Item 5c.

CONFIDENTIALITY AND WAIVER OF CONFLICT AGREEMENT

BY AND BETWEEN

THE METRO FLOOD DIVERSION AUTHORITY
as Authority

AND

FREDRIKSON & BYRON, P.A.
as Fredrikson & Byron

Dated as of January 26, 2017

Relating to:

Roles and responsibilities of the parties in conjunction with representation and organizational arrangements for P3 procurement and government lobbying services relating to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

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

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CONFIDENTIALITY AND WAIVER OF CONFLICT AGREEMENT

THIS CONFIDENTIALITY AND WAIVER OF CONFLICT AGREEMENT (hereinafter the "Agreement") is made and entered into this 26th day of January, 2017, by and between the METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota (hereinafter the "Authority"), and FREDRIKSON & BYRON, P.A., a professional corporation organized and existing under the laws of the State of Minnesota, with its principal office and place of business in the City of Minneapolis, Minnesota (hereinafter "Fredrikson & Byron").

WHEREAS, the City of Fargo, North Dakota; Cass County, North Dakota; the Cass County Joint Water Resource District, North Dakota; the City of Moorhead, Minnesota; and Clay County, Minnesota entered into a Joint Powers Agreement for the creation and ongoing operation of the Authority; and

WHEREAS, the Joint Powers Agreement provides for the cooperative administration of a project, specifically the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the "Project"); and

WHEREAS, construction of the Project was authorized by the United States Congress as part of the Water Resources Reform and Development Act of 2014, Public Law 113-121; and

WHEREAS, the Non-Federal Sponsors of the Project, which are the Authority, the City of Fargo, and the City of Moorhead, have entered into a Project Partnership Agreement ("PPA"), dated July 11, 2016, with the USACE for the Project; and

WHEREAS, the PPA sets forth a split delivery model for the Project, establishing the respective responsibilities of both the Non-Federal Sponsors and the USACE; and

WHEREAS, the Authority is the entity responsible for the Non-Federal Sponsors' obligations under the PPA; and

WHEREAS, pursuant to the PPA, part of the Authority's responsibility will be to design, construct, manage, operate, and maintain thirty (30) miles of channel and associated features; the channel outlet; two (2) aqueducts; two (2) hydraulic structures; various local drainage inlets; various levees; four (4) railroad bridges; four (4) interstate bridges; ten (10) county road bridges, as well as associated environmental mitigation and recreational features (the "Diversion Channel and Associated Infrastructure" or the "DCAI"); and

WHEREAS, Congress has passed, and the President has signed, a 2016 appropriations bill that includes USACE funding for construction of the Project; and

WHEREAS, to facilitate the design, construction, management, and financing of the DCAI, the Authority approved on September 2, 2015, a Notice of Intent to develop a Public-Private Partnership ("P3") pursuant to North Dakota Century Code Chapter 48-02.1; and

WHEREAS, the Authority issued the Draft Request for Proposals on December 16, 2016, and is in the Request for Proposals phase that will seek proposals from the four (4) interested Developers for the DCAI; and

WHEREAS, Fredrikson & Byron currently serves as counsel for the Authority for Minnesota government relations services, such as lobbying, monitoring Minnesota legislative activities, and developing and maintaining working relationships with Minnesota legislators and policy makers; and

WHEREAS, Fredrikson & Byron has expressed interest in representing a Developer throughout the Developer Procurement; and

WHEREAS, due to the potential for competing interests as a result of Fredrikson & Byron representing a Developer, as well as serving as counsel for the Authority for lobbying activities, the Authority and Fredrikson & Byron desire to establish an ethical wall and framework that will protect the confidences of the Authority and authorize Fredrikson & Byron to serve in the dual capacity.

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

ARTICLE I.
DEFINITIONS AND INTERPRETATION

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

"Acknowledgment" means an acknowledgment attached to this Agreement as Exhibit C or Exhibit D, as applicable.

