This is Task Order No. 1, consisting of 4 pages.

Task Order No. 1

In accordance with Paragraph 7 of the Master Agreement for Professional Services between Metro Flood Diversion Authority ("Owner") and Program Advisor Services, LLC ("Consultant") dated December 20, 2019 ("Agreement"), Owner and Consultant agree as follows:

1. Specific Project Data:

    A. Title: Consulting services for the strategy, funding, financing, development, procurement, and implementation of the Fargo Moorhead Metropolitan Area Flood Risk Management Project.

2. Services of Consultant – Subtasks:

    A. Basic Consulting Services. Consult with the Owner, advise on and provide recommendations on the development, procurement, governance, and implementation of the Fargo Moorhead Metropolitan Area Flood Risk Management Project. Review work products by others, prepare written materials, attend meetings, and coordinate with Owner's consultants and staff in areas including but not limited to the following:

        i. Assistance to the Executive Director, Deputy Executive Directors, and Co-Executive Directors regarding the execution of their responsibilities, including consultation and activities regarding interfaces with the Owner's Board, staff, member entities, interested parties, and the general public. Confer with the Executive Director on a regular basis to coordinate activities and confirm specific work assignments consistent with this Task Order.

        ii. Strategy, content, development of and communications regarding the Project Financial Plan, including meetings with and presentations to individuals, entities and elected officials as requested.

        iii. In close coordination with the Owner's P3 Lead and the PMC, the strategy, content, development and communications regarding the P3 Procurement through commercial and financial close. Represent the Owner at P3 meetings and conferences as requested.

        iv. Strategy and communications regarding the interface between the Owner and the USACE in delivering the Federal components of the Project as currently defined.

        v. Communicating and updating local, state and federal elected officials and staff regarding the Project. Coordinate and assist the PMC's Washington DC staff regarding Owner's trips to Washington DC.

vi. Attend Owner Board and Financial Committees meetings in coordination with the Executive Director and the PMC. Attend additional Owner Committee meetings as requested.

vii. Attend Technical Advisory Group and Technical Working Group meetings as relevant topics arise and as requested.

viii. Participate in any other activities related to the Project as directed by the Executive Director, Deputy Executive Directors or Co-Executive Directors.

B. Expenses

i. Expenses for travel from the Fargo-Moorhead metropolitan area required to perform the services described in this Task Order, including transportation, lodging, meals, and incidentals.

ii. Travel expenses will be reimbursed at cost.

3. Owner's Responsibilities

A. Execute, manage, administer and fulfil its obligations in Agreements and contracts with other Owner contractors, consultants and advisors, including the PMC, Ohnstad Twichell, PC, EYIA, Ashurst, AON, HMG, and others as the Owner determines necessary.

4. Times for Rendering Services

Phase	**Start Time**	**Completion Time**
All work	December 20, 2019	May 31, 2021

5. Payments to Consultant

A. Owner shall pay Consultant for services rendered as follows:

i. Compensation for services identified shall be on a Time and Material basis as set forth in the Agreement. The hourly rate for labor is established at $375 per hour for the duration of this Task Order.

ii. The total compensation for services identified under this Task Order Number 1 for Subtasks A and B is not-to-exceed $650,000 as defined in the table below.

iii. Consultant will notify Owner when eighty percent (80%) of the budget is expended.

iv. Consultant will not perform work beyond one hundred percent (100%) of the budget without Owner's authorization by an amendment to this Task Order.

Subtask	Budget ($)
A. Basic Consulting Services	$625,000
B. Travel Expenses	$25,000
TOTAL	**$650,000**

B. The terms of payment are set forth in the Agreement.

6. Other Modifications to Agreement: None
7. Attachments: None
8. Documents Incorporated By Reference: Agreement

Terms and Conditions: Execution of this Task Order by Owner and Consultant shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Consultant is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is December 20, 2019.

