



DIVERSION AUTHORITY BOARD MEETING
FARGO CITY COMMISSION CHAMBERS
FARGO, NORTH DAKOTA
THURSDAY, FEBRUARY 27, 2020
3:30 P.M.

1. Call to order
2. Approve minutes from previous meeting Item 2.
3. Approve order of agenda
 - a. Consent agenda briefing
4. Consent agenda approval*
5. Executive Director report Item 5.
6. P3 Education Session
7. Army Corps of Engineers project update
8. General Counsel update
9. Public Outreach
 - a. Business Leaders Task Force update
10. Land Management
11. Finance
 - a. Financial report Item 11a.
 - b. Voucher approval Item 11b.
 - c. Contract actions Item 11c.
 - *Audit Engagement Agreement
Eide Bailly - \$70,000
 - *Amendment to Master Agreement for Professional Services
Houston-Moore Group
 - *Task Order 1, Amendment 15 – Project Management
Houston-Moore Group - \$501,073
 - *Master Agreement for Professional Services
Advanced Engineering and Environmental Services
 - *Task Order 1 – AE2S Consultant Services
Advanced Engineering and Environmental Services - \$16,175,200
 - *Change Order – WP 50A Property Structure Mitigation
Schmidt and Sons Construction, Inc. - \$75,555
12. Other Business
13. Next Meeting – March 26, 2020
14. Adjournment

**METRO FLOOD DIVERSION AUTHORITY
JANUARY 30, 2020—3:32 PM**

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, January 30, 2020, at 3:30 PM in the Fargo City Commission Chambers with the following members present: Fargo City Mayor Tim Mahoney; Fargo City Commissioner Tony Grindberg; Fargo City Commissioner Dave Piepkorn; Moorhead City Council Member Chuck Hendrickson; Moorhead City Council Member Shelly Carlson; Cass County Commissioner Mary Scherling; Cass County Commissioner Chad Peterson; Cass County Commissioner Ken Pawluk; Clay County Commissioner Kevin Campbell; Clay County Commissioner Grant Weyland; and West Fargo City Commissioner Mike Thorstad. Moorhead City Mayor Johnathan Judd; Cass County Commissioner Rick Steen; and Cass County Joint Water Resource District Manager Rodger Olson were absent.

2. NOMINATION OF VICE CHAIR

MOTION, passed

Mr. Campbell moved and Mr. Peterson seconded to nominate Johnathan Judd, Moorhead City Mayor, as Vice Chair of the Metro Flood Diversion Authority. On roll call vote, the motion carried unanimously.

3. DESIGNATION OF SECRETARY

MOTION, passed

Mr. Weyland moved and Mr. Campbell seconded to designate Heather Worden as the Secretary of the Metro Flood Diversion Authority. Motion carried.

4. MINUTES APPROVED

MOTION, passed

Mr. Piepkorn moved and Mr. Weyland seconded to approve the minutes from the December 19, 2019, meeting as presented. Motion carried.

5. AGENDA ORDER

MOTION, passed

Mr. Campbell moved and Ms. Carlson seconded to approve the order of the agenda. Motion carried.

6. EXECUTIVE DIRECTOR REPORT

Joel Paulsen, Executive Director, said the overall cost-to-date is \$525 million. He reviewed information available on the financial dashboard to help track costs in real time.

Mr. Paulsen reviewed task orders approved by the Cass County Joint Water Resource District (CCJWRD). Moorhead Clay County Joint Powers Authority (MCCJPA) did not have any task orders.

Mr. Paulsen discussed activities and achievements, which include bidding for the Hickson Main Avenue storm sewer project, OHB wetland mitigation, and Property Structure Mitigation for Phase B this winter; current construction projects for the 2nd Street South and Main Avenue flood mitigation, OHB pump station and levee, and Property Structure Mitigation for Phase A; and incorporation of WIFIA requirements and other comments into Draft 4 of the P3 Request for Proposals (RFP).

Mr. Paulsen discussed short-term priorities, which include the issuance of Draft 4 of the P3 RFP's to proposers on February 19th; completion of the NDSU Ag Impacts study update to

reflect Plan B; securing remaining rights-of-entry for Southern Embankment design in North Dakota and Minnesota; FEMA approval of the Conditional Letter of Map Revision (CLOMR); and negotiation of the scope for Phase 2 Flowage Easement Valuation study.

Mr. Paulsen discussed long-term priorities, which include additional outreach to upstream property owners; assistance with legal efforts for the June contested case hearing; and issuance of Draft 5 of the P3 RFP's in May.

7. **CORPS OF ENGINEERS UPDATE**

Terry Williams, Project Manager from the Corps of Engineers, provided an update, which include pile driving and load testing at the Diversion inlet structure construction site; preconstruction conference for the Wild Rice River structure; physical modeling of the Red River structure design; geotechnical borings and ongoing design to incorporate Plan B into the Southern Embankment; and design review of I-29 road raise by Houston-Moore Group to begin in March.

Mr. Grindberg asked if the Corps' project is on time and within budget. Ms. Williams said the project is both on time and within budget.

8. **ADMINISTRATIVE/LEGAL UPDATE**

WIFIA events update

Attorney John Shockley provided a monthly update on the schedule of events associated with the Water Infrastructure Finance and Innovation Act (WIFIA) loan through the Environmental Protection Agency (EPA). He said three years of financials are needed as part of the WIFIA application, which needs to be submitted by the end of March. The Finance Committee discussed this issue at its meeting yesterday, and approved to hire Eide Bailly to conduct the audit for the Diversion Authority. Fargo and Cass County both have three years of financials completed to submit with the application. Mr. Grindberg said a policy will be developed to include a RFP process for the future, but considering the application deadline, the Finance Committee approved to move forward with Eide Bailly.

MOTION, passed

Mr. Grindberg moved and Mr. Campbell seconded to approve the hiring of Eide Bailly to conduct an audit for the Diversion Authority. On roll call vote, the motion carried unanimously.

Adopt meeting schedule for 2020

Pursuant to Section 5.11, subsection (b) of the Joint Powers Agreement (JPA), at the first meeting in January, the board needs to adopt a meeting schedule for the upcoming year. Board meetings will be held the fourth Thursday of each month, and committee meetings will be held the Wednesday before board meetings.

Mr. Campbell said the MCCJPA meeting for next month needs to be changed from February 27th to February 20th.

MOTION, passed

Mr. Campbell moved and Mr. Peterson seconded to adopt the meeting schedule for the Metro Flood Diversion Authority for 2020 with the one change to the MCCJPA meeting date in February. Motion carried.

Committee appointments

Committee appointments are outlined in the Joint Powers Agreement and need to be appointed and confirmed by the Diversion Authority.

Mrs. Scherling said she would like equal representation between Fargo and Cass County on the Finance Committee. Currently, Cass has three members and Fargo has five members.

Two of the Fargo members (Mr. Mahoney and Mr. Grindberg) are Diversion Authority appointments with the other three recommended by the City of Fargo. She asked if one of Fargo's representatives could be replaced with a county representative.

Mrs. Scherling asked about the terms of committee chairs, which Mr. Shockley said is also outlined in the JPA.

Mr. Mahoney said there is longevity with the current makeup of the committee. Mr. Piepkorn is not supportive of making any changes. Mr. Grindberg said this is the first he has heard of this issue and believes the current makeup works well.

MOTION, failed due to lack of a second

Mrs. Scherling moved to appoint Ken Pawluk as one of the Diversion Authority appointments. Discussion: Diversion Authority appointments that serve on the committees need to be Diversion Authority Board members. Mr. Pawluk is an alternate, not a board member. Mrs. Scherling realized this is not an option because of this requirement.

MOTION, passed

Mr. Grindberg moved and Mr. Piepkorn seconded to table action on any changes to the Finance Committee membership. On roll call vote, the motion carried unanimously.

MOTION, passed

Mr. Grindberg moved and Mr. Campbell seconded to adopt the Resolution Confirming Recommendations and Appointments to the Diversion Authority Board, Finance Committee, Land Management Committee, and Public Outreach Committee of the Metro Flood Diversion Authority as presented. Discussion: Members discussed whether committee membership can be changed at a different time. Mr. Shockley said committee members recommended by a member entity may be changed any time during the year; however, committee members that are appointed by the Diversion Authority may only be considered annually. Mr. Piepkorn asked Mr. Paulsen to provide the board with sales tax figures generated by Fargo and Cass County for the project. On roll call vote, the motion carried unanimously.

9. PUBLIC OUTREACH UPDATE

Committee report

The Public Outreach Committee met on January 29th. Rocky Schneider from the Program Management Consulting team said the committee continued to review the development of a new communications plan. Surveys will be sent in the next few weeks to determine how the public receives news, i.e. television, websites, social media.

10. LAND MANAGEMENT

Committee report

The Land Management Committee met on January 29th. Mrs. Scherling said Watts and Associates has been hired to review supplemental crop insurance mitigation programs. She said the CCJWRD is working on land acquisitions and appraisals. Mr. Schneider said 42 parcel appraisals were approved, and five parcels were acquired since the last meeting.

Property Acquisition Status Report

The Property Acquisition Status Report is updated monthly and shows the status of all parcels required for the project. The information is helpful to understand all the land purchases taking place and to monitor their progress.

11. FINANCE UPDATE

Committee report

The Finance Committee met on January 29th. Mr. Grindberg referred to the financial report and said the net cash position is \$86 million.

Voucher approval

The bills for the month are with Cass County Joint Water Resource District (CCJWRD) for costs associated with the Metro Flood Diversion right-of-entry and land acquisitions, OHB levee, and in-town levees; Dorsey & Whitney for legal services; Ohnstad Twichell, P.C. for legal services; Cass County for reimbursement of Executive Director expenses; and Marsh & McLennan Agency, LLC for general liability insurance premium.

MOTION, passed

Mr. Grindberg moved and Mr. Peterson seconded to approve the vouchers received through January 24, 2020, in the amount of \$930,218.14. On roll call vote, the motion carried unanimously.

12. RECOMMENDED CONTRACTING ACTIONS

Mr. Paulsen reviewed the recommended contracting actions, which were approved by the Finance Committee as follows:

- Jacobs Engineering Group, Inc. (Amended Master Services Agreement)—professional and program management services for a seven- year term through December 31, 2026, with costs to be paid per task order based on hourly rate schedule provided in the MSA;
- Houston-Moore Group, LLC (Task Order 23 Amendment 3 OHB Ring Levee)—add engineering services during bidding scope and budget for Hickson Main Avenue Storm Sewer and OHB wetland mitigation; add scope and budget for engineering services during construction for Hickson Main Avenue Storm Sewer and OHB wetland mitigation; add program management scope and budget for Hickson Main Avenue Storm Sewer and OHB wetland mitigation; and extend period of performance to December 31, 2020 in the amount of \$252,945;
- Houston-Moore Group, LLC (Task Order 26 Amendment 3 Work-in-Kind)—additional budget for Southern Embankment and Associated Infrastructure (SEAI) local drainage update; add scope and budget for SEAI transportation update; additional budget for SEAI utilities update; add scope and budget for SEAI hydraulic modeling support; and extend period of performance to December 31, 2020, in the amount of \$570,074.

MOTION, passed

Mr. Grindberg moved and Mr. Peterson seconded to approve the amended Master Services Agreement with Jacobs Engineering Group. On roll call vote, the motion carried unanimously.

MOTION, passed

Mr. Grindberg moved and Mr. Campbell seconded to approve Task Order 23 Amendment 3 and Task Order 26 Amendment 3 with Houston-Moore Group as presented. On roll call vote, the motion carried unanimously.

13. OTHER BUSINESS

Executive Session Policy

Mr. Paulsen discussed a proposed policy to address Executive Sessions, which is needed to maintain the integrity of P3 procurements as well as confidential information regarding on-going litigation. The policy outlines who can attend and participate in the sessions. Attendance will be limited to the Diversion Authority Board members, Executive Director and Diversion Authority legal counsel. Anyone else would need to be invited by the Executive Director to participate.

MOTION, passed

Mr. Peterson moved and Mr. Pawluk seconded to approve the Executive Session Policy as presented. On roll call vote, the motion carried unanimously.

Travel Reimbursement Policy

Mr. Paulsen said individual member entities have been reimbursing staff and public officials for travel related to the project. He discussed a policy and reimbursement form created to provide guidelines when submitting expenses. Costs shall be reimbursed if travel is requested by the Executive Director, is more than 100 miles one-way from the Fargo-Moorhead area, and if the purpose is to attend a meeting or conference related to the project.

Ms. Carlson asked about whether the federal per diem rate will be included in the policy. She wants to ensure everyone is fiscally conscious and responsible when traveling for Diversion business. Mr. Paulsen said the policy could be amended to include the federal per diem rate.

MOTION, passed

Mrs. Scherling moved and Mr. Weyland seconded to approve the Travel Reimbursement Policy with an amendment to include the federal per diem rate. On roll call vote, the motion carried unanimously.

Envision Resilience and Sustainability Program Overview

Quin McKenzie, Co-Founder and Consultant from Luuceo was present to discuss the Envision Resilience and Sustainability Program. Envision is a nationally recognized platform that uses a holistic approach to provide a framework for planning, evaluating, and rating benefits of infrastructure projects. Mr. Paulsen said Envision would enhance communication and public outreach for the project.

Ms. McKenzie provided examples of the opportunities that Envision may provide, which include facilitating public education on construction, conducting an economic evaluation during the lifecycle of the project, reviewing and enhancing community and public outreach, and improving infrastructure integration.

Mr. Paulsen said one of the benefits of using Envision is the potential cost savings through creating efficiencies. He understands work needs to be done to show the board how this program will save money. He drafted an Authority Work Directive (AWD) in the amount of \$40,000 for Luuceo to conduct preliminary work.

MOTION, passed

Mr. Grindberg moved and Mr. Hendrickson seconded to approve the Authority Work Directive in the amount of \$40,000 for Luuceo to conduct preliminary work. Discussion: Mr. Grindberg said the Finance Committee discussed this issue at great length and questioned how the value of any savings could be defined. He wants to see if the P3 proposers are supportive of the Envision Resilience Program. Mr. Peterson asked about cost savings examples to quantify what Luuceo has done for other projects. Ms. McKenzie said with one project there was a 40% cost savings because of land optimization. She said early contractor involvement and scope agreements to identify redundancies have proven to be cost effective. Mr. Paulsen said Envision will focus on processes that will deliver the project and act almost as an audit on project implementation. Mr. Hendrickson supports the concept and wants to see the benefits offered by Envision. Mr. Grindberg said the intent of his motion is to provide this funding to allow Luuceo to include language within the Draft P3 RFP about Envision and work with the

P3 proposers to see if this would be valuable for the project. His intent is not to come back and approve additional funding at the next meeting. On roll call vote, the motion carried with Mr. Grindberg, Mr. Hendrickson, Ms. Carlson, Mr. Mahoney, Mr. Piepkorn, Mr. Campbell, Mr. Weyland, Mrs. Scherling, and Mr. Thorstad voting “Yes”; and Mr. Peterson and Mr. Pawluk voting “No”.

Public Private Partnership Overview – Risk Transfer

This item was tabled until next month.

14. NEXT MEETING DATE

The next meeting is scheduled for Thursday, February 27, 2020.

15. ADJOURNMENT

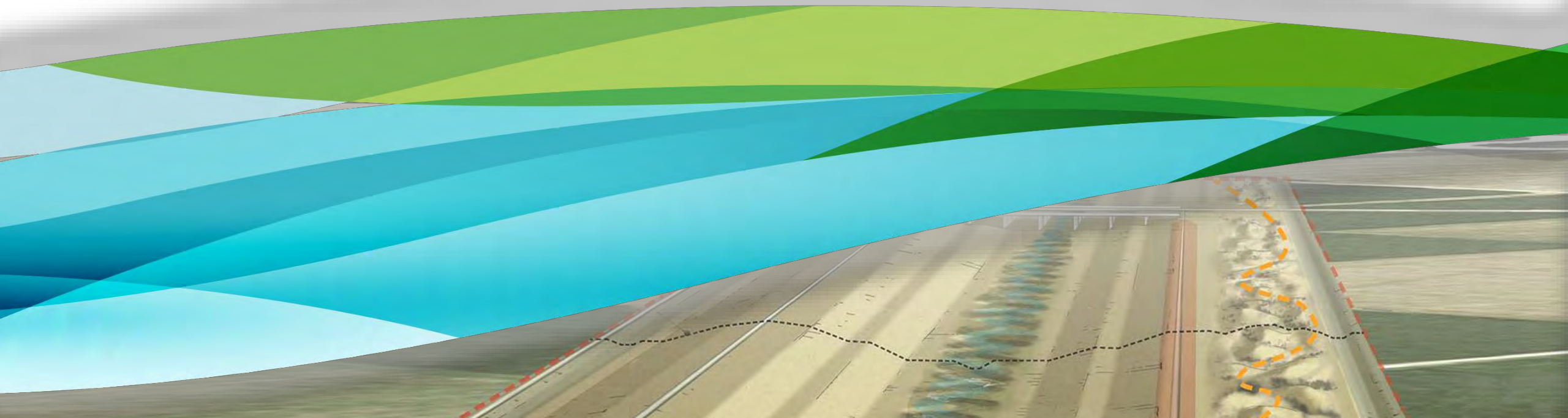
MOTION, passed

On motion by Mr. Peterson, seconded by Mrs. Scherling, and all voting in favor, the meeting was adjourned at 5:11 PM.



