGEAU LIFE EST.	7/3/2019	1,189,220.00	-	-	-	1,189,220.00
16835 47 ST SE - Buster Farms LLLP		1,755.00	-	-	-	1,755.00
Terry and Kay Compson Trust	1/17/2020	1,204,858.00	-	-	-	1,204,858.00
Easements - Piezometer						
67-0000-12719-010 - Adams - OIN-1201	3/13/2017	1,500.00	-	-	-	1,500.00
Easements - Minesota						
Askegaard Hope Partnership	10/14/2016	1,542,370.79	-	-	-	1,542,370.79
Farmland Purchases						
SE 1/4 11-140-50 (Raymond Twp, ND) - Ueland	1/20/2014	959,840.00	-	-	-	959,840.00
2 Tracts in the E 1/2-2-137-49 - Sorby/Maier	1/24/2014	1,636,230.00	-	-	-	1,636,230.00
3 Tracts NW1/4 1-140-50, NW1/4 11-140-50, & S1/2 25-141-50 - Rust (OINs 0511,0512,0880,0897)	2/18/2014	3,458,980.70	-	-	-	3,458,980.70
11-140-50 NE1/4 (Raymond Twp) - Diekrager	4/15/2014	991,128.19	-	-	-	991,128.19
NW 1/4 36-141-50 - Monson	5/7/2014	943,560.05	-	-	-	943,560.05
W 1/2 SE 1/4 SW 1/4 & SW 1/4 SW 1/4 2-137-49 - Gordier	5/13/2014	321,386.00	-	-	-	321,386.00
SW 1/4-11-140-50 - Hogleund	7/21/2014	989,706.03	-	-	-	989,706.03
NW 1/4 14-140-50 - Hogleund	10/23/2014	948,782.22	-	-	-	948,782.22
SW 1/4 2-140-50 -Rust	10/29/2014	955,901.00	-	-	-	955,901.00
2-140-50 S 1/2 of NW 1/4 & Lot 4A - Pile	3/4/2015	594,108.00	-	-	-	594,108.00
Fercho Family Farms,	3/25/2015	464,600.00	-	-	-	464,600.00
W 1/2 NW 1/4 2-141-49 - Heiden	4/24/2015	433,409.00	-	-	-	433,409.00
(Raymond Twp) - Subdivision: Part of 23-140-50, 155.82 acres - Henke (Raymond Twp) - Subdivision: Part of Sec. 23., Less Gust Sub and Jason Sub	6/17/2015	857,144.00	-	-	-	857,144.00
T140N R50W - Henke	6/17/2015	339,071.00	-	-	-	339,071.00
15-141-49 NW1/4 160.00 AC **12-31-98 COMB FRM 44-0000-00580-000 & 44-0000-00570-000 - Larson Trust (Nygren)	6/20/2017	291,840.00	-	-	-	291,840.00
64-0000-02720-000 - Ulstad (Condemnation)	11/10/2016	1,221,931.50	-	-	-	1,221,931.50
Peter Biegler, Jr - OIN 9748	7/17/2017	250,185.00	-	3,175.00	-	253,360.00
19-141-49 NE 1/4 A 160.00 - Schoenberg Farms	7/18/2017	3,470,167.12	-	-	-	3,470,167.12
SHEY RIV - Chose	7/28/2017	60,128.07	-	-	-	60,128.07
W 1/2d 1/2 10-141-49 & NW 1/4 10-141-49 - Larson Family Farm Trust	8/1/2017	1,402,847.99	-	-	-	1,402,847.99
S1/2 W1/2 NW1/4 - Conyers	8/3/2017	33,150.00	-	-	-	33,150.00

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27th St SE, between 169th Ave SE and I-29 - Nelson	8/3/2017	1,024,189.50	-	-	-	1,024,189.50
Meridian, Cass County, ND - Heiden Family, LLLP	8/4/2017	1,326,882.11	-	-	-	1,326,882.11
2368 173rd Ave SE & Rural Land Part of SE1/4 35-142-49, Wiser, ND - Kevin & Pamela Heiden	8/4/2017	614,439.02	-	-	-	614,439.02
20-141-49 SW 1/4 A 160.00 - Lloyd & Alice Amundson	8/9/2017	123,563.38	-	-	-	123,563.38
5251 174 1/2 Ave SE, Pleasant Township, ND 58047	8/18/2017	254,354.28	-	-	-	254,354.28
35-142-49 SW 1/4 A 160.00 - Burley_OIN 1218	8/31/2017	167,091.47	-	-	-	167,091.47
S-1/2 of N1/2 of Section 36-142-49, Wayne & Gary Ohnstad_OIN 1223	12/13/2017	200,135.00	-	-	-	200,135.00
2-141-49 S 1/2 OF NE 1/4 & N 1/2 OF SE 1/4	12/20/2017	251,668.74	-	-	-	251,668.74
County Rd 32 between 167th Ave SE and 169th Ave SE, 25-141-50 NE 1/4	1/19/2018	831,853.08	-	-	-	831,853.08
County Rd 32 between 167th Ave SE and 169th Ave SE, 30-141-50 NW 1/4	3/23/2018	831,535.25	-	-	-	831,535.25
NE 1/4 Section 14 Township 140 North of Range 50 West of 5th Principle Meridian LESS the East 85 feet of said NE Quarter	2/22/2018	707,530.88	-	-	-	707,530.88
East Half (E1/2), Section 3 Township 141 North, Range 49 West	5/18/2017	733,126.76	-	-	-	733,126.76
NE Quarter of NE Quarter of Section 33 Township 138 North of Range 49	1/7/2019	587,650.00	-	-	-	587,650.00
Land Purchases						
Hayden Heights Land, West Fargo ND	10/12/2012	484,016.00	-	-	(730,148.14)	(246,132.14)
Lot 4, Block 4, ND R-2 Urban Renewal Addition, Fargo ND - Professional Associates	5/14/2015	39,900.00	-	-	-	39,900.00
BNSF Railway Company	10/28/2015	27,000.00	-	-	-	27,000.00
City of Fargo - OIN 2366 & OIN 2367	3/9/2017	1,022,533.30	-	-	-	1,022,533.30
Edwin and Margaret Ployhart OIN 8852	4/5/2017	5,121.18	-	-	-	5,121.18
Arthur Mathison RT OIN 1994	5/19/2017	750.00	-	-	-	750.00
Ideal Ag Corp OIN 9789 / 9790	5/25/2017	30,120.68	-	-	-	30,120.68
OIN 1195 / 1196 - Mark Thorson	9/15/2017	203,678.32	-	-	-	203,678.32
Block 1 W. Shorr Subdivision of Eagle Township (Lots 1,2,3,4,5,10,11,12,13,14,15,16)	2/28/2019	3,395,663.23	-	24582.11	-	3,420,245.34
NE Quarter of section 28 in Township 138 North of Range 49 West of the 5th Principle Meridian less the South 67 feet of the North 100 feet of the NE Quarter of section 28 Township 138 North of Range 49 West of 5th Principle Meridian, Auditors Lot 1 and East 33 feet	1/10/2019	2,158,545.00	-	-	-	2,158,545.00
Auditor's Lots 2, 3, 5 of the Southeast Quarter of Section 34, Township 138 North of Range 49 West	12/8/2018	724,254.52	-	-	-	724,254.52
The West One Half of the Southwest Quarter of the Southwest Quarter of Section Nine, Township 137, Range 49 West of the 5th Principle Meridian	1/8/2019	200,120.00	-	-	-	200,120.00
Southwest Quarter of Section 2 Township 141 North Range 49 West of the 5th Principle Meridian	2/13/2019	336,646.65	-	-	-	336,646.65
Southeast Quarter of Section 27, Township 140 North Range 50	2/25/2019	825,430.39	-	-	-	825,430.39
Railroad Outlot #3 situated in Sections 6 and 7, Township 139 North of Range 48 West of the 5th Principal Meridian	5/30/2019	8,072.00	-	-	-	8,072.00
Auditor's Lot No 2 of the Southwest Quarter of Section 34, Township 138, North of Range 49 West of the 5th Principle Meridian	7/3/2019	225,249.40	-	203,759.80	-	429,009.20
NE and SE quarter Section 9, Township 141 North, Range 49 West of the 5th Principal Meridian AND NE and NW Quarter section 16, Township 141 North, Range 49 West of the 5th Principle Meridian	8/1/2019	1,697,063.17	-	-	-	1,697,063.17
North Half of the NE Quarter section and the East Half of the NW Quarter of Section 2, Township 141 North of Range 49 West of the 5th Principle Meridian	8/1/2019	776,622.28	-	-	-	776,622.28
Auditors Lot 1 of the SW Quarter Section 34, in Township 138 North of Range 49 West of the Fifth Principal Meridian	6/13/2019	257,765.51	-	23,662.03	-	281,427.54
SW Quarter Section of Section 8, Township 141 North, Range 49 West of the 5th Principle Meridian	11/7/2017	11,007.68	-	-	-	11,007.68
Government Lots 3 & 4 of Section 30, Township 138 North, Range 49 West of the 5th Principle Meridian	11/7/2019	1,160,482.00	-	-	-	1,160,482.00
Northwest Quarter of Section 25, Township 141 North, Range 50 West of the 5th Principle Meridian	11/27/2019	830,527.20	-	-	-	830,527.20
SW Quarter of Section 36 in Township 141 North of Range 50 West of the 5th Principle Meridian	11/27/2019	975,840.92	-	-	-	975,840.92
Auditors Lot 4 of the SW Quarter Section 34, in Township 138 North of Range 49 West of the Fifth Principal Meridian	11/27/2019	323,535.78	-	188,055.00	-	511,590.78
East Half of the NE Quarter of Section 254, Township 138 North Range 50 West of the 5th Principle Meridian	11/27/2019	12,431.73	-	-	-	12,431.73
SE Quarter Section of the NW Quarter of section Twenty, Township 137 of Range 49 West of the Fifth Principle Meridian	11/7/2019	846,828.57	-	9,963.36	-	856,791.93
East Half of the NE Quarter of Section 25, Township 138 North Range 50 West of the 5th Principle Meridian	12/26/2019	305,654.24	-	-	-	305,654.24
Lot One, In Block One of Bellmore First Subdivision	12/26/2019	828,373.27	-	9,369.20	-	837,742.47
South Half of Section 24, Township 141 North of Range 50	12/26/2019	1,660,379.20	-	-	-	1,660,379.20
SW Quarter of Section 8, Township 141 North Range 49 West of the 5th Principal Meridian and West Half of Section 17, Township 141 North Range 49 West of the 5th Pricpal Meridian	12/26/2019	60,830.60	-	-	-	60,830.60
NE Quarter of Section 27, Township 140 North Range 50 West of 5th Principal Merridian	12/26/2019	964,789.51	-	-	-	964,789.51
Government lot 7 situated in the South Half of the South Half of Section 6, Township 137 North Range 48 West	12/26/2019	428,021.46	-	-	-	428,021.46
South 812 Feet of the North 932 feet of NE quarter section 24, Township 137 North of Range 49 West of the 5th Principle meridian and Right of way situated in North Half of section 24 Township 137 North of Ranger 29 west of the 5th Principle Meridian	12/26/2019	448,700.79	-	-	-	448,700.79

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North 120 feet and the North 598.14 feet of the South 868.14 feet of NE Quarter section 24, Township 137 North of Range 49 West of the 5th Principle Meridian and railroad Right of way N Half Section 24, Township 137 North Range 49 West lying southerly of the southerly line of Highway 81 and stio 100 feet wide lying east of, parallel and adjacent to Right of way extendint form the East-West centerline of said Section to a line therin distant 1800 feet less 200 foot wide right of way Norht half of section 24 Township 137 North of Range 49	12/26/2019	726,354.36	-	-	-	726,354.36
7-137-48 DESC TRACT A 1.60 COM AT A PT WHICH IS 1985' E OF THE SW COR OF SD SEC 7 & SD PT IS THE TR PT OF BEG OF TR HEREINAFTER DESC:: THENCE WITH A DEFLECTION TO THE LEFT OF 90 DEG FOR A DIST OF 456.4'; THENCE WITH A DEFLECTION TO THE RIGHT OF 73 D*		820.00	-	-	-	820.00
Government Lot 1, Section 18, Township 137 North, Range 49 West of the Fifth Principal Meridian	10/29/2019	278,164.68	-	44,217.38	-	322,382.06
The west half of the SW Quarter Section 4, in township 137, range 49 West of the fifth Principal Meridian AND the south half of SW quarter of section 27 in township 139 north of Range 49 west of the fifth Principle Meridian AND North Half of SW quarter of Section 27, township 138 range 49 west of the 5th Principle meridian SW Quarter of Section 34, Township 138 North of Range 49 West of the Fifth Principle Meridian	4/1/2020	2,640,140.00	-	-	-	2,640,140.00
South Half of SE quarter of Section 3 in township 137 north of Range 49 West of the fifth Principle Meridian	4/1/2020	1,241,289.53	-	-	-	1,241,289.53
Lot 1 Block 1 Schmitz and Brennan Subdivision (NW quarter of Section 10, Township 139 Range 50 West of the fifth Principle Meridian)	4/1/2020	472,135.00	-	-	-	472,135.00
East 100 acres of the west 202 acres in the north half of section 34, township 140 north of range 50 west of the fifth Principle Meridian	4/1/2020	413,907.88	-	-	-	413,907.88
Tract in NE quarter section 32, township 138 north, Range 49, West of the fifth Principle Meridian	4/1/2020	505,635.00	-	-	-	505,635.00
ROW: south half of NW quarter and the N half of the SW quarter of section 24 township 138 north, Range 50 west of the fifth Principle Meridian	4/30/2020	697,800.00	-	-	-	697,800.00
ROW: NW quarter of the NW quarter and the north half of the SQ quarter of the NW quarter and Governments lots 1 & 2 section 36 Township 142 North Range 49 West	4/30/2020	1,335,336.14	-	-	-	1,335,336.14
SW quarter and the South half of the south half of the NW quarter of section 5 in township 138 north of Range 49 West of the Fifth Principle Meridian	4/30/2020	665,816.00	-	-	-	665,816.00
North half of the SE quarter of section 3, Township 137 North, Range 49 West of the Fifth Principle Meridian	4/30/2020	1,250.00	-	-	-	1,250.00
Lot of Job Third Subdivision (A replat of Block 1, Job Second Subdivision of a part of the NE Quarter of Section 35, Township 137 North, Range 49 West	4/30/2020	893,008.11	-	38,003.50	-	931,011.61
Part of Lot 62, 63 and part of Lot 64, Oxbow Country Club and Estates	4/30/2020	736,482.37	-	33,068.37	-	769,550.74
NE and NW Quarter of Section 10 Township 139 North Range 50 West of the fifth Principle Meridian	4/30/2020	1,500.00	-	-	-	1,500.00
NW Quarter of Section 6, Township 136 North Range 48 West of the 5th Principal Meridian and Government lot 3 Section 1 Township 136 North Range 49 West of the 5th Principal Meridian Wolverton Township, Wilkin County, MN	6/11/2020	251,453.93	-	275.00	-	251,728.93
Block Section 29 Township 138 Range 49 N 1/2 of SE 1/4	6/3/2020	1,057,568.00	-	-	-	1,057,568.00
Block Section 12 Township 138 Range 50 SE	6/3/2020	1,473,135.00	-	-	-	1,473,135.00
Lot 65, 67, 68, 69 Oxbow Country Club	6/3/2020	30,121.87	-	-	-	30,121.87
North Half of the NW quarter of Section 24 Township 139 North Range 50 West of the 5th Principal Meridian	6/3/2020	200,155.00	-	-	-	200,155.00
The North Half of the NW Quarter of Section 24, Township 139 North Range 50 West of the Fifth Principal Meridian	6/3/2020	438,770.56	-	-	-	438,770.56
SW Quarter of the NW Quarter of Section 8 Township 137 North Range 48 West (Clay County)	6/3/2020	419,921.87	-	12,384.46	-	432,306.33
SW Quarter of Section 30, Township 138 Norrrh, Range 39 West of the 5th Principal Meridian	7/9/2020	205,555.21	-	-	-	205,555.21
Government Lot 5 ins Section 6, Township 137 North Range 49 West of the 5th Principal Meridian	7/9/2020	8,857.19	-	-	-	8,857.19
Tract in NW Quarter Section 6 Township 137 N Range 49 W	7/9/2020	84,041.15	-	-	-	84,041.15
Part of the West Half Section 3 Township 141 North Range 49 West	7/9/2020	123,931.56	-	-	-	123,931.56
Part of the South 20 rods of the SE Quarter of section 36 Township 139 North Range 50 AND South Half of SE Quarter of section 36 Township 139 North Range 50 West of the 5th Princial Meridian	7/9/2020	746,981.16	-	-	-	746,981.16
North Half of the SE Quarter of Section 36 Township 139 North Range 50 West of the 5th Principal Meridian	7/9/2020	772,945.64	-	-	-	772,945.64
Part of the SW Quarter of Section 11, Township 139 North, Range 50 West of the 5th Principal Meridian	7/9/2020	88,569.56	-	-	-	88,569.56

**FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of January 31, 2021**

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
Auditires Lot 4 in the NE Quarter Section 25 Township 138 North, Range 50 AND West Half of the NE Quarter of SectioOn 25 Township 130 North Range 50 West of the 5th Principal Meridian	7/30/2020	98,690.18				98,690.18
Part of the SW Quarter Section 36 Township 142 North Range 49 West	7/30/2020	164,251.00				164,251.00
Part of the Southeast Quarter of Section 11, Township 137 North, Range 49 West of the 5th Principal Meridian	7/30/2020	(98,673.00)				(98,673.00)
Part of the SW Cornder Section 6 Township 137 Range 48 AND Part of Government Lot 7 Section 6 Township 137 Range 48 AND Part of Government lot 7 designated tract 5	7/30/2020	35,068.64				35,068.64
Lot 66 in Oxbow Country Club & Estate	7/30/2020	9,150.31				9,150.31
Part of the Nrth Half of Section 8, Township 137 AND South half of the NW Quarter of section 8 Range 48 West of the 5th Principal Meridian Clay County, MN	9/3/2020	434,661.00				434,661.00
Parts of Section 7 Township 137 North Range 48 West of the 5th Principal Meridian Clay County, MN	9/3/2020	512,497.35		40,000.00		552,497.35
Part of Section 17, Township 137 North, Range 48 West of the 5th Principal Meridian Clay County, MN	9/4/2020	334,837.87		27,214.23		362,052.10
Part of the East Half of the Northeast Quarter in Section 26, Township 137 North, Range 49 West of the Fifth Principal Meridian	9/3/2020	2,779.88				2,779.88
Auditors Lot 1 NW Section 31 Township 138 orth Range 48 West of the 5th Principal Meridian	9/3/2020	5,000.00				5,000.00
Part of lot 2 Block 2 of Siebels 2nd Subdivision in Section 30, Township 141 North Range 49 West of the 5th Principal meridian	9/3/2020	5,163.15				5,163.15
Tract of land situated in the NW Quarter Section 3 Township 137 North Range Forth fine West	9/3/2020	312,983.64		1,857.25		314,840.89
Part of North Half of the South half of Section 6 township 137 North Range 48 West AND Tract of land which is part of Government Lot 7 situated in the south half of the south half of Section 6 Township 137 North Range 48 West of the 5th Principal Meridian	9/3/2020	49,927.54				49,927.54
1.86-acre Rural Site, In N1/2 Sec 6, Pleasant Township	9/3/2020	17,065.18				17,065.18
North Half of Section 34 Township 140 North Range 50 West of the 5th Principal Meridian except west 202 acres of the north half	9/3/2020	642,028.70				642,028.70
Part of the South Half of the NE Quarter of Section 14 Township 139 North Range 50 West of the 5th Principal Meridian	9/3/2020	282,228.34				282,228.34
West 377 feet of the East 667 feet of the north 548 feet of the NW quarter of Section 4 Township 137 North Range 49 West of the 5th Principal Meridian	9/3/2020	279,475.51				279,475.51
Part of North Half of SE quarter Section 25, Township 138 North Range 50 West of the Fifth Principal Meridian	10/8/2020	517,000.00				517,000.00
Part of the SE Quarter Section 25, Township 138 North Range 50 West of the Fifth Principal Meridian with easement for use of private access road	10/8/2020	275,000.00				275,000.00
Lots 3, 4, 5 In Block 2 of Siebels Second Subdivision	10/8/2020	150,045.19				150,045.19
Part of NE Quarter of Secion 36, Township 141 North, Range 50 West of the 5th Principal Meridian AND Part of NE Quarte Section 10 Township 140 Norht Range 50 West of the 5th Principal Meridian	10/8/2020	299,525.83				299,525.83
All of McDougall First Subdivision, Cass County	10/8/2020	1,767,511.20				1,767,511.20
SW Quarter Section 14, Township 140 North, Range 50 West of the 5th Principal Meridian AND Part of the NW Quarter section 26, Township 140 North, Range 50 West of the 5th Principal Meridian AND SW Quarter of Section 26, Township 140 North, Range 50 West of the 5th Principal Meridian	10/8/2020	1,793,697.00				1,793,697.00
East side of Highway 81 Between 124th Ave S and 49th St SE Pleasant Township	10/8/2020	411,000.00				411,000.00
Part of NE Quarter Section 23, Township 137, North Rnge 49, West of the 5th Principal Meridian AND Part of the SE Quarter Section 23, Township 137, Range 49 West of the 5th Principal Meridian	10/8/2020	54,248.00				54,248.00
Auditors Lot 3 of the SE Quarter Section 30 Township 138N Range 49W	10/8/2020	1,100,000.00		252,035.00		1,352,035.00
Part of NE Quarter Section 26, Township 140, North Range 50 West of the 5th Princiapl Meridian	10/8/2020	38,637.20				38,637.20
Part of NW Quarter of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian AND Part of the NE quarter Section 15, Township 139, Range 50 West of the 5th Priciapal Meridian	10/8/2020	72,200.00				72,200.00
Lot 3 Block 1 of the Butch-R-Block Subdivision Cass County	10/8/2020	480,000.00				480,000.00
SE Quarter of Section 10 in Twonship 139 North of Range 50 West of Pricial Meridian AND Part of the SW quarter section 10, Township 139 North Range 50 West of the 5th Principal Meridian	10/8/2020	480,150.00				480,150.00
NE Quarter of the SE Quarter together with Part of the SE Quarter of the NE Quarter of Section 1, Township 137 North Range 49 West of the Fifth Principal Meridian	10/8/2020	25,000.00				25,000.00
Part of the Southwest Quarter (SW1/4) of Section 9, Township 139 North Range 50 West of the 5th Principal Meridian AND part of the Northeast Quarter (NE1/4) of Section 9, Township 139 North Range 50 West of the 5th Principal Meridian AND part of the Northeast Quarter (NW1/4) of Section 9, Township 139 North Range 50 West of the 5th Principal Meridian AND part of the Southeast Quarter (SE1/4) of Section 9, Township 139 North, Range 50 West of the 5th Principal Meridian	12/3/2020	688,000.00				688,000.00
Part of the Southeast Quarter (SE1/4) of Section 24, Township 138 North, Range 50 West of the 5th Principal Meridian	12/3/2020	34,800.00				34,800.00
Part of the West Half of the Northeast Quarter of Section Twenty-five, in Township One hundred Thirty-eight, of Range Fifty, lying West of the Sheyenne River	12/3/2020	750,000.00				750,000.00
Part Southeast Quarter (SE1/4) of Section 25, Township 138 North, Range 50 West of the 5th Principal Meridian	12/3/2020	232,000.00				232,000.00

**FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of January 31, 2021**

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
Part of the Southeast Quarter of the Northwest Quarter, that part of Government Lot 4 and that part of Government Lot 5, All in Section 6, Township 137 North, Range 49 West of the 5th Principal Meridian AND part of Government Lot 6 of Section 6, Township 137 North, Range 49 West of the 5th Principal Meridian AND part of the Southwest Quarter of the Southeast Quarter of Section 1, Township 137 North, Range 50 West of the 5th Principal Meridian AND part of the Southeast Quarter of the Southeast Quarter of Section 1, Township 137 North, Range 50 West of the 5th Principal Meridian AND part of Government Lot 7 of Section 6, Township 137 North, Range 49 West of the 5th Principal Meridian	12/3/2020	440,600.00				440,600.00
Part of West Half (W1/2) of Section 17, Township 141 North, Range 49 West of the 5th Principal Meridian	12/3/2020	6,830.00				6,830.00
That part of the Northeast Quarter (NE1/4) of Section 24, Township 139 North, Range 50 West of the 5th Principal Meridian	12/3/2020	508,600.00				508,600.00
That part of the Southeast Quarter (SE1/4) of Section 24, Township 139 North, Range 50 West of the 5th Principal Meridian AND That part of the Southwest Quarter of the Southeast Quarter (SW1/4SE1/4) of Section 24, Township 139 North, Range 50 West	12/3/2020	1,074,200.00				1,074,200.00
That part of the Northeast Quarter (NE1/4) of Section 25, Township 139 North, Range 50 West of the 5th Principal Meridian	12/3/2020	1,130,500.00				1,130,500.00
That part of the Southeast Quarter (SE1/4) of Section 25, Township 139 North, Range 50 West of the 5th Principal Meridian AND That part of the Southeast Quarter (SE1/4) of Section 25, Township 139 North, Range 50 West of the 5th Principal Meridian AND That part of the Southeast Quarter (SE1/4) of Section 25, Township 139 North, Range 50 West of the 5th Principal Meridian	12/3/2020	965,290.00				965,290.00
That part of the Northeast Quarter (NE1/4) of Section 36, Township 139 North, Range 50 West of the 5th Principal Meridian	12/3/2020	1,587,744.87				1,587,744.87
That part of the Southeast Quarter (SE1/4) of Section 10, Township 140 North, Range 50 West of the 5th Principal Meridian	12/3/2020	4,087.90				4,087.90
All of Government Lots 6 and 7, Section Six (6), Township One Hundred Thirtyseven (137) North, Range Forty-eight (48) West of the Fifth Principal Meridian	12/3/2020	231,500.00				231,500.00
Part of Lot 1, Block 1 of Gust Subdivision in Section 23, Township 140 North, Range 50 West of the 5th Principal Meridian	12/3/2020	134,500.00				134,500.00
That part of the Northeast Quarter (NE1/4) of Section 15, Township 139 North, Range 50 West of the 5th Principal Meridian	12/3/2020	1,504,810.00				1,504,810.00
That part of the South Half of the South Half (S½ S½) of Section 24, Township 138 North, Range 50 West of the 5th Principal Meridian AND That part of the South Half of the Northwest Quarter (S½ NW¼) of Section 25, Township 138 North, Range 50 West of the 5th Principal Meridian	12/3/2020	1,896,540.31				1,896,540.31
A tract of land which is part of Government Lot Seven (7) and which is situated in the South One-half (S½) of Section Six (6) in Township One Hundred Thirty-seven (137) North of Range Forty-eight (48) West of the Fifth Principal Meridian	12/3/2020	721,469.68				721,469.68
The East Half of Auditor's Lot Five, of the Southwest Quarter of Section 34, in Township 138 North, Range 49 West of the 5th Principal Meridian	12/31/2020	715,630.32				715,630.32
That part of the Southeast Quarter (SE¼) of Section 1, Township 138 North, Range 50 West of the 5th Principal Meridian AND That part South Half of the Southeast Quarter (S½SE¼) of Section 25, Township 138 North, Range 50 West of the 5th Principal Meridian	12/31/2020	509,950.00				509,950.00
That part of the North Half of the Southwest Quarter in Section 13, Township 137 North, Range 49 West of the 5th Principal Meridian AND That part of the Northeast Quarter of Section 14, Township 137 North, Range 49 West of the 5th Principal Meridian AND That part of the South Half of the Southeast Quarter of Section 14, Township 137 North, Range 49 West of the 5th Principal Meridian AND That part of the South Half of the Southeast Quarter of section 14, Township 137 North, Range 49 West of the 5th Principal Meridian AND That part of the North Half of the Southeast Quarter of Section 14, Township 137 North, Range 49 West of the 5th Principal Meridian AND That part of the North Half of the Southeast Quarter of Section 14, Township 137 North, Range 49 West of the 5th Principal Meridian AND That part of the Southwest Quarter in Section 13, Township 137 North, Range 49 West of the 5th Principal Meridian AND That part of the Southeast Quarter of Section 14, Township 137 North, Range 49 West of the 5th Principal Meridian	12/31/2020	37,038.00				37,038.00
Auditors Lot 1 NW section 31 Township 138 North Range 48 West of the 5th Principal Meridian	12/31/2020	312,334.18				312,334.18
That part of the Northeast Quarter of the Southeast Quarter of Section 1, Township 137 North, Range 50 West of the 5th Principal Meridian	12/31/2020	322,466.00				322,466.00
That part of the Northeast Quarter of Section 12, Township 137 North, Range 50 West of the 5th Principal Meridian	12/31/2020	56,040.74				56,040.74
That part of the Southwest Quarter of Section 12, Township 137 North, Range 50 West of the 5th Principal Meridian	12/31/2020	42,500.00				42,500.00
That part of the Southeast Quarter of the Southeast Quarter of Section 11, Township 137 North, Range 50 West of the 5th Principal Meridian	12/31/2020	19,000.00				19,000.00
That part of the Southeast Quarter (SE1/4) of Section 36, Township 141 North, Range 50 West of the 5th Principal Meridian	12/31/2020	173,246.00				173,246.00
That part of the Northeast Quarter of the Northeast Quarter of Section 11, Township 137 North, Range 50 West of the 5th Principal Meridian	12/31/2020	18,500.00				18,500.00

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of January 31, 2021

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
That part of the Southeast Quarter of the Northeast Quarter of Section 11, Township 137 North, Range 50 West of the 5th Principal Meridian AND That part of the Northeast Quarter of the Southeast Quarter of Section 11, Township 137 North, Range 50 West of the 5th Principal Meridian AND That part of the North Half of the Northwest Quarter of Section 12, Township 137 North, Range 50 West of the 5th Principal Meridian AND That part of the South Half of the northwest Quarter of Section 12, Township 137 North, Range 50 West of the 5th Principal Meridian AND That part of the Southwest Quarter of Section 1, Township 137 North, Range 50 West of the 5th Principal Meridian	12/31/2020	164,500.00				164,500.00
The West 377 feet of the East 667 feet of the North 548 feet of the NW Quarter Section 4 in Township 137 North Range 49 West of the Fifth Principal Meridian	12/31/2020	-				-
That part of the Northeast Quarter of Section 11, Township 137 North, Range 49 West of the 5th Principal Meridian	12/31/2020	31,728.00				31,728.00
That part of the Southwest Quarter (SW1/4) of Section 14, Township 139 North, Range 50 West of Principal Meridian AND A 10-foot-wide temporary construction easement across the Southwest Quarter (SW1/4) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian	12/31/2020	24,709.98				24,709.98
That part of the Northeast Quarter (NE1/4) of Section 2, Township 140 North, Range 50 West of the 5th Principal Meridian AND Government Lot 3, Section 2, Township 140 North, Range 50 West	12/31/2020	490,628.00				490,628.00
That part of the Southeast Quarter (SE1/4) of Section 2, Township 140 North, Range 50 West of the 5th Principal Meridian	12/31/2020	389,702.00				389,702.00
That part of the North Half (N1/2) of Section 10, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County AND That part of the Northwest Quarter (NW1/4) of Section 10, Township 139 North, Range 50 West of the 5th Principal Meridian AND That part of the Northwest Quarter (NW1/4) of Section 10, Township 139 North, Range 50 West of the 5th Principal Meridian	12/31/2020	423,000.00				423,000.00
That part of the Northeast Quarter (NE1/4) of Section Thirteen (13), Township One Hundred Thirty-eight (138) North, Range Fifty (50) West of the Fifth Principal Meridian	12/31/2020	604,869.91		2,988.00		607,857.91
That part of the Southeast Quarter (SE1/4) of Section 34, Township 140 North, Range 50 West of the 5th Principal Meridian AND That part of the Southwest Quarter (SW1/4) of Section 34, Township 140 North, Range 50 West of the 5th Principal Meridian AND The Northwest Quarter (NW1/4) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian	12/31/2020	1,427,000.00				1,427,000.00
That part of the North Half (N1/2) of Section 3, Township 139 North, Range 50 West of the 5th Principal Meridian AND That part of the North Half (N1/2) of Section 3, Township 139 North, Range 50 West of the 5th Principal Meridian AND That part of the Northwest Quarter (NW1/4) of Section 3, Township 139 North, Range 50 West of the 5th Principal Meridian AND That part of the Northwest Quarter (NW1/4) of Section 3, Township 139 North, Range 50 West of the 5th Principal Meridian AND That part of the Southeast Quarter (SE1/4) of Section 3, Township 139 North, Range 50 West of the 5th Principal Meridian AND That part of the Southwest Quarter (SW1/4) of Section 3, Township 139 North, Range 50 West of the 5th Principal Meridian	12/31/2020	1,723,500.00				1,723,500.00
		<u>160,893,853.00</u>	-	<u>35,607,326.96</u>	<u>(1,107,856.01)</u>	<u>195,393,323.95</u>
			(32,000.00)		10,000.00	
				Property Management Expense		2,806,706.08
					Grand Total	<u>\$ 198,200,030.03</u>

**FM Metropolitan Area Flood Risk Management Project
In-Town Levee Work
as of January 31, 2021**

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	\$ 909,149.49	\$ 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	\$ 17,612,237.19	\$ 17,500,178.16
V02806	HMG	WP42 - Services During Construction	\$ 6,661,323.82	\$ 6,407,481.39
V02807	CCJWRD	In-Town Levee Work	\$ 5,886,140.36	\$ 5,886,140.36
V02808	City of Fargo	Relocation of fiber optic along 2nd Street North	\$ 397,906.52	\$ 397,906.52
V02809	AT & T	2nd Street Utility Relocation	\$ 586,269.60	\$ 586,269.60
V02811	Xcel Energy	2nd Street & 4th Street Utility Relocations	\$ 769,791.73	\$ 769,791.73
V02812	Industrial Builders	WP-42F.1S - 2nd Street North Floodwall, South of Pump Station	\$ 16,720,591.15	\$ 16,720,591.15
V02813	Landwehr Construction	Park East Apartments Demolition	\$ 1,169,651.74	\$ 1,169,651.74
V02814	Primoris Aevenia	2nd Street Utility Relocation	\$ 16,230.00	\$ 16,230.00
V02815	Centurylink Communications	2nd Street Utility Relocation	\$ 2,660,937.92	\$ 2,660,937.92
V02816	Landwehr Construction	WP-42C.1 - In-Town Levees 2nd Street/Downtown Area Demo	\$ 907,999.08	\$ 907,999.08
V02817	Reiner Contracting, Inc	WP-42H.2 - El Zagal Area Flood Risk Management	\$ 1,599,646.21	\$ 1,599,646.21
V02818	Industrial Builders	WP-42I.1 - Mickelson Levee Extension	\$ 738,880.50	\$ 738,880.50
V02819	Industrial Builders	WP42F.1N - 2nd Street North	\$ 13,362,906.82	\$ 13,362,906.82
V02820	CH2M Hill	WP42 - Construction Management Services	\$ 851,775.30	\$ 851,775.30
V02821	Hough Incorporated	WP42F.2 - 2nd Street South	\$ 1,639,524.33	\$ 1,639,524.33
V02822	City of Fargo	COF - 2016 O&M on Lifts	\$ 111,761.97	\$ 111,761.97
V02823	Hoffman & McNamara	WP-42G General Landscaping and Planting	\$ 489,029.39	\$ 474,879.79
V02824	City of Fargo	COF – In-Town Flood Protection Debt Payments	\$ 18,892,630.00	\$ 18,892,630.00
V01703	Various	In-Town Property Purchases	\$ 39,409,623.22	\$ 38,192,183.71
V02825	Industrial Builders	WP-42E - 2nd Street South and Main Avenue Flood Mitigation	\$ 8,653,821.07	\$ 8,610,308.72
V02826	City of Fargo	In-Town Levee Maintenance	\$ 8,823.82	\$ 8,823.82
V054XX	City of Fargo	In-Town Complementary Work - Reimbursements	\$ 22,187,307.87	\$ 22,187,307.87
			<u>\$ 172,386,181.36</u>	<u>\$ 170,720,099.36</u>

**Fargo-Moorhead Metropolitan Area Flood Risk Management Project
State Water Commission Funds Reimbursement Worksheet
Fargo Flood Control Project Costs - HB1020 & SB2020**

Time Period for This Request: December 1, 2020 - December 31, 2020

Drawdown Request No: 112	
Requested Amount:	\$ 12,927,737.07
Total Funds Expended This Period:	23,053,860.04
Total Funds Requested at 100% Match	2,801,614.09
Remaining Funds Requested at 50% Match	20,252,245.95
SB 2020 Matching Requirements	50%
Total Funds Requested at 50% Match	10,126,122.98
Total Funds Requested:	12,927,737.07

STATE AID SUMMARY:

Summary of State Funds Appropriated		
Appropriations from 2009 Legislative Session	\$	45,000,000
Appropriations from 2011 Legislative Session		30,000,000
Appropriations from 2013 Legislative Session		100,000,000
Appropriations from 2015 Legislative Session		69,000,000
Appropriations from 2015 Legislative Session - Interior Flood Control		60,000,000
Appropriations from 2017 Legislative Session		66,500,000
Appropriations from 2019 Legislative Session		44,000,000
Anticipated appropriations to be deferred from 2019 Legislative Session	22,500,000	
Anticipated appropriations to be funded in 2021 Legislative Session	66,500,000	
Anticipated appropriations to be funded in 2023 Legislative Session	66,500,000	
Anticipated appropriations to be funded in 2025 Legislative Session	66,500,000	
Anticipated appropriations to be funded in 2027 Legislative Session	66,500,000	
Anticipated appropriations to be funded in 2029 Legislative Session	47,000,000	
Total State Funds	335,500,000	414,500,000
Less: Payment #1 through #35 - City of Fargo		(55,510,209.00)
Less: Payment #1 - Cass County		(136,039.36)
Less: Payment #1 through #7 - Interior Flood Control		(60,000,000.00)
Less: Payment #1 through #28 - FM Diversion Authority		(38,049,107.00)
Less: Payment #29 through #100 - FM Metro Area Flood Risk Management Project		(124,750,848.66)
Less: Payment #101 - FM Metro Area Flood Risk Management Project		(1,432,479.03)
Less: Payment #102 - FM Metro Area Flood Risk Management Project		(5,519,481.17)
Less: Payment #103 - FM Metro Area Flood Risk Management Project		(228,188.72)
Less: Payment #104 - FM Metro Area Flood Risk Management Project		(1,650,055.35)
Less: Payment #105 - FM Metro Area Flood Risk Management Project		(15,060.94)
Less: Payment #106 - FM Metro Area Flood Risk Management Project		(1,159,089.95)
Less: Payment #107 - FM Metro Area Flood Risk Management Project		(544,675.95)
Less: Payment #108 - FM Metro Area Flood Risk Management Project		(824,088.63)
Less: Payment #109 - FM Metro Area Flood Risk Management Project		(36,169,631.64)
Less: Payment #110 - FM Metro Area Flood Risk Management Project		(8,334,015.02)
Less: Payment #111 - FM Metro Area Flood Risk Management Project		(1,070,511.23)
Less: Payment #112 - FM Metro Area Flood Risk Management Project		(12,927,737.07)
Total Funds Reimbursed		(348,321,218.72)
Total State Fund Balances Remaining		66,178,781.29

LOCAL MATCHING FUNDS SUMMARY:

Matching Funds Expended To Date - FM Metro Area Flood Risk Management Project	\$	100,752,730
Less: Match Used on Payment #1 through #35 - City of Fargo		(41,506,620)
Less: Match used on Payment #1 - Cass County		(136,039)
Less: Match Used on Payment #1-28 - FM Diversion Authority		(11,052,710)
Less: Match Used on Payment #29 - 100 - FM Metro Area Flood Risk Management Project		(37,286,002)
Less: Match Used on Payment #101 - FM Diversion Authority		(447,649)
Less: Match Used on Payment #102 - FM Diversion Authority		(1,479,398)
Less: Match Used on Payment #108 - FM Diversion Authority		(488,259)
Less: Match Used on Payment #110 - FM Diversion Authority		(5,554,438)
Less: Match Used on Payment #112 - FM Diversion Authority		(2,801,614)
Balance of Local Matching Funds Available	\$	0

Finance Committee Bills from February 2021

Vendor	Description		
Cass County Joint Water Resource District	Western Trust – OINs: 1116, 1166, 1168, 1171, 1175, 1177 & 1184	\$	7,449,518.06
City of Fargo	Reimburse complementary in-town flood projects	\$	2,867,165.68
Cass County Joint Water Resource District	Diversion bills	\$	2,706,491.94
Dorsey & Whitney	Legal services rendered through September 30, 2020	\$	340,435.48
Ohnstad Twichell, P.C.	Legal services rendered through January 21, 2021	\$	177,822.90
Dorsey & Whitney	Legal services rendered through December 31, 2020	\$	56,479.74
Cass County Hwy Dept	Asphalt patching - Approach at Diversion Inlet Structure	\$	11,610.12
Cass County	Reimburse misc expenses from Executive Director office	\$	8,070.79
Cass County	Reimburse misc expenses from Executive Director office	\$	2,557.79
Total Bills Received through February 16, 2021		\$	<u>13,620,152.50</u>

From: Lewis, Carol <LewisC@casscountynynd.gov>
Sent: Thursday, February 11, 2021 1:41 PM
To: Kent Costin <KCostin@FargoND.gov>
Cc: Jenica Flanagan <JFlanagan@FargoND.gov>
Subject: RE: Western Trust closing next week

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Kent,

The closing documents are attached along with the text below from Karen. We would appreciate you forwarding the funds needed to cover this at your earliest convenience. Thanks

Carol

Carol:

Attached are the settlement statements and closing documents to be signed by the District.

We have reviewed the settlement statements. The total amount due to The Title Company is:

- OIN 1116 – \$818,254.84
- OINs 1166 1168 1171 1175 1184 - \$6,631,263.22
- **Grand Total of \$7,449,518.06**

Please let Luke or I know if you have any questions or concerns.

Thank you. I have attached The Title Company transfer instructions as well.

Karen L. Severson
Paralegal
Ohnstad Twichell, P.C.
444 Sheyenne Street, Suite #102
P.O. Box 458
West Fargo, ND 58078-0458
TEL (701) 282-3249
FAX (701) 282-0825
kseverson@ohnstadlaw.com
www.ohnstadlaw.com



The Title Company
 35 4th Street N, Suite 102
 Fargo, ND 58102
 Phone: (701)241-9282 Fax: (701)232-7340

Settlement Statement

Settlement Date: 02/16/2021
Order Number: 251588
Buyer: Cass County Joint Water Resource District, a North Dakota Political Subdivision
Seller: Western Trust Company u/d/t May 26, 1986
 Gary G. Hoffman
Property: 80+/-Acres; N1/2NW1/4 of Section 34, Township 138, Range 49
 Cass County, ND

Seller			Buyer	
Debit	Credit		Debit	Credit
	819,500.00	Total Consideration Purchase Price	819,500.00	
1,385.16		Prorations/Adjustments ESTIMATED 2021 RE Taxes; BUYER to pay when due and payable		1,385.16
106,000.00		Payoffs Loan paydown to American Federal Bank Total Payoff <u>106,000.00</u>		
300.00		Agri Access Partial Release Fee to American Federal Bank Total Payoff <u>300.00</u>		
115.00		Title/Escrow Charges Closing Fee	115.00	
		Recording Charges Record Deed	25.00	
25.00		Record Mortgage Release		
107,825.16	819,500.00	Subtotals	819,640.00	1,385.16
711,674.84		Balance Due FROM Buyer Balance Due TO Seller		818,254.84
819,500.00	819,500.00	Totals	819,640.00	819,640.00

The Title Company
 35 4th Street N, Suite 102
 Fargo, ND 58102
 Phone: (701)241-9282 Fax: (701)232-7340

Settlement Statement

Settlement Date: 02/16/2021
Order Number: 251586
Buyer: Cass County Joint Water Resource District, a North Dakota Political Subdivision
Seller: Western Trust Company u/d/t May 26, 1986
 Gary G. Hoffman
Property: 627.83+/- Acres in Sections 1, 12, 13 & 24, Township 138, Range 50
 Cass County, ND

Seller			Buyer	
Debit	Credit		Debit	Credit
	6,641,107.00	Total Consideration		
		Purchase Price	6,641,107.00	
10,028.78		Prorations/Adjustments		
		ESTIMATED 2021 RE Taxes; BUYER to pay when due and payable		10,028.78
2,071,526.74		Payoffs		
		Pay down Loan #5401868 to Dacotah Bank		
		Total Payoff		2,071,526.74
513,390.97		Loan #5406553 to Dacotah Bank		
		Total Payoff		513,390.97
173,213.30		Payoff Loan #2126277 to Bell Bank		
		Total Payoff		173,213.30
115.00		Title/Escrow Charges		
		Closing Fee	115.00	
		Recording Charges		
		Record Deed	70.00	
70.00		Record Affidavit of Trust		
25.00		Record Letters Testamentary (Earle J. Lean Estate)		
75.00		Record Mortgage Releases		
25.00		Miscellaneous Charges		
		Wire Fee		
10.00		Obtain Letters Testamentary (Earle J. Lean Estate)		

Settlement Statement

2,768,479.79	6,641,107.00	Subtotals	6,641,292.00	10,028.78
3,872,627.21		Balance Due FROM Buyer		6,631,263.22
		Balance Due TO Seller		
6,641,107.00	6,641,107.00	Totals	6,641,292.00	6,641,292.00

BUYER:

Cass County Joint Water Resource District, a North Dakota Political Subdivision

BY: _____

BY: _____

SELLER:

Western Trust Company u/d/t May 26, 1986

BY: _____
Gary G. Hoffman
Trustee

Gary G. Hoffman

The Title Company

BY: _____
The Title Company

February 11, 2021

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

Dear Metro Flood Diversion Board of Authority,

The City of Fargo is submitting for reimbursement invoices paid totaling \$2,867,165.68. These costs are for work on complementary in-town flood protection projects for the period December 1, 2020 through January 31, 2021.

Project Narrative, this request:

Project Number	Project Description	Amount
FLDADM	Flood Administration Expense	18.00
FLDBUY	Flood Buyouts - Property Acquisition Expense	3,772.73
FM15F	Harwood, Hackberry, & River Drive – Flood Risk Management	3,719.27
FM15J	Belmont Flood Risk Management Project	26,408.86
FM15K	Rosewood Addition – Flood Risk Management	136,532.08
FM16A	North Side - Flood Risk Management	709,739.99
FM19A	Riverwood Addition Area – Flood Risk Management	634,742.33
FM19B	Royal Oaks Area – Flood Risk Management	395,111.85
FM19C	Woodcrest Drive Area – Flood Risk Management	1,176.05
FM19E	Elm Circle Area – Flood Risk Management	2,221.76
FM19F	Oak Grove Area – Flood Risk Management	35,011.92
FM19H	University Drive Floodwall – Geotechnical Evaluation	31,734.25
HD19A	City Wide – Demo/Restore	87,252.14
MS19J	Asbestos Testing – City Wide	64.00
NR19B	Storm Lift Rehab - #24	798,390.45
999900	Mickelson storm lift station - backfill/crushed concrete	1,270.00
	Total Expense for Period	\$2,867,165.68

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

Sincerely,



Kent Costin
 Director of Finance, City of Fargo

City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
December 1, 2020 - January 31, 2021

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name
999900	CAPITAL PRJ CLEARING ACCT	46035305103899	INSTALL BACKFILL	1,270.00	308398	JC15523	12/23/2020	JDP ELECTRIC INC
			460-3530-510.38-99 - Total	1,270.00				
999900 - Total				1,270.00				
FLDADM	FLOOD ADMINISTRATION	46035305106810	FRYN PAN FAMILY RESTA	18.00	834	12/15-12/27/20	01/05/2021	P CARD BMO
			460-3530-510.68-10 - Total	18.00				
FLDADM - Total				18.00				
FLDBUY	FLOOD ACQUISITION	46000003618500	Flood Property-Jan 21	-40.00	MR	MR	12/02/2020	City of Fargo
FLDBUY	FLOOD ACQUISITION	46000003618500	Flood Property Monthly	-1,000.00	MR	MR	12/09/2020	City of Fargo
			460-0000-361.85-00 - Total	-1,040.00				
FLDBUY	FLOOD ACQUISITION	46035305103325	FLOOD RELATED ACQUISITION	1,666.00	308176	2985-	12/17/2020	ERIK R JOHNSON & ASSOCIATES
FLDBUY	FLOOD ACQUISITION	46035305103325	SERKLAND LAW FIRM	43.00	836	11/28-12/14/20	01/04/2021	P CARD BMO
FLDBUY	FLOOD ACQUISITION	46035305103325	SERKLAND LAW FIRM	86.00	836	11/28-12/14/20	01/04/2021	P CARD BMO
FLDBUY	FLOOD ACQUISITION	46035305103325	11/26-12/31 FLOOD RELATED	2,618.00	309049	2996-	01/21/2021	ERIK R JOHNSON & ASSOCIATES
			460-3530-510.33-25 - Total	4,413.00				
FLDBUY	FLOOD ACQUISITION	46035305106250	FSI XCEL ENERGY PMTS	43.18	830	11/15-11/27/20	12/05/2020	P CARD BMO
FLDBUY	FLOOD ACQUISITION	46035305106250	REPOST PCARD BATCH 5861	46.72	836	11/28-12/14/20	01/04/2021	P CARD BMO
			460-3530-510.62-50 - Total	89.90				
FLDBUY	FLOOD ACQUISITION	46035305106251	FSI XCEL ENERGY PMTS	126.46	830	11/15-11/27/20	12/05/2020	P CARD BMO
FLDBUY	FLOOD ACQUISITION	46035305106251	REPOST PCARD BATCH 5861	183.37	836	11/28-12/14/20	01/04/2021	P CARD BMO
			460-3530-510.62-51 - Total	309.83				
FLDBUY - Total				3,772.73				
FM15F4	FLOOD RISK-Harwd Hack Rvr	46035305103332	FLOOD MITIGATION	1,533.28	308269	13448.02-7	12/17/2020	SRF CONSULTING GROUP, INC
FM15F4	FLOOD RISK-Harwd Hack Rvr	46035305103332	FLOOD MITIGATION	2,185.99	308969	13448.02-8	01/14/2021	SRF CONSULTING GROUP, INC
			460-3530-510.33-32 - Total	3,719.27				
FM15F4 - Total				3,719.27				
FM15J0	FLOOD MIT-Belmont Park	46035305103305	BELMONT FLOOD MITIGATION	5,906.34	308201	1200312709	12/17/2020	HDR ENGINEERING INC
FM15J0	FLOOD MIT-Belmont Park	46035305103305	BELMONT FLOOD MITIGATION	5,343.11	308905	1200317454	01/14/2021	HDR ENGINEERING INC
			460-3530-510.33-05 - Total	11,249.45				
FM15J0 - Total				11,249.45				
FM15J2	FLOOD MIT-Belmont Park	46000002062000	Retainage and Retainage R	-1,625.13	309318	FM15J2 Est #7	01/28/2021	INDUSTRIAL BUILDERS INC
			460-0000-206.20-00 - Total	-1,625.13				
FM15J2	FLOOD MIT-Belmont Park	46035305103301	Cap Proj Admin Dec pd 13	1,525.87	SS20201309	SS20201309	01/29/2021	City of Fargo
			460-3530-510.33-01 - Total	1,525.87				
FM15J2	FLOOD MIT-Belmont Park	46035305107358	Storm Sewer	15,258.67	309318	FM15J2 Est #7	01/28/2021	INDUSTRIAL BUILDERS INC
			460-3530-510.73-58 - Total	15,258.67				
FM15J2 - Total				15,159.41				
FM15K0	FLOOD MIT-RoseCoulee	46035305103305	PROFESSIONAL SERVICES	1,486.50	308788	10146912	01/07/2021	KLJ ENGINEERING, LLC
			460-3530-510.33-05 - Total	1,486.50				
FM15K0 - Total				1,486.50				
FM15K1	FLOOD MIT-RoseCoulee	46000002062000	Retainage and Retainage R	37,814.61	308599	FM15K1 Est #22	12/31/2020	INDUSTRIAL BUILDERS INC
			460-0000-206.20-00 - Total	37,814.61				
FM15K1	FLOOD MIT-RoseCoulee	46035305103301	cap proj admin Dec 2020	7,866.45	SS20201210	SS20201210	12/31/2020	City of Fargo
			460-3530-510.33-01 - Total	7,866.45				
FM15K1	FLOOD MIT-RoseCoulee	46035305103899	OTHER SERVICES	10,700.00	308762	16848	01/07/2021	FARGO ELECTRIC CONST INC
			460-3530-510.38-99 - Total	10,700.00				
FM15K1	FLOOD MIT-RoseCoulee	46035305107320	Miscellaneous	950.00	308599	FM15K1 Est #22	12/31/2020	INDUSTRIAL BUILDERS INC
			460-3530-510.73-20 - Total	950.00				

City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
December 1, 2020 - January 31, 2021

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name
FM15K1	FLOOD MIT-RoseCoulee	46035305107352	Miscellaneous	1,835.00	308599	FM15K1 Est #22	12/31/2020	INDUSTRIAL BUILDERS INC
			460-3530-510.73-52 - Total	1,835.00				
FM15K1	FLOOD MIT-RoseCoulee	46035305107362	Miscellaneous	23,997.62	308599	FM15K1 Est #22	12/31/2020	INDUSTRIAL BUILDERS INC
			460-3530-510.73-62 - Total	23,997.62				
FM15K1	FLOOD MIT-RoseCoulee	46035305107366	Miscellaneous	46,085.00	308599	FM15K1 Est #22	12/31/2020	INDUSTRIAL BUILDERS INC
			460-3530-510.73-66 - Total	46,085.00				
FM15K1	FLOOD MIT-RoseCoulee	46035305107369	Miscellaneous	5,796.90	308599	FM15K1 Est #22	12/31/2020	INDUSTRIAL BUILDERS INC
			460-3530-510.73-69 - Total	5,796.90				
FM15K1 - Total				135,045.58				
FM16A0	FLOOD MIT-N Cass 20/I29	46035305103305	AO CASS COUNTY 20 AREA	12,278.55	308232	25591	12/17/2020	MOORE ENGINEERING INC
FM16A0	FLOOD MIT-N Cass 20/I29	46035305103305	AO CASS COUNTY 20 AREA	29,963.55	308232	25592	12/17/2020	MOORE ENGINEERING INC
FM16A0	FLOOD MIT-N Cass 20/I29	46035305103305	COUNTY 20 AREA FLOOD	9,651.96	309373	25890	01/28/2021	MOORE ENGINEERING INC
FM16A0	FLOOD MIT-N Cass 20/I29	46035305103305	COUNTY 20 AREA FLOOD	8,752.40	309373	25891	01/28/2021	MOORE ENGINEERING INC
			460-3530-510.33-05 - Total	60,646.46				
FM16A0 - Total				60,646.46				
FM16A1	FLOOD MIT-N Cass 20/I29	46000002062000	Retainage and Retainage R	-10,925.35	308214	FM16A1 Est #2	12/17/2020	KEY CONTRACTING INC
FM16A1	FLOOD MIT-N Cass 20/I29	46000002062000	Retainage and Retainage R	-15,269.20	308917	FM16A1 Est #3	01/14/2021	KEY CONTRACTING INC
FM16A1	FLOOD MIT-N Cass 20/I29	46000002062000	Retainage and Retainage R	-1,875.10	309339	FM16A1 Est #4	01/28/2021	KEY CONTRACTING INC
			460-0000-206.20-00 - Total	-28,069.65				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305103301	cap proj admin Dec 2020	21,850.70	SS20201210	SS20201210	12/31/2020	City of Fargo
FM16A1	FLOOD MIT-N Cass 20/I29	46035305103301	Cap Proj Admin Dec pd 13	34,288.60	SS20201309	SS20201309	01/29/2021	City of Fargo
			460-3530-510.33-01 - Total	56,139.30				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305103899	RECORDING FEES	46.00	308267	15002512623	12/17/2020	SIMPLIFILE LC
FM16A1	FLOOD MIT-N Cass 20/I29	46035305103899	AID TO CONSTRUCTION	7,477.00	308154	36832	12/17/2020	CASS COUNTY ELECTRIC-4100 32 AVE SW
FM16A1	FLOOD MIT-N Cass 20/I29	46035305103899	UTIL RELOCAT 51-0818715-7	5,257.88	308860	712680169	01/07/2021	XCEL ENERGY
FM16A1	FLOOD MIT-N Cass 20/I29	46035305103899	AID TO CONSTRUCT FM16A1	46,850.00	308745	36962	01/07/2021	CASS COUNTY ELECTRIC-4100 32 AVE SW
			460-3530-510.38-99 - Total	59,630.88				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107352	Flood Mitigation	43,844.00	308214	FM16A1 Est #2	12/17/2020	KEY CONTRACTING INC
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107352	Flood Mitigation	275,000.00	308917	FM16A1 Est #3	01/14/2021	KEY CONTRACTING INC
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107352	Storm Sewer	9,400.00	308917	FM16A1 Est #3	01/14/2021	KEY CONTRACTING INC
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107352	Flood Mitigation	28,402.00	309339	FM16A1 Est #4	01/28/2021	KEY CONTRACTING INC
			460-3530-510.73-52 - Total	356,646.00				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107358	Miscellaneous	5,500.00	308214	FM16A1 Est #2	12/17/2020	KEY CONTRACTING INC
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107358	Storm Sewer	19,325.00	308214	FM16A1 Est #2	12/17/2020	KEY CONTRACTING INC
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107358	Storm Sewer	9,100.00	309339	FM16A1 Est #4	01/28/2021	KEY CONTRACTING INC
			460-3530-510.73-58 - Total	33,925.00				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107359	Miscellaneous	81,200.00	308214	FM16A1 Est #2	12/17/2020	KEY CONTRACTING INC
			460-3530-510.73-59 - Total	81,200.00				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107362	Water Main	18,490.00	308214	FM16A1 Est #2	12/17/2020	KEY CONTRACTING INC
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107362	Water Main	20,984.00	308917	FM16A1 Est #3	01/14/2021	KEY CONTRACTING INC
			460-3530-510.73-62 - Total	39,474.00				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107363	Sanitary Sewer	50,170.00	308214	FM16A1 Est #2	12/17/2020	KEY CONTRACTING INC
			460-3530-510.73-63 - Total	50,170.00				
FM16A1	FLOOD MIT-N Cass 20/I29	46035305107369	Erosion and Sediment Cont	-22.00	308214	FM16A1 Est #2	12/17/2020	KEY CONTRACTING INC
			460-3530-510.73-69 - Total	-22.00				
FM16A1 - Total				649,093.53				
FM19A0	FLOOD MIT-Riverwood Addn	46035305103305	RIVERWOOD FLOOD MITIGATIO	4,087.81	308015	0051365	12/10/2020	HOUSTON ENGINEERING INC

City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
December 1, 2020 - January 31, 2021

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name
			460-3530-510.33-05 - Total	4,087.81				
FM19A0	FLOOD MIT-Riverwood Addn	46035305103899	51-9464640-5	60.71	308295	708994063	12/17/2020	XCEL ENERGY
FM19A0	FLOOD MIT-Riverwood Addn	46035305103899	1104615 ELECTRIC SERVICE	230.42	308342	12/4/2020	12/23/2020	CASS COUNTY ELECTRIC COOP(BOX 6088)
FM19A0	FLOOD MIT-Riverwood Addn	46035305103899	51-9464640-5 ELECTRIC SER	46.35	308989	713108954	01/14/2021	XCEL ENERGY
			460-3530-510.38-99 - Total	337.48				
FM19A0 - Total				4,425.29				
FM19A1	FLOOD MIT-Riverwood Addn	46035305103301	cap proj admin Dec 2020	56,946.32	SS20201210	SS20201210	12/31/2020	City of Fargo
			460-3530-510.33-01 - Total	56,946.32				
FM19A1	FLOOD MIT-Riverwood Addn	46035305107110	906 42ND AVE N FARGO	569,463.19	308246	20-200-055	12/17/2020	O'KEEFFE,O'BRIEN, LYSON & FOSS LTD
			460-3530-510.71-10 - Total	569,463.19				
FM19A1 - Total				626,409.51				
FM19A2	FLOOD MIT-Riverwood Addn	46035305103301	cap proj admin Dec 2020	355.23	SS20201210	SS20201210	12/31/2020	City of Fargo
			460-3530-510.33-01 - Total	355.23				
FM19A2	FLOOD MIT-Riverwood Addn	46035305107110	RELOCATION REIMBURSE	3,552.30	308427	12/7/2020	12/23/2020	NELSON, BARRY
			460-3530-510.71-10 - Total	3,552.30				
FM19A2 - Total				3,907.53				
FM19B0	FLOOD MIT-Royal Oaks Dr	46035305103305	ROYAL OAKS FLOOD MITIGATI	4,899.12	308015	0051366	12/10/2020	HOUSTON ENGINEERING INC
			460-3530-510.33-05 - Total	4,899.12				
FM19B0	FLOOD MIT-Royal Oaks Dr	46035305103899	51-9464640-5	508.15	308295	708994063	12/17/2020	XCEL ENERGY
FM19B0	FLOOD MIT-Royal Oaks Dr	46035305103899	51-9464640-5 ELECTRIC SER	1,095.94	308989	713108954	01/14/2021	XCEL ENERGY
			460-3530-510.38-99 - Total	1,604.09				
FM19B0 - Total				6,503.21				
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305103301	cap proj admin Dec 2020	35,036.48	SS20201210	SS20201210	12/31/2020	City of Fargo
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305103301	Cap Proj Admin Dec pd 13	115.00	SS20201309	SS20201309	01/29/2021	City of Fargo
			460-3530-510.33-01 - Total	35,151.48				
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305107110	749 ROYAL OAKS DRIVE N	350,364.80	308647	20-200-058	12/31/2020	O'KEEFFE,O'BRIEN, LYSON & FOSS LTD
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305107110	RELOCATION CLAIM REIMBURS	550.00	308852	12/10/2020	01/07/2021	SWALSTAD, DENAE
FM19B1	FLOOD MIT-Royal Oaks Dr	46035305107110	RELOCATION EXP CLAIM	600.00	308936	12/11/2020	01/14/2021	MONTPLAISIR, SUSAN
			460-3530-510.71-10 - Total	351,514.80				
FM19B1 - Total				386,666.28				
FM19B2	FLOOD MIT-Royal Oaks Dr	46035305103332	FLOOD MITIGATION	477.45	308269	13448.01-8	12/17/2020	SRF CONSULTING GROUP, INC
FM19B2	FLOOD MIT-Royal Oaks Dr	46035305103332	FLOOD MITIGATION	1,464.91	308969	13448.01-9	01/14/2021	SRF CONSULTING GROUP, INC
			460-3530-510.33-32 - Total	1,942.36				
FM19B2 - Total				1,942.36				
FM19C0	FLOOD MIT-Woodcrest	46035305103305	WOODCREST FLOOD MITIGATIO	711.31	308015	0051367	12/10/2020	HOUSTON ENGINEERING INC
			460-3530-510.33-05 - Total	711.31				
FM19C0	FLOOD MIT-Woodcrest	46035305103899	51-9464640-5	445.89	308295	708994063	12/17/2020	XCEL ENERGY
FM19C0	FLOOD MIT-Woodcrest	46035305103899	51-9464640-5 ELECTRIC SER	18.85	308989	713108954	01/14/2021	XCEL ENERGY
			460-3530-510.38-99 - Total	464.74				
FM19C0 - Total				1,176.05				
FM19E0	FLOOD MIT-Elm Circle	46035305103305	ELM CIRCLE FLOOD MITIGATI	2,099.25	308015	0051368	12/10/2020	HOUSTON ENGINEERING INC
			460-3530-510.33-05 - Total	2,099.25				
FM19E0	FLOOD MIT-Elm Circle	46035305103899	51-9464640-5	41.05	308295	708994063	12/17/2020	XCEL ENERGY
FM19E0	FLOOD MIT-Elm Circle	46035305103899	51-9464640-5 ELECTRIC SER	47.53	308989	713108954	01/14/2021	XCEL ENERGY
			460-3530-510.38-99 - Total	88.58				
FM19E0 - Total				2,187.83				
FM19E1	FLOOD MIT-Elm Circle	46035305106810	BURGGRAF'S ACE HARDWAR	33.93	830	11/15-11/27/20	12/05/2020	P CARD BMO

City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
December 1, 2020 - January 31, 2021

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name
460-3530-510.68-10 - Total				33.93				
FM19E1 - Total				33.93				
FM19F0	FLOOD MIT-Oak Grove Area	46035305103305	OAK GROVE FLOOD MITIGATIO	35,011.92	308015	0051369	12/10/2020	HOUSTON ENGINEERING INC
460-3530-510.33-05 - Total				35,011.92				
FM19F0 - Total				35,011.92				
FM19H0	FLOOD MIT-52 Ave S/Univ	46035305103899	BRAUN INTERTEC CORP	1,721.75	830	11/15-11/27/20	12/05/2020	P CARD BMO
FM19H0	FLOOD MIT-52 Ave S/Univ	46035305103899	BRAUN INTERTEC CORP	103.50	834	12/15-12/27/20	01/05/2021	P CARD BMO
FM19H0	FLOOD MIT-52 Ave S/Univ	46035305103899	BRAUN INTERTEC CORP	14,126.50	841	12/28-12/31/20	02/05/2021	P CARD BMO
FM19H0	FLOOD MIT-52 Ave S/Univ	46035305103899	BRAUN INTERTEC CORP	14,126.50	841	12/28-12/31/20	02/05/2021	P CARD BMO
460-3530-510.38-99 - Total				30,078.25				
FM19H0 - Total				30,078.25				
FM19H2	FLOOD MIT-52 Ave S/Univ	46035305103305	CREDIT PROJECT MANAGER	-820.00	307877	10141934	12/03/2020	KLJ ENGINEERING, LLC
FM19H2	FLOOD MIT-52 Ave S/Univ	46035305103305	UNIVER FLOOD WALL REPAIR	2,476.00	307877	10145505	12/03/2020	KLJ ENGINEERING, LLC
460-3530-510.33-05 - Total				1,656.00				
FM19H2 - Total				1,656.00				
HD19A1	DEMO RESTOR-City Wide	46000002062000	Retainage and Retainage R	-3,994.80	308618	HD19A1 Est #3	12/31/2020	LINNCO, INC
460-0000-206.20-00 - Total				-3,994.80				
HD19A1	DEMO RESTOR-City Wide	46035305103301	Cap Proj Admin Dec 2020	7,989.60	SS20201210	SS20201210	12/31/2020	City of Fargo
460-3530-510.33-01 - Total				7,989.60				
HD19A1	DEMO RESTOR-City Wide	46035305103306	BRAUN INTERTEC CORP	1,170.50	830	11/15-11/27/20	12/05/2020	P CARD BMO
HD19A1	DEMO RESTOR-City Wide	46035305103306	BRAUN INTERTEC CORP	2,059.50	834	12/15-12/27/20	01/05/2021	P CARD BMO
460-3530-510.33-06 - Total				3,230.00				
HD19A1	DEMO RESTOR-City Wide	46035305103899	51-9464640-5	120.71	308295	708994063	12/17/2020	XCEL ENERGY
HD19A1	DEMO RESTOR-City Wide	46035305103899	51-9464640-5 ELECTRIC SER	10.63	308989	713108954	01/14/2021	XCEL ENERGY
460-3530-510.38-99 - Total				131.34				
HD19A1	DEMO RESTOR-City Wide	46035305107320	#2A - #763, #767, #771, #	1,126.00	308618	HD19A1 Est #3	12/31/2020	LINNCO, INC
HD19A1	DEMO RESTOR-City Wide	46035305107320	#2B - #701/#709	1,486.00	308618	HD19A1 Est #3	12/31/2020	LINNCO, INC
HD19A1	DEMO RESTOR-City Wide	46035305107320	Site #2 - Royal Oaks Dri	1,760.00	308618	HD19A1 Est #3	12/31/2020	LINNCO, INC
HD19A1	DEMO RESTOR-City Wide	46035305107320	Site #4 - #1422 South Riv	16,886.00	308618	HD19A1 Est #3	12/31/2020	LINNCO, INC
HD19A1	DEMO RESTOR-City Wide	46035305107320	Site #5 - #1213 El Cano D	23,126.00	308618	HD19A1 Est #3	12/31/2020	LINNCO, INC
460-3530-510.73-20 - Total				44,384.00				
HD19A1	DEMO RESTOR-City Wide	46035305107359	Site #4 - #1422 South Riv	3,938.00	308618	HD19A1 Est #3	12/31/2020	LINNCO, INC
HD19A1	DEMO RESTOR-City Wide	46035305107359	Site #5 - #1213 El Cano D	3,850.00	308618	HD19A1 Est #3	12/31/2020	LINNCO, INC
460-3530-510.73-59 - Total				7,788.00				
HD19A1	DEMO RESTOR-City Wide	46035305107363	Site #5 - #1213 El Cano D	700.00	308618	HD19A1 Est #3	12/31/2020	LINNCO, INC
460-3530-510.73-63 - Total				700.00				
HD19A1	DEMO RESTOR-City Wide	46035305107366	Site #4 - #1422 South Riv	315.00	308618	HD19A1 Est #3	12/31/2020	LINNCO, INC
460-3530-510.73-66 - Total				315.00				
HD19A1	DEMO RESTOR-City Wide	46035305107367	#2A - #763, #767, #771, #	2,684.00	308618	HD19A1 Est #3	12/31/2020	LINNCO, INC
HD19A1	DEMO RESTOR-City Wide	46035305107367	Site #5 - #1213 El Cano D	21,725.00	308618	HD19A1 Est #3	12/31/2020	LINNCO, INC
460-3530-510.73-67 - Total				24,409.00				
HD19A1	DEMO RESTOR-City Wide	46035305107369	Site #5 - #1213 El Cano D	2,300.00	308618	HD19A1 Est #3	12/31/2020	LINNCO, INC
460-3530-510.73-69 - Total				2,300.00				
HD19A1 - Total				87,252.14				
MS19J0	Asbestos Testng City Wide	46035305103899	BRAUN INTERTEC CORP	64.00	830	11/15-11/27/20	12/05/2020	P CARD BMO
460-3530-510.38-99 - Total				64.00				
MS19J0 - Total				64.00				

City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
December 1, 2020 - January 31, 2021

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name
NR19B1	STORM LIFT RHAB #24	46035305103301	Cap Proj Admin Dec 2020	47,619.63	SS20201210	SS20201210	12/31/2020	City of Fargo
NR19B1	STORM LIFT RHAB #24	46035305103301	Cap Proj Admin Dec pd 13	24,961.32	SS20201309	SS20201309	01/29/2021	City of Fargo
460-3530-510.33-01 - Total				72,580.95				
NR19B1	STORM LIFT RHAB #24	46035305107358	PKG PAY APP #5 - DA SHARE	476,196.30	JB12200016	JB12200016	12/17/2020	City of Fargo
NR19B1	STORM LIFT RHAB #24	46035305107358	PKG PAY APP #6 - DA SHARE	249,613.20	JB13200028	JB13200028	01/18/2021	City of Fargo
460-3530-510.73-58 - Total				725,809.50				
NR19B1 - Total				798,390.45				
Overall - Total				2,867,165.68				

Feb 9, 2021



Cass County
Joint Water
Resource
District

February 11, 2021

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

Dan Jacobson
Chairman
West Fargo, North Dakota

Rodger Olson
Manager
Leonard, North Dakota

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

Greetings:

RE: Metro Flood Diversion Project
DPAC
Oxbow-Hickson-Bakke Ring Levee project
Southeast Cass WRD Reimbursements

Enclosed please find copies of bills totaling \$2,706,491.94 regarding the above referenced projects. The breakdown is as follows:

Metro Flood Diversion	\$2,675,400.29
DPAC	120.00
Oxbow-Hickson-Bakke Ring Levee project	23,936.15
Southeast Cass Water Resource District	7,035.50