"Applicable Ethical Rules" means ethical rules existing in the applicable jurisdictions in which Team Members of each respective Team provide legal services to the Authority or the Developer.

"Authority" means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota, and its respective legal representatives, successors, and permitted assigns.

"Authorized Representative" has the meaning set forth in Section 9.05.

"Confidential Information" means all non-public information that is designated as "Confidential Information" and provided by the Authority or its Authorized Representative to attorneys, paralegals, legal assistants, or any other staff personnel of Fredrikson & Byron in connection with the Minnesota Government Relations.

"Developer" means Red River Valley Alliance (Acciona/InfraRed) located at 9825 103 Street, Edmonton, Alberta T5K 2M3, Canada, an entity interested in partaking, and who may partake and be selected, in the Developer Procurement.

"Developer Team" means those attorneys, paralegals, legal assistants, and all other staff personnel of Fredrikson & Byron, as identified in Exhibit B, who have participated or will participate in the Developer Procurement.

"Developer Team Leader" means the Team Leader of the Developer Team.

"Developer Team Member" means all member(s) of the Developer Team including the Developer Team Leader.

"Developer Procurement" means the procurement process, and thereafter, engaged in by the Authority to select a developer to design, build, finance, operate, and maintain the DCAI.

"Diversion Channel and Associated Infrastructure" or **"DCAI"** means the thirty (30) miles of channel and associated features; the channel outlet; two (2) aqueducts; two (2) hydraulic structures; various local drainage inlets; various levees; four (4) railroad bridges; four (4) interstate bridges; ten (10) county road bridges, as well as associated environmental mitigation and recreational features, that will be constructed as part of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

"Executive Meeting" means a meeting of the executive committee or board, as the case may be, within Fredrikson & Byron which has the authority to make decisions and ensure that those decisions are carried out.

"Fredrikson & Byron" means Fredrikson & Byron, P.A., a professional corporation organized and existing under the laws of the State of Minnesota, with its principal office and place of business in the City of Minneapolis, Minnesota.

"Government Relations Team" means those attorneys, paralegals, legal assistants, and all other staff personnel of Fredrikson & Byron, as identified in Exhibit A, who have viewed, reviewed, or examined Confidential Information, or participated in Minnesota Government Relations, or who will view, review, examine Confidential Information, or participate in the Minnesota Government Relations.

"Government Relations Leader" means the Team Leader of the Government Relations Team.

"Government Relations Team Member" means all member(s) of the Government Relations Team including the Government Relations Team Leader.

"Minnesota Government Relations" means the services provided by Fredrikson & Byron to the Authority as outlined in the Engagement Letter for Minnesota Government Relations Services between Fredrikson & Byron and the Authority effective July 1, 2016, and any extensions of the services thereof; these services include, but are not limited to, developing a government relations work plan, monitoring Minnesota legislative activities, developing and maintaining positive working relationships with the Minnesota legislators, serving as an initial contact for the Authority with Minnesota policy makers, and organizing meetings with the Minnesota DNR and Executive Branch.

"Party" means the Authority or Fredrikson & Byron, as the context may require, and wherever a reference in this Agreement is made to any Parties hereto, **"Parties"** means the Authority and Fredrikson & Byron, collectively.

"Team Leader" means the leader of either the Government Relations Team or the Developer Team, as applicable, as denoted on either Exhibit A or Exhibit B, respectively.

"Team" means either the Government Relations Team or the Developer Team, and wherever a reference in this Agreement is made to Teams hereto, **"Teams"** means the Government Relations Team and the Developer Team, collectively.

"Team Members" means the Government Relations Team Members and/or the Developer Team Members, as appropriate.

"Third Party" means any individual, partnership, organization, corporation, or other entity that is neither included on the Government Relations Team, as outlined in Exhibit A, nor included on Exhibit E prepared by the Authority outlining those currently authorized to receive Confidential Information.