Consultant:	**Owner:**
Signature Date	Signature Date
Martin Nicholson Name	Joel Paulsen Name
Owner Title	Executive Director Title
DESIGNATED REPRESENTATIVE FOR TASK ORDER:	DESIGNATED REPRESENTATIVE FOR TASK ORDER:
Martin Nicholson Name	Joel Paulsen Name
Owner Title	Executive Director Title
630 1st Ave N, #507 Fargo, ND 58102 Address	211 9th Street South PO Box 2806 Fargo, ND 58108-2806 Address
martin@pgmadvisor.com E-Mail Address	paulsenj@fmdiversion.gov E-Mail Address
530-604-4902 Phone	701-660-0900 Phone

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Related to:

THE
FARGO-MOORHEAD AREA DIVERSION PROJECT

BY AND BETWEEN

METRO FLOOD DIVERSION AUTHORITY
as Owner

and

PROGRAM ADVISOR SERVICES, LLC
as Consultant

Dated as of _____ , 2019

An agreement for consulting services related to the development, procurement, and implementation of the Fargo Moorhead Metropolitan Area Flood Risk Management Project.

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This instrument was drafted by:
Ohnstad Twichell, P.C.
P.O. Box 458
West Fargo, North Dakota 58078-0458

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EXHIBIT A: GENERAL SCOPE OF SERVICES

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MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made as of December 20, 2019, by and between the Metro Flood Diversion Authority (the "Owner") and Program Advisor Services, LLC, a North Dakota limited liability company ("Consultant") (collectively, the "parties").

WHEREAS, the Owner, as a representative of the Metro Flood Diversion Authority, has selected Consultant to provide the Owner with professional services, subject to the oversight of the Co-Executive Directors, Executive Director, and the Diversion Authority Board; and

WHEREAS, the Owner 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 Diversion Project, commencing on December 20, 2019.

NOW THEREFORE, it is agreed by and between the parties as follows:

1. EMPLOYMENT. The Owner hires Consultant, which accepts the hiring with the Owner 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, including exhibits attached hereto, by and between the Metro Flood Diversion Authority and Program Advisor Services, LLC.

"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.

"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 December 20, 2019.

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"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.

"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 Project.

"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. Metro Flood Diversion Authority is the successor entity to the "Diversion Board of Authority."

"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.

"Principal-in-Charge" means the individual identified by the Consultant as the Consultant's principal-in-charge.

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"Program Management Consultant" means CH2M HILL Engineers, 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 13, 2017. References to the Program Management Consultant in this Agreement include references to subconsultants of CH2M HILL Engineers, Inc., and its successors and assigns, including Advanced Engineering and Environmental Services, Inc. (AE2S).

"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 as amended by the Non-Federal sponsors (City of Fargo, City of Moorhead, and Diversion Authority).

"Project Manager" means the individual identified by the Consultant as the Consultant's project manager.

"Task Order Budgetary Breakdown" means the budgetary breakdown for a Task Order.

3. AUTHORIZATION TO PROCEED. Execution of this Agreement by the Owner will be authorization for Consultant to proceed with the work, unless otherwise provided for in this Agreement.

4. SCOPE OF SERVICES. Owner has requested Consultant provide project development and implementation services, or related services for the Project, generally as set forth in the attached **Exhibit A** attached hereto. 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 Owner under this Agreement. 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 Project as mutually agreed upon between the parties.

5. CHANGES TO SCOPE OF SERVICES. The Owner 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.

6. RESPONSIBILITY FOR ERRORS OR DELAYS FROM INACCURATE DATA. Consultant and the Owner acknowledge that the reliability of Consultant's services depends upon the accuracy of the data supplied to Consultant. The Owner accepts sole responsibility for errors or delays in services resulting from inaccurate data supplied to

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Consultant, and the Owner acknowledges and agrees that any additional services thereby necessitated will result in additional fees payable by the Owner to Consultant.