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

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

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT

Carol Harbeke Lewis
Secretary-Treasurer

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

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

Enclosures

MOORE FLOOD DIVERSION RIGHT OF ENTRY/LAND ACQUISITION COST SHARE INVOICES

2/11/2021

Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description
				5.55	Cass County Joint WRD	Postage for formal offers
1/15/2021	1/15/2021			7,664.59	The Title Company	OIN 566 Property purchase (Roth)
1/15/2021	1/15/2021			19,163.49	The Title Company	OIN 5214 Property purchase (Kruse)
1/15/2021	1/15/2021			870,684.48	The Title Company	OIN 9183, 2365, 1216 property purchase (Heiden)
1/14/2021	1/12/2021			2,365.00	Ron's Repair	moving costs reimbursement
1/22/2021	12/31/2020	172758	130007	12,867.10	Ohnstad Twichell, P.C.	Legal-Diversion ROW Acquisition
1/22/2021	12/31/2020	172762	160007	48.00	Ohnstad Twichell, P.C.	Legal-Basin Project 2009 - Inlet Structure
1/22/2021	12/31/2020	172763	160007	2,223.00	Ohnstad Twichell, P.C.	Legal-Channel Phase I
1/22/2021	12/31/2020	172764	160007	2,055.00	Ohnstad Twichell, P.C.	Legal-Channel Phase II
1/22/2021	12/31/2020	172765	160007	11,099.00	Ohnstad Twichell, P.C.	Legal-Channel Phase III
1/22/2021	12/31/2020	172802	207007	504.00	Ohnstad Twichell, P.C.	Legal-I-29 Grade Raise
1/22/2021	12/31/2020	172774	187007	3,667.00	Ohnstad Twichell, P.C.	Legal-Southern Embankment
1/22/2021	12/31/2020	172768	170007	13,593.00	Ohnstad Twichell, P.C.	Legal-Upstream Mitigation Area
1/22/2021	12/31/2020	172778	197007	2,995.50	Ohnstad Twichell, P.C.	Legal-Western Tie Back
1/22/2021	12/31/2020	172804	207007	1,694.00	Ohnstad Twichell, P.C.	Legal-Wetland Mitigation Drain 27
1/22/2021	1/12/2021	173087	187007	1,989.50	Ohnstad Twichell, P.C.	Legal-Bio/Geo Easements
1/22/2021	1/12/2021	173088	197007	164.00	Ohnstad Twichell, P.C.	Legal-Right of Way Certificates (ND)
1/22/2021	1/12/2021	173089	207007	2,694.50	Ohnstad Twichell, P.C.	Legal-OIN 9628 Eminent Domain
1/22/2021	1/12/2021	173090	207007	97.00	Ohnstad Twichell, P.C.	Legal-OIN 1202 Quick Take Eminent Domain
1/22/2021	1/12/2021	173091	207007	268.50	Ohnstad Twichell, P.C.	Legal-OIN 904 Quick Take Eminent Domain
1/22/2021	1/12/2021	173092	207007	2,288.50	Ohnstad Twichell, P.C.	Legal-OIN 9400 Quick Take Eminent Domain
1/22/2021	1/12/2021	173093	207007	177.00	Ohnstad Twichell, P.C.	Legal-OIN 9174 Quick Take Eminent Domain
1/22/2021	1/12/2021	173094	207007	923.50	Ohnstad Twichell, P.C.	Legal-OIN 1199 Quick Take Eminent Domain
1/22/2021	1/12/2021	173095	207007	1,180.40	Ohnstad Twichell, P.C.	Legal-OIN 952 Quick Take Eminent Domain
1/22/2021	1/12/2021	173096	207007	2,299.50	Ohnstad Twichell, P.C.	Legal-OIN 722, 723 Quick Take Eminent Domain
1/22/2021	1/12/2021	173097	207007	3,079.00	Ohnstad Twichell, P.C.	Legal-OIN 566 Quick Take Eminent Domain Action
1/22/2021	1/12/2021	173098	207007	3,014.50	Ohnstad Twichell, P.C.	Legal-OIN 716 Quick Take Eminent Domain
1/22/2021	1/12/2021	173099	207007	1,815.50	Ohnstad Twichell, P.C.	Legal-OIN 720 Quick Take Eminent Domain
1/22/2021	1/12/2021	173100	207007	1,160.34	Ohnstad Twichell, P.C.	Legal-OIN 5278 QT Eminent Domain action
1/22/2021	1/12/2021	173101	207007	988.50	Ohnstad Twichell, P.C.	Legal-OIN 9348 Quick Take Eminent Domain
1/22/2021	1/12/2021	173102	207007	1,173.50	Ohnstad Twichell, P.C.	Legal-OIN 9383 Quick Take Eminent Domain
1/22/2021	1/12/2021	173103	207007	2,015.50	Ohnstad Twichell, P.C.	Legal-OIN 5004, 5009-5012, 5012, 9054-9056 QT Eminent Domain
1/22/2021	1/12/2021	173104	207007	2,130.00	Ohnstad Twichell, P.C.	Legal-OIN 1186 Quick Take Eminent Domain
1/22/2021	1/12/2021	173105	207007	2,255.30	Ohnstad Twichell, P.C.	Legal-OIN 5024 Quick Take Eminent Domain action
1/22/2021	1/12/2021	173106	207007	1,614.34	Ohnstad Twichell, P.C.	Legal-OIN 5214 Quick Take Eminent Domain
1/22/2021	1/12/2021	173108	207007	1,984.50	Ohnstad Twichell, P.C.	Legal-OIN 1191/1193 Quick Take Eminent Domain
1/22/2021	1/12/2021	173109	207007	1,825.00	Ohnstad Twichell, P.C.	Legal-OIN 717, 9732 Eminent Domain
1/22/2021	1/12/2021	173110	207007	1,369.50	Ohnstad Twichell, P.C.	Legal-OIN 8672-8675, 9747 Quick Take Eminent Domain Action
1/22/2021	1/12/2021	173111	207007	4,326.80	Ohnstad Twichell, P.C.	Legal-OIN 843 Quick Take Eminent Domain
1/22/2021	1/12/2021	173112	207007	3,154.50	Ohnstad Twichell, P.C.	Legal-OIN 698, 9756-9759 Quick Take Eminent Domain
1/22/2021	1/12/2021	173113	207007	1,148.50	Ohnstad Twichell, P.C.	Legal-OIN 945, 9741, 9760 Quick Take Eminent Domain
1/22/2021	1/12/2021	173114	207007	1,929.84	Ohnstad Twichell, P.C.	Legal-OIN 747, 751, 5014-5015, 5277 Quick Take ED
1/22/2021	1/12/2021	173115	207007	2,314.00	Ohnstad Twichell, P.C.	Legal-OIN 1169, 1200 Quick Take Eminent Domain
1/22/2021	1/12/2021	173116	207007	1,967.50	Ohnstad Twichell, P.C.	Legal-OIN 882, 8938 Quick Take Eminent Domain
1/22/2021	1/12/2021	173117	207007	1,340.00	Ohnstad Twichell, P.C.	Legal-OIN 886 Quick Take Eminent Domain
1/22/2021	1/12/2021	173118	207007	31.00	Ohnstad Twichell, P.C.	Legal-OIN 227-228 Quick Take Eminent Domain
1/22/2021	1/12/2021	173119	207007	3,030.00	Ohnstad Twichell, P.C.	Legal-OIN 5008, 1930, 1932, 1940-1941, 8517-8518 Quick Take ED
1/22/2021	1/12/2021	173120	207007	2,029.04	Ohnstad Twichell, P.C.	Legal-OIN 8678 Quick Take Eminent Domain
1/22/2021	1/12/2021	173121	207007	948.50	Ohnstad Twichell, P.C.	Legal-OIN 1173 Quick Take Eminent Domain
1/22/2021	12/16/2020	780770	38810.00008	1,022.21	Larkin Hoffman Attorneys	Legal-CCJT v Mary Adams
1/22/2021	12/16/2020	780769	38810.00007	331.47	Larkin Hoffman Attorneys	Legal-CCJT v Daniel Flaten
1/22/2021	12/16/2020	780772	38810.0001	1,701.86	Larkin Hoffman Attorneys	Legal-CCJT v Derek Flaten
1/22/2021	12/16/2020	780771	38810.00009	632.00	Larkin Hoffman Attorneys	Legal-CCJT v Steve and Lisa Loberg
1/22/2021	12/16/2020	780767	38810.00005	3,477.00	Larkin Hoffman Attorneys	Legal-CCJT v Newman Signs/Mary Newman Trust condemnation
1/22/2021	12/16/2020	780766	38810.00004	12,176.50	Larkin Hoffman Attorneys	Legal-CCJT v Richland/Cass Cos/App for Permit to Enter Land
1/22/2021	12/16/2020	780768	38810.00006	319.36	Larkin Hoffman Attorneys	Legal-CCJT v Mary Ann Tintes
1/22/2021	12/16/2020	780765	38810.00003	1,580.00	Larkin Hoffman Attorneys	Legal-CCJT v Verden Anderson/Prairie Scale Systems
1/22/2021	12/16/2020	780764	38810	200.03	Larkin Hoffman Attorneys	Legal-CCJT v Johnson, Monson, Tintes, Anderson
1/22/2021	1/13/2021	25812	19706	180.00	Moore Engineering, Inc.	Engineering-MOU Review
1/22/2021	1/13/2021	25811	19706	1,080.00	Moore Engineering, Inc.	Engineering - FM Diversion Design Coord-Team member meetings
1/22/2021	1/4/2021	1200317669		31,835.18	HDR Engineering Inc.	Property Acquisition services - TO1
1/22/2021	12/31/2020	13783.00-8		62,505.01	SRF Consulting Group, Inc.	Project management, ROW and Relocation services
1/22/2021	12/29/2020	101465	R12.00049	7,719.25	Ulteig Engineers	Engineering - Task 2 - project management, ROW and Rel Asst
1/22/2021	12/18/2020	21923-1		28,200.00	Patchin Messner Valuation Counselors	appraisal package 15
1/22/2021	12/18/2020	2		4,000.00	Tinjum Appraisal Company, Inc.	Appraisal package #14 - OIN 843
1/22/2021	12/23/2020	4587		15,000.00	Crown Appraisals, Inc.	Appraisals
1/22/2021	12/17/2020	403496		184.00	All American Plumbing and Heating Inc	HVAC service work for horse barn
1/22/2021	12/23/2020	CL01767820		321.21	Forum Communications	Legal Ad for Brandt quick take ED

Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description	
1/22/2021	12/23/2020	CL01767811		348.6	Forum Communications	Legal Ad for Brie Estates quick take ED	
1/22/2021	12/23/2020	CL01767812		1,277.37	Forum Communications	Legal Ad for Brodshaug Revocable Trust quick take ED	
1/22/2021	12/23/2020	CL01767813		587.64	Forum Communications	Legal Ad for Brodshaug Revocable Trust quick take ED	
1/22/2021	12/23/2020	CL01767810		535.35	Forum Communications	Legal Ad for Fitterer quick take ED	
1/22/2021	12/23/2020	CL01767814		2,649.36	Forum Communications	Legal Ad for Germanson quick take ED	
1/22/2021	12/23/2020	CL01767815		348.60	Forum Communications	Legal Ad for Gust quick take ED	
1/22/2021	12/23/2020	CL01767817		585.15	Forum Communications	Legal Ad for Kruse Living Trust quick take ED	
1/22/2021	12/23/2020	CL01767816		483.06	Forum Communications	Legal Ad for Ottis Revocable Living Trust quick take ED	
1/22/2021	12/23/2020	CL01767819		1,394.40	Forum Communications	Legal Ad for Perhus quick take ED	
1/22/2021	12/23/2020	CL01767818		520.41	Forum Communications	Legal Ad for Thoen quick take ED	
1/22/2021	12/25/2020	17345		32.00	Cass Rural Water Users District	Service to OIN 822	
1/22/2021	12/25/2020	17374		27.00	Cass Rural Water Users District	service to 5210 124 Av S	
1/22/2021	1/4/2021			4.98	Cass County Finance	Highway Dept copier use	
1/20/2021	1/15/2021			779,100.00	Cass County Clerk of Court	OIN 9736-9737 deposit for quick take	
1/29/2021	1/19/2021	782045	38810.00003	4,700.50	Larkin Hoffman Attorneys	Legal-CCJT v Verden Anderson/Prairie Scale Systems	
1/29/2021	1/19/2021	782050	38810.0001	1,540.50	Larkin Hoffman Attorneys	Legal-CCJT v Derek Flaten	
1/29/2021	1/19/2021	782049	38810.00009	4,543.50	Larkin Hoffman Attorneys	Legal-CCJT v Steve and Lisa Loberg	
1/29/2021	1/19/2021	782047	38810.00005	4,056.00	Larkin Hoffman Attorneys	Legal-CCJT v Newman Signs/Mary Newman Trust condemnation	
1/29/2021	1/19/2021	782046	38810.00004	3,752.50	Larkin Hoffman Attorneys	Legal-CCJT v Richland/Cass Cos/App for Permit to Enter Land	
1/29/2021	1/19/2021	782048	38810.00006	316.00	Larkin Hoffman Attorneys	Legal-CCJT v Mary Ann Tintes	
1/29/2021	1/19/2021	782044	38810	197.50	Larkin Hoffman Attorneys	Legal-CCJT v Johson, Monson, Tintes, Anderson	
1/29/2021	1/26/2021			26,615.75	Phyllis Johnson	moving costs reimbursement	
1/29/2021				79,317.68	Cass County Finance	2020 tax statements	
1/29/2021				10,380.57	Richland County Treasurer	2020 taxes on Richland County properties	
1/29/2021	1/20/2021	403585		219.00	All American Plumbing and Heating Inc	winterize shop on OIN 1120	
1/29/2021	1/14/2021	1160310		233.31	Cass County Electric Cooperative	service to 3703 124 Av S	
1/29/2021	1/14/2021	1125415		52.31	Cass County Electric Cooperative	service to 4857 173 Av SE	
1/29/2021	1/14/2021	1108711		108.80	Cass County Electric Cooperative	service to 5210 124 Av S	
1/29/2021	1/14/2021	1136109		135.60	Cass County Electric Cooperative	service to 10615 81 ST S	
1/29/2021	1/14/2021	1140519		58.31	Cass County Electric Cooperative	service to 16868 44 ST SE	
1/29/2021	1/14/2021	1132169		105.28	Cass County Electric Cooperative	service to 16875 44 ST SE	
1/29/2021	1/14/2021	1129748		3,043.00	Cass County Electric Cooperative	service to 17407 Horse Haven Dr	
1/29/2021	1/14/2021	1126250		41.34	Cass County Electric Cooperative	service to 17572 Pfiffer Dr	
1/29/2021	1/25/2021	17345		34.70	Cass Rural Water Users District	Service to OIN 822	
1/29/2021	1/25/2021	17374		29.70	Cass Rural Water Users District	service to 5210 124 Av S	
1/29/2021	12/31/2020	45107	3283-00	18,871.53	ProSource Technologies LLC	Task Order No 2, Proj mgmt and acquisition services	
1/29/2021	1/20/2021	102349	R12.00049	3,367.00	Ulteig Engineers	Task Order No 2, Proj mgmt and acquisition services	
1/28/2021	1/27/2021			700.00	Blaine Laaveg	refund rental deposit	
1/29/2021	1/27/2021			2,100.00	Lance Freier	refund rental and pet deposits	
1/29/2021	1/29/2021			541,164.64	The Title Company	Holck property purchase	
			Total	2,675,400.29			
DIVERSION PROJECT ASSESSMENT DISTRICT (DPAC) INVOICES							
Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description	
1/22/2021	12/31/2020	172757	120007	120.00	Ohnstad Twichell, P.C.	Legal-Diversion Project, Assessment District	
			Total	120.00			
OXBOW-HICKSON-BAKKE RING LEVEE INVOICES							
Invoice Paid	Invoice Date	Invoice No.	Purchase Order No.	Project No.	Amount	Vendor	Description
1/22/2021	12/31/2020	172760		140007	1,678.50	Ohnstad Twichell, P.C.	Legal-OHB property
1/29/2021					22,257.65	Cass County Finance	2020 tax statements
				Total	23,936.15		
SOUTHEAST CASS WRD PARTIAL DRAIN ABANDONMENT AND SHEYENNE DIVERSION MITIGATION							
Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description	
1/22/2021	12/31/2020	172785	207002	2,320.50	Ohnstad Twichell, P.C.	Legal-Sheyenne Diversion-FM Diversion Mitigation	
1/22/2021	12/31/2020	172783	207002	2,255.00	Ohnstad Twichell, P.C.	Legal-Drain 27 - FM Diversion - Partial Abandonment	
1/22/2021	12/31/2020	172789	207002	820.00	Ohnstad Twichell, P.C.	Legal-Drain 47 - FM Diversion	
1/22/2021	12/31/2020	172786	207002	1,640.00	Ohnstad Twichell, P.C.	Legal-Drain 51 Abandonment	
			Total	7,035.50			
			Grand Total	2,706,491.94			



Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

December 31, 2020

Kent Costin
Finance Director
City of Fargo
225 4th Street North
Fargo, ND 58102

Re: Metro Flood Diversion Project

Dear Kent:

I am enclosing a Summary Invoice dated December 4, 2020 from the Dorsey & Whitney Firm in Minneapolis for their professional services rendered through September 30, 2020 on the Metro Flood Diversion Project. If you have any questions, please feel free to contact me. Please remit payment directly to Dorsey Whitney.

Sincerely,

Erik R. Johnson

ERJ/lmw
Enclosure

cc: Bruce Grubb





MINNEAPOLIS OFFICE
612-340-2600

(Tax Identification No. 41-0223337)

STATEMENT OF ACCOUNT FOR PROFESSIONAL SERVICES

Fargo-Moorhead Flood Diversion Bd of Authority
c/o Erik R. Johnson & Associates, Ltd.
Attn: Erik Johnson
505 Broadway, Suite 206
Fargo, ND 58102

December 4, 2020
Invoice No. 3626945

Client-Matter No.: 491379-00001
Red River Diversion Project

For Legal Services Rendered Through September 30, 2020

INVOICE TOTAL

Total For Current Legal Fees	\$335,567.00
Total For Current Disbursement and Service Charges	\$4,868.48
Total For Current Invoice	\$340,435.48

For your convenience, please remit payment to the address below or we offer the option of remitting payment electronically by wire transfer. If you have any questions regarding this information, please contact the lawyer you are working with on this project or Dorsey's Accounts Receivable Department at 1-800-861-0760. Thank you.

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

Wire Instructions:
U.S. Bank National Association
800 Nicollet Mall
Minneapolis, MN 55402

(This account is only for Wire/ACH payments)
ABA Routing Number: 091000022
Account Number: 1047-8339-8282
Swift Code: USBKUS44IMT

Please make reference to the invoice number

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

OHNSTAD TWICHELL, P.C.
Attorneys at Law

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

Flood Diversion Board
Bond Counsel Work - PPP

Date: February 2, 2021

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

PROFESSIONAL SERVICES RENDERED			
	Hours	Rate	Totals
JTS	163.2	\$310.00	\$50,592.00
CMM	9.7	\$310.00	\$3,007.00
ADC	16.9	\$310.00	\$5,239.00
LDA	18.3	\$310.00	\$5,673.00
RGH	0.8	\$310.00	\$248.00
KJB	127.6	\$310.00	\$39,556.00
TJL	100.9	\$290.00	\$29,261.00
CBC	39.2	\$275.00	\$10,780.00
LWC	0.2	\$285.00	\$57.00
KJD	47.3	\$210.00	\$9,933.00
EMM	1.3	\$275.00	\$357.50
DCP	15.1	\$275.00	\$4,152.50
JDR	1.7	\$175.00	\$297.50
AJR	48.8	\$175.00	\$8,540.00
CMS	0.7	\$150.00	\$105.00
SKO	36.6	\$150.00	\$5,490.00
Total Fees:	628.3		\$173,288.50
Westlaw			\$408.40
NDRIN			\$6.00
Colliers Securities - Professional Service Fee			\$4,000.00
*Credit Card Processing Fee - 3%			\$120.00
Total Expenses:			\$4,534.40
Grand Total			\$177,822.90

	Rates
JTS John T. Shockley, Partner, Supervising Attorney	\$310.00
CMM Christopher M. McShane, Partner	\$310.00
ADC Andrew D. Cook, Partner	\$310.00
SNW Sarah M. Wear, Partner	\$310.00
RGH Robert G. Hoy, Partner	\$310.00
KJB Katie J. Bertsch, Partner	\$310.00
MWM Marshall W. McCullough, Partner	\$310.00
TJL Tyler J. Leverington, Partner	\$290.00
CBC Calley B. Campbell, Associate	\$275.00
LWC Lukas W. Croaker, Associate	\$285.00
SRH Stephen R. Hanson, Associate	\$275.00
ABG Bo Gruchala, Associate	\$275.00
JRS J.R. Strom, Associate	\$260.00
KJD Kathryn J. DelZoppo, Associate	\$210.00
LRC Leah R. Carlson, Associate	\$275.00
EMM Elle M. Molbert, Associate	\$275.00
BTB Brent T. Boeddeker, Associate	\$275.00
DCP David C. Piper, Associate	\$275.00
CAS Carol A. Stillwell, Paralegal	\$175.00
JDR Joshua D. Roaldson, Paralegal	\$175.00
AJR Andrea J. Roman, Paralegal	\$175.00
CRA Christie R. Axness, Paralegal	\$150.00
DLR Dena L. Ranum, Legal Administrative Assistant	\$150.00
CMS Cassie M. Smith, Paralegal	\$150.00
KLS Karen L. Severson, Paralegal	\$150.00
SKO Sharon K. Oliver, Paralegal	\$150.00
KK Kiara J. Klinkhammer, Paralegal	\$140.00

PROFESSIONAL SERVICES RENDERED

15-1395 JTS Invoice # 173413		Flood Diversion Board	Bond Counsel Work - PPP
FILE NUMBER	MATTER DESCRIPTION	INVOICE - TOTAL FEES	
151395-1	General Topics (Includes General Governance Questions, Notices, etc.)	\$33,191.50	
151395-2	Executive Director	\$1,549.00	
151395-3	P3 Procurement	\$28,560.00	
151395-4	Public Finance Issues	\$16,980.00	
151395-5	Consultant Contract Review/Development	\$9,178.50	
151395-10	Insurance Issues	\$192.50	
151395-11	Legislative Interface/Lobbying Support	\$2,387.00	
151395-13	Third Party Utility MOU's	\$51,198.50	
151395-14	ICS Issues	\$5,629.50	
151395-17	EPA WIFIA Loan	\$15,194.00	
151395-20	USDOT PABs	\$93.00	
151395-21	CCJWRD Temporary Refunding Imp Bond	\$9,135.00	
TOTAL		\$173,288.50	



Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

February 9, 2021

Kent Costin
Finance Director
City of Fargo
225 4th Street North
Fargo, ND 58102

Re: Metro Flood Diversion Project

Dear Kent:

I am enclosing a Summary Invoice dated January 20, 2021 from the Dorsey & Whitney Firm in Minneapolis for their professional services rendered through December 31, 2020 on the Metro Flood Diversion Project. If you have any questions, please feel free to contact me. Please remit payment directly to Dorsey Whitney.

Sincerely,

A handwritten signature in blue ink that reads "Erik R. Johnson". The signature is written in a cursive, flowing style.

Erik R. Johnson

ERJ/lmw
Enclosure
cc: Bruce Grubb





MINNEAPOLIS OFFICE
612-340-2600

(Tax Identification No. 41-0223337)

STATEMENT OF ACCOUNT FOR PROFESSIONAL SERVICES

Fargo-Moorhead Flood Diversion Bd of Authority
c/o Erik R. Johnson & Associates, Ltd.
Attn: Erik Johnson
505 Broadway, Suite 206
Fargo, ND 58102

January 20, 2021
Invoice No. 3636072

Client-Matter No.: 491379-00001
Red River Diversion Project

For Legal Services Rendered Through December 31, 2020

INVOICE TOTAL

Total For Current Legal Fees	\$51,839.50
Total For Current Disbursement and Service Charges	\$4,640.24
Total For Current Invoice	\$56,479.74

* Please refer to last page for any unpaid invoices and a current statement of account.

For your convenience, please remit payment to the address below or we offer the option of remitting payment electronically by wire transfer. If you have any questions regarding this information, please contact the lawyer you are working with on this project or Dorsey's Accounts Receivable Department at 1-800-861-0760. Thank you.

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

Wire Instructions:
U.S. Bank National Association
800 Nicollet Mall
Minneapolis, MN 55402

(This account is only for Wire/ACH payments)
ABA Routing Number: 091000022
Account Number: 1047-8339-8282
Swift Code: USBKUS44IMT

Please make reference to the invoice number

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

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

(701) 241-5600

DATE: 2/02/21

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

CUSTOMER NO: 198/294

TYPE: CA - COUNTY AUDITOR

CHARGE	DATE	DESCRIPTION	REF-NUMBER	DUE DATE	TOTAL AMOUNT
	1/07/21	BEGINNING BALANCE			166,578.28
	1/19/21	PAYMENT			21,750.00-
	2/01/21	PAYMENT			56,081.11-
AUDIT	2/02/21	FM DIVERSION			45,515.55
		INTEREST			
AUDIT	2/02/21	FM DIVERSION			67,196.66
		PAYROLL EXPENSES			
AUDIT	2/02/21	FM DIVERSION	Submitted for approval at Feb board mtg		2,557.79
		MISC EXPENSES			
AUDIT	2/02/21	FM DIVERSION	Submitted for approval at Feb board mtg		8,070.79
		MISC EXPENSES			
MISC	2/02/21	FM DIVERSION	Submitted for approval at Feb board mtg		11,610.12
		ASPHALT PATCHING			

Current	30 days	60 days	90 days
223698.08			

DUE DATE: 3/04/21

PAYMENT DUE: 223,698.08
TOTAL DUE: \$223,698.08

PLEASE DETACH AND SEND THIS COPY WITH REMITTANCE

DATE: 2/02/21 DUE DATE: 3/04/21 NAME: CITY OF FARGO
CUSTOMER NO: 198/294 TYPE: CA - COUNTY AUDITOR

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

TOTAL DUE: \$223,698.08

CASS COUNTY HIGHWAY DEPARTMENT

1201 MAIN AVE W
WEST FARGO, N D 58078-1301

PROGRESSIVE ESTIMATE 4 - FINAL

PROJECT: CH2007

Note: See line 60 on next page for asphalt patching

CONTRACT DATE: 02/21/2020

COVERING PERIOD FROM: 11/10/2020 TO 12/16/2020

CONTRACTOR:
NORTHERN IMPROVEMENT COMPANY
PO BOX 2846
FARGO, ND 58108

LENGTH: VARIES
TYPE: CONTRACT BIT. PATCHING
CONTRACT COST: \$191,963.00
FUNDING SOURCE: ROUTINE REPAIR / MAIN.

1	TOTAL WORK DONE TO DATE	\$246,966.59
2	0% RETAINAGE TO DATE:	\$0.00
LIQUIDATED DAMAGES:		
3	0 DAYS L. DAM. TO DATE @ \$700/DAY	
4	0 DAYS L. DAM. ON PREV. EST	
5	0 DAYS L. DAM. THIS PERIOD	
6	TOTAL DUE TO DATE (line 1 minus 2 minus 3)	\$246,966.59
7	PREVIOUS PAYMENTS (line 6, previous est.)	\$242,027.26
8	PAYMENT THIS ESTIMATE	\$4,939.33

REMARKS: 211-4001-431-45.01

WR#5985/50

For:

CERTIFIED AS TO FORM, QUANTITIES OF WORK, PRICE, AND EXTENSIONS

Date: 12/16/20	Project Engineer:
----------------	-------------------

ESTIMATE APPROVED

Date: 12/16/2020	Cass County Engineer:
------------------	-----------------------

CASS COUNTY HIGHWAY DEPARTMENT, WEST FARGO, ND PROJECT NUMBER: CH2007 CONTRACT BITUMINOUS PATCHING				COVERING PERIOD FROM: 11/10/2020 TO 12/16/2020						
ITEM	SPEC NO.	DESCRIPTION	UNIT	ORIGINAL QUANTITY	UNIT PRICE	TOTAL	CURRENT QUANTITY	QUANTITY TO DATE	AMOUNT TO DATE	PERCENT FINAL QUAN.
1	1	CONTRACT BOND	LSUM	1	\$475.00	\$ 475.00		1.00	\$ 475.00	100.0%
2	1	RAILROAD PROTECTION INSURANCE	EACH	7	\$475.00	\$ 3,325.00		7.00	\$ 3,325.00	100.0%
3	2	RESHAPING ROADWAY	EACH	9	\$1,500.00	\$ 13,500.00		9.00	\$ 13,500.00	100.0%
4	2	MILLING TIE IN	SY	45	\$35.00	\$ 1,575.00		0.00	\$ -	0.0%
5	3	HOT BITUMINOUS PAVEMENT	TON	1,227	\$124.00	\$ 152,148.00		964.55	\$ 119,604.20	78.6%
6	3	MOBILIZATION	LS	1	\$12,500.00	\$ 12,500.00		1.00	\$ 12,500.00	100.0%
7	4	TRAFFIC CONTROL	LS	1	\$8,440.00	\$ 8,440.00		1.00	\$ 8,440.00	100.0%
TOTAL:						\$191,963.00			\$157,844.20	82.2%

ADDITIONAL CONTRACT ITEMS

ITEM	Site	HWY NO	DESCRIPTION	UNIT	ORIGINAL QUANTITY	UNIT PRICE	TOTAL	CURRENT QUANTITY	QUANTITY TO DATE	AMOUNT TO DATE	PERCENT FINAL QUAN.
23	12	5	HBP	TON	148	\$ 124.00	\$ 18,352.00		164.43	\$ 20,389.32	111.1%
24	12	5	ASPHALT REMOVAL	SY	111	\$ 25.00	\$ 2,775.00		66.00	\$ 1,650.00	59.5%
25	13	5	HBP	TON	1	\$ 124.00	\$ 124.00		3.00	\$ 372.00	300.0%
26	13	5	SURFACE MILLING	SY	111	\$ 35.00	\$ 3,885.00		83.33	\$ 2,916.55	75.1%
27	14	NA	HBP	TON	21	\$ 124.00	\$ 2,604.00		8.39	\$ 1,040.36	40.0%
29	15	NA	HBP	TON	3	\$ 124.00	\$ 372.00		2.00	\$ 248.00	66.7%
30	15	NA	REMOVAL OF ASPHALT	SY	13	\$ 25.00	\$ 325.00		13.00	\$ 325.00	100.0%
31	16	NA	HBP	TON	7	\$ 124.00	\$ 868.00		7	\$ 868.00	100.0%
32	16	NA	REMOVAL OF ASPHALT	SY	22	\$ 25.00	\$ 550.00		24.4	\$ 610.00	110.9%
33	17	NA	HBP	TON	2	\$ 124.00	\$ 248.00		2	\$ 248.00	100.0%
34	17	NA	REMOVAL OF ASPHALT	SY	6	\$ 25.00	\$ 150.00		9.3	\$ 232.50	155.0%
35	18	NA	HBP	TON	2	\$ 124.00	\$ 248.00		2	\$ 248.00	100.0%
36	18	NA	REMOVAL OF ASPHALT	SY	7	\$ 25.00	\$ 175.00		10.9	\$ 272.50	155.7%
37	19	NA	HBP	TON	1	\$ 124.00	\$ 124.00		1	\$ 124.00	100.0%
38	19	NA	REMOVAL OF ASPHALT	SY	13	\$ 25.00	\$ 325.00		17.8	\$ 445.00	136.9%
39	20	NA	HBP	TON	2	\$ 124.00	\$ 248.00		2	\$ 248.00	100.0%
40	20	NA	REMOVAL OF ASPHALT	SY	7	\$ 25.00	\$ 175.00		22.2	\$ 555.00	317.1%
41	21	NA	HBP	TON	4	\$ 124.00	\$ 496.00		4	\$ 496.00	100.0%
43	22	NA	HBP	TON	1	\$ 124.00	\$ 124.00		1	\$ 124.00	100.0%
45	23	NA	HBP	TON	7	\$ 124.00	\$ 868.00		7	\$ 868.00	100.0%
46	23	NA	REMOVAL OF ASPHALT	SY	22	\$ 25.00	\$ 550.00		16	\$ 400.00	72.7%
47	24	NA	HBP	TON	8	\$ 124.00	\$ 992.00		8	\$ 992.00	100.0%
48	24	NA	REMOVAL OF ASPHALT	SY	25	\$ 25.00	\$ 625.00		8	\$ 200.00	32.0%
49	25	NA	HBP	TON	1	\$ 124.00	\$ 124.00		1	\$ 124.00	100.0%
50	25	NA	REMOVAL OF ASPHALT	SY	3	\$ 25.00	\$ 75.00		13.3	\$ 332.50	443.3%
51	26	NA	HBP	TON	178	\$ 124.00	\$ 22,072.00		150.99	\$ 18,722.76	84.8%
52	26	NA	REMOVAL OF GRAVEL	SY	533	\$ 25.00	\$ 13,325.00		373.3	\$ 9,332.50	70.0%
53	27	C81	HBP	TON	6	\$ 124.00	\$ 744.00		7.68	\$ 952.32	128.0%
54	27	C81	REMOVAL OF ASPHALT	SY	7	\$ 25.00	\$ 175.00		7	\$ 175.00	100.0%
55	28	C81	HBP	TON	2	\$ 124.00	\$ 248.00		2.56	\$ 317.44	128.0%
56	28	C81	REMOVAL OF ASPHALT	SY	22	\$ 25.00	\$ 550.00		22	\$ 550.00	100.0%
57	29	C81	HBP	TON	3	\$ 124.00	\$ 372.00		5.33	\$ 660.92	177.7%
58	30	C10	REMOVAL OF ASPHALT	SY	100	\$ 25.00	\$ 2,500.00		146	\$ 3,650.00	146.0%
59	30	C10	HBP	TON	60	\$ 124.00	\$ 7,440.00		71.15	\$ 8,822.60	118.6%
60	31	*C17	HBP	TON	74	\$ 124.00	\$ 9,176.00		93.63	\$ 11,610.12	126.5%
TOTAL:						\$ 92,004.00			\$ 89,122.39	96.9%	
GRAND TOTAL:						\$283,967.00			\$246,966.59	87.0%	

*C17 FM DIVERSION



MOU & Agreement Actions

February 25, 2021



DA Memorandums of Understanding (Action)

MOU Parties	Project	MOU Cost and Summary
<i>Diversion Authority</i>		
Cass County	SEAI	Addresses design, engineering, acquisition, construction, O&M reimbursement of costs, etc. in regard to SEAI. Cost reimbursement for salaries, services, fees and related costs and expense paid by the County to any person, consultant, contractor, or firm for time spent performing tasks within the MOU.
SECWRD	SEAI	Addresses design, engineering, acquisition, construction, O&M reimbursement of costs, etc. in regard to Drains 27, 47 & 51. Cost reimbursement for design reviews, inspection, costs incurred for acquisition, and expenses paid by the District to any person, consultant, contractor, or firm for time spent performing any task identified within the MOU.

DA Agreements (Action)

Agreement Parties	Project	Agreement Cost*
<i>Diversion Authority</i>		

* Note: Agreement Costs are included within the project budget



MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

METRO FLOOD DIVERSION AUTHORITY

AND

CASS COUNTY, NORTH DAKOTA

Dated as of _____, 2021

Relating to:

A Memorandum of Understanding outlining respective roles and responsibilities for the design, construction, and relocation of road facilities in conjunction with the Southern Embankment and Associated Infrastructure of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

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

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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is made and entered into this ____ day of _____, 2021 (the “Effective Date”), by and between METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota, and CASS COUNTY, NORTH DAKOTA, a political subdivision and home rule county of the State of North Dakota.

WHEREAS, construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Comprehensive Project”) at 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 for the Comprehensive Project and entered into a Project Partnership Agreement (the “PPA”) on July 11, 2016, with the United States Army Corps of Engineers (the “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 Non-Federal Sponsors and the USACE; and

WHEREAS, pursuant to the PPA, USACE will be responsible for completing the Diversion Inlet Structure; the connecting channel; the Red River Control Structure and the Wild Rice River Control Structure; the southern embankment; the overflow embankment (collectively, the “Southern Embankment or Associated Infrastructure” or “SEAI”); construction of road raises associated with the staging area; and all mitigation features that are not the responsibility of the Non-Federal Sponsors (collectively with the SEAI, the “Federal Work”); and

WHEREAS, pursuant to the PPA, the Non-Federal Sponsors will be responsible for an approximately 30 mile 20,000 cubic feet per second storm water diversion channel and associated features; the channel outlet; the Rush and Lower Rush River hydraulic structures; the Maple River aqueduct; the Sheyenne River aqueduct; the inflow design flood levee; associated railroad bridges (collectively, the “Storm Water Diversion Channel and Associated Infrastructure” or “SWDCAI”); the in-town levees and the Oxbow-Hickson-Bakke levee; recreation features; environmental mitigation features located within SWDCAI; and applicable pre- and post-monitoring and adaptive management for the Comprehensive Project (collectively with the SWDCAI, the “Non-Federal Work”); and

WHEREAS, although USACE is responsible for completing the Federal Work, the Non-Federal Sponsors are responsible for providing all real property interests, relocations, and disposal area improvements necessary for USACE; and

WHEREAS, the Authority, pursuant to the Joint Powers Agreement, is the entity responsible for the Non-Federal Sponsors’ obligations under the PPA; and

WHEREAS, the County owns infrastructure that will be impacted by the design, construction, operation, and maintenance of the Federal Work; and

WHEREAS, the Authority and the County now desire to enter into this MOU to define each Party's roles and responsibilities for the Work associated with the SWDCAI and the Federal Work.

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 in this MOU will have the meanings given to them in this MOU as and defined in this Section unless a different meaning clearly applies from the context.

“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 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.

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

“Betterment” means any improvement in design, construction, or capacity over and above what is required to provide road facilities of equal service and utility to the County. Notwithstanding the foregoing, the following are not considered Betterments:

- (a) Any upgrades from current infrastructure required for accommodation of the SEAI;
- (b) Replacement devices or materials that are of equivalent standards although not identical;
- (c) Replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;

(d) Any upgrading required by Applicable Law;

(e) Replacement devices or materials used for reasons of economy (e.g., it may be uneconomical to purchase non-stocked items); and

(f) Any upgrading required by a utility owner's applicable utility relocation standards.

"Business Day" means any day that is not a Saturday, a Sunday, or a State public holiday.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601-9675).

"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.

"Contractor" means a Person that contracts with USACE to perform Work.

"County" means Cass County, North Dakota, a political subdivision and home rule county of the State of North Dakota.

"County Engineer" means the Cass County Engineer.

"Culvert Improvement" means the replacement and expansion of a culvert underlying County Road 36 in the location identified on Exhibit C attached hereto.

"Diversion Inlet Structure" means the hydraulic structure being constructed by USACE at the confluence of County Road 16 and County Road 17.

"Drain 27 Wetland Restoration Project" means a project to block Drain 27 immediately upstream of the SEAI to create an area of approximately 320 acres of inundation and wetland.

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

"Environment" or **"Environmental"** means air, soils, surface waters (including wetlands), groundwater, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, and cultural, historic, archeological, and paleontological resources.

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

“Federal Work” means those portions of the Comprehensive Project allocated to USACE under the terms of the PPA and described in the Recitals.

“Final Completion” means the time at which the work performed under the construction contract between USACE and its contractor has progressed to the point of being complete, as defined by such contract.

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

“GAAP” means accounting principles generally accepted in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board, the American Institute of Certified Public Accountants, and the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession as in effect on the date hereof.

“Governing Body” means the Cass County Commission.

“Intermediate Design” means the design has reached sixty-five percent (65%) completion, as determined by USACE.

“Hazardous Materials” means any hazardous, toxic, radioactive, or infectious substance, material, or waste as defined, listed, or regulated under any Environmental Law.

“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.

“Material Modification” means a modification affecting the operation or performance of a Project Element or Township Element.

“Non-Federal Work” means those portions of the Comprehensive Project allocated to the Non-Federal Sponsors under the terms of the PPA and described in the Recitals.

“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.

“PPA” means the Project Partnership Agreement, dated June 11, 2016, 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 Comprehensive Project, and any amendments thereto.

“Project Elements” means the SE-1, SE-2, SE-3, the SEAI Crossings, the Culvert Improvement, the Reconstructs, the Diversion Inlet Structure, the Relocations, the Drain 27 Wetland Restoration Project, the Wild Rice River Control Structure, and the Red River Control Structure.

“Reconstructs” means (i) the reconstruction of County Road 18 from the east side of the Interstate 29 Hickson Interchange to 174 ½ Avenue South and (ii) the reconstruction of County Road 81 from County Road 18 to approximately South Schnell Drive, to facilitate the reconstruction of Interstate 29 to cross the SEAI.

“Relocations” means the relocations of County Road 16 and County Road 17 south of the SWDCAI, as preliminarily mapped on Exhibit B.

“Red River Control Structure” means the control structure on the Red River of the North to be procured by USACE.

“SE-1” means that portion of the Southern Embankment and Associated Infrastructure that will be constructed south and west of the Diversion Inlet Structure.

“SE-2” means that portion of the Southern Embankment and Associated Infrastructure that will be constructed between the Diversion Inlet Structure and the Wild Rice River Control Structure.

“SE-3” means that portion of the Southern Embankment and Associated Infrastructure that will be constructed between the Wild Rice River Control Structure and the Red River Control Structure.

“Southern Embankment and Associated Infrastructure” or **“SEAI”** means the Diversion Inlet Structure, the connecting channel, the Red River Control Structure, the Wild Rice River Control Structure, and the southern embankment in its entirety (including SE-1, SE-2, and SE-3), to be constructed as part of the Comprehensive Project.

“SEAI Crossing” means the raising of County Road 16 or County Road 81, as applicable, from its current location to over top of the SEAI.

“State” means the State of North Dakota.

“Substantial Completion” means the time at which the work performed under the construction contract between USACE and its contractor has progressed to the point of being substantially completed, as defined by such contract.

“Township Crossing” means a crossing of the SEAI at 45th Street South, if exercised in the discretion of the Authority, in the approximate location shown on Exhibit D.

“Township Elements” means the Mobility Improvements to 169th Avenue Southeast and 49th Street Southeast in Normanna Township and the Township Crossing.

“Uniform Act” means the Relocation Assistance and Real Property Acquisition Policies Act of 1970.

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

“Utility Relocation” means each relocation (temporary or permanent), abandonment, protection in place, adjust in place, removal, replacement, reinstallation, and/or modification of existing utilities necessary to accommodate construction, operation, maintenance, and/or use of the SEAI.

“Wild Rice River Control Structure” means the control structure on the Wild Rice River to be procured by USACE.

“Work” means design work, construction work, and maintenance work, and all other work, services, and obligations required to be furnished, performed, and provided by the Authority under this MOU.

Section 1.02 TERMS GENERALLY. The definition of terms in this MOU will apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” will be deemed to be followed by the phrase “without limitation.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document in the MOU will be construed as referring to the agreement, instrument, or other document as amended, supplemented, or otherwise modified (subject to any restrictions on amendments, supplements, or modifications in the MOU); (b) any reference in the MOU to any person will be construed to include the person’s permitted successors and assigns; (c) all references in the MOU to articles, sections, exhibits, and schedules will be construed to refer to articles and sections of, and exhibits and schedules to, this MOU; and (e) the words “asset” and “property” will be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

ARTICLE II. INTENT

Section 2.01 INTENT. Pursuant to the terms of the PPA, the Authority is responsible, on behalf of USACE, for obtaining the interests and authorizations necessary for construction, operation, and maintenance of the SEAI, which will be designed and constructed by USACE. As a result, the Parties desire to enter this MOU to address the Parties’ respective rights and obligations relating to the design, construction, operation, and maintenance of the SEAI. The Authority intends to transfer certain obligations set forth in this MOU to USACE based on the terms of the PPA.

ARTICLE III. DESIGN

Section 3.01 INTENT. The Parties intend that the Authority will be the lead agency for coordination with USACE for design. The Parties understand and agree that the SEAI and the components described herein must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 3.02 USACE RESPONSIBILITY. USACE is responsible for designing the Project Elements and the Township Elements and will submit a Preliminary Design, an Intermediate Design, and a Final Design to the County Engineer for review and comment. In the event USACE does not share designs with the County Engineer, the Authority will share these above-provided designs with the County Engineer for review and relay any comments from the County Engineer to USACE. The County Engineer will review and provide any comments on designs within twenty-eight (28) days of receipt.

Section 3.03 FINANCING. The County will not be responsible for any costs or expenses associated with the design of the Project Elements or Township Elements. The County may seek reimbursement from the Authority for design reviews as set forth in this MOU.

Section 3.04 RELEASE. Review by the County of any designs will not be deemed to mean the plans and specifications or construction will be structurally sound and appropriate or that the plans and specifications meet Applicable Law.

Section 3.05 BETTERMENTS. The County agrees that the relocation, arrangement, and/or alteration associated with the Relocations and SEAI Crossings to be accomplished under this MOU will provide the County with facilities equal in service as to those in existence on the Effective Date of this MOU. If the County desires any Betterments for the Relocations or an SEAI Crossing, the County will notify the Authority and USACE of each individual Betterment sought on or prior to the Effective Date. The Authority will initially pay the costs and expense of such Betterments to USACE prior to the contract award or, if a contract modification, prior to the execution of the modification and will thereafter invoice the County. All invoicing as between the Authority and the County will be done in accordance with the procedure set forth in Article XI.

ARTICLE IV. PRELIMINARY PLANNING AND ENGINEERING ACTIVITIES

Section 4.01 INTENT. The Parties intend that the Authority will be the lead agency for coordination with USACE for planning and engineering activities. The Parties understand and agree that the SEAI and the components described herein must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 4.02 SITE TESTING. The Authority will coordinate with USACE to ensure all preliminary engineering activities for the Project Elements and Township Elements, 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 are completed.

Section 4.03 MITIGATION. The Authority will ensure remediation and removal of all Hazardous Materials necessary to complete construction of the Project Elements and Township Elements is completed.

Section 4.04 ENVIRONMENTAL REVIEW. The Authority will ensure all work described in this MOU is compliant with applicable Environmental laws and regulations.

Section 4.05 UTILITY RELOCATIONS. The Authority is responsible for coordinating and/or performing Utility Relocations of all utilities and will be responsible for costs incurred for these Utility Relocations relating to the construction of the Project Elements and Township Elements.

Section 4.06 PERMITS AND APPROVALS. The Authority is responsible for securing any necessary permits and/or approvals for construction of the Project Elements and Township Elements. Except as otherwise specifically set forth herein, the County will not require additional permits and/or approvals from its Governing Body. The Authority must also obey and abide by all Applicable Law.

Section 4.07 PLATTING. The Authority intends to plat the Project Limits and will file the necessary documentation with the County as required under Applicable Law. The County will review such documentation in Good Faith and will use its Best Efforts to work with the Authority in the platting process. The Authority will utilize platting to define the Project Limits, which are currently projected on Exhibit A.

Section 4.08 REOPENING OF SECTION LINES. The County retains the ability to reopen section lines crossing the SEAI with the approval of the Authority. The County may request to reopen a section line for such things as adding an additional crossing over the SEAI. The Authority will not unreasonably withhold approval of the County's request to reopen.

Section 4.09 ROAD VACATION. If not platted, the Authority will seek authorization from the County, as necessary, to vacate any roads under the County's jurisdiction which will need to be relocated or vacated as a result of the construction of the SEAI. The Authority will seek County authorization as required under Applicable Law.

ARTICLE V. PROPERTY INTEREST ACQUISITION

Section 5.01 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 relocation and/or alteration of the Project Elements and Township Elements. In the event the Authority is unable to acquire any easement, right-of-way, or other interest pertaining to a roadway improvement contained within a Project Element or Township Element, following a Good Faith attempt, the Authority will notify the County, and the County will be responsible for acquiring such easement, right-of-way, or other interest. Following the acquisition of such, the County may seek reimbursement from the Authority as set forth in Article XI for the acquisition.

Section 5.02 TRANSFERS OF RIGHTS, PRIVILEGES, AND INTERESTS.

(a) The property interests held by the County in the locations where USACE will construct the Culvert Improvement, the Reconstructs, SE-1, and the SEAI Crossings are outlined on the maps attached as Exhibit E. The County will convey to the Authority the rights or privileges outlined in the table affixed in Exhibit E to construct the SEAI Crossings, the Reconstructs, SE-1, and the Culvert Improvement on or across the County's property. Although County Road 36 will not be reconstructed for SE-1, aside from the Culvert Improvement, the road must remain as currently constructed to maintain flood control for the Comprehensive Project. The Parties intend that the property interest acquired by the Authority will result in County Road 36 maintaining its current dimensions. For those property interests in which the County holds right-of-way, the County will grant a single permit allowing access to all of the applicable rights-of-way.

(b) The Authority will convey to the County the necessary easements or rights-of-way needed to operate and maintain the Relocations, the SEAI Crossings, the Reconstructs, and the Culvert Improvement upon the completion of such improvements. For those portions of the Relocations that are not constructed atop the Diversion Inlet Structure, the Authority's intent will be to convey a one hundred (100) foot road easement on either side of the center of the roadway, wherever possible, to the County. For those portions of the Relocations that are constructed atop the Diversion Inlet Structure, the Authority's intent will be to convey an easement that is wide enough to operate and maintain the road but not so wide to interfere with the other functions of the Diversion Inlet Structure.

(c) The Authority will receive and convey the property interests for the Township Elements as set forth in the memorandum of understanding between the Authority and Normanna Township for such elements.

Section 5.03 COUNTY ROAD 81 ACCESS PERMIT. To facilitate construction of the bypass of Interstate 29, USACE will construct a haul route that will cross County Road 81. The Authority submitted an access permit application to the County for such crossing, attached hereto as Exhibit F, and received necessary County approval.

ARTICLE VI. CONSTRUCTION

Section 6.01 INTENT. The Parties intend that the Authority will be the lead agency for coordination with USACE for construction. The Parties understand and agree that the SEAI and the components described herein must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 6.02 USACE RESPONSIBILITY. USACE will be constructing the Project Elements and Township Elements. Construction will occur based upon the Final Design, except as otherwise provided in Section 6.05.

Section 6.03 WORK ZONE TRAFFIC CONTROL. The Authority will coordinate with USACE to replace appropriate work zone traffic control signs during construction of the Project Elements and the Township Elements, as necessary.

Section 6.04 BYPASSES. USACE will not construct bypasses for County Roads 16, 36 or 81 during improvement or relocation construction.

Section 6.05 MATERIAL CHANGES OR MODIFICATIONS. Any Material Modification to a Final Design during construction will be subject to review and comment by the County. The County will review any proposed Material Modification within fourteen (14) days of receipt or on a truncated time period, as required by the Authority or USACE, in the event of a critical or emergency change. The County reserves the ability to request additional information relating to any proposed Material Modification, including but not limited to specifications for the modified material and information on how the specifications were determined, from either the Authority or USACE, and its 14-day review period will not commence until the receipt of such requested information.

Section 6.06 COORDINATION OF PARTIES. The County will coordinate and work through the Authority and USACE on any and all questions that develop during construction. The County agrees and acknowledges that it cannot direct the Contractor performing work on the Project Elements or the Township Elements.

Section 6.07 CONSTRUCTION SCHEDULE. To facilitate scheduling for construction of the Project Elements and Township Elements, the Authority will coordinate with USACE to provide the County with a proposed construction schedule and with monthly construction schedule updates.

Section 6.08 EXISTING ROADS. During the process of constructing the Project Elements, the Authority will coordinate with USACE to provide for the deconstruction or removal of any remaining portions of County roads, where deemed necessary by the County, as a result of the construction described herein.

Section 6.09 REVIEW AND INSPECTION. The Authority will coordinate with USACE to allow for worksite control rules that permit and facilitate reasonable access to the County for the reasonable inspection and review of work. The presence or absence of a County inspector does not relieve the Authority from any requirement in this MOU, nor is any inspector authorized to change any term or condition of this MOU. The County agrees that during any review or inspection contemplated under this section that its staff will follow USACE construction safety practices when visiting a construction site (e.g., register at field office and wear personal safety equipment).

Section 6.10 PRE-FINAL INSPECTION. The Authority will provide the County with written notice of any anticipated Substantial Completion of the Culvert Improvement, a Reconstruct, a Relocation, an SEAI Crossing, or a Township Element at least fifteen (15) calendar days prior to the anticipated date for Substantial Completion. Within ten (10) calendar days of the anticipated date for Substantial Completion, all parties will conduct at least one joint pre-final inspection of the Culvert Improvement, Reconstruct, Relocation, SEAI Crossing, or Township Element to verify the contract requirements have been met, the completed construction meets the Final Design and any Material Modification made pursuant to Section 6.05, and that the flood risk management certification requirements are met. If the County finds the construction is not in accordance with the Final Design or any approved Material Modification, the County will notify

the Authority to develop a written punch list of items not constructed in accordance with the Final Design or approved Material Modifications. The Authority will coordinate with USACE's contracting officer regarding the issue to ensure such issue is completed in a reasonable amount of time as determined by the Authority and the County.

Section 6.11 FINAL INSPECTION. Following the pre-final inspection and resolution of any punch list items, the County will conduct a final inspection of the Culvert Improvement, a Reconstruct, a Relocation, an SEAI Crossing, or a Township Element to determine whether the work meetings the Final Design and any Material Modification made pursuant to Section 6.05. If the County finds the construction is not in accordance with the Final Design or any approved Material Modification, the County will notify the Authority of such fact and the Authority will coordinate with USACE regarding such deficiency in the construction work in the form of a written punch list.

Section 6.12 TURN BACK AND TURNOVER. Following close-out of a USACE contract for the Culvert Improvement, a Reconstruct, a Relocation, or an SEAI Crossing, USACE will turn back control of the road to the County. Following close-out of a USACE contract for other Project Elements and the Township Elements, USACE will turn over control of those elements to the Authority. The Authority will turn over control of the Township Elements to Normanna Township as set forth in the memorandum of understanding between the Authority and Normanna Township.

Section 6.13 AS-BUILT DRAWINGS. The Authority will coordinate with USACE to provide as-built drawings of the Culvert Improvement, the Reconstructs, the Relocations, the SEAI Crossings, and the Township Elements to the County.

Section 6.14 WARRANTY. USACE may include a standard Federal Acquisition Regulation clause 52.246-21 Warranty of Construction in its construction contract. The clause includes a 1-year warranty provision. In the event the Authority and/or the County identifies a deficiency in workmanship or defective product or material, the Authority and/or the County will notify USACE.

ARTICLE VII. OPERATION AND MAINTENANCE

Section 7.01 COUNTY RESPONSIBILITY. Following a turn back of the Culvert Improvement, a Reconstruct, a Renovation, or an SEAI Crossing, the County will have full control of all items on County-owned property interest, excluding only the SEAI and its components.

ARTICLE VIII. FUTURE CHANGES OR ADDITIONS

Section 8.01 CULVERT IMPROVEMENT AND COUNTY ROAD 36.

(a) The County retains the ability, at its sole cost and expense, to perform normal operation and maintenance activities, such as replacing gravel surfacing, without separate written approval by the Authority or USACE.

(b) The County retains the ability, at its sole cost and expense, to perform any construction activities that involve excavation of the SE-1 embankment section along County Road 36 or to adjust or alter the Culvert Improvement or the overall roadway section on County Road 36 upon separate written approval by the Authority and USACE. USACE's written approval will be through the issuance of a 408 permit or successor USACE permitting regime.

(c) In the event there is a need to excavate the SE-1 embankment section along County Road 36, the County may perform such work without a temporary levee if the work is performed outside the normal spring flood season. Any replacement section of the SE-1 embankment section along County Road 36 must be reconstructed in accordance with the specifications required of other embankment sections of the SEAI.

(d) If it becomes necessary or desirable to change, alter, widen, or reconstruct the SEAI to accommodate a County-initiated project, the cost of such work, if approved by the Authority and USACE, including any cost incidental to alteration of the Culvert Improvement or flood control facility, including the SEAI, made necessary by any such changes, will be the expense of the County.

Section 8.02 SEAI CROSSINGS.

(a) The County retains the ability, at its sole cost and expense, to adjust or alter the SEAI Crossings to the extent such may be accomplished without adversely affecting, changing, or altering the SEAI, upon separate written approval by the Authority and USACE. USACE's written approval may be through the issuance of a 408 permit or successor USACE permitting regime. For purposes of this MOU, the Parties understand and agree that alteration of the SEAI will result if the County has to perform work one (1) foot below the subgrade of the SEAI Crossing and the top of the SEAI elevation.

(b) If it becomes necessary or desirable to change, alter, widen, or reconstruct the SEAI to accommodate a County-initiated project, the cost of such work, if approved by the Authority and USACE, including any cost incidental to alteration of the SEAI Crossing or flood control facility, including the SEAI, made necessary by any such changes, will be the expense of the County.

Section 8.03 RELOCATIONS.

(a) The County retains the ability, at its sole cost and expense, to adjust or alter the Relocations to the extent such may be accomplished without adversely affecting, changing, or altering the SEAI, upon separate written approval by the Authority and USACE. USACE's written approval may be through the issuance of a 408 permit or successor USACE permitting regime. For purposes of this MOU, the Parties understand and agree that alteration of the SEAI will result if the County has to perform work one (1) foot below the subgrade of the road and the top of the SEAI elevation.

(b) If it becomes necessary or desirable to change, alter, widen, or reconstruct the SEAI to accommodate a County-initiated project, the cost of such work, if approved by the Authority

and USACE, including any cost incidental to alteration of the Relocations or flood control facility, including the SEAI, made necessary by any such changes, will be the expense of the County.

Section 8.04 RECONSTRUCTS.

(a) The County retains the ability, at its sole cost and expense, to adjust or alter the Reconstructs to the extent such may be accomplished without adversely affecting, changing, or altering the SEAI, upon separate written approval by the Authority and USACE. USACE's written approval may be through the issuance of a 408 or successor USACE permitting regime.

(b) If it becomes necessary or desirable to change, alter, widen, or reconstruct the SEAI to accommodate a County-initiated project, the cost of such work, if approved by the Authority and USACE, including any cost incidental to alteration of the Reconstructs or flood control facility, including the SEAI, made necessary by any such changes, will be the expense of the County.

Section 8.05 SEAI AND OTHER PROJECT COMPONENTS.

(a) The Authority retains the ability, at its sole cost and expense, to adjust or alter the SEAI or other elements of the Comprehensive Project to the extent such may be accomplished without adversely affecting, changing, or altering the Culvert Improvement, a Reconstruct, an SEAI Crossing, or a Relocation.

(b) If it becomes necessary or desirable to change, alter, widen, or reconstruct the Culvert Improvement, an SEAI Crossing, or a Relocation to accommodate the SEAI or other elements of the Comprehensive Project, the cost of such work, if approved by the County and USACE, including any incidental costs made necessary by such changes, will be the expense of the Authority.

**ARTICLE IX.
INSURANCE AND LIABILITY**

Section 9.01 INDEMNIFICATION. As set forth in the Joint Powers Agreement, the Authority, to the fullest extent authorized by law, shall at all times hereinafter, defend and indemnify the County for any liability claims arising from Authority activities or operations, decisions of the Authority, or arising out of or regarding the Comprehensive Project. The indemnity and hold harmless provision 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. Nothing herein shall be construed to provide insurance coverage or indemnification to any officer, employee, or volunteer of the County for any act or omission for which the officer, employee, or volunteer is guilty of malfeasance in office, willful neglect of duty, or bad faith. In the event the County seeks indemnification, it will abide by section 15.07 of the JPA to first apply available and/or applicable insurance proceeds against said claim.

**ARTICLE X.
REIMBURSEMENT OF COSTS**

Section 10.01 REIMBURSABLE COSTS. When funds are, or become, available, the Authority will reimburse the County for salaries, services, and/or related costs and expenses as expressly provided in this MOU. Reimbursable costs are salaries, services, fees, and related costs and expense paid by the County to any person, consultant, contractor, or firm for time spent performing any task required or identified under this MOU when supported by adequate records. Salaries, services, and related costs and expenses paid to the County’s employees, officers, agents, or representatives may not be reimbursed.

Section 10.02 BETTERMENTS. The County agrees that it will not submit any costs or expenses for reimbursement by the Authority incurred for Betterments.

ARTICLE XI. INVOICING AND AUDIT

Section 11.01 COUNTY INVOICES.

(a) As necessary hereunder, the County will submit monthly properly certified invoices for reimbursable costs to the PMC at APInvoicesFMDiv@jacobs.com and to PaulsenJ@FMDiversion.gov in such form as outlined in the following section. Prior to commencing any work for which reimbursement will be sought, the County will submit final cost estimates to the Authority for review and approval.

(b) The County’s invoices must be detailed and precise, must clearly indicate fees and expenses for the current billing period month, and must include at least the following information:

- (i) The County’s name and address;
- (ii) The County’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.

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

(d) 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 County.

(e) Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified following payment, the County will credit any payment in error from any payment that is due or that may become due to the County under this MOU.

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

Section 11.02 AUDIT AND DISPUTE. All original time cards, payrolls, material records, and other accounts for all charges and expenditures for which reimbursement will be claimed by the County from the Authority will be available at all reasonable times to allow the Authority to check and audit the invoices submitted by the County. The ability of the Authority to audit the County's invoices will extend for a period of three (3) years from the date final payment has been received by the County. Any overpayment or underpayment discovered during the audit will be treated as a dispute under Article XIII.

Section 11.03 FINAL ACCOUNTING. The County will provide one (1) final and complete billing of all incurred costs within one (1) year following completion of the Project Elements and Township Element. The Authority may in Good Faith, after conducting a final audit, make adjustments to the amount of compensation due to the County under this MOU.

Section 11.04 BETTERMENTS. In the event the Authority constructs Betterments upon request of the County, the Authority will invoice the County for those costs and expenses incurred for construction of the Betterments in accordance with the procedure laid out in this Article.

Section 11.05 AUTHORITY INVOICES. As necessary hereunder, the Authority will submit monthly properly certified invoices for reimbursable costs to the County. Such invoices will be due and payable in full to the Authority within thirty (30) calendar days of their dated date. If payment is not timely made, the Authority reserves the right to apply a one percent (1%) monthly finance charge to the invoice.

ARTICLE XII. TERM AND TERMINATION

Section 12.01 TERM. This MOU will be an original term of ten (10) years from the Effective Date (the “Original Term”) and shall automatically renew for subsequent renewal terms of ten (10) years (a “Subsequent Renewal Term”) unless terminated in accordance with this MOU.

Section 12.02 TERMINATION. A Party may terminate performance of work during the Original Term or any Subsequent Renewal Term in whole or in part after providing at least one (1) year’s written notice to the other Party.

Section 12.03 EFFECTS OF TERMINATION. Upon receipt of a notice of termination, except as directed by the other Party, the Parties shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amount due under this clause:

(a) Place no further contracts or orders, except as necessary to complete the continued portion of the MOU.

(b) With approval or ratification of the Authority Representative, settle all outstanding liabilities and termination settlement proposals arising from the termination of contracts or responsibilities as proposed in this MOU, the cost of which would be reimbursable in whole or in part, under this MOU. Approval or ratification will be final for purposes of this section.

(c) Transfer title if not already transferred.

(d) Complete performance of the work not terminated.

(e) Take any action that may be necessary, or that the Authority Representative may direct, for the protection and preservation of the property related to this MOU that is in the possession of the County and in which the Authority has or may acquire an interest.

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. THIRD PARTY BENEFICIARY

Section 14.01 USACE. The Authority and the County specifically agree, acknowledge, and covenant that portions of the County's property or right-of-way will be used by USACE in order to construct, operate, and maintain the SEAI. As a result, the Authority and the County 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, USACE 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, USACE 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 USACE.

ARTICLE XV. MISCELLANEOUS

Section 15.01 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 15.02 COUNTERPARTS. This instrument may be executed 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 15.03 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 15.04 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 15.05 FORCE MAJEURE. No Party will be liable to another Party during any period in which its performance is delayed or prevented, in whole or in part, by circumstances beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Parties of the same.

Section 15.06 AUTHORIZED REPRESENTATIVES. Each of the Authority and the County hereby designates the following individuals as its initial authorized representatives, respectively, to administer this MOU on its respective behalf:

- (a) Authority Representative: Kris Bakkegard, Director of Engineering
- (b) County Representative: Jason Benson, Cass County Engineer

Section 15.07 NOTICE.

(a) All notices under the MOU will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by email communication followed by a hard copy, to the following addresses.

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

Jacobs
64 4th Street North, Suite 300
Fargo, North Dakota 58102

and

Director of Engineering
Box 2806
207 4th Street North
Suite A
Fargo, North Dakota 58102

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

County Engineer
Cass County Highway Department
1201 Main Avenue West
West Fargo, North Dakota 58078

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

Section 15.08 GOVERNING LAW. This MOU will be governed and construed in accordance with the laws of the State of North Dakota.

Section 15.09 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 working regarding other aspects of the Comprehensive Project.

Section 15.10 FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for the United States Environmental Protection Agency (“EPA”) in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. On or prior to the Effective Date, the County 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 G to this MOU. The County 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 15.11 DEBARMENT AND SUSPENSION. The County 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 County 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 County will complete and submit to the Authority the federal certification form regarding debarment and suspension, which is attached within Exhibit G to this MOU.

Section 15.12 CIVIL RIGHTS OBLIGATIONS. The County 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 County will complete and submit to the Authority the federal certification form regarding civil rights, which is attached within Exhibit G to this MOU.

Section 15.13 CONFLICT WITH JOINT POWERS AGREEMENT. Nothing in this MOU is intended to conflict with the provisions of the Joint Powers Agreement. In the event there is a conflict, the provisions of the Joint Powers Agreement will control.

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

(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 _____, 2021.

METRO FLOOD DIVERSION AUTHORITY

By: _____
JOHNATHAN JUDD, Chair

By: _____
JOEL PAULSEN, Executive Director

ATTEST:

By: _____
DAWN LINDBLOM, Secretary

Signature Page for Cass County, North Dakota

The Governing Body of Cass County, North Dakota, approved this MOU on the _____ of _____, 2021.