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

ARTICLE II.
REPRESENTATION

Section 2.01 CONSENT AND WAIVER. The Authority hereby consents to Fredrikson & Byron serving as counsel for the Authority for the Minnesota Government Relations and serving as counsel for a Developer for Developer Procurement under the provisions of this Agreement. The Authority hereby waives any potential conflict that may arise from Fredrikson & Byron's representation of a Developer in connection with the Developer Procurement. The Authority and Fredrikson & Byron each recognizes that confidentiality is of the utmost importance for Fredrikson & Byron to serve as counsel for both the Minnesota Government Relations and Developer Procurement.

Section 2.02 GOVERNMENT RELATIONS TEAM. Fredrikson & Byron agrees to and has identified all individuals who are part of the Government Relations Team and hereby acknowledges and agrees that Exhibit A includes any and all individuals who meet the definition of a Government

Relations Team Member. Fredrikson & Byron agrees that the Government Relations Team will abide by the provisions of this Agreement and shall at no time share Confidential Information, in any form, with anyone at Fredrikson & Byron outside of the Government Relations Team, specifically including the Developer Team, except as outlined for Executive Meetings in Section 5.06. The Government Relations Team further agrees that it will not share Confidential Information, in any form, with anyone outside of Fredrikson & Byron except for those individuals included by the Authority on Exhibit E or those individuals otherwise authorized by the Authority's Authorized Representative pursuant to Sections 3.08 and 4.05.

Section 2.03 DEVELOPER TEAM. Fredrikson & Byron agrees to and has identified all individuals who are part of the Developer Team and hereby acknowledges and agrees that Exhibit B includes any and all individuals who meet the definition of a member of the Developer Team.

Section 2.04 TEAM LEADERS. Both Teams will select a Team Leader, who will be designated as such on Exhibit A and Exhibit B, respectively. The Government Relations Team Leader will be responsible for following and enforcing the provisions of this Agreement.

Section 2.05 ACKNOWLEDGMENTS. All Government Relations Team Members and all Developer Team Members shall execute an Acknowledgment, attached to this Agreement as Exhibits C and D, acknowledging and consenting to the limitations set forth in this agreement. All Team Members shall return the executed, original copies of Acknowledgments to their respective Team Leaders. Team Leaders shall make copies of the originals and provide the copies to the Authority's Authorized Representative. Work by Fredrikson & Byron on Developer Procurement will not begin until copies of all Acknowledgments, from both the Government Relations Team and the Developer Team, have been provided to the Authority's Authorized Representative.

Section 2.06 MEMORANDUM. Fredrikson & Byron shall notify Fredrikson & Byron personnel that ethical walls exist around the Government Relations Team for the Minnesota Government Relations and around the Developer Team for the Developer Procurement.

ARTICLE III.
PHYSICAL DOCUMENTS

Section 3.01 SHARING. Except as otherwise provided in this Agreement, at no point will Government Relations Team Members share any physical documents containing Confidential Information. All physical documents containing any Confidential Information must be stored in a single, centralized file folder.

Section 3.02 MARKING. Any and all folders or file folders which comprise the centralized file folder for the Minnesota Government Relations will be physically marked, "WARNING – ETHICAL WALL APPLIED. This ethical wall bars communication of facts or information relating to this file to certain individuals. If you are barred from this client and/or matter, **do not view this file**. Breaching this ethical wall can have serious consequences."

Section 3.03 STORAGE. The centralized file folder holding physical documents containing Confidential Information must be maintained separate and apart from other files in Fredrikson & Byron's office and will be kept in a separate office location than that of any Developer Team Member.

Section 3.04 MEETING CONCLUSION. At the conclusion of meetings or conferences in which physical documents containing Confidential Information are present, those physical documents must be immediately removed from the gathering location for the meeting or conference following the conclusion of the meeting or conference and returned to the centralized file folder and storage. Government Relations Team Members must take great care to ensure that physical documents containing Confidential Information are not left in gathering locations following the conclusion of meetings or conferences.