Diversion Authority Board Meeting

Executive Director Report (Item 4)
February 27, 2020



Program Controls Report

Overall Program Status

Program Categories Non-Federal Portion	Estimate at Completion (EAC) Millions	Overall Cost to Date As of: 01/31/2020	FY2020 Annual Budget	FY2020 Cost To Date As of: 01/31/2020
P3 Support Services	\$85.51	\$17.65	\$7.74	\$0.59
Milestone Payments to the Developer	\$763.14	\$0.00	\$0.00	\$0.00
Fargo In-Town Projects	\$92.90	\$88.74	\$0.89	\$0.26
Fargo- River Stage 37' Projects	\$99.40	\$12.62	\$24.00	\$0.00
Moorhead- River Stage 37' Projects	\$43.80	\$0.00	\$0.00	\$0.00
Lands and Impacted Property Mitigation	\$416.43	\$207.97	\$71.23	\$0.29
Engineering, Legal, Financial	\$200.37	\$103.41	\$20.69	\$1.08
DA Construction Contingency	\$160.85	\$0.00	\$0.00	\$0.00
3rd Party MOU Mitigation	\$27.32	\$0.00	\$0.00	\$0.00
Net Current Interest / Financing Fees Paid	\$27.95	\$0.00	\$0.00	\$0.00
Designated P3 Channel Bridges	\$23.82	\$0.00	\$0.00	\$0.00
Designated Options and Easements after 2024	\$83.37	\$0.00	\$0.00	\$0.00
Designated 37' River Stage	\$20.33	\$0.00	\$0.00	\$0.00
DA Payment to USACE	\$67.39	\$53.16	\$0.00	\$0.00
Other/Mitigation Construction	\$72.56	\$25.93	\$2.90	\$0.00
Financing Costs				
Short Term Loan Payments	\$329.87	\$21.91	\$11.10	\$0.24
Non-Federal Totals	\$2,515.00	\$531.39	\$138.56	\$2.47
Less Outstanding Accounts Payable		(\$2.94)		
Actual Expenditure To Date		\$528.46		

Strategic Initiatives

- USACE Funding \$100Million for FY2020
- Consultant Contracting Savings
- Staffing Report: Status on Posting/Hiring
- Release of P3 RFP Draft 4 and Procurement Schedule
- Office of the State Engineer Update
- Value Propositions



FM Metropolitan Area Flood Risk Management Project
Fiscal Accountability Report Design Phase (Fund 790)
As of 01/31/20

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Cumulative Totals
Revenues											
City of Fargo	443,138	7,652,681	7,072,961	19,373,131	28,310,373	35,212,877	31,790,784	30,068,553	31,520,242	3,607,769	195,052,509
Cass County	443,138	7,652,681	7,072,961	19,373,131	28,310,373	111,715,540	14,193,826	14,066,719	15,181,234	990,276	218,999,878
State Water Commission			3,782,215	602,918	31,056,740	101,436,302	23,650,143	10,229,504	24,057,509	6,065,530	200,880,861
Other Agencies	98,475	1,700,595	1,571,769	4,305,140	6,291,194	(13,260,368)	-	-	-	-	706,805
Reimbursements						33,880	49,699	31,034	22,600	-	137,213
Lease/Rental Payments			17,358	154,180	180,341	260,806	350,720	466,494	714,292	20,275	2,164,466
Asset Sales				616,774	315,892	175,190	117,079	-	-	-	1,224,935
Interest Income							505,157	1,246,875	1,885,896	112,196	3,750,124
Miscellaneous			226	626	427		-	356	-	-	1,635
Total Revenues	984,751	17,005,957	19,517,490	44,425,900	94,465,340	235,574,227	70,657,409	56,109,535	73,381,773	10,796,046	622,918,427
Expenditures											
7905 Army Corp Payments	-	-	875,000	1,050,000	2,725,000	47,279,000	1,230,000	-	-	-	53,159,000
7910 WIK - Administration	107,301	331,321	77,614	169,019	282,227	545,555	500,885	958,066	1,096,321	49,116	4,117,425
7915 WIK - Project Design	149,632	5,366,147	3,220,859	9,118,723	4,660,226	2,719,505	2,631,656	2,426,701	2,101,350	223,167	32,617,966
7920 WIK - Project Management	679,037	7,223,650	4,695,477	3,579,339	4,500,955	8,464,392	14,714,801	7,061,890	7,695,009	964,530	59,579,081
7925 WIK - Recreation		163,223					-	-	40,000	75,000	278,223
7930 LERRDS - North Dakota	48,664	3,843,620	2,763,404	17,013,358	55,948,209	46,717,049	40,728,316	8,758,761	29,331,486	344,262	205,497,129
7931 LERRDS - Minnesota		27,996	287,907	13,068	32,452	1,815,566	35,457	4,354	5,779	-	2,222,578
7940 WIK Mitigation - North Dakota				587,180			225,293	100,316	12,357	988	926,134
7941 WIK Mitigation - Minnesota							-	-	-	-	-
7950 Construction - North Dakota				1,738,638	19,269,055	42,263,916	5,976,235	805,378	20,190,969	230,694	90,474,885
7951 Construction - Minnesota							-	-	-	-	-
7952 Construction - O/H/B				11,282,504	5,044,001	776,720	7,365,462	7,478,270	551,851	4,364	32,503,172
7955 Construction Management				556,209	2,867,422	5,182,366	1,498,050	294,744	706,544	28,853	11,134,187
7980 Operations & Maintenance							6,403	28,538	41,493	-	76,435
7990 Project Financing		50,000	70,000	216,376	566,600	5,435,289	8,305,600	9,975,391	10,769,348	259,756	35,648,360
7995 Project Eligible - Off Formula Costs						-	-	-	-	-	-
7999 Non Federal Participating Costs	116						221,568	-	-	-	221,684
Total Expenditures	984,750	17,005,957	11,990,261	45,324,414	95,896,147	161,199,358	83,439,726	37,892,409	72,542,506	2,180,731	528,456,259

FM Metropolitan Area Flood Risk Management Project
Statement of Net Position
January 31, 2020

	<u>Amount</u>
Assets	
Cash	\$ 89,527,853
Receivables	
State Water Commission *	6,065,530
Proceeds from Oxbow Lot Sales	438,704
Total assets	<u>96,032,087</u>
 Liabilities	
Retainage payable	1,563,919
Rent Deposit	6,000
Total liabilities	<u>1,569,919</u>
 NET POSITION	<u>\$ 94,462,168</u>

* Receivable balance is as of 12.31.2019

FM Metropolitan Area Flood Risk Management Project
FY 2019 Summary Budget Report (In Thousands)
As of 31 Jan 2020

	2020 Approved Budget	Current Month	Fiscal Year To Date	% Expended	Outstanding Encumbrances	Remaining Budget Balance
Revenue Sources						
City of Fargo	-	3,608	3,608			
Cass County	-	990	990			
State of ND - 50 % Match	-	3,444	3,444			
State of ND - 100% Match	-	2,622	2,622			
State of Minnesota	-	-	-			
Other Agencies	-	-	-			
Financing Proceeds	-	112	112			
Reimbursements	-	-	-			
Sales of Assets	-	-	-			
Property Income	-	20	20			
Miscellaneous	-	-	-			
Total Revenue Sources	138,559	10,796	10,796	-	-	127,763
Funds Appropriated						
Diversion Channel & Assoc. Infrastructure	7,744	589	589	0%	3,956	3,199
Southern Embankment & Assoc. Infrastructure	1,373	213	213	16%	1,447	(287)
Other Mitigation Projects	2,872	4	4	0%	646	2,222
In-Town Flood Protection	24,894	260	260	1%	979	23,656
Enabling Work / Other	26	-	0	0%	-	26
Land Acquisition & Mitigation	71,079	268	268	0%	61,686	9,125
Engineering & Design Fees	3,135	88	88	3%	3,779	(732)
Program Management	16,244	600	806	5%	80,281	(64,842)
Contingency	-	-	0	0%	-	-
Debt Service	11,100	158	237	2%	194	10,669
Maintenance	90	-	0	0%	-	90
Total Appropriations	138,559	2,181	2,466	2%	152,969	(16,876)

METRO FLOOD DIVERSION AUTHORITY

Tuesday, February 11, 2020

Data Through Date: Friday January, 31 2020

Summary of Expenses
EXP-2020-01

Account_Number	Check Date	Check Number	Vendor_Name	Transaction Amount	Description	Project Number	Project_Description
790-0000-206.10-00	1/23/2020	301976	HOFFMAN & MCNAMARA NURSERY&LANDSC	\$11,207.06	RETAINAGE PO 193315	V02823	LANDSCAPING & PLANTINGS
Retainage				\$11,207.06			
790-7910-429.11-00	1/30/2020	302063	CASS COUNTY FINANCE	\$16,250.00	DIRECTORS PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Full Time Staff / Salary				\$16,250.00			
790-7910-429.20-01	1/30/2020	302063	CASS COUNTY FINANCE	\$1,465.00	DIRECTORS PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Employee Benefits / Health Insurance				\$1,465.00			
790-7910-429.20-03	1/30/2020	302063	CASS COUNTY FINANCE	\$40.00	DIRECTORS PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Employee Benefits / Dental Insurance				\$40.00			
790-7910-429.21-01	1/30/2020	302063	CASS COUNTY FINANCE	\$962.34	DIRECTORS PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Employee Benefits / FICA 6.2%				\$962.34			
790-7910-429.21-02	1/30/2020	302063	CASS COUNTY FINANCE	\$225.06	DIRECTORS PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Employee Benefits / Medicare 1.45%				\$225.06			
790-7910-429.22-07	1/30/2020	302063	CASS COUNTY FINANCE	\$1,992.25	DIRECTORS PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Employee Benefits / Retirement Diversion				\$1,992.25			
790-7910-429.33-20	1/26/2020	JB01200015	CITY OF FARGO-AUDITORS OFFICE	\$5,378.90	CHARGE FOR COF TIME-01/20	V00102	General & Admin. WIK
Other Services / Accounting Services				\$5,378.90			
790-7910-429.33-25	1/9/2020	301679	OXBOW, CITY OF	\$227.50	TURMAN & LANG	V02407	OXBOW MOU-LEGAL SERVICES
	1/4/2020	773	P CARD BMO	\$72,432.91	Ohnstad Twichell PC	V00102	General & Admin. WIK
Other Services / Legal Services				\$72,660.41			
790-7910-429.34-20	1/23/2020	301996	ND WATER EDUCATION FOUNDATION	\$500.00	DEC ND WATER MAGAZINE	V05701	ND WATER MAGAZINE OUTRCH
Technical Services / Marketing/PR Services				\$500.00			
790-7910-429.38-68	2/4/2020	776	P CARD BMO	\$3,000.00	FREDRIKSON AND BYRON P	V00102	General & Admin. WIK
Other Services / Lobbyist				\$3,000.00			
790-7910-429.44-10	2/6/2020	JB01200018	CITY OF FARGO-AUDITORS OFFICE	\$10,080.00	2020 CIVIC CENTER RENT	V00102	General & Admin. WIK
Other Services / Land and Building Rentals				\$10,080.00			
790-7910-429.52-30	1/23/2020	301986	MARSH & MCLENNAN AGENCY LLC	\$8,995.00	2020 GENERAL LIABILITY	V00102	General & Admin. WIK
Insurance / General Liability				\$8,995.00			
790-7915-429.33-05	1/9/2020	301679	OXBOW, CITY OF	\$600.00	MOORE ENGINEERING, INC.	V02416	OXBOW MOU-MISC INFRA ENG

METRO FLOOD DIVERSION AUTHORITY

Tuesday, February 11, 2020

Data Through Date: Friday January, 31 2020

Summary of Expenses
EXP-2020-01

Account_Number	Check Date	Check Number	Vendor_Name	Transaction Amount	Description	Project Number	Project_Description
	1/9/2020	301640	HOUSTON-MOORE GROUP LLC	\$116,793.71	SEAI-WIK DESIGN SERVICES	V01620	SEAI-I29 GRADE RAISE DSGN
	1/9/2020	301593	AECOM TECHNICAL SERVICES, INC	\$3,013.28	CULTURAL RESOURCES INVEST	V01004	SEAI CULTURAL RES INVEST
	1/23/2020	301977	HOUSTON-MOORE GROUP LLC	\$24,075.19	PERMIT SUBMITTAL PREP	V01616	PERMIT SUBMITTAL PREP
	1/23/2020	301977	HOUSTON-MOORE GROUP LLC	\$73,626.86	GRADE RAISE DESIGN SERVIC	V01620	SEAI-I29 GRADE RAISE DSGN
	1/23/2020	301977	HOUSTON-MOORE GROUP LLC	\$4,123.00	UPSTREAM MITIGATION	V01622	MITIGATION SUPPORT SRVCS
	1/23/2020	301977	HOUSTON-MOORE GROUP LLC	\$935.00	HYDROLOGY/HYDRAULIC MODEL	V01625	HYDROLOGY/HYDRAULIC MODEL
Other Services / Engineering Services				\$223,167.04			
790-7920-429.33-79	1/9/2020	301679	OXBOW, CITY OF	\$1,192.10	MOORE ENGINEERING, INC	V02421	OXBOW MOU-MOORE PROJ MGMT
	1/30/2020	302068	CH2M HILL ENGINEERS INC	\$469,487.21	PROGRAM MGMT & SERVICES	V00211	CH2M HILL-6/2019-12/2021
	1/30/2020	302068	CH2M HILL ENGINEERS INC	\$493,851.01	SUPPORT SERVICES	V00212	P3 PROCUREMENT SUPPORT
Other Services / Construction Management				\$964,530.32			
790-7925-429.33-44	1/23/2020	301959	FARGO MOORHEAD METROPOLITAN	\$75,000.00	DIVERSION RECREATION PLAN	V05501	2019-216 RECREATION PLAN
Other Services / Metro COG Local Match				\$75,000.00			
790-7930-429.33-05	1/23/2020	301977	HOUSTON-MOORE GROUP LLC	\$34,519.85	BOUNDARY SURVEYING	V01628	BOUNDARY SURVEYING SRVCS
	1/23/2020	301977	HOUSTON-MOORE GROUP LLC	\$21,994.28	PROPERTY STUCTURE MITIGAT	V01630	PROPERTY STRUCTURE MITGTN
Other Services / Engineering Services				\$56,514.13			
790-7930-429.33-25	1/4/2020	773	P CARD BMO	\$3,026.24	Ohnstad Twichell PC	V00103	General & Admin. LERRDS
790-7930-429.33-25	1/4/2020	773	P CARD BMO	\$81,353.54	DORSEY AND WHITNEY LLP	V00101	Dorsey Whitney Legal
Other Services / Legal Services				\$84,379.78			
790-7930-429.33-79	1/30/2020	302068	CH2M HILL ENGINEERS INC	\$231,500.75	PROPERTY ACQUISITION MGMT	V00210	CH2M HILL-LAND ACQUISITON
Other Services / Construction Management				\$231,500.75			
790-7930-429.38-99	1/23/2020	301998	NDSU BUSINESS OFFICE	\$56,247.50	AG RISK STUDY SERVICES	V02701	AG RISK STUDY SERVICES
Other Services / Other Services				\$56,247.50			
790-7940-429.33-06	1/9/2020	301602	BRAUN INTERTEC CORP	\$988.00	MATERIALS TESTING	V00402	TESTING - WP-43 & WP-28A
Other Services / Quality Control Testing				\$988.00			
790-7950-429.73-52	1/30/2020	302102	INDUSTRIAL BUILDERS INC	\$222,744.59	2 ST S/MAIN AVE FLOOD MIT	V02825	2ND ST S FLOOD MITIGATION
Infrastructure / Flood Control				\$222,744.59			
790-7950-429.73-66	1/23/2020	301976	HOFFMAN & MCNAMARA NURSERY&LANDSC	\$7,949.88	LANDSCAPING & PLANTINGS	V02823	LANDSCAPING & PLANTINGS
Infrastructure / Landscaping				\$7,949.88			
790-7952-429.33-05	1/23/2020	301977	HOUSTON-MOORE GROUP LLC	\$4,364.10	WP 43 CONST SERVICES	V01623	CONSTRUCTN/BID SVCS WP43

METRO FLOOD DIVERSION AUTHORITY

Tuesday, February 11, 2020

Data Through Date: Friday January, 31 2020

Summary of Expenses**EXP-2020-01**

Account_Number	Check Date	Check Number	Vendor_Name	Transaction Amount	Description	Project Number	Project_Description
Other Services / Engineering Services				\$4,364.10			
790-7955-429.33-05	1/23/2020	301977	HOUSTON-MOORE GROUP LLC	\$28,412.71	WP #42 CONST SERVICES	V02806	CONSTRUCTION SVCS WP42
Other Services / Engineering Services				\$28,412.71			
790-7955-429.33-06	1/9/2020	301704	TERRACON CONSULTING ENGINEERS	\$440.00	MATERIALS TESTING	V02802	WP-42 MATERIALS TESTING
Other Services / Quality Control Testing				\$440.00			
790-7990-429.33-05	1/23/2020	301977	HOUSTON-MOORE GROUP LLC	\$11,220.50	PROCUREMENT SUPPORT	V01621	P3 RFP PROCUREMENT SUPPRT
Other Services / Engineering Services				\$11,220.50			
790-7990-429.33-25	1/4/2020	773	P CARD BMO	\$49,044.13	Ohnstad Twichell PC	V00102	General & Admin. WIK
Other Services / Legal Services				\$49,044.13			
790-7990-429.34-55	1/9/2020	301619	ERNST & YOUNG INFRASTRUCTURE	\$90,366.80	FINANCIAL ADVISORY SERVIC	V03301	PPP FINANCL ADVISORY SVCS
Technical Services / Financial Advisor				\$90,366.80			
790-7990-520.80-20	1/23/2020	301940	CASS COUNTY FINANCE	\$158,168.88	DECEMBER INTEREST	V02906	\$100M 2017 CASS WF ADVANC
	1/10/2020	JB13190011	CITY OF FARGO-AUDITORS OFFICE	\$78,974.03	12.2.19 WF INTEREST PMT	V02905	\$100M 2017 COF WF ADVANCE
Debt Service / Interest on Bonds				\$237,142.91			
Total Amount Invoiced this period				\$2,476,769.16			
				<u>\$11,207.06</u>	Less Paid Retainage		
				\$2,465,562.10	Total Less Paid Retainage		

FM Metropolitan Area Flood Risk Management Project
Cumulative Vendor Payments Since Inception
As of January 31, 2020

Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
CASS COUNTY JOINT WATER RESOUR	\$ 258,709,810.93	\$ 197,023,345.06	\$ 61,686,465.87	Land Purchases, O/H/B Ring Levee, DPAC, & ROE
CH2M HILL ENGINEERS INC	\$ 134,989,971.02	\$ 56,068,822.34	\$ 78,921,148.68	Program, Project, Construction and Land Management
ARMY CORP OF ENGINEERS	\$ 53,159,000.00	\$ 53,159,000.00	\$ -	Local Share
HOUSTON-MOORE GROUP LLC	\$ 50,348,129.93	\$ 45,475,774.98	\$ 4,872,354.95	Engineering Services
INDUSTRIAL BUILDERS INC	\$ 48,102,311.00	\$ 47,249,861.39	\$ 852,449.61	Const - 2nd St North Pump Station Project and 2nd Street Floodwall
CITY OF FARGO	\$ 30,015,570.53	\$ 30,015,570.53	\$ -	Digital Imagery Project, Utility Relocation, Accounting Svcs, and Bank Loan Advance DS Payments
INDUSTRIAL CONTRACT SERVICES I	\$ 17,605,821.19	\$ 17,493,762.16	\$ 112,059.03	Const - 4th St Pump Station and 2nd Street Floodwall
OXBOW, CITY OF	\$ 15,527,666.94	\$ 15,157,722.37	\$ 369,944.57	MOU Agreement
MEYER CONTRACTING INC	\$ 12,149,874.79	\$ 12,129,612.10	\$ 20,262.69	Construction/Demolition Services
ASHURST LLP	\$ 7,795,542.81	\$ 3,895,542.81	\$ 3,900,000.00	PPP (P3) Legal Counsel
DORSEY & WHITNEY LLP	\$ 7,466,558.03	\$ 7,466,558.03	\$ -	Legal Services
CASS COUNTY FINANCE	\$ 7,345,830.41	\$ 7,344,141.44	\$ 1,688.97	Property Taxes and Bank Loan Advance DS Payments
OHNSTAD TWICHELL PC	\$ 3,818,824.52	\$ 3,818,824.52	\$ -	ROE and Bonding Legal Fees
ERNST & YOUNG INFRASTRUCTURE	\$ 3,377,000.00	\$ 3,182,972.93	\$ 194,027.07	Financial Advisor
MINNESOTA DNR	\$ 2,613,681.40	\$ 2,613,681.40	\$ -	EIS Scoping
CENTURYLINK	\$ 2,586,742.00	\$ 2,586,742.00	\$ -	Utility Relocation
LANDWEHR CONSTRUCTION INC	\$ 2,316,627.66	\$ 2,305,622.16	\$ 11,005.50	Const - In-Town Demolition Contracts
URS CORPORATION	\$ 1,805,670.90	\$ 1,805,670.90	\$ -	Engineering Services
KENNELLY & OKEEFFE	\$ 1,729,110.56	\$ 1,729,110.56	\$ -	Home Buyouts
HOUGH INCORPORATED	\$ 1,639,524.33	\$ 1,639,524.33	\$ -	Const - 2nd Street South Flood Control
REINER CONTRACTING INC	\$ 1,599,646.21	\$ 1,599,646.21	\$ -	Const - El Zagal Flood Risk Management
CONSOLIDATED COMMUNICATIONS	\$ 1,063,096.11	\$ 1,063,096.11	\$ -	Utility Relocation
ORACLE AMERICA, INC	\$ 1,015,290.00	\$ 306,856.00	\$ 708,434.00	Storage System
ENGINEERS	\$ 909,149.49	\$ 882,451.41	\$ 26,698.08	Materials Testing
CONSTRUCTION	\$ 807,871.82	\$ 807,871.82	\$ -	Realignment
XCEL ENERGY	\$ 753,515.88	\$ 753,515.88	\$ -	Utility Relocation
MOORE ENGINEERING INC	\$ 662,468.17	\$ 662,468.17	\$ -	Engineering Services
PROGRAM ADVISOR SERVICES, LLC	\$ 650,000.00	\$ -	\$ 650,000.00	Professional Services
US BANK	\$ 626,849.03	\$ 626,849.03	\$ -	Loan Advance DS Payments
DUCKS UNLIMITED	\$ 587,180.00	\$ 587,180.00	\$ -	Wetland Mitigation Credits
HOUSTON ENGINEERING INC	\$ 576,669.57	\$ 576,669.57	\$ -	Engineering Services
ERIK R JOHNSON & ASSOCIATES	\$ 560,094.03	\$ 560,094.03	\$ -	Legal Services
RED RIVER BASIN COMMISSION	\$ 501,000.00	\$ 501,000.00	\$ -	Services
CROWN APPRAISALS INC	\$ 500,000.00	\$ 500,000.00	\$ -	Flowage Easements Valuation
NURSERY&LAN	\$ 486,502.29	\$ 472,091.04	\$ 14,411.25	Construction - Landscape
NORTHERN TITLE CO	\$ 484,016.00	\$ 484,016.00	\$ -	Land Purchases
SCHMIDT AND SONS CONSTRUCTION	\$ 478,376.86	\$ 423,378.80	\$ 54,998.06	Oxbow Housing Relocation
AT & T	\$ 461,031.30	\$ 461,031.30	\$ -	Utility Relocation
BRAUN INTERTEC CORP	\$ 450,146.25	\$ 385,987.89	\$ 64,158.36	Quality Testing
FARGO MOORHEAD METROPOLITAN	\$ 368,858.35	\$ 368,858.35	\$ -	Lidar Imaging
NDSU BUSINESS OFFICE	\$ 344,145.00	\$ 267,779.75	\$ 76,365.25	Ag Risk Study Services
ACONEX (NORTH AMERICA) INC	\$ 306,856.00	\$ 306,856.00	\$ -	Storage System
BEAVER CREEK ARCHAEOLOGY	\$ 291,990.00	\$ 159,909.77	\$ 132,080.23	Engineering Services
702 COMMUNICATIONS	\$ 266,892.07	\$ 266,892.07	\$ -	Utility Relocation