CASS COUNTY, NORTH DAKOTA

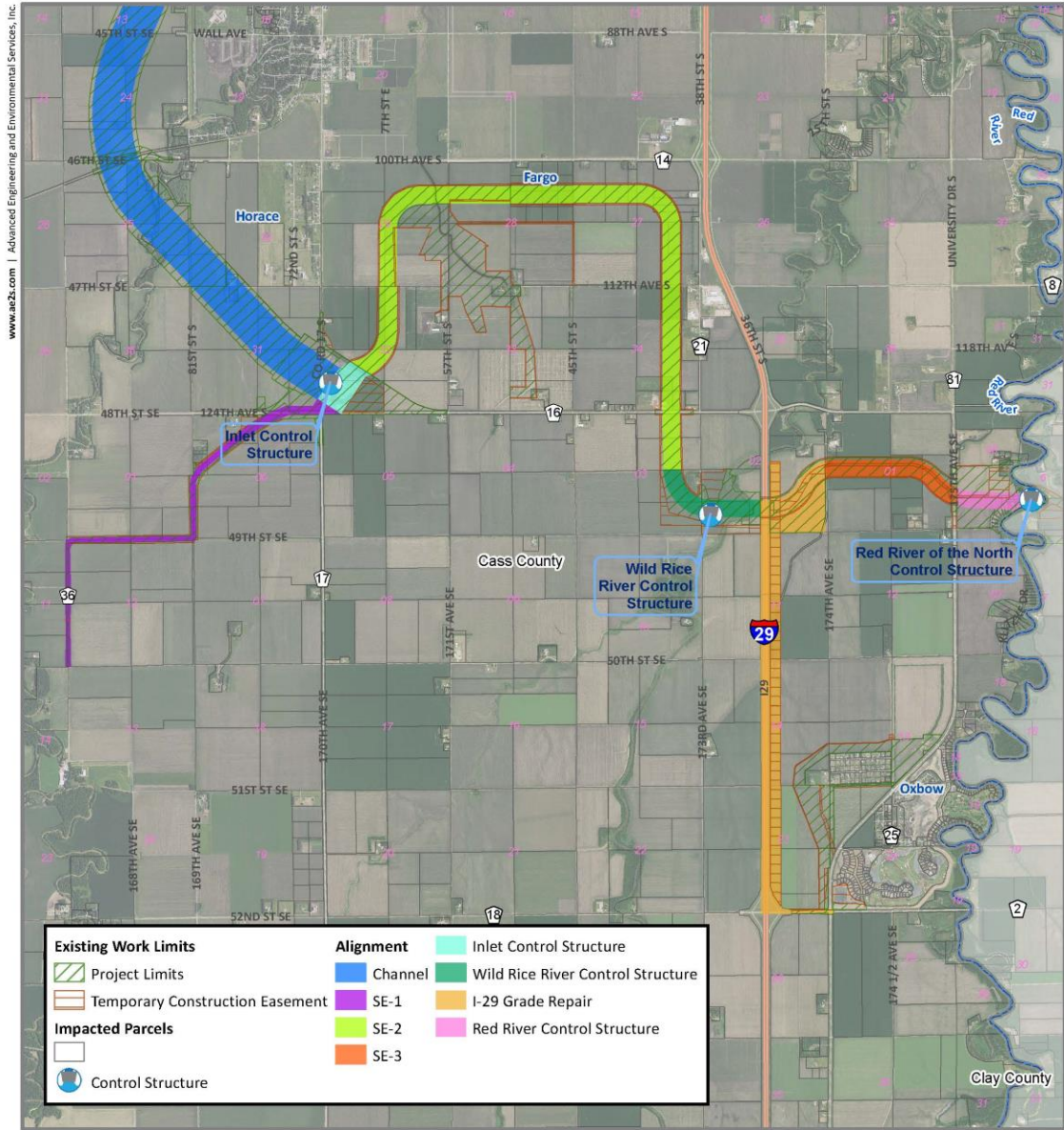
By: _____
CHAD PETERSON, Chair of the Board of
County Commissioners

ATTEST:

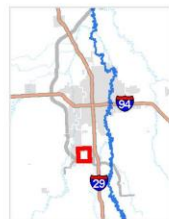
By: _____
MICHAEL MONTPLAISIR, County Auditor

EXHIBIT A

SEAI PROJECT LIMITS MAP



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 hereon 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: dlce, AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\WP27-Red River West Embankment\SEAI_ND_overall.mxd



SOUTHERN EMBANKMENT (ND) AND ASSOCIATED INFRASTRUCTURE

FM AREA DIVERSION
Map Date: 9/30/2020



EXHIBIT B

COUNTY ROADS 16 AND 17 RELOCATIONS MAP

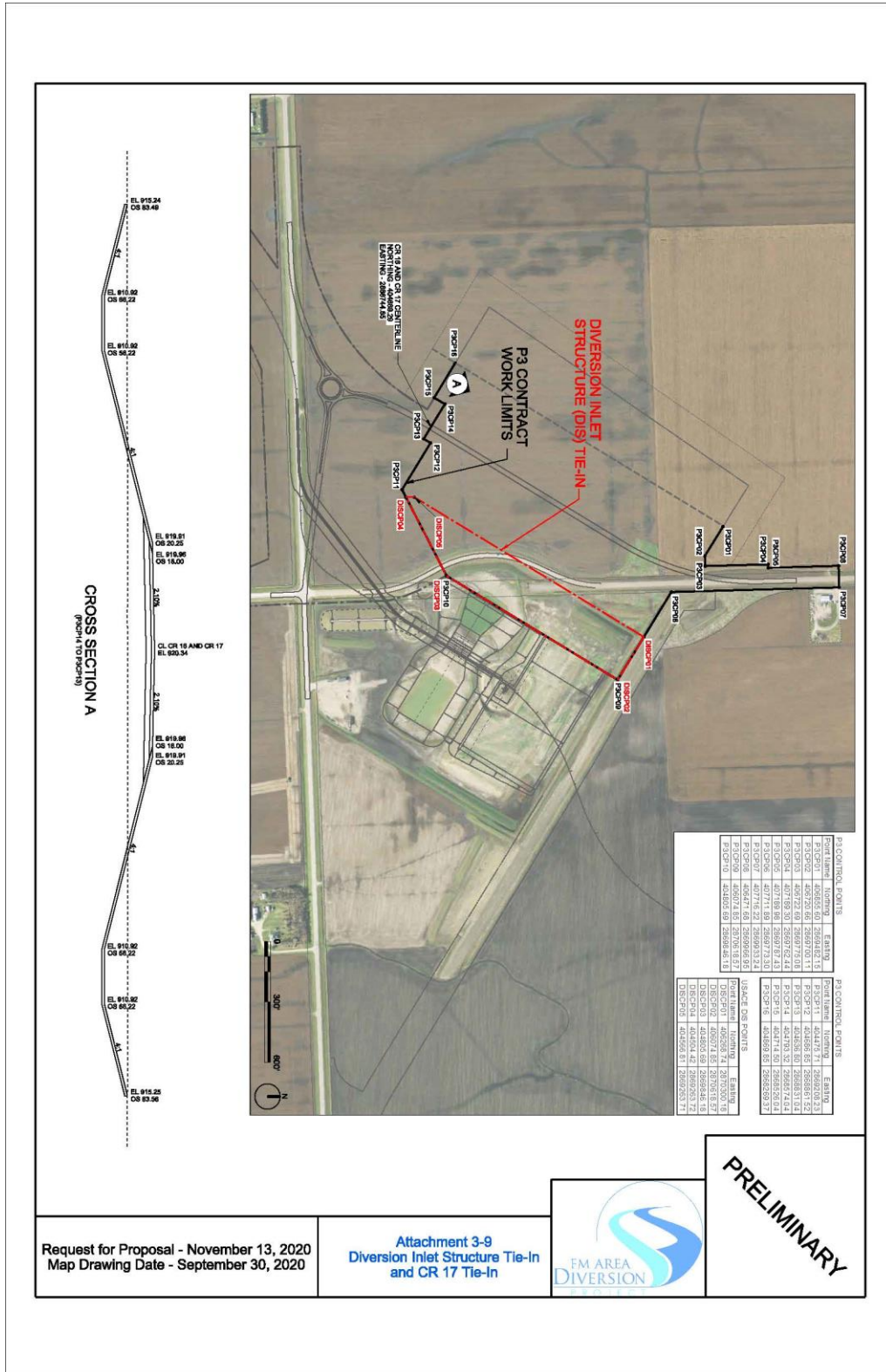
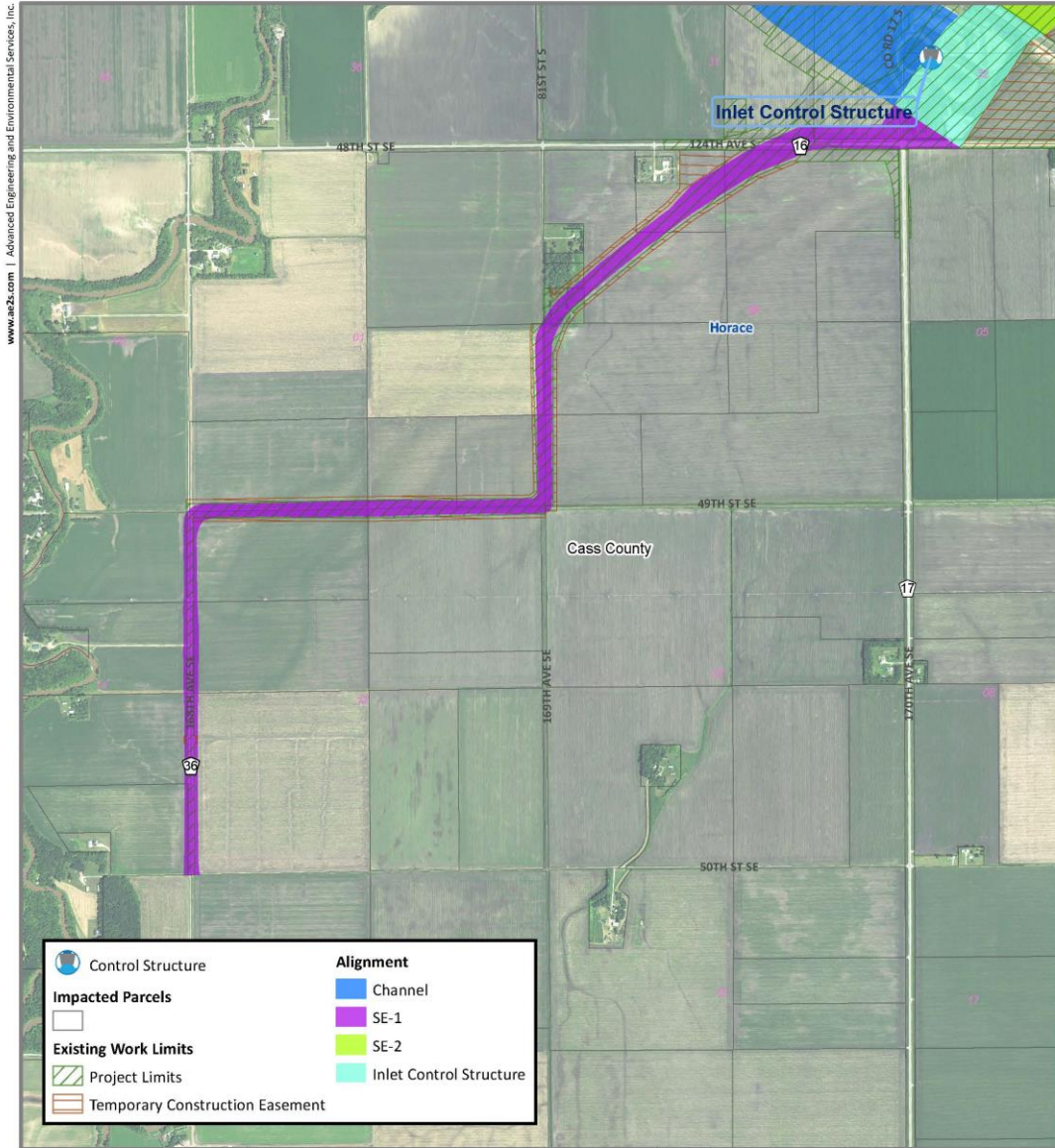
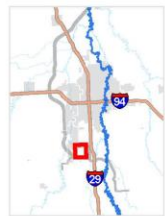
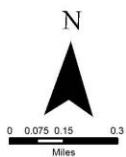


EXHIBIT C

SE-1 AND COUNTY ROAD 36 CULVERT MAPS



Any reliance upon this map is at user's own risk. AE25 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 hereon 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: cwickenheiser, AE25, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\WP27-Red River West Embankment\SEAI_ND_SE_1_for_MOU.mxd



SOUTHERN EMBANKMENT (ND) SE-1

FM AREA DIVERSION
Map Date: 10/1/2020



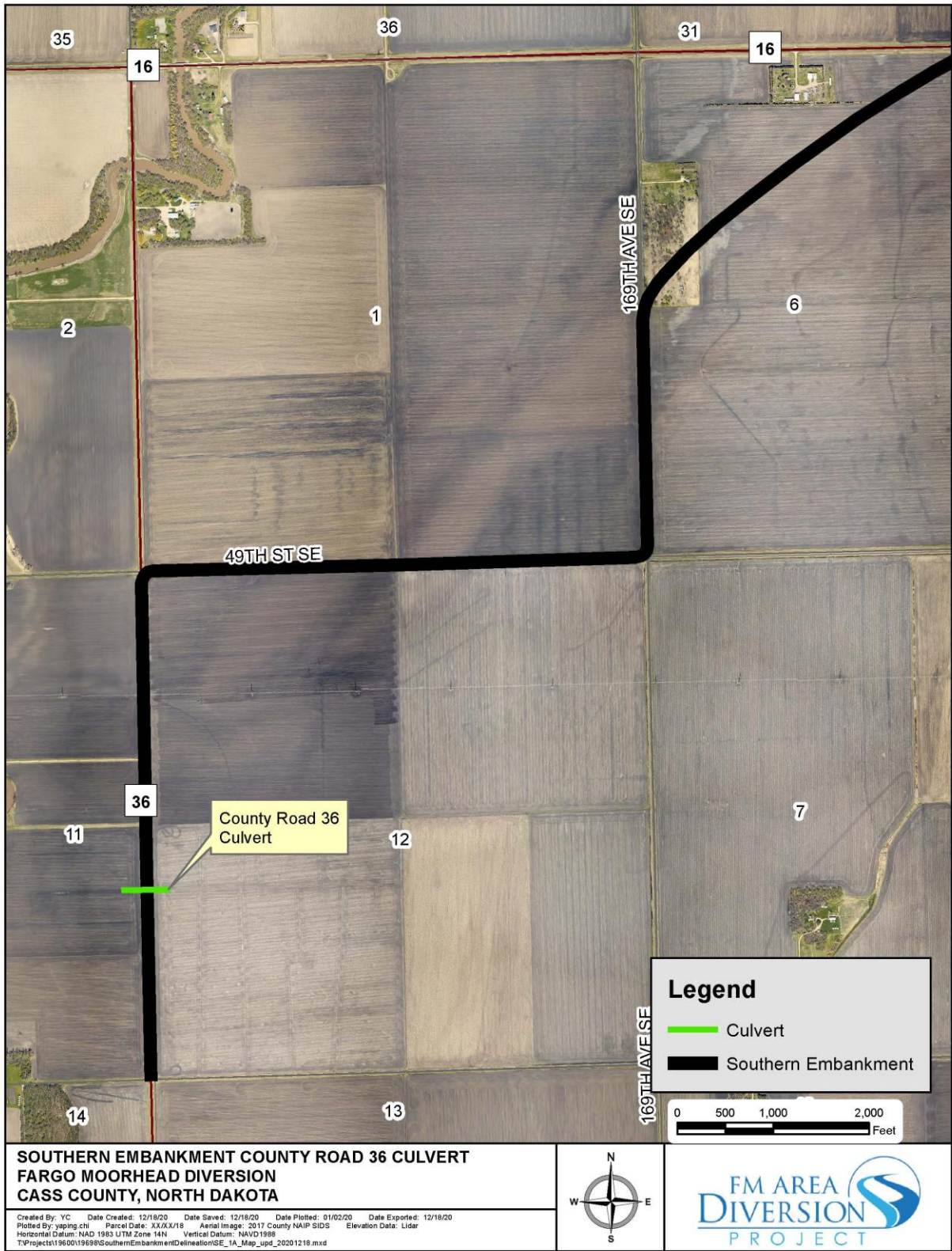
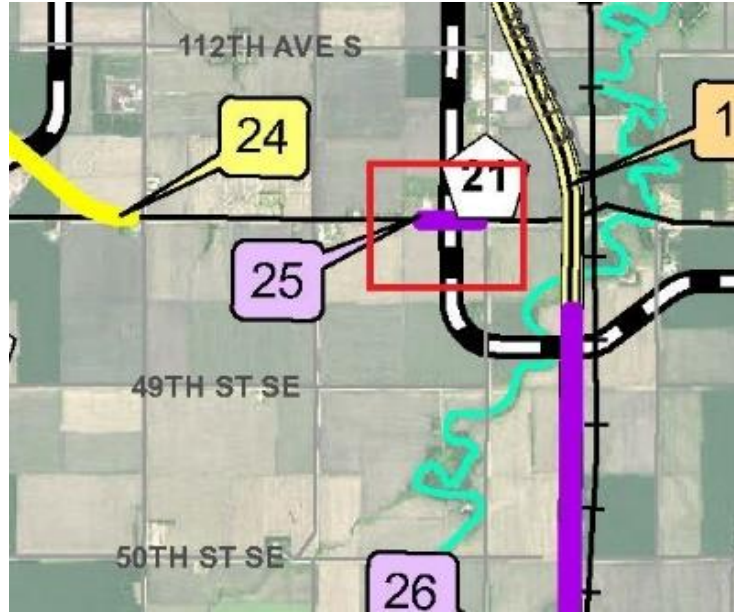


EXHIBIT D
SEAI CROSSINGS

COUNTY ROAD 16



COUNTY ROAD 81



COUNTY ROAD 45 – POSSIBLE CROSSING LOCATION

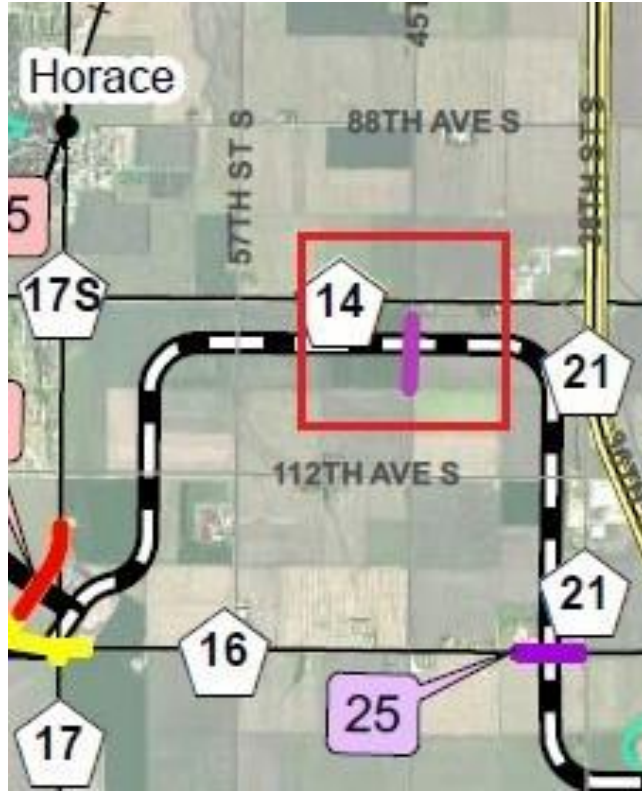


EXHIBIT E**PROPERTY INTEREST GRANTS**

<i>Location</i>	<i>Current County Property Interest</i>	<i>Grant to Authority</i>
County Road 36 from 49th Street Southeast to 50th Street Southeast (SE-1)	Easement	Permit
County Road 36 (Culvert Improvement)	Easement	Permit
Country Road 16 (SEAI Crossing)	Easement and Statutory Right-of-way	Permit
County Road 81 (SEAI Crossing)	Easement and Statutory Right-of-way	Permit
County Road 81 (Reconstruct)	Fee Simple and Statutory Right-of-way	Permit
County Road 18 (Reconstruct)	Right-of-way Deed and Statutory Right-of-way	Permit

EXHIBIT F

HIGHWAY 81 ACCESS PERMIT

ACCESS PERMIT APPLICATION

Please Print or Type Instructions: Complete all questions that apply, sign, attach necessary documents, and submit to the Cass County Highway Department, along with a nonrefundable application fee in the amount of \$50 and a \$1000 refundable performance guarantee. Submit an application and fee for each access requested.



Highway Department
1201 Main Avenue West
West Fargo, ND 58078
www.casscountynd.gov
Phone: 701-268-2370
Fax: 701-268-2395

Applicant Fargo Moorhead Diversion Authority		Applicant's Representative Kris Bakkegard	
Address 207 4th St. N, Suite A		Address 207 4th St. N, Suite A	
City, State Zip Fargo, ND 58102	Phone 701-660-0903	City, State Zip Fargo, ND 58102	Phone 701-660-0903
Email Address bakkegardk@fmdiversion.gov cc: stamnessm@casscountynd.gov		Email Address bakkegardk@fmdiversion.gov cc: stamnessm@casscountynd.gov	

Type of Permit Requested				
<input checked="" type="checkbox"/> New Access <input type="checkbox"/> Modify Existing Access <input type="checkbox"/> Remove Existing Access		<input type="checkbox"/> Permanent <input checked="" type="checkbox"/> Temporary <input type="checkbox"/> Field Drive		
Address, City, State Zip of Property to be Served by Permit (if applicable) N/A				
Parcel ID	Subdivision	Section 1	Township	Range
57000010222020 57000010204003	N/A	6	137 137	49 48
On what county highway are you requesting the access? County Highway 81S		What side of the highway? <input type="checkbox"/> N <input type="checkbox"/> S <input checked="" type="checkbox"/> E <input checked="" type="checkbox"/> W		
Current land use of property? <input checked="" type="checkbox"/> Agricultural <input type="checkbox"/> Residential <input type="checkbox"/> Business <input type="checkbox"/> Other:				
Will this activity disrupt normal traffic and/or functionality of the roadway? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, describe and submit a traffic safety plan per MUTCD on separate sheet (include timeline).				
Are there other existing or dedicated public streets, roads, highways, or access easements bordering or within the property? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, list them on the plans and indicate the proposed and existing access points.				
Description of proposed work The accesses are needed to provide a path for the borrow from the RRS to be stockpiled for the I-29 road raise project.				

By signing below, the Applicant agrees to perform all work in accordance with the Cass County Highway Access Ordinance and this Permit and to indemnify and hold harmless the County, its officers and employees from all liability, judgments, costs, expenses, and claims growing out of damages, or alleged damages, of any nature whatsoever, to any person or property arising out of performance or nonperformance of said work, or the existence of said drives.

Kris Bakkegard
11-19-2020
 Applicant Signature Date

Upon approval and issuance of the permit, the Applicant is granted permission to commence the work described herein as per the Installation Start Date. At such time as all work has been done to the complete satisfaction of the Highway Department, the performance guarantee shall be released.

Installation Start Date Spring 2021	Installation Completion Date	Temporary Access Removal Date	Permitted Length of Time of Traffic Disruption
--	------------------------------	-------------------------------	--

Diane Busto
11/30/2020
 Authorized Highway Department Signature Date

ACCESS PERMIT REQUIREMENTS

1. The applicant shall be solely responsible for paying all costs associated with the design and construction of an access facility and all costs associated with the design and construction of any improvement to a County Highway as required to accommodate the access facility and the traffic using the access facility.
2. No work under this application is to be started until the application is approved and the permit is issued.
3. The total cost of all construction and maintenance of the work specified shall be borne by the Applicant, its grantees, successors, and assigns; except that the County will maintain the shoulder of the roadway.
4. It is understood by the Applicant that the County does not assume any responsibility for the removal or clearance of snow, ice or sleet, or the opening of windrows of such material, upon any portion of the drive even though snow, ice, or sleet is deposited or windrowed on said drive by its authorized representative engaged in normal winter maintenance operations.
5. A drive, as referred to in this Permit, shall be the traveled area between the highway roadway-surface and the adjacent right-of-way line. Said drive shall be used only for the purpose of providing entrance to and exit from the Applicant's property.
6. The granting of this permit does not vest the applicant with the exclusive use of the drive. Cass County Highway Department retains the right to diminish and expand the use of the drive as required in the interest of the safety of highway traffic.
7. Where work on or near the traveled roadway is necessary, proper signs, channelizing devices, warning lights, and barricades must be erected to protect traffic, employees, and pedestrians. All traffic control devices and methods shall conform to the Manual on Uniform Traffic Control device (MUTCD).
8. It is understood by the Applicant that the location, construction, and maintenance of drives are under the supervision of the County at all times, and that in granting this permit the County waives none of its powers or rights to direct the removal, relocation, and/or proper maintenance in the future of any drives within the right of way of the County Highway.
9. No foreign material such as dirt, gravel, or bituminous material shall be deposited or left on the road during the construction or installation of access facilities.
10. Roadside must be cleaned up after work is completed.
11. No improvement constructed on the highway right of way shall be altered or relocated without permission of the County Engineer of the County Highway Department.
12. Right of way widths for County Highways shall be 100 feet from the centerline of the county highway to the right of way line on both sides of the highway, unless the County Engineer determines an increase or decrease in width is appropriate.
13. Driveway side slopes shall be constructed 8:1 and shall be hand finished and seeded.
14. Proper erosion control and sedimentation devices shall be used.
15. Surfacing may be omitted on field entrances if so specified in the application.
16. After construction is completed the applicant shall notify the Cass County Highway Department that the work is completed and is ready for inspection.
17. No construction shall be considered complete until checked and approved by the County Highway Department. The applicant will be notified of any deficiencies. Failure to complete the repairs will cause the applicant to forfeit the performance deposit, and be liable to the County for the cost of the repairs, as outlined in Ordinance #2015-2 and NDCC § 24-05-23.

OFFICE USE ONLY		
Application Fee Received:	Amount \$ N/A BAB	Date: 11/30/2020
Performance Guarantee Received:	Amount \$ N/A LS	Date: N/A LS
Onsite Survey Completed By:		Date:
Requirements:		
Approved Permit Sent to Applicant:	Date: 11-30-20 LS	
Written Notification Received From Applicant:	Date:	
Final Inspection Completed By:		Date:
Final Inspection Approved:	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Performance Guarantee Released:	Date:	
Comments:		

EXHIBIT G

**FEDERAL CERTIFICATION FORMS
CERTIFICATION REGARDING FEDERAL LOBBYING**

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

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

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

Company/
Entity Name: _____

Signed: _____

Its: _____

Date: _____

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

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

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

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)

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

Official Business Name _____

Date: _____

By: _____

Name and Title of Authorized Representative

PLEASE RETURN TO:

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

Signature of Authorized Representative

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this certification, the prospective contracting party is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contracting party shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Metro Flood Diversion Authority's (the "Authority") determination whether to enter into this transaction. However, failure of the prospective contracting party to furnish a certification or an explanation shall disqualify such person from entering into contracts with the Authority.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Authority determined to enter into a contract with the prospective contracting party. In order to qualify for participation in the U.S. EPA WIFIA program the Authority is required to obtain this certification. If it is later determined that the prospective contracting party knowingly rendered an erroneous certification, in addition to other remedies available to both the Authority and the Federal Government, the Authority may terminate this transaction for cause or default.
4. The prospective contracting party shall provide immediate written notice to the Authority to which this Certificate is submitted if at any time the prospective contracting party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Authority for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective contracting party agrees by submitting this certification that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Authority.
7. The prospective contracting party further agrees by submitting this certification that it will require a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," from all sub-contractors without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A contracting party in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A contracting party may decide the method and frequency by which it determines the ineligibility of its principals.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a contracting party is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a contracting party in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Authority may terminate this transaction for cause or default.

ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE

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

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

The undersigned assures that it will comply with:

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

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

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

Signature of Authorized Official

Title

Print Name

Name of Institution or Agency

Date

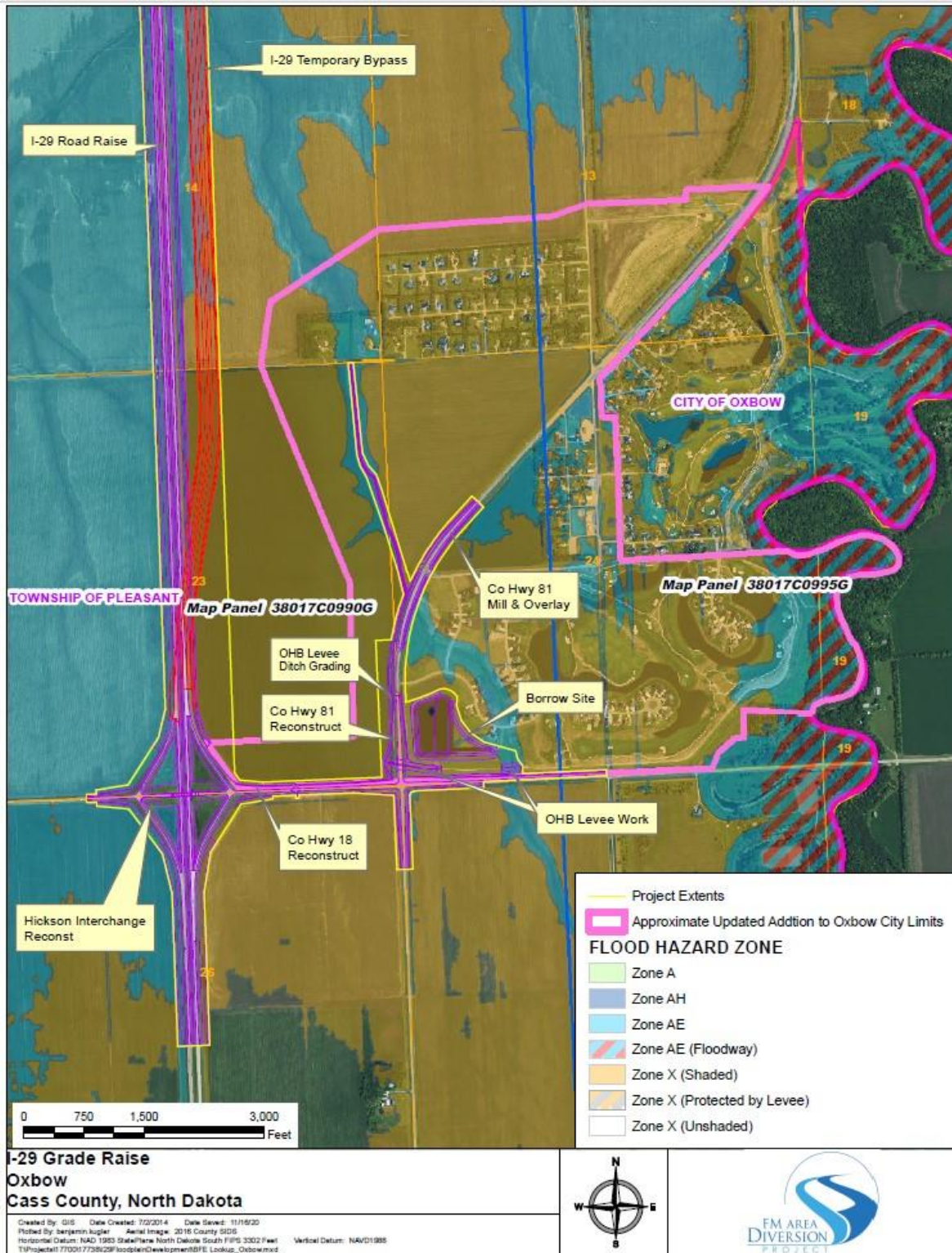
Street

City, State, Zip Code

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

Office Email Address

EXHIBIT H RECONSTRUCTS MAP



MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN
METRO FLOOD DIVERSION AUTHORITY
AND
SOUTHEAST CASS WATER RESOURCE DISTRICT

Dated as of _____, 2021

Relating to:

A Memorandum of Understanding outlining respective roles and responsibilities for the design, construction, and relocation of facilities in conjunction with the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

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SIGNATURE PAGESS-1 THROUGH S-2

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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is made and entered into this ____ day of _____, 2021, by and between the METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota (the “Authority”), and the SOUTHEAST CASS WATER RESOURCE DISTRICT, a political subdivision of the State of North Dakota (the “District”).

WHEREAS, construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Comprehensive Project”) at 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 for the Comprehensive Project and entered into a Project Partnership Agreement (the “PPA”) on July 11, 2016, with the United States Army Corps of Engineers (the “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 Non-Federal Sponsors and the USACE; and

WHEREAS, pursuant to the PPA, USACE will be responsible for completing the Southern Embankment and Associated Infrastructure, which includes the southern embankment in its entirety, the Diversion Inlet Structure, the control structures on the Red River of the North and the Wild Rice River; construction of road and railroad raises associated with the southern embankment; and all mitigation features that are not the responsibility of the Non-Federal Sponsors (collectively with the Southern Embankment and Associated Infrastructure, the “Federal Work”); and

WHEREAS, pursuant to the PPA, the Non-Federal Sponsors will be responsible for an approximately 30 mile 20,000 cubic feet per second storm water diversion channel and associated features; the channel outlet; the Rush and Lower Rush River hydraulic structures; the Maple River aqueduct; the Sheyenne River aqueduct; the inflow design flood levee; associated railroad bridges (collectively, the “Storm Water Diversion Channel and Associated Infrastructure” or “SWDCAI”); the in-town levees and the Oxbow-Hickson-Bakke levee; recreation features; environmental mitigation features located within SWDCAI; and applicable pre- and post-monitoring and adaptive management for the Comprehensive Project (collectively with the SWDCAI, the “Non-Federal Work”); and

WHEREAS, although USACE is responsible for completing the Federal Work, the Non-Federal Sponsors are responsible for providing all real property interests, relocations, and disposal area improvements necessary for USACE; and

WHEREAS, the Authority, pursuant to the Joint Powers Agreement, is the entity responsible for the Non-Federal Sponsors’ obligations under the PPA; and

WHEREAS, to facilitate the design, construction, operation, and maintenance of the SWDCAI, the Authority will enter into a public-private partnership with a Developer pursuant to North Dakota Century Code chapter 48-02.1; and

WHEREAS, the Authority anticipates the Developer will maintain the SWDCAI for an approximately 30-year maintenance term commencing upon substantial completion of the construction of the SWDCAI; and

WHEREAS, the District owns infrastructure that will be impacted by the design, construction, operation, and maintenance of the SWDCAI; and

WHEREAS, the District also owns infrastructure that will be impacted by the design, construction, operation, and maintenance of the Federal Work; and

WHEREAS, the Authority and the District now desire to enter into this MOU to define each Party's roles and responsibilities for the Work associated with the SWDCAI and the Federal Work.

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

**ARTICLE I.
DEFINITIONS AND INTERPRETATION**

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

“Abandoned Drains” means North Drain 51 and South Drain 27 following abandonment procedures undertaken by the District.

“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 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 District, or the work described herein.

“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.

“Authority Representative” means the individual identified in Section 16.06.

“Betterment” means any improvement in design, construction, or capacity over and above what was intended to be constructed by the Authority.

“Borrow Ditch” means the borrow ditch constructed on the south side of SE-1, as shown on Exhibit M, that will empty into Drain 47.

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

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601-9675).

“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 Supplement 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.

“Contractor” means a Person that contracts with USACE to perform Work.

“County” means Cass County, North Dakota, a political subdivision of the State of North Dakota.

“Developer” means the Person that enters into 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, including any other contractors, subcontractors, consultants, subconsultants, or material suppliers.

“District” means the Southeast Cass Water Resource District, a political subdivision of the State of North Dakota.

“District Engineer” means the firm providing engineering services to the District.

“District Representative” means the individual identified in Section 16.06.

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

“Drain 27 Wetland Restoration Project” means a project to block Drain 27 immediately upstream of the SEAI to create an area of approximately 150 acres of inundation and wetland.

“Drain 27 Alterations” means any and all alterations to Drain 27 as a result of construction of the SEAI, including the Drain 27 Wetland Restoration Project, the construction of the SEAI, and the construction of ditches running parallel to the SEAI that intersect Drain 27.

“Drain 51 Alterations” means both the relocation of Drain 51 to accommodate the bypass of Interstate 29 and the reconstruction of the original Drain 51 channel following the removal of the bypass of Interstate 29.

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

“Environment” or **“Environmental”** means air, soils, surface waters (including wetlands), groundwater, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, and cultural, historic, archeological, and paleontological resources.

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

“Facility” means any Legal Assessment Drain, project, facility, or water infrastructure that is, or will be, owned or operated by the District, or any Legal Assessment Drain Inlet, as identified by the Master MOU.

“Federal Work” means those portions of the Comprehensive Project allocated to USACE under the terms of the PPA and described in the Recitals.

“Final Completion” means the time at which the work performed under the construction contract between USACE and its contractor has progressed to the point of being complete, as defined by such contract.

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

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

“Good Industry Practice” means the industry practices and standards that would be exercised by a prudent and experienced developer, designer, engineer, contractor, operator, or maintenance provider engaged in the same kind of undertakings and under similar circumstances as those applying to the work.

“Governing Body” means the Board of Supervisors of the District.

“Hazardous Materials” means any element, chemical, compound, mixture, material, or substance, whether solid, liquid, or gaseous, which at any time is defined, listed, classified, or otherwise regulated in any way under any Applicable Law (including CERCLA), or any other such substances or conditions (including mold or other mycotoxins, fungi, or fecal material) which create any unsafe or hazardous condition or pose any threat or harm to the Environment or human health or safety.

“Intermediate Design” means the design has reached sixty-five percent (65%) completion, as determined by USACE.

“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.

“Legal Assessment Drain” means any “project” as defined under Chapter 61-16.1 of the North Dakota Century Code, financed in whole or in part by special assessments, including natural watercourses opened, or proposed to be opened, and improved by drainage and any artificial drains of any nature or description constructed for that purpose, including dikes and appurtenant works, which are financed in whole or in part by special assessments.

“Legal Assessment Drain Inlet” means the location where a Legal Assessment Drain flows into the SWDCAL.

“Master MOU” means the Memorandum of Understanding by and between the Metro Flood Diversion Authority, Southeast Cass Water Resource District, Maple River Water Resource District, Rush River Water Resource District, North Cass Water Resource District, and Cass County Joint Water Resource District, dated December 22, 2020, defined roles and responsibilities for the SWDCAL.

“Material Modification” means a modification affecting the operation or performance of Drain 51.

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

“Non-Federal Work” means those portions of the Comprehensive Project allocated to the Non-Federal Sponsors under the terms of the PPA and described in the Recitals.

“North Drain 27” means that portion of Drain 27 that will be located on the north side of the SEAI.

“North Drain 27 Alteration” means as defined in Section 7.03.

“North Drain 51” means that portion of Drain 51 that will be located on the north side of the SEAI.

“Party” means the Authority or the District, 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.

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

“Program Management Consultant” means the Authority’s management consultant that will coordinate the implementation of this MOU on the Authority’s behalf.

“Reach SE-1” means that portion of the Southern Embankment and Associated Infrastructure that will be constructed south and west of the Diversion Inlet Structure and includes any subsections into which that portion of the Southern Embankment and Associated Infrastructure may be divided.

“Red River Control Structure” means the control structure on the Red River of the North procured by USACE.

“SEAI Drains” means Drain 27, Drain 47, and Drain 51, collectively.

“South Drain 27” means that portion of Drain 27 that will be located on the south side of the SEAI.

“South Drain 51” means that portion of Drain 51 that will be located on the south side of the SEAI.

“Southern Embankment and Associated Infrastructure” or **“SEAI”** means the Diversion Inlet Structure; the Red River Control Structure and the Wild Rice River Control Structure; the southern embankment; and the overflow embankment, to be constructed as part of the Comprehensive Project.

“State” means the State of North Dakota.

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

“Substantial Completion” means the time at which the work performed under the construction contract between USACE and its contractor has progressed to the point of being substantially completed, as defined by such contract.

“SWDCAI Project Limits” means the permanent property interests for the SWDCAI, as currently estimated on Exhibit L.

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

“Utility Relocation” means each relocation (temporary or permanent), abandonment, protection in place, adjust in place, removal, replacement, installation, and/or modification of existing utilities necessary to accommodate construction, operation, maintenance, and/or use of the SEAI Drains and the Drain 27 Wetland Restoration Project.

“Wild Rice River Control Structure” means the control structure on the Wild Rice River procured by USACE.

Section 1.02 TERMS GENERALLY. The definition of terms in this MOU will apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” will be deemed to be followed by the phrase “without limitation.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document in the MOU will be construed as referring to the agreement, instrument, or other document as amended, supplemented, or otherwise modified (subject to any restrictions on amendments, supplements, or modifications in the MOU); (b) any reference in the MOU to any person will be construed to include the person’s permitted successors and assigns; (c) all references in the MOU to articles, sections, exhibits, and schedules will be construed to refer to articles and sections of, and exhibits and schedules to, this MOU; and (e) the words “asset” and “property” will 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. MASTER MEMORANDUM OF UNDERSTANDING

Section 2.01 INCORPORATION. The District, as well as other local water resource districts, entered into the Master MOU with the Authority for work that will be completed by the Developer. This MOU expressly incorporates all provisions of the Master MOU and does not supersede any terms or conditions of the Master MOU. The terms and conditions of this MOU apply only to Work described herein on Drain 27 and Drain 51 and, except as otherwise indicated in the following section, do not apply to any work that will be completed by the Developer. In the event this MOU conflicts with any term or condition of the Master MOU for work that the Developer will complete, the Master MOU will control.

Section 2.02 DISTRICT IMPACT SUMMARY. The construction of the SWDCAI will impact Drain 21C and Drain 50. The Developer, on behalf of the Authority, will construct inlets on Drain 21C and Drain 50 into the SWDCAI according to the River Inlet and Drain Inlet Interface Data Sheets attached hereto as Exhibit E. The Master MOU sets forth the responsibilities for the work on the Facilities as follows:

(a) Design: The Authority/Developer will be responsible for designing any physical alterations to Facilities. The District and its District Engineer will have the opportunity to review, request modifications, and approve of such physical alterations during the design process.

(b) Other Preliminary Work: The Authority/Developer will be responsible for all preliminary planning and engineering work necessary to complete the physical alterations to Facilities. Additionally, the Authority will generally be responsible for acquiring all property interests necessary for the physical alterations. In the event the Authority is unable to acquire a property interest, the District will acquire the property interests and will be reimbursed by the Authority.

(c) Permits and Approvals: The Authority and the District will cooperate for all necessary permits and/or approvals for construction of the Facilities. In the event construction requires permits from the North Dakota State Engineer, the Authority will seek review and concurrence from the District prior to the submission of the application to the North Dakota State Engineer for those applications under which North Dakota law provides the District with a review period as a portion of the review conducted by the North Dakota State Engineer. For those applications in which the District provides concurrence, the District will waive any review period allowed under North Dakota law, including N.D.C.C. § 61-16.1-38, that it would have otherwise normally received from the North Dakota State Engineer in its review of such application.

(d) Construction: The Authority/Developer will be responsible for construction of all physical alterations to Facilities. If there are any material changes or modifications to a design during construction, the District will have the opportunity to review, request modifications, and approve of such material changes or modifications. The District will have monitoring rights during construction and will have inspection rights for substantial completion. Upon substantial completion of physical alterations to a Facility, the Authority will transfer ownership of the Facility to the District.

(e) Maintenance: The Authority/Developer will be responsible for maintenance of Facilities located within the project right-of-way for the SWDCAI in accordance with maintenance requirements reviewed and approved by the District. In the event the Authority/Developer is not maintaining a Facility in accordance with such maintenance requirements, the District has step-in rights to perform the maintenance.

(f) Special Assessments: The District has the authority to assess the Authority for any benefits, as determined by the District, any Facility provides to the SWDCAI. If the benefits of any Facility change as a result of the SWDCAI, the Authority will reimburse the District for costs incurred regarding reassessment proceedings.

(g) Insurance and Indemnification: The Authority will require the Developer to maintain certain types and levels of insurance while performing work on Facilities. The Authority/Developer will additionally release, defend, indemnify, and hold harmless the District for acts or omissions of the Authority related to the Comprehensive Project.

(h) District Reimbursement: The District may submit invoices to the Authority for reimbursement of funds spent for persons, consultants, contractors, or firms performing tasks required or identified under the Master MOU.

Section 2.03 PROPERTY INTEREST GRANT. The District holds fee simple on OIN 144, OIN 234, OIN 721, OIN 727, OIN 1167, OIN 1174, OIN 8913, and OIN 9344B. In the locations depicted on Exhibit F, the District will grant the following to the Authority:

- (a) A permanent easement and a temporary construction easement on OIN 144,
- (b) A permanent easement on OIN 234,
- (c) A permanent easement and a temporary construction easement on OIN 721,
- (d) A permanent easement and a temporary construction easement on OIN 727,
- (e) A permanent easement, fee simple, and a temporary construction easement on OIN 1167,
- (f) A permanent easement on OIN 1174,
- (g) A permanent easement and a temporary construction easement on OIN 8913, and
- (h) Fee simple on OIN 9344B.

Templates of a permanent easement and a temporary construction easement are attached to the MOU as Exhibit I and Exhibit J, respectively. Fee simple grants will be made through quit claim deed. A template quit claim deed is attached as Exhibit K.

ARTICLE III. SEAI DRAIN IMPACTS INTENT

Section 3.01 DRAIN 27. The SEAI will intersect Drain 27 at the location shown on Exhibit A, creating North Drain 27 and South Drain 27. The District will, in Good Faith, pursue the abandonment of that portion of Drain 27 over which USACE will construct the SEAI. North Drain 27 will continue to function as a Legal Assessment Drain, collecting local drainage and carrying water to the north. A ditch running parallel with the SEAI will intersect North Drain 27. The District will, in Good Faith, pursue the abandonment of South Drain 27 as a Legal Assessment Drain, and USACE will convert South Drain 27 into the Drain 27 Wetland Restoration Project. A preliminary map of the Drain 27 Wetland Restoration Project is attached as Exhibit B. The District will utilize its best efforts to abandon South Drain 27 by August 1, 2021. The specific legal descriptions for those areas that will be abandoned will be designated as designs of the SEAI and the Drain 27 Wetland Restoration Projects are finalized. Local drainage lost by the abandonment of South Drain 27 will be redirected to the SEAI local drains.

Section 3.02 DRAIN 51. The SEAI will intersect Drain 51 at the location shown on Exhibit C, creating North Drain 51 and South Drain 51. The District will, in Good Faith, pursue

the abandonment of that portion of Drain 51 over which USACE will construct the SEAI. Prior to the construction of the SEAI, USACE will construct a road raise and temporarily bypass Interstate 29 at the location shown on Exhibit C. The bypass will result in the temporary relocation of Drain 51. Drain 51 will be relocated to the location shown on Exhibit C from approximately Spring 2021 until Summer 2023. During this time period, USACE will install a 66” pipe conduit for Drain 51 to cross the SEAI temporary haul road and will install two 54” reinforced concrete pipes for Drain 51 to cross the Interstate 29 bypass, both shown on Exhibit C. Once the Interstate 29 bypass is removed, USACE will reconstruct Drain 51 to its original geometry and slope, as described on Exhibit D. Construction of the SEAI will intersect Drain 51 at the location shown on Exhibit C, creating North Drain 51 and South Drain 51. The District will continue to operate both North Drain 51 and South Drain 51 as a Legal Assessment Drain but will conduct reassessment proceedings following the construction of the SEAI to reassess the benefits provided by North Drain 51 and South Drain 51. The District anticipates property owned by the Authority for the SEAI will be included within the reassessment.

Section 3.03 DRAIN 47. USACE is responsible for the construction of Reach SE-1. The work limits of Reach SE-1, as currently projected, extend into the District’s right-of-way for Drain 47. USACE anticipates constructing the Borrow Ditch within said right-of-way, which will outlet into Drain 47. The District authorizes use of Drain 47 as an outlet for the Borrow Ditch and will grant the property interests described in Section 6.03 to the Authority for the construction described herein. If the discharge into Drain 47 will require improvements to Drain 47, or if the discharge will damage Drain 47, the Authority will fund the improvements or repairs and will reimburse the District for related costs incurred. The District may conduct reassessment proceedings following the construction of the Borrow Ditch to reassess the benefits provided by Drain 47. The District anticipates property owned by the Authority for the SEAI will be included within the reassessment.

ARTICLE IV. DESIGN

Section 4.01 INTENT. The Parties intend that the Authority will be the lead agency for coordination with USACE for design. The Parties understand and agree that the SEAI Drains must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 4.02 SEAI DRAINS.

(a) Drain 51 Relocation and Reconstruction. The Authority is responsible for designing the Alterations to Drain 51 and will submit a Preliminary Design, an Intermediate Design, and a Final Design to the District Engineer for review and comment. The District Engineer will review and provide any comments on designs within fourteen (14) days of receipt.

(b) Drain 27 Alterations. USACE will be designing the SEAI and the Drain 27 Wetland Restoration Project and plans to submit Preliminary Designs, Intermediate Designs, and Final Designs to the Authority, which will submit them to the District Engineer for review and comment. The District Engineer will review and provide any comments on designs within fourteen (14) days of receipt.

(c) Borrow Ditch. As of the Effective Date, the Final Design for the Borrow Ditch has been completed. The District will be afforded the opportunity to review any Material Modifications to the Final Design, as described in Section 7.06.

Section 4.03 FINANCING. The District will not be responsible for any costs or expenses associated with the design of Drain 51 Alterations or Drain 27 Alterations. The District may seek reimbursement from the Authority for design reviews in accordance with Article XII.

Section 4.04 RELEASE. Review by the District of any designs will not be deemed to mean the plans and specifications or construction will be structurally sound and appropriate or that the plans and specifications meet Applicable Law.

ARTICLE V. PRELIMINARY PLANNING AND ENGINEERING ACTIVITIES

Section 5.01 INTENT. The Parties intend that the Authority will be the lead agency for coordination with USACE for planning and engineering activities. The Parties understand and agree the Drain 51 Alterations and Drain 27 Alterations must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 5.02 SITE TESTING. The Authority will coordinate with USACE regarding all preliminary engineering activities for the Drain 51 Alterations and Drain 27 Alterations, 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. The District will not be responsible for any expenses relating to preliminary engineering activities.

Section 5.03 MITIGATION. The Authority will ensure remediation and removal of all Hazardous Materials necessary to complete construction of the Drain 51 Alterations and Drain 27 Alterations are completed.

Section 5.04 ENVIRONMENTAL REVIEW. The Authority will coordinate with USACE to ensure that all work described in this MOU is compliant with applicable Environmental laws and regulations.

Section 5.05 UTILITY RELOCATIONS. The Authority is responsible for coordinating and/or performing Utility Relocations of all utilities and will be responsible for costs incurred for these Utility Relocations relating to the construction of the Drain 51 Alterations and Drain 27 Alterations.

Section 5.06 PERMITS AND APPROVALS.

(a) The Authority will secure any necessary permits and/or approvals for construction of the Drain 51 Alterations and Drain 27 Alterations and is responsible for carrying out any requirements of those permits and/or approvals, including Environmental requirements. Except

as otherwise specifically set forth herein, the District will not require additional permits and/or approvals from its Governing Body. The Authority must also obey and abide by all Applicable Law.

(b) In the event construction requires permits from the North Dakota State Engineer, the Authority will seek review and concurrence from the District prior to the submission of the application to the North Dakota State Engineer for those applications under which North Dakota law provides the District with a review period as a portion of the review conducted by the North Dakota State Engineer. For those applications in which the District provides concurrence, the District will waive any review period allowed under North Dakota law, including N.D.C.C. § 61-16.1-38, that it would have otherwise normally received from the North Dakota State Engineer in its review of such application. The Authority will reimburse the District for costs incurred in connection with any permit or approval, including any costs of reviewing any application.

Section 5.07 PLATTING. The Authority intends to plat the footprint of the Comprehensive Project, and the District will cooperate with any and all efforts to plat, including signing a plat if necessary. The plats will collectively define the limits of the SEAI and the SWDCAI Project Limits.

Section 5.08 PRE-CONSTRUCTION MEETINGS. The Authority will invite the District to attend the pre-construction meetings for Drain 51 Alterations and Drain 27 Alterations.

ARTICLE VI. PROPERTY INTERESTS

Section 6.01 ACQUISITION. The Authority will use its best efforts, at its sole cost and expense, to obtain all easements, rights-of-way, or other interests in real property necessary for the Drain 51 Alterations and Drain 27 Alterations. In the event the Parties jointly determine the District should acquire all, or some, of the easements, rights-of-way, or other interests in real property, the Authority will cooperate with the District and the Authority will reimburse the District for costs incurred. In the event the District acquires property interests, the District will consult with the Authority prior to determining the price at which it will offer to purchase said property interests. The District will only offer to purchase property interests at a price consented to by the Authority. Any purchase price paid above the amount consented to by the Authority will be the District's sole expense.

Section 6.02 TRANSFER OF INTEREST.

(a) The Authority will convey to the District the easements, rights-of-way, or other interests in real property necessary for the Drain 51 Alterations and Drain 27 Alterations on any additionally acquired lands.

(b) The District will convey to the Authority the right to construct the Drain 51 Alterations, the Borrow Ditch, and Drain 27 Alterations on or across the District's right-of-way to the extent the District may convey these rights. The Authority will pay the District fair market value for any easements, rights-of-way, or other interests in any District real property. Fair market value may be established through any reasonable method and need not be based upon an appraisal.

Section 6.03 PROPERTY INTEREST GRANT. The District owns fee simple on OIN 1233 for Drain 51 and on OINs 5128 and 5129 for Drain 27. In the locations depicted on Exhibit G, the District will grant temporary construction easements to the Authority. A template construction easement is attached as Exhibit J. For the areas of Drain 51 and Drain 27 that will underlie the SEAI, the District will transfer fee simple to the property identified on Exhibits G and H by way of quit claim deed. The District will additionally transfer fee simple to the property abandoned for Drain 27, as identified in Exhibit H, by way of quit claim deed. A template quit claim deed is attached as Exhibit K. The District additionally owns a sixty six (66) foot wide easement on the east side of OIN 5016 and a seventy four and one quarter (74 ¼) foot easement on the north side of OIN 5019, as shown on Exhibit N. The District does not oppose the grant of the permanent right-of-way easement on the north side of OIN 5016 and will grant a temporary construction easement in the location show on Exhibit N to the Authority. The District will further grant a temporary construction easement on the north side of OIN 5019, in the location shown on Exhibit N, to the Authority.

ARTICLE VII. CONSTRUCTION

Section 7.01 INTENT. Following the transfer of the abandoned Drain 27 property to the Authority for construction of the SEAI and Drain 27 Wetland Restoration Project, the District will no longer have an interest, and the Authority will take the lead on projects with USACE. For the Drain 51 Alterations, both for the initial relocation and later reconstruction, the Parties intend that the Authority will be the lead agency for coordination with USACE for construction. The Authority will also be the lead agency for coordination with USACE for construction of the Borrow Ditch. The Parties understand and agree that the Drain 51 Alterations, the Borrow Ditch, and the Drain 27 Alterations must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 7.02 DRAIN 51. USACE, not the Authority, is the contract holder and will be administering and monitoring construction of the Drain 51 Alterations. The Authority, through its cooperation with USACE, will provide funding and advertising for the construction of the Drain 51 Alterations. Construction of the Drain 51 Alterations will occur based upon the Final Design, except as otherwise provided in Section 7.06.

Section 7.03 DRAIN 27. USACE, not the Authority, is the contract holder and will be administering and monitoring construction of the SEAI that will impact North Drain 27 (“North Drain 27 Alteration”). The Authority, through its cooperation with USACE, will provide funding and advertising for that construction. Construction of the Drain 27 Alterations to North Drain 27 will occur based upon the Final Design, except as otherwise provided in Section 7.06.

Section 7.04 BORROW DITCH. USACE, not the Authority, is the contract holder and will be administering and monitoring construction of the Borrow Ditch. The Authority, through its cooperation with USACE, will provide funding and advertising for that construction. Construction of the Borrow Ditch will occur based upon the USACE design, except as otherwise provided in Section 7.06.

Section 7.05 PROGRESS REPORTS. The Authority will provide bi-weekly progress reports to the District during the construction of Drain 51 Alterations, Borrow Ditch, and the North Drain 27 Alteration.

Section 7.06 MATERIAL MODIFICATIONS. To the extent practicable, any Material Modifications to a Final Design during bidding and construction will be subject to review and comment by the District. The District will review any proposed Material Modification within fourteen (14) days of receipt or on a truncated time period, as requested by the Authority or USACE, in the event of a critical or emergency change.

Section 7.07 COORDINATION OF PARTIES. The District will coordinate and work through the Authority on any and all questions that develop during bidding and construction. The District agrees and acknowledges that it cannot direct a Contractor performing work on Drain 51, the Borrow Ditch, or Drain 27.

Section 7.08 CONSTRUCTION SCHEDULE. To facilitate scheduling for construction of the Drain 51 Alterations, the Borrow Ditch, and the North Drain 27 Alteration, the Authority will provide the District with a proposed construction schedule and at least thirty (30) calendar days' advanced written notice of the proposed start date of the work.

Section 7.09 REVIEW AND INSPECTION. The Authority will coordinate with USACE to allow for worksite control rules that permit and facilitate reasonable access to the District for the reasonable inspection and review of work. The presence or absence of a District inspector does not relieve the Authority from any requirement in this MOU, nor is any inspector authorized to change any term or condition of this MOU. The District agrees that during review or inspection contemplated under this section that its staff will follow USACE construction safety practices when visiting a construction site (e.g., register at field office and wear personal safety equipment).

Section 7.10 PRE-FINAL INSPECTION. The Authority will provide the District with written notice of any anticipated Substantial Completion of a Drain 51 Alteration, the Borrow Ditch, or the North Drain 27 Alteration at least fifteen (15) calendar days prior to the anticipated date for Substantial Completion. Within ten (10) calendar days of the anticipated date for Substantial Completion, all parties will conduct at least one joint pre-final inspection to verify the contract requirements have been met, the completed construction meets the Final Design and any Material Modification made pursuant to Section 7.06, and that the flood risk management certification requirements are met. If the District finds the construction is not in accordance with the Final Design or any approved Material Modifications, the District will notify the Authority to develop a written punch list of items not constructed in accordance with the Final Design or approved Material Modifications. The Authority will coordinate with USACE's contracting officer regarding the issue to ensure such issue is completed in a reasonable amount of time as determined by the Authority and the District.

Section 7.11 FINAL INSPECTION. Following the pre-final inspection and after resolution of any punch list items, the District will conduct a final inspection of Drain 51, the Borrow Ditch, or Drain 27, as applicable, to determine whether the work meets the Final Design and any Material Modification made pursuant to Section 7.06. If the District finds the construction is not in accordance with the Final Design or any approved Material Modification, the District will notify

the Authority of such fact and the Authority will coordinate with USACE regarding such deficiency in the construction work in the form of a written punch list.

Section 7.12 TURN BACK. Following each close-out of a USACE contract for a Drain 51 Alteration or North Drain 27 Alteration, the Authority will turn back control of Drain 51 or Drain 27, as applicable, to the District.

Section 7.13 AS-BUILT DRAWINGS. The Authority will coordinate with USACE to provide as-built drawings of the Drain 51 Alterations, the Borrow Ditch, and North Drain 27 Alterations to the District.

Section 7.14 WARRANTY. USACE may include a standard Federal Acquisition Regulation clause 52.246-21 Warranty of Construction in its construction contract. The clause includes a 1-year warranty provision. In the event the Authority and/or the District identifies a deficiency in workmanship or defective product or material, the Authority and/or the District will notify USACE.

ARTICLE VIII. OPERATION AND MAINTENANCE

Section 8.01 DRAIN 27. The District will be responsible for operating and maintaining all of Drain 27 until abandonment as set forth herein. Following abandonment, the District will remain responsible for operating and maintaining all portions of Drain 27 that remain a Legal Assessment Drain. The District will have no responsibilities for operating or maintaining the Drain 27 Wetland Restoration Project.

Section 8.02 DRAIN 51.

(a) The District will be responsible for operating and maintaining all of Drain 51 until abandonment as set forth herein. Following abandonment, the District will remain responsible for operating and maintaining all portions of Drain 51 that remain a Legal Assessment Drain. The District's operation and maintenance responsibilities include operating and maintaining Drain 51 prior to and following the relocation and prior to and following the reconstruction of the original channel.

(b) Following the reassessment and reduction of the assessment district for North Drain 51, the District may need additional funds for maintenance expenses. To the extent the assessment district for North Drain 51 does not generate sufficient funds for necessary maintenance of North Drain 51, the District may submit a request to the Authority for the Authority to contribute funds to eliminate the shortfall between the amount generated by the assessment district and the amount of the necessary maintenance. The Authority will not unreasonably withhold approval of the request.

Section 8.03 DRAIN 47. The District will be responsible for operating and maintaining Drain 47 prior to and following the construction of the Borrow Ditch.

**ARTICLE IX.
FUTURE CHANGES OR ADDITIONS**

Section 9.01 DRAIN 27. In the event the District desires a future change or addition to any SEAI features or the Drain 27 Wetland Restoration Project, it will submit such request to the Authority and USACE. The Authority will not unreasonably deny any requested change or addition posed by the District. The Authority will work with USACE to secure any necessary permits or approvals for such change or addition.

Section 9.02 DRAIN 51. The District retains the ability, at its sole cost and expense, to adjust or alter Drain 51. Such an adjustment or alteration, however, may not include the adjustment or alteration to any SEAI features without written approval from the Authority and USACE.

Section 9.03 DRAIN 47. The District retains the ability, at its sole cost and expense, to adjust or alter Drain 47. Such an adjustment or alteration, however, may not include the adjustment or alteration to any SEAI features without written approval from the Authority and USACE.

**ARTICLE X.
SPECIAL ASSESSMENTS**

Section 10.01 SPECIAL ASSESSMENTS. The District will assess the Authority for any benefits, as determined by the District, an SEAI Drain provides to the Comprehensive Project.

Section 10.02 REASSESSMENTS. If the benefits of any SEAI Drain change as a result of the construction, operation, improvement, reconstruction, or maintenance of the Comprehensive Project, the Authority will reimburse the District for costs incurred regarding the reassessment proceedings.

**ARTICLE XI.
INSURANCE AND LIABILITY**

Section 11.01 AUTHORITY INDEMNIFICATION. To the fullest extent permitted under Applicable Law, with the exception of any damages caused by the District's negligence, the Authority will release, defend, indemnify, and hold harmless the District and the District's officers, employees, and agents with respect to any claims, losses, liability, suits, judgments, costs, and expenses arising out of or regarding any acts or omissions of the Authority or its agents related to the Comprehensive Project or any acts or omissions of the District in pursuing the abandonments or modifications to the SEAI Drains described herein. This indemnity and hold harmless provision 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.

Section 11.02 INSURANCE. The Authority will coordinate with USACE regarding insurance requirements.

**ARTICLE XII.
REIMBURSEMENT OF COSTS**

Section 12.01 ALLOWABLE COSTS. The Authority will reimburse the District for those allowable costs as expressly provided in this MOU, including, but not limited to, all design reviews; inspection upon Substantial Completion; costs incurred regarding acquisition of easements, rights-of-way, or other interests in real property; inspections; and costs incurred by the District securing or attempting to secure any permits or approvals. Approved allowable costs are salaries, services, fees, and related costs and expenses paid by the District to any person, consultant, contractor, or firm for time spent performing any task required or identified under this MOU are reimbursable when supported by adequate records. Salaries, services, and related costs and expenses paid to the District's employees, officers, agents, or representatives may not be reimbursed.

Section 12.02 BETTERMENTS. The District agrees it will not submit any costs or expenses for reimbursement by the Authority incurred for betterments.

ARTICLE XIII. INVOICING AND AUDITS

Section 13.01 INVOICES. The District will provide a monthly invoice for reimbursable costs incurred to the District Representative who will review the invoice and seek reimbursement to the District from the Authority.

Section 13.02 AUDIT AND DISPUTE. All original time cards, payrolls, material records, and other accounts for all charges and expenditures for which reimbursement will be claimed by the District will be available at all reasonable times to allow the Authority to check and audit the invoices submitted by the District. The ability of the Authority to audit the District's invoices will extend for a period of three (3) years from the date the District receives final payment. Any overpayment or underpayment discovered during the audit will be treated as a dispute under Article XV.

Section 13.03 PAYMENT. Subject to the availability of funds, the Authority will make payments to the District when required to reimburse payments made to the District.

Section 13.04 FINAL ACCOUNTING. The District will provide one (1) final and complete billing of all incurred costs within one (1) year following completion of the reimbursable design and construction work. The Authority may in Good Faith, after conducting a final audit, make adjustments to the amount of compensation due to the District under this MOU.

Section 13.05 BETTERMENTS. In the event the Authority constructs Betterments upon request of the District, the Authority will invoice the District for costs and expense associated with such Betterments.

ARTICLE XIV. TERM AND TERMINATION

Section 14.01 TERM. This MOU will be for an indefinite term and will continue until terminated or rescinded in accordance with the terms and conditions of this MOU. At least six (6) months prior to the anticipated date of completion of the Comprehensive Project, the Authority

and the District will enter into Good Faith negotiations to determine whether any amendments to this MOU are necessary or desired.

Section 14.02 TERMINATION.

(a) The Parties must mutually agree, in writing, to terminate this MOU. The Parties may not terminate this MOU prior to completion of the Comprehensive Project as described in the preceding Section.

(b) If the Authority and the District disagree regarding the necessity to terminate this MOU, or if they otherwise disagree in whole or in part on the amount of costs and/or fees to be paid because of the termination of work, the failure to agree will be treated as a dispute under the following Article.

**ARTICLE XV.
DISPUTE RESOLUTION**

Section 15.01 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 Parties agree to the following procedure.

Section 15.02 MEDIATION. If there is a failure between the Parties to resolve a dispute on their own, they will first attempt to mediate the dispute. The Parties will agree upon a single mediator or, if any 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 will be selected as the AAA mediator, and each Party will pay fifty percent (50%) of any costs for mediation services.

Section 15.03 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 this Article, the Parties may litigate the matter.

Section 15.04 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 15.05 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 thereto relating to this MOU. This provision is a material inducement for all Parties entering into this MOU. This provision applies only to suits between the Parties and does not apply to third party claims or suits.

**ARTICLE XVI.
THIRD PARTY BENEFICIARY**

Section 16.01 USACE. The Authority and the District specifically agree, acknowledge, and covenant that portions of the District's property or right-of-way will be used by USACE in order to construct Drain 51 Alterations, the Borrow Ditch, and Drain 27 Alterations.

**ARTICLE XVII.
MISCELLANEOUS**

Section 17.01 COMPLETE AGREEMENT. This MOU contains the entire and exclusive understanding of the Parties with respect to the subject matter contained in the MOU and supersedes all prior written or oral agreements, understandings, statements, representations, and negotiations between the Parties.

Section 17.02 COUNTERPARTS. This instrument may be executed 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 17.03 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 17.04 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, the illegality or invalidity will not affect the validity of the remainder of this MOU.

Section 17.05 FORCE MAJEURE. No Party will be liable to another Party during any period in which its performance is delayed or prevented, in whole or in part, by circumstances beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Parties of the same.

Section 17.06 AUTHORIZED REPRESENTATIVES. The Authority and the District each designate the following as its initial authorized representative, respectively, to administer this MOU:

- (a) Authority Representative: Executive Director and Program Management Consultant
- (b) District Representative: Secretary-Treasurer

Section 17.07 NOTICE.

(a) All notices under the MOU will be in writing and (i) delivered personally, (ii) sent by certified mail, return receipt requested, or (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested, to the following addresses.

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

Jacobs
64 4th Street North, Suite 300
Fargo, North Dakota 58102

and

Executive Director
Box 2806
207 4th Street North, Suite A
Fargo, North Dakota 58102

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

Cass County Water Resource Districts
1201 Main Avenue West
West Fargo, North Dakota 58078

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

Section 17.08 GOVERNING LAW. This MOU will be governed and construed in accordance with North Dakota law.

Section 17.09 FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for 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 District 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 as Exhibit O to this MOU. The District 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 17.10 DEBARMENT AND SUSPENSION. The District 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 District 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 District will complete and submit to the Authority the federal certification form regarding debarment and suspension, which is attached within Exhibit O to this MOU.

Section 17.11 CIVIL RIGHTS OBLIGATIONS. The District 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 District will complete and submit to the Authority the federal certification form regarding civil rights, which is attached within Exhibit O to this MOU.

IN WITNESS WHEREOF, the Authority and the District 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 MOU on the ____ day of _____, 2021.

METRO FLOOD DIVERSION
AUTHORITY

By: _____
Michelle Carlson, Chair

By: _____
Joel Paulsen, Executive Director

ATTEST:

Dawn Lindblom, Secretary

Signature Page for the Southeast Cass Water Resource District

The governing body of the Southeast Cass Water Resource District approved this MOU on the ____ day of _____, 2021.

SOUTHEAST CASS WATER RESOURCE DISTRICT

By: _____
Dan Jacobson, Chair

ATTEST:

Carol Harbeke Lewis, Secretary-Treasurer

EXHIBIT A

DRAIN 27 AND SEAI MAP

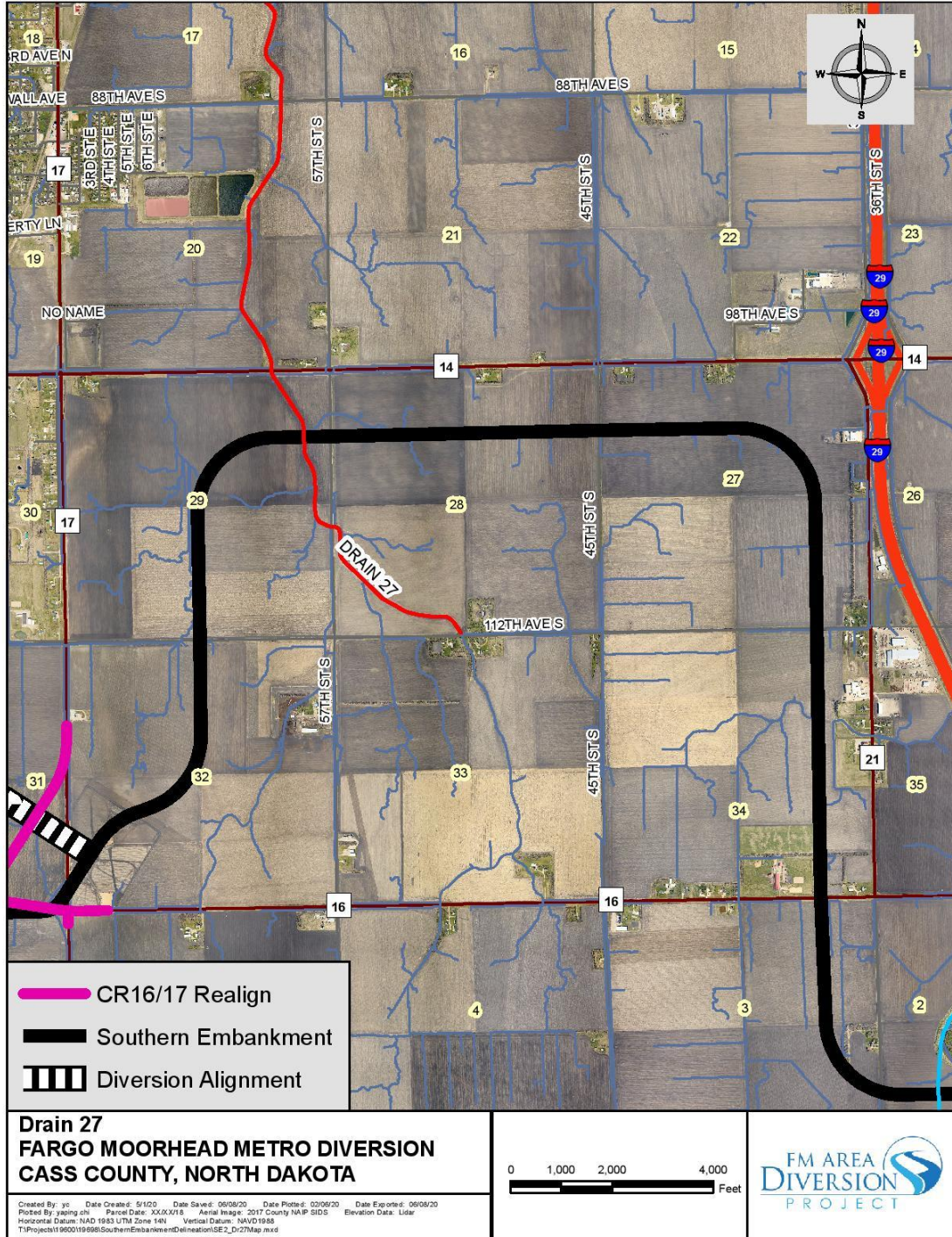
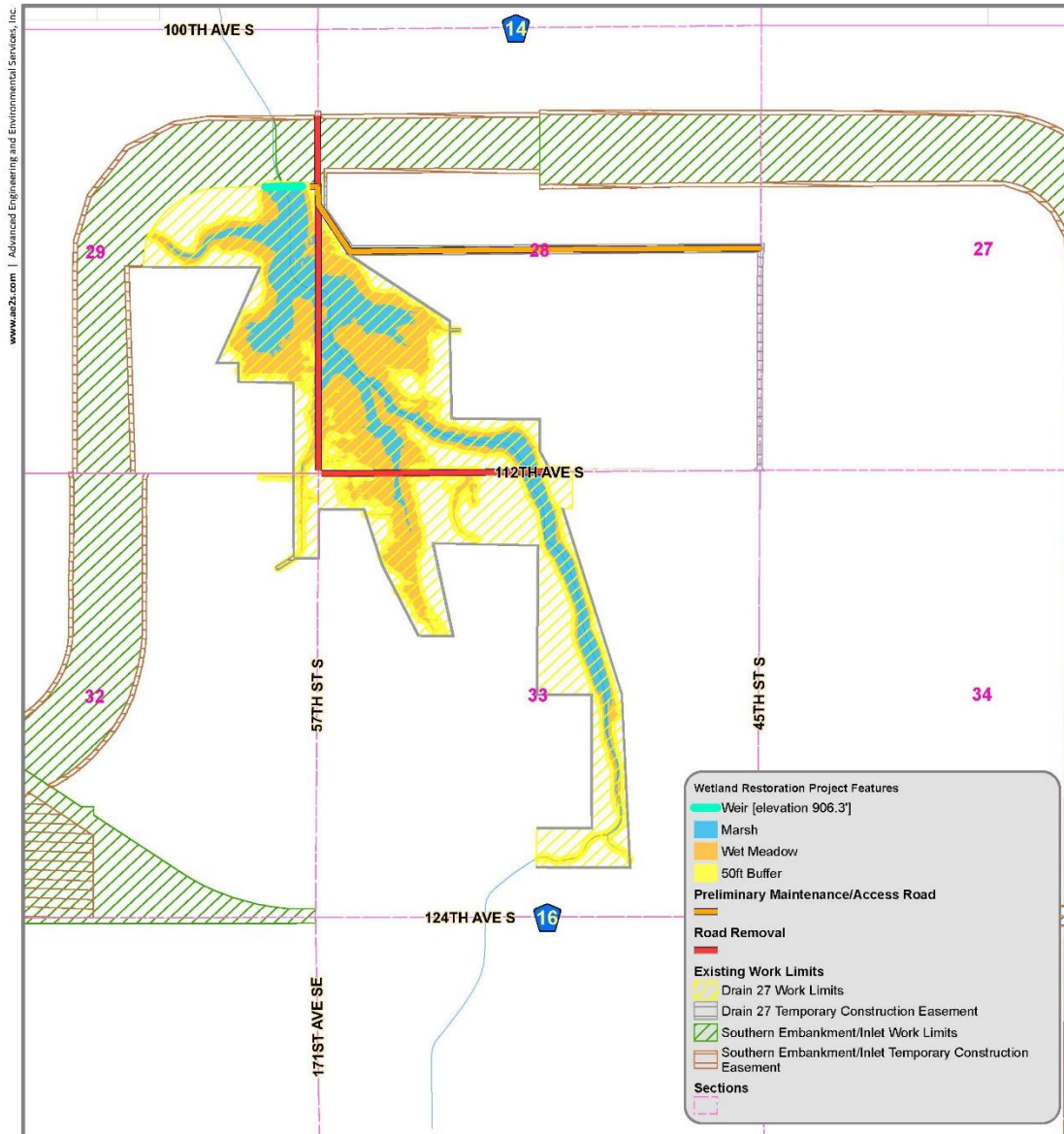
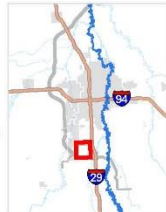
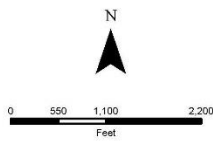


EXHIBIT B

DRAIN 27 WETLAND RESTORATION PROJECT PRELIMINARY MAP



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 hereon 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: cwickenheiser - AE2S, Inc. |
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DRAIN 27 WETLAND RESTORATION PROJECT