Section 3.05 COPYING OF PRINTING. Physical documents containing Confidential Information shall be collected immediately from printers, photocopiers, fax machines, and the like. The Government Relations Team, for Confidential Information, will utilize printers, photocopiers, fax machines, and the like which are not accessible by other Fredrikson & Byron personnel, including but not limited to, attorneys, paralegals, legal secretaries, and all other administrative staff personnel.

Section 3.06 DISPOSAL. The disposal of any physical document containing Confidential Information shall entail placing the document in a secured designated confidential bin for shredding.

Section 3.07 RELEASE. The Government Relations Team shall not release any physical document containing Confidential Information to any Third Party without the express consent or direction of the Authority's Authorized Representative. If there is any question whether someone qualifies as a Third Party, the Government Relations Team will err on the side of non-disclosure and seek direction from the Authority.

ARTICLE IV.
ELECTRONIC COPIES AND NETWORK

Section 4.01 SHARING. Except as otherwise provided in this Agreement, at no point will Government Relations Team Members share any electronic documents containing Confidential Information. All electronic documents containing any Confidential Information must be stored in a single, centralized electronic file on Fredrikson & Byron's network or a single, centralized electronic file on an internal electronic recordkeeping system. Government Relations Team Members will not save electronic documents containing Confidential Information on computer desktops or other internal hard drives on electronic devices, including computers, tablets, and telephones.

Section 4.02 FILE SEPARATION. The centralized file folders holding electronic documents containing Confidential Information must be maintained separate and apart from other files in Fredrikson & Byron's electronic system.

Section 4.03 PASSWORD PROTECTED. Each centralized file folder holding electronic documents containing Confidential Information shall require a user ID and password to access the electronic documents. User IDs and passwords to access centralized file folders will only be issued to Government Relations Team Members, and each Government Relations Team Member will have his or her own user ID and password.

Section 4.04 TRACKING. Fredrikson & Byron's network and any internal electronic recordkeeping system upon which electronic documents containing Confidential Information are stored will track the user IDs utilized to access electronic documents containing Confidential Information. If the Government Relations Team Leader determines any usage is out of the ordinary,

uncommon, or suspicious, the Government Relations Team Leader will conduct an investigation of the activity and report any unauthorized usage or sharing to the Authority's Authorized Representative as provided in Section 6.02.

Section 4.05 RELEASE. The Government Relations Team shall not release any electronic document containing Confidential Information to any Third Party without the express consent or direction of the Authority's Authorized Representative. If there is any question whether someone qualifies as a Third Party, the Government Relations Team will err on the side of non-disclosure and seek direction from the Authority.

ARTICLE V.
OTHER LIMITATIONS

Section 5.01 PHYSICAL SEPARATION. The offices and work spaces of Government Relations Team Members shall be physically segregated from the offices and work spaces of Developer Team Members. No Government Relations Team Members will ever share work space with a Developer Team Member while working on the Minnesota Government Relations.

Section 5.02 SPEAKING. Government Relations Team Members shall only comment on or discuss the Confidential Information with other Government Relations Team Members, authorized individuals of the Authority included in Exhibit E or as determined pursuant to Sections 3.08 and 4.05, or during Executive Meetings as outlined in Section 5.06. Government Relations Team Members shall not comment on or discuss the Confidential Information in open, common areas inside or outside of the office. If comments or discussions regarding the Confidential Information occur, they will take place in a closed room. Government Relations Team Members must take great care to ensure comments on or discussions regarding the Confidential Information are not overheard by anyone outside of Government Relations Team Members, authorized individuals of the Authority included in Exhibit E or as determined pursuant to Sections 3.08 and 4.05, or during Executive Meetings as outlined in Section 5.06.