FM Metropolitan Area Flood Risk Management Project
Cumulative Vendor Payments Since Inception
As of January 31, 2020

Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
SPRINT	\$ 256,409.37	\$ 256,409.37	\$ -	Utility Relocation
AON RISK SERVICES CENTRAL, INC	\$ 240,000.00	\$ 183,813.50	\$ 56,186.50	P3 Risk Advisory Services
BUFFALO-RED RIVER WATERSHED DI	\$ 221,568.00	\$ 221,568.00	\$ -	Retention Projects - Engineering Services
CASS RURAL WATER USERS DIST	\$ 213,335.00	\$ 213,335.00	\$ -	Utilities and Utility Relocation
FREDRIKSON & BYRON, PA	\$ 205,592.36	\$ 205,592.36	\$ -	Lobbying Services
ROBERT TRENT JONES	\$ 200,000.00	\$ 200,000.00	\$ -	Agreement
SPRINGSTED INCORPORATED	\$ 178,010.15	\$ 178,010.15	\$ -	Financial Advisor
S & S LANDSCAPING CO INC	\$ 150,528.50	\$ 31,123.00	\$ 119,405.50	Construction - Landscape
PFM PUBLIC FINANCIAL MANAGEMEN	\$ 146,460.00	\$ 146,460.00	\$ -	Financial Advisor
GRAY PANNELL & WOODWARD LLP	\$ 143,800.68	\$ 143,800.68	\$ -	Legal Services
AECOM TECHNICAL SERVICES, INC	\$ 139,000.00	\$ 20,244.79	\$ 118,755.21	Engineering Services
AT&T NETWORK OPERATIONS	\$ 125,238.30	\$ 125,238.30	\$ -	Utility Relocation
CENTURYLINK ASSET ACCOUNTING-B	\$ 118,871.82	\$ 118,871.82	\$ -	Utility Relocation
ENVENTIS	\$ 115,685.62	\$ 115,685.62	\$ -	Utility Relocation
UNITED STATES GEOLOGICAL SURVE	\$ 104,600.00	\$ 104,600.00	\$ -	Stage Gage Installation
CASS COUNTY ELECTRIC-4100 32 A	\$ 104,195.00	\$ 97,995.00	\$ 6,200.00	Utility Services / Relocation
EL ZAGAL TEMPLE HOLDING CO	\$ 76,000.00	\$ 76,000.00	\$ -	Easement Purchase for El Zagal Levee
HKA GLOBAL, INC	\$ 74,353.00	\$ 74,353.00	\$ -	Professional Services
GERSON LEHRMAN GROUP, INC.	\$ 60,819.00	\$ 60,819.00	\$ -	Legal Services
NIXON PEABODY LLC	\$ 60,000.00	\$ 60,000.00	\$ -	Legal Services
CPS HR CONSULTING	\$ 50,555.98	\$ 50,555.98	\$ -	HR Consulting
ADVANCED ENGINEERING INC	\$ 50,000.00	\$ 50,000.00	\$ -	Public Outreach
IN SITU ENGINEERING	\$ 47,973.00	\$ 47,973.00	\$ -	Quality Testing
US GEOLOGICAL SURVEY	\$ 46,920.00	\$ 46,920.00	\$ -	Stage Gage Installation
WARNER & CO	\$ 40,567.00	\$ 40,567.00	\$ -	General Liability Insurance
COMMUNICATIONS	\$ 37,318.95	\$ 37,318.95	\$ -	Utility Relocation
CLAY COUNTY AUDITOR	\$ 34,538.71	\$ 34,538.71	\$ -	Property Tax, Home Buyout Demo
AMERICAN ENTERPRISES INC	\$ 34,000.00	\$ 34,000.00	\$ -	Test Pits
GEOKON INC	\$ 33,815.36	\$ 33,815.36	\$ -	Vibrating Wire Piezometer Equipment
COLDWELL BANKER	\$ 33,066.02	\$ 33,066.02	\$ -	Property Management Services
ND WATER USERS ASSOCIATN	\$ 30,450.00	\$ 30,450.00	\$ -	Membership Dues
WESTERN AREA POWER ADMINISTRAT	\$ 30,000.00	\$ 30,000.00	\$ -	P3 Support Services
NAASTAD BROTHERS, INC	\$ 25,796.40	\$ 25,796.40	\$ -	Roadway Ditch Work
XCEL ENERGY-FARGO	\$ 16,275.85	\$ 16,275.85	\$ -	Utility Relocation
PRIMORIS AEVENIA INC	\$ 16,230.00	\$ 16,230.00	\$ -	Utility Relocation
MOORHEAD, CITY OF	\$ 15,062.90	\$ 15,062.90	\$ -	ROE Legal Fees
MAP SERVICE CENTER	\$ 14,500.00	\$ 14,500.00	\$ -	Permit fee
BRIGGS & MORGAN PA	\$ 12,727.56	\$ 12,727.56	\$ -	Legal Services
MARSH & MCLENNAN AGENCY LLC	\$ 9,383.52	\$ 9,383.52	\$ -	Property Insurance - Home Buyouts
PROSOURCE TECHNOLOGIES, INC	\$ 8,324.94	\$ 8,324.94	\$ -	Vibrating Wire Piezometer Equipment
NEWMAN SIGNS INC	\$ 5,816.00	\$ 5,816.00	\$ -	Sinage
ONE	\$ 3,575.00	\$ 3,575.00	\$ -	Legal Services
MCKINZIE METRO APPRAISAL	\$ 3,200.00	\$ 3,200.00	\$ -	Appraisal Services
STUDIO 7 PRODUCTIONS	\$ 3,170.00	\$ 3,170.00	\$ -	Video Productions

FM Metropolitan Area Flood Risk Management Project
Cumulative Vendor Payments Since Inception
As of January 31, 2020

Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
MANAGEMENT	\$ 2,977.50	\$ 2,977.50	\$ -	Lawn Mowing Services
BNSF RAILWAY COMPANY	\$ 2,925.00	\$ 2,925.00	\$ -	MOU Agreement
SERVICE	\$ 2,345.00	\$ 2,345.00	\$ -	Public Outreach
COUGAR TREE CARE INC	\$ 2,300.00	\$ 2,300.00	\$ -	Tree Removal
FORUM COMMUNICATIONS (LEGALS)	\$ 2,224.20	\$ 2,224.20	\$ -	Advertising Services
HEARTLAND SEEDS, INC.	\$ 2,200.00	\$ 2,200.00	\$ -	Lawn Mowing Services
GLACIER ENTERPRISES	\$ 2,150.00	\$ 2,150.00	\$ -	Soil Grading
FOUNDATION	\$ 2,000.00	\$ 2,000.00	\$ -	Advertising Services
FORUM COMMUNICATIONS (ADVERT)	\$ 1,743.77	\$ 1,743.77	\$ -	Advertising Services
NORTH DAKOTA TELEPHONE CO	\$ 1,697.00	\$ 1,697.00	\$ -	Communication
ERBERT & GERBERTS SUBS	\$ 1,232.29	\$ 1,232.29	\$ -	lunches for the task force meetings
HUBER, STEVE	\$ 1,056.43	\$ 1,056.43	\$ -	Home Buyouts
WARREN TOWNSHIP	\$ 1,023.72	\$ 1,023.72	\$ -	CONTROL
DEPT OF NATURAL RESOUR	\$ 1,000.00	\$ 1,000.00	\$ -	DNR Dam Safety Permit Application Fee
TRIO ENVIRONMENTAL CONSULTING	\$ 747.60	\$ 747.60	\$ -	Asbestos and LBP Testing - Home Buyouts
NDSU-DINING-STORE 685	\$ 701.75	\$ 701.75	\$ -	Meeting Incidentals
RED RIVER TITLE SERVICES INC	\$ 675.00	\$ 675.00	\$ -	Abstract Updates
CIVIL DESIGN INC	\$ 595.00	\$ 595.00	\$ -	MOU Agreement
COOPERATIVE A	\$ 536.96	\$ 536.96	\$ -	Electricity - Home Buyouts
FERRELLGAS	\$ 496.00	\$ 496.00	\$ -	Propane - Home Buyouts
BROKERAGE PRINTING	\$ 473.33	\$ 473.33	\$ -	Custom Printed Forms
KOCHMANN, CARTER	\$ 315.00	\$ 315.00	\$ -	Lawn Mowing Services
GALLAGHER BENEFIT SERVICES INC	\$ 250.00	\$ 250.00	\$ -	Job Description Review
DONS PLUMBING	\$ 240.00	\$ 240.00	\$ -	Winterize - Home Buyouts
HARWOOD TOWNSHIP, CASS, ND	\$ 208.91	\$ 208.91	\$ -	Township Meeting Expenses
WALMART STORE #4352	\$ 161.97	\$ 161.97	\$ -	Meeting Incidentals
CURTS LOCK & KEY SERVICE INC	\$ 138.10	\$ 138.10	\$ -	Service Call - Home Buyouts
GOOGLE LOVEINTHEOVEN	\$ 116.00	\$ 116.00	\$ -	Meeting Incidentals
LANE, BARRET	\$ 108.77	\$ 108.77	\$ -	Lodging Expense
FEDERAL EXPRESS CORPORATION	\$ 71.89	\$ 71.89	\$ -	Postage
Grand Total	\$ 681,425,358.56	\$ 528,456,259.18	\$ 152,969,099.38	

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of January 31, 2020

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

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of January 31, 2020

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
477 Oxbow Drive - OIN 9614 - Henry & Suzanne Mertz	10/27/2017	25,020.58	-	-	-	25,020.58
354 & 358 Schnell Drive	12/6/2018	199,512.06	-	-	-	199,512.06
872 Riverbend Rd	10/17/2018	14,329.43	-	-	-	14,329.43
869 Riverbend Rd	10/17/2018	13,029.43	-	-	-	13,029.43
873 Riverbend Rd	10/17/2018	13,029.43	-	-	-	13,029.43
Home Buyouts - Hickson						
17495 52nd St SE	4/28/2015	785,747.66	-	27,604.74	-	813,352.40
4985 and 4989 Klitzke Drive, Pleasant Twp	7/20/2016	245,926.71	-	92,817.44	-	338,744.15
Home Buyouts - Horace						
2914 124th Ave S	12/29/2016	50,981.00	-	-	-	50,981.00
17471 49th St SE - Campbell - OIN 9403	2/16/2017	883,581.00	-	155,896.55	-	1,039,477.55
17465 49th St SE - Campbell - OIN 9411	2/21/2017	828,561.00	-	190,389.56	-	1,018,950.56
17474 52nd St SE - Leher - OIN 1889/1990/2182	7/11/2017	909,905.00	-	29,301.96	-	939,206.96
17449 50th Street SE - Scott Young	9/1/2017	398,936.66	-	-	-	398,936.66
4848 CR 81 S, Horace, ND _ OIN 9405	9/15/2017	451,185.00	-	36,153.08	-	487,338.08
17568 Pfiffer Drive - OIN 9387	3/6/2018	505,925.70	-	3,590.00	-	509,515.70
15-0000-02690-010 & 15-0000-02690-020 - Cossette _ OIN 229 & 230	11/29/2017	2,433,020.59	-	-	-	2,433,020.59
5021 171st Ave. Southeast, Horace, ND _ OIN 1955	12/18/2017	248,677.89	-	-	-	248,677.89
17554 Pfiffer Drive _OIN 9382	1/14/2019	736,781.09	-	101,579.21	-	838,360.30
4961 KLITZKE DR & 4957 KLITZKE DR	12/26/2019	6,320.00	-	-	-	6,320.00
KLITZKE BROTHERS LOT 1A BLK 1	12/26/2019	520.00	-	-	-	520.00
Home Buyouts - Argusville						
2351 173rd Ave SE - Johnson - OIN 1222	2/6/2017	215,030.91	-	6,912.57	-	221,943.48
Easements - Fargo						
Part of Lot 5 El Zagal Park	10/9/2014	76,000.00	-	-	-	76,000.00
72 2nd St N - Bortnem	4/13/2016	37,020.00	-	-	-	37,020.00
Oak Terrace Condos - 2 N Terrace N	3/30/2016	5,588.00	-	-	-	5,588.00
Fercho Family Farms,	3/25/2015	50,000.00	-	-	-	50,000.00
Part of Lot 3 Block 4 R2 Urban Renewal Addition	3/15/2018	336,108.00	-	-	-	336,108.00
Easements - Hickson						
Hickson Village Lot 8 BLK 11	5/11/2016	500.00	-	-	-	500.00
Easements - Oxbow						
Oxbow Parcel 57-0000-10356-070 - Pearson	10/13/2014	55,500.00	-	-	-	55,500.00
Easements - Diversion Inlet Control Structure						
15-0000-02690-020 - Cossette	6/1/2016	-	-	-	-	-
64-0000-02730-000 - Sauvageau	6/1/2016	1,113,101.57	-	-	-	1,113,101.57
64-0000-027400-000 - Duboard	9/15/2016	177,399.29	-	-	-	177,399.29
64-0000-02700-010 - Rheault	1/31/2017	2,243.06	-	-	-	2,243.06
15-141-49 NW1/4 160.00 AC **12-31-98 COMB FRM 44-0000-00580-000 & 44-0000-00570-000 - Larson Trust (Nygren)	6/20/2017	32,340.00	-	-	-	32,340.00
Southwest corner of County Road 17 S and 112th Avenue S (comdemnation) - SAUVAGEAU LIFE EST.	7/3/2019	1,189,220.00	-	-	-	1,189,220.00
16835 47 ST SE - Buster Farms LLLP		1,755.00	-	-	-	1,755.00
Easements - Piezometer						
67-0000-12719-010 - Adams - OIN-1201	3/13/2017	1,500.00	-	-	-	1,500.00
Easements - Minesota						
Askegaard Hope Partnership	10/14/2016	1,542,370.79	-	-	-	1,542,370.79
Farmland Purchases						
SE 1/4 11-140-50 (Raymond Twp, ND) - Ueland	1/20/2014	959,840.00	-	-	-	959,840.00
2 Tracts in the E 1/2-2-137-49 - Sorby/Maier	1/24/2014	1,636,230.00	-	-	-	1,636,230.00
3 Tracts NW1/4 1-140-50, NW1/4 11-140-50, & S1/2 25-141-50 - Rust (OINs 0511,0512,0880,0897)	2/18/2014	3,458,980.70	-	-	-	3,458,980.70
11-140-50 NE1/4 (Raymond Twp) - Diekrager	4/15/2014	991,128.19	-	-	-	991,128.19
NW 1/4 36-141-50 - Monson	5/7/2014	943,560.05	-	-	-	943,560.05
W 1/2 SE 1/4 SW 1/4 & SW 1/4 SW 1/4 2-137-49 - Gordor	5/13/2014	321,386.00	-	-	-	321,386.00
SW 1/4-11-140-50 - Hoglund	7/21/2014	989,706.03	-	-	-	989,706.03
NW 1/4 14-140-50 - Hoglund	10/23/2014	948,782.22	-	-	-	948,782.22
SW 1/4 2-140-50 -Rust	10/29/2014	955,901.00	-	-	-	955,901.00
2-140-50 S 1/2 of NW 1/4 & Lot 4A - Pile	3/4/2015	594,108.00	-	-	-	594,108.00
Fercho Family Farms,	3/25/2015	464,600.00	-	-	-	464,600.00
W 1/2 NW 1/4 2-141-49 - Heiden	4/24/2015	433,409.00	-	-	-	433,409.00
(Raymond Twp) - Subdivision: Part of 23-140-50, 155.82 acres - Henke	6/17/2015	857,144.00	-	-	-	857,144.00
(Raymond Twp) - Subdivision: Part of Sec. 23., Less Gust Sub and Jason Sub						
T140N R50W - Henke	6/17/2015	339,071.00	-	-	-	339,071.00
15-141-49 NW1/4 160.00 AC **12-31-98 COMB FRM 44-0000-00580-000 & 44-0000-00570-000 - Larson Trust (Nygren)	6/20/2017	291,840.00	-	-	-	291,840.00
64-0000-02720-000 - Ulstad (Condemnation)	11/10/2016	1,221,931.50	-	-	-	1,221,931.50