7. TASK ORDERS. Consultant shall receive assignments for work under this Agreement through Task Orders authorized and provided by the Owner. The Owner 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 Owner shall not compensate Consultant for that work, unless agreed to in writing by the Owner prior to the work being completed. All amendments to Task Orders must be authorized and provided by the Owner in writing. The time or schedule for performing services or providing deliverables shall be stated in each Task Order. If no times are stated in the applicable Task Order, 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. Notwithstanding the above, the parties acknowledge that because of an immediate need for services, the Owner and Consultant may communicate by email or similar device, which services will later be reduced to a formal Task Order. Owner will compensate Consultant for such directed services.

8. RESERVED FOR FUTURE USE.

9. SUBCONTRACTORS. Consultant may enter into agreements with subcontractors in furtherance of its services under this Agreement, as approved by the Owner, whose approval shall not be unreasonably withheld.

10. TERM. Unless terminated under Section 31, this Agreement shall remain in full force and effect for a period of approximately three (3) years from the date of execution on December 20, 2019, through December 31, 2022. This Agreement shall take full force and effect on December 20, 2019, upon approval and execution by the Owner. Pursuant to Section 11 of this Agreement and upon expiration of the initial term of this Agreement, this Agreement may be renewed by mutual agreement of the parties.

11. EXTENSION OF TERM. This Agreement may be extended by written amendment.

12. COMPENSATION. For all services rendered by Consultant, the Owner 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 Owner. Invoices shall be sent as required in Section 13 of this Agreement. Invoices are due and payable within thirty (30) days of receipt. If a Task Order issued under this Agreement contains a not-to-exceed compensation amount, the Owner 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 Task Order, unless the Task Order has been amended pursuant to Section 7 of this Agreement.

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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 Owner 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 Owner 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 expenses, but do not include allowances for subcontracts, outside services allowed by this Agreement, or travel expenses from the Fargo-Moorhead area required to perform the work authorized by a Task Order. Consultant's hourly rates include Consultant's personal travel to and from the Fargo-Moorhead area and Consultant's interests outside of North Dakota.

13. INVOICING AND PAYMENT.

A. Consultant must submit invoices to the Owner on the fifteenth (15^{th}) 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 Owner 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 Owner for the following month.

B. Consultant must submit each original invoice to: APInvoicesFMDiv@ch2m.com, copied to paulsenj@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

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(10) A description of the work performed, in accordance with the Task Order Budgetary Breakdown, which provides a general narrative sufficient for the reader to identify the task and hours worked on that task.

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 Owner receives Consultant's invoice, the Owner 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 Owner'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 Owner shall pay the undisputed portion. The Owner 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 Owner 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 Owner 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 Owner, 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 Owner for delays or damages 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.

14. RELATIONSHIP BETWEEN PARTIES. Consultant is retained by the Owner only for the purposes and to the extent set forth in this Agreement, and its relationship to the Owner 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 Owner. Neither Consultant, nor its personnel, shall be considered to be employed by the Owner or entitled to participate in any plans, arrangements or

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distributions by the Owner pertaining to or in connection with any benefits accorded the Owner's regular employees. The Owner 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 Owner shall not be responsible for wage or salary withholding to the federal or any state government.

15. 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 Owner with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.

B. The personnel and agents of the Consultant who will be performing the work hereunder have no interest that would constitute a conflict of interest with the Owner during the term of the Project.

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 Owner 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.

16. WORKING RELATIONSHIP. Consultant's Principal-in-Charge shall be the individual who will engage with the Owner and shall work in close cooperation and coordinate with the Executive Director and Program Management Consultant on providing the contemplated Basic and Additional Services described in Exhibit A.

17. 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.

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Consultant shall require its personnel to perform the services rendered in accordance with accepted principals of its industry in the State of North Dakota. If applicable, 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.

18. 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.

19. DISCIPLINARY ACTIONS. Consultant shall immediately notify Owner if any of the personnel assigned to work under a Task Order receives notice of a disciplinary action by any licensing organization.

20. 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:

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(1) With respect to insurance required by above paragraphs 20(A)(3) through 20(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 Owner 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 Owner 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 one (1) year after final payment.