FM AREA DIVERSION
Map Date: 9/30/2020



EXHIBIT C

I-29 ROAD RAISE AND BYPASS

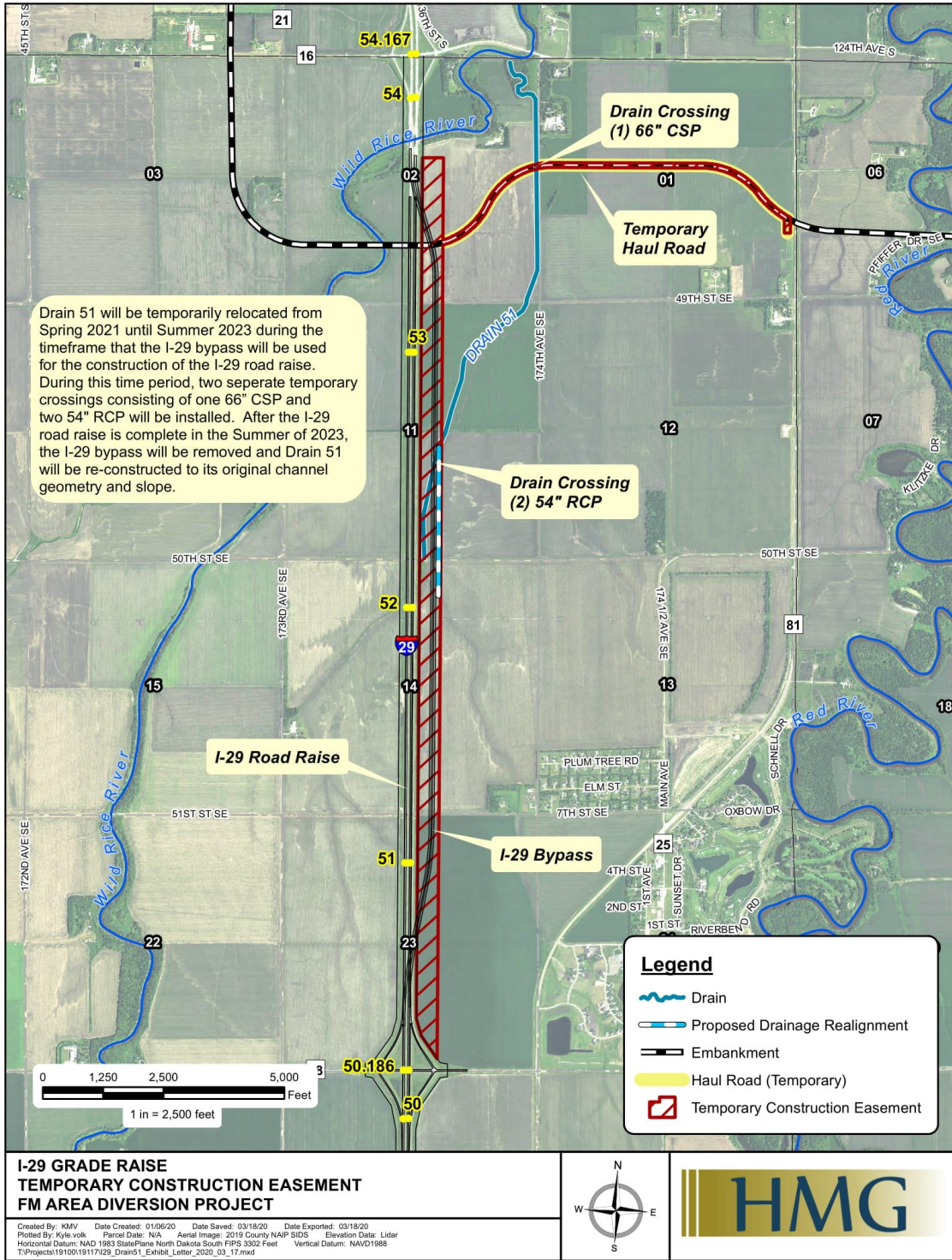


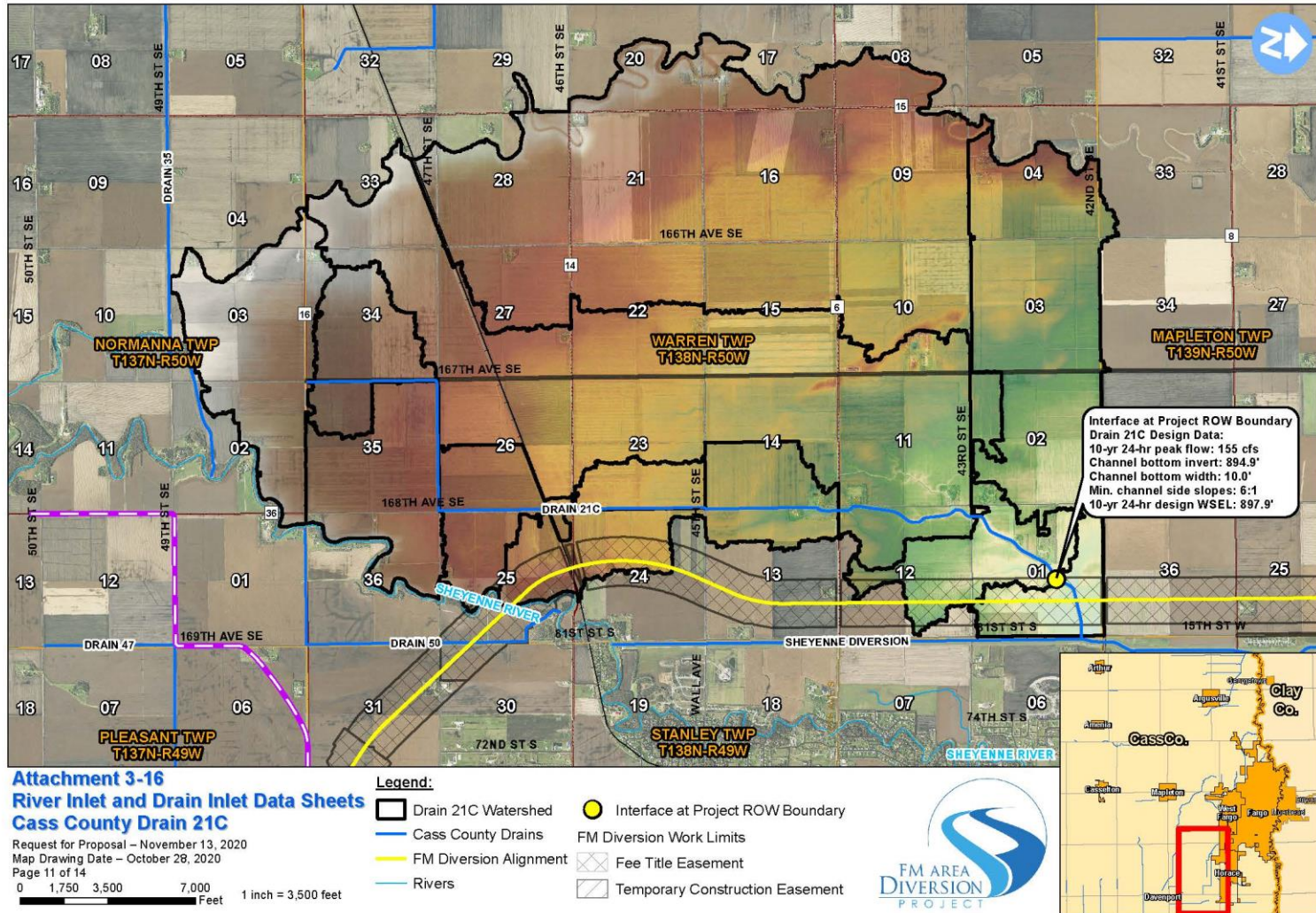
EXHIBIT D

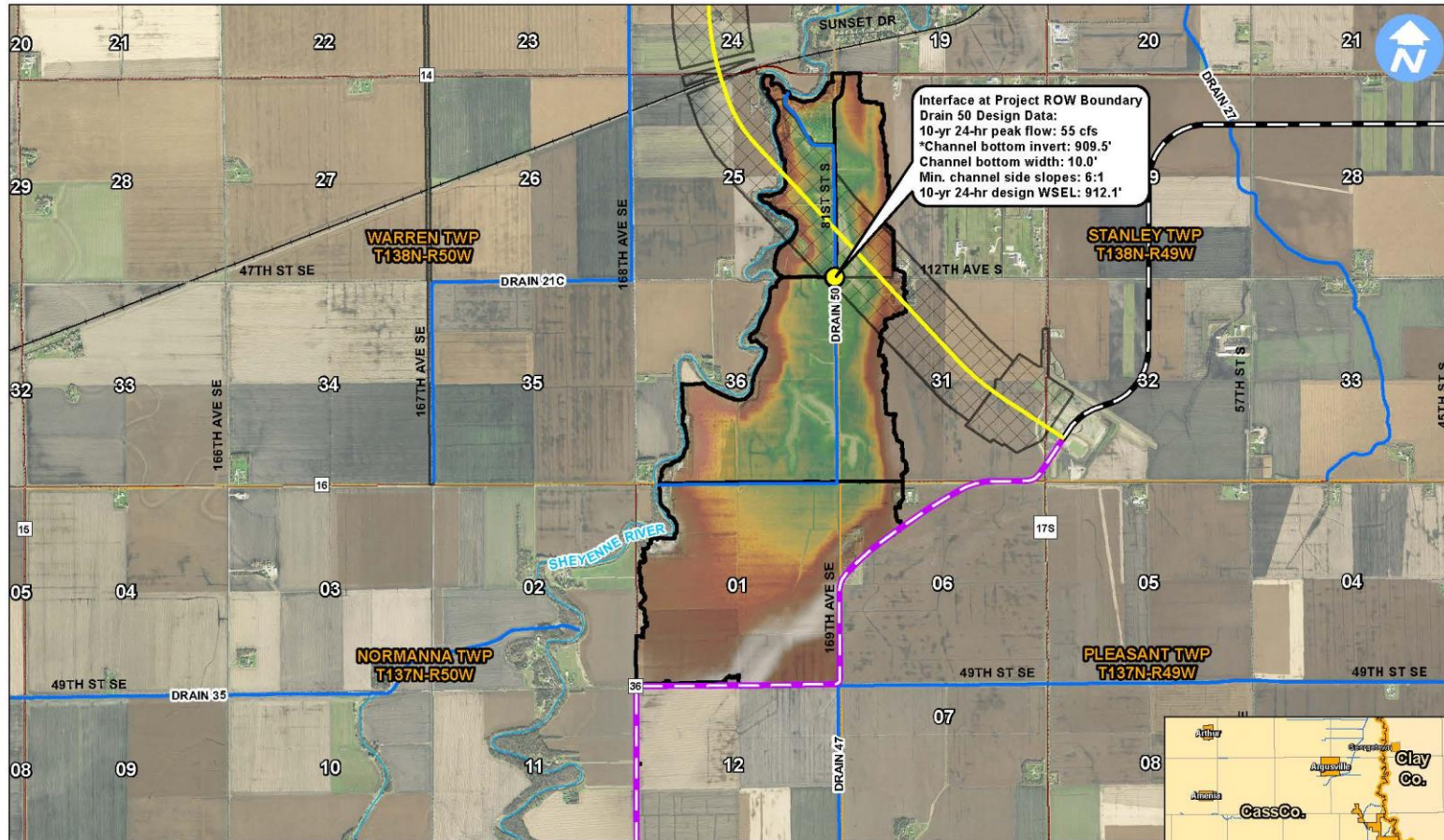
DRAIN 51 ORIGINAL GEOMETRY AND SLOPE

1. Ten (10) foot bottom
2. 5H:1V sideslopes
3. Channel slope of 0.046%

EXHIBIT E

RIVER INLET AND DRAIN INLET INTERFACE DATA SHEETS





Attachment 3-16
River Inlet and Drain Inlet Data Sheets
Cass County Drain 50

Request for Proposal – November 13, 2020
 Map Drawing Date – October 28, 2020
 Page 12 of 14

0 1,250 2,500 5,000 Feet 1 inch = 2,500 feet

Legend:

- Drain 50 Watershed
- Cass County Drains
- FM Diversion Alignment
- Rivers
- Interface at Project ROW Boundary
- FM Diversion Work Limits
- Fee Title Easement
- Temporary Construction Easement

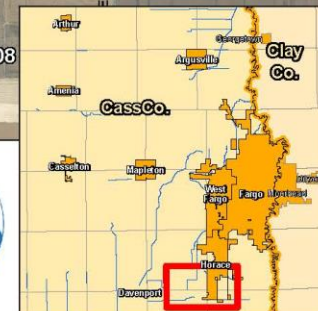
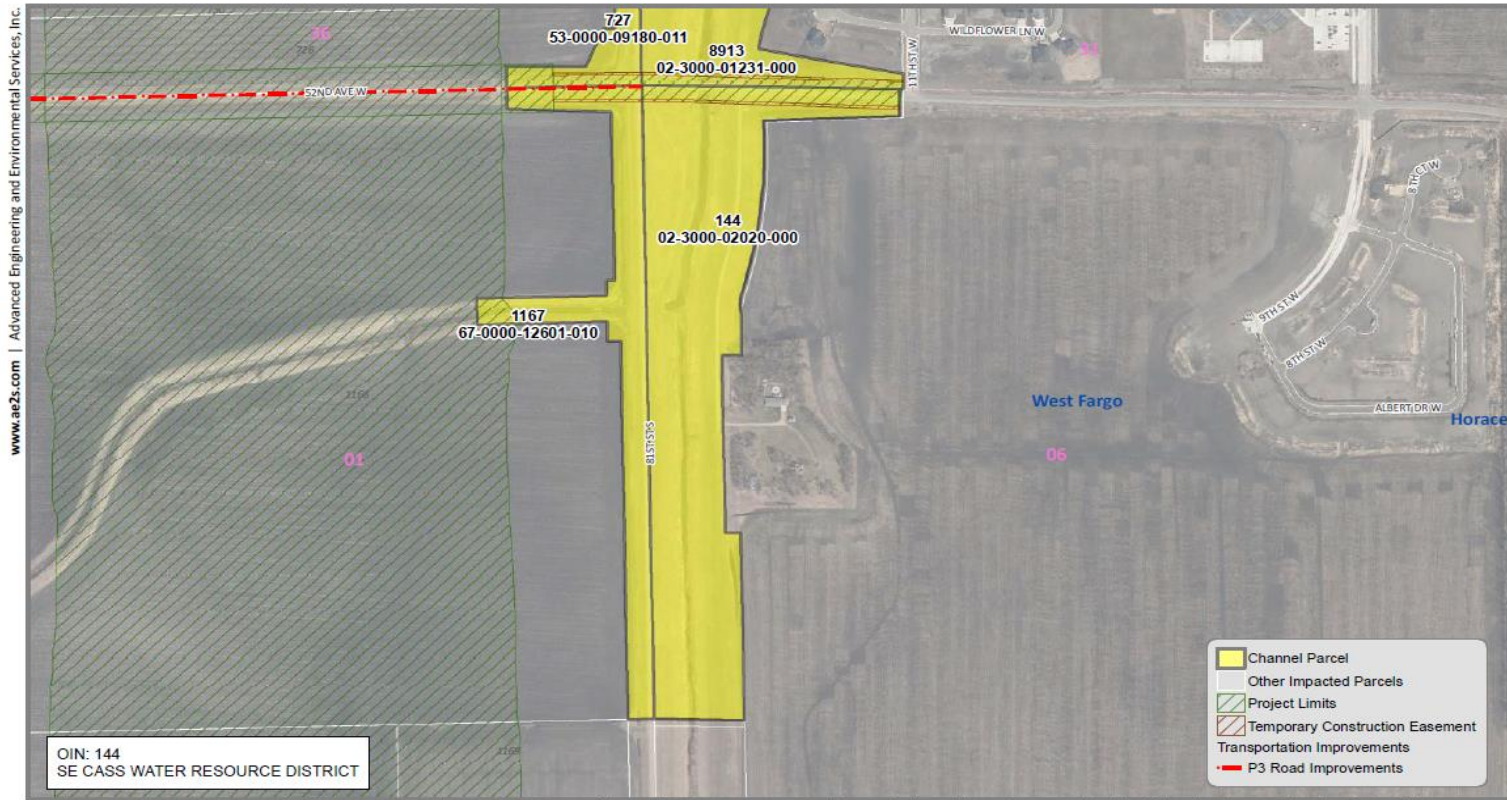


EXHIBIT F

MAPS OF PROPERTY INTEREST GRANTS



OIN: 144
SE CASS WATER RESOURCE DISTRICT

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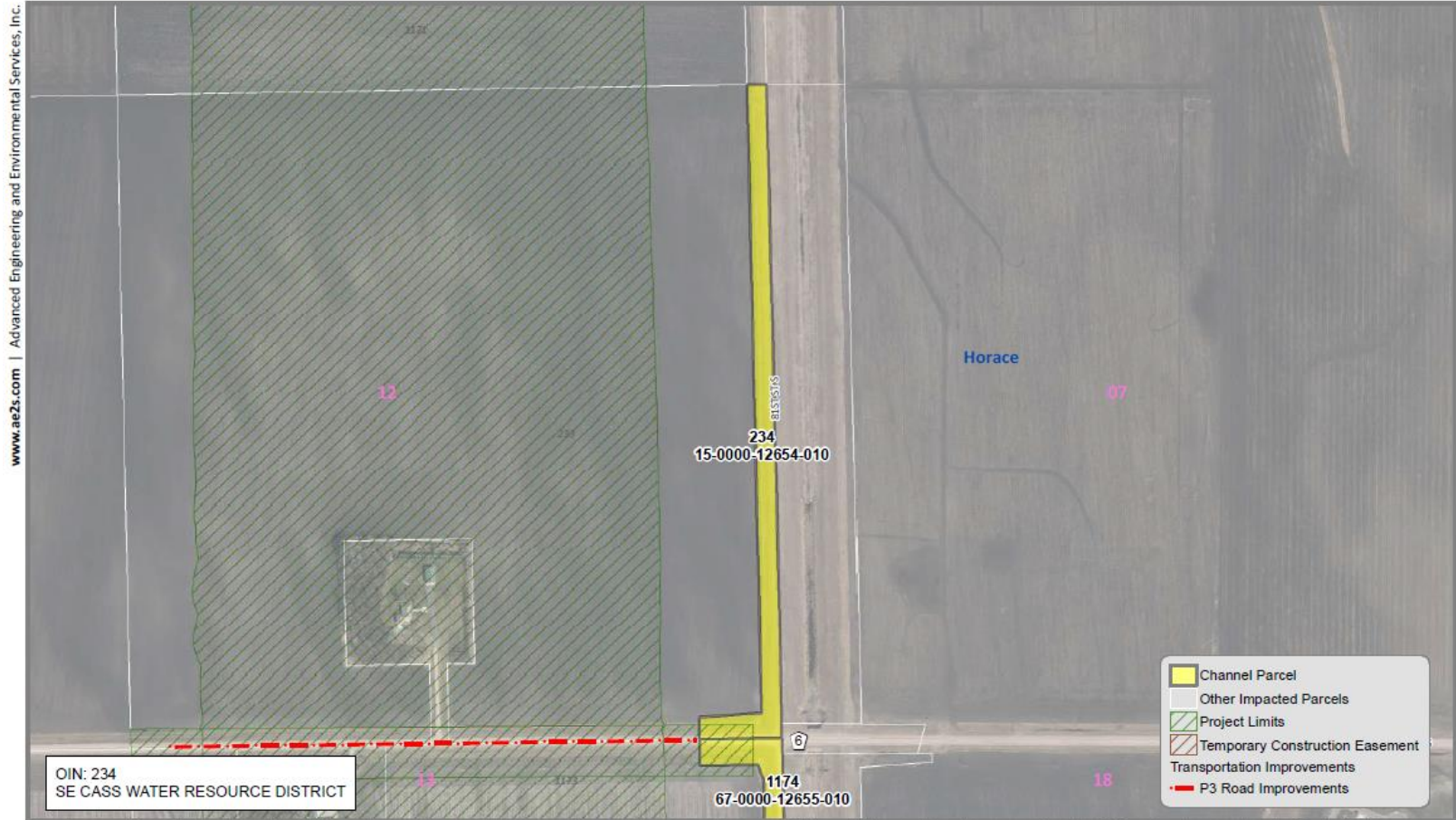


Locator Map Not to Scale

PENDING MOUS CHANNEL PARCELS

FM AREA DIVERSION
Map Date: 12/20/2019



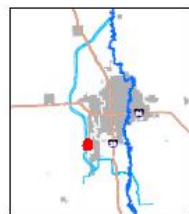
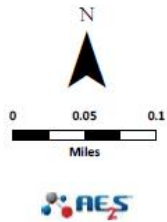


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OIN: 234
SE CASS WATER RESOURCE DISTRICT

- Channel Parcel
- Other Impacted Parcels
- Project Limits
- Temporary Construction Easement Transportation Improvements
- P3 Road Improvements

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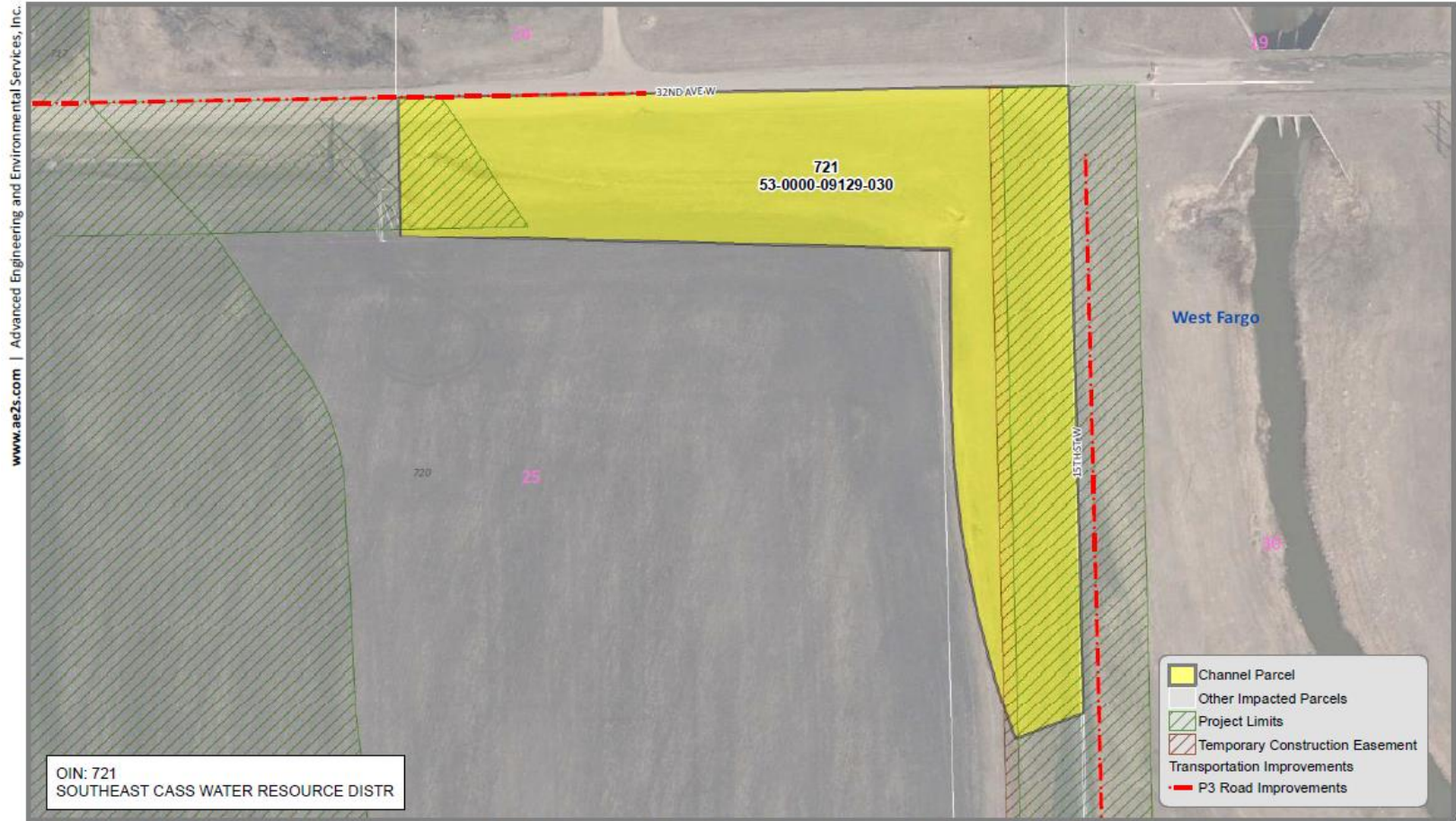


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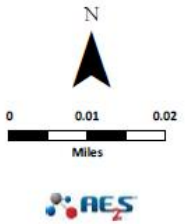
PENDING MOUS CHANNEL PARCELS

FM AREA DIVERSION
Map Date: 12/20/2019





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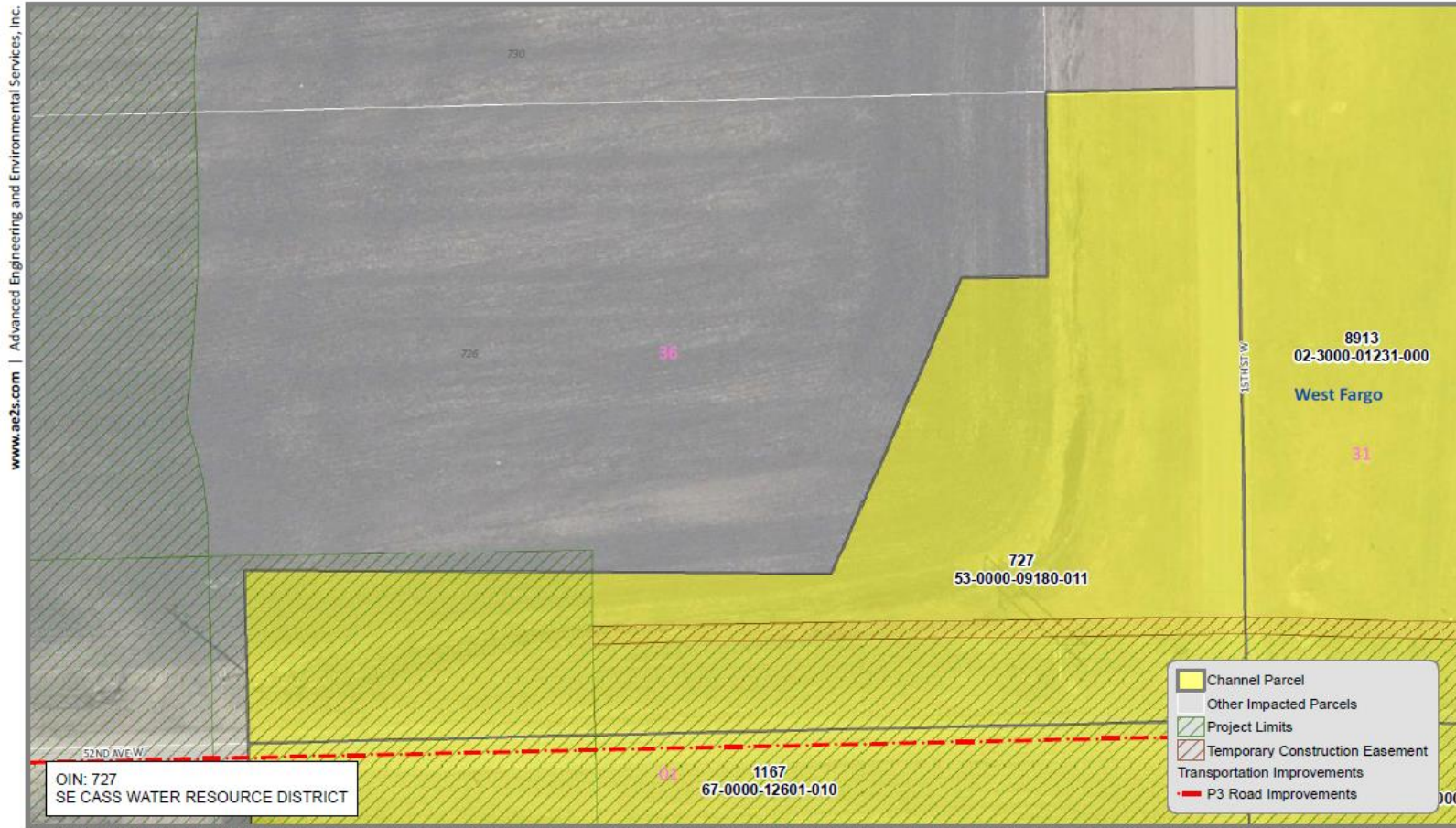


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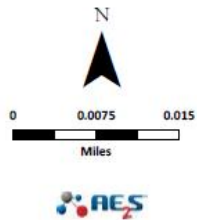
PENDING MOUS CHANNEL PARCELS

FM AREA DIVERSION
Map Date: 12/20/2019





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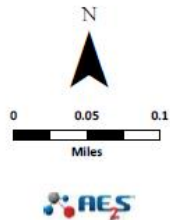
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FM AREA DIVERSION
Map Date: 12/20/2019





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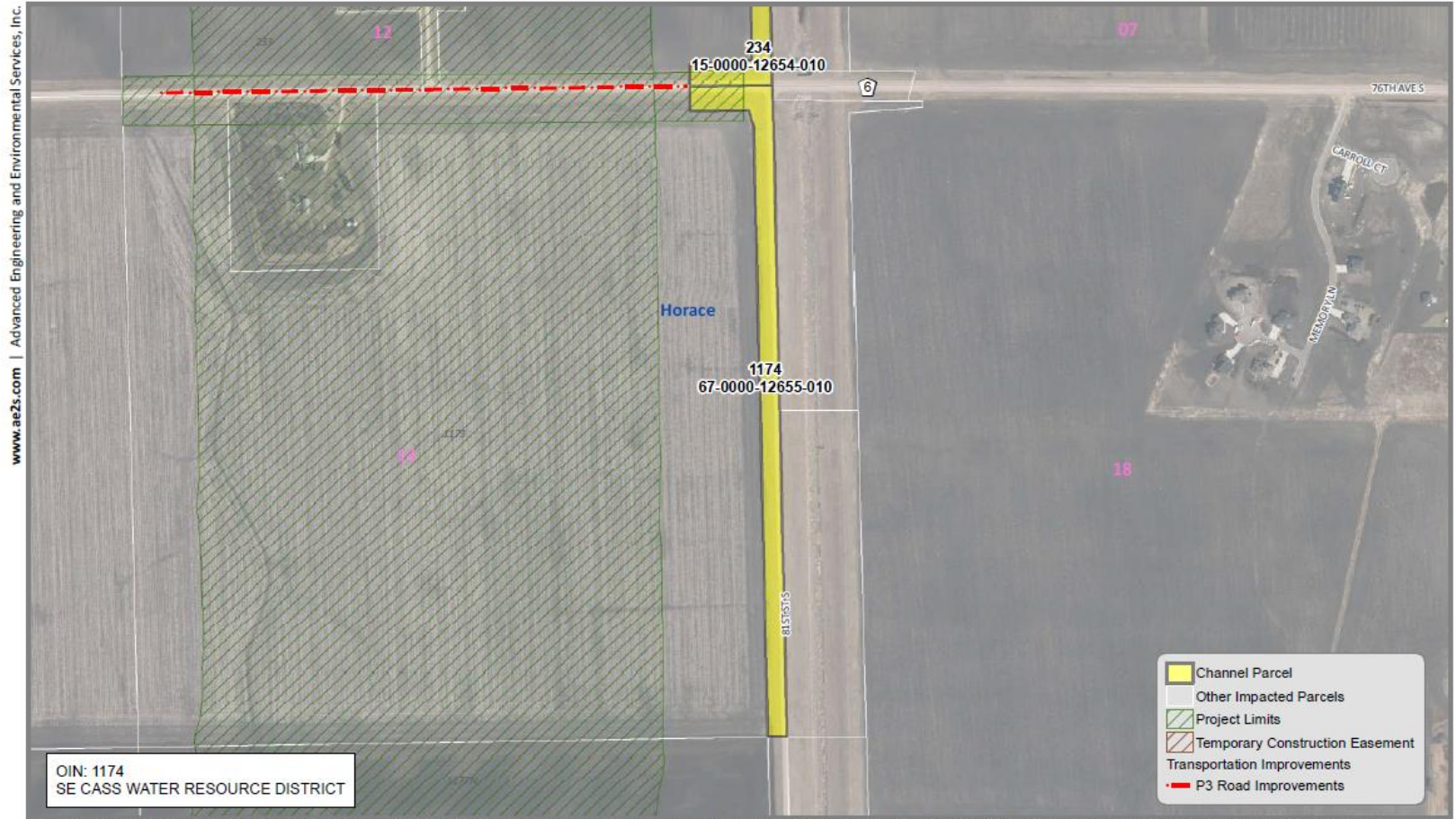


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PENDING MOUS CHANNEL PARCELS

FM AREA DIVERSION
Map Date: 12/20/2019



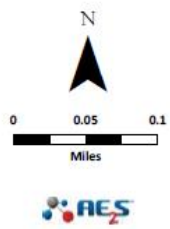


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OIN: 1174
SE CASS WATER RESOURCE DISTRICT

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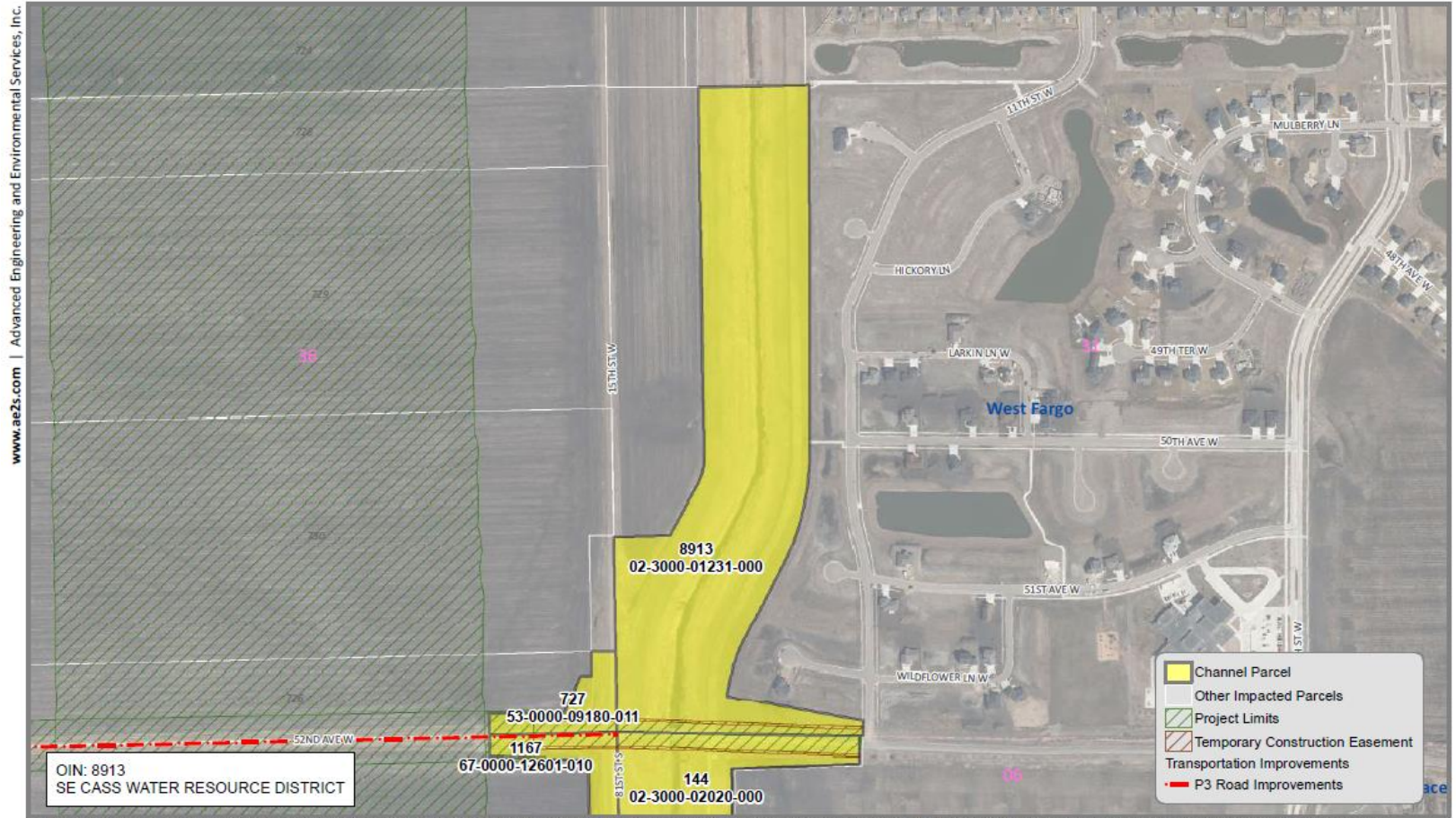


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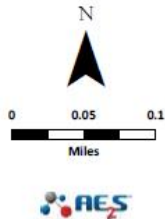
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FM AREA DIVERSION
Map Date: 12/20/2019





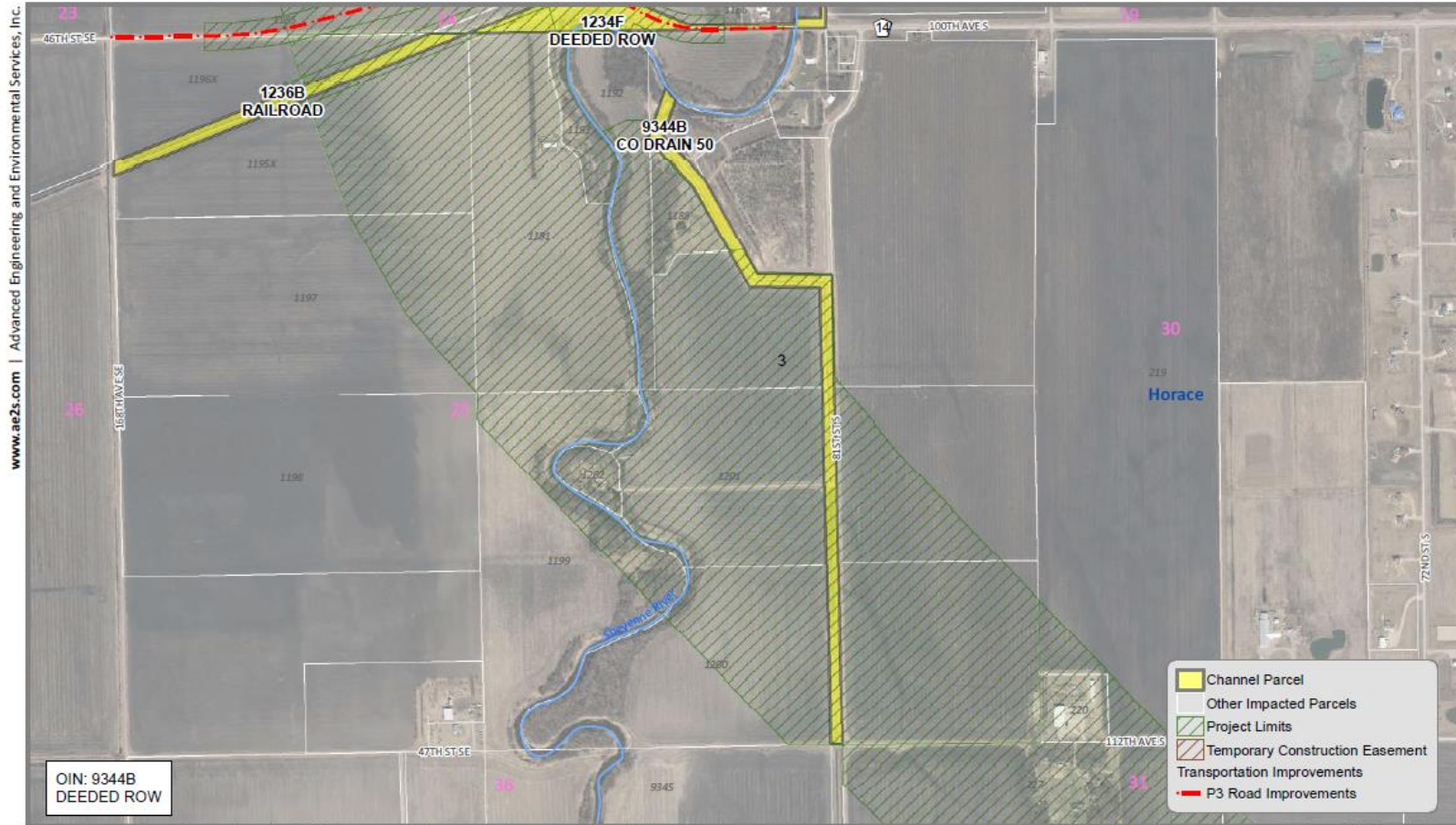
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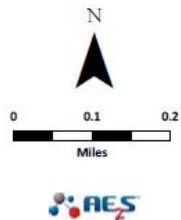
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FM AREA DIVERSION
Map Date: 12/20/2019





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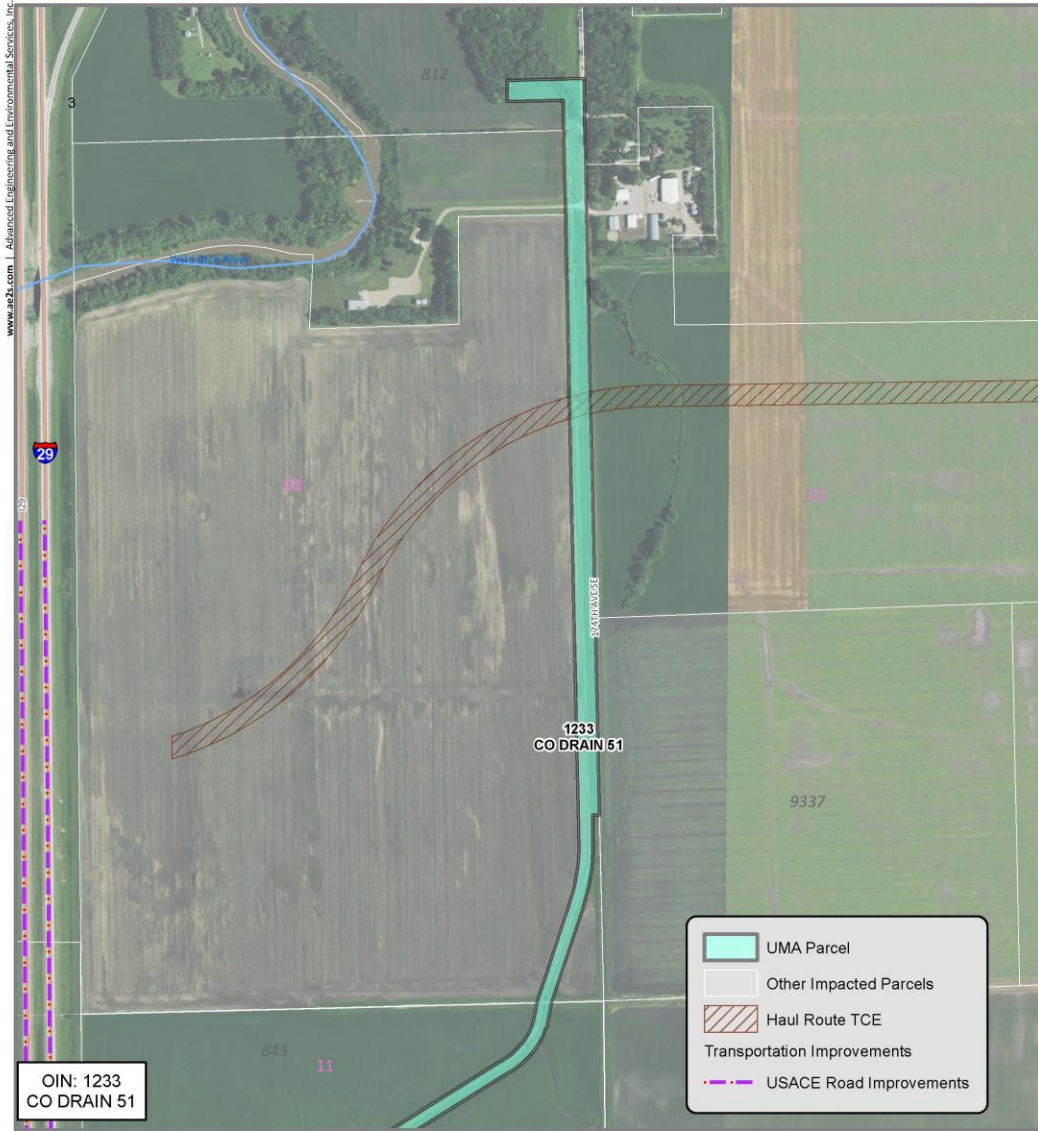
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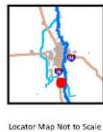
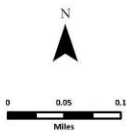
EXHIBIT G

MAPS OF DRAIN 51 PROPERTY INTEREST GRANTS

Haul Route Temporary Construction Easement



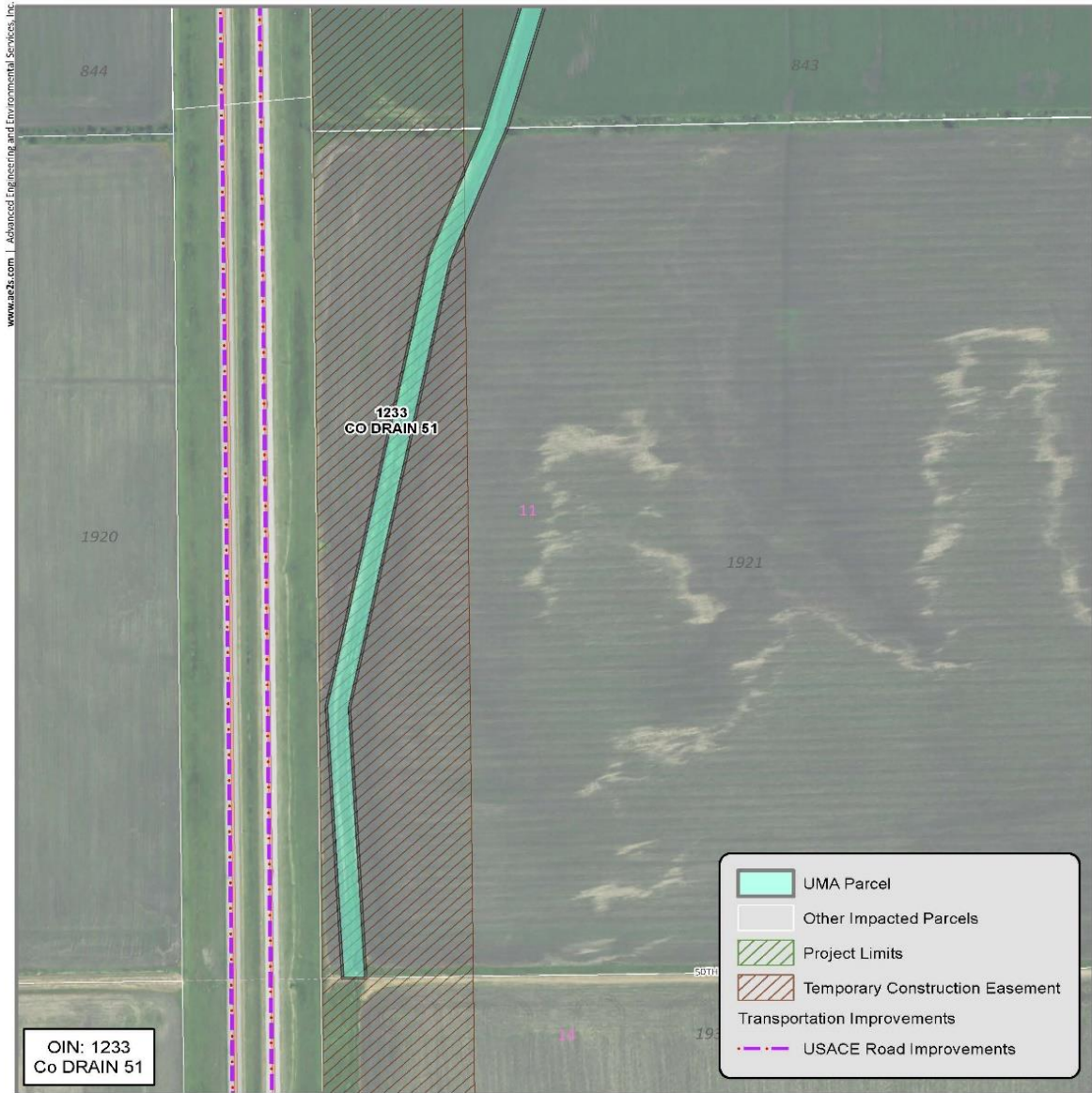
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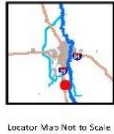
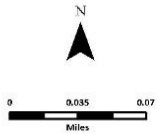
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FM AREA DIVERSION
Map Date: 7/15/2020



Interstate 29 Bypass Temporary Construction Easement



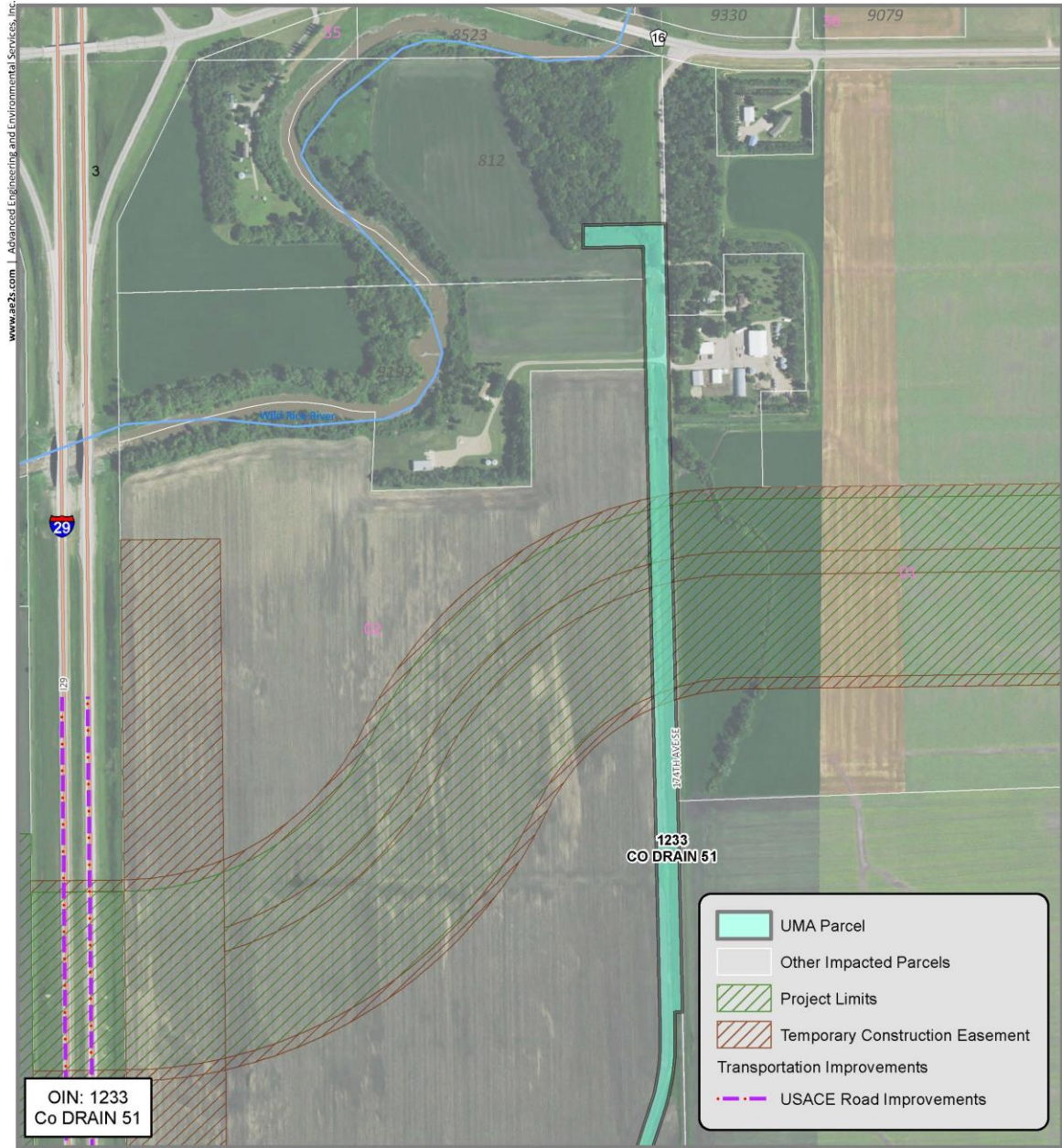
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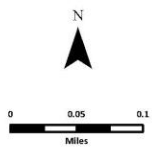
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 FM AREA DIVERSION
 Map Date: 7/15/2020



Drain 51 Abandonment Property



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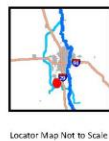
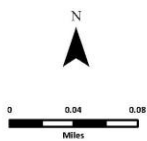
EXHIBIT H

MAPS OF DRAIN 27 PROPERTY INTEREST GRANTS

SEAI Abandonment Property



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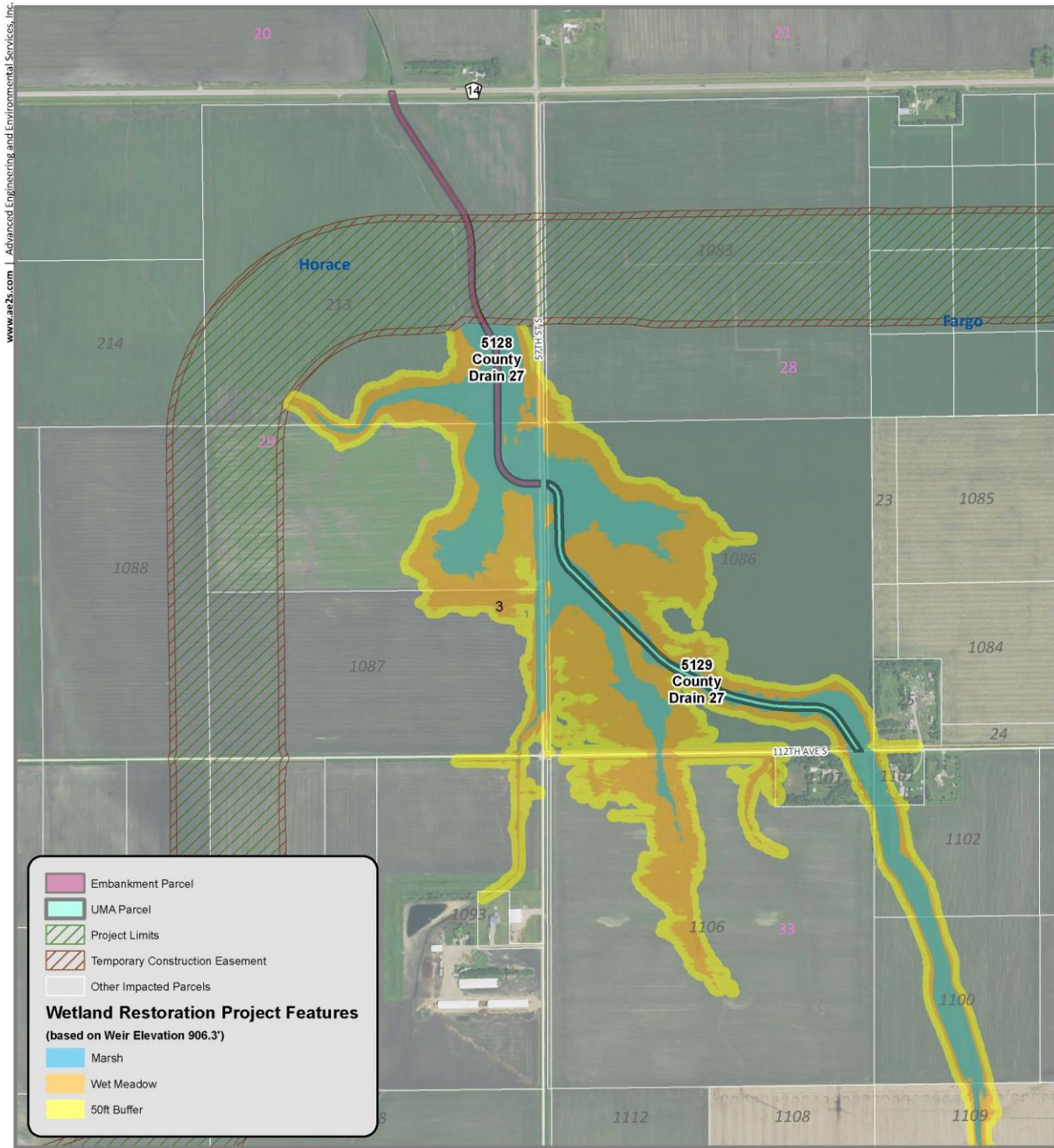
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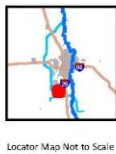
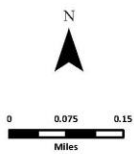
Map Date: 7/15/2020



Drain 27 Wetland Restoration Project Abandonment Property



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PENDING MOUS
 FM AREA DIVERSION
 Map Date: 7/16/2020



EXHIBIT I

PERMANENT EASEMENT TEMPLATE

THIS EASEMENT is made this ____ day of _____, 20__, by [SELLER NAME 1], [MARITAL STATUS] whose post office address is [ADDRESS] (“Grantor”); and Cass County Joint Water Resource District, a North Dakota political subdivision, whose post office address is 1201 Main Avenue West, West Fargo, North Dakota 58078 (“Grantee”).

RECITALS

A. The United States Army Corps of Engineers (the “Corps”) previously completed the Fargo-Moorhead Metropolitan Feasibility Study (the “Study”); as a result of the Study, the Corps concluded a diversion project located in North Dakota with appurtenant, levees, staging and storage areas is the most viable permanent flood control and protection option to reduce flood damages and risks in the region; the parties refer to the project as the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Project”).

B. Grantee is authorized to acquire the real property necessary for purposes of constructing, operating, and maintaining the Project.

C. Grantor owns certain real property necessary for the Project that the Grantee must acquire; Grantor agrees to convey a Permanent Easement to the Grantee upon, in, on, under, over, across and through the property described below, all subject to the terms and conditions contained in this Easement.

In consideration of \$10.00, the mutual covenants contained in this Permanent Easement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **The Permanent Easement Property.** Grantor grants and conveys to Grantee a Permanent Easement, including the easement rights described in this Permanent Easement, upon, over, in, on, under, across, and through the following real property in Cass County, North Dakota:

That part of Lot 3, Block 4, North Dakota R-2 Urban Renewal Addition to the City of Fargo, Cass County, North Dakota, described as follows: Commencing at the southwest corner of said Lot 3; thence North 83°26’31” East, along the southerly boundary of said Lot 3, for a distance of 23.05 feet to the true point of beginning; thence North 02°47’12” East for a distance of 42.15 feet; thence North 79°49’29” East for a distance of 310.37 feet to a point of intersection with the easterly boundary of said Lot 3; thence South 02°31’21” West, along the easterly boundary of said Lot 3, for a distance of 61.94 feet to the southeast corner of said Lot 3;

thence South 83°26'31" West, along the southerly boundary of said Lot 3, for a distance of 306.82 feet to the point of beginning.

Said tract of land contains 15,758 square feet, more or less.

(the "Permanent Easement Property.")

2. **The Permanent Easement Property.** Under this Permanent Easement, Grantor grants to Grantee, and Grantee's officers, employees, agents, representatives, and contractors, this permanent and perpetual easement upon, over, in, under, across, and through the Permanent Easement Property for the following purposes: constructing, inspecting, reconstructing, modifying, operating, maintaining, repairing, and improving the Project and related appurtenances, including a flood protection levee, flood wall, and other improvements; excavating, piling, storing, depositing, spoiling, spreading, and removing excavated dirt, soil, clay, silt, and other materials; storing and removing equipment, materials, and supplies; removing trees, underbrush, obstructions, and any other vegetation, structures, or obstacles from the Permanent Easement Property; and the right to perform any other work necessary and incident to the construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of the Project, together with all necessary and reasonable rights of ingress and egress to and from the Permanent Easement Property. Grantee is not responsible for pre-existing environmental contamination or liabilities.

3. **Consideration.** Grantor specifically acknowledges the consideration received by Grantor represents full and final consideration to Grantor as compensation or damages regarding the Permanent Easement Property, any of Grantor's remaining property, or the Project, and that Grantor is not entitled to any further payments, tax reductions, or damages under any state or federal statute, constitutional provision, rule or regulation, or other legal authority.

4. **Easement Runs With the Permanent Easement Property.** This Permanent Easement, and all covenants, terms, conditions, provisions, and undertakings created under this Permanent Easement, are perpetual and will run with the Permanent Easement Property, and will be binding upon Grantor's heirs, successors, and assigns.

5. **Structures and Personal Property.** Any buildings, structures, fixtures, personal property, or other items remaining on the Permanent Easement Property will automatically become Grantee's property upon execution of this Permanent Easement, without the need for any bill of sale or any other written instrument or agreement; Grantee may then remove any buildings, structures, personal property, or other items from the Permanent Easement Property, at its sole discretion and at its sole cost.

6. **Taxes.** Grantor is solely responsible for all taxes and special assessments or assessments for special improvements due, levied, or assessed regarding the Permanent Easement Property for all past, present, and future years. Grantee will not be responsible for payment of any real estate taxes or special assessments regarding the Permanent Easement Property.

7. **Grantor's Use of the Permanent Easement Property.** Grantor has the right and privilege to use the Permanent Easement Property at any time, in any manner, and for any purpose that is not inconsistent with Grantee's rights and privileges under this Permanent Easement. Grantor will not use, or permit use of, the Permanent Easement Property in any manner that disrupts or interferes with Grantee's use of the Permanent Easement Property, Grantee's rights and privileges under this Permanent Easement, or with the Project. Grantor will promptly cease any activities and remove any structures or obstructions that interfere with Grantee's use of the Permanent Easement Property, Grantee's rights and privileges under this Permanent Easement, or with the Project, when directed by Grantee, at Grantor's sole cost. Grantor will repair or replace any of Grantee's structures, facilities, right of way, or any other property owned by Grantee damaged by Grantor or as a result of Grantor's use of the Permanent Easement Property, at Grantor's sole cost.

8. **Encumbrances.** Grantor will not encumber the Permanent Easement Property or enroll the Permanent Easement Property in any program that would be contrary to, or would in any way disrupt or interfere with, Grantee's use of the Permanent Easement Property, Grantee's rights and privileges under this Permanent Easement, or with the Project. However, Grantor may rent or lease the Permanent Easement Property, at Grantor's sole discretion and without first obtaining Grantee's consent; and Grantor may mortgage the Permanent Easement Property, at Grantor's sole discretion and without first obtaining Grantee's consent so long as any such mortgage is subordinate to this Permanent Easement. If Grantor rents or leases the Permanent Easement Property, any lessee's rights and uses are subject to this Permanent Easement, including the use restrictions described above; Grantor will be fully responsible to Grantee for Grantor's obligations under this Permanent Easement, including for any violations by any lessee.

9. **Waiver of Warranties.** The parties specifically agree neither Grantee nor any of its agents or representatives have made any representations or warranties in any way regarding the Project; Grantor's ability to use the Permanent Easement Property following construction of the Project; or Grantor's ability to enroll the Permanent Easement Property in any federal program.

10. **Forbearance or Waiver.** The failure or delay of Grantee to insist on the timely performance of any of the terms of this Permanent Easement, or the waiver of any particular breach of any of the terms of this Permanent Easement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

11. **Governing Law.** This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

12. **Severability.** If any court of competent jurisdiction finds any provision or part of this Permanent Easement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Permanent Easement, and all remaining terms and provisions of this Permanent Easement will remain binding and enforceable.

13. **Entire Agreement.** This Permanent Easement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Permanent Easement, and this Permanent Easement supersedes all other previous oral or written agreements between the parties.

14. **Modifications.** Any modifications or amendments of this Permanent Easement must be in writing and signed by Grantor and Grantee, and must be recorded in the Cass County Recorder's Office.

15. **Representation.** The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Permanent Easement, and agree they have not been influenced by any representations or statements made by any other parties.

16. **Headings.** Headings in this Permanent Easement are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages.)

IN WITNESS WHEREOF, Grantor executed this Permanent Easement on the date written above.

GRANTOR:

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

On this ____ day of _____, 2021, before me, a Notary Public, in and for said County and State, personally appeared _____, to me known to be the _____, a _____, that is described in, and who executed the within and foregoing instrument, and acknowledged to me that they executed the same on behalf of _____.

Notary Public, State of North Dakota
My Commission Expires:

(SEAL)

IN WITNESS WHEREOF, Grantee executed this Permanent Easement on the date written above.

CASS COUNTY JOINT WATER
RESOURCE DISTRICT

Dan Jacobson, Chair

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer

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

On this ____ day of _____, 2021, before me, a Notary Public, in and for said County and State, personally appeared Dan Jacobson and Carol Harbeke Lewis, to me known to be the Chair and Secretary-Treasurer, respectively, of the Cass County Joint Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Cass County Joint Water Resource District.

Notary Public, State of North Dakota
My Commission Expires:

(SEAL)

EXHIBIT J

TEMPORARY CONSTRUCTION EASEMENT TEMPLATE

THIS EASEMENT is made this ____ day of _____, 20__, by [SELLER NAME 1], [MARITAL STATUS] whose post office address is [ADDRESS] (“Grantor”); _____, a North Dakota political subdivision, whose post office address is 1201 Main Avenue West, West Fargo, North Dakota 58078 (“Grantee”).

RECITALS

A. The United States Army Corps of Engineers (the “Corps”) and the Metro Flood Diversion Authority entered into a Project Partnership Agreement on July 11, 2016, and amended on March 19, 2019, for construction of the Fargo-Moorhead Metropolitan Area Flood Risk Reduction Project, commonly referred to as the Fargo-Moorhead Area Diversion Project (the “Diversion Project”).

B. Grantee is authorized to acquire the real property necessary for purposes of constructing, operating and maintaining the Diversion Project.

C. Grantor owns certain real property necessary for the Diversion Project that the Grantee must acquire. Grantor agrees to convey a Temporary Construction Easement to the Grantee in, on, upon, under, over, across and through the property described below for purposes of the Diversion Project, all subject to the terms and conditions contained in this Easement.

In consideration of the mutual covenants contained in this Easement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

The Temporary Easement Property. Grantor grants and conveys to Grantee a temporary easement, including the easement rights described in this Easement, upon, over, in, under, across, and through the following real property in Cass County, North Dakota:

[TEMPORARY EASEMENT LEGAL DESCRIPTION]

(the “Temporary Easement Property.”)

Easement Rights. Under this Easement, Grantor grants to Grantee, and Grantee’s officers, employees, agents, representatives, and contractors, this temporary easement upon, over, in, under, across, and through the Temporary Easement Property for the following purposes: ingress and egress to and from the Diversion Project; constructing the Diversion Project; moving, storing, and removing equipment, materials, and supplies; erecting and removing temporary structures on the Temporary Easement Property; removing trees, underbrush, obstructions, and any other vegetation, structures, or obstacles from the Temporary Easement Property; excavating, piling, storing, depositing, spoiling, spreading, and removing excavated dirt, soil, clay, silt, and other materials on or from the Temporary Easement Property; and any other work necessary and incident

to the construction and improvement of the Diversion Project. Grantee is not responsible for pre-existing environmental contamination or liabilities.

Term. This Easement, and all the rights, privileges, and easements granted in this Easement, will continue for a period of ____ years from the date of Grantor's execution, or until Grantee completes the Diversion Project, whichever event occurs sooner. However, the parties acknowledge and agree some rights granted under this Easement, including the right to remove trees, underbrush, obstructions, and any other vegetation, structures, or obstacles on or from the Temporary Easement Property, as well as the right to excavate, pile, store, deposit, spoil, spread, or remove excavated dirt, silt, or other materials on or from the Temporary Easement Property, may result in permanent alterations of the Temporary Easement Property.

Term. The Grantee's rights under this Easement commence on the sooner of the date Grantee gives Grantor written notice of commencement of this Easement, or ____ years from the date of this Easement (the "Commencement Date"), and will expire on the fifth anniversary of the Commencement Date, unless the Grantee completes construction of the Diversion Project sooner, in which case this Easement will expire upon the Grantee's completion of construction of the Diversion Project and satisfies the terms of this Easement. However, the parties acknowledge and agree some rights granted under this Easement, including the right to remove trees, underbrush, obstructions, and any other vegetation, structures, or obstacles on or from the Temporary Easement Property, as well as the right to excavate, pile, store, deposit, spoil, spread, or remove excavated dirt, silt, or other materials on or from the Temporary Easement Property, may result in permanent alterations of the Temporary Easement Property. The parties further agree Grantee may elect to extend the term of this Easement by up to _____ additional ____ year terms, by providing written notice of intent to extend this Easement to Grantor by November 1 of the final year at least 90 days before the end of the term of this Easement (either the original ____ year term or subsequent ____ year terms, as applicable).

Structures and Personal Property. Unless otherwise agreed by the parties, Grantor will remove any buildings, structures, personal property, or other items left on the Temporary Easement Property on or before [CLOSING DATE]. Any buildings, structures, personal property, or other items remaining on the Temporary Easement Property after [CLOSING DATE], will automatically become Grantee's property, without the need for any bill of sale or any other written instrument or agreement; Grantee may then remove any buildings, structures, personal property, or other items from the Temporary Easement Property, at its sole discretion and at its sole cost.

Grantor Covenants. Grantor warrants that Grantor is the fee simple owner of the Temporary Easement Property; that Grantor has the right to execute this Easement and to make the promises, covenants, and representations contained in this Easement; that this Easement does not violate any mortgage or other interest held by any third party regarding the Temporary Easement Property, or any portion of the Temporary Easement Property; that there are no outstanding unpaid bills incurred for labor, materials, or services regarding the Temporary Easement Property, or any portion of the Temporary Easement Property; and that there are no recorded or unrecorded liens, security interests, or any outstanding, pending, or threatened suits, judgments, executions, bankruptcies, or other proceedings pending or of record that would in any manner impact title to the Temporary Easement Property, or any portion of the Temporary Easement Property. Grantor will release, hold harmless, defend, and indemnify Grantee and all its officers, agents, representatives, employees, and contractors from and against any and all

claims, damages, injuries, or costs arising out of or in any way related to any title defects regarding the Temporary Easement Property.

Taxes. Grantor is solely responsible for all taxes and special assessments or assessments for special improvements due, levied, or assessed regarding the Temporary Easement Property for all past, present, and future years. Grantee will not be responsible for payment of any real estate taxes or special assessments regarding the Temporary Easement Property.

Grantor's Use of the Temporary Easement Property. Grantor has the right and privilege to use the Temporary Easement Property at any time, in any manner, and for any purpose that is not inconsistent with Grantee's rights and privileges under this Easement. Grantor will not use, or permit use of, the Temporary Easement Property in any manner that disrupts or interferes with Grantee's use of the Temporary Easement Property, Grantee's rights and privileges under this Easement, or with the Diversion Project. Grantor will promptly cease any activities and remove any structures or obstructions that interfere with Grantee's use of the Temporary Easement Property, Grantee's rights and privileges under this Easement, or with the Diversion Project, when directed by Grantee, at Grantor's sole cost. Grantor will repair or replace any of Grantee's structures, facilities, right of way, or any other property owned by Grantee damaged by Grantor or as a result of Grantor's use of the Temporary Easement Property, at Grantor's sole cost.

Encumbrances. Grantor will not encumber the Temporary Easement Property or enroll the Temporary Easement Property in any federal program that would be contrary to, or would in any way disrupt or interfere with, Grantee's use of the Temporary Easement Property, Grantee's rights and privileges under this Easement, or with the Diversion Project. Grantor may mortgage the Temporary Easement Property, at Grantor's sole discretion and without first obtaining Grantee's consent so long as such mortgage is subordinated to this Easement. If Grantor rents or leases the Temporary Easement Property, any lessee's rights and uses are subject to this Easement, including the use restrictions described above; Grantor will be fully responsible to Grantee for Grantor's obligations under this Easement, including for any violations by any lessee.

Forbearance or Waiver. The failure or delay of Grantee to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Easement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

Governing Law. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

Severability. If any court of competent jurisdiction finds any provision or part of this Easement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Easement, and all remaining terms and provisions of this Easement will remain binding and enforceable.

Entire Agreement. This Easement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Easement, and this Easement supersedes all other previous oral or written agreements between the parties.

Modifications. Any modifications or amendments of this Easement must be in writing and signed by both Grantor and Grantee.

Binding Effect. The covenants, terms, conditions, provisions, and undertakings in this Easement, or in any amendment, will be binding upon the parties' successors and assigns.

Representation. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Easement, and agree they have not been influenced by any representations or statements made by any other parties.

Headings. Headings in this Easement are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on following pages.)

IN WITNESS WHEREOF, Grantor executed this Easement on the date written above.

GRANTOR

[NAME]

By: _____

xxx

Its: _____

xxx

STATE OF _____)

) ss.

COUNTY OF _____)

On this ____ day of _____, 20____, before me, a Notary Public, in and for said County and State, personally appeared [SELLER NAME 1], [MARITAL STATUS], known to me to be the person that is described in, and who executed the within and foregoing instrument, and acknowledged to me that [SHE]he executed the same.

 Notary Public, _____ County, _____
 My Commission Expires: _____

(SEAL)

IN WITNESS WHEREOF, the parties executed this Agreement on the date written above.

By: _____
Chair

ATTEST:

Secretary-Treasurer

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

On this ____ day of _____, 20__, before me, a Notary Public, in and for said County and State, personally appeared _____, to me known to be the Chair and Secretary-Treasurer, respectively, of _____, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of _____.

Notary Public, State of North Dakota
My Commission Expires:

(SEAL)

The legal description contained in this document was prepared by:

[SURVEYOR INFORMATION]

EXHIBIT K

QUIT CLAIM DEED TEMPLATE

THIS INDENTURE, made this ____ day of _____, 2021, between [SELLER], a _____, GRANTOR, and the Cass County Joint Water Resource District, a North Dakota political subdivision, GRANTEE, whose post office address is 1201 Main Avenue West, West Fargo, North Dakota 58078.

WITNESSETH, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, GRANTOR does hereby **GRANT (excluding the covenants under NDCC 47-10-19), CONVEY AND QUIT CLAIM** to the GRANTEE, all of the following real property lying and being in Cass County, North Dakota, described as follows:

[PROPERTY DESCRIPTION]

IN TESTIMONY WHEREOF, the said GRANTOR has caused these presents to be executed in its corporate name on the day and year first above written.

(Signatures on following pages)

WITNESS, the hand of the GRANTOR:

ATTEST:

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

On this ____ day of _____, 20__, before me personally appeared _____, to me known to be the _____, a _____, and that they executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of said corporation.

(SEAL)

Notary Public, Cass County, ND
My Commission Expires:

I certify that the requirement for a report or statement of full consideration paid does not apply because this deed is for one of the transactions exempted by subdivision h of subsection 6 of North Dakota Century Code Section 11-18-02.2.

_____ Signed: _____
Date Grantee or Agent

The legal description contained in this instrument was obtained from a previously recorded instrument.