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of January 31, 2020

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
Peter Biegler, Jr - OIN 9748	7/17/2017	250,185.00	-	3,175.00	-	253,360.00
19-141-49 NE 1/4 A 160.00 - Schoenberg Farms	7/18/2017	3,470,167.12	-	-	-	3,470,167.12
SHEY RIV - Chose	7/28/2017	60,128.07	-	-	-	60,128.07
W 1/2d 1/2 10-141-49 & NW 1/4 10-141-49 - Larson Family Farm Trust	8/1/2017	1,402,847.99	-	-	-	1,402,847.99
S1/2 W1/2 NW1/4 - Conyers	8/3/2017	33,150.00	-	-	-	33,150.00
27th St SE, between 169th Ave SE and I-29 - Nelson	8/3/2017	1,024,189.50	-	-	-	1,024,189.50
Meridian, Cass County, ND - Heiden Family, LLLP	8/4/2017	1,326,882.11	-	-	-	1,326,882.11
2368 173rd Ave SE & Rural Land Part of SE1/4 35-142-49, Wiser, ND - Kevin & Pamela Heiden	8/4/2017	614,439.02	-	-	-	614,439.02
20-141-49 SW 1/4 A 160.00 - Lloyd & Alice Amundson	8/9/2017	123,563.38	-	-	-	123,563.38
5251 174 1/2 Ave SE, Pleasant Township, ND 58047	8/18/2017	254,354.28	-	-	-	254,354.28
35-142-49 SW 1/4 A 160.00 - Burley _ OIN 1218	8/31/2017	167,091.47	-	-	-	167,091.47
S-1/2 of N1/2 of Section 36-142-49, Wayne & Gary Ohnstad_OIN 1223	12/13/2017	200,135.00	-	-	-	200,135.00
2-141-49 S 1/2 OF NE 1/4 & N 1/2 OF SE 1/4	12/20/2017	251,668.74	-	-	-	251,668.74
County Rd 32 between 167th Ave SE and 169th Ave SE, 25-141-50 NE 1/4	1/19/2018	831,853.08	-	-	-	831,853.08
County Rd 32 between 167th Ave SE and 169th Ave SE, 30-141-50 NW 1/4	3/23/2018	831,535.25	-	-	-	831,535.25
NE 1/4 Section 14 Township 140 North of Range 50 West of 5th Principle Meridian LESS the East 85 feet of said NE Quarter	2/22/2018	707,530.88	-	-	-	707,530.88
East Half (E1/2), Section 3 Township 141 North, Range 49 West	5/18/2017	733,126.76	-	-	-	733,126.76
NE Quarter of NE Quarter of Section 33 Township 138 North of Range 49	1/7/2019	587,650.00	-	-	-	587,650.00
Land Purchases						
Hayden Heights Land, West Fargo ND	10/12/2012	484,016.00	-	-	(730,148.14)	(246,132.14)
Lot 4, Block 4, ND R-2 Urban Renewal Addition, Fargo ND - Professional Associates	5/14/2015	39,900.00	-	-	-	39,900.00
BNSF Railway Company	10/28/2015	27,000.00	-	-	-	27,000.00
City of Fargo - OIN 2366 & OIN 2367	3/9/2017	1,022,533.30	-	-	-	1,022,533.30
Edwin and Margaret Ployhart OIN 8852	4/5/2017	5,121.18	-	-	-	5,121.18
Arthur Mathison RT OIN 1994	5/19/2017	750.00	-	-	-	750.00
Ideal Ag Corp OIN 9789 / 9790	5/25/2017	30,120.68	-	-	-	30,120.68
OIN 1195 / 1196 - Mark Thorson	9/15/2017	203,678.32	-	-	-	203,678.32
Block 1 W. Shorr Subdivision of Eagle Township (Lots 1,2,3,4,5,10,11,12,13,14,15,16)	2/28/2019	3,395,663.23	-	24582.11	-	3,420,245.34
NE Quarter of section 28 in Township 138 North of Range 49 West of the 5th Principle Meridian less the South 67 feet of the North 100 feet of the NE Quarter of section 28 Township 138 North of Range 49 West of 5th Principle Meridian, Auditors Lot 1 and East 33 feet	1/10/2019	2,158,545.00	-	-	-	2,158,545.00
Auditor's Lots 2, 3, 5 of the Southeast Quarter of Section 34, Township 138 North of Range 49 West	12/8/2018	724,254.52	-	-	-	724,254.52
The West One Half of the Southwest Quarter of the Southwest Quarter of Section Nine, Township 137, Range 49 West of the 5th Principle Meridian	1/8/2019	200,120.00	-	-	-	200,120.00
Southwest Quarter of Section 2 Township 141 North Range 49 West of the 5th Principle Meridian	2/13/2019	336,646.65	-	-	-	336,646.65
Southeast Quarter of Section 27, Township 140 North Range 50	2/25/2019	825,430.39	-	-	-	825,430.39
Railroad Outlot #3 situated in Sections 6 and 7, Township 139 North of Range 48 West of the 5th Principal Meridian	5/30/2019	8,072.00	-	-	-	8,072.00
Auditor's Lot No 2 of the Southwest Quarter of Section 34, Township 138, North of Range 49 West of the 5th Principle Meridian	7/3/2019	225,249.40	-	203,759.80	-	429,009.20
NE and SE quarter Section 9, Township 141 North, Range 49 West of the 5th Principal Meridian AND NE and NW Quarter section 16, Township 141 North, Range 49 West of the 5th Principle Meridian	8/1/2019	1,697,063.17	-	-	-	1,697,063.17
North Half of the NE Quarter section and the East Half of the NW Quarter of Section 2, Township 141 North of Range 49 West of the 5th Principle Meridian	8/1/2019	776,622.28	-	-	-	776,622.28
Auditors Lot 1 of the SW Quarter Section 34, in Township 138 North of Range 49 West of the Fifth Principal Meridian	6/13/2019	257,765.51	-	20,302.03	-	278,067.54
SW Quarter Section of Section 8, Township 141 North, Range 49 West of the 5th Principle Meridian	11/7/2017	11,007.68	-	-	-	11,007.68
Government Lots 3 & 4 of Section 30, Township 138 North, Range 49 West of the 5th Principle Meridian	11/7/2019	1,160,482.00	-	-	-	1,160,482.00
Northwest Quarter of Section 25, Township 141 North, Range 50 West of the 5th Principle Meridian	11/27/2019	830,527.20	-	-	-	830,527.20
SW Quarter of Section 36 in Township 141 North of Range 50 West of the 5th Principle Meridian	11/27/2019	975,840.92	-	-	-	975,840.92
Auditors Lot 4 of the SW Quarter Section 34, in Township 138 North of Range 49 West of the Fifth Principal Meridian	11/27/2019	323,535.78	-	188,055.00	-	511,590.78
East Half of the NE Quarter of Section 254, Township 138 North Range 50 West of the 5th Principle Meridian	11/27/2019	12,431.73	-	-	-	12,431.73
SE Quarter Section of the NW Quarter of section Twenty, Township 137 of Range 49 West of the Fifth Principle Meridian	11/7/2019	846,828.57	-	4,000.00	-	850,828.57
East Half of the NE Quarter of Section 25, Township 138 North Range 50 West of the 5th Principle Meridian	12/26/2019	305,654.24	-	-	-	305,654.24
Lot One, In Block One of Bellmore First Subdivision	12/26/2019	828,373.27	-	-	-	828,373.27
South Half of Section 24, Township 141 North of Range 50	12/26/2019	1,660,379.20	-	-	-	1,660,379.20
SW Quarter of Section 8, Township 141 North Range 49 West of the 5th Principal Meridian and West Half of Section 17, Township 141 North Range 49 West of the 5th Principal Meridian	12/26/2019	60,830.60	-	-	-	60,830.60
NE Quarter of Section 27, Township 140 North Range 50 West of 5th Principal Meridian	12/26/2019	964,789.51	-	-	-	964,789.51
Government lot 7 situated in the South Half of the South Half of Section 6, Township 137 North Range 48 West	12/26/2019	428,021.46	-	-	-	428,021.46

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of January 31, 2020

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
South 812 Feet of the North 932 feet of NE quarter section 24, Township 137 North of Range 49 West of the 5th Principle meridian and Right of way situated in North Half of section 24 Township 137 North of Ranger 29 west of the 5th Principle Meridian	12/26/2019	448,700.79	-	-	-	448,700.79
North 120 feet and the North 598.14 feet of the South 868.14 feet of NE Quarter section 24, Township 137 North of Range 49 West of the 5th Principle Meridian and railroad Right of way N Half Section 24, Township 137 North Range 49 West lying southerly of the southerly line of Highway 81 and stio 100 feet wide lying east of, parrallel and adjacent to Right of way extendint form the East-West centerline of said Section to a line therin distant 1800 feet less 200 foot wide right of way Norht half of section 24 Township 137 North of Range 49	12/26/2019	726,354.36	-	-	-	726,354.36
7-137-48 DESC TRACT A 1.60 COM AT A PT WHICH IS 1985' E OF THE SW COR OF SD SEC 7 & SD PT IS THE TR PT OF BEG OF TR HEREINAFTER DESC:: THENCE WITH A DEFLECTION TO THE LEFT OF 90 DEG FOR A DIST OF 456.4'; THENCE WITH A DEFLECTION TO THE RIGHT OF 73 D*		820.00				
		112,921,026.67	-	35,136,591.21	(1,107,856.01)	146,948,941.87
		(32,000.00)			10,000.00	
				Property Management Expense		2,185,323.32
				Grand Total		<u>\$ 149,134,265.19</u>

FM Metropolitan Area Flood Risk Management Project
In-Town Levee Work
as of January 31, 2020

Vcode #	Vendor Name	Descriptions	Contract Amount	Amount Paid
V02801	Industrial Builders	WP42.A2 - 2nd Street North Pump Station	\$ 8,696,548.46	\$ 8,696,548.46
V02802	Terracon Consulting	WP-42 (In Town Levees) Materials Testing	\$ 909,149.49	\$ 882,451.41
V02803	Consolidated Communications	2nd Street Utility Relocation	\$ 1,178,781.73	\$ 1,178,781.73
V02804	702 Communications	2nd Street Utility Relocation	\$ 266,892.07	\$ 266,892.07
		WP-42A.1/A.3 - 4th St Pump Station & Gatewell and 2nd St		
V02805	ICS	Floodwall S	\$ 17,612,237.19	\$ 17,500,178.16
V02806	HMG	WP42 - Services During Construction	\$ 6,185,022.82	\$ 5,956,412.62
V02807	CCJWRD	In-Town Levee Work	\$ 5,886,140.36	\$ 5,886,140.36
V02808	City of Fargo	Relocation of fiber optic along 2nd Street North	\$ 397,906.52	\$ 397,906.52
V02809	AT & T	2nd Street Utility Relocation	\$ 586,269.60	\$ 586,269.60
V02811	Xcel Energy	2nd Street & 4th Street Utility Relocations	\$ 769,791.73	\$ 769,791.73
V02812	Industrial Builders	WP-42F.1S - 2nd Street North Floodwall, South of Pump Station	\$ 16,720,591.15	\$ 16,720,591.15
V02813	Landwehr Construction	Park East Apartments Demolition	\$ 1,169,651.74	\$ 1,169,651.74
V02814	Primoris Aevenia	2nd Street Utility Relocation	\$ 16,230.00	\$ 16,230.00
V02815	Centurylink Communications	2nd Street Utility Relocation	\$ 2,660,937.92	\$ 2,660,937.92
V02816	Landwehr Construction	WP-42C.1 - In-Town Levees 2nd Street/Downtown Area Demo	\$ 907,999.08	\$ 907,999.08
V02817	Reiner Contracting, Inc	WP-42H.2 - El Zagal Area Flood Risk Management	\$ 1,599,646.21	\$ 1,599,646.21
V02818	Industrial Builders	WP-42I.1 - Mickelson Levee Extension	\$ 738,880.50	\$ 738,880.50
V02819	Industrial Builders	WP42F.1N - 2nd Street North	\$ 13,362,906.82	\$ 13,362,906.82
V02820	CH2M Hill	WP42 - Construction Management Services	\$ 851,775.30	\$ 851,775.30
V02821	Hough Incorporated	WP42F.2 - 2nd Street South	\$ 1,639,524.33	\$ 1,639,524.33
V02822	City of Fargo	COF - 2016 O&M on Lifts	\$ 76,434.40	\$ 76,434.40
	Hoffman & McNamara Nursery			
V02823	& Lan	WP-42G General Landscaping and Planting	\$ 486,502.29	\$ 472,091.04
V02824	City of Fargo	COF – In-Town Flood Protection Debt Payments	\$ 12,590,315.00	\$ 12,590,315.00
V01703	Various	In-Town Property Purchases	\$ 39,413,129.91	\$ 38,195,690.40
V02825	Industrial Builders	WP-42E - 2nd Street South and Main Avenue Flood Mitigation	\$ 8,585,709.07	\$ 7,733,259.46
V05401	City of Fargo	FM15F2 - Harwood, Hackberry & River Drive - Demo/ Levee	\$ 749,375.28	\$ 749,375.28
V05402	City of Fargo	FM15K1 - Rosewood Addition - Demo/Levee/Floodwall	\$ 2,622,612.82	\$ 2,622,612.82
V05403	City of Fargo	HD18A1 - Oakcreek, Copperfield & University - Demo	\$ 95,083.25	\$ 95,083.25
V054XX	City of Fargo	In-Town Complementary Work - Reimbursements	\$ 9,154,311.26	\$ 9,154,311.26
			<u>\$ 155,930,356.30</u>	<u>\$ 153,478,688.62</u>

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

Time Period for This Request: December 1, 2019 - December 31, 2019

Drawdown Request No: 98	
Requested Amount:	\$ 4,111,403.41
Total Funds Expended This Period:	6,379,383.51
Total Funds Requested at 100% Match	1,843,423.30
Remaining Funds Requested at 50% Match	4,535,960.21
SB 2020 Matching Requirements	50%
Total Funds Requested at 50% Match	2,267,980.11
Total Funds Requested:	4,111,403.41

STATE AID SUMMARY:

Summary of State Funds Appropriated		
Appropriations from 2009 Legislative Session	\$	45,000,000
Appropriations from 2011 Legislative Session		30,000,000
Appropriations from 2013 Legislative Session		100,000,000
Appropriations from 2015 Legislative Session		69,000,000
Appropriations from 2015 Legislative Session - Interior Flood Control		60,000,000
Appropriations from 2017 Legislative Session		66,500,000
Anticipated appropriations to be funded in 2019 Legislative Session	66,500,000	
Anticipated appropriations to be funded in 2021 Legislative Session	66,500,000	
Anticipated appropriations to be funded in 2023 Legislative Session	66,500,000	
Anticipated appropriations to be funded in 2025 Legislative Session	66,500,000	
Anticipated appropriations to be funded in 2027 Legislative Session	66,500,000	
Anticipated appropriations to be funded in 2029 Legislative Session	47,000,000	
Total State Funds	379,500,000	370,500,000
Less: Payment #1 through #35 - City of Fargo		(55,510,209.00)
Less: Payment #1 - Cass County		(136,039.36)
Less: Payment #1 through #7 - Interior Flood Control		(60,000,000.00)
Less: Payment #1 through #28 - FM Diversion Authority		(38,049,107.00)
Less: Payment #29 through #75 - FM Metro Area Flood Risk Management Project		(93,470,290.00)
Less: Payment #76 - FM Metro Area Flood Risk Management Project		(433,312.97)
Less: Payment #77 - FM Metro Area Flood Risk Management Project		(11,892.35)
Less: Payment #78 - FM Metro Area Flood Risk Management Project		(244,521.99)
Less: Payment #79 - FM Metro Area Flood Risk Management Project		(255,691.15)
Less: Payment #80 - FM Metro Area Flood Risk Management Project		(121,908.95)
Less: Payment #81 - FM Metro Area Flood Risk Management Project		(105,433.98)
Less: Payment #82 - FM Metro Area Flood Risk Management Project		(135,130.77)
Less: Payment #83 - FM Metro Area Flood Risk Management Project		(13,901.70)
Less: Payment #84 - FM Metro Area Flood Risk Management Project		(558,592.20)
Less: Payment #85 - FM Metro Area Flood Risk Management Project		(229,746.00)
Less: Payment #86 - FM Metro Area Flood Risk Management Project		(6,421,825.21)
Less: Payment #87 - FM Metro Area Flood Risk Management Project		(59,863.29)
Less: Payment #88 - FM Metro Area Flood Risk Management Project		(6,650,000.00)
Less: Payment #89 - FM Metro Area Flood Risk Management Project		(973,992.33)
Less: Payment #90 - FM Metro Area Flood Risk Management Project		(1,294,793.15)
Less: Payment #91 - FM Metro Area Flood Risk Management Project		(88,136.44)
Less: Payment #92 - FM Metro Area Flood Risk Management Project		(2,835,957.03)
Less: Payment #93 - FM Metro Area Flood Risk Management Project		(750,500.56)
Less: Payment #94 - FM Metro Area Flood Risk Management Project		(6,250.00)
Less: Payment #95 - FM Metro Area Flood Risk Management Project		(111,960.91)
Less: Payment #96 - FM Metro Area Flood Risk Management Project		(3,699,516.47)
Less: Payment #97 - FM Metro Area Flood Risk Management Project		(1,954,126.65)
Less: Payment #98 - FM Metro Area Flood Risk Management Project		(4,111,403.41)
Total Funds Reimbursed		(278,234,102.87)
Total State Fund Balances Remaining		92,265,897.14

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

LOCAL MATCHING FUNDS SUMMARY:		
Matching Funds Expended To Date - FM Metro Area Flood Risk Management Project	\$	89,883,370
Less: Match Used on Payment #1 through #35 - City of Fargo		(41,506,620)
Less: Match used on Payment #1 - Cass County		(136,039)
Less: Match Used on Payment #1-28 - FM Diversion Authority		(11,052,710)
Less: Match Used on Payment #29 - 75 - FM Metro Area Flood Risk Management Project		(22,172,839)
Less: Match Used on Payment #82 - FM Diversion Authority		(135,131)
Less: Match Used on Payment #83 - FM Diversion Authority		(13,902)
Less: Match Used on Payment #84 - FM Diversion Authority		(558,592)
Less: Match Used on Payment #85 - FM Diversion Authority		(229,746)
Less: Match Used on Payment #86 - FM Diversion Authority		(6,421,825)
Less: Match Used on Payment #87 - FM Diversion Authority		(59,863)
Less: Match Used on Payment #89 - FM Diversion Authority		(527,365)
Less: Match Used on Payment #90 - FM Diversion Authority		(355,580)
Less: Match Used on Payment #92 - FM Diversion Authority		(168,249)
Less: Match Used on Payment #93 - FM Diversion Authority		(223,766)
Less: Match Used on Payment #96 - FM Diversion Authority		(3,699,516)
Less: Match Used on Payment #97 - FM Diversion Authority		(778,204)
Less: Match Used on Payment #98 - FM Diversion Authority		(1,843,423)
Balance of Local Matching Funds Available	\$	(0)

Finance Committee Bills from February 2020

Vendor	Description		
Cass County Joint Water Resource District	Diversion bills	\$	1,622,901.20
Dorsey & Whitney	Legal services rendered through December 31, 2019	\$	134,866.35
Ohnstad Twichell, P.C.	Professional services rendered	\$	117,020.80
Cass County	Reimburse misc expenses for Executive Director	\$	1,762.76
F-M Sertoma Club	Holiday Lights in Lindenwood Park display	\$	1,000.00
Total Bills Received through February 21, 2020		\$	1,877,551.11



Cass County
Joint Water
Resource
District

February 3, 2020

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

Dan Jacobson
Chairman
West Fargo, North Dakota

Greetings:

Rodger Olson
Manager
Leonard, North Dakota

RE: Metro Flood Diversion Project
Oxbow-Hickson-Bakke Ring Levee Project
In-Town Levees Project