Section 5.03 WORK EMAILS. If any and all information regarding the Confidential Information is shared by a Government Relations Team Member through email, that Government Relations Team Member shall utilize his or her official Fredrikson & Byron email account and address to send the information. If a recipient of any and all information regarding the Confidential Information is a Government Relations Team Member, the Government Relations Team Member sending the email shall utilize the recipient's official Fredrikson & Byron email address. To the greatest extent possible, the sending Government Relations Team Member shall also utilize non-personal email addresses of other recipients.

Section 5.04 REVIEW. Government Relations Team Members shall review Confidential Information only in a closed room, never in open, common areas inside or outside of the office. Government Relations Team Members will never review or have Confidential Information visible in the presence of a Developer Team Member. Government Relations Team Members shall also ensure that Confidential Information is not inadvertently viewed by individuals not authorized to receive Confidential Information under this Agreement. Accordingly, Government Relations Team Members will do such things as protect screens, whether on a computer, tablet, telephone, or otherwise, from being viewed; close or minimize electronic documents or programs; or return physical documents or notes taken to a file so as not to be seen.

Section 5.05 SECURING ELECTRONIC DEVICES. Government Relations Team Members will password protect and secure any and all electronic devices, including computers, tablets, and telephones, which may provide access to Confidential Information, when not in use by the Government Relations Team Member. Government Relations Team Members will further take great care to ensure that user IDs, passwords, and the like utilized to access electronic devices are not shared or stored in easily accessible locations.

Section 5.06 EXECUTIVE MEETINGS. The Government Relations Team Leader is authorized to provide verbal updates on the Minnesota Government Relations during Executive Meetings, provided, however, that no Developer Team Members are present during that portion of the Executive Meeting. At no time is the Government Relations Team Leader authorized to distribute physical documents of any information containing Confidential Information during an Executive Meeting. The Government Relations Team Leader must ensure that others attending the Executive Meeting are aware of this Agreement and that they will not share or discuss any Confidential Information with anyone outside of the Government Relations Team Leader.

Section 5.07 FREDRIKSON & BYRON'S REPRESENTATION. Upon the execution of this Agreement, Fredrikson & Byron's representation of the Authority is limited solely to the Minnesota Government Relations. Unless otherwise determined by the Authority in its sole discretion, the Authority will not seek counsel from Fredrikson & Byron for any issues relating to the Procurement or for issues outside of the Minnesota Government Relations. The Authority reserves the right to seek counsel from Fredrikson & Byron for other future matters relating to the Project, subject to Fredrikson & Byron's agreement to provide such additional counsel.

ARTICLE VI.
DISSEMINATION

Section 6.01 DISSEMINATION. If any Government Relations Team Member shares or discusses, or is alerted that a Government Relations Team Member or anyone else shared or discussed, Confidential Information either advertently or inadvertently with someone other than those authorized by this Agreement to possess Confidential Information, that Government Relations Team Member will immediately notify the Government Relations Team Leader. The Government Relations Team Leader must immediately follow-up on the report, confirm the recipient of the Confidential Information, and isolate any shared Confidential Information. The Government Relations Team Leader shall record his or her follow-up steps and take a statement from the recipient regarding what information was shared and the identity of the individual who shared the information. If the recipient received a physical document containing Confidential Information, the Government Relations Team Leader will confiscate the document and any copies made thereof. The Government Relations Team Leader will thereafter have a conference with the individual who shared the Confidential Information and the recipient of such information to reiterate the terms of this Agreement and enforce whatever means necessary, in the Government Relations Team Leader's discretion, to prevent further dissemination of the Confidential Information.

Section 6.02 NOTIFICATION. If Confidential Information is shared or discussed beyond the terms of this Agreement, the Government Relations Team Leader shall notify the Authority's Authorized Representative within five (5) calendar days of the dissemination and provide him or her

the record of follow-up steps taken, any action moving forward to prevent further dissemination, and the statement from the recipient of the Confidential Information.

Section 6.03 AUTHORITY DISCRETION. Upon receipt of the Government Relations Team Leader's notification under Section 6.02, the Authority retains full discretion on how to proceed under this Agreement and with its relationship with Fredrikson & Byron. The Authority expressly reserves its right to terminate its engagement of Fredrikson & Byron for Minnesota Government Relations work.