THIS INSTRUMENT WAS DRAFTED BY:

EXHIBIT L

SWDCAI PROJECT LIMITS MAP

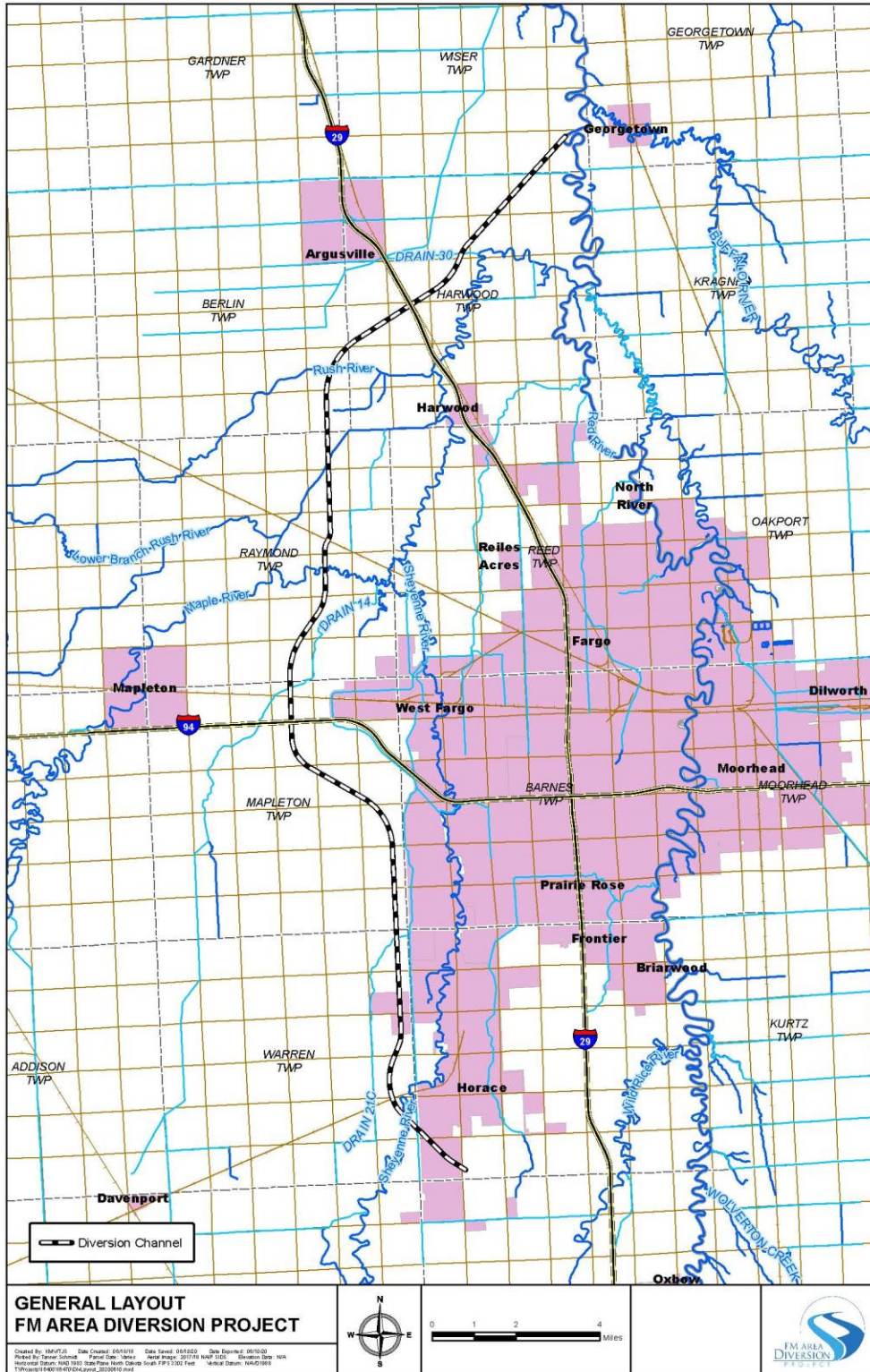
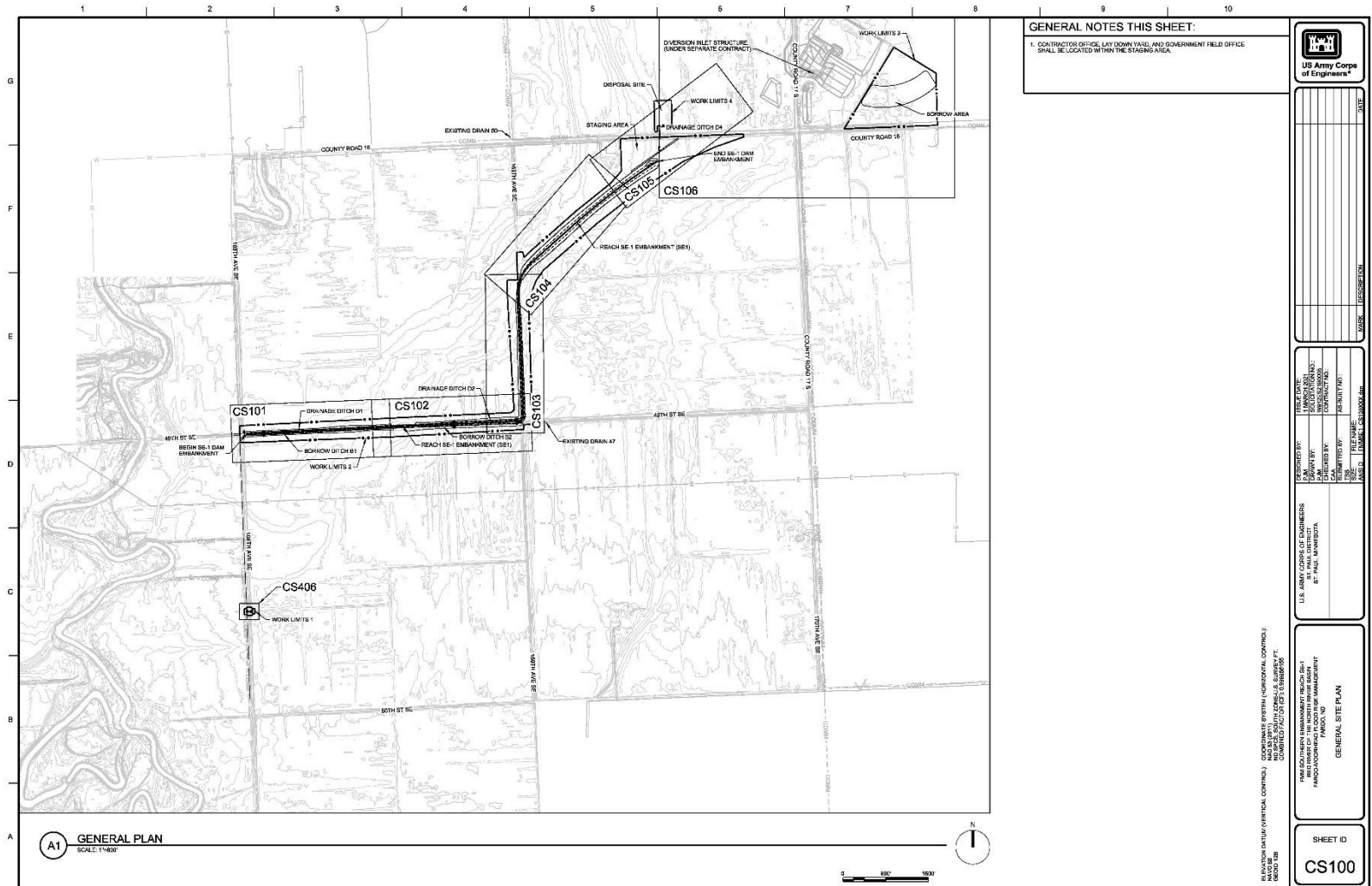
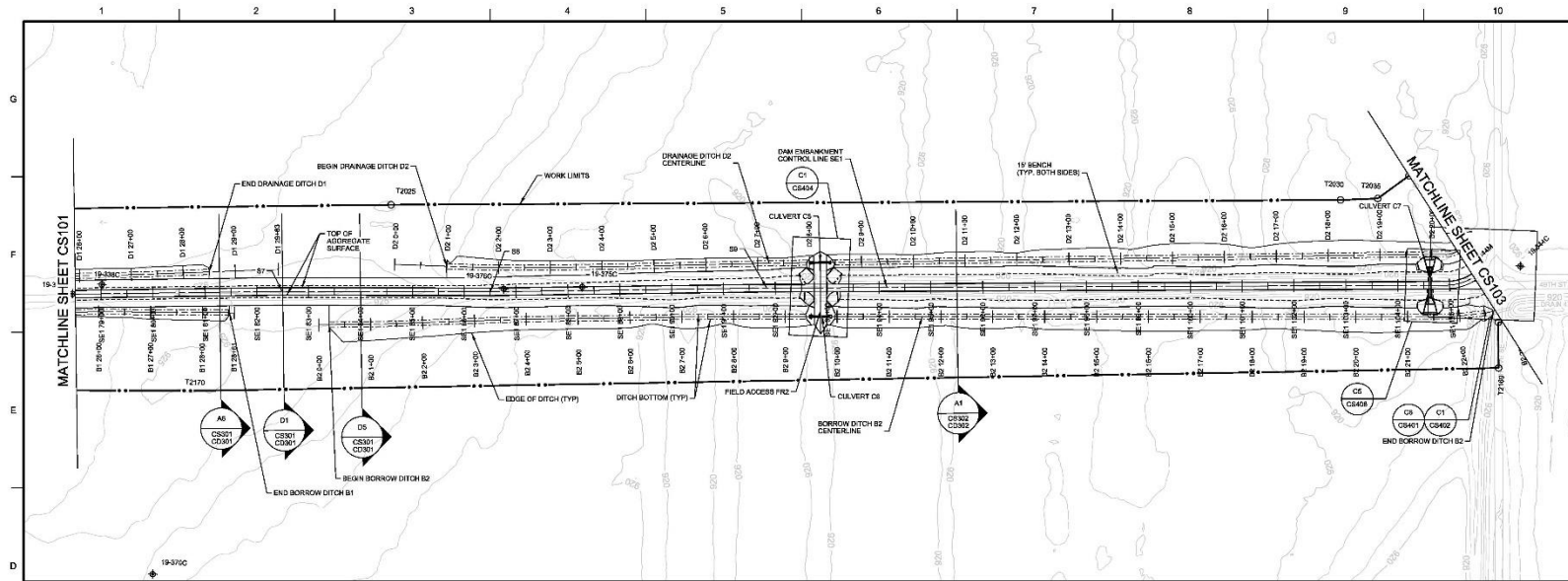


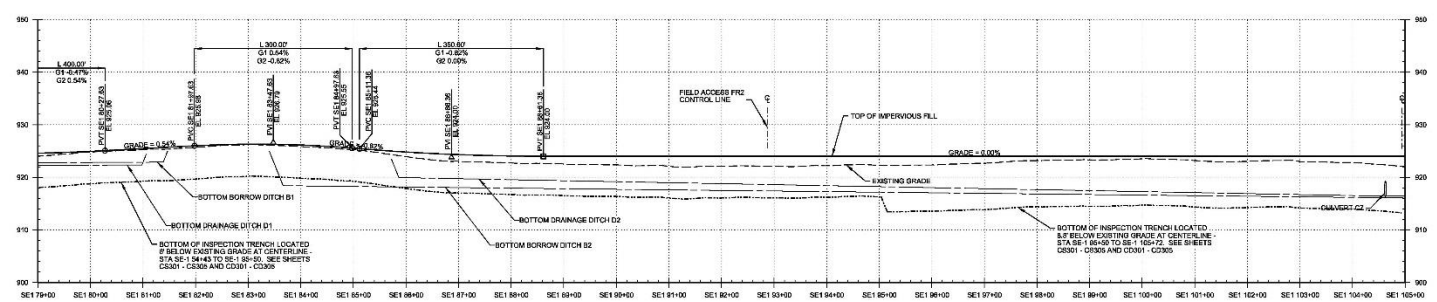
EXHIBIT M

DRAIN 47 IMPACTS MAP





D1 DAM EMBANKMENT PLAN
SCALE: 1"=100'



A1 DAM EMBANKMENT PROFILE
HORIZONTAL SCALE: 1"=100'
VERTICAL SCALE: 1"=10'

1/2 PRODUCTION DATA 1%
1/2 PRODUCTION DATA 2%
1/2 PRODUCTION DATA 3%
1/2 PRODUCTION DATA 4%

US Army Corps of Engineers

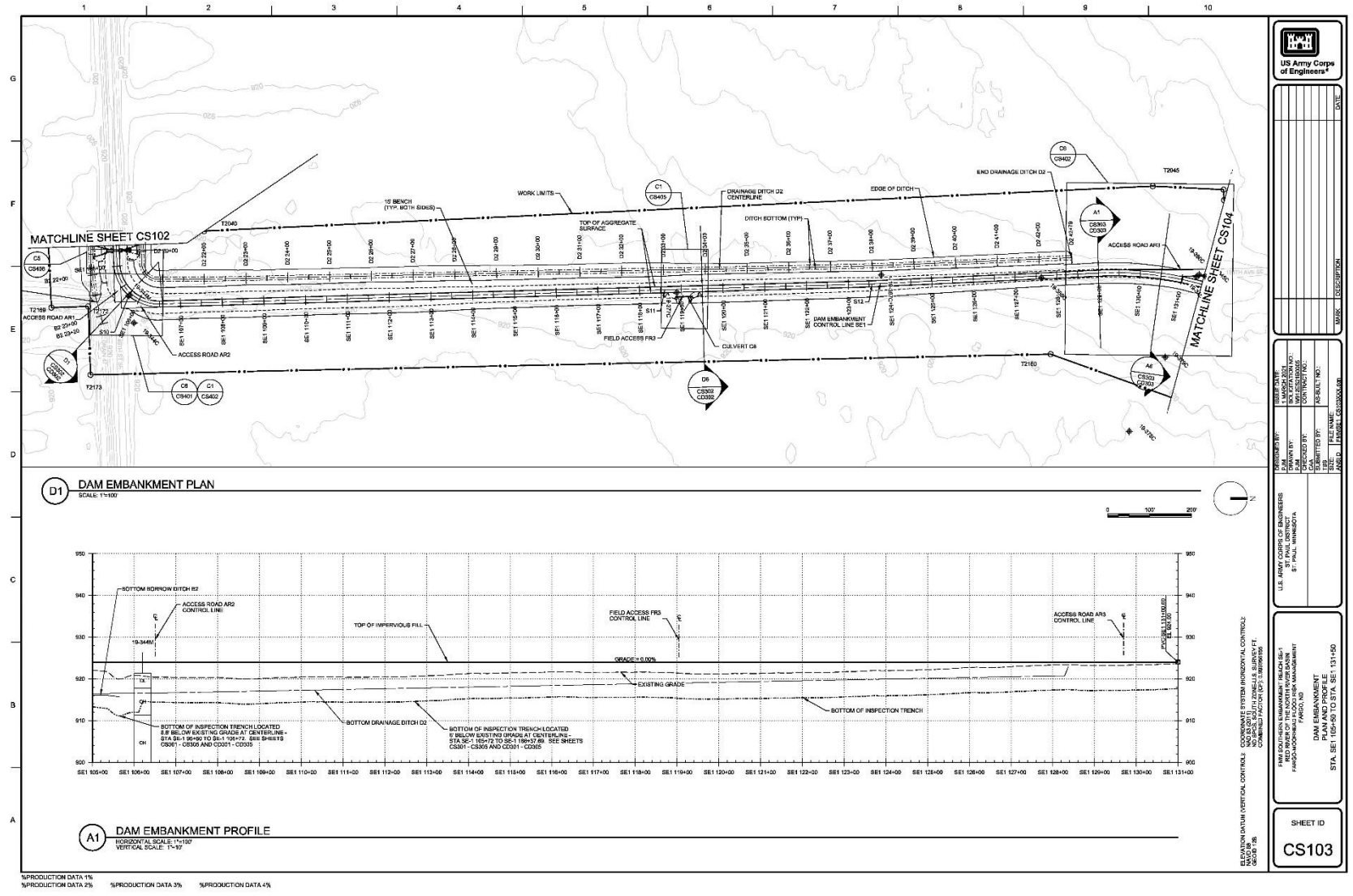
ENGINEER BY: [Signature]
DRAWN BY: [Signature]
CHECKED BY: [Signature]
DATE: [Date]

PROJECT: DAM SOUTH EMBANKMENT TRENCH-1
DRAWING NO.: CS102
SUBMITTED BY: [Signature]
DATE: [Date]

U.S. ARMY CORPS OF ENGINEERS
ST. PAUL DISTRICT
1117 N. GARDNER ST.
MINNEAPOLIS, MN 55405

DAM SOUTH EMBANKMENT TRENCH-1
HANDLING AND MANAGEMENT
FUND NO.
DAM EMBANKMENT
PLAN AND PROFILE
STA. SE1 79+00 TO STA. SE1 105+00

SHEET ID
CS102



US Army Corps of Engineers

DESIGNED BY: []

CHECKED BY: []

DATE: []

DATE: []

SCALE: []

NO.	REVISION

DESIGNED BY: []

CHECKED BY: []

DATE: []

FILE NAME: []

SCALE: []

PROJECT: []

LOCATION: []

DATE: []

SCALE: []

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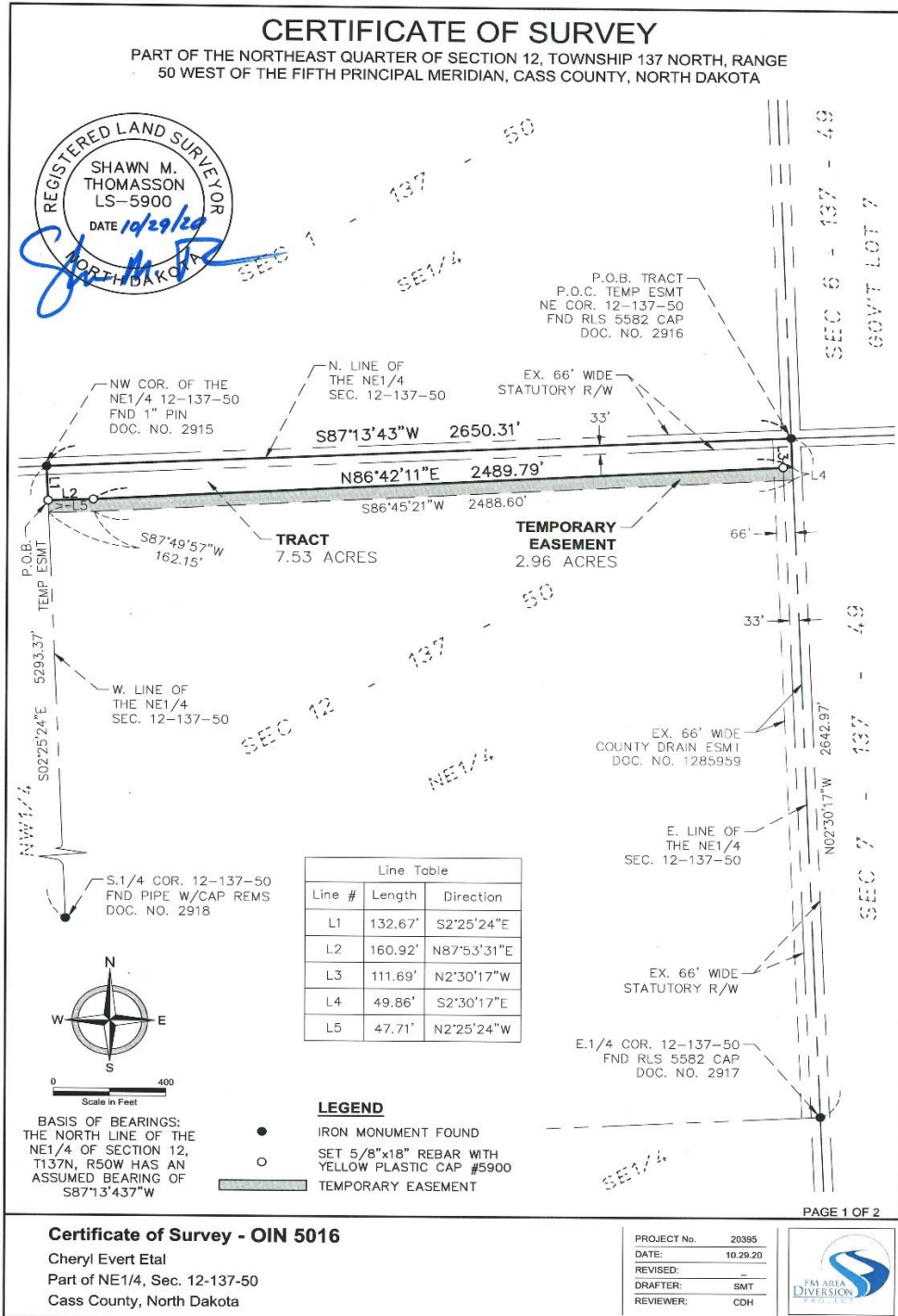
LOCATION: []

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SCALE: []

EXHIBIT N

MAPS OF DRAIN 47 PROPERTY INTEREST GRANTS



CERTIFICATE OF SURVEY

PART OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 137 NORTH, RANGE 50 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA

DESCRIPTION-TRACT

That part of the Northeast Quarter of Section 12, Township 137 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, described as follows:

Beginning at a found iron monument which designates the northeast corner of said Section 12; thence South 87 degrees 13 minutes 43 seconds West on an assumed bearing along the north line of said Northeast Quarter for a distance of 2650.31 feet to the northwest corner of said Northeast Quarter; thence South 02 degrees 25 minutes 24 seconds East along the west line of said Northeast Quarter for a distance of 132.67 feet; thence North 87 degrees 53 minutes 31 seconds East for a distance of 160.92 feet; thence North 86 degrees 42 minutes 11 seconds East for a distance of 2489.79 feet to the east line of said Northeast Quarter; thence North 02 degrees 30 minutes 17 seconds West along the east line of said Northeast Quarter for a distance of 111.69 feet to the point of beginning.

Said tract contains 7.53 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

DESCRIPTION-TEMPORARY EASEMENT

That part of the Northeast Quarter of Section 12, Township 137 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the northeast corner of said Section 12; thence South 87 degrees 13 minutes 43 seconds West on an assumed bearing along the north line of said Northeast Quarter for a distance of 2650.31 feet to the northwest corner of said Northeast Quarter; thence South 02 degrees 25 minutes 24 seconds East along the west line of said Northeast Quarter for a distance of 132.67 feet to the point of beginning; thence North 87 degrees 53 minutes 31 seconds East for a distance of 160.92 feet; thence North 86 degrees 42 minutes 11 seconds East for a distance of 2489.79 feet to the east line of said Northeast Quarter; thence South 02 degrees 30 minutes 17 seconds East along the east line of said Northeast Quarter for a distance of 49.86 feet; thence South 86 degrees 45 minutes 21 seconds West for a distance of 2488.60 feet; thence South 87 degrees 49 minutes 57 seconds West for a distance of 162.15 feet to the west line of said Northeast Quarter; thence North 02 degrees 25 minutes 24 seconds West along the west line of said Northeast Quarter for a distance of 47.71 feet to the point of beginning.

Said tract contains 2.96 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

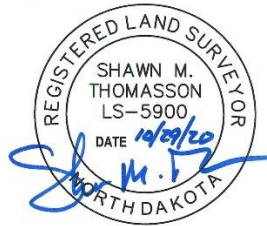
I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

Shawn M. Thomasson

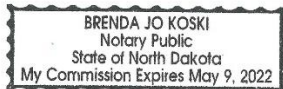
Shawn M. Thomasson, R.L.S.
N.D. License No. LS-5900

Date: 10-29-20

State of North Dakota)
County of Cass)



On this 29th day of October, 2020, before me, a Notary Public in and for said county and state, personally appeared Shawn M. Thomasson, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.



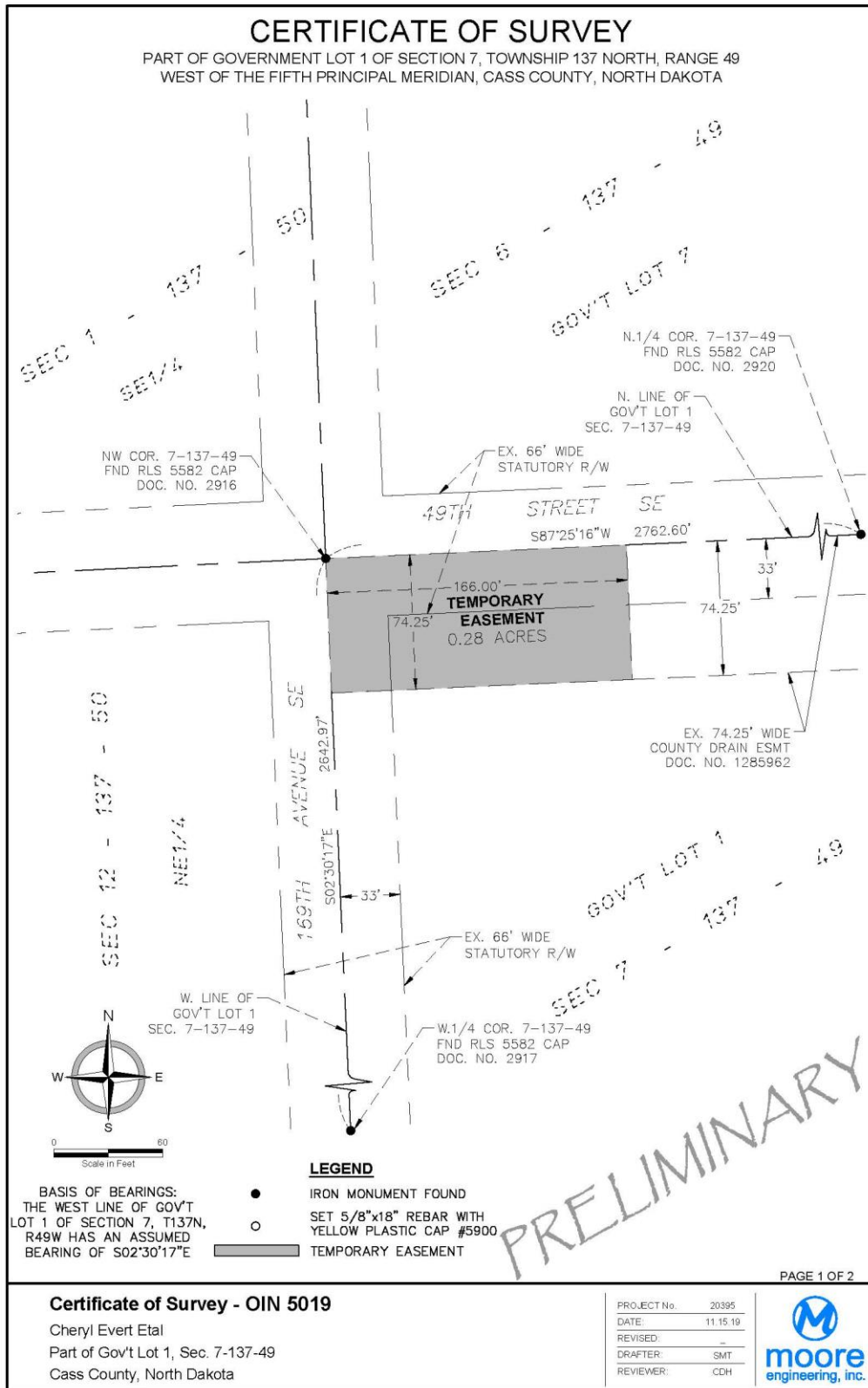
Brenda Jo Koski
Notary Public, Cass County, North Dakota

Certificate of Survey - OIN 5016

Cheryl Evert Etal
Part of NE1/4, Sec. 12-137-50
Cass County, North Dakota

PROJECT No.	20395
DATE:	10.29.20
REVISED:	-
DRAFTER:	SMT
REVIEWER:	CDH





CERTIFICATE OF SURVEY

PART OF GOVERNMENT LOT 1 OF SECTION 7, TOWNSHIP 137 NORTH, RANGE 49 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA

DESCRIPTION-TEMPORARY EASEMENT

The North 74.25 feet of the West 166.00 feet of Government Lot 1, Section 7, Township 137 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota, as measured at a right angle to and parallel with the north and west lines of said Government Lot 1.

Said tract contains 0.28 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

Shawn M. Thomasson, R.L.S.
N.D. License No. LS-5900

Date: _____

State of North Dakota)
County of Cass)

On this ____ day of _____, 2019, before me, a Notary Public in and for said county and state, personally appeared Shawn M. Thomasson, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.

Notary Public, Cass County, North Dakota

PRELIMINARY

PAGE 2 OF 2

Certificate of Survey - OIN 5019

Cheryl Evert Etal
Part of Gov't Lot 1, Sec. 7-137-49
Cass County, North Dakota

PROJECT No. 20395
DATE: 11.15.19
REVISED: -
DRAFTER: SMT
REVIEWER: CDH



EXHIBIT O

**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

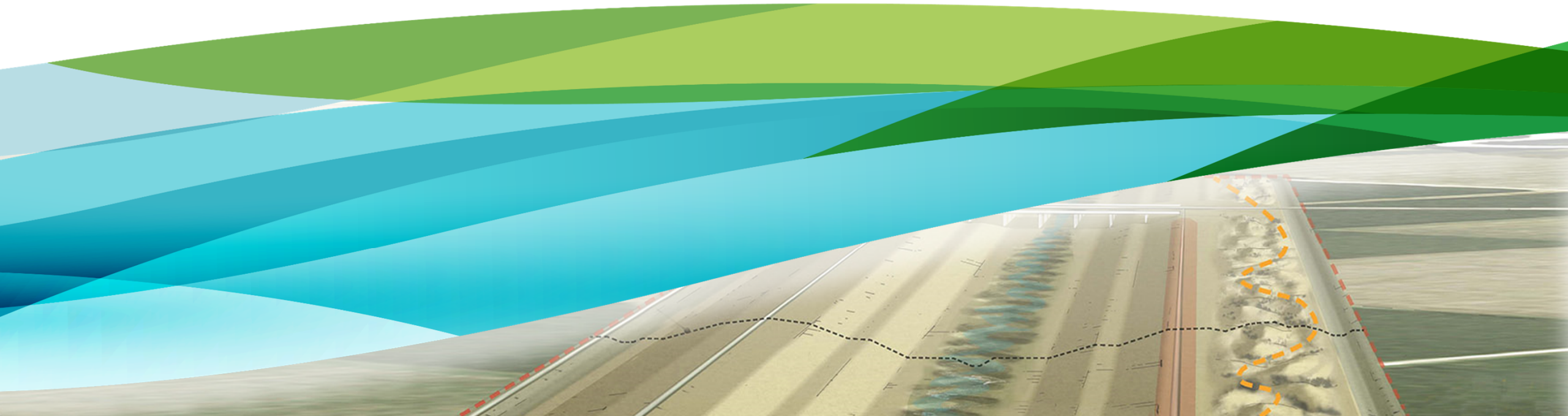
PLEASE RETURN TO:
Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

Office Email Address



Diversion Authority Board Meeting

Executive Director Report
February 25, 2021



February Happenings:

- MnDNR Issues Permit
- Legislative Update
 - Joel Paulsen Testimony on February 1, 2021
 - House Appropriations Committee Approves Bonding Bill
- P3 Updates
 - RFP Amendment 1 went out to the Proposers
 - Schedule Adjustment - Technical Proposal now due on March 24, 2021 and Financial Proposal now due on April 14, 2021
- USACE Approved Moving forward with I-29



FM AREA
DIVERSION
PROJECT

SETTLEMENT AGREEMENT

By and Between

METRO FLOOD DIVERSION AUTHORITY

and

RICHLAND-WILKIN JOINT POWERS AUTHORITY

and

BUFFALO-RED RIVER WATERSHED DISTRICT

and

CITY OF WOLVERTON, MINNESOTA

and

CITY OF COMSTOCK, MINNESOTA

Dated as of February 1, 2021

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Settlement Agreement”) is made and entered into this 1st day of February, 2021 (the “Effective Date”), by and between the Metro Flood Diversion Authority (the “Diversion Authority”), the Richland-Wilkin Joint Powers Authority (the “RWJPA”), the Buffalo-Red River Watershed District (the “BRRWD”), the City of Wolverton, Minnesota (“Wolverton”), and the City of Comstock, Minnesota (“Comstock”) (collectively referred to as the “Parties”).

RECITALS

WHEREAS, the Parties have conducted extensive negotiation regarding a global settlement of all disputes and litigation pertaining to the design, construction, financing, operation, and maintenance of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, known as “Plan B” or the “Comprehensive Project”; and

WHEREAS, on October 27, 2020, the Parties entered into a Binding Settlement Term Sheet for Settlement of Dispute Regarding Flood Diversion Project (the “Term Sheet”), a binding and fully enforceable settlement agreement to resolve disputes and litigation pertaining to Plan B; and

WHEREAS, the Parties have resolved all claims, actions, disputes, and litigation pertaining to Plan B, have identified various negative impacts to upstream property owners, businesses and political subdivisions created by Plan B, have agreed upon appropriate compensation and remedies, and intend to settle the matters currently in dispute, all subject to the terms and conditions contained in this Settlement 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 used, and not otherwise defined herein, shall have the meanings given to them in this Settlement Agreement and defined in this Section unless a different meaning clearly applies from the context.

“100-year Flood” means the one hundred (100) year flood event (one percent chance exceedance event) using POR Hydrology.

“500-year Flood” means the five hundred (500) year flood event (0.2 percent chance exceedance event) using POR Hydrology.

“Active Farm Operations” or “Agricultural Producer” means a person or persons officially recognized by the United States Department of Agriculture, Farm Service Agency as actively engaged in farming.

“Actual Production History” means a record of an Agricultural Producer’s agricultural crop yields over a multi-year period. Such records are used by the Federal Crop Insurance Corporation to determine “normal” production levels for an Agricultural Producer.

“Alternative Dispute Resolution Board” means an independent quasi-judicial board comprised of three (3) independent review officers, chosen from a list of individuals having real estate, legal, financial, technical, engineering, and appraisal experience established by the Authority pursuant to the requirements of the PRAM as approved by ND OSE and MDNR to administratively hear and review landowner claims relating to damages caused by the Comprehensive Project outside the scope of the flowage easements obtained by the Diversion Authority in connection with the Comprehensive Project. The independent review officers will be chosen and appointed in a manner to assure their independence. No person who uses the Alternative Dispute procedure will be required to waive rights to just compensation under the laws governing eminent domain.

“Barnesville School District” means Minnesota independent school district #146, having an official address of 302 3rd Street Southeast, Barnesville, Minnesota 56514.

“Binding Settlement Term Sheet for Settlement of Dispute Regarding Flood Diversion Project” or **“Term Sheet”** means the Binding Settlement Term Sheet for Settlement of Dispute Regarding Flood Diversion Project dated as of October 27, 2020 and executed by the Parties.

“Boards of Commissioners” means the Boards of Commissioners for Richland County and Wilkin County.

“BRRWD Managers” means the Buffalo-Red River Board of Managers, which is the Governing Body of the BRRWD.

“BRRWD Permit” means BRRWD Permit #19-003, which was approved by BRRWD on October 26, 2020.

“Buffalo-Red River Watershed District” or **“BRRWD”** means the Buffalo-Red River Watershed District, a watershed district in the Red River Basin.

“Business Day” means any day other than a Saturday, a Sunday, or a day on which the offices of the US Government or a state are authorized to be closed or on which commercial banks are authorized or required by law, regulation, or executive order to be closed.

“Business Interruption Insurance” means an insurance coverage that will reimburse a Qualified Business for loss or damage directly caused by the operation of the Comprehensive Project.

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

“Change in Cropping Choices” means a material change in the varieties/types of agricultural crops grown by Active Farm Operations within the Staging Area.

“Change of Law” means any revised or new statutes, ordinances, rules, laws, interpretations (including judicial determinations), or regulations which could materially impact the Parties’ ability to implement and comply with the terms of this Settlement Agreement, including, but not limited to, new or revised environmental statutes or regulations, new or revised statutes or regulations concerning flood protection, dams, or work in public waters, new or revised FEMA or USACE regulations, new statutes or laws directly addressing Plan B, new or revised zoning, land use or

management of water use or management ordinances or rules, new or revised property tax statutes or regulations, and new or revised federal crop insurance rules.

“Christine” or **“City of Christine”** means the City of Christine, a North Dakota political subdivision.

“Christine MOU” means a Memorandum of Understanding by and between the Diversion Authority and Christine as more fully described in Section 16.03 of this Settlement Agreement.

“Christine Project” means a flood control project designed and implemented by the City of Christine as more fully described in Section 16.02 of this Settlement Agreement.

“Clay County” means Clay County, a Minnesota political subdivision.

“Clay County Engineer” means the duly appointed and acting County Engineer for Clay County.

“Compensation/Mitigation Flexibility Plan” means an approach or process other than a buyout that is used to remove Comprehensive Project flood impacts from a specific parcel of real property.

“Completion of Comprehensive Project Operation” occurs when the Executive Director of the Diversion Authority or his/her designee has determined that the Comprehensive Project has concluded an operational event in accordance with the Master Water Control Manual, Fargo-Moorhead Metro Area Flood Risk Management Project, MDNR Permit 2018-0819, and applicable federal permits.

“Comprehensive Project” means the LPP Flood Risk Management Features and the Recreation Features as generally described in the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering Documentation Report, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, ND and MN, Modifications Through February 2019, also known as Plan B.

“Comprehensive Project Operation” occurs when the Executive Director of the Diversion Authority or his/her designee places the Comprehensive Project into operation in accordance with the Master Water Control Manual, Fargo-Moorhead Metro Area Flood Risk Management Project, MDNR Permit 2018-0819, and applicable federal permits.

“Comprehensive Project Property” means all real property, including but not limited to property interests consisting of temporary construction easements, licenses, operating permits, right of way and fee simple interests, controlled and owned by the Diversion Authority, the MCCJPA, and/or the Member Entities.

“Comstock” or **“City of Comstock”** means the City of Comstock, a Minnesota political subdivision.

“Comstock Flood Control Project” means the flood control project designed and implemented by the City of Comstock as more fully described in Section 17.02 of this Settlement Agreement.

“Comstock Lagoon Project” means a project to develop, construct, and complete a new lagoon sized to handle the current needs and appropriate and reasonable expansion/increase in sanitary sewer flows from the City of Comstock, designed in accordance with accepted civil engineering practices and

Minnesota Pollution Control Agency guidelines and requirements, as more fully described in Section 17.03 of this Settlement Agreement.

“Comstock MOU” means a Memorandum of Understanding by and between the Diversion Authority, the MCCJPA, if needed, and Comstock, as more fully described in Section 17.05 of this Settlement Agreement.

“Comstock Projects” means collectively the Comstock Flood Control Project and the Comstock Lagoon Project.

“Counties” means Richland County, North Dakota, and Wilkin County, Minnesota.

“Distribution Agreement” means an agreement drafted by the RWJPA to provide for monetary distributions from the Relief Fund containing the mandatory conditions set forth in Section 28.04 of this Settlement Agreement.

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

“Diversion Authority Board” means the Governing Body of the Diversion Authority.

“Diversion Authority Director of Engineering” means an employee of the Diversion Authority who serves as director of engineering and is a licensed Professional Engineer in the State of North Dakota.

“Diversion Authority Enforceable Terms” means as defined in Section 28.13 hereof.

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

“Diversion Inlet Structure” means the hydraulic control structure to control the flow of water entering the Diversion Channel south of Horace, North Dakota, and as detailed in the document entitled the “FMM Diversion Inlet Control Structure, Red River of the North River Basin, Fargo, ND.”

“Eagle Township” means Eagle Township, Richland County, a political subdivision of the State of North Dakota.

“Economic Impact Relief Fund” or **“Relief Fund”** means a fund created by Section 28.01 of this Settlement Agreement, to be administered by the RWJPA and held by the Richland County Auditor as a fiduciary.

“Effective Date” means February 1, 2021.

“F-M Diversion Rural Impact Mitigation Program” means a program to provide financial assistance in the form of a forgivable loan to help with the relocation and re-establishment of

farmsteads, rural businesses, and rural non-profit organizations that are displaced by the Comprehensive Project as described in Article XXVI of this Settlement Agreement.

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

“Fargo-Moorhead Metropolitan Area Flood Risk Management Project” is the name given to the Comprehensive Project by USACE and has the same definition as Comprehensive Project in this Settlement Agreement.

“Federal Cases” means (a) Richland/Wilkin Joint Powers Authority, et al. v. United States Army Corps of Engineers (“USACE”), et al., Civil No. 13-2262 (JRT/LIB), which is venued in the United States District Court for the District of Minnesota, and (b) Richland/Wilkin Joint Powers Authority, et al. v. United States Army Corps of Engineers, et al., Court of Appeals Docket No. 17-3429, which is venued in the United States Court of Appeals for the Eighth Circuit.

“Federal Crop Insurance Corporation” or **“FCIC”** means the government corporation wholly owned by the United States of America whose purpose is to administer federal crop insurance.

“Federal Parties” means USACE and those federal government personnel named in their official capacities as parties to the Federal Cases.

“FEMA” means the Federal Emergency Management Agency.

“FEMA Accredited Flood Protection” means a flood protection system that FEMA has determined can be shown on a FIRM as providing one percent (1%) chance flood or greater level of flood protection. This determination is based on the submittal of data and documentation required by 44 CFR Section 65.10 which must be certified by a Professional Engineer.

“FIRM” means Flood Insurance Rate Map.

“Final Operating Plan” means the Master Water Control Manual, Fargo-Moorhead Metro Area Flood Risk Management Project developed by USACE in coordination with the Diversion Authority and the Diversion Authority’s contractors, and as may be approved or reviewed by state regulators in accordance with North Dakota and Minnesota regulatory procedures, and by the P3 developer responsible for the construction of the Diversion Channel.

“Flowage Easement” means a permanent and perpetual easement across and over real property by which the Diversion Authority and its Member Entities are legally authorized to divert flood water onto and detain water on the property for the operation of the Comprehensive Project.

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

“Georgetown MOU” means a Memorandum of Understanding by and between the Diversion Authority, the BRRWD, and if necessary, the MCCJPA, as more fully described in Section 14.03 of this Settlement Agreement.

“Georgetown Project” means a project undertaken by BRRWD as more fully described in Section 14.02 of this Settlement Agreement.

“Good Faith” means honesty in fact and observance of reasonable standards of fair dealing that will ensure that the Parties receive the benefits set forth in this Settlement Agreement.

“Governing Body” means the body that performs the legislative and governmental functions of a political subdivision, including but not limited to, a board, council, or commission.

“Holy Cross MOU” means a Memorandum of Understanding by and between the Diversion Authority, Holy Cross Township and, if necessary, the MCCJPA, as more fully described in Section 28.01(d) of this Settlement Agreement.

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

“Independent School District #846 in Breckenridge, Minnesota” means a Minnesota school district serving the community of Breckenridge, Minnesota.

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

“JPA” or “Joint Powers Agreement” 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 Diversion Authority.

“Kindred Public School District #2” means a North Dakota state-accredited K-12 school district in Cass County and portions of Richland County, serving the communities of Kindred, Davenport, Leonard, Walcott, Oxbow, and Horace.

“Master Water Control Manual, Fargo-Moorhead Metropolitan Area Flood Risk Management Project” means the document that defines rules and provides guidance for direction, operation, and management of water storage for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

“MCCJPA” means the Moorhead-Clay County Joint Powers Authority, a Minnesota joint powers authority created by the City of Moorhead and Clay County through the Minnesota Land Acquisition Joint Powers Agreement, dated July 1, 2019.

“MDNR Permit” means MDNR Dam Safety and Public Waters Work Permit No. 2018-0819, and any amendments thereto.

“Member Entities” means the City of Moorhead, the City of Fargo, Clay County, Cass County, North Dakota, and CCJWRD.

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

“Minnesota” means the State of Minnesota.

“Minnesota Case” means Metro-Flood Diversion Authority v. Buffalo Red-River Watershed District, Court File No. 03-CV-19-1418, which is venued in the Minnesota District Court in Becker County (Minnesota’s Seventh Judicial District).

“Minnesota Contested Case” or **“MN CCH”** means the administrative matter titled In the Matter of the Dam Safety and Public Waters Work Permit No. 2018-0819 for the Fargo-Moorhead Flood Risk Management Project, Clay and Wilkin Counties, Minnesota, and Cass and Richland Counties, North Dakota, OAH Docket No. 65-2002-31615, which is venued in the Minnesota Office of Administrative Hearings.

“Minnesota Fringe Area” as shown in Exhibit D, means those areas within BRRWD’s jurisdiction in which the impact of staging water from the operation of the Comprehensive Project increases the water surface elevation by more than 0.1 of a foot (1.2 inches) but less than 0.5 of a foot (six inches) under the 100-year flood event as generally described in Exhibit D to this Settlement Agreement.

“Minnesota DNR” or **“MDNR”** means the Minnesota Department of Natural Resources.

“Minnesota OAH” means the Minnesota Office of Administrative Hearings.

“Minnesota Plan A Contested Case” means the administrative matter titled, In the Matter of the Dam Safety and Public Waters Work Permit Application No. 2016-0386 for the Fargo-Moorhead Flood Risk Management Project, Clay and Wilkin Counties, Minnesota and Cass and Richland Counties, North Dakota, OAH Docket No. 65-2002-34309, which is venued in the Minnesota Office of Administrative Hearings and is presently stayed.

“Moorhead” or **“City of Moorhead”** means the City of Moorhead, a Minnesota political subdivision and home rule charter city.

“ND OSE” or **“OSE”** means the North Dakota Office of State Engineer.

“ND OSE Permits” means collectively the permit or permits issued by ND OSE for the construction, operation, and maintenance of elements of the Comprehensive Project located in the State of North Dakota.

“Non-Authority Parties” means all Parties to this Settlement Agreement other than the Diversion Authority.

“Non-Federal Sponsor” means the entities providing the non-federal project costs for the Comprehensive Project, which include the City of Fargo, the City of Moorhead, and the Diversion Authority created pursuant to the JPA.

“North Dakota” means the State of North Dakota.

“North Dakota State Auditor” means a North Dakota political office responsible for overseeing the Office of the State Auditor.

“Oxbow” or **“City of Oxbow”** means the City of Oxbow, a North Dakota political subdivision.

“Period of Record Hydrology,” “POR,” or **“POR Hydrology”** means flows for a river or watershed that are based on a hydrological analysis for the defined period of record of available flow measurements for the Comprehensive Project Design and the infrastructure projects contemplated in this Settlement Agreement; the years 1902 through 2009 comprise the period of record.

“Plan A” means the proposed comprehensive flood control project for the Fargo-Moorhead Metropolitan Area that was the subject of MNDR Dam Safety and Public Waters Work Permit Application No. 2016-0386 and the Minnesota Plan A Contested Case.

“Plan B” means the proposed comprehensive flood control project for the Fargo-Moorhead Metropolitan Area that is the subject of the MDNR Permit and the Minnesota Contested Case.

“PMF Flood Event” or **“PMF”** means Probable Maximum Flood.

“Post-Operation Debris Clean-up and Restoration Plan” means the plan described in Article XIX of this Settlement Agreement.

“Post-Operation Debris Clean-up and Restoration Sub-Committee” means a sub-committee of the Land Management Committee authorized by the Diversion Authority Board (as provided in Section 19.02 of this Settlement Agreement) to meet on a regular and as needed basis to develop and implement the Post-Operation Debris Clean-up and Restoration Plan and related plans, policies, and procedures.

“Professional Engineer” means an individual or individuals properly registered in the state where they perform services requiring registration as an engineer, responsible for the certification of a flood protection system.

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

“Property Rights Acquisition and Mitigation Plan” or **“PRAM”** means a comprehensive plan, subject to approval by the ND OSE and MDNR, that documents the property rights acquisition and mitigation policies that will be followed for the Comprehensive Project.

“Qualified Business” means an ongoing business which derives fifty percent (50%) or more of its income from sales/transactions to farmland operated by an Agricultural Producer located within the Staging Area.

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

“Red River Basin” means the area shown in the map attached hereto as Exhibit B.

“Red River Control Structure” means a feature of the Comprehensive Project which consists of a gated control structure (three 50-foot wide tainter gates) on the Red River that, along with a similar structure on the Wild Rice River, will regulate the amount of water flowing through the Southern Embankment into the Fargo-Moorhead Metropolitan Area during Comprehensive Project Operation, during large flood events.

“Richland #44 School District” means a North Dakota state-accredited K-12 school district in Richland County, serving the communities of Abercrombie, Colfax, Christine, and Galchutt.

“Richland County” means Richland County, a political subdivision and municipal corporation of the State of North Dakota.

“Richland County Auditor” means the chief financial officer, the elections administrator, and the property tax administrator of Richland County, and the executive secretary to the Board of County Commissioners of Richland County.

“Richland County Jobs Development Authority” means the North Dakota jobs development authority whose mission is developing the economy of Richland County, primarily through lending to new and expanding business, supporting business research and development, providing technical assistance and participating in development of needed infrastructure.

“Richland County Water Resource District” means the North Dakota water resource district and political subdivision involved with the establishment, construction, reconstruction, and maintenance of legal drains; establishment and management of benefit assessment districts for the legal drains; and maintenance of natural waterways in Richland County.

“Risk Management Agency” or **“RMA”** means the United States Department of Agriculture, Risk Management Agency, created in 1996 to manage the Federal Crop Insurance Corporation.

“RWJPA” means the Richland-Wilkin Joint Powers Authority.

“Signatory to the Distribution Agreement” or **“Signatory”** means the party or parties to a Distribution Agreement receiving a distribution of monies from the Relief Fund.

“Southern Embankment” or **“SEAI”** means the southern embankment consisting of the Diversion Inlet Structure, Wild Rice Control Structure and Red River Control Structure, associated road raises, an earthen embankment commencing south and east of the City of Horace, proceeding east, and terminating in Minnesota by the Wolverton Creek as generally shown on Exhibit C to this Settlement Agreement.

“Staging Area” means the area upstream of the Southern Embankment, Diversion Inlet Structure, Red River Control Structure and the Wild Rice River Control Structure (both of which are being built as part of Plan B) that will be used to store floodwater when the Comprehensive Project is fully operational. The Staging Area includes an approximately 28,500-acre land management area immediately upstream of the Southern Embankment designed to store floodwaters. The Staging Area includes that area where the Comprehensive Project will increase the 100-year POR or 500-year POR floodwater surface elevation by one foot or more over existing (that is, pre-Comprehensive Project) conditions and as generally illustrated in Exhibit C.

“Substantial Completion of the Comprehensive Project” means the substantial completion of all Comprehensive Project elements to the satisfaction of the Diversion Authority’s Director of Engineering as evidenced by his/her certificate of substantial completion.

“Termination Date” means the date upon which this Settlement Agreement will terminate as set forth in Section 40.01 of this Settlement Agreement.

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

“Walcott Township” means Walcott Township, Richland County, a political subdivision of the State of North Dakota.

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

“Wild Rice River Control Structure” means a feature of the Comprehensive Project which consists of a gated control structure (two 40-foot wide tainter gates) on the Wild Rice River that, along with a similar structure on the Red River, will regulate the amount of water flowing through the Southern Embankment into the Fargo-Moorhead Metropolitan Area during Comprehensive Project operation during large flood events.

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

“Wilkin County Economic Development Authority” means a Minnesota economic development authority, established under the Minnesota Economic Development Authority Act, whose mission is to encourage economic activity and promote community development within Wilkin County, which will strengthen the tax base, provide employment for its citizens, and raise the standard of living and quality of life.

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

“Wolverton Creek Crossing” means a structure located in Minnesota that will be constructed as part of Clay County Road 50. It includes a culvert crossing for Wolverton Creek and is also designed to overflow similar to conditions existing as of the Effective Date during large flood events to limit upstream impacts in Wilkin County and ensure the City of Comstock, Minnesota, is not adversely affected during extreme flood events such as the PMF. The design elevation for the overflow at the Wolverton Creek Crossing is at approximately elevation 923.9.

“Wolverton MOU” means a Memorandum of Understanding by and between the Diversion Authority, the BRRWD, and if necessary, the MCCJPA, as more fully described in Section 15.03 of this Settlement Agreement.

“Wolverton Project” means a project administered by BRRWD for permanent 100-year FEMA Accredited Flood Protection (applying Period of Record Hydrology) for Wolverton as more fully described in Section 15.02 of this Settlement Agreement.

“Wolverton Township” means Wolverton Township, Wilkin County, a political subdivision of the State of Minnesota.

Section 1.02 INTERPRETATION.

(a) The headings of articles and sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of this Settlement Agreement. Any and all exhibits to this Settlement Agreement are hereby incorporated by reference. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms.

(b) This Settlement Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Settlement Agreement or some provision of it or because that Party relies on a provision of this Settlement Agreement to protect itself. The Parties acknowledge and agree that this Settlement Agreement has been prepared jointly by the Parties and has been the subject of arm's length and careful negotiation, that each Party has been given the opportunity to independently review this Settlement Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of this Settlement Agreement. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Settlement Agreement, this Settlement Agreement will not be interpreted or construed against any Party simply because that Party participated in its drafting or proposed revisions to any draft.

**ARTICLE II.
PURPOSE AND INTENT**

Section 2.01 PURPOSE. The purpose of this Settlement Agreement is to implement and make more specific the Term Sheet.

Section 2.02 INTENT. The express intent of the Parties is to acknowledge the Diversion Authority's need and ability to design, finance, develop, construct, operate, and maintain the Comprehensive Project; 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. This Settlement Agreement is intended to fully resolve and settle any and all disputes, claims, and/or causes of action arising from or relating to the design, construction, financing, operation, and maintenance of the Comprehensive Project as between and among the Parties.

**ARTICLE III.
DIVERSION AUTHORITY WILL PROCEED WITH PLAN B**

Section 3.01 THE DIVERSION AUTHORITY WILL PROCEED WITH PLAN B. Plan B will be implemented and permitted without subsequent and material design, construction, or operational revisions and without materially increasing the Staging Area. The Diversion Authority agrees that it will not make (or seek to have others, including USACE, make) any material changes to the design, construction, or planned operation of Plan B, except to the extent necessary to address a Change of Law or reasonable but unanticipated engineering changes to accomplish the purpose and intent as stated in Article II of this Settlement Agreement, nor will it make any changes to Plan B which are reasonably likely to materially increase the area of the Staging Area. However, the Parties

acknowledge and agree that design of the Comprehensive Project is not fully complete, nor have the operating plans for Plan B been finalized; accordingly, the Parties agree that minor, non-material changes in the alignment of Plan B may be made (provided they are of the scope and nature of changes described as “micro alignment changes”). In addition, appropriate changes to the planned operation of Plan B may be made in order to comply with conditions in the MDNR Permit, ND OSE Permits, and/or applicable USACE requirements, with the policies and procedures of those respective agencies governing the process for any such changes. Provided, however, where changes are proposed that materially impact a Party to this Settlement Agreement, it shall not be a violation of this Settlement Agreement for such Party to participate in consideration of those changes and express their point of view to the extent that the Party does not undertake an Interference Action.

Section 3.02 IMPACTS OF CHRISTINE PROJECT AND WOLVERTON PROJECT. The Parties agree and acknowledge that the construction of the Christine Project and the Wolverton Project may have impacts on the hydraulic flows and modeling associated with the Comprehensive Project. As a result, the Parties agree that modifications to the Comprehensive Project associated with the Christine Project and Wolverton Project are consistent with Sections 3.01 and 3.04 of this Settlement Agreement. The Parties will work in Good Faith to minimize the impacts of the Christine Project and Wolverton Project but acknowledge that the Christine Project and Wolverton Project may have impacts to surrounding real property and the Comprehensive Project that will be considered micro alignment changes.

Section 3.03 THE DIVERSION AUTHORITY WILL NOT PROCEED WITH PLAN A. The Diversion Authority agrees not to construct Plan A or any of the comprehensive flood control project alternatives for the Fargo-Moorhead Metropolitan Area that were studied and rejected by the MDNR during environmental review of the Plan B permit application.

Section 3.04 PLAN B TO BE CONSTRUCTED IN CONFORMANCE WITH THE MDNR PERMIT. The Diversion Authority agrees that Plan B will be constructed pursuant to the terms and conditions of the MDNR Permit, and any amendments to said permit.

ARTICLE IV. DISMISSALS AND ENFORCEMENT

Section 4.01 DISMISSAL OF LITIGATION. Within fourteen (14) days of the execution of this Settlement Agreement or within thirty (30) days of the execution of the Term Sheet, whichever is earlier, the Parties agree to dismiss with prejudice the Federal Cases, the Minnesota Case, the Minnesota Contested Case, and the Minnesota Plan A Contested Case. Failure to commence proceedings to dismiss the above-referenced proceedings immediately upon expiration of either of these time periods shall not waive a Party’s right to seek dismissal.

Section 4.02 DUTY OF GOOD FAITH DISMISSAL OF LITIGATION. The Parties agree to work together in Good Faith to obtain the agreement of the MDNR and, for the Federal Cases, the Federal Parties, and the City of Oxbow, to execute stipulations of dismissal and/or such other documents that are reasonably necessary to obtain dismissals (with prejudice) of the Federal Cases, the Minnesota Case, the Minnesota Contested Case, and the Minnesota Plan A Contested Case. The Parties agree to make reasonable efforts to obtain the consent of the MDNR, the Federal Parties, and the City of Oxbow, and further agree not to make any demands of the MDNR and the Federal Parties in connection with seeking dismissals other than to request that all parties to each litigation jointly seek

to have the matter in question dismissed with prejudice without any award of attorney fees, costs, or other expenses of litigation to any party. If for any reason any party to this Settlement Agreement, the City of Oxbow, the MDNR, or the Federal Parties, are unwilling or unable to execute a stipulation of dismissal, the Diversion Authority may nevertheless enforce the provisions of the Settlement Agreement against any party to secure the dismissals agreed to therein. Nothing in this Settlement Agreement shall be read to require RWJPA to advocate a dismissal by MDNR that would represent an adjudication against MDNR's right or power to regulate water resource development projects impacting the State of Minnesota.

Section 4.03 NO PREJUDICE TO AGENCY PERMITTING AUTHORITY. The Parties acknowledge and agree that the dismissals provided for in Article IV of this Settlement Agreement shall not prejudice or impact the current or future permitting jurisdiction of the MDNR, the ND OSE, or any federal agency having jurisdiction over the Comprehensive Project.

Section 4.04 MN CCH DISMISSAL. The Parties have entered into a separate agreement with MDNR providing that the challenges to the MDNR Permit are withdrawn and the Administrative Law Judge has recommended that the MDNR Permit be issued.

Section 4.05 MDNR PERMIT CONDITION 22. The Parties have recommended to the MDNR that it modify Condition 22 to the MDNR Permit in the manner set forth in the proposed Findings of Fact and Conclusions of Law submitted by the Diversion Authority in the Minnesota Contested Case and anticipate that the MDNR may make this and other minor modifications to the MDNR Permit.

Section 4.06 OBLIGATION TO DISCLOSE ALL INTERFERENCE ACTIONS BY THE PARTIES ADVERSE TO THE COMPREHENSIVE PROJECT AND REPRESENTATIONS THERE ARE NONE BEYOND THOSE DISCLOSED. The Parties affirmatively represent that, other than the Minnesota Case, the Minnesota Contested Case, and the Federal Cases, none of them are parties to any matter pending (or being initiated) in a court, administrative forum, or arbitral forum that seeks to stop, prevent, delay, disrupt, or otherwise challenge the design, planning, construction, development, operation, or maintenance of the Comprehensive Project. Provided, however, a Minnesota MERA action filed in Wilkin County District court was enjoined by the federal court. RWJPA will assure that the action filed in Wilkin County District Court has been appropriately dismissed, and, if not, shall take such further action as is necessary to secure a dismissal, with prejudice, of the matter.

ARTICLE V. NO ADMISSION

Section 5.01 NO ADMISSION BY THE PARTIES. This Settlement Agreement is being entered into solely for the purposes of settlement. By entering into this Settlement Agreement, none of the Parties are admitting to the correctness of any of the positions or contentions of any other Party, nor are any of the Parties making an admission regarding the propriety, efficacy, or desirability of Plan B.

ARTICLE VI. MUTUAL RELEASES AND COVENANT NOT TO SUE

Section 6.01 MUTUAL RELEASE AND COVENANT NOT TO SUE. The Parties and the Counties hereby mutually release each other from (a) all claims that have been made to date regarding the

Comprehensive Project and (b) all claims of any kind and nature, whether legal, equitable, statutory, regulatory, or having some other source, current or arising in the future, presently known or unknown, that could stop or materially interfere with the design, construction, development, financing, operation, or maintenance of Plan B in accordance with the MDNR permit (as amended from time to time in accordance with MDNR permitting procedures), OSE permits (as amended from time to time in accordance with OSE procedures), any federal permits, and this Settlement Agreement. The Parties and the Counties further covenant and agree not to institute, participate in, or support any administrative proceeding, suit, or action, at law, in equity, or having a basis in statutory or regulatory provisions, seeking to stop or materially interfere with the design, construction, development, financing, planning, operation, or maintenance of the Comprehensive Project, provided that the Diversion Authority is in substantial compliance with the MDNR Permit as amended from time to time, in accordance with MDNR permitting procedures, ND OSE permits, federal permits, and this Settlement Agreement.

Section 6.02 INJUNCTIVE RELIEF PERMITTED. The Parties specifically agree that damages alone are not an adequate remedy for any breach of the covenant not to sue set forth in this Article VI and that injunctive relief, including anti-suit injunctions, shall be available as a remedy, in addition to damages, for any such violation.

ARTICLE VII. BRRWD PERMIT

Section 7.01 BRRWD PERMIT. The Parties agree and acknowledge that BRRWD issued the BRRWD Permit on October 26, 2020, at a regularly scheduled meeting of the BRRWD Managers and that the terms and conditions of the Term Sheet were incorporated by reference into the BRRWD Permit. The Parties intend that this Settlement Agreement will conform to the Term Sheet and no further action from BRRWD with respect to granting or amending the BRRWD Permit to include this Settlement Agreement is required.

Section 7.02 DIVERSION AUTHORITY COMPLIANCE WITH BRRWD PERMIT. The Diversion Authority agrees to comply with the conditions of the BRRWD Permit and to carry out its design, development, construction, operation, and maintenance of the Comprehensive Project in accordance with the terms of the BRRWD Permit.

Section 7.03 THIRD PARTY APPEALS OF THE BRRWD PERMIT. The BRRWD agrees that if the BRRWD Permit is appealed or otherwise challenged in any judicial or administrative forum, it shall defend the BRRWD Permit and the propriety of the issuance of said permit using competent counsel of its own choosing. The Diversion Authority agrees that in the event the issuance of the BRRWD Permit is appealed or otherwise challenged in any judicial or administrative forum, the Diversion Authority will hold the BRRWD harmless by reimbursing the BRRWD for any and all costs, expenses, or disbursements (including reasonable attorney fees and expenses) incurred in the defense of such appeal or challenge. If the BRRWD seeks reimbursement in connection with a defense of the BRRWD Permit, it shall submit detailed invoices to the Diversion Authority on a monthly basis and keep the Diversion Authority reasonably apprised of the progress of the matter. The Diversion Authority and BRRWD agree to enter into a Common Interest and Joint Defense Agreement in connection with the BRRWD's defense to any challenge or appeal of the BRRWD Permit and to cooperate in defending the BRRWD Permit and the propriety of its issuance. If the Diversion Authority seeks to intervene in any judicial or administrative matter in which a challenge or appeal of the BRRWD Permit is being considered, the BRRWD agrees to support such

intervention, and the Parties agree that the Diversion Authority will be responsible for the costs of any such intervention.

Section 7.04 MINNESOTA CASE AS A DEFENSE TO BRRWD PERMIT. In any appeal or challenge to the BRRWD Permit, the BRRWD agrees that, notwithstanding dismissal of the Minnesota Case, the BRRWD and/or Diversion Authority may raise any or all of the facts and arguments asserted in the Minnesota Case as justification for the BRRWD's issuance of the BRRWD Permit. This includes but is not limited to, the argument that issuance of the BRRWD Permit was not arbitrary and capricious because, in addition to the facts before the BRRWD supporting the issuance of the BRRWD Permit at the time it granted the Permit, there also existed a material risk that the Diversion Authority would have prevailed in the Minnesota Case based on the record evidence and arguments submitted by the Diversion Authority in the Minnesota Case, and that issuance of the BRRWD Permit including the incorporated terms and conditions of the Term Sheet was a more favorable result for the BRRWD and its constituents than might have been the case if the Minnesota Case had been allowed to proceed to judgment.

ARTICLE VIII. OVERFLOW REACH ELEVATION

Section 8.01 OVERFLOW REACH ELEVATION. The overflow reach for Plan B, which is part of the Southern Embankment reach SE-1, is located in North Dakota and serves a PMF resiliency function. It is designed to overtop during the PMF should there be blockages in the gates for the Red River Control Structure, Wild Rice River Control Structure, or other blockages. Southern Embankment reach SE-5, which is located in Minnesota and includes the Wolverton Creek Crossing, is designed to overflow to limit upstream impacts in Wilkin County and ensure that Comstock is not adversely affected during extreme flood events such as the PMF. The Parties acknowledge that due to the natural grade of the Red River Valley, the Southern Embankment reach SE-5 overflow and Wolverton Creek Crossing is approximately three (3) inches higher than the Southern Embankment reach SE-1 overflow reach. As a result, the overflow elevation is approximately the same level for both the ND OSE Permit and the MDNR Permit, and there are grade, soil, hydraulic and engineering reasons that the Southern Embankment may have slight variations in its elevation. The Diversion Authority covenants that such variations are consistent with the MDNR Permit, ND OSE Permits and federal permits as amended from time to time and does not result in disparate treatment as between the State of Minnesota and the State of North Dakota.

ARTICLE IX. COMPREHENSIVE PROJECT COMPLIANCE REQUIREMENTS

Section 9.01 COMPREHENSIVE PROJECT COMPLIANCE OBJECTIVE(S). The Parties agree and acknowledge that the Comprehensive Project is a flood control project with the purpose of providing flood protection for the City of Fargo, City of Moorhead and surrounding communities included within the Fargo-Moorhead Metropolitan Area from flooding associated with the spring melt of heavy snowpack and/or a moderate snowpack and heavy spring rains in the Red River Basin south of the City of Fargo and the City of Moorhead. The Parties acknowledge that if there are claims regarding an alleged breach of Section 9.02 of this Settlement Agreement by the Diversion Authority, the Non-Authority Parties will provide the Diversion Authority with advanced written notice of such claims, pursuant to and in accordance Section 41.09 and Article XII of this Settlement Agreement and, if known and possible, in advance of anticipated Comprehensive Project Operation following a winter

with a significant snow pack and/or a moderate snow pack and heavy spring rains in the Red River Basin south of the City of Fargo and the City of Moorhead.

Section 9.02 THE COMPREHENSIVE PROJECT SHALL COMPLY WITH THE TERMS AND CONDITIONS OF THIS SETTLEMENT AGREEMENT. The Diversion Authority agrees that the Comprehensive Project shall not be placed into Comprehensive Project Operation unless the Diversion Authority is in compliance with (a) federal, MDNR, ND OSE, and BRRWD permit conditions, as amended from time to time, and (b) the terms of this Settlement Agreement.

Section 9.03 THE PARTIES SHALL COOPERATE IN GOOD FAITH REGARDING THIS ARTICLE IX. In the event of a Change of Law event which impacts Comprehensive Project Operation, the Diversion Authority shall invoke the procedure set forth in Article XII of this Settlement Agreement. The Parties to this Settlement Agreement shall cooperate in Good Faith regarding Change of Law Events, which impact any federal, MDNR, ND OSE, or BRRWD permit conditions, so as to carry out the intent of this Settlement Agreement.

Section 9.04 THE COMPREHENSIVE PROJECT COMPLIES WITH LOCAL REQUIREMENTS. The Parties agree and acknowledge that the Comprehensive Project, as described or expressly referenced in the MDNR Permit, complies with all local laws and ordinances of the Parties and of the Counties. The persons signing this Settlement Agreement for the RWJPA specifically represent that they have been authorized to make the acknowledgment set forth in the preceding sentence with respect to each of the Counties.

ARTICLE X. REMEDIES ON DEFAULT

Section 10.01 INADEQUACY OF DAMAGES ALONE. The Parties agree that, except for the rights of third-party beneficiaries set forth in Article XXIII, the remedy of damages at law is an inadequate remedy for a breach of this Settlement Agreement. Accordingly, the Parties agree that in addition to such other remedies as may be available, including damages, the remedy of injunctive relief shall be available in the event of an actual or threatened breach of this Settlement Agreement. Damages and injunctive relief are to be understood as both being proper remedies for breaches of this Settlement Agreement and not as exclusive alternatives. No bond shall be required for any Party to obtain an injunction against the actual or threatened breach of this Settlement Agreement by another Party.

Section 10.02 ATTORNEY FEES AS BETWEEN BRRWD AND THE DIVERSION AUTHORITY. In the event of a dispute between BRRWD and the Diversion Authority with regard to a claimed breach (or breaches) of this Settlement Agreement that is resolved through litigation, the prevailing party shall be entitled to recover its costs, expenses, and reasonable attorney fees. The recovery of costs, expenses, and fees provided for in this Section 10.02 is in addition to such remedies as may be available, including actual damages and injunctive relief. The Parties agree and acknowledge that this Section 10.02 only applies to disputes between BRRWD and the Diversion Authority and does not apply to disputes with third parties or Parties other than BRRWD and the Diversion Authority. However, if both BRRWD and the Diversion Authority are adverse to one another in a dispute that also involves other persons, entities, or Parties, the prevailing party as between BRRWD and the Diversion Authority may recover that portion of its costs, expenses, and attorney fees as may be fairly attributed to BRRWD or the Diversion Authority, as the case may be.

Section 10.03 SECTIONS 10.01 AND 10.02 SUBJECT TO ARTICLE XI OF THIS SETTLEMENT AGREEMENT. The provisions of this Article X are subject to the dispute resolution requirements set forth in Article XI of this Settlement Agreement.

ARTICLE XI. DISPUTE RESOLUTION

Section 11.01 GENERAL. The Parties shall use reasonable and Good Faith efforts to promptly resolve any disputes pursuant to this Article XI.

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 Settlement Agreement, the Party (or Parties) making such allegation shall, except as provided in Section 41.09 (Notices) of this Settlement Agreement, provide thirty (30) days written notice to the other Party or Parties of the alleged breach. The written notice shall contain a reasonable description of the underlying facts and an explanation why the Party or Parties providing the notice believe those facts constitute a breach. Following transmittal of the notice, the Party or Parties alleged to have caused the breach shall be given a reasonable time (as provided for in Section 11.03 of this Settlement Agreement) except as set forth below, and not less than ten (10) days to correct or remedy the alleged breach, to meet and confer with the other Party or Parties, and/or to participate in mediation with the other Party or Parties (if such other Party or Parties agree) 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 irreparable harm may initiate litigation to seek a temporary restraining order and/or preliminary injunction 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 41.09 (Notices) of this Settlement Agreement as applicable.

Section 11.03 TIME TO CORRECT. The reasonableness of the time afforded to the Party or Parties alleged to have breached this Settlement Agreement pursuant to Section 11.02 of this Settlement 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 such harm, injury, or damages has the potential to worsen with the passage of time.

Section 11.04 OBLIGATION TO MAKE KEY DECISION MAKERS AVAILABLE. All Parties agree to make themselves and key decision makers reasonably available to meet and confer with the other Parties in the event of an alleged breach, on a schedule that is commensurate with the immediacy and severity of the alleged breach.

ARTICLE XII. CHANGE OF LAW

Section 12.01 RECOGNITION OF THE POSSIBILITY OF A CHANGE OF LAW. The Parties acknowledge and agree that the Comprehensive Project may be subject to various legal requirements and standards including federal statutes, FEMA and USACE rules, North Dakota statutes and rules, Minnesota statutes and rules, local governmental ordinances and regulations, and federal and state permitting standards and conditions. The Parties also agree and acknowledge that the Comprehensive Project will be constructed over a period exceeding five (5) years and operated and maintained for an

indefinite period. Given the number of potential legal requirements and the lengthy period of time during which this Settlement Agreement will be in effect, the Parties understand and acknowledge the possibility that there could be a Change of Law, and further understand and acknowledge that any such Changes of Law, to the extent it is deemed valid, should not operate to interfere with, contradict or contravene the commitments and undertakings set forth in Sections 3.01, 3.02, 3.03, and 3.04 of this Settlement Agreement

Section 12.02 PROCEDURE IN THE EVENT OF CHANGE OF LAW. If a Change of Law occurs, the Party alleging a Change of Law shall give notice in accordance with the Section 12.03 of this Settlement Agreement to the other Parties and the Parties agree to meet and confer to determine whether an amendment to this Settlement Agreement is necessary to address the Change of Law. In meeting and conferring and determining whether to amend the Settlement Agreement, the Parties agree to act in Good Faith, in a cooperative manner, and in a manner that is consistent with the intent of the Parties as set forth in this Settlement Agreement.

Section 12.03 NOTICE OF A CHANGE OF LAW. If a Change of Law occurs or is reasonably anticipated to occur, any Party may notify the other Parties and include in such notification: (i) an opinion as to its likely effects, and (ii) any proposed changes to the Settlement Agreement required by the Change of Law to affect the intent of the terms and conditions of this Settlement Agreement. All Parties agree to refrain from advocating for a Change of Law that requires a material change in the Comprehensive Project or its operation that would undermine this Settlement Agreement.

Section 12.04 INTENT OF THE PARTIES WITH RESPECT TO A CHANGE OF LAW. In considering Changes of Law and determining whether to amend this Settlement Agreement, it is the intent of the Parties to ensure that the purpose and intent of this Settlement Agreement shall remain in full force and effect to the maximum extent possible, notwithstanding any Change of Law. The Parties further intend that amendments to this Settlement Agreement made in response to a Change of Law shall preserve, to the maximum extent possible, the purpose and intent of this Settlement Agreement and its material terms and conditions and will not interfere with the design, construction, financing, development, operation, and maintenance of Plan B.