Ken Loughheed
Manager
Gardner, North Dakota

Enclosed please find copies of bills totaling \$1,622,901.20 regarding the above referenced projects. The breakdown is as follows:

Jacob Gust
Manager
Fargo, North Dakota

Metro Flood Diversion	\$1,587,356.26
DPAC	1,165.25
Oxbow-Hickson-Bakke Ring Levee	33,936.77
In-Town Levees	442.92

Keith Weston
Manager
Fargo, North Dakota

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

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

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT

Carol Harbeke Lewis
Secretary-Treasurer

Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078-1301

Enclosures

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

METRO FLOOD DIVERSION RIGHT OF ENTRY/LAND ACQUISITION COST SHARE INVOICES							2/3/2020
Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description	
				100.75	Cass County Joint WRD	Postage for formal offers	
				139.50	Cass County Joint WRD	558 pages printed for formal offers	
				96.60	Cass County Joint WRD	remailing of returned formal offer letter	
1/13/2020	1/3/2020	1924	2001	1,360.00	Houston-Moore Group	Engineering - ROE Services	
1/13/2020	1/3/2020	1925	2004	67,804.75	Houston-Moore Group	Engineering - Task 4 - Property Acquisition Services	
1/13/2020	1/3/2020	1926	2005	45,764.54	Houston-Moore Group	Engineering - Task 5 - Property Acquisition Services	
1/9/2020	12/15/2019	89898	R12.00049	17,223.74	Ulteig Engineering	Engineering - Task Order 2 - ROW Services, Relocation Assist	
1/9/2020	11/30/2019	20932	3283-00	29,702.02	ProSource Technologies LLC	Task Order 2 - Project mgmt, and acquisition services	
1/9/2020	12/30/2019	4439		9,000.00	Crown Appraisals, Inc.	Appraisals	
1/9/2020	12/13/2019	124-2019-0283		12,000.00	Integra Realty Resources	Appraisals	
1/13/2020	1/3/2020			3,360.00	Joseph Merz	Reimbursement for Storage costs	
1/11/2020	1/11/2020			3,250.00	David Germanson	soils borings on parcel 15-0000-10070-000	
1/9/2020	1/2/2020	11652		340.14	Foss Johnson Oil LLC	service to 4115 124 Ave S	
1/9/2020	12/31/2019			80.54	Deans Bulk Service Inc.	tank rental OIN 1926	
1/14/2020				375.00	Greta Evenson	Environmental Monitoring Easement	
1/14/2020				375.00	Sean Evenson	Environmental Monitoring Easement	
1/14/2020				750.00	Kathleen Hanson	Environmental Monitoring Easement	
1/14/2020				375.00	Christopher Johnson	Environmental Monitoring Easement	
1/14/2020				375.00	Dawn McKinnon	Environmental Monitoring Easement	
1/14/2020				375.00	Neil Landstrom	Environmental Monitoring Easement	
1/14/2020				375.00	Stephanie Lanstrom	Environmental Monitoring Easement	
1/14/2020				750.00	Gene Lockwood	Environmental Monitoring Easement	
1/14/2020				375.00	Joe Louwagie	Environmental Monitoring Easement	
1/14/2020				375.00	Cassie Louwagie	Environmental Monitoring Easement	
1/14/2020	1/13/2020			1,500.00	Carol Freeman	Environmental Monitoring Easement	
1/17/2020				1,204,858.00	TRN Abstract & Title Co	property purchase - Compson	
1/23/2020	1/6/2020	166598	130007	13,554.10	Ohnstad Twichell, P.C.	Legal-Diversion ROW Acquisition	
1/23/2020	1/6/2020	166489	160007	4,612.00	Ohnstad Twichell, P.C.	Legal-Channel Phase I	
1/23/2020	1/6/2020	166490	160007	7,255.50	Ohnstad Twichell, P.C.	Legal-Channel Phase II	
1/23/2020	1/6/2020	166491	160007	11,380.00	Ohnstad Twichell, P.C.	Legal-Channel Phase III	
1/23/2020	11/25/2019	164777	187007	1,944.50	Ohnstad Twichell, P.C.	Legal-Southern Embankment	
1/23/2020	1/6/2020	166494	187007	1,170.50	Ohnstad Twichell, P.C.	Legal-Southern Embankment	
1/23/2020	1/6/2020	166497	197007	7,091.00	Ohnstad Twichell, P.C.	Legal-Western Tie Back	
1/23/2020	1/6/2020	166496	197007	874.50	Ohnstad Twichell, P.C.	Legal-ROW Wild Rice Structure	
1/23/2020	1/6/2020	166492	170007	8,220.50	Ohnstad Twichell, P.C.	Legal-Upstream Mitigation Area	
1/30/2020	1/10/2020	21923-F		7,875.00	Patchin Messner Valuation Counselors	Appraisals	
1/30/2020	1/16/2020			524.00	ND Guaranty & Title Co	Title Insurance for Brian & Emily Potter	
1/23/2020				375.00	Brent Olson	Environmental Monitoring Easement	
1/23/2020				375.00	Keri Olson	Environmental Monitoring Easement	
1/23/2020				750.00	Daniel Peterson	Environmental Monitoring Easement	
1/23/2020				750.00	Jon Larson	Environmental Monitoring Easement	
1/23/2020				750.00	Dale Flesberg	Environmental Monitoring Easement	
1/23/2020				750.00	Douglas Sherman	Environmental Monitoring Easement	
1/23/2020				750.00	Randal Woodley	Environmental Monitoring Easement	
1/23/2020				1,500.00	Doris Kylo	Environmental Monitoring Easement	
1/23/2020				1,500.00	Wayne Freedland	Environmental Monitoring Easement	
1/23/2020				750.00	Kim Hoffmann	Environmental Monitoring Easement	
1/23/2020				750.00	Mary Adams	Environmental Monitoring Easement	
1/23/2020	1/6/2020	9142001		224.90	Red River Valley Coop Power	Service to 16678 3rd St S Moorhead MN	
1/23/2020	1/14/2020	1121701		351.31	Cass County Electric Cooperative	Service to 4107 124th Ave S	
1/23/2020	1/7/2020	1125415		46.74	Cass County Electric Cooperative	Service to 4510 112 Av S	
1/23/2020	1/14/2020	1156241		362.63	Cass County Electric Cooperative	Service to 5150 170 Ave SE	
1/23/2020	1/7/2020	1134578		41.60	Cass County Electric Cooperative	Service to 16918 50 St SE	
1/23/2020	1/14/2020	1140519		47.99	Cass County Electric Cooperative	Service to 17406 Horse Haven Dr	
1/23/2020	1/14/2020	1125687		557.10	Cass County Electric Cooperative	Service to 17411 Horse Haven Dr	
1/23/2020	1/7/2020	1125656		253.99	Cass County Electric Cooperative	Service to 17554 Pfiffer Dr	
1/28/2010				94,541.10	Cass County Finance	Metro Diversion properties 2019 Real Estate Taxes	
1/28/2020				16,346.72	Richland County Treasurer	Richland County properties 2019 Real Estate Taxes	
			Total	1,587,356.26			

DIVERSION PROJECT ASSESSMENT DISTRICT (DPAC) INVOICES						
Invoice	Invoice	Invoice	Project			
Paid	Date	No.	No.	Amount	Vendor	Description
1/23/2020	1/6/2020	166486	120007	1,165.25	Ohnstad Twichell, P.C.	Legal-DPAC
			Total	1,165.25		
OXBOW-HICKSON-BAKKE RING LEVEE INVOICES						
Invoice	Invoice	Invoice	Purchase	Project		
Paid	Date	No.	Order No.	No.	Amount	Vendor
1/23/2020	1/6/2020	166488		140007	8,593.50	Ohnstad Twichell, P.C.
1/28/2020					25,343.27	Cass County Finance
				Total	33,936.77	
IN-TOWN LEVEES INVOICES						
Invoice	Invoice	Invoice	Project			
Paid	Date	No.	No.	Amount	Vendor	Description
1/23/2020	12/31/2019	667278918		205.93	Xcel Energy	Electric service to 419 3rd St N
1/23/2020	12/31/2019	667293517		118.79	Xcel Energy	Gas service to 419 3rd St N
1/23/2020	1/8/2020	6000052129		118.20	City of Fargo	Service to 419 3 St N
				Total	442.92	
				Grand Total	1,622,901.20	



MINNEAPOLIS OFFICE
612-340-2600

(Tax Identification No. 41-0223337)

STATEMENT OF ACCOUNT FOR PROFESSIONAL SERVICES

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

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

Billing Rates:
Cattanach - \$795/hr
Drysdale - \$675/hr
Wicker - \$490/hr
Beck - \$380/hr
Ibrahim - \$365/hr
Dolezal - \$300/hr
Greenberg - \$295/hr

REVISED INVOICE
January 24, 2020
Invoice No. 3555457

For Legal Services Rendered Through December 31, 2019

INVOICE TOTAL

Total For Current Legal Fees	\$130,555.50
Total For Current Disbursement and Service Charges	\$4,310.85
Total For Current Invoice	\$134,866.35

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

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

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

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

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

Please make reference to the invoice number

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

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



Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

February 3, 2020

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

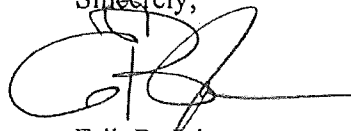
Note:
Revised invoice
submitted on 2-21-20

Re: Metro Flood Diversion Project

Dear Kent:

I am enclosing a Summary Invoice dated January 24, 2020 from the Dorsey & Whitney Firm in Minneapolis for their professional services rendered through December 31, 2019 on the Metro Flood Diversion Project. If you have any questions, please feel free to contact me. Please remit payment directly to Dorsey Whitney.

Sincerely,



Erik R. Johnson

ERJ/lmw
Enclosure
cc: Bruce Grubb



OHNSTAD TWICHELL, P.C.
Attorneys at Law

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

15-1395

JTS Invoice # 167037

Flood Diversion Board
Bond Counsel Work - PPP

Date: February 10, 2020

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

PROFESSIONAL SERVICES RENDERED

	Hours	Rate	Totals
JTS	144.5	\$310.00	\$44,795.00
CMM	8	\$310.00	\$2,480.00
LDA	7.9	\$310.00	\$2,449.00
RGH	0.5	\$310.00	\$155.00
KJB	116.9	\$295.00	\$34,485.50
TJL	53.4	\$265.00	\$14,151.00
SRH	4.8	\$250.00	\$1,200.00
KJD	72.1	\$135.00	\$9,733.50
AJR	43.6	\$170.00	\$7,412.00
CRA	0.8	\$140.00	\$112.00
Total Fees:	452.5		\$116,973.00
NDRIN			\$11.00
Travel/Mileage			\$36.80
Total Expenses:			\$47.80
Grand Total			\$117,020.80

	2019 Rates
JTS John T. Shockley, Partner, Supervising Attorney	\$310.00
CMM Christopher M. McShane, Partner	\$310.00
ADC Andrew D. Cook, Partner	\$310.00
SNW Sarah M. Wear, Partner	\$310.00
RGH Robert G. Hoy, Partner	\$310.00
KJB Katie J. Bertsch, Associate	\$295.00
TJL Tyler J. Leverington, Associate	\$265.00
CBC Calley B. Campbell, Associate	\$250.00
LWC Lukas W. Croaker, Associate	\$260.00
SRH Stephen R. Hanson, Associate	\$250.00
ABG Bo Gruchala, Associate	\$250.00
JRS J.R. Strom, Associate	\$235.00
KJD Kathryn J. DelZoppo, Associate	\$135.00
LRC Leah R. Carlson, Associate	\$250.00
CAS Carol A. Stillwell, Paralegal	\$165.00
JDR Joshua D. Roaldson, Paralegal	\$165.00
AJR Andrea J. Roman, Paralegal	\$170.00
CRA Christie R. Axness, Paralegal	\$140.00
DLR Dena L. Ranum, Legal Administrative Assistant	\$150.00

OHNSTAD TWICHELL, P.C.

WEST FARGO, NORTH DAKOTA 58078

COST ADVANCES BY US FOR YOUR ACCOUNT, FOR WHICH WE HAVE NOT
BEEN BILLED, WILL APPEAR ON YOUR NEXT STATEMENT.

PROFESSIONAL SERVICES RENDERED

15-1395 JTS Invoice # 167037 Flood Diversion Board Bond Counsel Work - PPP		
FILE NUMBER	MATTER DESCRIPTION	INVOICE - TOTAL FEES
151395-1	General Topics (Includes General Governance Questions, Notices, etc.)	\$12,866.00
151395-3	P3 Procurement	\$18,867.50
151395-4	Public Finance Issues	\$25,898.50
151395-5	Consultant Contract Review/Development	\$2,781.00
151395-6	Support of External Litigation Counsel	\$2,192.00
151395-7	Coordination with Member Entities	\$3,549.00
151395-9	Environmental Permitting Issues/NEPA	\$659.00
151395-13	Third Party Utility MOU's	\$32,128.50
151395-17	EPA WIFIA Loan	\$18,002.00
151395-20	USDOT PABs	\$29.50
TOTAL		\$116,973.00

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

DATE: 2/06/20

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

CUSTOMER NO: 198/294

TYPE: CA - COUNTY AUDITOR

CHARGE	DATE	DESCRIPTION	REF-NUMBER	DUE DATE	TOTAL AMOUNT
	12/31/19	BEGINNING BALANCE			180,792.50
	1/27/20	PAYMENT			158,168.88-
	2/03/20	PAYMENT			20,934.65-
AUDIT	2/06/20	FM DIVERSION			168,418.67
		JANUARY INTEREST			
AUDIT	2/06/20	FM DIVERSION			21,812.29
		2181229			
AUDIT	2/06/20	FM DIVERSION			1,762.76
		MISC EXPENSES			

Current	30 days	60 days	90 days
193682.69			

DUE DATE: 3/09/20

PAYMENT DUE: 193,682.69
TOTAL DUE: \$193,682.69

PLEASE DETACH AND SEND THIS COPY WITH REMITTANCE

DATE: 2/06/20 DUE DATE: 3/09/20 NAME: CITY OF FARGO
CUSTOMER NO: 198/294 TYPE: CA - COUNTY AUDITOR

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

ND 58108-2806

TOTAL DUE: \$193,682.69

Please return this application to:

F-M Sertoma Club
P.O. Box 10764
Fargo, ND 58106

Business/Organization Name Flood Diversion Board of Authority Board
Mailing Address Box 2806 211 9th St. S. Fargo, ND 58108
Contact person(s) Joel Pavlsen
Work Phone 701-660-0900 Home Phone _____ Cell 701-781-4758
Email Address Pavlsen.J@FMDiversion.gov
Sponsorship Amount (Please mark level on front of sheet): \$ 1000

I will provide my own display. Yes X No _____
I will rent a display from the F-M Sertoma Club. Yes _____ No _____
Non-Profit Businesses/Organizations: Please contact us for more information.

The F-M Sertoma Club members and Board, the Fargo Optimist Club members and Board, the owners of the property and the Fargo Park Board assume no risk; and by acceptance of this agreement, the displayer expressly releases those named above from any and all liability for any damage, injury or loss to any person or goods which may arise from the rental and occupation of said site by the displayer and agrees to hold and save those named above harmless of any loss or damage by reason thereof. The displayer also agrees to save those named above harmless from any and all claims made, which arise out of exhibit by displayer at F-M Sertoma Club & Optimist Club "Holiday Lights in Lindenwood Park".

I have read and accept the terms and conditions stated in this application.

Signature and Title

Display site size:

- A regular display area will measure approximately 50' wide and 10' deep, but we can accommodate wider or deeper site needs or special placements.

Electricity:

- 110-volt power is provided.
- Displayers will need to furnish their own 50' to 100' 12 gauge (minimum), heavy-duty outdoor extension cords. **For safety reasons, Indoor Extension Cords WILL NOT BE ALLOWED. PLEASE LABEL YOUR CORD WITH YOUR NAME or you may not get it back.**
- ALL CORDS must have a 3-prong safety ground plug.

Lighting:

- Not more than 4 – 60 LED watt outdoor spot/floodlights will be allowed in your display.
- Halogen lighting, large wattage spot or floodlights will not be allowed. Only LED lighting will be allowed.

Signs:

- Each display will be furnished a lighted identification sign that measures 22" X 34".
- F/M Sertoma & Fargo Optimist reserve the right for placement of the signs.

Set-up:

- Display set-up will begin on Saturday, November 16th, and the park will be open daily from 9 AM to 4 PM.
- All display set-ups must be completed by 4 PM on Thursday, November 28th.
- **Please make sure your display is well anchored, in case of high winds.**
- **Please do not use any blow up items, as they do not stand up in the wind and snow.**

Teardown:

- Displays may be dismantled and removed beginning Wednesday, January 1, 2020. The park will be open daily from 9 AM to 4 PM. **Please remove everything you brought into the park by 4 PM SATURDAY, JANUARY 4th.**

Security:

- Limited security will be provided.

Insurance:

- The Park will be closed from 10:00 PM to 5:30 PM the following day, and any damage or maintenance to displays is the responsibility of the displayer. Displayers are encouraged to check their displays for problems daily using their "Displayer Pass".
- We will make every effort to notify displayer's of any problems.

For additional information or questions, please contact: Jim Wolsiegl 701-238-3575, Devin Gaard 701-936-5372, Bruce Hanson 701-261-9734 or Darrell Vasvick 701-261-3412

Date

11/6/19

*The Fargo-Moorhead Sertoma Club and the
Fargo Optimist Club are making your Holidays
BIGGER & BRIGHTER!*

**Be a part of the '2019 Holiday Lights' Tradition this year!
Join us for the 21st Annual "Holiday Lights in Lindenwood Park"**

We invite your business/organization to join us in making the holidays brighter for our community. This year's celebration runs from Friday, November 29th through Tuesday, December 31st, with the park being open daily from 5:30 P.M. until 10:00 P.M.

- **New and larger displays** will make this year's Holiday Lights the best ever.
- You can be a **part of what everyone will be talking about** this holiday season.
- Last year's displayers are returning with **expanded, re-designed or new displays**.
- This year's event has room for **65 - 70 displays**.
- **Each business/organization is recognized** by having their name listed by their display.
- Displayer 'passes' allow you to keep your display in working order.
- **Hundreds of thousands** have viewed 'Holiday Lights' in Lindenwood Park.
- Experience the dazzle of the holiday lights from the warmth and comfort of your car.
- Admission is \$7.00 per vehicle or \$6.00 with canned good, \$11.00 for buses and limousines.
- **ALL PROCEEDS** support local charities so dollars stay in our community.
- **Rental Displays are available.**

**Show Fargo-Moorhead that you are committed to brightening the holiday!
Participate in this year's 'HOLIDAY LIGHTS in LINDENWOOD PARK'!**

Sponsorship Levels Available:

\$125 – Displayer - Reserved spot for your display, sign with your business name on it, and advertising to thousands of people for the month of December.

EARLY REGISTRATION PRIOR TO MONDAY, October 14th is ONLY \$75.

\$250 Community Partner - For those businesses who do not want to display, but who would like to support Holiday Lights. Your name is listed as a Community Partner on flyers handed out to guests as they enter Holiday Lights.

\$750 Weekly Sponsor - Reserved spot for your display, sign with your business name on it, 25 guaranteed radio spots on Radio Fargo Moorhead stations, and the ability to hand out items, coupons, goods, promotions to all guests entering the Holiday Lights during your week of sponsorship. Reach thousands of people for one low price. Weekly sponsorships are available December 1 – 7, December 8-14, December 15-21, and December 22-31.