(b) Consultant will furnish the Owner and each other additional insured identified, to whom a certificate of insurance has been issued, evidence satisfactory to the Owner 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 Owner, the Diversion Authority and the State of North Dakota, and those parties' officers, employees, agents, consultants, subcontractors, and representatives in accordance with Section 28;

(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 Owner, the Diversion Authority or the State of North Dakota.

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(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 Owner, 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 Owner or 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 Workers' 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) Workers' 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

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(d) Each Occurrence (Bodily Injury and Property Damage): $1,000,000

(e) Property damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.

(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) 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; and
(c) State of North Dakota

(5) 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 Owner in limits no less than those specified and required to be passed down to subcontractors in paragraph 8 of the Owner'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 Owner'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 Owner 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

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Agreement without thirty (30) days' notice to the Owner. 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 Owner 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 Owner shall have no specific responsibility to provide any general liability coverage or workers' compensation coverage for the benefit of Consultant's employees during the terms of this Agreement.

21. OPEN RECORDS. Consultant will cooperate with the Owner 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. If such request pertains to Consultant records, Owner shall immediately provide notice of the same to Consultant. If Consultant objects to the release of any such records because Consultant is of the opinion such records are exempt from disclosure under North Dakota law, Owner shall not disclose the same. All costs and expenses contesting such disclosure shall be borne by the Consultant, including but not limited to attorney fees and costs later assessed for nondisclosure.

22. DATA FURNISHED BY THE OWNER. The Owner will provide to Consultant all data in the Owner's possession relating to Consultant's services on the Project. Consultant may reasonably rely upon the accuracy of the information provided by the Owner.

23. ACCESS TO FACILITIES AND PROPERTY. The Owner 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 Owner will perform, at no cost to Consultant, such tests of equipment, machinery, pipelines, and other components of the Owner's facilities as may be required in connection with Consultant's services.

24. TIMELY REVIEW. The Owner 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 Owner deems appropriate; and render in writing decisions required by the Owner in a timely manner.

25. PROMPT NOTICE. The Owner will give prompt written notice to Consultant whenever the Owner 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.

26. OWNER'S INSURANCE.

A. The Owner is not responsible for the payment of deductibles owed under Consultant's insurance policies.

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B. The Owner 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.

27. LITIGATION ASSISTANCE. Consultant will support, prepare, document or assist Owner with litigation when requested by Owner. Specific services requested of Consultant by the Owner to support, prepare, document or assist in litigation undertaken or defended by the Owner, except for suits or claims between the parties to this Agreement, will be defined in an authorized Task Order and reimbursed as mutually agreed.

28. INDEMNIFICATION. Consultant will defend, indemnify, and hold harmless the Owner, 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 Owner, 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 one (1) year following termination of this Agreement

The indemnified party shall provide notice to Consultant after obtaining knowledge of any claim that it may have pursuant to this Section. 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.

29. 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 the Owner, the 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

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employees shall not exceed the total amount, individually, collectively or in the aggregate shall not exceed the amount of one million dollars ($1,000,000). 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. The Owner 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 Owner knowingly waives all such claims against Consultant's individual employees, officers, shareholders, directors in their individual capacity or any affiliated companies to Consultant.

30. 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. Each party agrees to and must give the other party notice immediately if they reasonably believe that they have breached this Agreement, 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.

31. 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 from the other party and diligently complete the correction thereafter.

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B. The Owner may terminate this Agreement, in whole or in part, or modify or limit Consultant's services, and proportionately, Consultant's compensation, if:

(1) The Owner 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 to the other party.

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 Owner may terminate this Agreement immediately upon written notice.

F. Upon receipt of any termination notice from the Owner 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 Owner will be released from compensating Consultant for services other than those Consultant 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 Owner 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 Owner's interests (or the interest of any person represented on the Owner's behalf) or (2) violation of Consultant's statutory or ethical duties. Consultant

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must notify the Owner of any further services, prior to withdrawal or substitution, which Consultant believes are necessary to avoid prejudice to the Owner's interests (or the interest of any person represented on the Owner's behalf) and obtain the Owner's consent prior to performing such services.