Section 12.05 A CHANGE OF LAW RESULTING FROM THE ACTIONS OF A PARTY OR THE COUNTIES. Notwithstanding the foregoing Sections 12.01, 12.02, and 12.03 of this Settlement Agreement, if one or both of the Counties, a Party to this Settlement Agreement, a member of the RWJPA, the Diversion Authority, or one of its Member Entities adopts a Change of Law that would materially and adversely impact the design, financing, development, construction, design, operation, or maintenance of the Comprehensive Project, or that materially and adversely inhibits the ability to minimize, protect, and compensate upstream individuals, landowners, entities, and political subdivisions from the Comprehensive Project as set forth in and pursuant to this Settlement Agreement, the Diversion Authority and/or the Non-Authority Parties are not required to comply with the dispute resolution provisions in Article XI of this Settlement Agreement or to meet and confer with regard to possible amendment of this Settlement Agreement, and may immediately seek injunctive relief, damages, and any available statutory, legal, regulatory, or equitable remedies, none of which are waived, without regard for the dispute resolution requirements set forth in Article XI.

Section 12.06 ARBITRATION IN THE EVENT OF A CHANGE OF LAW. In the event that the Parties meet and confer pursuant to the preceding Section 12.02 but are unable to agree on an amendment to this Settlement Agreement, one or more Parties may, but are not required to, initiate arbitration proceedings pursuant to this Section 12.06. Arbitration pursuant to this Section shall be

the exclusive forum for resolving disputes as to whether this Settlement Agreement shall be amended in response to a Change of Law and, if so, the substance and form that such an amendment should take. However, this Section 12.06 shall not apply to any other disputes arising out of or related to this Settlement Agreement. The arbitration shall be conducted and decided by one arbitrator who is a retired judge or a lawyer with at least ten (10) years of experience, and who is mutually agreeable to the Parties. If the Parties cannot agree on an arbitrator, any Party may petition the court pursuant to the arbitration statutes of the state where the Change of Law is implemented for the appointment of an arbitrator. To aid the arbitrator, the arbitrator shall have the authority to hire experts and special masters such as engineers. The arbitration shall be conducted pursuant to the Commercial Arbitration Rules promulgated by the American Arbitration Association. The arbitration shall not be administered by the American Arbitration Association. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Section 12.07 CHANGE OF CROPPING CHOICES. In the event that a Change in Cropping Choices renders the crop insurance program provided for in Section 20.01 of this Settlement Agreement obsolete, impracticable, or otherwise in need of revision to accomplish its goals, the Parties agree to meet and confer to determine whether amendment to the crop insurance program and/or this Settlement Agreement is necessary. In meeting and conferring and determining whether to amend this Settlement Agreement and/or the crop insurance program, the Parties agree to act in Good Faith, in a cooperative manner, and in a manner that it is consistent with an intent of providing crop insurance that accomplishes the same substantive goals as the plan established pursuant to Section 20.01 of this Settlement Agreement.

ARTICLE XIII. BRRWD ATTORNEY FEES

Section 13.01 BRRWD REIMBURSEMENT OF ATTORNEY FEES. The Diversion Authority agrees to pay up to Two Hundred Fifty Thousand Dollars (\$250,000) to cover the BRRWD's unreimbursed out-of-pocket attorney fees in the Minnesota Case and the Minnesota Contested Case. If the BRRWD's out-of-pocket attorney fees in the Minnesota Case and the Minnesota Contested Case exceed Two Hundred Fifty Thousand Dollars (\$250,000), the RWJPA agrees to reimburse the BRRWD up to an additional Two Hundred Fifty Thousand dollars (\$250,000) in such fees. Not later than ten (10) Business Days after entry of the last of the judgments dismissing the Federal Cases, the Minnesota Case, and the Minnesota Contested Case, the BRRWD shall provide to the RWJPA and the Diversion Authority notarized affidavits from the lead counsels in the Minnesota Case and the Minnesota Contested Case setting forth the total amounts of the BRRWD's out-of-pocket fees for each matter and any amounts reimbursed by insurers or which have been submitted for reimbursement to insurers.

Section 13.02 BRRWD ATTORNEY FEES REIMBURSED BY INSURANCE PROVIDER NOT INCLUDED. BRRWD's attorney fees covered by reimbursements from BRRWD's insurance carrier shall not be considered to be out-of-pocket attorney fees and will not be reimbursed pursuant to Section 13.01 of this Settlement Agreement.

Section 13.03 RWJPA'S OBLIGATION TO PAY BRRWD'S ATTORNEY FEES CONTINGENT. The RWJPA's reimbursement obligations pursuant to Section 13.01 of this Settlement Agreement shall be due ten (10) days after the RWJPA receives the initial payment from the Diversion Authority as set forth in Section 28.07 of this Settlement Agreement.

**ARTICLE XIV.
GEORGETOWN**

Section 14.01 PROJECT COOPERATION. The Diversion Authority and BRRWD will cooperate and work in Good Faith to implement the Georgetown Project, which is further described in Section 14.02 of this Settlement Agreement. The Diversion Authority and BRRWD recognize and acknowledge that the Georgetown Project must be designed, permitted, and constructed and that cooperation between the Diversion Authority and BRRWD is essential to completing the Georgetown Project.

Section 14.02 THE GEORGETOWN PROJECT. The Diversion Authority will provide reasonable and adequate initial and annual funds to BRRWD to design, construct, operate, and maintain a project to construct 100-year FEMA Accredited Flood Protection (based upon the Period of Record Hydrology) protection for Georgetown to close gaps in Georgetown’s permanent flood protection and to protect Georgetown against any adverse flood impact(s) of the Comprehensive Project. The Georgetown Project will include appropriate in-town lift stations needed for flood control raises to existing transportation levee crossings and include already existing flood control elements such as existing levees. Prior to commencement of the Georgetown Project, BRRWD and the Diversion Authority will reasonably and mutually agree as to the Georgetown Project scope, budget, and timing. BRRWD agrees that it will administer and complete the Georgetown Project.

Section 14.03 GEORGETOWN MOU. BRRWD and the Diversion Authority agree to cooperate in Good Faith to develop a Memorandum of Understanding, specifically setting forth the construction, operation, and maintenance related to the Georgetown Project and the procedures for the initial and annual funding, reviews, reimbursements, timeline for completion of the Georgetown Project and coordination with Minnesota state agencies. BRRWD and the Diversion Authority will confer at least once every six (6) months, starting from the Effective Date, to discuss the status of the commencement of drafting the Georgetown MOU. The Georgetown MOU will set forth the timeline for design, construction, and operation of the Georgetown Project along with the timing of reimbursements/payments to BRRWD from the Diversion Authority.

**ARTICLE XV.
WOLVERTON**

Section 15.01 PROJECT COOPERATION. The Diversion Authority and BRRWD will cooperate and work in Good Faith to implement the Wolverton Project, which is further described in Section 15.02 of this Settlement Agreement. The Diversion Authority and BRRWD recognize and acknowledge that the Wolverton Project must be designed, permitted, and constructed and that cooperation between the Diversion Authority and BRRWD is essential to completing the Wolverton Project.

Section 15.02 THE WOLVERTON PROJECT. The Diversion Authority will provide reasonable and adequate initial and annual funds to BRRWD to design, construct, operate and maintain a project for 100-year FEMA Accredited Flood Protection (based upon the Period of Record Hydrology) as set forth in BRRWD’s already proposed flood protection project and protect against any adverse flood impact(s) of the Comprehensive Project to Wolverton (the “Wolverton Project”). The Wolverton Project is planned to include flood protection for an area to include up to one square mile measured from Wolverton’s current city limits as of the Effective Date, taking into account the proximity of the Red River and making reasonable provisions to protect or replace its current lift station based on

engineering feasibility and protect the city cemetery. The Parties recognize and agree that the Wolverton city cemetery is physically close to the Red River and may require additional mitigation to allow for the construction of a flood control project to protect the Wolverton city cemetery. The Wolverton Project will include appropriate in-town lift stations needed for flood control and provide levees or flood walls that are one (1) foot above the 500-year flood elevation. Prior to commencement of the Wolverton Project, BRRWD and the Diversion Authority will reasonably and mutually agree as to the Wolverton Project scope, budget, and timing. BRRWD agrees that it will administer and complete the Wolverton Project.

Section 15.03 WOLVERTON MOU. The Wolverton MOU will provide for the initial and annual funding for the design, construction, operation, and maintenance of the Wolverton Project by the Diversion Authority. The Wolverton MOU will set forth the timeline for design, construction, and operation of the Wolverton Project along with the timing of reimbursements and payments to BRRWD from the Diversion Authority. BRRWD and the Diversion Authority agree to cooperate in Good Faith to develop a Memorandum of Understanding specifically setting forth the construction, operation, and maintenance related to the Wolverton Project and the procedures for the initial and annual funding, reviews, reimbursements, timeline for completion of the Wolverton Project and coordination with Minnesota state agencies. BRRWD and the Diversion Authority will confer at least once every six (6) months, starting from the Effective Date, to discuss the status of the commencement of drafting the Wolverton MOU until Substantial Completion of the Comprehensive Project.

ARTICLE XVI. CHRISTINE

Section 16.01 DUTY TO COOPERATE IN GOOD FAITH – CHRISTINE PROJECT. The Diversion Authority and Christine will cooperate and work in Good Faith to implement the Christine Project, which is further described in Section 16.02 of this Settlement Agreement. The Diversion Authority and Christine recognize and acknowledge that the Christine Project must be designed, permitted, and constructed and that cooperation between the Diversion Authority and Christine is essential to completing the Christine Project.

Section 16.02 THE CHRISTINE PROJECT. The Diversion Authority will provide reasonable and adequate initial and annual funds to Christine to design, construct, operate, and maintain a flood control project in Christine, to protect against any adverse flood impact(s) of the Comprehensive Project to Christine. The Christine Project will include appropriate in-town lift stations needed for flood control and provide 100-year FEMA Accredited Flood Protection (based upon the Period of Record Hydrology) and provide levees that are one (1) foot above the 500-year flood elevation. The Christine Project must be planned to include flood protection for a minimum of an area to include at least one (1) square mile radius measured from Christine’s current city limits as of the Effective Date. Prior to commencement of the Christine Project, Christine and the Diversion Authority will reasonably and mutually agree as to the Christine Project scope, budget, and timing. Christine will administer and complete the Christine Project.

Section 16.03 CHRISTINE MOU. Christine and the Diversion Authority agree to cooperate in Good Faith to develop a Memorandum of Understanding, specifically setting forth the construction, operation, and maintenance related to the Christine Project and the procedures for reviews, reimbursements, and coordination with North Dakota state agencies. Christine and the Diversion Authority will confer at least once every six (6) months, starting from the Effective Date, to discuss

the status of the commencement of drafting the Christine MOU until Substantial Completion of the Comprehensive Project.

ARTICLE XVII. COMSTOCK

Section 17.01 DUTY TO COOPERATE IN GOOD FAITH FOR COMSTOCK FLOOD CONTROL PROJECT, LAGOON PROJECT. The Diversion Authority and Comstock will cooperate and work in Good Faith to implement the Comstock Flood Control Project, as determined in Section 17.02 of this Settlement Agreement, and Comstock Lagoon Project, which is further described in Section 17.03 of this Settlement Agreement. The Diversion Authority and Comstock recognize and acknowledge that the Comstock Flood Control Project and Comstock Lagoon Project must be designed, permitted, and constructed and that cooperation between the Diversion Authority and Comstock is essential to completing the Comstock Flood Control Project and Comstock Lagoon Project.

Section 17.02 THE COMSTOCK FLOOD CONTROL PROJECT. The Diversion Authority will provide reasonable and adequate initial and annual funds to Comstock to design, construct, operate, and maintain a flood control project in Comstock to protect against any adverse flood impacts of and caused by the Comprehensive Project to Comstock within a reasonable area to the west of Comstock to Highway 75 and within a reasonable area to the east of Comstock (the “Comstock Flood Control Project”). The Diversion Authority and Comstock will work in Good Faith to meet and determine if there are any adverse physical, environmental, water related, flood insurance impacts or non-monetary impacts to Comstock caused by the Comprehensive Project.

Section 17.03 THE COMSTOCK LAGOON PROJECT. The Diversion Authority will provide funds to Comstock to develop, construct, complete, and finalize the construction of a new lagoon (the “Comstock Lagoon Project”).

Section 17.04 COORDINATION WITH CLAY COUNTY- HIGHWAY 2 PROJECT. The Diversion Authority will also coordinate with Clay County to provide additional funds to assist in the repair or replacement of Clay County Highway 2 within Comstock city limits, as they exist on the Effective Date. The Diversion Authority will coordinate with the Clay County Engineer to determine if the Highway 2 Project can be constructed using storm sewers rather than rural section ditches.

Section 17.05 COMSTOCK MOU. Prior to commencement of the Comstock Flood Control Project, the Comstock Lagoon Project, and the Highway 2 Project, Comstock and the Diversion Authority agree to cooperate in Good Faith to reasonably and mutually agree as to the projects’ scopes, budgets, and timing. Comstock will administer and complete the Comstock Flood Control Project and the Comstock Lagoon Project. Clay County is anticipated to administer the Highway 2 Project. Comstock and the Diversion Authority agree to cooperate in Good Faith to develop a Memorandum of Understanding, specifically setting forth the construction, operation, maintenance, and the timeline to complete the Comstock Flood Control Project and the design and construction of the Comstock Lagoon Project, and the procedures for the initial and annual funding, reviews, reimbursements, and coordination with Minnesota state agencies. Comstock and the Diversion Authority will confer at least once every six (6) months, starting from the Effective Date, to discuss the status of the commencement of drafting the Comstock MOU until Substantial Completion of the Comprehensive Project.

**ARTICLE XVIII.
CEMETERIES**

Section 18.01 CEMETERY PROTECTION PLANS. The Diversion Authority will provide reasonably sufficient initial and annual funds to affected cemeteries within the Staging Area as set forth in Exhibit E to this Settlement Agreement (including any later discovered cemeteries in the Staging Area) to develop and construct reasonable cemetery protection plans, which may include, but are not limited to, ring dikes/levees, fencing, maintenance requirements, and/or an internal water management and discharge system inside the ring dikes/levees, surrounding the cemetery to eliminate and prevent any impact, including erosion, of the Comprehensive Project to said cemeteries. Said plans shall also include payment by the Diversion Authority for debris removal and other damages caused by the operation of the Comprehensive Project and the Diversion Authority will ensure that access will be maintained to the cemeteries when the Comprehensive Project is not operating (such as during construction of the Comprehensive Project).

Section 18.02 IMPLEMENTATION OF CEMETERY PROTECTION PLANS. The Diversion Authority agrees to cooperate in Good Faith with the individual cemetery boards to develop the scope, budget, and timing of the cemetery protection plan. If a cemetery board decides to implement a cemetery protection plan, the cemetery board shall notify the Diversion Authority in accordance with Section 41.09 (Notices) of this Settlement Agreement. Each cemetery will approve and administer their individual cemetery protection plan. In the event the initial cemetery protection plan developed by the Diversion Authority and cemetery involved is inadequate to address adverse impacts arising from the operation of the Comprehensive Project, the Diversion Authority and the cemetery involved will cooperate in Good Faith and develop modifications/ amendments to the initial cemetery protection plan. If there are costs associated with the modifications/amendments, the Diversion Authority shall fund such costs. The RWJPA will assist the Diversion Authority in coordinating with the leadership/management/cemetery board of each of the impacted cemeteries. The Diversion Authority covenants to complete the cemetery mitigation project(s)/mitigation before Comprehensive Project Operation, unless a cemetery board refuses to agree to a mitigation project or makes unreasonable regarding mitigation. The Parties recognize that any cemetery that is listed on the National Register of Historic Places may need to comply with Section 106 of the National Historical Preservation Act and 36 CFR 800, which may place some limitations on what the cemetery boards are able to incorporate into their protection plans. The Diversion Authority shall provide an update regarding the status of the cemetery plan to the Parties every six (6) months commencing on the Effective Date of this Settlement Agreement until Substantial Completion of the Comprehensive Project.

**ARTICLE XIX.
POST-OPERATION DEBRIS REMOVAL AND PROPERTY DAMAGE RESTORATION
AND CLEAN-UP PLAN**

Section 19.01 POST-OPERATION DEBRIS REMOVAL AND RESTORATION. The Diversion Authority will implement and fund a Debris Removal and Property Damage Restoration and Clean-up Plan to provide for the clean-up of debris and restoration of property arising out of the operation of the Comprehensive Project. The Debris Removal and Property Damage Clean-up Plan shall provide that debris shall be removed by the Diversion Authority, and non-structural property damage shall be repaired, remedied, and restored at its cost, within ten (10) days of the Completion of Comprehensive Project Operation, upon notification by property owners that floodwaters have receded from affected properties and permission from property owners to the Diversion Authority to

enter their land, as long as local conditions permit such removal. If debris or non-structural property damage is not removed or repaired/remedied and restored within ten (10) days of notification that floodwaters have receded, the landowner or tenant may arrange for such removal to the side of a township or county road/highway and submit the costs of removal to the Diversion Authority for reimbursement. The Diversion Authority will make available a list of pre-qualified contractors who are available to perform the work. The Post Operation Debris Clean-up and Restoration Plan will include a provision that allows landowners and/or tenants to repair/remedy/restore damaged non-structural property and/or remove the debris and receive reasonable compensation for such activities before or after said ten (10) day period. The Parties recognize that the amount of debris that will need to be removed will depend upon specific conditions, including prior years' crops, size, and duration of operations in the Staging Area and other factors. As such, the Parties recognize that, over time, having an adaptive program for debris removal will be beneficial to landowners and the Parties.

Section 19.02 POST-OPERATION DEBRIS REMOVAL AND RESTORATION SUB-COMMITTEE. The Diversion Authority will create and support a Debris Removal and Restoration Sub-Committee to adaptively manage debris clean up and non-structural property damage repair, remediation, and/or restoration. The RWJPA agrees to secure two (2) full-time Agricultural Producers from the Staging Area to be voting members of a Debris Removal and Property Damage Sub-Committee to assist in further clarifying and refining the Debris Removal and Restoration Program over time. The Diversion Authority shall provide an update regarding the status of the Post-Operation Debris Clean-up and Restoration Plan to the Parties every six (6) months commencing on the Effective Date of this Settlement Agreement until termination of the Comprehensive Project.

ARTICLE XX. CROP DAMAGE

Section 20.01 CROP DAMAGE CAUSED BY THE COMPREHENSIVE PROJECT. Beginning no later than March 1 in the first year of Substantial Completion of the Comprehensive Project (estimated 2027) and continuing through the Termination Date, the Diversion Authority will implement and fund, at no cost to landowners/producers, a program that will compensate producers for actual crop losses caused by the Comprehensive Project Operation during the normal crop growing season and the program will provide prevent plant insurance coverage. The Diversion Authority shall provide an update regarding the status of the growing season crop insurance and prevent plant insurance programs to the Parties every six (6) months commencing on the Effective Date of this Settlement Agreement. These programs will include the following requirements:

- (a) The growing season supplemental crop loss program will reimburse one hundred percent (100%) of any crop loss proximately caused by Comprehensive Project Operation, i.e., to ensure that producers are reimbursed for crop loss up to said producer's proven yield as established through crop insurance or governmental filings. The growing season supplemental crop loss program will include a rebuttable presumption that if growing crops in the Staging Area are damaged by floodwaters and the Comprehensive Project Operation has occurred, that the crop damages were due to Comprehensive Project Operation. The Parties contemplate that a crop insurance rider will be designed, and the rider will be paid for by the Diversion Authority at no cost to landowners/producers.
- (b) The prevent plant crop insurance program will be funded by the Diversion Authority for producers located within the Staging Area.

- (c) The growing season supplemental crop loss program and prevent plant crop insurance program contemplated in this Section 20 shall contain the following provisions:
 - (i) If an agricultural crop is grown for the non-GMO (Genetically Modified Organism) or certified organic marketplace and the premium for production of the non-GMO or certified organic crop is lost because of staging water in the Staging Area, contamination or other reasons due to Comprehensive Project Operation, the growing season supplemental crop loss program and prevent plant crop insurance program provided by the Diversion Authority must provide compensation for the lost premium based upon Actual Production History yield for the non-GMO or certified organic crop.
 - (ii) The growing season supplemental crop loss program and the prevent plant crop insurance program provided by the Diversion Authority must provide that if Comprehensive Project Operation causes farmland within the Staging Area to be contaminated and such contamination causes the farmland to no longer qualify in the non-GMO or certified organic marketplace, the landowner or tenant involved shall be compensated for all crop loss caused by such failure.
- (d) The growing season supplemental crop loss program and prevent plant crop insurance program provided by the Diversion Authority must provide that a producer's Actual Production History yield is not adversely affected by a reduced yield caused by the Comprehensive Project Operation, the crop insurance program shall include a provision/rider that the Risk Management Agency shall not include yields in their calculation for any year in which the Comprehensive Project operates.

Section 20.02 PARTICIPATION IN FEDERAL CROP INSURANCE AND NOTIFICATION. The Parties agree and acknowledge that any Agricultural Producer desiring to participate in the growing season supplemental crop loss program and the prevent plant crop insurance program contemplated in Section 20.01, must (i) participate in the federal crop insurance program, (ii) have growing agricultural crops within the Staging Area, and (iii) notify the Diversion Authority either directly or by signing up for the prevent plant crop insurance and/or supplemental crop loss program that he/she is raising agricultural crops in the Staging Area and desires to participate in the programs.

ARTICLE XXI. BUSINESS DAMAGE

Section 21.01 BUSINESS DAMAGE. Beginning no later than March 1 in the first year of Substantial Completion of the Comprehensive Project (estimated 2027) and continuing through the Termination Date, the Diversion Authority will implement and fund a program at no cost to a Qualified Business, that provides Business Interruption Insurance, which will reimburse businesses within the Staging Area for business loss or damage directly caused by Comprehensive Project Operation. The Parties do not intend that this program would be available to an equipment dealer, car dealership, or other like business for damages to movable property including but not limited to equipment and vehicles. As of the Effective Date, the Parties agree there are three (3) businesses which meet the definition of a Qualified Business. Those businesses are: (i) Dakota Ag Cooperative in Kindred, North Dakota, (ii) C-W Valley Co-op in Comstock, Minnesota, and (iii) Heartland Seed. If additional businesses desire to participate in the business damage program, they must provide

written notification to the Diversion Authority for review and consideration to determine if the business meets the definition of a Qualified Business. The Diversion Authority shall provide an update regarding the status of the business damage program to the Parties every six (6) months commencing on the Effective Date of this Settlement Agreement until Substantial Completion of the Comprehensive Project.

ARTICLE XXII. ACCESS

Section 22.01 ACCESS. The Diversion Authority will guarantee reasonable, timely, and if necessary for safety reasons, emergency access to fields flooded in the Staging Area. If washouts or other damage to township and county roads occurs because of Comprehensive Project Operation, the township and/or county roads will be repaired by the township or county having jurisdiction over the road in a manner approved by the township or county. The Diversion Authority will reimburse the township or county for the road repair costs.

Section 22.02 TOWNSHIP AND COUNTY ROADS. When the Comprehensive Project is not operating, during construction or thereafter, the Diversion Authority shall take reasonable precautions and actions to ensure that township and county roads are not damaged, blocked, or detoured by Comprehensive Project construction, operations, and/or maintenance any more than reasonably necessary so as to allow farmers to access their fields with minimal interruption or delay – i.e., detours shall be implemented so as to provide minimal delay or alternative routes, and road lifts or side roads shall be constructed as opposed to providing long detour routes. All costs for temporary closures and road openings shall be paid by the Diversion Authority, either through actual construction and cost payment by the Diversion Authority or by reimbursement to the townships and counties as set forth in Section 22.01 of this Settlement Agreement.

Section 22.03 POST OPERATION PUBLIC LANDS REPAIR AND CLEAN-UP PLAN. The Diversion Authority will develop and implement a Post Operation Public Lands Repair and Clean-up Plan, which is specific to repair and clean-up of public lands in the Staging Area from operation of the Comprehensive Project. The Post Operation Public Lands Repair and Clean-up Plan will allow local government entities (townships, water boards, etc.) to contract for the repair and clean-up work on the public lands, and then submit for reimbursement to the Diversion Authority. In general, the Post Operation Public Lands Repair and Clean-up Plan will include the following elements:

- (a) The Post Operation Public Lands Repair and Clean-up Plan will pattern the approach that FEMA uses for post-disaster damage assessment and reimbursements.
- (b) Public lands include township and county roads, drainage ditches, cemeteries, and parks.
- (c) The Diversion Authority will define the boundary of the Staging Area cleanup area based on the actual flood event.
- (d) The Diversion Authority will distribute an annual newsletter that will include information related to post-operation mitigation programs.
- (e) The Diversion Authority will notify public entities of eligible areas and request that the public entity identify any damage that may have been caused by the Comprehensive Project Operation, including debris removal.
- (f) The Diversion Authority will send a representative to meet with the public entities to verify damage on a site-by-site basis.

- (g) The public entities shall solicit quotes (in conformance with procurement, legal, and regulatory requirements) for the repairs or clean-up work at each site and submit the quotes for each site to the Diversion Authority for review.
- (h) The Diversion Authority shall review the quotes for reasonableness, and either approve, request additional details, or deny the quote.
- (i) The Diversion Authority will confirm the work was completed in accordance with the quote, and then reimburse the public entity.
- (j) The Diversion Authority will also consider reimbursement of emergency repairs that may be needed in advance of following this process.
- (k) The Diversion Authority will establish a reasonable deadline for submission of damage claims.

ARTICLE XXIII.

THIRD PARTY ENFORCEABILITY OF ARTICLES XIX, XX, AND XXI

Section 23.01 THIRD PARTY ENFORCEABILITY OF ARTICLES XIX, XX, AND XXI. The Parties agree that this Settlement Agreement provides the ability for third parties to enforce Articles XIX, XX, and XXI of this Settlement Agreement; provided, however, that the Diversion Authority and the Diversion Authority's Insurance Provider must be provided reasonable, written notice of an alleged breach by the Diversion Authority, and the Diversion Authority and the Diversion Authority's insurance provider must be given a reasonable opportunity and time to correct such alleged breach and the opportunity to meet and confer with the person(s) or organizations claiming there is breach prior to any initiation of any litigation, arbitration, or administrative proceedings. Third parties shall not have the right to enforce any other terms of this Settlement Agreement except for Articles XIX (Post-Operation Debris Removal and Restoration), XX (Crop Damage), and XXI (Business Damage).

ARTICLE XXIV.

FLEXIBLE COMPENSATION/MITIGATION

Section 24.01 FLEXIBLE COMPENSATION/MITIGATION. Subject to MDNR, ND OSE, and applicable federal requirements, if requested by a landowner as an alternative to an acquisition of property rights, the Diversion Authority will fund and approve flexible compensation/mitigation efforts within the Staging Area to compensate landowners for or prevent water damage to their properties. Compensation/mitigation of structures upstream of the Southern Embankment shall be completed in accordance with the federal and state statutes, regulations, and constitutional requirements (depending upon the location of the property), and the Diversion Authority, with the landowner's agreement, consents to use the Compensation/Mitigation Flexibility Plan, to be more fully developed by the Parties to the extent it is permitted to do so under applicable state and federal permit requirements. The Diversion Authority shall work in Good Faith with the other Parties to this Settlement Agreement to secure agreement from the MDNR for the use of the Compensation/Mitigation Flexibility Plan; however, the Parties acknowledge that such approval is not certain and agree that it shall not be considered a condition precedent to the enforcement of this Settlement Agreement.

ARTICLE XXV.

FLOWAGE EASEMENTS AND REAL PROPERTY PURCHASES

Section 25.01 FLOWAGE EASEMENTS AND REAL PROPERTY PURCHASES. The Diversion Authority will continue to purchase real property, including Flowage Easements and fee simple

interests, and will continue with acquisitions and mitigation for individual landowners. These costs and mitigation dollars are separate and distinct from the Relief Fund provided for in Article XXVIII.

Section 25.02 FLOWAGE EASEMENT AGREEMENT. The general terms of the Flowage Easement Agreement must be mutually agreed between the landowner and the entity acquiring the Flowage Easement, except that nothing herein shall allow terms prohibited by applicable law or prohibit the Diversion Authority or its Member Entities from using eminent domain if an agreement cannot be reached with the landowner.

Section 25.03 CASH VALUES. All cash values for farm purchases must be based on the property's highest and best use as determined in accordance with federal and state statutory and constitutional requirements and eminent domain law.

Section 25.04 FLOWAGE EASEMENT INPUT. The Diversion Authority will provide the RWJPA, BRRWD, MDNR, ND OSE, and USACE with a draft of the general form of the Flowage Easement proposed to be applicable in their respective jurisdictions for their review and input. The Diversion Authority will consider the input of the RWJPA, BRRWD, MDNR, ND OSE, and USACE with respect to the general form of the Flowage Easement and engage in a Good Faith dialogue with the RWJPA, BRRWD, MDNR, ND OSE, and USACE regarding whether its input can be incorporated into the form of the Flowage Easement while complying with (i) applicable state law, (ii) regulatory agency requirements, (iii) MDNR Permit requirements, (iv) ND OSE Permit requirements, and (v) USACE land acquisition requirements.

ARTICLE XXVI.

ACTIVE FARM OPERATIONS AND BUSINESS RELOCATIONS

Section 26.01 ACTIVE FARM OPERATIONS AND BUSINESS RELOCATIONS. Active Farm Operations and business relocations displaced by the Comprehensive Project must be rebuilt with similar productive and operational capacity as the original sites. To supplement any relocation benefits for which the recipient may be eligible, the Diversion Authority will create and fund a Rural Impact Mitigation Program to provide a forgivable loan program in addition to funds received as part of property rights acquisitions, to assist in the relocation and replacement of displaced Active Farm Operations and rural businesses. The purpose of the program is to create a forgivable loan that allows the recipient to rebuild and continue in business with modern facilities, and, so long as the recipient or the recipient's heirs, successors, and assigns stay in operation for a period of ten (10) years, the loan will be fully forgivable. In accordance with the Rural Impact Mitigation Program rules, if the recipient or the recipient's heirs, successors, or assigns do not stay in operation for the full ten (10) year period, the loan shall be forgiven proportionately for the amount of time the operation was in business. The program shall be administered in accordance with the forgivable loan administration process developed by the Diversion Authority for the Rural Impact Mitigation Program. All utilities and transportation access must be equal to or exceed the existing location, taking into account the existing locations, prior transportation access, and utility length and scope.

ARTICLE XXVII.

APPLICABILITY OF ARTICLES XX-XXVI

Section 27.01 APPLICABILITY OF ARTICLES XX THROUGH XXVI. Subject to the exceptions set forth herein, the provisions in Articles XX through XXVI of this Settlement Agreement shall be applicable to any land within the Staging Area. In the event a property located outside of the Staging

Area is damaged by Comprehensive Project Operation, the Diversion Authority will pay that landowner its actual damages as determined either by the Alternative Dispute Resolution Board, or as determined through the state's statutory eminent domain procedure at the landowner's option. The property owner may opt-in to Articles XX through XXVI of this Settlement Agreement at the same time that he, she, or it enters into a Flowage Easement with the Diversion Authority, which Flowage Easement shall provide reasonable compensation to the property owner in a similar manner as is paid to all property owners who have previously executed Flowage Easements and in compliance with applicable law. The Parties intend that the benefits of the above-described mitigation arise out of impacts from the Comprehensive Project Operation and as a result, securing a Flowage Easement is a reasonable condition precedent for properties to benefit from the provisions set forth in Articles XX through XXVI of this Settlement Agreement.

ARTICLE XXVIII. ECONOMIC IMPACT RELIEF FUND

Section 28.01 ECONOMIC IMPACT RELIEF FUND. An Economic Impact Relief Fund will be created and administered by the RWJPA. The monies held within the Relief Fund shall be to be used by the RWJPA, generally, for the following items:

- (a) to reimburse Richland County, Wilkin County, and BRRWD for legal fees incurred related to the proposed diversion through the Effective Date and to be used to pay for future legal and administrative fees incurred by the RWJPA and Richland County related exclusively to the administration/implementation of this Settlement Agreement;
- (b) for Richland County and Wilkin County to be used for public infrastructure;
- (c) for economic assistance and infrastructure to be used by various political subdivisions within Richland County and Wilkin County, including, but not limited to, the BRRWD, the Richland County Water Resource District, Christine, Wolverton, Comstock, Kindred Public School District #2, Richland #44 School District, Barnesville School District, Independent School District #846 in Breckenridge, MN, Richland County Jobs Development Authority, Wilkin County Economic Development Authority, Walcott Township, Eagle Township, and Wolverton Township, and Holy Cross Township in Clay County. Nothing in this Settlement Agreement prevents the RWJPA from distributing funds to political subdivisions other than those enumerated in this Subsection; and further, nothing in this Settlement Agreement obligates the RWJPA to distribute funds to the political subdivisions enumerated in this Subsection.
- (d) The Parties agree and acknowledge that the Diversion Authority is currently in discussions with Holy Cross Township to develop a Memorandum of Understanding, which is intended to provide mutually agreeable terms with respect to Holy Cross Township flood protection and implementation of the Comprehensive Project. Upon execution by the Diversion Authority and Holy Cross Township of the Holy Cross MOU, Holy Cross Township shall automatically be deleted from Section 28(c) without any further action by the Parties, and further, the Diversion Authority will notify the Parties to this Settlement Agreement regarding execution of the Holy Cross MOU and

that this Settlement Agreement has been automatically modified to delete Holy Cross Township from being listed in Section 28(c).

Section 28.02 GIFTS OR COMPENSATION. The RWJPA shall not distribute any portion of the Relief Fund as gifts or compensation to private individuals, businesses, or corporate entities. As stated in Section 28.01(c) of this Settlement Agreement, distributions shall be to political subdivisions to be used exclusively for public purposes including economic assistance and infrastructure purposes. To the extent that distribution of assistance exclusively for public purposes creates benefits that may flow down to individuals, businesses, or corporate entities as a result of said economic assistance and infrastructure, it is not a violation of this Section 28.02.

Section 28.03 DISTRIBUTIONS FROM THE RELIEF FUND. It is anticipated that RWJPA will function as a North Dakota-Minnesota Joint Powers Authority. Distributions from the Relief Fund shall be made in accordance with the law of the state to which distributions are made.

Section 28.04 DISTRIBUTION AGREEMENT.

- (a) The RWJPA shall require every Signatory receiving funds/monies from the Relief Fund, as a precondition to receiving any direct monetary distribution, loan, or grant from the Relief Fund, to execute a Distribution Agreement, which includes the following mandatory terms and conditions:
 - (i) a provision requiring that the Signatory not take any Interference Action to stop or materially interfere with the design, construction, financing, operation, or maintenance of the Comprehensive Project,
 - (ii) a provision requiring that if the Signatory does take such Interference Action then it must repay the distribution from the Relief Fund to the RWJPA, plus liquidated damages of ten percent (10%) interest (“Liquidated Damages”) on such monies to compensate for the impacts of such an Interference Action which are inherently difficult to quantify (“Clawback Clause”), and
 - (iii) a provision granting the Diversion Authority the status of Third-Party Beneficiary under the Distribution Agreement with the right to enforce Interference Action provisions of the Distribution Agreement.
- (b) The RWJPA further agrees to not distribute any portion of the Relief Fund to persons, entities, units of local government, or organizations who are taking any Interference Action to stop or materially interfere with the design, construction, financing, operation, or maintenance of the Comprehensive Project,
- (c) Upon receipt of notice of an Interference Action by the Diversion Authority, RWJPA shall cease distribution to the applicable Signatory until and unless satisfactory compliance with the terms and conditions of the Distribution Agreement has been established.
- (d) The RWJPA shall include the above required Section 28.04(a) (i) through (iii) language in the Distribution Agreement after the Diversion Authority provides

language to the RWJPA that is consistent with this Settlement Agreement to implement and enforce this Section 28.04.

- (e) Prior to distributing any monies from the Relief Fund, the RWJPA shall provide the Diversion Authority with a copy of its Distribution Agreement for distributions from the Relief Fund. The failure of the RWJPA to include items 28.04(a) (i) through (iii) set forth in this Section with any distribution of monies from the Relief Fund shall be deemed a breach of this Settlement Agreement. The RWJPA will provide the Diversion Authority with fully executed copies of all Distribution Agreements within thirty (30) days of the date that such Distribution Agreement is executed.

Section 28.05 ADMINISTRATION OF THE RELIEF FUND. The Relief Fund will be administered by the RWJPA and held in a designated account by the Richland County Auditor as fiscal agent for the RWJPA. The Richland County Auditor will act as a fiduciary when handling monies contained within the Relief Fund. The RWJPA will coordinate with the various political subdivisions impacted by the Comprehensive Project, as set forth above. The RWJPA will provide a copy of the proposed Distribution Agreement to a Signatory at least seven (7) calendar days before distributing money from the Relief Fund to the Signatory pursuant to said Distribution Agreement. The North Dakota State Auditor shall have the right to audit the use of funds as with any other North Dakota public entity.

Section 28.06 DIVERSION AUTHORITY OBLIGATIONS. The costs associated with any obligation of the Diversion Authority set forth in this Settlement Agreement, other than those arising under Article XXVIII of this Settlement Agreement, including but not limited to land acquisition, Flowage Easements, individual mitigation efforts, cemeteries, Georgetown, Christine, Comstock, and Wolverton flood reduction/mitigation projects, crop insurance, business interruption insurance, debris removal, and road repair, will be independently funded by the Diversion Authority and will not be funded through the Relief Fund.

Section 28.07 DIVERSION AUTHORITY PAYMENTS TO THE RICHLAND COUNTY AUDITOR AS FIDUCIARY FOR RELIEF FUND. Payments of Seventy-five Million Dollars (\$75,000,000) will be provided by the Diversion Authority to the 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 Judgment of Dismissal with Prejudice (or the reasonable equivalent thereof if such a judgment 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 judgment of dismissal with prejudice in the pending appeal to the Eighth Circuit Court of Appeals. The remaining balance of \$40,000,000 shall be paid as set forth in Section 28.08 of this Settlement Agreement.

Section 28.08 PAYMENT OF REMAINING \$40,000,000. 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. By way of illustration, on the assumption that Substantial Completion occurs on December 31, 2027, interest would accrue, payments would be

made, and payments would be applied against principal and interest as set forth in Exhibit F to this Settlement Agreement.

Section 28.09 PRE-FUND. The Diversion Authority may decide to pre-fund all or part of its obligations under this Settlement Agreement at any time upon six (6) months' written notice to the RWJPA given in accordance with Section 41.09 of this Settlement Agreement. The prefunding amount will be the remaining principal balance and any accrued interest as yet unpaid.

Section 28.10 AUDIT. The State of North Dakota will have the authority to audit the Relief Fund and to request reports as to how the funds have been spent. None of the Relief Fund shall ever be returned to the Diversion Authority.

Section 28.11 RICHLAND-WILKIN JPA. In the event the RWJPA ever ceases to exist, the RWJPA will identify another North Dakota political subdivision to administer the Relief Fund and obtain approval from the North Dakota State Auditor, if necessary. Any new entity chosen to administer the Relief fund must have the authority to distribute funds in both Minnesota and North Dakota.

Section 28.12 INTERFERENCE WITH COMPREHENSIVE PROJECT. The Diversion Authority's payments to the Relief Fund are contingent on the RWJPA, Wolverton, Comstock, Richland County, and/or Wilkin County not taking any Interference Action to stop or materially interfere with the design, construction, financing, operation, or maintenance of the Comprehensive Project. If the RWJPA, Wolverton, Comstock, Wilkin County, or Richland County take any Interference Action to stop or materially interfere with the design, construction, financing, operation, or maintenance of the Comprehensive Project, the Diversion Authority may invoke the Dispute Mechanism Process set forth in Article XI of this Settlement Agreement. If a voluntary resolution of the dispute does not occur and the Parties proceed to litigation, any payments to the Relief Fund otherwise required to be made after a formal complaint in any court of competent jurisdiction has been served upon the RWJPA, shall be deposited into an escrow fund held by a third party or court, and any further distribution of the funds will be as determined according to the results of the proceeding commenced by the Diversion Authority. Specifically, if the court determines that the RWJPA, Wolverton, Comstock, Wilkin County, or Richland County has breached its obligations under this Section, the Diversion Authority is entitled to reclaim any escrowed funds and its obligation to make future payments to the Relief Fund is terminated. If the court determines that the party is not in breach, all escrowed funds shall be paid to the RWJPA and future direct payments to the RWJPA shall continue in accordance with the terms and conditions of this Settlement Agreement.

Section 28.13 THIRD-PARTY BENEFICIARY.

- (a) The Parties agree that the Diversion Authority shall be designated as a Third-Party Beneficiary under the Distribution Agreement(s) and shall have the direct right to enforce those terms and conditions of the Distribution Agreement(s) identified in Section 28.04 as the Interference Action Clause and the Clawback Clause and any related provisions (collectively, the "Diversion Authority Enforceable Terms") as though it were a party to the Distribution Agreement(s), and shall be entitled to exercise all of the RWJPA's rights and remedies under the Distribution Agreement(s) with respect to the Diversion Authority Enforceable Terms as though it were the RWJPA. In any action to enforce the Distribution Agreement(s), the Parties agree that the principal funds advanced from the Relief Fund to the Signatory that are recovered

from the Signatory would be refunded to the RWJPA and the Diversion Authority shall be entitled to amounts referenced in Section 28.04 as Liquidated Damages to offset against any Diversion Authority costs associated with enforcing the Distribution Agreement(s).

- (b) The RWJPA, Wolverton, Comstock, Wilkin County, and/or Richland County agree to cooperate in Good Faith with the Diversion Authority and not to interfere in any action by the Diversion Authority to enforce the terms and conditions of the Distribution Agreement(s) pursuant to this Section and Section 28.04.
- (c) The Diversion Authority shall reimburse the RWJPA for all reasonable attorney fees incurred by the RWJPA with respect to its cooperation with the Diversion Authority relating exclusively to the Diversion Authority's enforcement of the Diversion Authority Enforceable Terms in a court having personal and subject matter jurisdiction over the matter.
- (d) The Diversion Authority shall have no obligation to reimburse the RWJPA for enforcement actions under the Distribution Agreement(s) unrelated to the Diversion Authority Enforceable Terms. Nothing in this Section 28.13 requires the RWJPA to file a legal action in a court having personal and subject matter jurisdiction to enforce the Diversion Authority Enforceable Terms.
- (e) At all times, the RWJPA and the Diversion Authority agree to act in Good Faith to administratively enforce the Distribution Agreements' terms relating to the Diversion Authority Enforceable Terms, and the RWJPA has the discretion to enforce terms and conditions of the Distribution Agreement(s) unrelated to the Diversion Authority Enforceable Terms as it deems appropriate and necessary to enforce its rights and is solely responsible for the costs of enforcing terms and conditions of the Distribution Agreement(s) unrelated to the Diversion Authority Enforceable Terms.
- (f) It is anticipated and intended that the RWJPA's "agreement to act in Good Faith to administratively enforce" as set forth above will likely require the RWJPA to send a notice of default to a Signatory of a Distribution Agreement when it has reasonable grounds to do so, in accordance with the procedures to be set forth in the Distribution Agreement(s).

Section 28.14 ENFORCEMENT OF THE SETTLEMENT AGREEMENT. Notwithstanding anything to the contrary and subject to the dispute mechanism provision set forth in this Settlement Agreement, the RWJPA, Comstock, and Wolverton are not precluded from enforcing the terms and conditions of this Settlement Agreement, which such enforcement shall not be deemed an Interference Action as defined herein. In addition, to the extent that non-parties Wilkin County and Richland County possess enforceable rights under this Settlement Agreement, actions to enforce such rights shall not be deemed to be an Interference Action as defined herein.

ARTICLE XXIX. PUBLIC OPPOSITION AND/OR SUPPORT

Section 29.01 PUBLIC OPPOSITION AND/OR SUPPORT. Although they may choose to take a supporting position for certain Diversion Authority activities after the Settlement Agreement is

executed, the Non-Authority Parties will neither oppose nor support the Comprehensive Project in the media or at any state or political subdivision level. The Parties understand that the Parties have no control over supporting or opposing positions being taken by members of the public. The RWJPA will shut down and cease operation of the RWJPA editorial team and will not allow its name to be used to oppose the Comprehensive Project.

Section 29.02 NO OBLIGATION REGARDING THE GENERAL PUBLIC. The Parties agree and acknowledge that they do not have control over the statements that may be made or the positions that may be taken by members of the general public.

Section 29.03 THE RWJPA EDITORIAL TEAM TO CEASE OPERATIONS. The RWJPA has obtained the agreement of its editorial team to close and completely cease the operations of the editorial team and will assure compliance with that agreement, which includes, but is not limited to, the website “FMDam.org” and the Facebook pages “FMDam.org” and “FM. Diversion” and its writing, editing, promotion of, and placement of news articles, editorials, and letters to the editor. The RWJPA shall ensure that the editorial team removes all materials from said locations whether electronic or in print form. The RWJPA further agrees that it will not allow its name and identity to be used to oppose the Comprehensive Project, nor will it facilitate, cooperate in, or encourage the founding of any new organizations seeking to oppose the Comprehensive Project.

ARTICLE XXX. FINAL OPERATING PLAN

Section 30.01 FINAL OPERATING PLAN. Whenever the Master Water Control Manual, Fargo-Moorhead Metropolitan Area Flood Risk Management Project changes in any respect, those changes shall be provided in writing to the RWJPA and BRRWD within ten (10) Business Days after the changes are adopted by the Diversion Authority Board. Further, after the Master Water Control Manual, Fargo-Moorhead Metro Area Flood Risk Management Project is adopted as a final document, said document shall be provided to the RWJPA and BRRWD within ten (10) Business Days after it has been adopted.

Section 30.02 CHANGE OF LAW. Subject to the Change of Law clause, if changes in the Master Water Control Manual, Fargo-Moorhead Metro Area Flood Risk Management Project cause material increases in the elevation of the Staging Area/Inundation Levels or materially lengthen the duration of the water detention, the Diversion Authority shall be responsible for supplemental compensation and mitigation for affected land, landowners, and businesses, as determined by the then-in-affect Property Rights Acquisition and Mitigation Plan (“PRAM”), provided that PRAM amendment will not detract from the Diversion Authority’s obligations in this Settlement Agreement.

ARTICLE XXXI. RETENTION PROJECTS

Section 31.01 RETENTION PROJECTS POLICY. The Diversion Authority will continue its policy of encouraging the development of retention projects in the Red River Basin.

Section 31.02 RETENTION PROJECT COST SHARE. The Diversion Authority will provide reasonable funds to political subdivisions to cost share upstream retention projects when (i) such project(s) lower and/or reduce the frequency of the water in the Staging Area, (ii) a sponsoring political subdivision is willing to undertake the upstream retention project, and (iii) the sponsoring

political subdivision is able to secure the appropriate real property interests (fee simple, easement, or other necessary rights) and the share of the funding contemplated in this Section 31.02

ARTICLE XXXII. INDIVIDUAL RIGHTS

Section 32.01 NON-WAIVER OF NON-PARTY OR INDIVIDUAL RIGHTS. Nothing in this Settlement Agreement shall be construed as superseding, giving up, or waiving whatever rights property owners who are (a) living persons or (b) non-Party entities not related to or controlled by any Parties may have to compensation as a result of impacts to or occupation of real property resulting from the construction the Comprehensive Project Operation, including, but not limited to, relief available under the Alternative Dispute Resolution Board, due process, equal protection, or the takings clauses of the statutes and/or constitutions of Minnesota, North Dakota, or United States Constitution and related federal statutes.

ARTICLE XXXIII. AFFIRMATIVE COVENANTS OF THE DIVERSION AUTHORITY

Section 33.01 THE DIVERSION AUTHORITY IS A POLITICAL SUBDIVISION. The Diversion Authority is a permanent and perpetual North Dakota political subdivision, as created by the Joint Powers Agreement dated June 1, 2016. Pursuant to and in accordance with section 7.01 of the Joint Powers Agreement the Diversion Authority has all of the necessary duties and powers of a North Dakota political subdivision, including, but not limited to, entering into this Settlement Agreement and purchasing the insurance products set forth in Articles XX and XXI of this Settlement Agreement.

Section 33.02 THE DIVERSION AUTHORITY IS A NON-FEDERAL SPONSOR UNDER THE PPA. The Diversion Authority, the City of Fargo, and the City of Moorhead are Non-Federal Sponsors of the Comprehensive Project as set forth in the Project Partnership Agreement (“PPA”) with the United States Department of Army.

Section 33.03 OBLIGATION TO COMPLY WITH TERMS AND CONDITIONS OF PPA. Pursuant to Article XIII (Operations and Maintenance) and Section 19.03 (Distribution of Funds and Property) of the Joint Powers Agreement and the obligations set forth in the Project Partnership Agreement, in the event the Diversion Authority should ever dissolve any and all obligations to third parties including the Department of the Army will continue in full force and effect and the Comprehensive Project Property and any project obligations, liabilities and funds and all the rights and obligations contained in this Settlement Agreement shall be transferred to and become the obligation of the City of Fargo and the City of Moorhead as the other Non-Federal Sponsors.

ARTICLE XXXIV. COOPERATION WITH USACE

Section 34.01 DUTY TO COOPERATE IN GOOD FAITH WITH USACE. The Parties recognize and acknowledge that USACE is not a party to this Settlement Agreement. This Settlement Agreement does not require the consent or acquiescence of USACE to be fully effective and binding and the Parties agree that they are not seeking and do not require the approval of USACE to its terms. Additionally, no Party has represented that it speaks for USACE or has the authority to bind USACE, nor has any Party relied on any such representation. No Party shall be liable for any actions or decisions of USACE. The Parties agree to cooperate in Good Faith to ensure that the actions carried

out pursuant to this Settlement Agreement do not violate any applicable USACE requirements. The Parties agree that if, notwithstanding the foregoing, any Party claims that some action or decision by USACE has resulted in a Change of Law or an alleged breach of this Settlement Agreement, the Party making such an allegation shall notify the other Parties in writing and provide a reasonable opportunity for consultation with USACE to attempt to mitigate, resolve, or cure the alleged breach. In the event the terms of Article XII of this Settlement Agreement (Change of Law) shall be applicable, i.e., in the event of a Change of Law, the Parties shall work collaboratively to ensure that the substance and the intent of this Settlement Agreement is implemented and continues in full force and effect via an amendment to this Settlement Agreement.

ARTICLE XXXV. COOPERATION WITH MDNR

Section 35.01 DUTY TO COOPERATE IN GOOD FAITH WITH THE MDNR. The Parties recognize and acknowledge that MDNR is not a party to this Settlement Agreement. This Settlement Agreement does not require the consent or acquiescence of MDNR to be fully effective and binding and the Parties agree that they are not seeking and do not require the approval of MDNR to its terms. Additionally, no Party has represented that it speaks for MDNR or has the authority to bind MDNR, nor has any Party relied on any such representation. No Party shall be liable for any actions or decisions of MDNR. The Parties agree to cooperate in Good Faith to ensure that the actions carried out pursuant to this Settlement Agreement do not violate any applicable MDNR requirements. The Parties agree that if, notwithstanding the foregoing, any Party claims that some action or decision by MDNR has resulted in a Change of Law or an alleged breach of the terms of this Settlement Agreement, the Party making such an allegation shall notify the other Parties in writing and provide a reasonable opportunity for consultation with MDNR to attempt to mitigate, resolve, or cure the alleged breach. In the event the terms of Article XII (Change of Law) shall be applicable, i.e., in the event of a Change of Law, the Parties shall work collaboratively to ensure that the substance and the intent of this Settlement Agreement is implemented and continues in full force and effect via an amendment to this Settlement Agreement.

ARTICLE XXXVI. COVENANT TO OPERATE COMPREHENSIVE PROJECT

Section 36.01 COVENANT TO OPERATE COMPREHENSIVE PROJECT. The Diversion Authority affirmatively covenants that pursuant to and in accordance with the Project Partnership Agreement between the Department of the Army, the City of Fargo, the City of Moorhead, and the Metro Flood Diversion Authority for the Construction of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 11, 2016¹ and as amended on March 19, 2019 (the “PPA”), along with the Joint Powers Agreement² creating the Diversion Authority, the Diversion Authority affirmatively covenants that it is the political subdivision responsible for Comprehensive Project Operation in accordance with the Master Water Control Manual, Fargo-Moorhead Metro Area Flood Risk Management Project, MDNR Permit 2018-0819, and applicable federal permits.

¹Article II, section I of the PPA provides that “[t]he Non-Federal sponsors, at no cost to the Government [USACE], shall operate, maintain, repair, rehabilitate, and replace the Project in a manner compatible with the authorized purposes of the Project in accordance with the applicable Federal laws and the OMRR&R Manuals, and any subsequent modification thereto.”

²Article XIII of the Joint Powers Agreement grants the Diversion Authority the rights, obligations, and responsibility of operating the Comprehensive Project.

**ARTICLE XXXVII.
CHOICE OF LAW/VENUE**

Section 37.01 CHOICE OF LAW. This Settlement Agreement shall be interpreted and construed in accordance with and be governed by the laws of the State of North Dakota. However, this Section 37.01 is to be interpreted to only apply to this Settlement Agreement itself, and the Parties do not intend that North Dakota law should apply to interpretations of Federal or Minnesota statutes, regulations, or permit conditions. Issues that are not governed by this Section 37.01 include, but are not limited to, the construction and application of state and local permitting standards in Minnesota, administration of RWJPA distributions within Minnesota, constitutional and statutory requirements in Minnesota with regard to eminent domain, and Federal FEMA and USACE requirements and regulations.

Section 37.02 VENUE. The Parties hereby designate the district court of the State of North Dakota in Cass County (within the East Central Judicial District) as the proper and exclusive venue for any suit or action directly arising out of this Settlement Agreement not subject to arbitration, except that the Parties may, if appropriate, seek injunctive relief against political subdivisions of the State of Minnesota in the district courts of the State of Minnesota. The Parties agree to be bound by any decision issued by the East Central Judicial District Court without the requirement of any order or judgment being transcribed or otherwise transferred to any other court. The foregoing shall not waive any rights to appeal. The Parties further agree that the East Central Judicial District court shall have all the powers necessary to enforce its decision, including the power of contempt over all Parties.

**ARTICLE XXXVIII.
ACKNOWLEDGMENT AND AUTHORIZATION**

Section 38.01 ACKNOWLEDGMENT. Each of the Parties affirms and acknowledges that it has fully read, appreciates, and understands the words, terms, conditions, and provisions of this Agreement and is fully satisfied with the same. Each Party affirms and acknowledges that it has been, or has had the opportunity to be, represented by legal counsel of its choice.

Section 38.02 AUTHORIZATION TO EXECUTE THIS SETTLEMENT AGREEMENT. The representatives of the Parties signing this Settlement Agreement each represent that they have been duly authorized by the governing body of their respective entity to execute this Settlement Agreement on its behalf.

**ARTICLE XXXIX.
PAYMENTS**

Section 39.01 GENERAL. The Parties will work in Good Faith to coordinate and make the payments contemplated in Sections 13.01 and 28.07 of this Settlement Agreement. On or before the Effective Date of this Agreement, RWJPA and BRRWD will provide the Diversion Authority with wire instructions for the account(s) to which the payments Sections 13.01 and 28.07 of this Settlement Agreement are to be deposited.

Section 39.02 PAYMENTS BY THE DIVERSION AUTHORITY. The Diversion Authority will wire the payments contemplated to BRRWD and the RWJPA in accordance with Sections 13.01 and 28.07 of this Settlement Agreement. This obligation is contingent upon the conditions precedent set forth in Sections 13.01 and 28.07 of this Settlement Agreement being satisfied. Upon receipt of the

payments BRRWD and RWJPA will provide proof of receipt of funds within forty-eight (48) hours of receiving the wire transfer.

Section 39.03 PAYMENTS BY THE RWJPA TO BRRWD. The RWJPA will wire the payments contemplated to BRRWD in accordance with Section 13.01 of this Settlement Agreement. This obligation is contingent upon the conditions precedent set forth in Section 13.01 of this Settlement Agreement being satisfied.

ARTICLE XL. TERMINATION DATE

Section 40.01 TERM. The term of this Settlement Agreement shall begin on the Effective Date and shall terminate six (6) years after the last payment to the Relief Fund has been made by the Diversion Authority as provided in Section 28.08 of this Settlement Agreement, or when the Comprehensive Project permanently discontinues operations, or December 31, 2083, whichever date shall occur last.

Section 40.02 MANDATORY MEET AND CONFER MEETING. By or before December 31, 2078, the Parties' designated representatives shall meet and confer to determine if any amendments or termination of this Settlement Agreement should occur. Any amendments or termination shall be done by mutual agreement of the Parties.

ARTICLE XLI. MISCELLANEOUS

Section 41.01 PROHIBITION ON ASSIGNMENT. No Party to this Settlement Agreement may transfer or assign this Settlement Agreement or any of the Party's rights or obligations unless it obtains the express written consent of all the Parties. Provided, however, the Parties recognize that RWJPA may be required to reorganize under state laws in order to fully perform its functions herein and agree to assent to a reasonable reorganization. In the event the RWJPA must reorganize, it shall provide the Diversion Authority, Wolverton, Comstock, and BRRWD with thirty (30) days written notice of the proposed reorganization and draft copies of the reorganization documents so that the Diversion Authority, Wolverton, Comstock, and BRRWD may provide comments to the proposed reorganization. The Parties agree and acknowledge that RWJPA is currently drafting an amendment to its organizational structure to allow it to administer the Relief Fund. Any attempted transfer or assignment made in violation of this Section 41.01 shall be void as a matter of law.

Section 41.02 TAX CONSEQUENCES. The Parties agree and acknowledge that the receipt of certain benefits and funds pursuant to this Settlement Agreement may have an impact on taxes that are due and owing by the recipient. Recipients are responsible for apprising themselves of potential tax consequences before receiving any benefit or funds described herein, and the Diversion Authority assumes no liability, and shall not be responsible, for resulting negative tax implications.

Section 41.03 MAINTENANCE OF PROJECTS. Except for providing initial and annual funding for design, construction and maintenance of the Georgetown Project, Comstock Projects, Christine Project, and Wolverton Projects, the Diversion Authority will not be responsible for the operation and maintenance of the Georgetown Project, Comstock Projects, Christine Project, and Wolverton Projects

Section 41.04 AMENDMENT. This Settlement Agreement may only be amended in a written instrument executed by all of the Parties or as provided for in Section 12.05 of this Settlement Agreement.

Section 41.05 ENTIRE AGREEMENT. This Settlement Agreement constitutes the entire agreement between the Parties on the subject matter of this Settlement Agreement and supersedes any preceding agreement between the Parties on the subject matter of this Settlement Agreement. In particular, this Settlement Agreement fully supersedes and replaces the Term Sheet.

Section 41.06 SURVIVAL. The indemnifications, limitations, releases, obligations, and all other provisions, which by their inherent character should survive expiration or earlier termination of this Settlement Agreement, will survive the expiration or earlier termination of this Settlement Agreement.

Section 41.07 AUTHORIZED REPRESENTATIVES.

- (a) The Parties hereby designate the following individuals as their initial representatives, respectively, to administer this Settlement Agreement on their behalf:
 - (i) Diversion Authority Representative: Its Executive Director
 - (ii) RWJPA Representative: Its Chairperson
 - (iii) BRRWD Representative: Its: Chairperson
 - (iv) Comstock Representative: Its: Mayor
 - (v) Wolverton Representative: Its: Mayor
- (b) The representatives will be reasonably available to each other during the term of this Settlement Agreement and will have the authority to issue instructions and other communications on behalf of the Party or Parties, respectively, and will be the recipients of notices and other written communications from the other Parties pursuant to this Settlement Agreement, except as otherwise provided in this Settlement Agreement. Such representatives, however, will not have the authority to make decisions or give instructions binding upon the Diversion Authority, RWJPA, BRRWD, Comstock, and Wolverton, except to the extent expressly authorized by the Diversion Authority, RWJPA, BRRWD, Comstock, and Wolverton, as the case may be, in writing.
- (c) In the event the Diversion Authority, RWJPA, BRRWD, Comstock, or Wolverton designates a different representative, it will give the other Party written notice of the identity of and contact information for the new representative.

Section 41.08 NOTICES.

- (a) All notices under this Settlement Agreement shall be in writing and: (1) delivered personally; or (2) sent by certified mail, return receipt requested; or (3) sent by a

recognized overnight mail or courier services, with delivery receipt requested; or (4) sent by email communication followed by a hard copy, to the following addresses.

- (b) All notices to the Diversion Authority shall be marked as regarding this Settlement Agreement and shall be delivered to the following address or as otherwise directed by the Diversion Authority Representative:

Attn: Executive Director
Metro Flood Diversion Authority
207 4th St N, Suite A
Fargo, ND 58102

- (c) All notices to the RWJPA shall be marked as regarding this Settlement Agreement and shall be delivered to the following address or as otherwise directed by the RWJPA Representative:

Attn: Chairperson
Richland-Wilkin JPA
418 2nd Ave. N
Wahpeton, ND 58075

- (d) All notices to BRRWD shall be marked as regarding this Settlement Agreement and shall be delivered to the following address or as otherwise directed by the BRRWD Representative:

Attn: Chairperson
Buffalo Red-River Watershed District
P.O. Box 341
Barnesville, MN 56514

- (e) All notices to Wolverton shall be marked as regarding this Settlement Agreement and shall be delivered to the following address or as otherwise directed by the Wolverton Representative:

Attn: Mayor
City of Wolverton
301 US Hwy 75
Wolverton, MN 56594

- (f) All notices to Comstock shall be marked as regarding this Settlement Agreement and shall be delivered to the following address or as otherwise directed by the Comstock Representative:

Attn: Mayor
City of Comstock
P.O. Box 39
Comstock, MN 56525

- (g) Notices shall 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. shall be deemed received on the first calendar day following delivery.

Section 41.09 FORCE MAJEURE. In no event shall a Party be liable for any failure or delay in performance of its obligations hereunder resulting from an event beyond its reasonable control, including but not limited to, acts of God or of the public enemy, fire, floods, embargoes, war, acts of war (whether war is declared or not), terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, sabotage, vandalism, epidemic or pandemic, or adverse and extreme weather conditions not reasonably anticipated; provided, however, that the Party so affected must (a) provide prompt written notice to the other Parties regarding the impacts on the performance of its obligations and the causes thereof, and (b) make Good Faith efforts to mitigate the impacts on its performance and resume performance as soon as it practicable under the circumstances. The Parties specifically exclude the impacts from Changes of Law from this Section 41.10; instead, any such impacts are to be governed by Article XII.

Section 41.10 COUNTERPARTS AND ELECTRONIC SIGNATURES. This Settlement Agreement may be executed in five or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

(Signatures appear on the following pages.)

IN WITNESS WHEREOF, the Parties caused this Settlement Agreement to be executed.

Signature Page for the Metro Flood Diversion Authority

The Governing Body of the Metro Flood Diversion Authority approved this Settlement Agreement on the ____ of _____, 2021.

Authority:

Metro Flood Diversion Authority

_____, Chair

Joel Paulsen, Executive Director

Signature Page for the Richland-Wilkin Joint Powers Authority

The Governing Body of the Richland-Wilkin Joint Powers Agreement approved this Settlement Agreement on the ____ of _____, 2021.

RWJPA:

Richland-Wilkin Joint Powers Authority

Nathan Berseth,
Richland County Commissioner

Dennis Larson,
Wilkin County Commissioner

Signature Page for the City of Comstock

The Governing Body of the City of Comstock approved this Settlement Agreement on the ____ of _____, 2021.

COMSTOCK:

The City of Comstock, MN

Tom Askegaard, Mayor

Pamela Gust, Clerk

Signature Page for the City of Wolverton

The Governing Body of the City of Wolverton approved this Settlement Agreement on the ____ of _____, 2021.

WOLVERTON:

The City of Wolverton, MN

Nancy Olthoff, Mayor

Jessi Kappes, Clerk

Signature Page for the Buffalo-Red River Watershed District

The Governing Body of the Buffalo-Red River Watershed District approved this Settlement Agreement on the ____ of _____, 2021.

BRRWD:

Buffalo-Red River Watershed District

Peter Fjestad, President

Catherine Affield, Vice President

EXHIBIT A

A Buffalo-Red River Watershed District (BRRWD) Permit is granted and will remain valid subject to the Binding Settlement Term Sheet, Settlement Agreement, and the following conditions:

1. **ADDITIONAL FLOOD MITIGATION:** With impacts expected to flood levels at Wolverton and Georgetown, the Permittee shall provide the BRRWD with funding for permanent 100-year FEMA Accredited Flood Protection (period of Record Hydrology) protection for the City of Georgetown and the City of Wolverton. Flood protection for the Cities of Georgetown and Wolverton will be designed and constructed by the BRRWD and may, subject to Permittee providing proof of sufficient funding, commence prior to acquisition of all flowage easements for the proposed maximum flood pool and to acquisition of property rights for dam construction. Notwithstanding the foregoing, Permittee shall ensure that it immediately begins the process of engaging personally with all landowners in negotiations for flowage easement and property rights. The BRRWD will seek reasonable funding assistance options for the Georgetown and Wolverton flood mitigation projects. Maintenance and operation of the flood protection for the Cities of Georgetown and Wolverton to be paid for by the Permittee.
2. **SITE ACCESS:** The Permittee shall grant access to the Minnesota portions of the project site at all reasonable times during and after construction to BRRWD authorized representatives and the Board of Managers for inspection of the work authorized hereunder.
3. **PROPERTY RIGHTS:** Minnesota property rights shall be acquired, or option agreements shall be signed for all property necessary for construction and operation of the Project in Minnesota prior to the commencement of construction in Minnesota. Permittee shall, to the extent it has not already done so, immediately begin the process of engaging personally with all landowners in negotiations for such rights. Property rights shall include fee simple absolute acquisition of all property of the Project footprint (Plan B eastern tieback could be by easement). Construction of the Red River Control Structure, In-Town projects, and road improvements within the BRRWD's jurisdiction can proceed when all property rights necessary for their individual construction are acquired.

All lands with residential or farmstead structures that will be impacted by Project operation will be acquired in fee simple absolute, unless the:

- a. landowner prefers a mutually agreeable alternative, and
- b. other regulatory authorities (such as Army Corps, FEMA, and Department of Natural Resources). BRRWD will permit the alternative (assumed to be no more restrictive than current statewide floodplain regulations), and
- c. the alternative is cost effective (costs less than full fee simple absolute purchase).

Mitigation for structures upstream of the Southern embankment within the Fringe Area of the Staging Area shall be acquired in accordance with the Minnesota Constitution

regarding landowner compensation provided that the Permittee will coordinate in good faith with willing landowners to voluntarily remove project impacts from structures, farmsteads, rural residences, and business structures through the use of ring levees, structure elevation, or other methods acceptable under the Minnesota Constitution, applicable federal and state requirements, and the MDNR Permit to secure necessary property rights for the operation of the Comprehensive Project. For purposes of this Permit the term "Fringe Area" means those areas within BRRWD's permit jurisdiction in which the impact of staging water from the operation of the Comprehensive Project increases the water surface elevation by more than .10 of a foot (1.2 inches) but less than .50 of a foot (six inches).

For all other property impacted when the dam is operated at maximum capacity that is not acquired in fee simple absolute, flowage easements are required. The demolition and/or cleanup of bought-out structures, construction associated with relocation, elevating, floodproofing, or ring diking of farmstead or rural residences, and construction associated with landowner preferred alternatives may commence prior to acquisition of all flowage easements.

4. SUBMITTALS: All submittals required by the Minnesota Department of Natural Resources Permit No. 2018-0819 conditions shall also be provided concurrently to the BRRWD.

5. WOLVERTON CREEK CROSSING: The Permittee shall coordinate the final design of the Wolverton Creek Structure with the BRRWD to ensure compatibility with the Wolverton Creek Restoration Project. The BRRWD recommends the Wolverton Creek Structure and Plan B Eastern Tieback levee be moved to the County line. No construction of the Wolverton Creek Structure is allowed by this permit until written approval of the final design is obtained from the BRRWD staff.

6. OPERATION, MAINTENANCE, MONITORING. AND INSPECTION PLAN: Any changes to the Operation and Maintenance Plan require prior written approval of the BRRWD staff.

7. CONSTRUCTION PHASE APPROVAL: Written approval must be obtained from the BRRWD staff prior to the start of construction of any components of the dam in Minnesota. Permittee shall submit to the BRRWD detailed plans and specifications at least 120 days prior to construction. The intention of the plan review and approval is to ensure consistency with the original project design and ensure local drainage accommodations and erosion control are adequate.

8. PROJECT MAINTENANCE: The Permittee may, at its cost, maintain the project in Minnesota without a permit from the BRRWD, as long as the maintenance restores the system to its original constructed configuration. Permittee shall ensure that all flood related debris and damage caused by operation of the Project, including that on property belonging to private citizens is cleaned and remediated in a timely manner at the cost of the Permittee.

The Permittee shall notify the BRRWD of any modification in excess of \$100,000 in estimated construction cost.

9. APPLICABLE FEDERAL, STATE, OR LOCAL REGULATIONS: This permit does not release the permittee from any rules, regulations, requirements ordinances, or standards of any applicable federal, state, or local agencies. This includes all Department of Natural Resources Project Permit No. 2018-0819 requirements.

10. COMPLETION DATE: Construction work authorized under this permit shall be completed on or before December 31, 2027. The Permittee may request an extension of the time to complete the project by submitting a written request six (6) months prior to permit expiration, stating the reason(s) therefor to the BRRWD. Any extension of time made and granted by the BRRWD shall be made in writing.