X \$1000 Major Sponsor - Reserved spot for your display, sign with your business name on it, 50 guaranteed radio spots on Radio Fargo Moorhead stations, and the ability to hand out items, coupons, goods, promotions to all guests entering the Holiday Lights on any of the above weeks listed in the Weekly Sponsorship. Reach thousands of people for one low price.

**Please complete this application and reserve your spot for this year's event.
We look forward to sharing a "brighter" holiday with you.**



Item 11c.

Contract Actions

February 2020



DA Board Approval Contract Actions (For Approval)

Description	Company	Budget Estimate (\$)
<i>Task Orders – Diversion Authority</i>		
Audit Engagement Agreement	Eide Bailly	\$70,000
Amendment to Master Agreement for Professional Services	HMG	-
Task Order 1, Amendment 15 – Project Management	HMG	\$501,073
Master Agreement for Professional Services	AE2S	-
Task Order 1 – AE2S Consultant Services	AE2S	\$16,175,200
Change Order – WP50A Property Structure Mitigation	Schmidt and Sons Construction, Inc.	\$75,555



Board Meeting

February 27, 2020

SUBJECT: Audit Engagement Agreement
Eide Bailly LLP

RECOMMENDATION: Board Approval

BACKGROUND / KEY POINTS: Contract to audit the financial statements of Diversion Authority for FY2017-FY2019.

FINANCIAL CONSIDERATIONS: Total contract value is **\$70,000** (maximum)

VOTING REQUIREMENTS: Majority of DA Board

Disclaimer: Voting requirements may be subject to changes in the law, parliamentary procedural matters, or other unforeseen issues. The DA General Counsel provides opinion on questions of voting requirements in accordance with the North Dakota State Statutes and parliamentary procedure.

Respectfully Submitted:

Joel Paulsen, PE
Executive Director

Attachments: Eide Bailly Audit Engagement



February 20, 2020

To the Authority
Metro Flood Project Diversion Authority
Fargo, North Dakota

You have requested that we audit the financial statements of the Metro Flood Project Diversion Authority (the Authority) as of December 31, 2017, December 31, 2018, and December 31, 2019, and for the years then ended, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter. Our audits will be conducted with the objectives of our expressing an opinion on the opinion unit.

Accounting principles generally accepted in the United States of America require that certain information be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the required supplementary information (RSI) in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist primarily of inquiries of management regarding their methods of measurement and presentation and comparing the information for consistency with management's responses to our inquiries. We will not express an opinion or provide any form of assurance on the RSI. The following RSI is required by accounting principles generally accepted in the United States of America. This RSI will be subjected to certain limited procedures but will not be audited:

1. Budgetary Comparison Schedule

Audit of the Financial Statements

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS), the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error, fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. If appropriate, our procedures will therefore include tests of documentary evidence that support the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of cash, investments, and certain other assets and liabilities by correspondence with creditors and financial institutions. As part of our audit process, we will request written representations from your attorneys, and they may bill you for responding. At the conclusion of our audit, we will also request certain written representations from you about the financial statements and related matters.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or noncompliance (whether caused by errors, fraudulent financial reporting, misappropriation of assets, detected abuse, or violations of laws or governmental regulations) may not be detected exists, even though the audit is properly planned and performed in accordance with U.S. GAAS and *Government Auditing Standards* of the Comptroller General of the United States of America. Please note that the determination of abuse is subjective, and *Government Auditing Standards* does not require auditors to detect abuse.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any other periods.

We will issue a written report upon completion of our audit of the Authority's basic financial statements. Our report will be addressed to the governing body of Authority. We cannot provide assurance that any unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

In accordance with the requirements of *Government Auditing Standards*, we will also issue a written report describing the scope of our testing over internal control over financial reporting and over compliance with laws, regulations, and provisions of grants and contracts, including the results of that testing. However, providing an opinion on internal control and compliance over financial reporting will not be an objective of the audit and, therefore, no such opinion will be expressed.

We also will issue a written report on the items listed below upon completion of our audit.

1. Independent Auditor's Report on Internal Control over Financial Reporting and Compliance and Other Matters based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*.

Management Responsibilities

Our audit will be conducted on the basis that management and, when appropriate, those charged with governance, acknowledge and understand that they have responsibility:

1. For the preparation and fair presentation of the basic financial statements in accordance with accounting principles generally accepted in the United States of America;
2. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of basic financial statements that are free from material misstatement, whether due to fraud or error;
3. For identifying and providing report copies of previous audits, attestation engagements, or other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented;
4. For taking prompt action when instances of noncompliance are identified;
5. For addressing the findings and recommendations of auditors, for establishing and maintaining a process to track the status of such findings and recommendations and taking corrective action on reported audit findings from prior periods and preparing a summary schedule of prior audit findings;
6. For following up and taking corrective action on current year audit findings and preparing a corrective action plan for such findings;
7. For making the auditor aware of any significant contractor relationships where the contractor is responsible for program compliance;
8. To provide us with:
 - a. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, and relevant to federal award programs, such as records, documentation, and other matters;
 - b. Additional information that we may request from management for the purpose of the audit; and
 - c. Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.
9. For adjusting the basic financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current period under audit are immaterial, both individually and in the aggregate, to the basic financial statements as a whole;
10. For acceptance of nonattest services, including identifying the proper party to oversee nonattest work;
11. For maintaining adequate records, selecting and applying accounting principles, and safeguarding assets;
12. For informing us of any known or suspected fraud affecting the entity involving management, employees with significant role in internal control and others where fraud could have a material effect on compliance;
13. For the accuracy and completeness of all information provided;
14. For taking reasonable measures to safeguard protected personally identifiable and other sensitive information; and
15. For confirming your understanding of your responsibilities as defined in this letter to us in your management representation letter.

The Authority's management is responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.

As part of our audit process, we will request from management and, when appropriate, those charged with governance, written confirmation concerning representations made to us in connection with the audit.

We understand that your employees will prepare all confirmations we request and will locate any documents or invoices selected by us for testing.

If you intend to publish or otherwise reproduce the financial statements and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

Fees and Timing

Jamie Fay will be the engagement partner for the audit services specified in this letter. Responsibilities include supervising services performed as part of this engagement and signing or authorizing another qualified firm representative to sign the audit report. We expect to begin our audit in February 2020 and finalize by June 1, 2020. Our fees are based on the amount of time required at various levels of responsibility, plus actual out-of-pocket expenses. Invoices are payable upon presentation. Our fee will be billed at a blended hourly rate of \$150 per hour up to a maximum of \$70,000.

We will notify you immediately of any circumstances we encounter that could significantly affect this initial fee estimate. Whenever possible, we will attempt to use the Authority's personnel to assist in the preparation of schedules and analyses of accounts. This effort could substantially reduce our time requirements and facilitate the timely conclusion of the audit. Further, we will be available during the year to consult with you on financial management and accounting matters of a routine nature.

In addition, we will be compensated for any time and expenses, including time and expenses of legal counsel, we may incur in conducting or responding to discovery requests or participating as a witness or otherwise in any legal, regulatory, or other proceedings as a result of our Firm's performance of these services. You and your attorney will receive, if lawful, a copy of every subpoena we are asked to respond to on your behalf and will have the ability to control the extent of the discovery process to control the costs you may incur.

Should our relationship terminate before our audit procedures are completed and a report issued, you will be billed for services to the date of termination. All bills are payable upon receipt. A service charge of 1% per month, which is an annual rate of 12%, will be added to all accounts unpaid 30 days after billing date. If collection action is necessary, expenses and reasonable attorney's fees will be added to the amount due.

Other Matters

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

We may use third party service providers and/or affiliated entities (including Eide Bailly Shared Services Private Limited) (collectively, "service providers") in order to facilitate delivering our services to you. Our use of service providers may require access to client information by the service provider. We will take reasonable precautions to determine that they have the appropriate procedures in place to prevent the unauthorized release of confidential information to others. We will remain responsible for the confidentiality of client information accessed by such service provider and any work performed by such service provider.

The audit documentation for this engagement is the property of Eide Bailly LLP and constitutes confidential information. However, we may be requested to make certain audit documentation available to the respective federal cognizant agency or its designee and federal agencies and the U.S. Government Accountability Office pursuant to authority given to it by law or regulation, or to peer reviewers. If requested, access to such audit documentation will be provided under the supervision of Eide Bailly LLP's personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies. We agree to retain our audit documentation or work papers for a period of at least eight years from the date of our report.

Further, we will be available during the year to consult with you on financial management and accounting matters of a routine nature.

During the course of the audit, we may observe opportunities for economy in, or improved controls over, your operations. We will bring such matters to the attention of the appropriate level of management, either orally or in writing.

Regarding the electronic dissemination of audited financial statements, including financial statements published electronically on your Internet website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

You agree to inform us of facts that may affect the financial statements of which you may become aware during the period from the date of the auditor's report to the date the financial statements are issued.

At the conclusion of our audit engagement, we will communicate to the Authority the following significant findings from the audit:

- Our view about the qualitative aspects of the entity's significant accounting practices;
- Significant difficulties, if any, encountered during the audit;
- Uncorrected misstatements, other than those we believe are trivial, if any;
- Disagreements with management, if any;
- Other findings or issues, if any, arising from the audit that are, in our professional judgment, significant and relevant to those charged with governance regarding their oversight of the financial reporting process;
- Material, corrected misstatements that were brought to the attention of management as a result of our audit procedures;
- Representations we requested from management;
- Management's consultations with other accountants, if any; and
- Significant issues, if any, arising from the audit that were discussed, or the subject of correspondence, with management.

Government Auditing Standards require that we provide, upon request, a copy of our most recent external peer review report and any subsequent review reports to the party contracting for the audit. Accordingly, we will provide a copy of our most recent peer review report at your request.

Eide Bailly LLP is a member of HLB International, a worldwide organization of accounting firms and business advisors, ("HLB"). Each member firm of HLB, including Eide Bailly LLP is a separate and independent legal entity and is not owned or controlled by any other member of HLB. Each member firm of HLB is solely responsible for its own acts and omissions and no other member assumes any liability for such acts or omissions. Neither Eide Bailly LLP, nor any of its affiliates, are responsible or liable for any acts or omission of HLB or any other member firm of HLB and hereby specifically disclaim any and all responsibility, even if Eide Bailly LLP, or any of its affiliates are aware of such acts or omissions of another member of HLB.

Eide Bailly LLP formed The Eide Bailly Alliance Network, a network for small to mid-sized CPA firms across the nation. Each member firm of The Eide Bailly Alliance, including Eide Bailly LLP, is a separate and independent legal entity and is not owned or controlled by any other member of The Eide Bailly Alliance. Each member firm of The Eide Bailly Alliance is solely responsible for its own acts and omissions and no other member assumes any liability for such acts or omissions. Neither Eide Bailly LLP, nor any of its affiliates, are responsible or liable for any acts or omission of The Eide Bailly Alliance or any other member firm of The Eide Bailly Alliance and hereby specifically disclaim any and all responsibility, even if Eide Bailly LLP, or any of its affiliates are aware of such acts or omissions of another member of The Eide Bailly Alliance.

DISPUTE RESOLUTION

The following procedures shall be used to resolve any disagreement, controversy or claim that may arise out of any aspect of our services or relationship with you, including this engagement, for any reason ("Dispute"). Specifically, we agree to first mediate.

Mediation

All Disputes between us shall first be submitted to non-binding mediation by written notice ("Mediation Notice") to the other party. In mediation, we will work with you to resolve any differences voluntarily with the aid of an impartial mediator. The mediator will be selected by mutual agreement, but if we cannot agree on a mediator, one shall be designated by the American Arbitration Association ("AAA").

The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the Dispute. Mediation will be conducted with the parties in person in Fargo, North Dakota.

Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

Either party may commence suit on a Dispute after the mediator declares an impasse.

Governing Law and Venue

We both agree to submit any unresolved Dispute to trial by a federal or state court venued in Fargo, North Dakota. This agreement shall be governed by and construed in accordance with the laws of the State of North Dakota (regardless of the laws that might be applicable under the principles of conflict of law) as to all matters including without limitation, matters of validity, construction, effect, and performance.

LIMITATION OF DAMAGES AND NO PUNITIVE DAMAGES

The exclusive remedy available to you in any adjudication proceeding shall be the right to pursue claims for actual damages that are directly caused by acts or omissions that are breaches by us of our duties under this agreement and/or under applicable professional standards, such damages will be limited to no more than two times fees paid under this agreement. In no event shall we be liable to you for any punitive or exemplary damages, or for attorneys' fees.

TIME LIMITATION

The nature of our services makes it difficult, with the passage of time, to gather and present evidence that fully and fairly establishes the facts underlying any Dispute. We both agree that, notwithstanding any statute of limitations that might otherwise apply to a Dispute, it is reasonable that you may not bring any legal proceeding against us unless it is commenced within twenty-four (24) months ("Limitation Period") after the date when we deliver our report, return or other deliverable under this agreement to you, regardless of whether we do other services for you or that may relate to the audit.

The Limitation Period applies and begins to run even if you have not suffered any damage or loss, or have not become aware of the existence or possible existence of a Dispute.

INDEMNITY

You agree that none of Eide Bailly LLP, its partners, affiliates, officers or employees (collectively "Eide Bailly") shall be responsible for or liable to you for any misstatements in your financial statements that we may fail to detect as a result of knowing representations made to us, or the concealment or intentional withholding of information from us, by any of your owners, directors, officers or employees, whether or not they acted in doing so in your interests or for your benefit, and to hold Eide Bailly harmless from any claims, losses, settlements, judgments, awards, damages and attorneys' fees from any such misstatement, provided that the services performed hereunder were performed in accordance with professional standards, in all material respects.

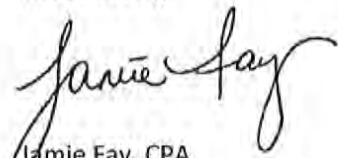
ASSIGNMENTS PROHIBITED

You agree that you will not and may not assign, sell, barter or transfer any legal rights, causes of actions, claims or Disputes you may have against Eide Bailly LLP, its partners, affiliates, officers and employees, to any other person or party, or to any trustee, receiver or other third party.

Please sign and return the attached copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our audit of the financial statements including our respective responsibilities.

We appreciate the opportunity to be your certified public accountants and look forward to working with you and your staff.

Respectfully,


Jamie Fay, CPA
Senior Manager

RESPONSE:

This letter correctly sets forth our understanding.

Acknowledged and agreed on behalf of the Metro Flood Project Diversion Authority by:

Name: _____

Title: _____

Date: _____



Board Meeting

February 27, 2020

SUBJECT: Amendment to Master Agreement for Professional Services for Houston-Moore Group

RECOMMENDATION: Board Approval

BACKGROUND / KEY POINTS: Extend the current agreement for 30 days (expiration date April 3, 2020)

FINANCIAL CONSIDERATIONS: No change in fee

VOTING REQUIREMENTS: Majority of DA Board

Disclaimer: Voting requirements may be subject to changes in the law, parliamentary procedural matters, or other unforeseen issues. The DA General Counsel provides opinion on questions of voting requirements in accordance with the North Dakota State Statutes and parliamentary procedure.

Respectfully Submitted:

Joel Paulsen, PE
Executive Director

Attachments: Amendment to Master Agreement for Professional Services for Houston-Moore Group

**AMENDMENT NO. 3 TO
MASTER AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AMENDMENT (the “Amendment”) made and entered into this ____ day of _____, 2020, by and between the Metro Flood Diversion Authority (“Diversion Authority”) and Houston-Moore Group, LLC (“HMG”) (collectively referred to as the “parties”).

RECITALS

WHEREAS, the parties previously entered into a Master Agreement for Professional Services, dated May 1, 2017 (the “Agreement”), whereby HMG would provide project management and engineering services for the Fargo-Moorhead Area Diversion Project, subject to the oversight of the Co-Executive Directors, Executive Director, and the Diversion Authority Board; and

WHEREAS, the Diversion Authority and HMG subsequently entered into the Amendment No. 1 to the Agreement (“Amendment No. 1”), to increase the hourly rates for services rendered by HMG under the Agreement. A copy of Amendment No. 1 is attached hereto as **Exhibit A**, and includes a copy of the Agreement as an exhibit to Amendment No. 1; and

WHEREAS, prior to the Agreement expiring on December 31, 2019, the parties subsequently entered into the Amendment No. 2 to the Agreement (“Amendment No. 2”), to extend the termination date approximately sixty (60) days until March 2, 2020. A copy of Amendment No. 2 is attached hereto as **Exhibit B**; and

WHEREAS, the parties now desire to amend the Agreement to extend the termination date for a period of approximately thirty (30) days to allow additional time for the Co-Executive Directors, Executive Director, and the Diversion Authority Board to negotiate new terms and conditions of the Agreement; and

WHEREAS, Section 12 of the Agreement allows for the extension of the term of the Agreement by written amendment; and

WHEREAS, Section 54 of the Agreement provides that the Agreement may only be changed by written amendment approved by the Diversion Authority and executed by HMG and the Chair of the Diversion Authority on behalf of the Diversion Authority; and

WHEREAS, the parties desire to enter into this Amendment No. 3 to extend the termination date until April 3, 2020.

NOW THEREFORE, in consideration of the mutual agreements and undertakings of the parties, and for other good and valuable considerations, the parties hereto agree as follows:

1. The above described Agreement is hereby extended and shall remain in effect from March 2, 2020, through April 3, 2020, and the termination date as referred to in Section 12 the Agreement is hereby amended and changed to April 3, 2020.

2. The Agreement, except as amended, revised, or changed by the terms of Amendment No. 1, Amendment No. 2, and this Amendment No. 3, shall remain in full force and effect.

Dated this ____ day of _____, 2020.

DIVERSION AUTHORITY:

Metro Flood Diversion Authority

Timothy J. Mahoney, Chair
Diversion Authority Board

Joel Paulsen, PE, Executive Director,
Diversion Authority Board

HMG:

Houston-Moore Group LLC

By: _____

Its: _____

EXHIBIT A

**AMENDMENT NO. 1 TO MASTER AGREEMENT FOR PROFESSIONAL SERVICES
DATED MAY 1, 2017
BETWEEN DIVERSION AUTHORITY AND HMG**

This Amendment No. 1 (the "Amendment") is entered into this 17th day of May, 2018, by and between the Metro Flood Diversion Authority ("Diversion Authority") and Houston-Moore Group, LLC ("HMG").

WHEREAS, the parties entered into a Master Agreement for Professional Services, dated May 1, 2017 (attached as Exhibit A and hereinafter referred to as the "Agreement"); and

WHEREAS, pursuant to Section 14 of the Agreement, based on mutual agreement, the parties may increase the hourly rates at which the Diversion Authority will compensate HMG for services rendered under the Agreement for 2018; and

WHEREAS, the parties desire to increase the hourly rates for professional services rendered by HMG under the Agreement effective May 1, 2018; and

WHEREAS, Section 54 of the Agreement provides that modification of the Agreement may only be made by written amendment approved by the Diversion Authority and executed by HMG and the Chair of the Diversion Authority on behalf of the Diversion Authority.


NOW THEREFORE, BE IT AGREED between Diversion Authority and HMG as follows:

1. The 2018 hourly rates for services rendered by HMG under the Agreement are hereby amended as indicated on the rate schedule attached hereto as Exhibit B. The new rates shown in Exhibit B shall be effective as of May 1, 2018.
2. All other terms, conditions, and obligations set forth in the attached Agreement will remain in full force and effect to the extent those terms, conditions, and obligations are not in conflict with the changes set forth in this Amendment.