32. ADDITIONAL PAYMENT. Nothing contained in this Agreement shall obligate the Owner to make any payment for services rendered in any period after the termination of Consultant's retention by the Owner.

33. SUSPENSION, DELAY, OR INTERRUPTION OF WORK. The Owner may suspend, delay, or interrupt the Services of Consultant for the convenience of the Owner. In such event, Consultant's contract price and schedule shall be equitably adjusted.

34. 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 Consultant:
Program Advisor Services, LLC
Attn: Martin T. Nicholson
630 1st Avenue North, #507
Fargo, ND 58102

If to Owner:
Attn: Secretary
Metro Flood Diversion Authority
PO 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 (3) 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 Agreement.

35. PROHIBITION AGAINST ASSIGNMENT. This is a bilateral personal services Agreement. Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable.

36. NO THIRD PARTY BENEFICIARIES. This Agreement gives no rights or benefits to anyone other than the Owner and Consultant and has no third-party beneficiaries.

37. CONSEQUENTIAL DAMAGES. Consultant and Consultant's affiliated corporations and subcontractors shall not be liable for the Owner's special, indirect, or consequential

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damages, whether such damages arise out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action.

38. DELIVERABLES. A party may rely on data or information that the party receives from the other party by hard copy or electronic media. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents. Consultant's deliverables are for the Owner's or others' convenience. Any conclusions or information derived or obtained from these files will be at user's sole risk.

39. ACCESS TO CONSULTANT'S ACCOUNTING RECORDS AND AUDIT RIGHTS.

A. Consultant must allow the Owner and its designees, at the Owner's expense, 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 Owner for a period of one (1) year 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 Owner may only audit accounting records applicable to a cost-reimbursable type compensation. Upon finalization of the audit, the Owner 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 Owner 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 Owner. 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 Owner to finally disallow any items of questioned or no opinion expressed cost.

C. The Owner 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 Owner or reach an agreement with the Owner on a repayment schedule within thirty (30) days after the date of an invoice from the Owner. If Consultant fails to repay the overpayment or reach an agreement with the Owner on a repayment schedule within the thirty (30) day period, Consultant agrees that the Owner will deduct all or

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a portion of the overpayment from any funds then or thereafter payable by the Owner 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 one-half percent (1/2%) per month, or that permitted by law if lesser. Consultant expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit to contest the Owner's decision.

40. OWNERSHIP. Ownership of work product and inventions created by Consultant shall be as follows:

A. Pre-Existing Consultant Materials. The Owner 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 Owner a non-exclusive, non-transferable, royalty-free license, fully assignable to the Owner's Member Entities, to utilize the Pre-Existing Consultant Materials for the purpose of the Owner's Project.

B. Derivative Consultant Materials. The Owner 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 Owner a non-exclusive, non-transferable, royalty-free license, fully assignable to the Owner's Member Entities, to utilize the Derivative Consultant Materials.

C. New Consultant Materials. The Owner 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 Owner will retain all right, title and interest, including without limitation intellectual property rights, in and to the New Consultant Materials. The Owner 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 Owner hereby grants to Consultant a non-exclusive, transferable, royalty-free license to utilize the concepts, methods, techniques, processes, protocols, ideas, inventions,

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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 Owner 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 Owner 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 Owner'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 Owner 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 Owner 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. Owner Material. As between the parties, the Owner is the exclusive owner of all material Consultant collects from the Owner in connection with the services under this Agreement, including copyrights. Within thirty (30) days of the end date of the Agreement, or upon the Owner's notice at any time, Consultant must give all materials collected to the Owner (or to another party at the Owner's direction). Unless the Owner 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 Owner resolves with Consultant the findings of any final audit.

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Consultant may retain copies of any original documents Consultant provides to the Owner and a copy of any material collected from the Owner in Consultant's confidential files for the purpose of complying with applicable laws or established company procedure regarding the preservation of business records.

41. REUSE OF PROJECT DOCUMENTS. Services and deliverables are for the exclusive use of the Owner 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 Owner an irrevocable license to the instruments of service.