EXHIBIT B

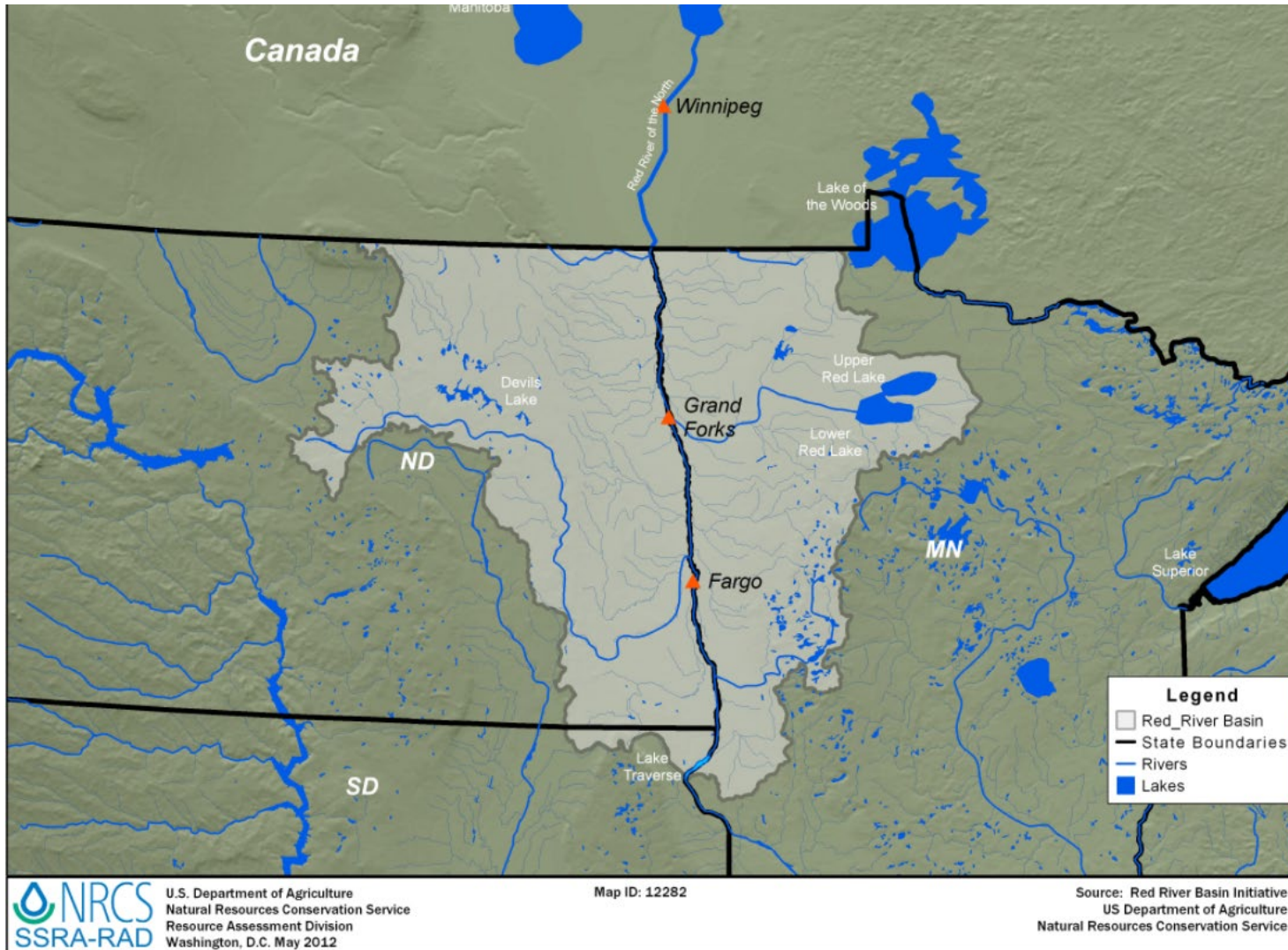


EXHIBIT C

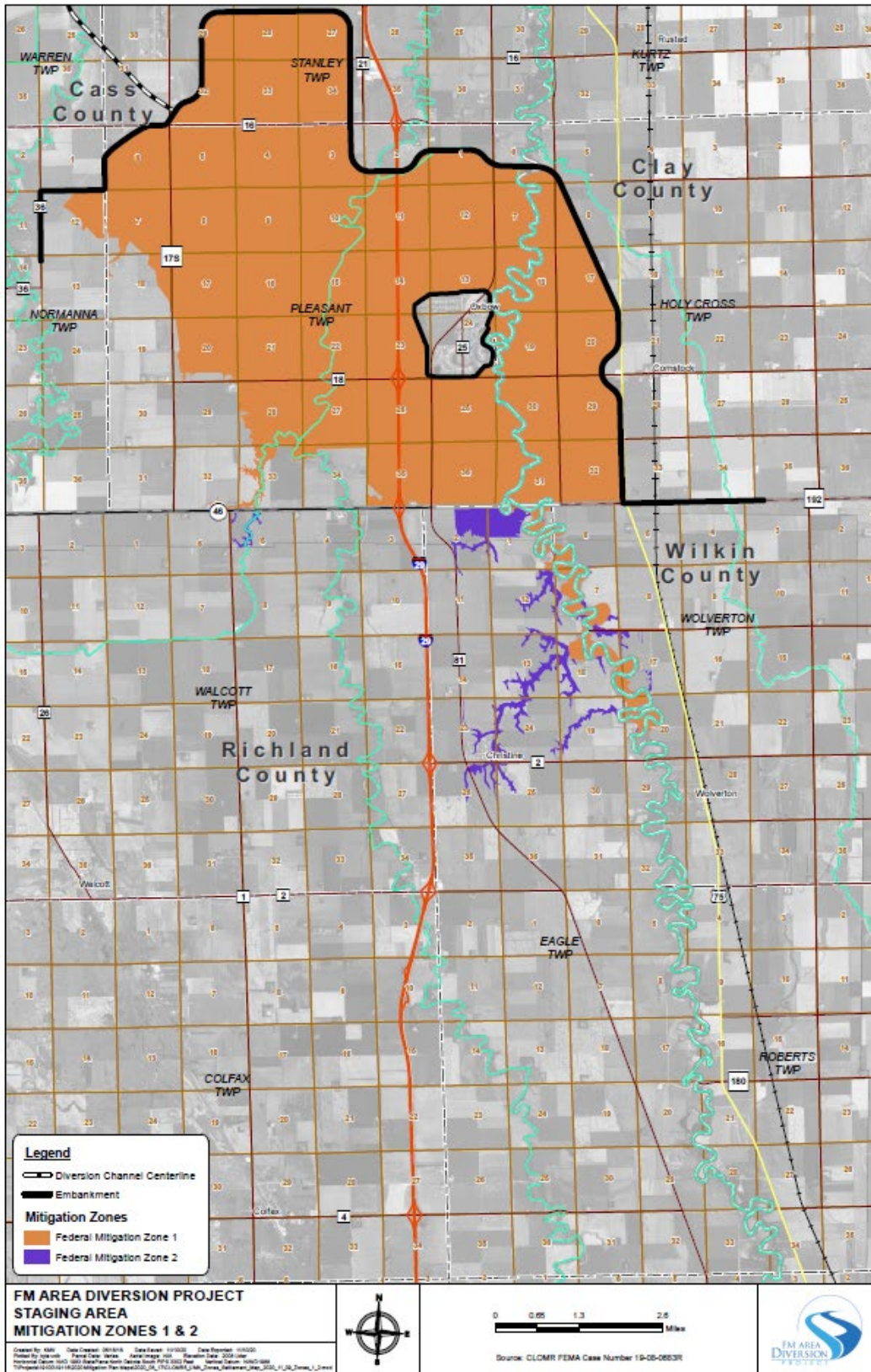


EXHIBIT D

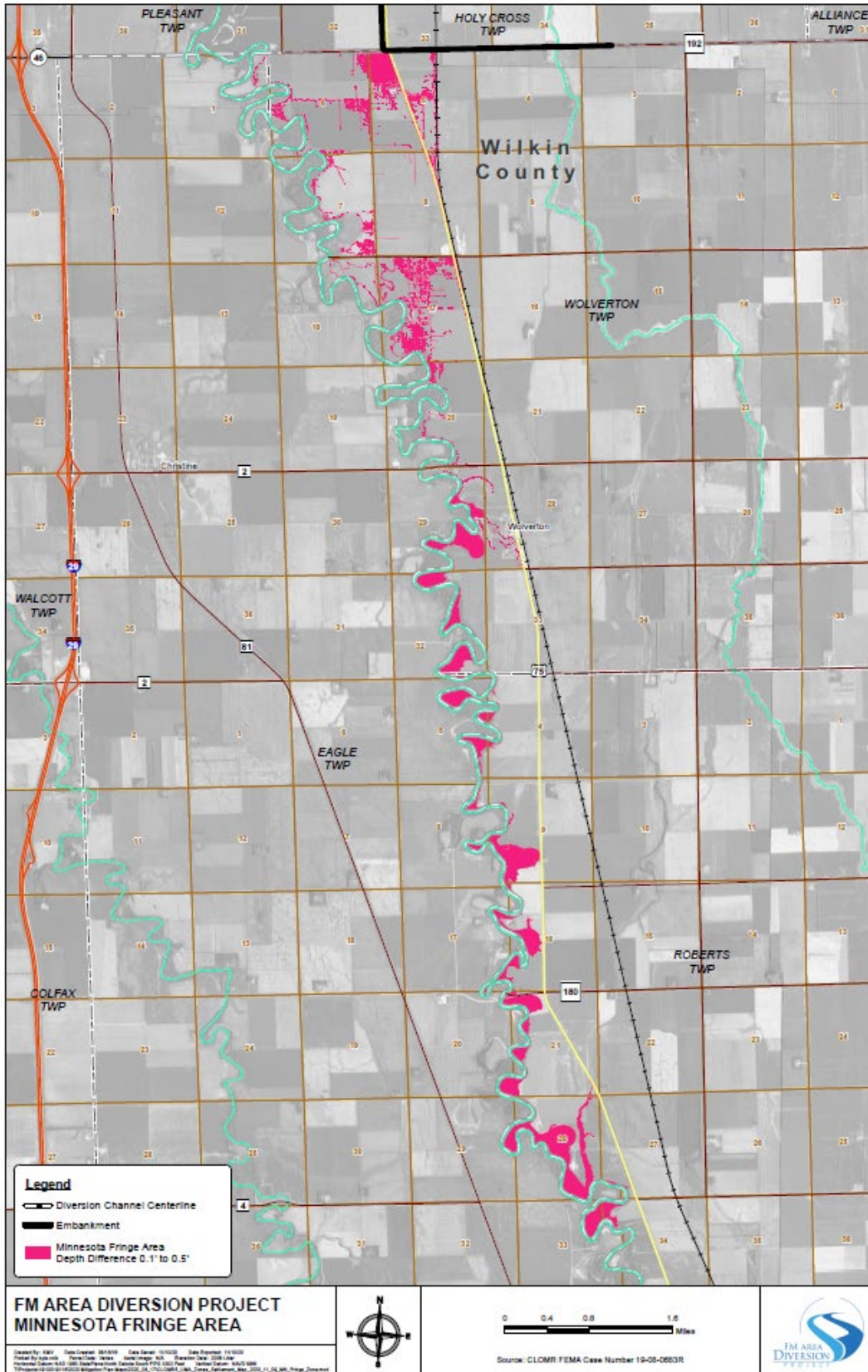
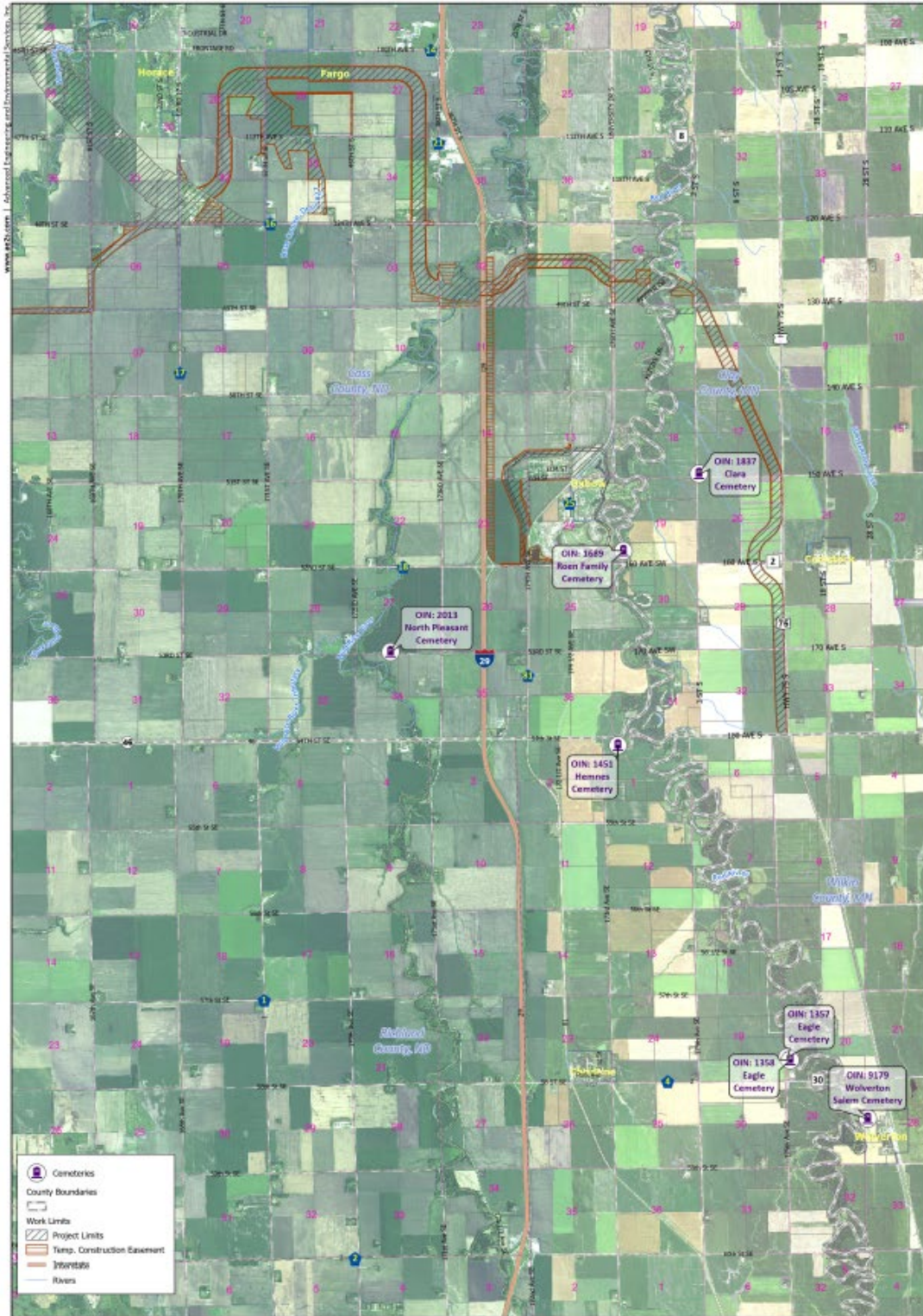


EXHIBIT E



Upstream Mitigation Area
Impacted Cemeteries

FM AREA DIVERSION PROJECT
Map Date: 11/11/2020



EXHIBIT F

1/11/2021 1:11 PM Page 1

201124 Relief Fund Payments

Rate Period: Exact Days

Nominal Annual Rate: 2.000%

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	12/31/2020	40,000,000.00	1		
2 Payment	12/31/2027	1,857,299.97	33	Annual	12/31/2059

AMORTIZATION SCHEDULE - U.S. Rule (no compounding)

Date	Payment	Interest Accrued	Interest Paid	Principal Paid	----- Interest	Balance Due Principal	----- Total
Loan 12/31/2020		0.00	0.00	0.00	0.00	40,000,000.00	40,000,000.00
2020 Totals	0.00	0.00	0.00	0.00			
1 12/31/2027	1,857,299.97	5,602,191.78	1,857,299.97	0.00	3,744,891.81	40,000,000.00	43,744,891.81
2027 Totals	1,857,299.97	5,602,191.78	1,857,299.97	0.00			
2 12/31/2028	1,857,299.97	802,191.78	1,857,299.97	0.00	2,689,783.62	40,000,000.00	42,689,783.62
2028 Totals	1,857,299.97	802,191.78	1,857,299.97	0.00			
3 12/31/2029	1,857,299.97	800,000.00	1,857,299.97	0.00	1,632,483.65	40,000,000.00	41,632,483.65
2029 Totals	1,857,299.97	800,000.00	1,857,299.97	0.00			
4 12/31/2030	1,857,299.97	800,000.00	1,857,299.97	0.00	575,183.68	40,000,000.00	40,575,183.68
2030 Totals	1,857,299.97	800,000.00	1,857,299.97	0.00			
5 12/31/2031	1,857,299.97	800,000.00	1,375,183.68	482,116.29	0.00	39,517,883.71	39,517,883.71
2031 Totals	1,857,299.97	800,000.00	1,375,183.68	482,116.29			
6 12/31/2032	1,857,299.97	792,523.04	792,523.04	1,064,776.93	0.00	38,453,106.78	38,453,106.78
2032 Totals	1,857,299.97	792,523.04	792,523.04	1,064,776.93			
7 12/31/2033	1,857,299.97	769,062.14	769,062.14	1,088,237.83	0.00	37,364,868.95	37,364,868.95
2033 Totals	1,857,299.97	769,062.14	769,062.14	1,088,237.83			
8 12/31/2034	1,857,299.97	747,297.38	747,297.38	1,110,002.59	0.00	36,254,866.36	36,254,866.36
2034 Totals	1,857,299.97	747,297.38	747,297.38	1,110,002.59			
9 12/31/2035	1,857,299.97	725,097.33	725,097.33	1,132,202.64	0.00	35,122,663.72	35,122,663.72
2035 Totals	1,857,299.97	725,097.33	725,097.33	1,132,202.64			
10 12/31/2036	1,857,299.97	704,377.80	704,377.80	1,152,922.17	0.00	33,969,741.55	33,969,741.55

2036 Totals	1,857,299.97	704,377.80	704,377.80	1,152,922.17			
11 12/31/2037	1,857,299.97	679,394.83	679,394.83	1,177,905.14	0.00	32,791,836.41	32,791,836.41
2037 Totals	1,857,299.97	679,394.83	679,394.83	1,177,905.14			
12 12/31/2038	1,857,299.97	655,836.73	655,836.73	1,201,463.24	0.00	31,590,373.17	31,590,373.17
2038 Totals	1,857,299.97	655,836.73	655,836.73	1,201,463.24			
13 12/31/2039	1,857,299.97	631,807.46	631,807.46	1,225,492.51	0.00	30,364,880.66	30,364,880.66
2039 Totals	1,857,299.97	631,807.46	631,807.46	1,225,492.51			
14 12/31/2040	1,857,299.97	608,961.44	608,961.44	1,248,338.53	0.00	29,116,542.13	29,116,542.13
2040 Totals	1,857,299.97	608,961.44	608,961.44	1,248,338.53			
15 12/31/2041	1,857,299.97	582,330.84	582,330.84	1,274,969.13	0.00	27,841,573.00	27,841,573.00
2041 Totals	1,857,299.97	582,330.84	582,330.84	1,274,969.13			
16 12/31/2042	1,857,299.97	556,831.46	556,831.46	1,300,468.51	0.00	26,541,104.49	26,541,104.49
2042 Totals	1,857,299.97	556,831.46	556,831.46	1,300,468.51			
17 12/31/2043	1,857,299.97	530,822.09	530,822.09	1,326,477.88	0.00	25,214,626.61	25,214,626.61
2043 Totals	1,857,299.97	530,822.09	530,822.09	1,326,477.88			
18 12/31/2044	1,857,299.97	505,674.16	505,674.16	1,351,625.81	0.00	23,863,000.80	23,863,000.80
2044 Totals	1,857,299.97	505,674.16	505,674.16	1,351,625.81			
19 12/31/2045	1,857,299.97	477,260.02	477,260.02	1,380,039.95	0.00	22,482,960.85	22,482,960.85
2045 Totals	1,857,299.97	477,260.02	477,260.02	1,380,039.95			
20 12/31/2046	1,857,299.97	449,659.22	449,659.22	1,407,640.75	0.00	21,075,320.10	21,075,320.10
2046 Totals	1,857,299.97	449,659.22	449,659.22	1,407,640.75			
21 12/31/2047	1,857,299.97	421,506.40	421,506.40	1,435,793.57	0.00	19,639,526.53	19,639,526.53
2047 Totals	1,857,299.97	421,506.40	421,506.40	1,435,793.57			
22 12/31/2048	1,857,299.97	393,866.67	393,866.67	1,463,433.30	0.00	18,176,093.23	18,176,093.23
2048 Totals	1,857,299.97	393,866.67	393,866.67	1,463,433.30			
23 12/31/2049	1,857,299.97	363,521.86	363,521.86	1,493,778.11	0.00	16,682,315.12	16,682,315.12
2049 Totals	1,857,299.97	363,521.86	363,521.86	1,493,778.11			
24 12/31/2050	1,857,299.97	333,646.30	333,646.30	1,523,653.67	0.00	15,158,661.45	15,158,661.45
2050 Totals	1,857,299.97	333,646.30	333,646.30	1,523,653.67			
25 12/31/2051	1,857,299.97	303,173.23	303,173.23	1,554,126.74	0.00	13,604,534.71	13,604,534.71
2051 Totals	1,857,299.97	303,173.23	303,173.23	1,554,126.74			
26 12/31/2052	1,857,299.97	272,836.15	272,836.15	1,584,463.82	0.00	12,020,070.89	12,020,070.89
2052 Totals	1,857,299.97	272,836.15	272,836.15	1,584,463.82			

27 12/31/2053	1,857,299.97	240,401.42	240,401.42	1,616,898.55	0.00	10,403,172.34	10,403,172.34
2053 Totals	1,857,299.97	240,401.42	240,401.42	1,616,898.55			
28 12/31/2054	1,857,299.97	208,063.45	208,063.45	1,649,236.52	0.00	8,753,935.82	8,753,935.82
2054 Totals	1,857,299.97	208,063.45	208,063.45	1,649,236.52			
29 12/31/2055	1,857,299.97	175,078.72	175,078.72	1,682,221.25	0.00	7,071,714.57	7,071,714.57
2055 Totals	1,857,299.97	175,078.72	175,078.72	1,682,221.25			
30 12/31/2056	1,857,299.97	141,821.78	141,821.78	1,715,478.19	0.00	5,356,236.38	5,356,236.38
2056 Totals	1,857,299.97	141,821.78	141,821.78	1,715,478.19			
31 12/31/2057	1,857,299.97	107,124.73	107,124.73	1,750,175.24	0.00	3,606,061.14	3,606,061.14
2057 Totals	1,857,299.97	107,124.73	107,124.73	1,750,175.24			
32 12/31/2058	1,857,299.97	72,121.22	72,121.22	1,785,178.75	0.00	1,820,882.39	1,820,882.39
2058 Totals	1,857,299.97	72,121.22	72,121.22	1,785,178.75			
33 12/31/2059	1,857,299.97	36,417.58	36,417.58	1,820,882.39	0.00	0.00	0.00
2059 Totals	1,857,299.97	36,417.58	36,417.58	1,820,882.39			
Grand Totals	61,290,899.01	21,290,899.01	21,290,899.01	40,000,000.00			

Last interest amount decreased by 0.07 due to rounding.

Member _____ introduced the following resolution and moved its adoption:

**RESOLUTION CONFIRMING THE APPOINTMENT OF MEMBERS TO THE LAND
MANAGEMENT, FINANCE, AND PUBLIC OUTREACH COMMITTEES OF THE
METRO FLOOD DIVERSION AUTHORITY**

WHEREAS, Article VI of the Joint Powers Agreement dated June 1, 2016, (“JPA”), contains the powers, duties, and membership requirements of committees established by the Diversion Authority Board; and

WHEREAS, the Diversion Authority Board must appoint the members of the Land Management Committee in accordance with Section 6.04 of the JPA; and

WHEREAS, the Diversion Authority Board must appoint the members of the Finance Committee in accordance with Section 6.11 of the JPA; and

WHEREAS, the Diversion Authority Board has established the Public Outreach Committee to advise the Diversion Authority Board pursuant to Section 6.01 of the JPA.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Metro Flood Diversion Authority:

Section 1. Land Management Committee. The Diversion Authority hereby confirms the appointment of the members to the Land Management Committee of the Metro Flood Diversion Authority as reflected on the attached Exhibit A, and further, states that the membership of the Land Management Committee meets the requirements of Section 6.04 of the JPA.

Section 2. Finance Committee. The Diversion Authority hereby confirms the appointment of the members to the Finance Committee of the Metro Flood Diversion Authority as reflected on the attached Exhibit A, and further, states that the membership of the Finance Committee meets the requirements of Section 6.11 of the JPA.

Section 3. Public Outreach Committee. The Diversion Authority hereby confirms the appointment of the members to the Public Outreach Committee of the Metro Flood Diversion Authority as reflected on the attached Exhibit A.

Section 4. This Resolution shall take effect immediately upon adoption.

Dated: February 25, 2021.

METRO FLOOD DIVERSION AUTHORITY

APPROVED:

Michelle Carlson, Chair

ATTEST:

Dawn Lindblom, Secretary

The motion for adoption of the foregoing resolution was duly seconded by Member _____,
and upon roll call vote, the following voted in favor thereof: _____

The following were absent and not voting: none. The following voted against the same: none. A
majority of the Members having voted aye, the resolution was declared duly passed and adopted.

EXHIBIT A

Land Management Committee

Arlette Preston	Fargo City Commissioner
Bob Zimmerman	Engineer, City of Moorhead
Bruce Grubb	City Administrator, City of Fargo
Chuck Hendrickson	Moorhead City Council Member
Duane Breitling	Cass County Commissioner
Jenny Mongeau	Clay County Commissioner
Johnathan Judd	Mayor, City of Moorhead
Kevin Campbell	Clay County Commissioner
Kory Peterson	Mayor, City of Horace
Mary Scherling	Cass County Commissioner
Nathan Boerboom	Engineer, City of Fargo
Rodger Olson	Cass County Joint Water Resource District

Finance Committee

Bernie Dardis	Mayor, City of West Fargo
Chad Peterson	Cass County Commissioner
Chuck Hendrickson	Moorhead City Council Member
Dan Jacobson	Cass County Joint Water Resource District
Kent Costin	Finance Director, City of Fargo
Lori J. Johnson	Clay County Auditor
Mike Montplaisir	Cass County Auditor
Mike Redlinger	Asst. City Administrator, City of Fargo
Rick Steen	Cass County Commissioner
Tim Mahoney	Mayor, City of Fargo
Tony Gehrig	Fargo City Commissioner
Karla McCall	Finance Director, City of Moorhead

Public Outreach Committee

Bernie Dardis	Mayor, City of West Fargo
Gerald VanAmburg	Buffalo-Red River Watershed District
Jake Gust	Rush River Watershed District
John Strand	Fargo City Commissioner
Katie Mastel	Business Leaders Task Force
Kevin Campbell	Clay County Commissioner
Rick Steen	Cass County Commissioner
Rodger Olson	Cass County Joint Water Resource District
Shelly Carlson	Moorhead City Council Member
Jim Kapitan	Cass County Commissioner
David Ebinger	Clay County Commissioner

**RESOLUTION CONFIRMING APPOINTMENT OF VICE CHAIR AND SECRETARY
TO DIVERSION AUTHORITY BOARD AT ITS ANNUAL MEETING**

of the

METRO FLOOD DIVERSION AUTHORITY

Approved on February 25, 2021

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

Member _____ introduced the following resolution and moved for its adoption:

RESOLUTION CONFIRMING APPOINTMENT OF VICE CHAIR AND SECRETARY TO DIVERSION AUTHORITY BOARD AT ITS ANNUAL MEETING

WHEREAS, the Metro Flood Diversion Authority (the “Diversion Authority”) was established by five (5) member entities through the execution of a Joint Powers Agreement, dated June 1, 2016 (the “JPA”), for the purpose of designing, constructing, financing, operating, and maintaining the Fargo-Moorhead Metropolitan Area Flood Risk Management Project; and

WHEREAS, Section 5.07 of the JPA states that a Vice Chair must be elected at the annual meeting of the Diversion Authority Board by a majority vote of all members of the Diversion Authority Board;

WHEREAS, Section 5.08 of the JPA states that the Diversion Authority Board shall appoint a Secretary at its annual meeting; and

WHEREAS, pursuant to Sections 5.07 and 5.08 of the JPA, the Diversion Authority Board desires to re-appoint and confirm Dawn Lindblom as the Secretary, and to appoint and confirm Chad Peterson as the Vice Chair of the Metro Flood Diversion Authority.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Metro Flood Diversion Authority:

1. Secretary. The Diversion Authority Board hereby appoints Dawn Lindblom to serve as the Secretary of the Metro Flood Diversion Authority and to serve as the Secretary of the Finance Committee. Ms. Lindblom will serve in these roles until resignation or until further action by the Diversion Authority Board.
2. Vice Chair. The Diversion Authority Board hereby appoints Chad Peterson as the Vice Chair of the Diversion Authority Board. Mr. Peterson will serve as Vice Chair until the Diversion Authority Board’s annual meeting of 2022 or until a successor Vice Chair is appointed, whichever event occurs first.
3. Effective Date. The above-described appointments will commence immediately.

Dated: February 25, 2021.

METRO FLOOD DIVERSION AUTHORITY

APPROVED:

Michelle Carlson, Chair

ATTEST:

, Diversion Authority Board Member

The motion for adoption of the foregoing resolution was duly seconded by Member _____ and upon roll call vote, the following Members voted in favor thereof:

_____.

The following were absent and not voting: _____.

The following voted against the same: _____. A majority of the Members having voted aye, the resolution was declared duly passed and adopted.

Communication Approach 2021



COMMUNICATIONS VIEW

High-level view of the communications landscape for this project

CORE INITIATIVES

Priorities we must keep moving over the next six-months while the local team is being built

- Securing funding from the ND Legislative Assembly
- Federal legislative funding
- Community and lands outreach
- National coalition building
- P3 announcement & transition
- Partner/regulatory communications (Corps, Fargo-Moorhead, Cass, Clay, MN DNR, ND OSE, consultants)
- Strategic plans - P3 contractor selection, P3 onboarding, transition to construction
- Proactive media communications vs. reactive
- Brand consistency for Project and MFDA credibility/authority

COMMUNICATIONS CHANNELS

Streamline and evolve the ways we're communicating to educate, build community engagement and awareness

- Website, social media
- Videos/photos
- News media, local/regional
- Presentations/testimony
- Project materials
- In-person events
- Internal platforms (measurement dashboard, project-wide communication during construction phase)

NEXT STEPS

Drive strategic initiatives to stay on schedule while building the local team

- Build local team as we utilize strategic communications support in 2021 (MN team of PR for Good with specialist support Mike Klein)
- Local "creative team" ready to activate (video, photography, web development)
- Brand guidelines, templates, newsletters reviewed and updated
- Job descriptions ready for communications positions
(Digital Media Coordinator, Visual Designer, Writer/Editor)
- Job descriptions ready for DA Positions
(Project Manager, Team Coordinator and Director of Finance)
- Develop and launch intern program

MFDA Board of Authority



Tim Mahoney
Mayor of Fargo
tmahoney@cityoffargo.com

Shelly Carlson
Mayor of Moorhead & MFDA Board Chair
shelly.carlson@cityofmoorhead.com

Bernie Dardis
Mayor of West Fargo
bernie.dardis@westfargond.gov

Rick Steen
Cass County Commissioner
steenr@casscountynd.gov

Chad Peterson
Cass County Commissioner
petersonc@casscountynd.gov

Mary Scherling
Cass County Commissioner
scherlingm@casscountynd.gov

Dave Ebinger
Clay County Commissioner
dave.ebinger@co.clay.mn.us

Kevin Campbell
Clay County Commissioner
kevin.campbell@co.clay.mn.us

Dave Piepkorn
Fargo City Commissioner
dpiepkorn@cityoffargo.com

Rodger Olson
Cass County Joint Water Resource
District Member
olson.rodger@aol.com

John Strand
Fargo City Commissioner
jstrand@cityoffargo.com

Chuck Hendrickson
Moorhead City Council Member
chuck.hendrickson@cityofmoorhead.com

MFDA Leadership Team



Dawn Lindblom
Executive Assistant
lindblomd@fmdiversion.gov

Joel Paulsen
Executive Director
paulsenj@fmdiversion.gov

Kris Bakkegard
Director of Engineering
bakkegardk@fmdiversion.gov

Future Role
Director of Finance
Q1 2021

Jennifer Darling
Director of Communications
darlingj@fmdiversion.gov

Key Project Support



John Shockley
Legal Counsel
jshockley@ohnstadlaw.com

Martin Nicholson
Acting Deputy Executive Director
martin.nicholson@pgmadvisor.com

Paul Barthel
Program Manager (PMC)
paul.barthel@jacobs.com

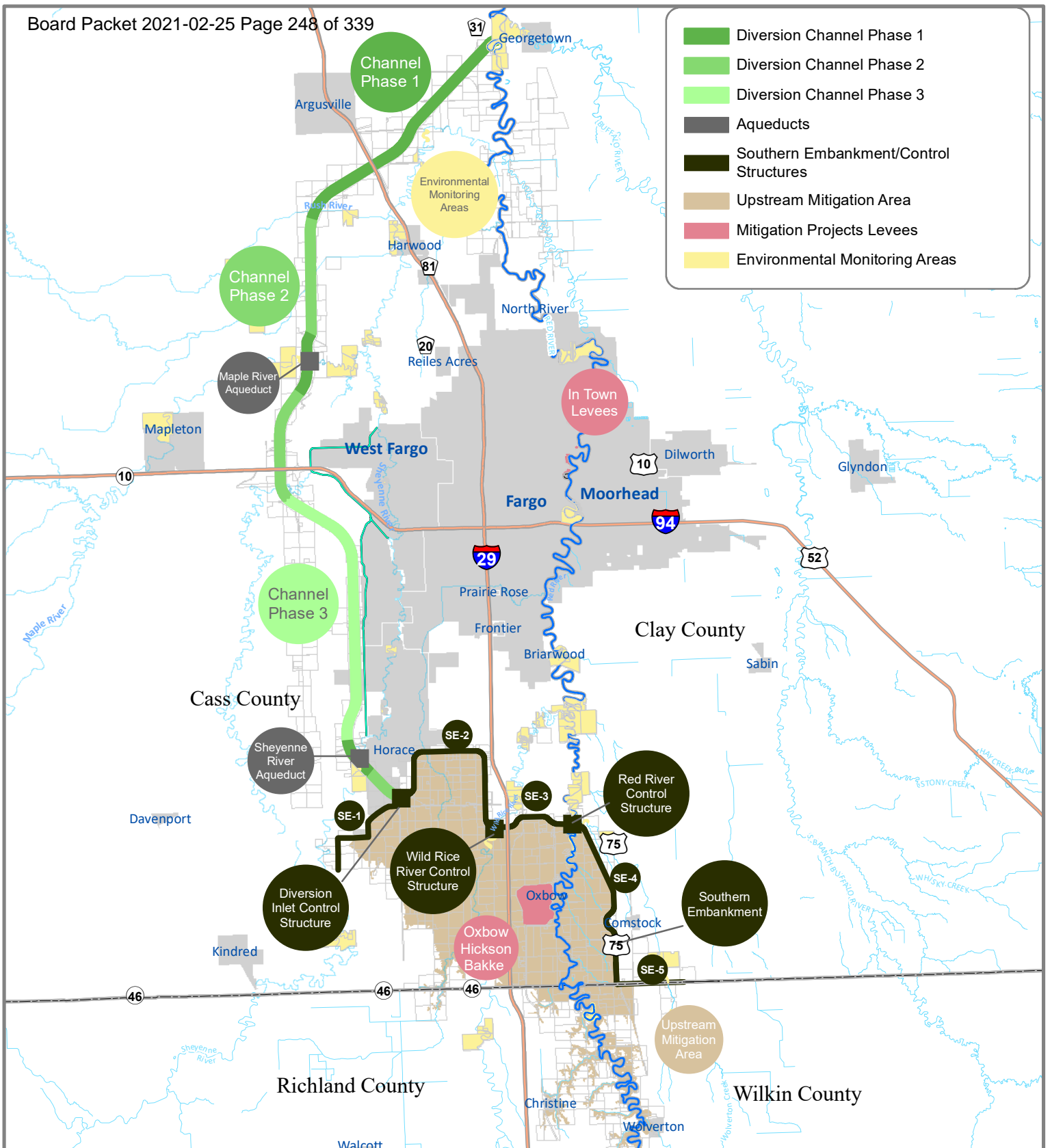
Peggy Harter
Deputy Program Manager (PMC)
peggy.harter@jacobs.com

Andrew Dobson
P3 Lead
andrew.dobson@jacobs.com

Eric Dodds
Property Lead
eric.dodds@ae2s.com

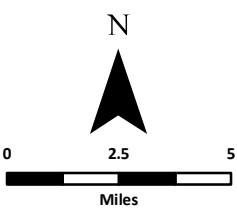
Gregg Thielman
Design Lead
cgthielman@houstoneng.com

Lyndon Pease
Design Lead
lyndon.pease@mooreengineeringinc.com



- Diversion Channel Phase 1
- Diversion Channel Phase 2
- Diversion Channel Phase 3
- Aqueducts
- Southern Embankment/Control Structures
- Upstream Mitigation Area
- Mitigation Projects Levees
- Environmental Monitoring Areas

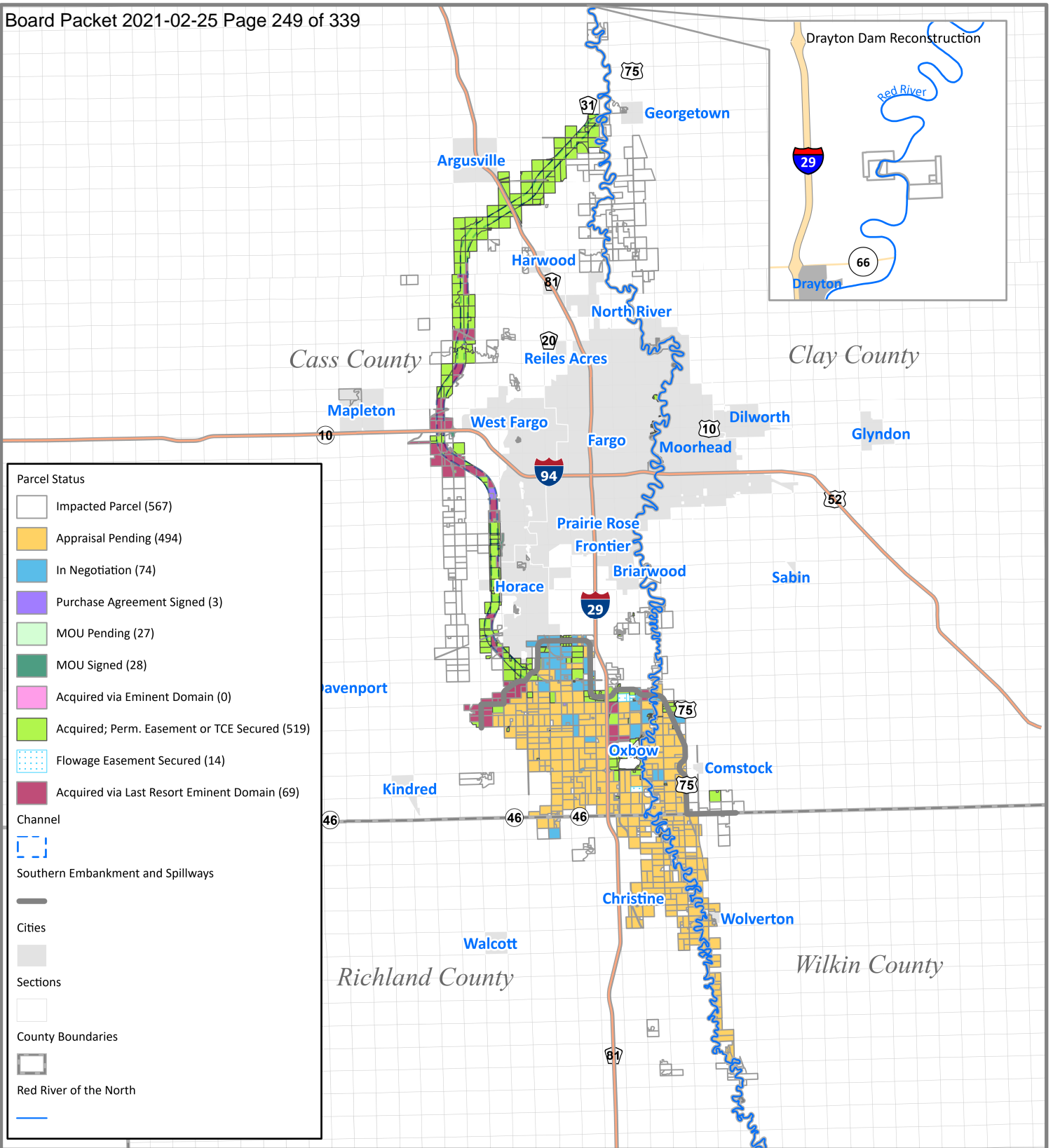
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.
 Coordinate System: NAD 1983 UTM Zone 14N | Produced by: cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\PropertyAcquisitionSevenPhaseMap8x11.mxd



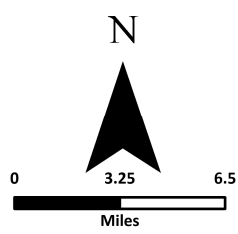
FM AREA DIVERSION KEY ACQUISITION AREAS

Map Date: 2/16/2021





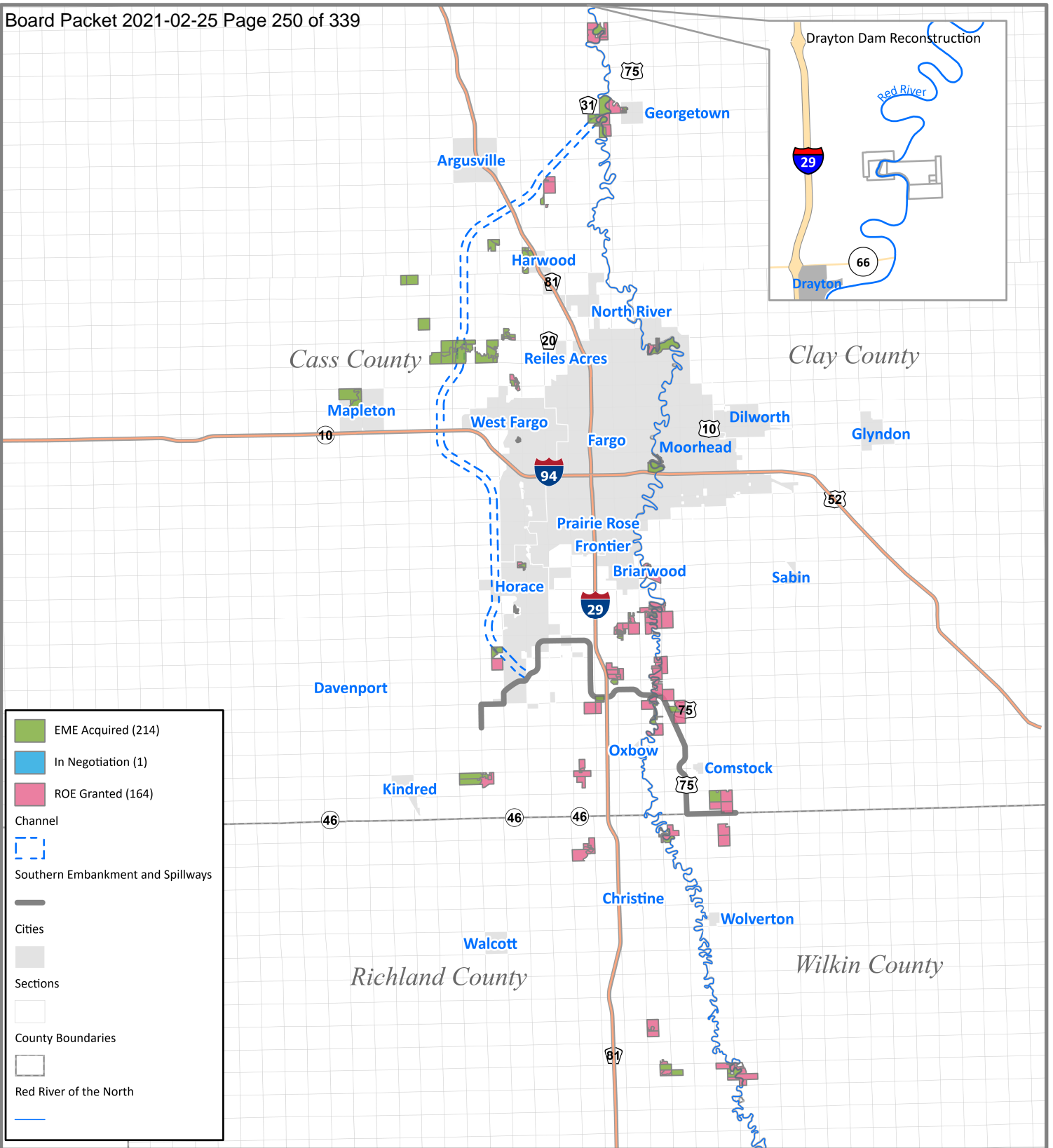
Information depicted may include data unverified by AE2S. Any reliance upon such data is at the user's own risk. AE2S does not warrant this map or its features are either spatially or temporally accurate.
 C:\Data\Projects\GIS Projects\FM Area Diversion\FMDiversionParcelStatus.aprx, Layout: PropertyAcquisitionStatusReport_8x11 | Produced by: cwickenheiser - AE2S, LLC.



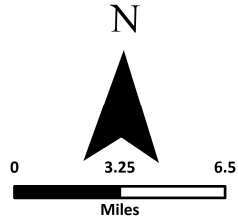
PROPERTY ACQUISITION STATUS REPORT

Map Date: 2/16/2021





Information depicted may include data unverified by AE2S. Any reliance upon such data is at the user's own risk. AE2S does not warrant this map or its features are either spatially or temporally accurate.
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**ENVIRONMENTAL MONITORING EASEMENT
 ACQUISITION STATUS REPORT**

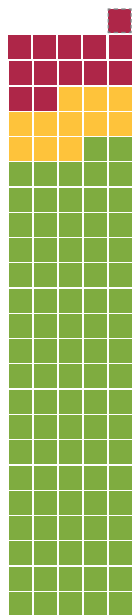
Map Date: 2/16/2021



Diversion Channel

Phase 1

(WP LAP01)

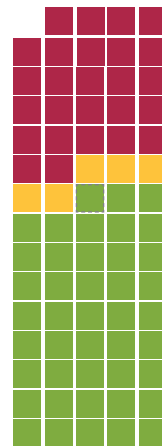


116 parcels total

- 11 MOU Pending
- 0 In Negotiation
- 0 Agreement Signed
- 92 Acquired Parcel/ TCE Secured
- 13 Condemnation
- Change from last report

Phase 2

(WP LAP02)

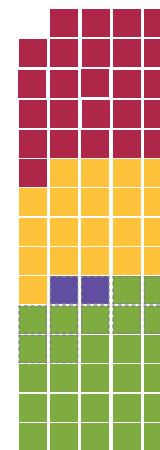


74 parcels total

- 5 MOU Pending
- 0 In Negotiation
- 0 Agreement Signed
- 43 Acquired/TCE Secured
- 26 Condemnation
- Change from last report

Phase 3

(WP LAP03)

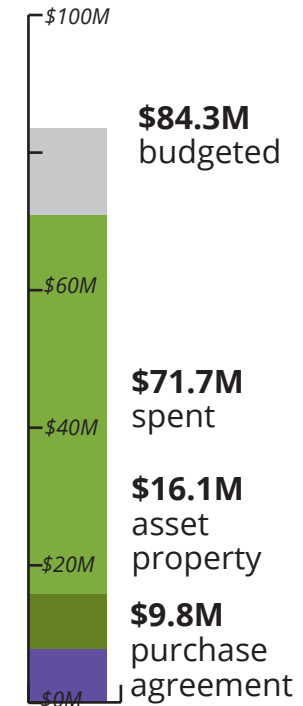


74 parcels total

- 16 MOU Pending
- 0 In Negotiation
- 2 Agreement Signed
- 27 Acquired Parcel/TCE Secured
- 25 Condemnation
- 0 Mitigation
- Change from last report

Hard Costs paid to Property Owners

NOTE: Based on Financial data through January



- Budgeted
- Purchase Agreement
- Spent
- Asset Property



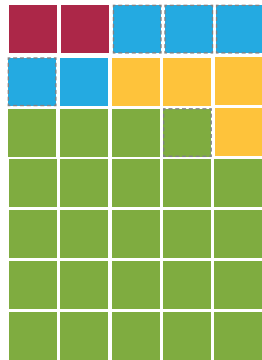
As of February 16, 2021

Southern Embankment Control Structures

Red River Control Structure

(WP 35)

Target Completion:
August 2021

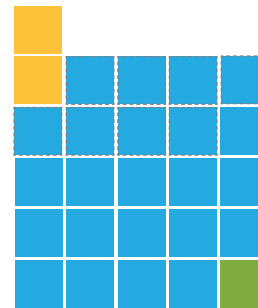


35 parcels total

- 4 Appraisal Pending
- 5 In Negotiation
- 0 Agreement Signed
- 24 Acquired/ TCE Secured
- 2 Condemnation
- Changed from last report

Drain 27 Wetland Project

Targeted Completion:
August 2021



26 parcels total

- 2 Appraisal Pending/ MOU
- 23 In Negotiation
- 0 Agreement Signed
- 1 Acquired/ TCE Secured
- Condemnation
- Changed from last report

Completed:

- Diversion Inlet
• 8 Parcels
- Wild Rice River Control Structure
• 4 Parcels

Property Status Report



As of February 16, 2021

Southern Embankment

Southern Embankment

(WP Reach SE-1 to SE-5 and I29)
Targeted Completion: September 2025

108 parcels total

SE-1 Complete
Total Parcels: 21



SE-2 Target Completion: Aug. 2021 & Aug. 2022
Total Parcels: 40



SE-3 Target Completion: July 2024
Total Parcels: 5



I29 Completed
Total Parcels: 11



SE-4 Target Completion: July 2023
Total Parcels: 24



SE-5 Target Completion: July. 2024
Total Parcels: 9



ND

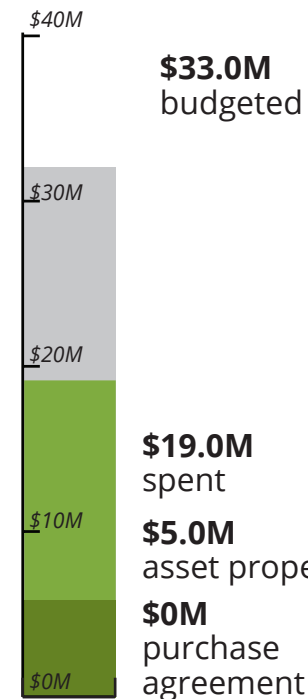
MN

- 2 Appraisal/ MOU Pending
- 8 In Negotiation
- 0 Agreement Signed
- 40 Acquired/ TCE Secured
- 21 Condemnation
- Change from last report

Southern Embankment & Control Structures

Hard Costs paid to Property Owners

Note: Based on financial data through January

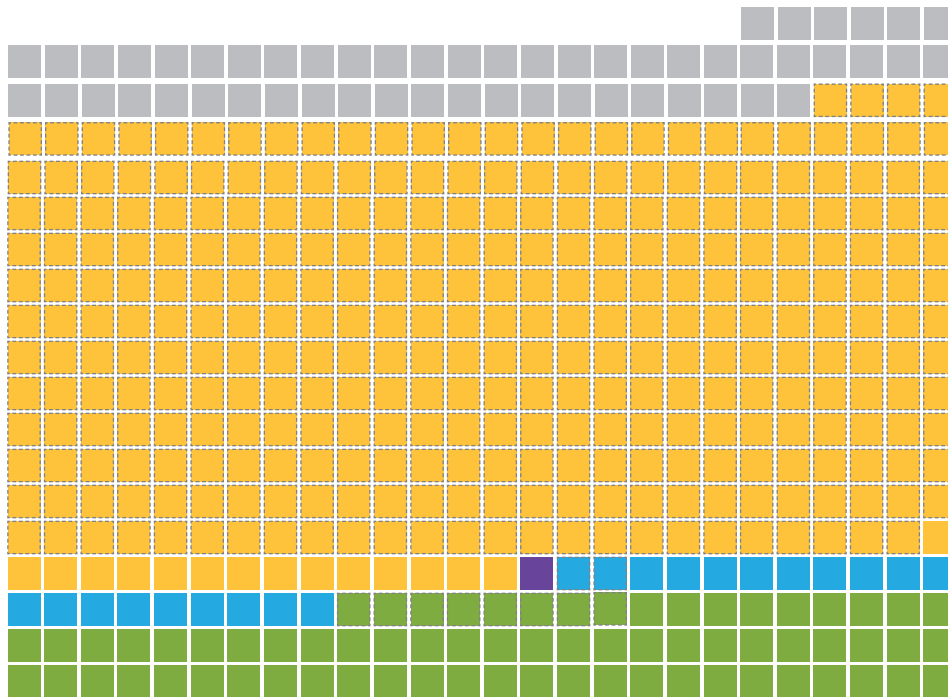


- Budgeted
- Purchase Agreement
- Spent
- Asset Property

Upstream Mitigation Area-ND (UMA)

Flowage Easements without structures (ND)

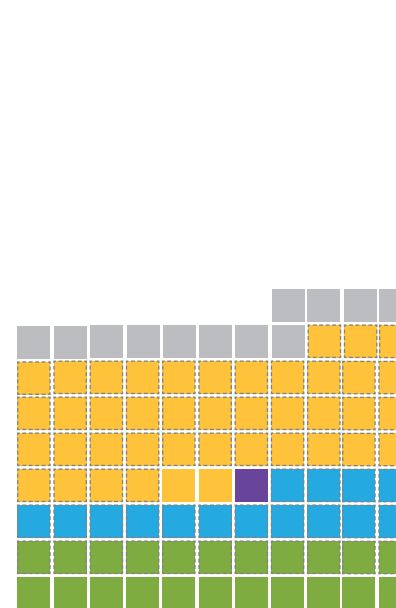
Approximately 474 parcels in ND



- 330 Appraisal/MOU Pending
- 20 In Negotiation
- 1 Agreement Signed
- 10 Flowage Easement Secured
- 59 Acquired
- 0 Condemnation
- Changed

Flowage Easement Structure Sites (ND)

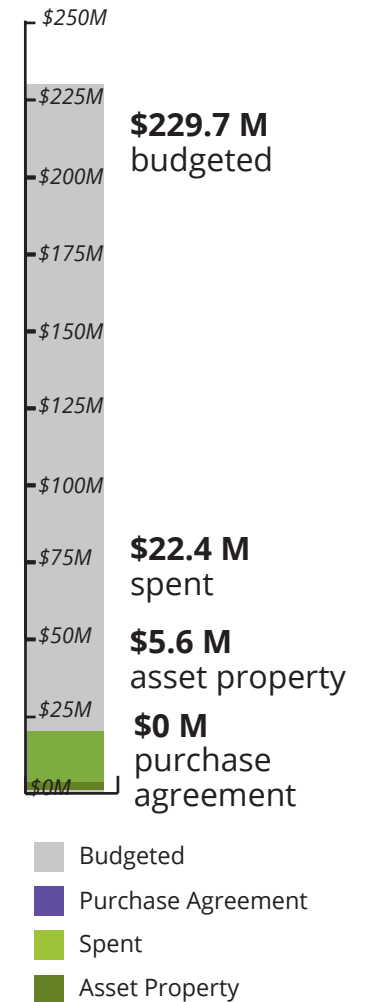
Approximately 92 parcels in ND



- 2 Appraisal/MOU Pending
- 11 In Negotiation
- 1 Agreement Signed
- 11 Acquired
- 0 Flowage Easement Secured
- Condemnation
- Changed

ND + MN UMA Hard Costs paid to Property Owners

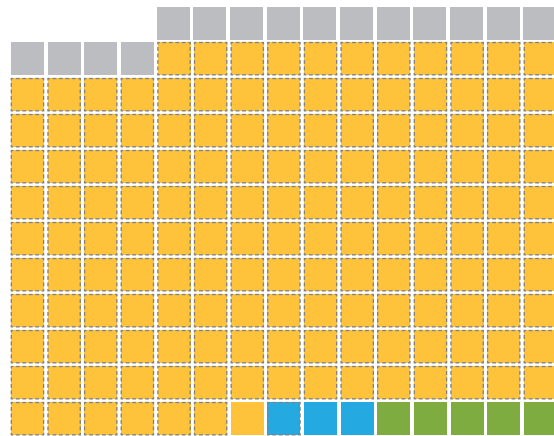
Note: Based on financial data through January



Upstream Mitigation Area-MN (UMA)

Flowage Easements without structures (MN)

Approximately
176 parcels in MN



- 153 Appraisal/MOU Pending
- 3 In Negotiation
- 0 Agreement Signed
- 4 Flowage Easement Secured
- 1 Acquired
- 0 Condemnation
- Changed

Flowage Easement Structure Sites (MN)

Approximately
28 parcels in MN



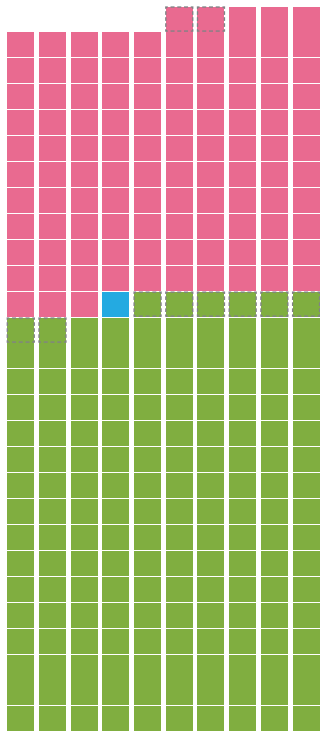
- 18 Appraisal/MOU Pending
- 1 In Negotiation
- 0 Agreement Signed
- 0 Flowage Easement Secured
- 8 Acquired
- Condemnation
- Changed

Environmental Monitoring Areas (BIOGEO)

North Dakota

Minnesota

Cass County



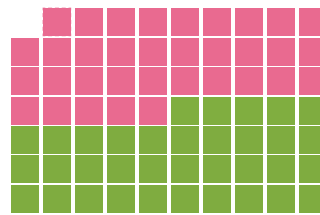
275 parcels total

Richland County



31 parcels total

Clay County



69 parcels total

Wilkin County

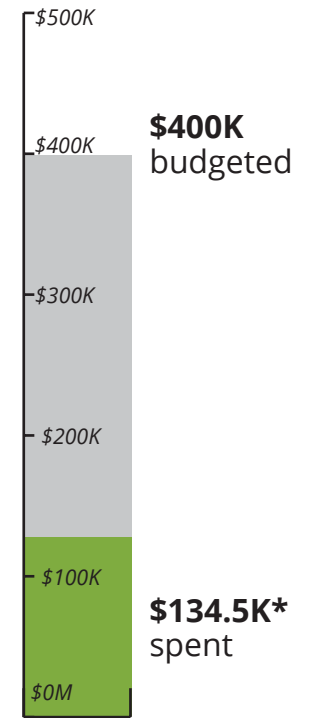


9 parcels total

- Easement Document in Work
- In Negotiations
- ROE Granted
- Bio/Geo Easement Secured
- USACE Easement Bounds In Work
- Change from last report
- Preliminary COS In Work
- On Hold

Hard Costs paid to Property Owners

Note: Based on financial data through January



*includes payments for monuments and easements.

- Budgeted
- Purchase Agreement
- Spent

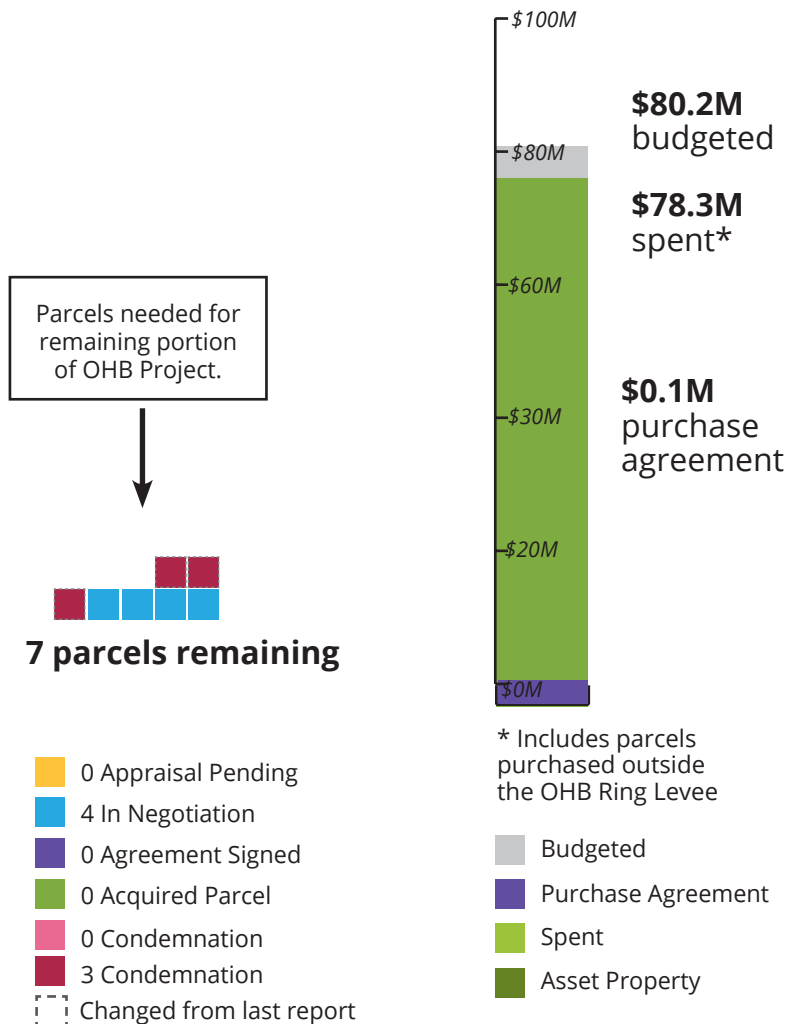
OHB Projects

OHB Ring Levee

WP 43

Completed:

- Hickson Main Ave ROW
- 4 Parcels





Contracting Actions

February 25, 2021



DA Board Approval Contract Actions (Recommendation)

Description	Company	Budget Estimate (\$)
<i>Diversion Authority</i>		
New Contract for Communication Services	PR for Good	\$237,000
New MSA – January 2021 through December 31, 2023	Crown Appraisal	\$0



Executive Director-Approved Contract Actions (For Information)

Description	Company	Budget Estimate (\$)
Task Order 20, Amendment 8 – SEAI 45 th Street & CR 16 Design	Houston Moore Group	\$148,000
Task Order 21, Amendment 9 – P3 Proposal Procurement Support – Extends POP to December 31, 2021 and incorporates 2021 rates	Houston Moore Group	\$0
Task Order 22, Amendment 5 – Mitigation Support – Extends POP to December 31, 2021 and incorporates 2021 rates	Houston Moore Group	\$0
Task Order 15, Amendment 13 – Draft Operations Plan – Extends POP to December 31, 2021 and incorporates 2021 rates	Houston Moore Group	\$0

CCJWRD Approved Contract Actions (For Information)

Description	Company	Budget Estimate (\$)
New MSA – Land Acquisitions Services through December 31, 2023	ProSource Technologies, LLC	\$0
Task Order 2, Amendment 1 – Property Appraisal Services	Compass Land Consultants	\$48,000
Task Order 2, Amendment 3 – Property Appraisal Services	Crown Appraisals, Inc.	\$134,500
Task Order 4, Amendment 0 – Property Appraisal Services	Crown Appraisals, Inc.	\$30,000
Task Order 5, Amendment 2 – Property Acquisition Services – Close out TO between HMG & CCJWRD. New Contract with HDR & CCJWRD was executed in May 2020.	Houston Moore Group	(\$443,440.81)
Task Order 4, Amendment 5 – Property Acquisition Services – Close out TO between HMG & CCJWRD. New Contract with SRF & CCJWRD was executed in May 2020.	Houston Moore Group	(\$1,782,595.96)
Task Order 1, Amendment 3 – Property Appraisal Services	Patchin Messner Valuation Counselors	\$42,500

CCJWRD Approved Contract Actions (For Information) Continued

Description	Company	Budget Estimate (\$)
Task Order 3, Amendment 1 – Property Appraisal Services	Patchin Messner Valuation Counselors	\$20,500
Task Order 2, Amendment 0 – Property Appraisal Services	Tinjum Appraisal Company, Inc.	\$42,000
New MSA for Property Acquisition Services through Dec 31, 2023	Ulteig Engineers	\$0

MCCJPA Approved Contract Actions (For Information)

Description	Company	Budget Estimate (\$)
Task Order 2, Amendment 0 – Property Appraisal Services	Crown Appraisals, Inc.	\$11,500





Executive Director Contracting Recommendation

Date: 2/8/2021

RECOMMENDATION FOR ACTION:

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

SUMMARY OF CONTRACTING ACTION:

Per the contract review and approval procedures that were adopted by the Diversion Authority on November 10, 2016 and amended August 23, 2018, the Owner's Program Management Consultant (PMC) or Engineer of Record (EOR) is directed to prepare task orders and task order amendments for existing Master Services Agreements (MSA) and submit them to the Executive Director for review and action.

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

PR for Good (PR)*Agreement – Consulting Services***\$237,000**

- Communication Consulting Services

BACKGROUND AND DISCUSSION:

At the request of Jennifer Darling, PR for Good will be added as a subcontractor to the DA to support Public Relation functions.

The purpose of this agreement is for PR for Good to deliver the following: Media relations strategy, approach and detailed 12 month editorial plan; Media relations implementation (local – international); Spokesperson training; Brand messaging direct support/reputation issues; Review/consultant on communication priorities as needed; Communication crisis planning, and prevention strategies; Crisis work - direct support availability; Support/writing for website in media relations/reputation; Review/consultant on communication priorities as needed.

The scope of work for the contract for PR for Good will include the work of PR for Good combined with Change the Terms and work performed by Mike Klein. Change the Terms/Mike Klein has been working with the Project since December, 2020 and due to his work locations in Iceland and the Netherlands, will be subcontracting his work on behalf of MFDA to be invoiced and then paid by PR for Good upon receipt of payment from the Authority.

This work will be performed on a time and material basis.

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

SUMMARY OF CONTRACTING HISTORY AND CURRENT CONTRACT ACTION:

Original Agreement or Amendment	Budget Change	Initial or Revised Project Cost	Project Start	Project Completion	Comments
Agreement Amendment 00	\$ -	\$10,000	19-Jan-20	31-Dec-21	Initial Scope of Work
Agreement Amendment 01	\$237,000	\$238,000	19-Jan-20	31-Dec-21	Follow-on agreement with Changing the Terms as a subconsultant

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

ATTACHMENT(S):

1. Corrected020521CommsEstMFDA (Estimate)
2. Draft Agreement
3. AWD-00072

Prepared by: Program Management Consultant

Kristopher Grigg

2/9/2021

Kristopher Grigg
Jacobs

Date

Submitted by:

Joel Paulsen

Joel Paulsen
Diversion Authority Executive Director

Concur: Non-Concur:

Cc: Technical Advisory Group

- Nathan Boerboom, City of Fargo Engineer/Diversion Authority Project Manager
- David Overbo, Clay County Engineer
- Jason Benson, Cass County Engineer
- Robert Zimmerman, Moorhead City Engineer
- Matt Stamness, Assistant Cass County Engineer/Diversion Authority Project Manager
- Dustin Scott, West Fargo City Engineer
- Kris Bakkegard, Diversion Authority Director of Engineering

SERVICES AGREEMENT

BY AND BETWEEN

METRO FLOOD DIVERSION AUTHORITY

AND

PR FOR GOOD

Dated as of February 3, 2021

Relating to:

A Services Agreement to perform work pursuant to Communications Support.

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 A – PR FOR GOOD COMMUNICATIONS ESTIMATE – DATED JANUARY 2021	
EXHIBIT B – FEDERAL CERTIFICATION FORMS	

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the “Agreement”) is made and entered into this _____ day of _____, 2021, by and between the METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota, whose address is 207 4th St. N., Suite A, Fargo, North Dakota 58102 (the “Authority”), and PR FOR GOOD, a corporation organized and existing under the laws of the State of Minnesota with a principal office at 5700 Johnson Drive, Edina, Minnesota 55436 (“PR”) (collectively, the Authority and PR are referred to as the “Parties”).

RECITALS

WHEREAS, in February 2021, the Authority issued a Request for Quotes for communications support consulting services for the Authority; and

WHEREAS, on or prior to February 2021, PR, submitted a quote in response to the Authority’s Request for Quotes; and

WHEREAS, of the quotes submitted, PR submitted the lowest quote for communications support consulting services; and

WHEREAS, the Authority is of the opinion that PR has the necessary qualifications, experience, and abilities to provide the services required for communications support consulting services; and

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

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

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

AGREEMENT

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

A. Communications Support Consulting Services

The Authority, for compensation in addition to those amounts provided in Section 4 of this Agreement, may direct PR to perform Services in addition to the above-listed Services. PR hereby agrees to provide such Services to the Authority, and the Authority agrees to provide the agreed-upon compensation for such Services.

2. **Notice to Proceed.** PR will not commence Services until receipt of a notice to proceed from the Authority. The Authority will not issue a notice to proceed to PR until PR provides evidence of performance and payments bonds to the Authority in the full amount described in Section 4 of this Agreement. PR shall complete Services within the time period allotted in the notice to proceed.

3. **Term of Agreement.** The term of this Agreement (the “Term”) will begin on the date of the execution of this Agreement and will expire on December 31, 2021, subject to earlier termination as provided in this Agreement. The Term may be extended with the prior written consent of both Parties. Either Party may terminate this Agreement, in whole or in part, for cause if either Party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within thirty (30) calendar days of written notice and diligently complete the correction thereafter.

4. **Compensation and Payment.** The Authority agrees to pay the following to PR for completion of the Services:

A.	Communications Support Consulting Services:	\$237,000
	TOTAL	\$237,000

PR’s cost proposal forms for the Services are attached hereto as Exhibit A. In the event the Authority directs PR to perform additional Services pursuant to Section 1 hereof, the Authority agrees to compensate PR accordingly for those additional Services.

5. **Invoicing.**

A. PR shall deliver invoices to the Authority on the fifteenth day (15th) day of each month for all Services provided. PR 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. PR must submit each original invoice to:

Metro Flood Diversion Authority
c/o Kris Bakkegard
BakkegardK@fmdiversion.gov

and

APIInvoicesFMDiv@ch2m.com

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

- i. PR's name and address;
 - ii. PR'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, in accordance with Task Order Budgetary Breakdown;
 - vii. Name, billing rate, and hours worked by each person involved in each activity, in accordance with the Task Order Budgetary Breakdown;
 - 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, in accordance with the Task Order Budgetary Breakdown.
 - D. After the Authority receives PR's invoice, the Authority will either process the invoice for payment or give PR specific reasons, in writing within fifteen (15) business days, why part or all of the Authority's payment is being withheld and what actions PR must take to receive the withheld amount.
 - E. In the event of a disputed billing, only the disputed portion will be withheld from payment, and the Authority shall pay the undisputed portion. The Authority will exercise reasonableness in disputing any bill or portion thereof. Interest will accrue on any disputed portion of the billing determined to be due and owing to PR.
 - 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, PR must credit any payment in error from any payment that is due or that may become due to PR under this Agreement.
 - G. The Authority will be charged interest at the rate of one-half percent (1/2%) per month, or that permitted by law if lesser, on all past-due amounts starting thirty (30) days after receipt of invoice. Payments will be first credited to interest and then to principal.
 - H. If the Authority fails to make payment in full within thirty (30) days of the date due for any undisputed billing, PR 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, PR will have no liability to the Authority for delays or damages caused by the Authority because of such suspension.
6. **WIFIA Loan.** PR is a Minnesota corporation and agrees to comply with all state and federal laws; a copy of the federal lobbying certificate and disclosure forms, debarment, and

suspension certification form, and civil rights certification are attached as Exhibit B. In order to finance the design, construction, operation, and maintenance of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, the Authority will seek a loan through U.S. EPA Water Infrastructure Finance and Innovation Act (“WIFIA”) program. For the purposes of the WIFIA loan obtained by the Authority, PR will undertake all work related to the Services, described in this Agreement.

7. **Return of Property.** Upon termination of this Agreement or expiration of its Term, PR will return to the Authority any property, documentation, records, or confidential information which is the Authority’s property.

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

9. **Release and Hold Harmless.** The Authority shall hold and save PR free from all damages arising from dissemination of information provided by or approved by the Authority or by the Authority’s authorized representatives.

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

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

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

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

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

If to the Authority: Attn: Executive Director
Metro Flood Diversion Authority
207 4th St. N., Suite A
Fargo, ND 58102

If to PR: Attn: Joanne Henry
PR for Good
5700 Johnson Drive
Edina, MN 55436

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

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

16. **Good Faith, Fair Dealing, and Cooperation.** The Parties affirmatively represent that they are entering into this Agreement in good faith, complete cooperation, due diligence, and

honesty, and with the full and complete intention to uphold the provisions of this Agreement. The Parties agree to deal fairly and cooperate with the other party regarding the purpose of this Agreement. The Parties must perform their obligations under this Agreement with reasonable skill and diligence and may not intentionally interfere with or prevent the other Party's performance of its obligations under this Agreement. The Parties will seek to resolve any dispute arising under or in connection with this Agreement through cooperation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the Parties executed this Agreement on the day and year written above.

AUTHORITY:

Metro Flood Diversion Authority

Joel Paulsen, Executive Director

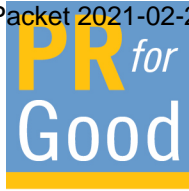
PR:

PR for Good

By:_____

Its:_____

Exhibit A

**PR for Good**

5700 Johnson Drive
Edina, MN 55436
USA

EMAIL: jhenry@prforgood.com

PHONE: 612.280.4833

WEB: PRforGood.com

Scope of Work

The scope of work for the contract for PR for Good will include the work of PR for Good combined with Change the Terms and work performed by Mike Klein. Change the Terms/Mike Klein has been working with the Project since December, 2020 and due to his work locations in Iceland and the Netherlands, will be subcontracting his work on behalf of MFDA to be invoiced and then paid by PR for Good upon receipt of payment from the Authority.

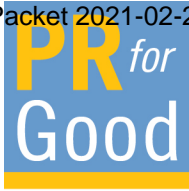
As a result the scope of work includes the Work of Change the Terms as well as a stipend for an intern retained to work exclusively on MFDA projects.

- Legislative support for North Dakota bonding bill
- Additional political consulting and writing as required through 2021
- Content development, materials
- Content development, website
- Content development presentations
- Speaking opportunities management
- Media relations strategy and approach through stages
- Social and media monitoring and response strategy
- Media relations implementation (local – international)
- Spokesperson training
- Crisis and reputation management
- Brand messaging direct support/reputation issues
- Communication with team for crisis prevention/response
- Crisis work – on-site direct support availability
- Availability for additional project at ongoing client rates.

Hourly rates for this work will typically range from \$45(distribution) to \$200.00 and we agree to provide the name, hours worked and billing rate of the person doing work for each invoice. (Direct crisis support 24/7 for incidents are at \$250.00 plus expenses.)

Estimates by delivered services are based on this rate of \$130.00 x anticipated hours.