ARTICLE VII.
TERM AND TERMINATION

Section 7.01 TERM. This Agreement will be for an indefinite term and will continue until terminated or rescinded in accordance with the terms and conditions of this Agreement.

ARTICLE VIII.
LIABILITY

Section 8.01 RELEASE OF LIABILITY AND INDEMNITY.

(a) Fredrikson & Byron hereby waives, releases, indemnifies, defends, and holds harmless the Authority for all judgments, awards, claims, demands, and expenses (including attorney's fees) arising from Fredrikson & Byron's violation of the provisions in Articles III, IV, V, and VI of this Agreement.

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

(c) It is mutually understood and agreed that the indemnification provided for in this Agreement survive any termination of this Agreement.

ARTICLE IX.
MISCELLANEOUS

Section 9.01 COMPLETE AGREEMENT. This Agreement contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all other prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter.

Section 9.02 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 9.03 AMENDMENTS. This Agreement 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 Agreement.

Section 9.04 SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid for an reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Agreement.

Section 9.05 AUTHORIZED REPRESENTATIVES. Each of the Authority and Fredrikson & Byron hereby designates the following individuals as its initial Authorized Representatives, respectively, to administer this Agreement on its respective behalf:

(a) For the Authority: Michael J. Redlinger, Co-Deputy Executive Director

(b) For Fredrikson & Byron: Kevin Goodno, Government Relations Team Lead

Section 9.06 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:

If to Fredrikson & Byron: Attn: Kevin Goodno
Fredrikson & Byron, P.A.
200 S 6th St., Suite 4000
Minneapolis, MN 55402–1425

If to Authority: Attn: Chair
Metro Flood Diversion Authority
211 9th St. S
P.O. Box 2806
Fargo, ND 58108-2806

Each such mailed notice or communication will be deemed to have been given on the date that is three days after the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any Party may change its address for service of notice in the manner specified in this Section.

Section 9.07 GOVERNING LAW. This Agreement will be governed and construed in accordance with the laws of the State of North Dakota.

Section 9.08 VENUE. All litigation between the Parties arising out of or pertaining to this Agreement 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 9.09 WAIVER OF JURY TRIAL. The Parties hereby knowingly, irrevocably, voluntarily, and intentionally waive any rights that any may have to a trial by jury with respect to any action, proceeding, counterclaim, or defense based on this Agreement, or arising out of, under, or in any connection with this Agreement, or with respect to any course of conduct, course of dealing, statements (whether oral or written) or actions of any party hereto relating to this Agreement. This provision is a material inducement for all Parties entering into this Agreement. This provision applies only to suits between the Parties and does not apply to third party claims or suits.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed.

(Remainder of page intentionally left blank.)

Signature Page for the Authority

The Governing Body of the Metro Flood Diversion Authority approved this Agreement on January 26, 2017.

METRO FLOOD DIVERSION AUTHORITY

By: _____
Timothy J. Mahoney, Chairman
Diversion Authority Board

By: _____
Michael J. Redlinger, Co-Executive Director

ATTEST:

By: _____
Heather Worden, Secretary
Diversion Authority Board

Signature Page for Fredrikson & Byron

FREDRIKSON & BYRON, P.A.

By: _____
Kevin Goodno, Shareholder/Vice President

EXHIBIT A
GOVERNMENT RELATIONS TEAM

Team Leader (Name and Position): Kevin Goodno, Attorney

Other Team Members (Name and Position):

1. _____
2. _____
3. _____
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19. _____

EXHIBIT B
DEVELOPER TEAM

Team Leader (Name and Position): Lawrence Bender, Attorney

Other Team Members (Name and Position):

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EXHIBIT C
GOVERNMENT RELATIONS TEAM
CONFIDENTIALITY ACKNOWLEDGMENT

I hereby acknowledge and understand that in the course of my professional actions, duties, and representations, I have been, am, or will be exposed to Confidential Information in the course of Fredrikson & Byron's representation of the Metro Flood Diversion Authority.