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment on the date first written above.

DIVERSION AUTHORITY:

HMG:

By: 
Del Rae Williams, Chair
Diversion Authority Board

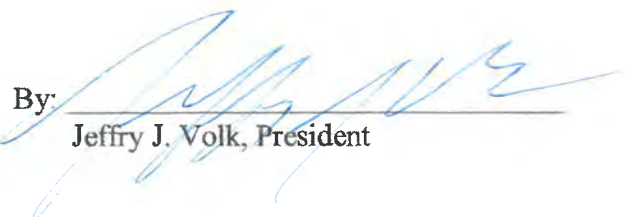
By: 
Jeffrey J. Volk, President

EXHIBIT A

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Related to:

**THE
FARGO-MOORHEAD AREA DIVERSION PROJECT**

BY AND BETWEEN

**METRO FLOOD DIVERSION AUTHORITY
as Diversion Authority**

and

**HOUSTON-MOORE GROUP, LLC
as HMG**

Dated as of May 1, 2017

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

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EXHIBIT A – GENERAL SCOPE OF SERVICES

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES (the “Agreement”) is made as of May 1, 2017, by and between the Metro Flood Diversion Authority (“Diversion Authority”) and Houston-Moore Group, LLC (“HMG”) (collectively, the “parties”).

WHEREAS, the Diversion Authority and the United States Army Corps of Engineers (“USACE”) have completed significant work in readying the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Project”) for implementation; and

WHEREAS, using a Split Delivery Method, the multiple Project features will be split into those implemented by the Diversion Authority and those implemented by the USACE, with the Diversion Authority delivering the majority of the Diversion Authority’s features through a Public-Private Partnership (“P3”) delivery method; and

WHEREAS, the portions of the Project that the Diversion Authority will implement through a P3 are collectively referred to as the Diversion Channel and Associated Infrastructure Work Package (“DCAI WP”); and

WHEREAS, the Diversion Authority has selected HMG to provide the Diversion Authority with professional services, subject to the oversight of the Co-Executive Directors, Executive Director, and the Diversion Authority Board; and

WHEREAS, the Diversion Authority desires to enter into a master agreement for professional services with HMG and retain HMG to provide professional services for the Fargo-Moorhead (FM) Area Diversion Project, commencing on May 1, 2017.

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

1. **EMPLOYMENT.** The Diversion Authority hires HMG, which accepts the hiring with the Diversion Authority pursuant to this Agreement. HMG is an independent contractor under this Agreement. Nothing in this Agreement shall be construed to create an employer-employee relationship between the parties.
2. **DEFINITIONS.** All capitalized terms used and not otherwise defined herein shall have the meanings given to them in this Agreement as defined in this Section, unless a different meaning clearly applies from the context.

“*Agreement*” means this Master Agreement for Professional Services by and between the Metro Flood Diversion Authority and Houston-Moore Group, 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.

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

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

“Consultant” means the individual or entity with which the Owner has contracted for performance of the services as set forth in this Agreement.

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

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

“Effective Date” means May 1, 2017.

“Executive Director” means the Chief Administrative Officer of the Metro Flood Diversion Authority. The term also includes Co-Executive Director.

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

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

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

“Governing Body” means the body which performs the legislative and governmental functions of a political subdivision, including but not limited to, a board, council, or commission. For example, the Cass County Commission, the Clay County Commission, the Moorhead City Council and the Fargo City Commission are the Governing Body of each of said entities as the board for the CCJWRD is the Governing Body for that entity.

“Initial Agreement” means the agreement dated as of March 8, 2012, between the Diversion Authority and HMG.

“JPA” or *“Joint Powers Agreement”* means the agreement dated as of June 1, 2016, by and between the Member Entities.

“LJPA” or *“Limited Joint Powers Agreement”* means the agreement dated July 11, 2011, and subsequently amended, which was entered into between the City of Moorhead, the City of Fargo, Clay County, Cass County, the Buffalo-Red River Watershed District and the Cass

County Joint Water Resource District in order to cooperate in the planning and design phase of the Locally Preferred Plan.

“Member Entities” shall mean the City of Moorhead, the City of Fargo, Clay County, Cass County, and Cass County Joint Water Resource District.

“Metro Flood Diversion Authority” means the political subdivision created by the LJPA and continued through and vested with the powers set forth in the JPA.

“Owner” means the individual or entity with which the Consultant has contracted regarding the services set forth herein, and which has agreed to pay Consultant for the performance of the services, pursuant to the terms of this Agreement.

“Person” means any natural or legal person, county, city, municipality, political subdivision, public benefit corporation, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority, or other entity.

“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.

“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.

3. AUTHORIZATION TO PROCEED. Execution of this Agreement by the Diversion Authority will be authorization for HMG to proceed with the work, unless otherwise provided for in this Agreement.
4. PRIOR AGREEMENTS. Any prior agreements between the Diversion Authority or its Member Entities and HMG shall, upon execution of this Agreement, be terminated and have no further force and effect. Upon execution of this Agreement, the Initial Agreement shall terminate and have no further force and effect. HMG shall send the final invoice pursuant to the Diversion Authority and HMG agreement no later than July 1, 2017. If HMG fails to send the final invoice by such date, the Diversion Authority reserves the right to withhold payment for the services reflected in the final invoice. Any Task Orders executed and completed per the Initial Agreement shall remain subject to the terms and conditions set forth in the Initial Agreement. Except with respect to the Cass County Joint Water Resource District, any Task Orders between the Diversion Authority or its Member Entities and HMG entered into on or after the effective date of this Agreement shall be subject to the terms of this Agreement. Nothing herein shall affect the contract agreement dated August 8, 2013, between HMG and the Cass County Joint Water Resource District and any Task Orders executed or issued under that August 8, 2013, agreement.

5. SCOPE OF SERVICES. Diversion Authority has requested HMG provide professional engineering, survey, project management or related services for the Project generally as set forth in the attached Exhibit A. HMG's detailed scope of services, work schedule, and cost budget will be mutually agreed upon in writing and set forth in Task Orders issued by the Diversion Authority under this Agreement directly or through the Diversion Authority's designated Program Management Consultant. Each Task Order will specifically refer to and incorporate this Agreement by reference, and the provisions of this Agreement shall apply to all Task Orders entered into subsequent to the effective date of this Agreement. In general, HMG's services will include services in support of the Fargo-Moorhead Area Diversion Project as mutually agreed upon between the parties.
6. CHANGES TO SCOPE OF SERVICES. The Diversion Authority may make or approve changes within the general scope of services in this Agreement. If such changes affect HMG's cost of or time required for performance of the services as set out in any applicable Task Order, then an equitable adjustment will be made through an amendment to the applicable Task Order or this Agreement.
7. RESPONSIBILITY FOR ERRORS OR DELAYS FROM INACCURATE DATA. HMG and the Diversion Authority acknowledge that the reliability of HMG's services depends upon the accuracy and completeness of the data supplied to HMG. The Diversion Authority accepts sole responsibility for errors or delays in services resulting from inaccurate or incomplete data supplied to HMG, and the Diversion Authority acknowledges and agrees that any additional services thereby necessitated will result in additional fees payable by the Diversion Authority to HMG. HMG must receive promptly the information to deliver the services as well as the Diversion Authority's prompt updates to any information where there has been a material change which may affect the scope or delivery of the services, such as a change in the nature of the Diversion Authority's products or equipment, systems, and/or processes that are the focus of HMG's service(s).
8. TASK ORDERS. HMG shall receive assignments for work under this Agreement through Task Orders authorized and provided by the Diversion Authority directly or through its designated Program Management Consultant. The Diversion Authority shall compensate HMG only for work contained within the Task Orders. HMG shall not be obligated to perform any work or services unless such services are set forth in an executed Task Order. If HMG engages in work beyond the scope of a Task Order, the Diversion Authority shall not compensate HMG for that work, unless agreed to in writing by the Diversion Authority prior to the work being completed. All amendments to Task Orders must be authorized and provided by the Diversion Authority in writing. The time or schedule for performing services or providing deliverables shall be stated in each Task Order. If no times are stated, then HMG will perform services and provide deliverables within a reasonable time. HMG is not responsible for any delays in execution of its services or work due to the absence of an executed Task Order or amendment to a Task Order.
9. PERSONNEL. All persons assigned by HMG to perform services as set forth in Task Orders issued under this Agreement shall be fully qualified to perform the work assigned to them. HMG shall devote such personnel and resources, time, attention and energies to the Diversion Authority's business as are necessary to fulfill the duties and responsibilities

required by the Diversion Authority and agreed to by HMG in any given Task Order. HMG must endeavor to minimize turnover of personnel performing services under this Agreement. If the Diversion Authority is dissatisfied with any of HMG's personnel, the Diversion Authority reserves the right to require removal of those personnel from the Task Order. The Diversion Authority shall provide HMG with a written statement, including reasonable detail, outlining its reasons for desiring removal. Replacement personnel for the removed person shall be fully qualified for the position.

10. PERSONNEL IDENTIFIED FOR PROJECT DELIVERY. HMG agrees and acknowledges that the following specifically identified individuals shall be assigned the following roles for this Agreement (hereinafter "Key Personnel"):

Individual	Position	Labor Category	Billing Rate/Hour
Jeff Volk	Principal-in-Charge	Principal Engineer	\$239
Jeff LeDoux	Principal-in-Charge	Principal Engineer	\$239
Lee Beauvais	Project Manager	Senior Project Manager	\$232
Lyndon Pease	Project Manager	Senior Project Manager	\$232
Gregg Thielman	Project Manager	Senior Project Manager	\$232
Greg Thompson	H&H Lead	Project Manager	\$194
Jeremy McLaughlin	Structural Lead	Senior Project Manager	\$232
Jeff Lansink	Transportation Lead	Project Manager	\$194
Chris Gross	Lead Design Engineer	Project Manager	\$194
Troy Opsahl	Lead Field Survey	Survey Manager	\$140
Jim Schlieman	Lead Land Surveyor	Senior Land Surveyor	\$178
Kyle Volk	GIS Lead	GIS Manager	\$173
Mark Aanenson	Lead Environmental/Permitting	Senior Environmental Scientist	\$189

HMG shall use its Best Efforts to assure that Key Personnel are available to provide services to the Project and as points of contact for the Co-Executive Directors and General Counsel of the Diversion Authority. In the event that any of the Key Personnel are not available for the Project, HMG shall notify the Co-Executive Directors of the Diversion Authority within ten (10) days of the Key Personnel's non-availability. HMG shall provide the resumes of the individual(s) it is proposing to replace the non-available Key Personnel and the Diversion Authority will review the resume and may approve the new Key Personnel. The Diversion Authority will act in Good Faith and in a reasonable manner when reviewing and approving new Key Personnel. In the event that the Diversion Authority determines that the new Key Personnel are not acceptable, HMG will propose new Key Personnel.

11. SUBCONTRACTORS. HMG may enter into agreements with subcontractors in furtherance of their services under this Agreement, as approved by the Co-Executive Directors, which approval shall not be unreasonably withheld.
12. TERM. Unless terminated under Section 42, this Agreement shall remain in full force and effect for a period of approximately three (3) years from the date of execution on May 1, 2017, through December 31, 2019. Task Order 1-Scope of Services, attached hereto as

Exhibit A, shall become effective on May 1, 2017, and will expire on _____. This Agreement shall take full force and effect on May 1, 2017, upon approval and execution by the Diversion Authority Board. Pursuant to Section 13 of this Agreement and upon expiration of the initial term of this Agreement, this contract may be renewed by mutual agreement of the parties.

13. **EXTENSION OF TERM.** This Agreement may be extended by written amendment or renewed as set forth in Section 12 of this Agreement. If this Agreement expires before the completion of a Task Order, the Agreement shall be deemed to have been extended until the completion of services under the applicable Task Order.
14. **COMPENSATION.** For all services rendered by HMG, the Diversion Authority will pay HMG based on the time spent by those HMG team members working on the Project and the hourly charging rates applicable to those HMG team members, plus subcontracts with non HMG-affiliated companies and Outside Services, plus a service charge of ten percent (10%) on subcontracts and outside services, plus applicable sales, use, value added, business transfer, gross receipts, or other similar taxes. Time will be tracked and billed in half (1/2) hour increments for each HMG team member. HMG's Hourly Rates for services rendered through December 31, 2017, are listed below. Beginning January 1, 2018, the Hourly Rates Schedule may be increased based on mutual agreement, but will not be increased by an amount exceeding three and one-half percent (3.5%) of the 2017 rates, rounded to the nearest dollar. (For example, the 2018 rate of an administrative assistant cannot exceed \$84.00 per hour). Beginning January 1, 2019, Hourly Rates and Reimbursable Expenses Schedule may be increased based on mutual agreement, but will not be increased by an amount exceeding three and one-half percent (3.5%) of the 2018 rates, rounded to the nearest dollar. Additionally, HMG's Reimbursable Expenses for services rendered through December 31, 2019, are listed below.

2017 Rates			
Category	Hourly Rate	Category	Hourly Rate
Principal Engineer	\$239	GIS Programmer III	\$140
Sr Project Manager	\$232	GIS Programmer II	\$130
Sr Professional Engineer	\$216	GIS Programmer I	\$125
Project Manager	\$194	GIS Technician III	\$125
Professional Engineer II	\$189	GIS Technician II	\$119
Professional Engineer I	\$178	GIS Technician I	\$113
Project Coordinator	\$178	Senior Land Surveyor	\$178
Project Engineer	\$151	Land Surveyor	\$157
Graduate Engineer	\$135	Survey Manager	\$140
Legislative/Grants/Funding Specialist	\$194	Graduate Land Surveyor	\$125
Project Manager Assistant	\$130	GPS Survey Crew Chief	\$178
Sr Environmental Project Manager	\$216	Survey Crew Chief II	\$135
Sr Environmental Scientist	\$189	Survey Crew Chief I	\$125
Environmental Scientist	\$162	Survey Technician III	\$97
Scientist	\$143	Survey Technician II	\$86
Graduate Scientist	\$130	Survey Technician I	\$81
Sr Engineering Designer	\$156	CADD Manager	\$140

Engineering Designer II	\$135	CADD Technician III	\$125
Engineering Designer I	\$130	CADD Technician II	\$119
Sr Construction Engineer/Specialist	\$176	CADD Technician I	\$113
Construction Engineer/Specialist II	\$149	Communications Manager	\$173
Construction Engineer/Specialist I	\$135	Communications Specialist	\$135
Graduate Construction Engineer	\$127	Senior Planner	\$197
Engineering Technician III	\$130	Associate Planner	\$141
Engineering Technician II	\$114	Technical Writer	\$97
Engineering Technician I	\$100	Administrative Assistant	\$81
Technician Intern	\$87	Receptionist	\$76
Sr GIS Project Manager	\$189	Bookkeeper	\$97
GIS Manager	\$173	Controller	\$173
GIS Developer	\$151		

2017, 2018, and 2019 Reimbursable Expenses	
Lodging & Meals*	Actual Cost
Per Diem*	\$60 per day
Project Mileage	IRS Rates
Motorized Off-road Vehicles	\$75 per day
Iron Pins	\$1.25 each
Fence Posts	\$5.00 each
Project Expenses	Actual Cost
Sub-Consultants	Actual Cost + 10%

*Out-of-town travel expenses

The Diversion Authority will compensate HMG as set forth above and in accordance with each Task Order. Work performed under this Agreement may be performed using labor from affiliated companies of HMG. Such labor will be billed to the Diversion Authority under the same billing terms applicable to HMG's employees.

The compensation is payable following the end of each month upon submission by HMG of a monthly invoice setting forth the services performed in that month on behalf of the Diversion Authority. Invoices shall be sent as required in Section 15 of this Agreement. Invoices are due and payable within thirty (30) days of receipt. If a work order issued under this Agreement contains a not-to-exceed compensation amount, the Diversion Authority will only pay compensation to HMG for fees and/or expenses that are less than or equal to the not-to-exceed amount stated on the work order, unless the work order has been amended pursuant to Section 7 of this Agreement.

- A. Budget. Budgetary amounts, excluding taxes, will be established for each Task Order executed under the Agreement. HMG will make reasonable efforts to complete the work within the budget and will keep the Diversion Authority informed of progress toward that end so that the budget or work effort can be adjusted if found necessary. HMG is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is the Diversion Authority obligated to pay HMG beyond these limits. When any budget has been increased, HMG'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 HMG's employees of the indicated classifications. These rates include all allowances for salaries, overhead, fees, and all expenses, but do not include allowances for subcontracts or outside services allowed by this Agreement.

15. INVOICING AND PAYMENT.

- A. HMG must submit invoices to the Diversion Authority on the fifteenth (15th) day of each month for all services provided and allowed expenses incurred during the preceding month. HMG's Project Manager must personally review each invoice before it is sent to the Diversion Authority to determine its accuracy and fairness, and to ensure the invoice complies with the requirements in this Agreement. Each invoice will be entered into the Aconex system and processed by the Diversion Authority for the following month.

- B. HMG must submit each original invoice to:

Metro Flood Diversion Authority
c/o Nathan Boerboom
N.Boerboom@cityoffargo.com

- C. HMG's invoices must be detailed and precise. HMG's invoices must clearly indicate fees and expenses incurred for the current billing period month and include at least the following information:

- (1) HMG's name and address;
- (2) HMG's federal employer identification number;
- (3) Unique invoice number;
- (4) Billing period;
- (5) Description of each activity performed for each day in which services were 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 the Task Order Budgetary Breakdown;
- (8) Total amount of fees and costs "billed to date," including the preceding month; and
- (9) Preferred remittance address, if different from the address on the invoice's coversheet
- (10) All of the work performed during that billing period, in accordance with the Task Order Budgetary Breakdown.

- D. HMG's invoice must be printed on a printed bill head and signed by the Program Manager or other authorized signatory.
- E. If any HMG invoices contain requests for expense reimbursement, HMG must include copies of the corresponding invoices and receipts with that invoice.

- F. After the Diversion Authority receives HMG's invoice, the Diversion Authority will either process the invoice for payment or give HMG specific reasons, in writing within fifteen (15) business days, why part or all of the Diversion Authority's payment is being withheld and what actions HMG must take to receive the withheld amount.
 - G. In the event of a disputed billing, only the disputed portion will be withheld from payment, and the Diversion Authority shall pay the undisputed portion. The Diversion Authority will exercise reasonableness in disputing any bill or portion thereof. Interest will accrue on any disputed portion of the billing determined to be due and owing to HMG.
 - 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, HMG must credit any payment in error from any payment that is due or that may become due to HMG under this Agreement.
 - I. The Diversion Authority will be charged interest at the rate of one-half percent (1/2%) per month, or that permitted by law if lesser, on all past-due amounts starting thirty (30) days after receipt of invoice. Payments will be first credited to interest and then to principal.
 - J. If the Diversion Authority fails to make payment in full within thirty (30) days of the date due for any undisputed billing, HMG may, after giving seven (7) days' written notice to the Diversion Authority, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, HMG will have no liability to the Diversion Authority for delays or damages caused by the Diversion Authority because of such suspension.
 - K. Without waiving any rights to recover payment for reimbursable taxes, fees or other costs per the provisions of Paragraph 14 herein, HMG must pay in the first instance all fees, fines, taxes, or other costs of doing business related to the services.
16. RELATIONSHIP BETWEEN PARTIES. HMG is retained by the Diversion Authority only for the purposes and to the extent set forth in this Agreement, and its relationship to the Diversion Authority shall, during the period or periods of services under this Agreement, be that of an independent contractor. HMG shall be free to use such portion of HMG's entire time, energy and skill during the course of this Agreement to meet its contractual obligation to the Diversion Authority. Neither HMG, nor its personnel, shall be considered to be employed by the Diversion Authority or entitled to participate in any plans, arrangements or distributions by the Diversion Authority pertaining to or in connection with any benefits accorded the Diversion Authority's regular employees. The Diversion Authority shall not be financially responsible to HMG except for the payment of compensation specifically set forth in this Agreement, and shall not be responsible for the payment of any cost of living allowances, merit increases, medical insurance, employee's retirement, life or disability coverage, sick leave or holiday pay or vacation pay or any benefit of any kind not specifically set forth in this Agreement. Likewise, the Diversion Authority shall not be responsible for wage or salary withholding to the federal or any state government.