42. CONFIDENTIAL INFORMATION AND PUBLICITY.

A. Consultant agrees to hold in confidence the following confidential information ("Confidential Information"):

(1) All information that the Owner 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 Owner, the Owner owns the Confidential Information, and the Owner authorizes Consultant to use it only for purposes of performing this Agreement. Consultant may also disclose the Owner's Confidential Information to the extent necessary to comply with law, provided Consultant gives the Owner prior written notice. Upon the end date of this Agreement, Consultant must destroy or return all Confidential Information to the Owner, at the Owner's discretion, and certify to the Owner, 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 Owner's prior written approval.

D. Consultant acknowledges it has received, or will receive, Confidential Information as a necessary component of completing the work assigned by each Task Order. The free flow of information from Owner to Consultant is necessary for Consultant to provide accurate and timely work product. To ensure such a free flow of information,

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Consultant agrees to not provide any appraisal services for landowners related to the Project. This prohibition on performing appraisal services to landowners related to the Project survives termination of this Agreement.

E. 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 Owner.

F. To the extent Consultant believes it is providing its Confidential Information to Owner, Consultant will clearly designate and mark such information as Confidential.

43. 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 Owner and executed by Consultant and the Chair of the Owner on behalf of the Owner. 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.

44. 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.

45. 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 Owner 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.

46. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Owner, its successors and assigns, and any such successor shall be deemed substituted for the Owner 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.

47. NEGOTIATED AGREEMENT. This Agreement has been arrived at through negotiation between the parties.

48. 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

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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 Owner 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.

49. 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.

50. 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.

51. DISPUTE RESOLUTION. The Owner and Consultant shall endeavor to resolve claims, disputes and other matters in question between them by non-binding mediation. A request for 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 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 Cass County, North Dakota, 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.

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52. 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 of North Dakota, 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 located in Cass County, North Dakota.

53. 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.

54. 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 its subcontracts under this agreement.

55. 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 Metro Flood Diversion Authority the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34. 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.

56. NO CONFLICT WITH PRIOR EMPLOYER. Consultant certifies that its role in providing services pursuant to this Agreement does not violate any terms or conditions associated with its Principal-in-Charge's prior employment with the Authority's Program Management Consultant. Consultant has provided written confirmation evidencing this to the Authority via electronic mail dated December 13, 2019, addressed to the Authority's Executive Director and General Counsel.

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This Agreement is executed the day and year above noted.

OWNER:

Metro Flood Diversion Authority

By: _____
Mary Scherling, Chair

Attest:

_____
Heather Worden, Secretary

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CONSULTANT:

PROGRAM ADVISOR SERVICES, LLC

By: _____
Martin T. Nicholson, Owner/Chief Manager

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Consultant's Role[1]

Exhibit A –General Scope of Services

This is **Exhibit A**, **General Scope of Services,** referred to in and part of the Agreement between Owner and Consultant for Professional Services dated: December 20, 2019.

Services for the development, procurement, and implementation of the Metro Flood Diversion Project

Basic Consulting Services

Consult with the Owner and provide recommendations on the development, procurement, and implementation of the Fargo Moorhead Metropolitan Area Flood Risk Management Project.

Note: For purposes of this Agreement, consulting services are defined as providing the Owner, the Diversion Authority and the Program Management Consultant with Consultant's knowledge, advice, recommendations and opinions pertaining to aspects of the Project within the area of the Consultant's expertise. The Consultant is not a decision-maker for the Owner. Consultant will attend meetings or otherwise participate in governmental or quasi-governmental forums only as directed by the Owner.

Additional Consulting Services

1. Other services as applicable and agreed to by the Owner and Consultant.

References

1. Martin T. Nicholson is the Principal-in-Charge and the Project Manager.

2. With regard to paragraph 15.B, Owner acknowledges the Project Manager's prior employment with CH2M HILL Engineers, Inc. (now Jacobs).

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[1] Consultant will coordinate and cooperate in Good Faith with the Project Management Consultant.