Media relations	\$ 70,000.00
Reputation/crisis and response	25,000.00
Legislative support	55,000.00
Executive team support	10,500.00
Content Development/brand support	28,000.00



PR for Good

5700 Johnson Drive
Edina, MN 55436
USA

EMAIL: jhenry@prforgood.com

PHONE: 612.280.4833

WEB: PRforGood.com

P3 Announcement Communications	18,000.00
P3 Community /Internal Communications Support	<u>\$ 15,000.00</u>
Total Estimated Fees	\$221,500.00
Estimated expenses	
Monitoring services	\$ 3,500.00
Media wire, distribution services* (Cision)	5,800.00
Travel expense	3,500.00
Intern stipends 9 months	<u>2,700.00</u>
Subtotal expenses	15,500.00
*Media announcement dependent	
Estimated Total Fees and Services	\$237,000.00

PR for Good
Address: 5700 Johnson Drive, Edina, MN 55436

Exhibit B

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



METRO FLOOD DIVERSION PROJECT

AUTHORITY WORK DIRECTIVE

AWD-00072 REV-0

Add Mike Klein as a Subcontractor through Jacobs

		WORK TYPE:	WIK
TO:	CH2M HILL ENGINEERS, INC (CH2M)	DATE INITIATED:	12/17/2020
PROJECT:	Fargo-Moorhead Diversion Engineering Design		
OWNER:	Metro Flood Diversion Authority		

The following additions, deletions, or revisions to the Work have been ordered and authorized:

OBJECTIVE:

Mike Klein (owner of boutique communication strategy firm Changing The Terms, BV) will work directly with the Director of Communication, Jennifer Darling, with a strong focus on editorial leadership and planning, survey research, communication measurement and ensuring consistent and effective messaging that supports FM Diversion's efforts to navigate the Project to completion within agreed time, budgetary and safety guidelines.

BACKGROUND:

Following the discussion on December 14, 2020, between Mike Klein and Paul Barthel, Mike will be brought onto the project and doing so through Jacobs.

SCOPE:

Mike will work up to 20 hours per week for FM Diversion and will be based in his home office in Europe at a rate of \$103.00 (EUR 85) per hour.

DELIVERABLES:

Editorial leadership and planning, survey research, communication measurement and ensuring consistent and effective messaging that supports FM Diversion.

SCHEDULE:

Mike will join as of December 9, 2020, for an initial term of one year, extendable by mutual consent.

HOW WORK IS PERFORMED:

This work will be performed on a time and material basis.

COST:

Services performed under this AWD shall not exceed \$40,000. The above scope of work will be incorporated into a future CH2M Task Order, which will supersede this AWD. Costs associated with this AWD will be invoiced under that Task Order after the amendment has been executed.

REASON FOR CHANGE(S):

To support the Director of Communications.

ATTACHMENTS (List Supporting Documents):

Recommendation Letter from Jennifer Darling, Director of Communications, dated December 15, 2020.

It is understood that this AWD will not change the Contract Price or Times, but is evidence that the parties expect a Contract Amendment to be subsequently issued reflecting the changes.

Recommended by: Jacobs
Program Management Consultant

Kristopher Grigg
Name

Kristopher Grigg
Signature

Project Controls
Title

December 17, 2020
Date

Ordered by: Board of Authority
Owner

Joel Paulsen, P.E.
Name

Joel Paulsen
Signature

Executive Director
Title

12/17/2020
Date



December 15, 2020

Following yesterday's discussion between Mike Klein and Paul Barthel, we have decided to move forward with the idea of bringing Mike onto the project and doing so through Jacobs. Mike will join as of December 9, 2020 for an initial term of one year, extendable by mutual consent.

Mike, whose rate will be USD 103 per hour (EUR 85), is the owner of boutique communication strategy firm Changing The Terms, BV, which is based in the Netherlands. Mike, a US Citizen, has had a thirty-year career in corporate, government and political communication and is a senior communication strategist, writer and researcher with an international reputation and following. Mike's other clients include communications software provider Smarp, Avery Dennison, and Ball Corporation. He has also supported major projects and initiatives at Shell, Cargill, Maersk, Barclays and the United States Department of Transportation (Federal Motor Carrier Safety Administration), as well as VimpelCom, an international mobile telecommunication company. He is a graduate of the University of Wisconsin-Madison and holds an MBA from London Business School (University of London).

Mike will work directly with the Director of Communication, Jennifer Darling, with a strong focus on editorial leadership and planning, survey research, communication measurement and ensuring consistent and effective messaging that supports FM Diversion's efforts to navigate the Project to completion within agreed time, budgetary and safety guidelines.

Mike will work up to 20 hours per week for FM Diversion, and will be based in his home office in Europe.

Thank you,

A handwritten signature in blue ink, appearing to be 'JD', is written over the printed name.

Jennifer Darling
Director of Communications



CONTRACT NUMBER: Agreement

PROJECT NAME: Work In Kind (WIK)

CONSULTANT NAME: PR for Good, Inc.

DATE SUBMITTED: February 9, 2021

SUBMITTED BY: Kris Grigg/Jacobs

LEGAL REVIEW

- APPROVED AS IS
- APPROVED WITH COMMENTS
- NOT APPROVED

Legal Sign-Off (signature): 

Printed Name: John T. Shockley

Date of Sign-Off: 2-9-2021



Executive Director Contracting Recommendation

Date: 02/16/2021

RECOMMENDATION FOR ACTION:

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

SUMMARY OF CONTRACTING ACTION:

Per the contract review and approval procedures that were adopted by the Diversion Authority on November 10, 2016 and amended on August 23, 2018, the Owner's Program Management Consultant (PMC) or Engineer of Record (EOR) is directed to prepare task orders and task order amendments for existing Master Services Agreements (MSA) and submit them to the Executive Director for review and action.

AE2S has prepared the following Contract Action(s):

Crown Appraisals, Inc

Master Services Agreement

- Updated MSA for 2021
- Replaces the 2017 MSA between Crown and MFDA

BACKGROUND AND DISCUSSION:

Crown Appraisals, Inc., a certified real estate appraisal firm, has been providing services to the MFDA related to flowage easement valuations since 2017. Crown Appraisals, Inc., is currently under contract with the MFDA to perform the Phase 2 Flowage Easement Valuation Study.

FINANCIAL CONSIDERATIONS:

Fees for any services performed by Crown Appraisals, Inc., will be identified in a Task Order written against the MSA. As such, there are no financial considerations for the MSA.

ATTACHMENT(S):

1. DRAFT MSA between Crown Appraisals, Inc., and the MFDA

Prepared by: AE2S



Eric C. Dodds
AE2S

02/16/2021

Date

Submitted by: Executive Director



Joel Paulsen
Diversion Authority Executive Director

Concur: X Non-Concur: _____

Cc:

- John Shockley, DA Legal Advisor
- Paul Barthel, Jacobs Program Manager
- Andy Albertson, Jacobs Program Controls
- Kris Bakkegard, DA Director of Engineering

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Related to:

**THE
FARGO-MOORHEAD AREA FLOOD DIVERSION PROJECT**

BY AND BETWEEN

**METRO FLOOD DIVERSION AUTHORITY
as Diversion Authority**

and

**CROWN APPRAISALS, INC.
as Consultant**

Dated as of January 1, 2021

This instrument was drafted by:
Ohnstad Twichell, P.C.
John T. Shockley
P.O. Box 458
West Fargo, North Dakota 58078-0458

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MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES (the “Agreement”) is made effective as of January 1, 2021, by and between the Metro Flood Diversion Authority (the “Diversion Authority”) and Crown Appraisals, Inc. (“Consultant”) (collectively, the “parties”).

WHEREAS, the Diversion Authority has selected Consultant to provide the Diversion Authority with professional services, subject to the oversight of the Co-Executive Directors, Executive Director, and the Diversion Authority Board; and

WHEREAS, the Diversion Authority desires to enter into a master agreement for professional services with Consultant and retain Consultant to provide professional services for the Fargo-Moorhead (FM) Area Flood Diversion Project, commencing on January 1, 2021, which supersedes and replaces the prior agreement between the parties dated December 21, 2017.

NOW THEREFORE, it is agreed by and between the parties as follows:

1. **EMPLOYMENT.** The Diversion Authority hires Consultant, which accepts the hiring with the Diversion Authority pursuant to this Agreement. Consultant is an independent contractor under this Agreement. Nothing in this Agreement shall be construed to create an employer-employee relationship between the parties.
2. **DEFINITIONS.** All capitalized terms used and not otherwise defined herein shall have the meanings given to them in this Agreement as defined in this Section unless a different meaning clearly applies from the context.

“*Agreement*” means this Master Agreement for Professional Services by and between the Metro Flood Diversion Authority and Crown Appraisals, Inc.

“*Best Efforts*” means that the parties to this Agreement will act in Good Faith, act in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this Agreement, in accordance with applicable 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.

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

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

“*Consultant*” means the individual or entity with which the Owner has contracted for performance of the services as set forth in this Agreement.

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

“Diversion Authority Board” means the Governing Body of the Metro Flood Diversion Authority.

“Effective Date” means January 1, 2021.

“Executive Director” means the Chief Administrative Officer of the Metro Flood Diversion Authority. The term also includes Co-Executive Director.

“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 “Project” in this Agreement and is the name given to the Project by the USACE.

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

“Governing Body” means the body which performs the legislative and governmental functions of a political subdivision, including but not limited to, a board, council, or commission. For example, the Cass County Commission, the Clay County Commission, the Moorhead City Council and the Fargo City Commission are the Governing Body of each of said entities as the board for the CCJWRD is the Governing Body for that entity.

“JPA” or *“Joint Powers Agreement”* means the agreement dated as of June 1, 2016, by and between the Member Entities.

“LJPA” or *“Limited Joint Powers Agreement”* means the agreement dated July 11, 2011, and subsequently amended, which was entered into between the City of Moorhead, the City of Fargo, Clay County, Cass County, the Buffalo-Red River Watershed District and the Cass County Joint Water Resource District in order to cooperate in the planning and design phase of the Locally Preferred Plan.

“Member Entities” shall mean the City of Moorhead, the City of Fargo, Clay County, Cass County, and Cass County Joint Water Resource District.

“Metro Flood Diversion Authority” means the political subdivision created by the LJPA and continued through and vested with the powers set forth in the JPA.

“Owner” means the individual or entity with which the Consultant has contracted regarding the services set forth herein, and which has agreed to pay Consultant for the performance of the services, pursuant to the terms of this Agreement.

“*Person*” means any natural or legal person, county, city, municipality, political subdivision, public benefit corporation, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority, or other entity.

“*Prior Agreement*” means the agreement dated December 21, 2017, between the Diversion Authority and Consultant.

“*Program Management Consultant*” means CH2M HILL Engineers, Inc., a wholly owned subsidiary of Jacobs Engineering Group, Inc., its successors and assigns, which provides Program Management Consultant services to the Diversion Authority pursuant to the Master Agreement for Professional Services dated January 31, 2020.

“*Project*” means the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District 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.

3. AUTHORIZATION TO PROCEED. Execution of this Agreement by the Diversion Authority will be authorization for Consultant to proceed with the work, unless otherwise provided for in this Agreement.
4. PRIOR AGREEMENTS. Any prior agreements between the Diversion Authority and Consultant shall, upon execution of this Agreement, be terminated and have no further force and effect; however, any Task Orders executed and completed per the Prior Agreement shall remain subject to the terms and conditions set forth in the Prior Agreement. Any Task Orders between the Diversion Authority and Consultant entered into on or after the effective date of this Agreement shall be subject to the terms of this Agreement.
5. SCOPE OF SERVICES. Diversion Authority has requested Consultant provide real estate appraisal services, or related services for the Project, generally as set forth in the attached **Exhibit A**. Consultant’s detailed scope of services, work schedule, and cost budget will be mutually agreed upon in writing and set forth in Task Orders issued by the Diversion Authority under this Agreement directly or through the Diversion Authority’s designated Program Management Consultant. Each Task Order will specifically refer to and incorporate this Agreement by reference, and the provisions of this Agreement shall apply to all Task Orders entered into subsequent to the Effective Date of this Agreement. In general, Consultant’s services will include services in support of the Fargo-Moorhead Area Diversion Project as mutually agreed upon between the parties.

6. CHANGES TO SCOPE OF SERVICES. The Diversion Authority may make or approve changes within the general scope of services in this Agreement. If such changes affect Consultant's cost of or time required for performance of the services as set out in any applicable Task Order, then an equitable adjustment will be made through an amendment to the applicable Task Order or this Agreement.
7. RESPONSIBILITY FOR ERRORS OR DELAYS FROM INACCURATE DATA. Consultant and the Diversion Authority acknowledge that the reliability of Consultant's services depends upon the accuracy and completeness of the data supplied to Consultant. The Diversion Authority accepts sole responsibility for errors or delays in services resulting from inaccurate or incomplete data supplied to Consultant, and the Diversion Authority acknowledges and agrees that any additional services thereby necessitated will result in additional fees payable by the Diversion Authority to Consultant. Consultant must receive promptly the information to deliver the services as well as the Diversion Authority's prompt updates to any information where there has been a material change which may affect the scope or delivery of the services, such as a change in the nature of the Diversion Authority's products or equipment, systems, and/or processes that are the focus of Consultant's service(s).
8. TASK ORDERS. Consultant shall receive assignments for work under this Agreement through Task Orders authorized and provided by the Diversion Authority directly or through its designated Program Management Consultant. The Diversion Authority shall compensate Consultant only for work contained within the Task Orders. Consultant shall not be obligated to perform any work or services unless such services are set forth in an executed Task Order. If Consultant engages in work beyond the scope of a Task Order, the Diversion Authority shall not compensate Consultant for that work, unless agreed to in writing by the Diversion Authority prior to the work being completed. All amendments to Task Orders must be authorized and provided by the Diversion Authority in writing. The time or schedule for performing services or providing deliverables shall be stated in each Task Order. If no times are stated, then Consultant will perform services and provide deliverables within a reasonable time. Consultant is not responsible for any delays in execution of its services or work due to the absence of an executed Task Order or amendment to a Task Order.
9. PERSONNEL. All persons assigned by Consultant to perform services as set forth in Task Orders issued under this Agreement shall be fully qualified to perform the work assigned to them. Consultant shall devote such personnel and resources, time, attention and energies to the Diversion Authority's business as are necessary to fulfill the duties and responsibilities required by the Diversion Authority and agreed to by Consultant in any given Task Order. Consultant must endeavor to minimize turnover of personnel performing services under this Agreement. If the Diversion Authority is dissatisfied with any of Consultant's personnel, the Diversion Authority reserves the right to require removal of those personnel from the Task Order. The Diversion Authority shall provide Consultant with a written statement, including reasonable detail, outlining its reasons for desiring removal. Replacement personnel for the removed person shall be fully qualified for the position.

10. SUBCONTRACTORS. Consultant may enter into agreements with subcontractors in furtherance of their services under this Agreement, as approved by the Diversion Authority's Co-Executive Directors, whose approval shall not be unreasonably withheld.
11. TERM. Unless terminated under Section 34, this Agreement shall remain in full force and effect for a period of approximately three (3) years from January 1, 2021, through December 31, 2023. This Agreement shall take full force and effect on January 1, 2021, upon approval and execution by the Diversion Authority Board. Pursuant to Section 12 of this Agreement and upon expiration of the initial term of this Agreement, this Agreement may be renewed by mutual agreement of the parties.
12. EXTENSION OF TERM. This Agreement may be extended by written amendment or renewed as set forth in Section 11 of this Agreement. If this Agreement expires before the completion of a Task Order, the Agreement shall be deemed to have been extended until the completion of services under the applicable Task Order.
13. COMPENSATION. For all services rendered by Consultant, the Diversion Authority will pay Consultant based on the terms established in each Task Order.

The compensation is payable following the submission by Consultant of an invoice setting forth the services performed on behalf of the Diversion Authority. Invoices shall be sent as required in Section 14 of this Agreement. Invoices are due and payable within thirty (30) days of receipt. If a work order issued under this Agreement contains a not-to-exceed compensation amount, the Diversion Authority will only pay compensation to Consultant for fees and/or expenses that are less than or equal to the not-to-exceed amount stated on the work order, unless the work order has been amended pursuant to Section 8 of this Agreement.

- A. Budget. Budgetary amounts, excluding taxes, will be established for each Task Order executed under the Agreement. Consultant will make reasonable efforts to complete the work within the budget and will keep the Diversion Authority informed of progress toward that end so that the budget or work effort can be adjusted if found necessary. Consultant is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is the Diversion Authority obligated to pay Consultant beyond these limits. When any budget has been increased, Consultant's costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.
 - B. Hourly Rates. Hourly rates are those hourly rates charged for work performed on the Project by Consultant's employees of the indicated classifications. These rates include all allowances for salaries, overhead, fees, and all expenses, but do not include allowances for subcontracts or outside services allowed by this Agreement.
14. INVOICING AND PAYMENT.
 - A. Consultant must submit invoices to the Diversion Authority on the fifteenth (15th) day of each month for all services provided and allowed expenses incurred during the

preceding month. Consultant's Project Manager must personally review each invoice before it is sent to the Diversion Authority to determine its accuracy and fairness, 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 Diversion Authority for the following month.

B. Consultant must submit each original invoice to:

(1) Eric Dodds, AE2S
4170 28th Avenue S.
Fargo, ND 58104
Eric.Dodds@ae2s.com

(2) With a copy of each invoice to the Diversion Authority:

APInvoicesFMDiv@jacobs.com
and
BakkegardK@fmdiversion.gov

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

- (1) Consultant's name and address;
- (2) Consultant's federal employer identification number;
- (3) Unique invoice number;
- (4) Billing period;
- (5) Description of activities performed;
- (6) Work order number associated with each activity, in accordance with the Task Order Budgetary Breakdown;
- (7) Name, billing rate, and hours worked by each person involved in each activity, in accordance with and as necessary per the Task Order Budgetary Breakdown;
- (8) Total amount of fees and costs "billed to date," including the preceding month;
- (9) Preferred remittance address, if different from the address on the invoice's coversheet; and
- (10) All of the work performed during that billing period, in accordance with the Task Order Budgetary Breakdown.

D. Consultant's invoice must be printed on a printed bill head and signed by the Project Manager or other authorized signatory.

E. If any Consultant invoices contain requests for expense reimbursement, Consultant must include copies of the corresponding invoices and receipts with that invoice.

F. After the Diversion Authority receives Consultant's invoice, the Diversion 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 Diversion Authority's

payment is being withheld and what actions Consultant must take to receive the withheld amount.

- G. In the event of a disputed billing, only the disputed portion will be withheld from payment, and the Diversion Authority shall pay the undisputed portion. The Diversion 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.
 - H. Payment does not imply acceptance of services, that expenses are allowable, 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.
 - I. The Diversion Authority will be charged interest at the rate of one-half percent (1/2%) per month, or that permitted by law if lesser, on all past-due amounts starting thirty (30) days after receipt of invoice. Payments will be first credited to interest and then to principal.
 - J. If the Diversion 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 Diversion 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 Diversion Authority for delays or damages caused by the Diversion Authority because of such suspension.
 - K. Without waiving any rights to recover payment for reimbursable taxes, fees or other costs per the provisions of Paragraph 13 herein, Consultant must pay in the first instance all fees, fines, taxes, or other costs of doing business related to the services.
15. RELATIONSHIP BETWEEN PARTIES. Consultant is retained by the Diversion Authority only for the purposes and to the extent set forth in this Agreement, and its relationship to the Diversion Authority shall, during the period or periods of services under this Agreement, be that of an independent contractor. Consultant shall be free to use such portion of Consultant's entire time, energy and skill during the course of this Agreement to meet its contractual obligation to the Diversion Authority. Neither Consultant, nor its personnel, shall be considered to be employed by the Diversion Authority or entitled to participate in any plans, arrangements or distributions by the Diversion Authority pertaining to or in connection with any benefits accorded the Diversion Authority's regular employees. The Diversion Authority shall not be financially responsible to Consultant except for the payment of compensation specifically set forth in this Agreement and shall not be responsible for the payment of any cost-of-living allowances, merit increases, medical insurance, employee's retirement, life or disability coverage, sick leave or holiday pay or vacation pay or any benefit of any kind not specifically set forth in this Agreement. Likewise, the Diversion Authority shall not be responsible for wage or salary withholding to the federal or any state government.

16. REPRESENTATIONS AND WARRANTIES. Consultant represents and warrants that the following statements are true:
 - A. Consultant has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any member of the Diversion Authority with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
 - B. The team members performing the work hereunder have no interest that would constitute a conflict of interest with the Diversion Authority during the term of the Project. This does not preclude or prohibit other Consultant employees or representatives from working with other parties who may participate on the Project and have potential or actual adverse interest to the Diversion Authority.
 - C. This Agreement does not constitute a conflict of interest or default under any of Consultant's other agreements.
 - D. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Consultant's ability to perform under this Agreement.
 - E. Consultant is in compliance with all laws, rules, and regulations applicable to its business, including rules of professional conduct (the "Laws and Regulations").
 - F. During the term of this Agreement, Consultant must not take any action, or omit to perform any act, that may result in a representation becoming untrue. Consultant must immediately notify the Diversion Authority if any representation and warranty becomes untrue.
 - G. THIS WARRANTY SHALL BE IN LIEU OF AND EXCLUDES ALL OTHER IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.
17. WORKING RELATIONSHIP. Consultant's Principal-in-Charge, Jeff Berg, and Project Manager, Brian Field, shall be the individuals that will engage with the Diversion Authority Board and the Diversion Authority's Executive Director(s). Consultant shall work in close cooperation and coordinate with the Diversion Authority's Program Management Consultant and the Diversion Authority's Lands Program Management Consultant.
18. INDEPENDENT PROFESSIONAL JUDGMENT. Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by Consultant in accordance with the independent professional judgment of each of its employees. Consultant shall require its personnel to perform the services rendered in accordance with accepted principals of its industry in the State of North Dakota. Consultant personnel are subject to the rules and regulations of any and all licensing and professional organizations or associations to which those personnel may from time to time belong, and the laws and regulations in the State of North Dakota.

19. STANDARD OF CARE. The standard of care applicable to Consultant's services will be the degree of skill and diligence normally employed by professional consultants or consultants performing the same or similar services at the time said services are performed. Consultant will re-perform any services not meeting this standard without additional compensation.
20. SUBSURFACE INVESTIGATIONS. In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of Consultant.
21. CONSULTANT'S INSURANCE. Consultant shall maintain throughout this Agreement the following insurance:
 - A. Consultant shall purchase and maintain throughout this Agreement such insurance as is required by this Agreement in the categories and amounts set forth below:
 - (1) Claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of Consultant's employees;
 - (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than Consultant's employees;
 - (4) Claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Consultant, or
 - (b) by any other person for any other reason;
 - (5) Claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - (6) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.
 - B. The policies of insurance required by this Section will:

- (1) With respect to insurance required by above paragraphs 21(A)(3) through 21(A)(6) inclusive, be written on an occurrence basis, included as additional insureds (subject to any customary exclusion regarding Professional Liability and Workers Compensation) the Diversion Authority, and any other individuals or entities identified, all of whom will be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insured, and the insurance afforded to these additional insureds will provide primary coverage for all claims covered in the General Liability and Automobile Liability Policies;
 - (a) All insurance policies required under this Agreement, including the Excess or Umbrella Liability Policies, must be from insurers rated “A-” or better by the A.M. Best Company, Inc.
- (2) Include at least the specific coverages and be written for not less than the limits of liability specified or required by Laws or Regulations, whichever is greater;
- (3) Contain a provision or endorsement that the coverage afforded will not be canceled or renewal refused until at least thirty (30) days prior written notice has been given to the Diversion Authority and to each other additional insured identified to whom a certificate of insurance has been issued (and the certificates of insurance furnished by Consultant pursuant to this Section will so provide);
- (4) Remain in effect at least until final payment and at all times thereafter when Consultant may be correcting, removing, or replacing defective work;
- (5) Include completed operations coverage:
 - (a) Such insurance will remain in effect for two (2) years after final payment.
 - (b) Consultant will furnish the Diversion Authority and each other additional insured identified, to whom a certificate of insurance has been issued, evidence satisfactory to the Diversion Authority and any such additional insured of continuation of such insurance at final payment and one (1) year thereafter.
- (6) Not limit in any way Consultant’s duties to defend, indemnify, and hold harmless the Diversion Authority and the State of North Dakota, and those parties’ officers, employees, agents, consultants, subcontractors, and representatives in accordance with Section 31;
- (7) Either in the policies or in endorsements, contain a “waiver of subrogation” (except for in the Professional Liability Policy and Workers Compensation Policy) that waives any right to recovery any of Consultant’s insurance companies might have against the Diversion Authority.

- (8) Either in the policies or in endorsements, contain a provision that Consultant's insolvency or bankruptcy will not release the insurers from payment under the policies, even when Consultant's insolvency or bankruptcy prevents Consultant from meeting the retention limits under the policies;
 - (9) Either in the policies or in endorsements, contain cross liability/severability of interests, to ensure that all additional parties are covered as if they were all separately covered (with the exception of Workers Compensation and Professional Liability Policies);
 - (10) Either in the policies or in endorsements, contain a provision that the legal defense provided to the Diversion Authority and the State of North Dakota must be free of any conflict of interest, even if retention of separate legal counsel is necessary;
 - (11) Either in the policies or in endorsements, contain a provision that any attorney who represents the State of North Dakota must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C § 54-12-08;
 - (12) Either in the policies or in endorsements, contain a provision that Consultant's policies will be primary and noncontributory regarding any other insurance maintained by or available to the Diversion Authority or the State of North Dakota, and that any insurance maintained by those parties will be in excess of Consultant's insurance and will not contribute with it (except for Worker's Compensation and Professional Liability Policies).
- C. 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 Laws and Regulations:
- (1) Worker's Compensation, and related coverages under paragraphs 21(A)(1) and 21(A)(2):
 - (a) State: Statutory;
 - (b) Applicable Federal (e.g. Longshoreman's): Statutory;
 - (c) Employer's Liability: \$1,000,000.
 - (2) Consultant's General Liability under paragraphs 21(A)(3) through 21(A)(6) which will include premises or operations coverage, completed operations and product liability coverages, and will eliminate the exclusion with respect to property under the care, custody, and control of Consultant:
 - (a) General Aggregate: \$2,000,000
 - (b) Products- Completed Operations Aggregate: \$1,000,000
 - (c) Personal and Advertising Injury: \$1,000,000
 - (d) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000

- (e) Property damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.
 - (f) Excess or Umbrella Liability:
 - i. General Aggregate: \$2,000,000
 - ii. Each Occurrence: \$2,000,000
- (3) Automobile Liability under paragraph 21(A)(6) (which will include coverage for any auto, including owned, non-owned, and hired):
- (a) Bodily Injury:
 - i. Each person: \$1,000,000
 - ii. Each accident: \$1,000,000
 - (b) Property Damage:
 - i. Each accident: \$1,000,000
 - OR
 - (c) Combined Single
 - i. Limit of: \$1,000,000
- (4) Professional Liability coverage will provide coverage for not less than the following amounts:
- (a) Each claim made: \$1,000,000
 - (b) Annual Aggregate: \$1,000,000
- (5) The following will be included as additional insured on all of Consultant's General Liability and Automobile Insurance Policies required under this Agreement:
- (a) Cass County Joint Water Resource District; and
 - (b) Diversion Authority.
- (6) If Consultant is domiciled outside of the State of North Dakota, Consultant will purchase and maintain employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on Consultant's Workers' Compensation and General Liability Policies.
- D. Consultant will ensure that any of its subcontractors or subconsultants secure and maintain insurance policies and endorsements required of Consultant and the Diversion Authority in limits no less than those specified and required to be passed down to subcontractors in Paragraph 8 of the Diversion Authority's contract with the North Dakota State Water Commission.
- E. If any required policy is written on a "claims made" form, Consultant must maintain the coverage continuously throughout the term of this Agreement, and, without lapse, for three (3) years beyond the termination or expiration of this Agreement and the Diversion Authority's acceptance of all services provided under this Agreement. The

retroactive date or “prior acts inclusion date” of any “claims made” policy must be no later than the date that services commence under this Agreement.

- F. Before Consultant begins performing services, Consultant must send the Diversion Authority certificates of insurance and any applicable endorsements attesting to the existence of coverage. Consultant will not allow its policies to be cancelled, lapse, and/or terminate or be amended to reduce coverage below the minimums called for in this Agreement without thirty (30) days’ notice to the Diversion Authority. The certificates of insurance issued to confirm Consultant’s compliance must reference this Agreement.
 - G. If required insurance lapses during the term of this Agreement, the Diversion Authority is not required to process invoices after such lapse until Consultant provides evidence of reinstatement that is effective as of the lapse date.
 - H. The Diversion Authority shall have no specific responsibility to provide any general liability coverage or worker’s compensation coverage for the benefit of Consultant’s employees during the terms of this Agreement.
22. THIRD-PARTY DESIGNERS. The Diversion Authority and Consultant acknowledge and agree that some of the design services for the Project will be separately engaged by the Diversion Authority through retention of separate design professionals or provided by the USACE. Notwithstanding any provision to the contrary, Consultant shall have no responsibility for the accuracy or sufficiency of documentation prepared by those design professionals. Consultant will notify the Diversion Authority of errors, discrepancies and inconsistencies it may discover in such documents. If such errors, discrepancies or inconsistencies cause an increase in cost or the time for performance, Consultant shall be entitled to an equitable adjustment. In the event Consultant performs constructability reviews, value engineering or any other reviews or tasks involving the design for the work contemplated by the Project, it is understood that such reviews will not render Consultant liable in any manner for the duties of the Diversion Authority’s separately retained design professionals or the USACE.
23. OPEN RECORDS. Consultant will cooperate with the Diversion Authority in responding to any request for documents by any third party to the extent such documents may be required to be disclosed under Chapter 44-04 of North Dakota Century Code regarding open records laws.
24. DATA FURNISHED BY THE DIVERSION AUTHORITY. The Diversion Authority will provide to Consultant all data in the Diversion Authority’s possession relating to Consultant’s services on the Project. Consultant may reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the Diversion Authority.
25. ACCESS TO FACILITIES AND PROPERTY. The Diversion Authority will make its facilities accessible to Consultant as required for Consultant’s performance of its services and will provide labor and safety equipment as required by Consultant for such access. The Diversion Authority will perform, at no cost to Consultant, such tests of equipment,

machinery, pipelines, and other components of the Diversion Authority's facilities as may be required in connection with Consultant's services.

26. ADVERTISEMENTS, PERMITS, AND ACCESS. Unless otherwise agreed to in the Scope of Services of a Task Order, the Diversion Authority will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for Consultant's services or Project construction.
27. TIMELY REVIEW. The Diversion Authority will examine Consultant's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the Diversion Authority deems appropriate; and render in writing decisions required by the Diversion Authority in a timely manner.
28. PROMPT NOTICE. The Diversion Authority will give prompt written notice to Consultant whenever the Diversion Authority observes or becomes aware of any development that affects the scope or timing of Consultant's services, or of any suspected or actual defect in the work of Consultant or their third-party designers or subcontractors.
29. OWNER'S INSURANCE.
 - A. The Diversion Authority will maintain property insurance on all pre-existing physical facilities associated in any way with the Project.
 - B. The Diversion Authority will provide for a waiver of subrogation as to all Owner-carried property damage insurance, during appraisals and thereafter, in favor of Consultant, Consultant's officers, employees, affiliates, and subcontractors.
 - C. The Diversion Authority is not responsible for the payment of deductibles owed under Consultant's insurance policies.
 - D. The Diversion Authority reserves the right to enter into a program-wide insurance plan at its expense. Consultant agrees to participate in such a program if named as an insured party and if commercially reasonable terms are available.
30. LITIGATION ASSISTANCE. Services required or requested of Consultant by the Diversion Authority to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the Diversion Authority, except for suits or claims between the parties to this Agreement, will be defined in an authorized Task Order and reimbursed as mutually agreed.
31. INDEMNIFICATION. Consultant will defend, indemnify, and hold harmless the Diversion Authority and the State of North Dakota, and those parties' officers, employees, agents, consultants, subcontractors, and representatives, from and against any and all claims, losses, liabilities, damages, expenses, demands, suits, fines, judgments, costs, expenses, and fees (including all fees and charges of attorneys, engineers, architects, and

other professionals and all court, arbitration, mediation, or other resolution costs) arising out of or relating to claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by any negligent act or omission of Consultant, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the work or anyone for whose acts any of them may be liable, and including all costs, expenses, and fees incurred by the Diversion Authority or the State of North Dakota in establishing and litigating the existence, scope, or any other matters relating to Consultant's obligations to defend, indemnify, and hold harmless. Consultant's obligations to defend will be free of any conflicts of interest, even if retention of separate legal counsel is necessary. Consultant's duties to defend, indemnify, and hold harmless include anything in excess of any minimum insurance requirements described in the contract documents, and anything in excess of any of Consultant's insurance policy limits. Consultant's obligations to defend, indemnify, and hold harmless will continue for a period of not less than six (6) years following completion of the Project or any termination or expiration of the contract documents.

The indemnified party shall provide notice to Consultant after obtaining knowledge of any claim that it may have pursuant to this Section 31. In the event the indemnified party pursues a claim pursuant to this Section, the indemnified party will also provide relevant information and assistance to Consultant.

32. LIMITATION OF LIABILITY. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, members, partners, agents, guarantors, consultants, subconsultants, subcontractors, and employees, to Diversion Authority, its members and the State of North Dakota, and anyone else claiming by, through, or resulting from, or in any way related to the Project or Task Order, from any negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of Consultant or Consultant's officers, directors, members, partners, agents, consultants, subconsultants, subcontractors or employees shall not exceed the total amount, individually, collectively or in the aggregate shall not exceed the amount of two million dollars (\$2,000,000). This Section takes precedence over any conflicting Section of this Agreement or any document incorporated into it or referenced by it. This limitation of liability will apply whether Consultant's liability arises under breach of contract or warranty; tort, including negligence, strict liability, statutory liability, or any other cause of action, and shall include Consultant's officers, affiliated corporations, employees, and subcontractors. Diversion Authority further agrees that its sole and exclusive remedy, and any claim, demand or suit arising from or related to the services under this Agreement shall be directed and/or asserted only against Consultant and not against any of Consultant's individual employees, officers, shareholders, affiliated firms or directors. The Diversion Authority knowingly waives all such claims against Consultant's individual employees, officers, shareholders, directors in their individual capacity or any affiliated companies to Consultant.

33. BREACH AND REMEDIES.

A. A breach exists under this Agreement if either party:

- (1) Makes a material misrepresentation in writing; or
 - (2) Fails or is unable to meet or perform any material promise in this Agreement, and
 - (a) Is incapable of curing the failure, or
 - (b) Does not cure the failure within twenty (20) days following notice (or within a longer period if specified in the notice).
- B. Consultant must give the Diversion Authority notice immediately if Consultant breaches, or if a third-party claim or dispute is brought or threatened that alleges facts that would constitute a breach under this Agreement.
- C. The parties will use their Best Efforts to resolve amicably any dispute, including use of alternative dispute resolution options.
- D. All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

34. TERMINATION.

- A. Either party may terminate this Agreement, in whole or in part, for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within twenty (20) days of written notice and diligently complete the correction thereafter.
- B. The Diversion Authority may terminate this Agreement, in whole or in part, or modify or limit Consultant's services, and proportionately, Consultant's compensation, if:
- (1) The Diversion Authority determines that having Consultant provide services has become infeasible due to changes in applicable laws or regulations, or
 - (2) Expected or actual funding to compensate Consultant is withdrawn, reduced, or limited.
- C. Either party may terminate this Agreement, in whole or in part, for any or no reason upon thirty (30) days' written notice.
- D. On termination, Consultant will be paid for all authorized services performed up to the termination date plus termination expenses, such as, but not limited to, reassignment of personnel, subcontract termination costs, and related closeout costs.
- E. In the event a federal or state tax or employment agency concludes that an independent contractor relationship does not exist, either Consultant or the Diversion Authority may terminate this Agreement immediately upon written notice.

- F. Upon receipt of any termination notice from the Diversion Authority related to any specific Task Order, Consultant must promptly discontinue all affected services under the Task Order unless the parties mutually agree otherwise.
 - G. Upon the end date of the Agreement, which is the date when this Agreement as a whole, along with any pending Task Orders, expires or are terminated pursuant to their terms:
 - (1) The Diversion Authority will be released from compensating Consultant for services other than those Consultant satisfactorily performed prior to the end date.
 - (2) Consultant must submit Consultant's final invoice for payment within sixty (60) days of the end date. The Diversion Authority will not pay any Consultant invoice received after this period.
 - (3) Consultant will be released from performing services, except for services in any non-terminated portion of the Agreement.
 - H. All rights and duties with respect to services performed prior to the expiration or termination of this Agreement, and continuing obligations specified in this Agreement to be performed following expiration or termination of this Agreement, will survive the expiration or termination of this Agreement.
 - I. In the event of termination, expiration, or removal/withdrawal, Consultant must terminate its services as soon as it is reasonably possible to do so without (1) prejudice to the Diversion Authority's interests (or the interest of any person represented on the Diversion Authority's behalf) or (2) violation of Consultant's statutory or ethical duties. Consultant must notify the Diversion Authority of any further services, prior to withdrawal or substitution, which Consultant believes are necessary to avoid prejudice to the Diversion Authority's interests (or the interest of any person represented on the Diversion Authority's behalf) and obtain the Diversion Authority's consent prior to performing such services.
35. ADDITIONAL PAYMENT. Nothing contained in this Agreement shall obligate the Diversion Authority to make any payment for services rendered in any period after the termination of Consultant's retention by the Diversion Authority.
36. SUSPENSION, DELAY, OR INTERRUPTION OF WORK. The Diversion Authority may suspend, delay, or interrupt the Services of Consultant for the convenience of the Diversion Authority. In such event, Consultant's contract price and schedule shall be equitably adjusted.
37. NOTICE. Any notice or election required or permitted to be given or served by any party to this Agreement upon any other will be deemed given or served in accordance with the provisions of this Agreement if said notice or election is (1) delivered personally, or (2) mailed by United States certified mail, return receipt requested, postage prepaid and in any case properly addressed as follows:

43. ACCESS TO CONSULTANT'S ACCOUNTING RECORDS AND AUDIT RIGHTS.

- A. Consultant must allow the Diversion Authority and its designees to review and audit Consultant's financial documents and records relating to this Agreement. Consultant will maintain accounting records, in accordance with generally accepted accounting principles. These records will be available to the Diversion Authority for a period of two (2) years after Consultant's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The Diversion Authority may only audit accounting records applicable to a cost-reimbursable type compensation. Upon finalization of the audit, the Diversion Authority will submit to Consultant a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to Consultant at the completion of an audit.
- B. Within one hundred eighty (180) days after the date of the Notice of Audit Results, Consultant will respond, in writing, to the Diversion Authority indicating (a) whether it concurs with the audit report, (b) clearly explaining the nature and basis for any disagreement as to a disallowed item of expense, and (c) providing a written explanation as to any questioned or no opinion expressed item of expense ("Response"). The Response will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, Consultant may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the Diversion Authority. The Response will refer to and apply the language of this Agreement. Consultant agrees that failure to submit a Response within the one hundred eighty (180) day period constitutes agreement with any disallowance of an item or expense and authorizes the Diversion Authority to finally disallow any items of questioned or no opinion expressed cost.
- C. The Diversion Authority will make its decision with regard to any Notice of Audit Results and Response within one hundred twenty (120) days after the date of the Response. If it is determined by a court of competent jurisdiction or by mutual agreement that an overpayment has been made to Consultant, Consultant will repay the amount to the Diversion Authority or reach an agreement with the Diversion Authority on a repayment schedule within thirty (30) days after the date of an invoice from the Diversion Authority. If Consultant fails to repay the overpayment or reach an agreement with the Diversion Authority on a repayment schedule within the thirty (30) day period, Consultant agrees that the Diversion Authority will deduct all or a portion of the overpayment from any funds then or thereafter payable by the Diversion Authority to Consultant for this project. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be the interest rate on judgments in North Dakota as calculated by the state court administrator pursuant to N.D.C.C. § 28-20-34. The rate of interest will be reviewed annually by the Diversion Authority and adjusted as necessary. Consultant expressly consents to

this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit to contest the Diversion Authority's decision.

44. OWNERSHIP. Ownership of work product and inventions created by Consultant shall be as follows:
- A. Pre-Existing Consultant Materials. The Diversion Authority acknowledges and agrees that in the performance of the services, Consultant will utilize its proprietary data, concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software, works of authorship, software and hardware architecture, databases, tools, other background technologies and standards of judgment that developed or licensed from third parties prior to the effective date of this Agreement (the "Pre-Existing Consultant Materials") and that Consultant shall retain all right, title and interest, including intellectual property rights in the Pre-existing Consultant Materials. Subject to the terms and conditions of this Agreement, Consultant hereby grants to the Diversion Authority a non-exclusive, non-transferable, royalty-free license, fully assignable to the Diversion Authority's member entities, to utilize the Pre-Existing Consultant Materials for the purpose of the Diversion Authority's Project.
 - B. Derivative Consultant Materials. The Diversion Authority acknowledges and agrees that in the performance of the services, Consultant will utilize and develop customization, enhancements, improvements, modifications and adaptations of and to the Pre-Existing Consultant Materials (the "Derivative Consultant Materials"). Consultant shall retain all right, title and interest, including intellectual property rights in the Derivative Consultant Materials. Subject to the terms and conditions of this Agreement, Consultant hereby grants to the Diversion Authority a non-exclusive, non-transferable, royalty-free license, fully assignable to the Diversion Authority's member entities, to utilize the Derivative Consultant Materials.
 - C. New Consultant Materials. The Diversion Authority acknowledges and agrees that in the performance of the services, Consultant may utilize and develop new software, hardware and other technology or processes that do not utilize or incorporate, or are not based upon, the Pre-Existing Consultant Materials ("New Consultant Materials"). Between the parties, subject to the license grant-back set forth below, the Diversion Authority will retain all right, title and interest, including without limitation intellectual property rights, in and to the New Consultant Materials. The Diversion Authority shall have the full ownership of such New Consultant Materials without any limitation or restriction.
 - D. License Grant Back. Subject to the terms and conditions of the Agreement, the Diversion Authority hereby grants to Consultant a non-exclusive, transferable, royalty-free license to utilize the concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software and hardware architecture, and other background technologies that are newly developed by Consultant under the Agreement and assigned to the Diversion Authority under this Agreement, to make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale,

service, support, import, and otherwise disposed of any products, technologies, and services and for any purposes without restriction.

- E. License Restrictions. Except as otherwise permitted above, the Diversion Authority and its member entities shall not, and shall not allow any third party to: (i) modify or otherwise create derivative works of the Pre-Existing Consultant Materials; (ii) use the Pre-Existing Consultant Materials for any other purpose, other than the Diversion Authority's Project; (iii) make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, or import any product that incorporates, embodies and/or is based upon the Pre-Existing Consultant Materials; (iv) sublicense, distribute or otherwise transfer to a third party any of the Pre-Existing Consultant Materials by itself or as incorporated in the services; or (v) reverse engineer, disassemble, decompile or attempt to derive the source code or underlying ideas or algorithms of the Pre-Existing Consultant Materials. Any additional use of the Pre-Existing Consultant Materials shall require a separate written license agreement.
- F. Miscellaneous. Nothing contained in this Agreement shall be construed as conferring to the Diversion Authority or any third party any license or right by implication, estoppel or otherwise to any intellectual property rights of Consultant, other than the rights expressly granted under this Agreement. The Diversion Authority and its member entities may use said work products for the specific purpose for which the work product was intended. Any other use or reuse, without written verification or adaptation by Consultant will be at the user's sole risk.
- G. Diversion Authority Material. As between the parties, the Diversion Authority is the exclusive owner of all material Consultant collects from the Diversion Authority in connection with the services under this Agreement, including copyrights. Within thirty (30) days of the end date of the Agreement, or upon the Diversion Authority's notice at any time, Consultant must give all materials collected to the Diversion Authority (or to another party at the Diversion Authority's direction). Unless the Diversion Authority specifies otherwise, all files must be saved in Microsoft Word and Excel formats, as applicable. Consultant must maintain Consultant's records relating to services under this Agreement and Consultant's invoices, and all other materials, in an accessible location and condition for a period of not less than one (1) year after the later of:
- (1) The date when Consultant receives final payment under this Agreement; or
 - (2) The date when the Diversion Authority resolves with Consultant the findings of any final audit.

Consultant may retain copies of any original documents Consultant provides to the Diversion Authority and a copy of any material collected from the Diversion Authority in Consultant's confidential files for the purpose of complying with applicable laws or established company procedure regarding the preservation of business records.

45. REUSE OF PROJECT DOCUMENTS. Services and deliverables are for the exclusive use of the Diversion Authority and are not to be relied upon by third parties. All reports,

drawings, specifications, documents, and other deliverables of Consultant, whether in hard copy or in electronic form, are Instruments of Service for this Project, whether the Project is completed or not. Upon full payment for services due under this Agreement, Consultant agrees to grant to the Diversion Authority an irrevocable license to the Instruments of Service, the Diversion Authority agrees to indemnify Consultant and Consultant's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to the Diversion Authority's related entities' unauthorized reuse, change or alteration of these Project documents. Nothing in this Agreement shall constitute a waiver of the statutory limits of liability set forth in N.D.C.C. § 32-12.1-03 or a waiver of any available immunities or defenses.

46. CONFIDENTIAL INFORMATION AND PUBLICITY.

A. Consultant agrees to hold in confidence the following confidential information:

- (1) All information that the Diversion Authority discloses to Consultant; and
- (2) All information to which Consultant gains access while providing services under this Agreement.

B. Confidential information does not include any information that Consultant can demonstrate has been made available to the public (other than through a breach of this Agreement). As between Consultant and the Diversion Authority, the Diversion Authority owns the confidential information, and the Diversion Authority authorizes Consultant to use it only for purposes of performing this Agreement. Consultant may also disclose the Diversion Authority's confidential information to the extent necessary to comply with law, provided Consultant gives the Diversion Authority prior written notice. Upon the end date of this Agreement, Consultant must destroy or return all confidential information to the Diversion Authority, at the Diversion Authority's discretion, and certify to the Diversion Authority, in writing, that it has done so; provided, however, such destruction shall include, without limitation, the process of expunging, to the extent reasonably practicable, all such confidential information from any computer, hard drive, word processor, server, backup tape, or other electronic device containing such confidential information. Notwithstanding the foregoing, Consultant may retain one (1) archival copy of the confidential information in its confidential files for the purpose of complying with applicable laws or established company procedure regarding the preservation of business records.

C. Consultant must not make any public announcement, press release, or other writing relating to the services under this Agreement without the Diversion Authority's prior written approval.

D. Consultant understands a breach under this Section may result in irreparable damage for which no adequate remedy may be available. Accordingly, injunctive relief and other equitable relief are remedies available to the Diversion Authority.

47. ENTIRE AGREEMENT; MODIFICATION. This Agreement, including its attachments and schedules, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment approved by the Diversion Authority and executed by Consultant and the Chair of the Diversion Authority on behalf of the Diversion Authority. The following attachment is hereby made a part of this Agreement: (1) **Exhibit A** – General Scope of Services. This Agreement may be modified as to terms and conditions from time to time upon the mutual consent of the parties; however, such modification shall be reduced to writing, signed by the parties and the document appended to and made a part of this Agreement.
48. FORCE MAJEURE. Consultant is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of Consultant. In any such event, Consultant’s contract price and schedule shall be equitably adjusted.
49. WAIVER. A party’s waiver of enforcement of any of this Agreement’s terms or conditions will be effective only if it is in writing. A party’s specific waiver will not constitute a waiver by that party of any earlier, concurrent, or later breach or default.

The Diversion Authority waives all claims against Consultant, including those for latent defects, which are not brought within six (6) years of substantial completion of the facility designed or final payment to Consultant, whichever is earlier.

50. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Diversion Authority, its successors and assigns, and any such successor shall be deemed substituted for the Diversion Authority under the terms of this Agreement. This Agreement shall likewise be binding upon Consultant, its successors and assigns. As used in this Agreement, the term “successor” shall include any person, firm, corporation or other business entity which at any time whether by merger, purchase or otherwise acquires all or substantially all of the assets or business of the corporation.
51. NEGOTIATED AGREEMENT. This Agreement has been arrived at through negotiation between the parties.
52. INTEGRATED SERVICES. Notwithstanding anything in the Agreement to the contrary, the parties recognize and support the integrated nature of the Project team in the performance and delivery of professional services by Consultant. This Agreement, and particularly the contractual risk allocation and liability provisions, shall be interpreted and applied, and the professional accountability determined in such a manner that the integrated nature, shared control of the service performance, and joint decision-making roles of the parties and Consultant’s role as agent for the Diversion Authority shall be given due and full consideration. Further, the parties agree to re-visit this Agreement, if necessary, to better reflect the parties’ changing roles on the Project, and any changes in Consultant’s role as the Project proceeds.
53. SEVERABILITY AND SURVIVAL. If any court of competent jurisdiction declares, for any reason, any provision or part of this Agreement to be invalid, illegal, or unenforceable,

all remaining terms and provisions of this Agreement will remain binding and enforceable. Limitations of liability, indemnities, and other express representations shall survive termination of this Agreement for any cause.

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

55. DISPUTE RESOLUTION. The Diversion Authority and Consultant shall endeavor to resolve claims, disputes and other matters in question between them by non-binding mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association. A request for non-mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of non-binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

If the parties do not resolve a dispute through non-binding mediation pursuant to this Section, then the method of binding dispute resolution shall be via formal claims filed in a court of competent jurisdiction.

56. CONTROLLING LAW AND VENUE. This Agreement, its interpretation and performance, and any other claims related to it shall be controlled by the laws of the state where the services or work was provided, and any action brought as a result of any claim, demand or cause of action arising under the terms of this Agreement shall be brought in a court of competent jurisdiction within the state where the services or work were provided.

57. 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 USEPA 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, Consultant shall complete and submit to the Diversion Authority the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34, which are attached in **Exhibit B** to this Agreement. Consultant 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.

58. DEBARMENT AND SUSPENSION. Consultant 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>. Consultant 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, Consultant shall complete and submit to the Diversion Authority the federal certification form regarding debarment and suspension, which is attached in **Exhibit B** to this Agreement.
59. CIVIL RIGHTS OBLIGATIONS. Consultant 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.

Upon award of this contract, Consultant shall complete and submit to the Diversion Authority the federal certification form regarding debarment and suspension, which is attached in **Exhibit B** to this Agreement.

60. COUNTERPARTS; ELECTRONIC SIGNATURES. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

This Agreement is executed the day and year above noted.

DIVERSION AUTHORITY:

Metro Flood Diversion Authority

By: _____
Michelle (Shelly) Carlson, Chair
Diversion Authority Board

By: _____
Joel Paulsen, Executive Director

CONSULTANT:

Crown Appraisals, Inc.

By: _____
Jeffrey Berg, President

**Fargo - Moorhead Diversion Authority
Consultant's Role***

Exhibit A – General Scope of Services

1. Real property appraisal services.

See Task Order No. 1 for description of services.

* Consultant will coordinate and cooperate in Good Faith with the Diversion Authority's Project Management Consultant.

EXHIBIT B

**FEDERAL CERTIFICATION FORMS REGARDING
LOBBYING, DEBARMENT AND SUSPENSION, AND CIVIL RIGHTS**

CERTIFICATION REGARDING FEDERAL LOBBYING

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

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

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

Company/
Entity Name: _____

Signed: _____

Its: _____

Date: _____

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

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

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

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)

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

Official Business Name _____

Date: _____

By: _____

Name and Title of Authorized Representative

Signature of Authorized Representative

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

PAGE 2 - 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.
6. Executive Order No. 11246.

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

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

Signature of Authorized Official

Title

Print Name

Name of Institution or Agency

Date

Street

City, State, Zip Code

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

Office Email Address



CONTRACT NUMBER: Master Services Agreement

PROJECT NAME: Appraisal Services

CONSULTANT NAME: Crown Appraisals, Inc.

DATE SUBMITTED: February 16, 2021

SUBMITTED BY: Eric Dodds

LEGAL REVIEW

APPROVED AS IS

APPROVED WITH COMMENTS

NOT APPROVED

Legal Sign-Off (signature): 

Printed Name: John T. Shockley

Date of Sign-Off: 2-18-2021



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**POLICY ON THE DISPOSITION AND MANAGEMENT
OF
COMPREHENSIVE PROJECT LANDS**

PREAMBLE

The leaders and representatives of the Member Entities of the Metro Flood Diversion Authority (Authority) entered into a Joint Powers Agreement dated June 1, 2016 (the “JPA”) that established procedures and a governing structure to secure long term and comprehensive flood risk reduction for the Fargo-Moorhead Metropolitan Area and to promote accountable governance, provide for the construction of the Fargo-Moorhead Area Flood Diversion Project (“Comprehensive Project”), encourage Member Entities’ participation, and to foster a sense of community by facilitating joint jurisdictional cooperation among the Member Entities.

Section 3.01 of the JPA states that the purpose of the JPA is to allow the Member Entities to work collaboratively to avoid the duplication of required approvals and actions with respect to the Comprehensive Project, to maximize efficiencies of the Member Entities with respect to flood control projects, to have the Member Entities’ employees, engineers, attorneys and professional consultants cooperate in the design, financing, construction, operation and maintenance of the Comprehensive Project.

Section 3.02 of the JPA clarifies that the intent of the JPA is to increase efficiencies with respect to designing, constructing, financing, operating and/or maintaining the Project by allowing the Member Entities to cooperate in the bidding and letting of contracts, by cross-pledging sales taxes, special assessment levies, by entering into a Project Agreement with a P3 Developer, cooperating in the administration of the Comprehensive Project and to reimburse the Member Entities for expenses incurred in connection with the Comprehensive Project.

The Authority will periodically review its inventory of real property to determine if its land ownership exceeds its foreseeable needs for the Comprehensive Project. Land that is no longer needed, not expected to be needed in the future for the Comprehensive Project and declared Excess Land by the Executive Director may be made available for sale, lease, or exchange in accordance with this Policy. Excess Land and the proceeds of the lease and sales of such lands shall be treated as fiscal assets of the Authority and this Policy provides a framework for the effective management of these assets. Land that is expected to be needed in the future for the Comprehensive Project should be leased or otherwise managed in the best interests of the Authority, consistent with the applicable parts of this Policy.

1. INTRODUCTION

- 1.1. In connection with carrying out their land acquisition responsibilities under the JPA, the Member Entities have acquired, and may continue to acquire, real property that may be determined not to be necessary for completion or operation of the Comprehensive Project.



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- 1.2. The JPA governs the sale of excess property acquired by Member Entities in connection with real property needed for the Comprehensive Project. In accordance with Section 16.10 of the JPA, each Member Entity shall coordinate the sale of such property with the Authority's Executive Director and the Member Entity's chief administrative staff. Member Entities shall not sell, trade, and/or exchange excess Comprehensive Project property without prior written approval from the Authority's governing body (the "Diversion Authority Board").
- 1.3. The Authority's Property Rights Acquisition and Mitigation Plan provides initial guidance on the disposal process for excess property. Further guidance on the procedure for requesting Authority approval to sell lands can be found in the Authority's resolution(s) establishing the procedures and protocols for accepting funds derived from land sales and rent, as well as the corresponding resolutions for certain Member Entities.
- 1.4. The purpose of this Policy is to provide a policy framework for Member Entities to follow when determining when and how Comprehensive Project Land may be sold or managed for the benefit of the Authority. This policy is intended to be administered by the Executive Director and create a process that is instructional to the Diversion Authority and its Member Entities, transparent to the community and beneficial to the Diversion Authority.
- 1.5. When proposing to the Authority whether Excess Land should be sold, Member Entities should observe the following guiding principles:
 - 1.5.1. *Refrain from selling land at less than Market Value.*
 - 1.5.2. *Provide preference to Member Entities.*
 - 1.5.3. *Provide preference to Prior Landowners.*
 - 1.5.4. *Provide preference to Adjacent Property Owners.*
 - 1.5.5. *Eventually sell or exchange all Excess Lands, at a time when it is in the financial best interests of the Authority to do so.*

Author Comment: Section 1.5.4: It has been suggested that "Preference" be changed to "Notice" for adjacent property owners.

2. DEFINITIONS.

- 2.1. "Adjacent Farm Operator" means the specific party or parties, collectively and individually, that through ownership or by contract operated the adjoining farmland for the last growing season prior to the Authority offering the land for lease. Land that is separated from the Excess Land by a public road, right of way or legal drain shall for the purposes of this Policy be considered adjacent.
- 2.2. "Adjacent Landowner" means a person or entity holding title to land adjoining the Excess Land based on the most recent property tax statement(s). Land that is separated from the Excess



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Land by a public road, right of way or legal drain shall for the purposes of this Policy be considered adjacent.

- 2.3. “Authority” or “Metro Flood Diversion Authority” means the Metro Flood Diversion Authority, a North Dakota political subdivision created by the Joint Powers Agreement.
- 2.4. “Comprehensive Project” (a/k/a “LPP Flood Risk Management Features”) means construction of a storm water diversion channel through North Dakota that conveys 20,000 cubic feet per second at the one percent (1%) chance or 100 year event and is approximately 30 miles long, tie-back embankments, a staging area, a Diversion Inlet Structure, a 6-mile connecting channel, a control structure on each of the Red and Wild Rice Rivers, an aqueduct hydraulic structure on each of the Maple and Sheyenne Rivers, a drop structure of each of the Rush and Lower Rush Rivers, three railroad crossings, in-town levees, community ring levees, and environmental mitigation, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environment Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by District Engineer, St. Paul District 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.
- 2.5. “Comprehensive Project Land” means land acquired by the Authority or one of its Member Entities for the construction, operation, use, maintenance, or mitigation of the Comprehensive Project.
- 2.6. “Diversion Authority Board” means the Governing Body of the Authority.
- 2.7. “Excess Land” means land owned by the Authority or one of its Member Entities that has been declared by the Executive Director as no longer needed for the construction, operation, use, maintenance, or mitigation of the Comprehensive Project.
- 2.8. “Governing Body” means the body that performs the legislative and governmental functions of a political subdivision, including but not limited to, a board, council, or commission. For example, the Cass County Commission, the Clay County Commission, the Moorhead City Council, and the Fargo City Commission are the Governing Body of each of said entities as the board for the Cass County Joint Water Resource District is the Governing Body for that entity.
- 2.9. “Impacted Owner” means an individual or entity from whom property rights are being acquired for the Comprehensive Project.



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- 2.10. "JPA" and/or "Joint Powers Agreement" 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 continues the Authority.
- 2.11. "Market Lease Rate" means the current lease rate for agricultural land as determined by professionals competent in the agricultural industry, unless otherwise determined by the Authority. The Market Lease Rate shall take into consideration the impacts of the Comprehensive Project that affect the lease value of the Excess Land.
- 2.12. "Market Value" means the value established for the Excess Land by appraisal, real estate market assessment or other method acceptable to the Executive Director. The Market Value of Excess Land shall take into consideration the impacts of the Comprehensive Project that affect the value of the Excess Land and anticipated closing costs, including but not limited to applicable real estate or auctioneer commission.
- 2.13. "Member Entities" shall mean the City of Moorhead, the City of Fargo, Clay County, Cass County, and CCJWRD and, for purposes of this policy, the Moorhead-Clay County Joint Powers Authority.
- 2.14. "Prior Landowner" means the specific party or parties, collectively and individually, that owned and conveyed the Comprehensive Project Land to the Member Entity and/or the Authority.
- 2.15. "Prior Farm Operator" means the specific party or parties, collectively and individually, that through ownership or by contract operated the applicable farmland for the last growing season prior to the Authority offering the land for lease.
- 2.16. "Public Lease" means a lease of Comprehensive Project Land secured through advertising the lease offering for a minimum of 30 days by (1) publishing a notice of intent to lease-request for proposals; (2) a classified advertisement published once a week for three (3) consecutive weeks in a local newspaper of general circulation; or (3) other commercially reasonable means of publicly marketing the specific Comprehensive Project Land being offered for lease.
- 2.17. "Public Sale" means a sale of Excess Land that is advertised for a minimum of 30 days by (1) publishing a notice of intent to sell or request for proposals; (2) a classified advertisement published once a week for three (3) consecutive weeks in a local newspaper of general circulation; or (3) other commercially reasonable means of publicly marketing the specific Excess Land being sold.

3. RESPONSIBILITIES

- 3.1. The Member Entities have a core responsibility to acquire and make available to the Authority real property for construction, operations, maintenance, and mitigation of the Comprehensive Project.



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- 3.2. The Member Entities have a further responsibility to act in the best interest of the Authority and the financial interests of the Comprehensive Project (and the public at large) in acquiring, managing, developing and disposing of the property it acquires on behalf of the Authority.
- 3.3. The Member Entities must seek approval from the Authority prior to selling, trading, or exchanging Comprehensive Project property. The Member Entities must also remit to the Authority all revenues from land sales and leases of Comprehensive Project property. The Member Entities will carry out these duties in accordance with the Joint Powers Agreement, and in accordance with the Authority's Resolution(s) establishing the procedures and protocols for accepting funds derived from land sales and rent, as well as the corresponding resolutions of applicable Member Entities.

4. KEY PRINCIPLES

- 4.1. **Sale of Excess Land.** It is the Authority's intent that all Excess Land will eventually be sold or exchanged at a time when it is in the financial best interests of the Authority to do so. The Authority views Excess Lands as assets of the taxpayers to be used to offset costs of the Comprehensive Project.
- 4.2. **Land Sold via Public Sale.** It is the Authority's intent that the sale of Excess Lands, subject to the preferences set forth herein, shall be done via public sale such that there is transparent and abundant opportunity for all buyers to purchase the property.
- 4.3. **Refrain from Selling Land at less than Market Value.** It is the Authority's intent that Excess Land should not be sold at less than Market Value.
- 4.4. **Preference to Sell Excess Land to a Member Entity.** First preference should be given to Member Entities. Member Entities should be provided the opportunity to acquire Excess Land at market value for purposes consistent with the Member Entity's approved policies and procedures prior to the Excess Land being made available to the prior landowner as set forth herein.
- 4.5. **Preference to Sell Excess Land to Prior Landowner.** Second preference should be given to the Prior Landowner of an Excess Land to repurchase such Excess Land. The Prior Landowner should be provided the opportunity to acquire Excess Land at market value prior to Excess Land being made available to Adjacent Landowners as set forth herein.
- 4.6. **Preference to Sell Excess Land to Adjacent Landowner.** Third preference should be given to Adjacent Landowners. Each Adjacent Landowner should be provided the opportunity to acquire Excess Land at market value prior to Excess Land being made available to the general public.
- 4.7. **Preference to Lease Agricultural Land to the Prior Farm Operator.** First preference should be given to the Prior Farm Operator, who should be provided with notice of the intent to lease the



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Comprehensive Project Land prior to the Comprehensive Project Land being made available to the Adjacent Farm Operators as set forth herein.

- 4.8. Preference to Lease Agricultural Land to an Adjacent Farm Operator. Second preference should be given to the Adjacent Farm Operators. Each Adjacent Farm Operator should be provided the opportunity to lease Comprehensive Project Land at market rates prior to the Comprehensive Project Land being made available for lease to the general public.
- 4.9. Mitigation for Impacted Owners. Should a Member Entity determine that it would be in the best interest of the Authority to sell or exchange Comprehensive Project Land with an Impacted Owner, the Member Entity will work to negotiate such sale or exchange, as applicable, prior to the Excess Land being made available to the Adjacent Landowners or the general public.
- 4.10. Authority pays Taxes on Lands. The Authority, or Member Entity, should continue to pay property taxes on Comprehensive Project Lands held in its name or in the name of a Member Entity until such time that the lands are declared Excess Lands and sold or exchanged.

5. MANNER OF DISPOSAL OF EXCESS LAND

- 5.1. The purchaser of Excess Land will be responsible for closing costs, as well as any necessary relocation costs, subdivision costs, rezoning fees, and other costs to complete the sale or exchange.
- 5.2. Preference to Member Entities:
 - 5.2.1. The Authority will give first preference to Member Entities. Upon the Authority's determination that Excess Land should be sold, it will first give written notice of intent to sell to the Member Entities, subject to any conditions in the original acquisition of the Excess Land. Should a Member Entity desire to retain the Excess Land for purposes consistent with its policies and procedures, it shall, within thirty (30) calendar days of the notice of intent, provide notice to the Authority of its intent to acquire the Excess Land. The Authority will transfer all obligations of the ownership and management of the Excess Land to the purchasing Member Entity upon receipt of funds equal to or greater than Market Value in accordance with standard real property sale procedures.
- 5.3. Preference to Prior Landowner:
 - 5.3.1. The Authority, or Member Entity, will give second preference to the Prior Landowner. To carry out this principle, the Member Entity who owns the Excess Land will, subject to any conditions in the original acquisition of the Excess Land, provide the Prior Landowner with a notice of intent to sell the Excess Land at Market Value and ask the Prior Landowner to provide written notice of their commitment to acquire the Excess Land at Market Value within thirty (30) calendar days from the date of the notice.



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5.3.2. If there are multiple parties that make up the Prior Landowner and those parties do not want to collectively repurchase the Excess Land at the Market Value, priority shall be given to the Prior Landowner party that within the 30-day period offers to acquire the land for the highest purchase price at or above the Market Value.

5.3.3. If the Prior Landowner does not commit to acquire the Excess Land in the allotted timeframe and enter into a written purchase agreement with the applicable Member Entity for the repurchase of the Excess Land reasonably soon thereafter, the Member Entity will offer the Excess Land to the Adjacent Landowner.

5.4. Preference to Adjacent Landowner:

5.4.1. Member Entities will give the third preference to the Adjacent Landowners. To carry out this principle, Member Entity who owns the Excess Land will, subject to any conditions in the original acquisition of the Excess Land, provide the Adjacent Landowners with a notice of intent to sell the Excess Land at Market Value and ask the Adjacent Landowners to provide written notice of their interest in acquiring the Excess Land at the Market Value within thirty (30) calendar days from the date of the notice.

5.4.2. If there are multiple interested Adjacent Landowners, priority shall be given to the Adjacent Landowner that within the 30-day period offers to acquire the land for the highest purchase price above the Market Value.

5.4.3. If no Adjacent Landowners submit interest in acquiring the Excess Land in the allotted timeframe and enter into a written purchase agreement with the applicable Member Entity for the purchase of the Excess Land reasonably soon thereafter, the Member Entity will sell the Excess Land at a Public Sale.

5.5. Public Sale:

5.5.1. Public Sales will be subject to a reserve price that is calculated based on current Market Value. If the Excess Land cannot be sold for the Market Value, the Executive Director will make a recommendation to the Authority to adjust the Market Value, sell the Excess Land at the most favorable offer received, or postpone the sale to a later date.

6. MANNER OF LEASING COMPREHENSIVE PROJECT LAND AND PROPERTY (Property not immediately required for the Authority's needs):

6.1. The Member Entities have acquired and may continue to acquire land and property which is either not immediately required for the Comprehensive Project or not yet declared by the Executive Director as Excess Land.

6.2. Residential, recreational, conservation, and commercial land.



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- 6.2.1. Such land will be offered for lease on an annual or month-to-month basis or for a longer term if such basis is customary for the applicable property.
- 6.2.2. The amount of rent will be determined by the market rate as determined by professionals competent in the appropriate industry, unless otherwise decided by the Authority.
- 6.2.3. The rent from such leases will be remitted to the Authority at a frequency appropriate for the type of property being leased.
- 6.3. Farmland:
 - 6.3.1. Such land will be offered for lease on an annual basis unless a longer lease is in the best interest of the Authority.
 - 6.3.2. The rent from such leases will be remitted to the Authority on an annual basis.
 - 6.3.3. Preference to Prior Farm Operator:
 - 6.3.3.1. The Member Entities will give first preference for leasing farmland to the Prior Farm Operator. To carry out this principle, Member Entities will provide the Prior Farm Operator with a written notice of intent to lease the farmland at the Market Lease Rate and ask the Prior Farm Operator to provide written notice of their interest in leasing the farmland within thirty (30) calendar days from the date of the notice.
 - 6.3.3.2. If there are multiple parties that make up the Prior Farm Operator and those parties do not want to collectively lease the farmland at the Market Lease Rate, priority shall be given to the Prior Farm Operator party that within the 30-day period offers to lease the land for the highest lease rate at or above the Market Lease Rate.
 - 6.3.3.3. If the Prior Farm Operator does not commit to lease the farmland in the allotted timeframe and enter into a written lease agreement with the applicable Member Entity for the lease of the Excess Land reasonably soon thereafter, the Member Entity will offer to lease the farmland to the Adjacent Farm Operator.
 - 6.3.4. Preference to Adjacent Farm Operator:
 - 6.3.4.1. The Member Entities will give second preference for leasing farmland to the Adjacent Farm Operators. To carry out this principle, Member Entities will provide the Adjacent Farm Operators with a written notice of intent to lease the farmland at the Market Lease Rate and ask them to provide written notice of their interest in leasing the farmland within thirty (30) calendar days from the date of the notice.



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6.3.4.2. If there are multiple interested Adjacent Farm Operators, priority shall be given to the Adjacent Farm Operator that within the 30-day period offers to lease the land for the highest lease rate above the Market Lease Rate.

6.3.4.3. If no Adjacent Farm Operator submits interest in leasing the farmland in the allotted timeframe and enters into a written rental agreement with the applicable Member Entity for the lease of the farmland reasonably soon thereafter, the Member Entities will offer the farmland for lease to the public.

6.4. Public Lease:

6.4.1. Public Leases will be offered at the Market Lease Rate. Interested parties may submit a written notice of intent to lease at the Market Lease Rate to the Member Entity during the advertising period. If more than one notice of interest in leasing the property is received, priority shall be given to the party that within the advertising period offers to lease the property for the highest rental price at or above the Market Lease Rate.

6.4.2. If the farmland cannot be leased for at least the Market Lease Rate (no notice of intent is received), the Authority will adjust the Market Lease Rate and re-advertise the Public Lease for a minimum of fourteen (14) calendar days. If more than one notice of interest in leasing the farmland is received, priority shall be given to the party that within the advertising period offers to lease the farmland for the highest rental price at or above the Market Lease Rate as adjusted. If again no notice of intent is received, the Market Lease Rate will be adjusted again and the process repeated until the farmland is leased, or the farmland in question is managed differently as determined by the Authority.

7. UNSOLICITED PROPOSALS

7.1. The Authority and its Member Entities may entertain unsolicited proposals, including property development proposals, land sales, and leases. For purposes of unsolicited proposals, the following principles will apply:

7.1.1. Proposals received will be analyzed and evaluated by the Member Entity and/or Authority.

7.1.2. Proposals which are deemed reasonable by the Authority will be subject to the preferences for prior and adjacent parties as described for sales and leases, then advertised similarly to Public Sale to elicit competitive proposals and public comment.

7.1.3. Should the advertisement elicit purchase or lease interest from one or more third parties, a Public Sale or Public Lease process will be conducted.

7.1.4. The final lease or sale transaction will be submitted to the Authority for approval.



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8. IMPACTED OWNERS

- 8.1. The Authority and its Member Entities may entertain proposals from Impacted Owners for land sales or exchanges. For purposes of such proposals, the following principles will apply:
 - 8.1.1. Proposals received will be analyzed and evaluated by the Member Entity and Executive Director to determine whether the sale or exchange is in the best interests of the Authority.
 - 8.1.2. Proposals received will be subject to the preferences described herein.
 - 8.1.3. Sales and exchanges will be at Market Value, unless otherwise approved by the Authority.
 - 8.1.4. The final sale or exchange transaction will be submitted to the Authority for approval.

9. TRANSACTION REQUIREMENTS

- 9.1. Except as may be authorized by the Authority, all Excess Land shall be sold in accordance with the terms and conditions of a purchase agreement prepared by the applicable Member Entity to be entered into by the buyer and the applicable Member Entity and sold "as is", via a quit claim deed prepared by the applicable Member Entity. All conveyances shall be subject to any existing easements, reservations, rights of use and restrictions of record, building and use restrictions, zoning ordinances, municipal regulations, prior conveyances or leases of oil, gas and mineral rights, and all liens, encumbrances, defects and other conditions on, concerning or relating to the Excess Land. In no event will the Member Entity consider conveying excess real property by Warranty Deed. The buyer at buyer's option, sole cost, and expense may obtain a standard policy of title insurance for the Excess Land.

10. TRANSPARENCY/OPEN RECORDS

- 10.1. It is important that all land transactions of the Authority and its Member Entities are conducted in a transparent manner. Any documents prepared by, or provided to, the Authority or its Member Entities in connection with the sale of Excess Land are subject to each Member Entity's respective state open records law and must be disclosed by the Member Entity in accordance with that Member Entity's state law.

11. PROTECTION OF THE PUBLIC INTEREST

- 11.1. The Member Entities have a further responsibility to protect the public interest in acquiring, managing, developing, and disposing of the property it acquires on behalf of the Authority. In this regard, the Member Entities must conduct all real estate transactions in the best interest of the Authority (and thus, the public at large) rather than that of the individual purchaser. In all transactions the Member Entities enter, there should be maximum benefit to the Authority, its operational requirements, and the broader community.



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12. TRANSACTIONS WITH LOCAL/FEDERAL GOVERNMENT

- 12.1. The Authority intends that any Excess Land sold should continue to generate revenue for the benefit of all taxing jurisdictions in the form of real estate taxes, unless approved otherwise by the Diversion Authority Board.

Dated: _____, 2021.

Michelle (Shelly) Carlson, Chair

Joel Paulsen, Executive Director

DRAFT