I further hereby acknowledge and understand that Fredrikson & Byron may or will be representing a Developer with the anticipation of entering an agreement with the Metro Flood Diversion Authority to design, build, finance, operate, and maintain a Diversion Channel and Associated Infrastructure as a part of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

I further hereby acknowledge and understand that Fredrikson & Byron and the Metro Flood Diversion Authority have entered into a Confidentiality and Waiver of Conflict Agreement authorizing Fredrikson & Byron to serve as counsel for both the Metro Flood Diversion Authority and a Developer in the above-described capacities.

I further hereby acknowledge that I have reviewed the Confidentiality and Waiver of Conflict Agreement between Fredrikson & Byron and the Metro Flood Diversion Authority and all Exhibits and understand the establishment of an ethical wall and framework between the Teams providing counsel for the Metro Flood Diversion Authority and a Developer.

I further hereby acknowledge that I know the identities of the Developer Team Members.

I hereby agree that I will abide by the provisions of the Confidentiality and Waiver of Conflict Agreement, will share or discuss Confidential Information only in those manners authorized by the Confidentiality and Waiver of Conflict Agreement, will take great care to protect and secure Confidential Information, and will report any unauthorized sharing or dissemination of Confidential Information to the Government Relations Team Leader.

Signed: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT D
DEVELOPER TEAM CONFIDENTIALITY ACKNOWLEDGMENT

I hereby acknowledge and understand that in the course of my professional actions, duties, and representations, I have been, am, or will be exposed to Confidential Information in the course of Fredrikson & Byron's representation of a Developer with the anticipation of entering an agreement with the Metro Flood Diversion Authority to design, build, finance, operate, and maintain a Diversion Channel and Associated Infrastructure as a part of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

I further hereby acknowledge and understand that Fredrikson & Byron has and will be representing the Metro Flood Diversion Authority.

I further hereby acknowledge and understand that Fredrikson & Byron and the Metro Flood Diversion Authority have entered into a Confidentiality and Waiver of Conflict Agreement authorizing Fredrikson & Byron to serve as counsel for both the Metro Flood Diversion Authority and a Developer in the above-described capacities.

I further hereby acknowledge that I have reviewed the Confidentiality and Waiver of Conflict Agreement between Fredrikson & Byron and the Metro Flood Diversion Authority and all Exhibits and understand the establishment of an ethical wall and framework between the Teams providing counsel for the Metro Flood Diversion Authority and a Developer.

I further hereby acknowledge that I know the identities of the Government Relations Team Members.

I hereby agree that I will abide by the provisions of the Confidentiality and Waiver of Conflict Agreement and will report any unauthorized sharing or dissemination of Confidential Information to the Government Relations Team Leader.

Signed: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT E
AUTHORITY AUTHORIZED INDIVIDUALS

NAME AND TITLE

1. _____, Executive Director of the Metro Flood Diversion Authority
2. Timothy J. Mahoney, Chair of the Metro Flood Diversion Authority (January 1, 2017 – December 31, 2017)
3. Del Rae Williams, Current Vice Chair of the Metro Flood Diversion Authority and Incoming Chair of the Metro Flood Diversion Authority (January 1, 2018 – December 31, 2018)
4. Diversion Authority Board Members Authorized by the Metro Flood Diversion Authority
5. John T. Shockley, General Counsel for the Metro Flood Diversion Authority
6. Erik R. Johnson, Fargo City Attorney
7. Nancy J. Morris, Fargo City Attorney
8. John T. Shockley, Moorhead City Attorney
9. Sarah M. Wear, Moorhead City Attorney
10. Sean M. Fredricks, Attorney for Cass County Joint Water Resource District
11. Birch P. Burdick, Cass County State's Attorney
12. Jenny Samarzja, Assistant Clay County Attorney