17. REPRESENTATIONS. HMG represents that the following statements are true:

- A. HMG has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any member of the Diversion Authority with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- B. The Team Members performing the work hereunder have no interest that would constitute a conflict of interest with the Diversion Authority during the term of the Project. This does not preclude or prohibit other HMG employees or representatives from working with other parties who may participate on the Project and have potential or actual adverse interest to the Diversion Authority.
- C. This Agreement does not constitute a conflict of interest or default under any of HMG'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 HMG's ability to perform under this Agreement.
- E. HMG 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, HMG must not take any action, or omit to perform any act, that may result in a representation becoming untrue. HMG must immediately notify the Diversion Authority if any representation and warranty becomes untrue.

THE REPRESENTATIONS ABOVE SHALL BE IN LIEU OF ANY IMPLIED OR EXPRESS WARRANTIES AND HMG MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE IN CONNECTION WITH ITS SERVICES.

18. WORKING RELATIONSHIP. HMG's Principal-in-Charge and Project Manager shall be the individuals that will engage with the Diversion Authority Board and the Diversion Authority's Executive Director(s). HMG shall work in close cooperation and coordinate with the Diversion Authority's Program Management Consultant.
19. INDEPENDENT PROFESSIONAL JUDGMENT. Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by HMG in accordance with the independent professional judgment of each of its employees. HMG shall perform the services rendered in accordance with accepted principals of its profession. HMG 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 locale of the services performed for the Project.
20. STANDARD OF CARE. The standard of care applicable to HMG'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. HMG will re-perform any services not meeting this standard without additional compensation.

21. SUBSURFACE INVESTIGATIONS. In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of HMG.
22. HMG'S PERSONNEL AT CONSTRUCTION SITE.
- A. The presence or duties of HMG's, or its subcontractor's or subconsultant's, personnel at a construction site, whether as onsite representatives or otherwise, do not make HMG or HMG's personnel, or HMG's subcontractors or subconsultants, in any way responsible for those duties that belong to the Diversion Authority and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction contract documents and any health or safety precautions required by such construction work.
 - B. HMG and HMG's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except HMG's own personnel.
 - C. The presence of HMG's personnel at a construction site is for the purpose of providing to the Diversion Authority a greater degree of confidence that the completed construction work will conform generally to the construction documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the construction contractor(s). HMG neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents.
 - D. For this Agreement only, construction sites include places of manufacture for materials incorporated into the construction work, and construction contractors include manufacturers of materials incorporated into the construction work.
 - E. The presence of HMG's personnel, subcontractors or subconsultants at a construction site whether as on-site representative or otherwise do not make HMG or HMG's personnel, subcontractors or subconsultants liable for any duties belonging to either Diversion Authority or its Contractor except as specifically outlined in a Task Order. HMG shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall HMG have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any

contractor, for the safety precautions and programs incident thereto, for security or safety at any Project Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

- F. HMG neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform Work at the Project in accordance with any plans, specifications, drawings, details, or other construction or design documents prepared by HMG for the Project.
- G. For each service or design performed or furnished, HMG shall be responsible only for those Construction Phase services that have been itemized and expressly required of HMG in the authorizing Task Order. With the exception of such expressly required services, HMG shall have no design, shop drawing review, or other obligations during construction and Diversion Authority assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services. HMG shall not be liable to the Diversion Authority for any Construction Phase engineering or professional services except for those services that are expressly required of HMG in the authorizing Task Order.

23. OPINIONS OF COST, FINANCIAL CONSIDERATIONS, AND SCHEDULES.

- A. HMG has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, HMG makes no warranty that the Diversion Authority's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from any opinions of Project costs, financial analyses, economic feasibility projections, or schedules for the Project included in HMG's services work or deliverables for the Project.
- B. If the Diversion Authority wishes greater assurance as to any element of Project cost, feasibility, or schedule, the Diversion Authority will employ an independent cost estimator, contractor, or other appropriate advisor.

24. CONSTRUCTION PROGRESS PAYMENTS. Recommendations by HMG to the Diversion Authority for periodic construction progress payments to the construction contractor(s) will be based on HMG's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by HMG to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that HMG has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to the Diversion Authority free and clear of liens, claims, security interests, or

encumbrances; or that there are no other matters at issue between the Diversion Authority and the construction contractors that affect the amount that should be paid.

25. RECORD DRAWINGS. Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. To the extent that HMG prepares, compiles, and furnishes information to be incorporated into the Record Drawings, HMG will be responsible for damages that are incurred by the Diversion Authority to the extent caused by any negligent errors or omissions by HMG in preparing, compiling, and furnishing such information. HMG is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.

26. CONSULTANT'S INSURANCE. HMG shall maintain throughout this Agreement the following insurance:

A. HMG 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 HMG's employees;
- (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than HMG'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 HMG, or
 - (b) by any other person for any other reason;
- (5) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
- (6) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.

B. The policies of insurance required by this Section will:

- (1) With respect to insurance required by above paragraphs 27(A)(3) through 27(A)(6) inclusive, be written on an occurrence basis, included as additional insureds (subject to any customary exclusion regarding Professional liability and Workers

Compensation) the Diversion Authority, the State of North Dakota, and any other individuals or entities identified, all of whom will be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insured, and the insurance afforded to these additional insureds will provide primary coverage for all claims covered in the General Liability and Automobile Liability Policies;

- (a) All insurance policies required under this Agreement, including the Excess or Umbrella Liability policies, must be from insurers rated “A-” or better by the A.M. Best Company, Inc.
- (2) Include at least the specific coverages and be written for not less than the limits of liability specified or required by Laws or Regulations, whichever is greater;
- (3) Contain a provision or endorsement that the coverage afforded will not be canceled or renewal refused until at least thirty (30) days prior written notice has been given to the Diversion Authority and to each other additional insured identified to whom a certificate of insurance has been issued (and the certificates of insurance furnished by HMG pursuant to this section will so provide);
- (4) Remain in effect at least until final payment and at all times thereafter when HMG may be correcting, removing, or replacing defective work;
- (5) Include completed operations coverage:
 - (a) Such insurance will remain in effect for two (2) years after final payment.
 - (b) HMG will furnish the Diversion Authority and each other additional insured identified, to whom a certificate of insurance has been issued, evidence satisfactory to the Diversion Authority and any such additional insured of continuation of such insurance at final payment and one year thereafter.
- (6) Not limit in any way HMG’s duties to defend, indemnify, and hold harmless the Diversion Authority and the State of North Dakota, and those parties’ officers, employees, agents, consultants, subcontractors, and representatives in accordance with Section 39;
- (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 HMG’s insurance companies might have against the Diversion Authority or the State of North Dakota.
- (8) Either in the policies or in endorsements, contain a provision that HMG’s insolvency or bankruptcy will not release the insurers from payment under the policies, even when HMG’s insolvency or bankruptcy prevents HMG from meeting the retention limits under the policies;

- (9) Either in the policies or in endorsements, contain cross liability/severability of interests, to ensure that all additional parties are covered as if they were all separately covered (with the exception of Workers Compensation and Professional liability policies);
 - (10) Either in the policies or in endorsements, contain a provision that the legal defense provided to the Diversion Authority and the State of North Dakota must be free of any conflict of interest, even if retention of separate legal counsel is necessary;
 - (11) Either in the policies or in endorsements, contain a provision that any attorney who represents the State of North Dakota must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C § 54-12-08;
 - (12) Either in the policies or in endorsements, contain a provision that HMG's policies will be primary and noncontributory regarding any other insurance maintained by or available to the Diversion Authority or the State of North Dakota, and that any insurance maintained by those parties will be in excess of HMG's insurance and will not contribute with it (except for Worker's Compensation and Professional Liability Policies).
- C. The limits of liability for the insurance required by this Section will provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
- (1) Worker's Compensation, and related coverages under Paragraphs 27(A)(1) and 27(A)(2):

(a) State:	Statutory;
(b) Applicable Federal (e.g. Longshoreman's):	Statutory;
(c) Employer's Liability:	\$1,000,000.
 - (2) HMG's General Liability under Paragraphs 27(A)(3) through 27(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 HMG:

(a) General Aggregate:	\$10,000,000
(b) Products- Completed Operations Aggregate:	\$2,000,000
(c) Personal and Advertising Injury:	\$2,000,000
(d) Each Occurrence (Bodily Injury and Property Damage):	\$2,000,000
(e) Property damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.	
(f) Excess or Umbrella liability:	
i. General Aggregate:	\$10,000,000
ii. Each Occurrence:	\$10,000,000

(3) Automobile Liability under Paragraph 27(A)(6) (which will include coverage for any auto, including owned, non-owned, and hired):

(a) Bodily injury:

- i. Each person: \$2,000,000
- ii. Each accident: \$2,000,000

(b) Property Damage:

- i. Each accident: \$2,000,000

OR

(c) Combined Single

- i. Limit of: \$2,000,000

(4) Professional Liability coverage will provide coverage for not less than the following amounts:

- (a) Each claim made: \$3,000,000
- (b) Annual Aggregate: \$3,000,000

(5) The following will be included as additional insured on all of HMG's general liability and automobile insurance policies required under this Agreement:

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

(6) If HMG is domiciled outside of the State of North Dakota, HMG will purchase and maintain employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on HMG's Workers' Compensation and General Liability Policies.

D. HMG will ensure that any of its subcontractors or subconsultants secure and maintain insurance policies and endorsements required of HMG and the Diversion Authority in limits no less than those specified and required to be passed down to subcontractors in Paragraph 8 of the Diversion Authority's contract with the North Dakota State Water Commission.

E. If any required policy is written on a "claims made" form, HMG must maintain the coverage continuously throughout the term of this Agreement, and, without lapse, for three (3) years beyond the termination or expiration of this Agreement and the Diversion Authority's acceptance of all services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that services commence under this Agreement.

F. Before HMG begins performing services, HMG must send the Diversion Authority certificates of insurance and any applicable endorsements attesting to the existence of coverage. HMG will not allow its policies to be cancelled, lapse, and/or terminate or be amended to reduce coverage below the minimums called for in this Agreement without thirty (30) days' notice to the Diversion Authority. The certificates of insurance issued to confirm HMG's compliance must reference this Agreement.

- G. If required insurance lapses during the term of this Agreement, the Diversion Authority is not required to process invoices after such lapse until HMG provides evidence of reinstatement that is effective as of the lapse date.
- H. The Diversion Authority shall have no specific responsibility to provide any general liability coverage or worker's compensation coverage for the benefit of HMG's employees during the terms of this Agreement.
27. THIRD PARTY DESIGNERS. The Diversion Authority and HMG acknowledge and agree that some of the design services for the Project will be separately engaged by the Diversion Authority through retention of separate design professionals or provided by the USACE. Notwithstanding any provision to the contrary, HMG shall have no responsibility for the accuracy or sufficiency of documentation prepared by those design professionals. HMG will notify the Diversion Authority of errors, discrepancies and inconsistencies it may discover in such documents. If such errors, discrepancies or inconsistencies cause an increase in cost or the time for performance, HMG shall be entitled to an equitable adjustment. In the event HMG performs constructability reviews, value engineering or any other reviews or tasks involving the design for the work contemplated by the Project, it is understood that such reviews will not render HMG liable in any manner for the duties of the Diversion Authority's separately-retained design professionals or the USACE.
28. OPEN RECORDS. HMG will cooperate with the Diversion Authority in responding to any request for documents by any third party to the extent such documents may be required to be disclosed under Chapter 44-04 of North Dakota Century Code regarding open records laws.
29. DATA FURNISHED BY THE DIVERSION AUTHORITY. The Diversion Authority will provide to HMG all data in the Diversion Authority's possession relating to HMG's services on the Project. HMG may reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the Diversion Authority.
30. ACCESS TO FACILITIES AND PROPERTY. The Diversion Authority will make its facilities accessible to HMG as required for HMG's performance of its services and will provide labor and safety equipment as required by HMG for such access. The Diversion Authority will perform, at no cost to HMG, such tests of equipment, machinery, pipelines, and other components of the Diversion Authority's facilities as may be required in connection with HMG's services.
31. ADVERTISEMENTS, PERMITS, AND ACCESS. Unless otherwise agreed to in the Scope of Services of a Task Order, the Diversion Authority will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for HMG's services or Project construction.
32. TIMELY REVIEW. The Diversion Authority will examine HMG's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other

consultants as the Diversion Authority deems appropriate; and render in writing decisions required by the Diversion Authority in a timely manner.

33. PROMPT NOTICE. The Diversion Authority will give prompt written notice to HMG whenever the Diversion Authority observes or becomes aware of any development that affects the scope or timing of HMG's services, or of any suspected or actual defect in the work of HMG or their third party designers or construction contractors.
34. ASBESTOS OR HAZARDOUS SUBSTANCES. If asbestos or hazardous substances in any form are encountered or suspected, HMG will stop its own work in the affected portions of the Project to permit testing and evaluation. If asbestos is suspected, HMG will, if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated. If hazardous substances other than asbestos are suspected, HMG will, if requested, conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary remedial measures at an additional fee and contract terms to be negotiated. Client recognizes that HMG assumes no risk and/or liability for a waste or hazardous waste site originated by other than HMG. Under no circumstances shall HMG be considered to be a generator, storer or transporter of hazardous substances or materials with regard to services provided under this Agreement or the Initial Agreement.
35. CONTRACTOR INDEMNIFICATION AND CLAIMS.
 - A. The Diversion Authority agrees to include in all construction contracts the provisions of Section 23, HMG's Personnel at Construction Site, and provisions providing contractor indemnification of the Diversion Authority and HMG for contractor's negligence.
 - B. The Diversion Authority shall require construction contractor(s) to name the Diversion Authority, the State of North Dakota, HMG, and its subcontractors as additional insureds on the contractor's general liability insurance policy.
 - C. The Diversion Authority agrees to include the following clause in all contracts with construction contractors, and equipment or materials suppliers: "Contractors, subcontractors, and equipment and material suppliers on the Project, or their sureties, shall maintain no direct action against HMG, HMG's officers, employees, affiliated corporations, and subcontractors for any claim arising out of, in connection with, or resulting from the consulting services performed. The Diversion Authority will be the only beneficiary of any undertaking by HMG."
36. OWNER'S INSURANCE.
 - A. The Diversion Authority will maintain property insurance on all pre-existing physical facilities associated in any way with the Project.
 - B. The Diversion Authority will provide for a waiver of subrogation as to all Owner-carried property damage insurance, during construction and thereafter, in favor of HMG, HMG's officers, employees, affiliates, and subcontractors.

- C. The Diversion Authority is not responsible for the payment of deductibles owed under HMG's insurance policies.
 - D. The Diversion Authority will provide (or have the construction contractor(s) provide) a Builders Risk All Risk insurance policy for the full replacement value of all Project work including the value of all onsite Owner-furnished equipment and/or materials associated with HMG's services. Such policy will include coverage for loss due to defects in materials and workmanship and errors in design, and will provide a waiver of subrogation as to HMG and the construction contractor(s) (or the Diversion Authority), and their respective officers, employees, agents, affiliates, and subcontractors. The Diversion Authority will provide HMG a copy of such policy.
 - E. The Diversion Authority reserves the right to enter into a program-wide insurance plan at its expense. HMG agrees to participate in such a program if named as an insured party and if commercially reasonable terms are available.
37. LITIGATION ASSISTANCE. Services required or requested of HMG by the Diversion Authority to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the Diversion Authority, except for suits or claims between the parties to this Agreement, will be defined in an authorized Task Order and reimbursed as mutually agreed.
38. INDEMNIFICATION. HMG will defend, indemnify, and hold harmless the Diversion Authority and the State of North Dakota, and those parties' officers, employees, agents, consultants, subcontractors, and representatives, from and against any and all claims, losses, liabilities, damages, expenses, demands, suits, fines, judgments, costs, expenses, and fees (including all fees and charges of attorneys, engineers, architects, and other professionals and all court, arbitration, mediation, or other resolution costs) arising out of or relating to claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by any negligent act or omission of HMG, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, and including all costs, expenses, and fees incurred by the Diversion Authority or the State of North Dakota in establishing and litigating the existence, scope, or any other matters relating to HMG's obligations to defend, indemnify, and hold harmless. HMG's obligations to defend will be free of any conflicts of interest, even if retention of separate legal counsel is necessary. HMG'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 HMG's insurance policy limits. HMG's obligations to defend, indemnify, and hold harmless will continue for a period of not less than six (6) years following completion of the Project or any termination or expiration of the Contract Documents.

The indemnified party shall provide notice to HMG after obtaining knowledge of any claim that it may have pursuant to this Section 39. In the event the indemnified party pursues a claim pursuant to this Section, the indemnified party will also provide relevant information and assistance to HMG.

39. 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 HMG and HMG's officers, directors, members, partners, agents, guarantors, Consultants, subconsultants, subcontractors, and employees, to Diversion Authority, its members and the State of North Dakota, and anyone else claiming by, through, or resulting from, or in any way related to the Project or Task Order, from any negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of HMG or HMG's officers, directors, members, partners, agents, consultants, subconsultants, subcontractors or employees shall not exceed the total amount, individually, collectively or in the aggregate shall not exceed the amount of twenty million dollars (\$20,000,000). This article takes precedence over any conflicting article of this Agreement or any document incorporated into it or referenced by it. This limitation of liability will apply whether HMG'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 HMG's officers, affiliated corporations, employees, and subcontractors. Diversion Authority further agrees that its sole and exclusive remedy, and any claim, demand or suit arising from or related to the services under this Agreement shall be directed and/or asserted only against HMG and not against any of HMG individual employees, officers, shareholders, affiliated firms or directors. Diversion Authority knowingly waives all such claims against HMG's individual employees, officers, shareholders, directors in their individual capacity or any affiliated companies to HMG.

40. 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. HMG must give the Diversion Authority notice immediately if HMG breaches, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a breach under this Agreement.

C. The parties will use their Best Efforts to resolve amicably any dispute, including use of alternative dispute resolution options.

D. All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

41. TERMINATION.

A. Either party may terminate this Agreement, in whole or in part, for cause if either party fails substantially to perform through no fault of the other and does not commence

correction of such nonperformance within twenty (20) days of written notice and diligently complete the correction thereafter.

- B. The Diversion Authority may terminate this Agreement, in whole or in part, or modify or limit HMG's services, and proportionately, HMG's compensation, if:
 - (1) The Diversion Authority determines that having HMG provide services has become infeasible due to changes in applicable laws or regulations, or
 - (2) Expected or actual funding to compensate HMG is withdrawn, reduced, or limited.
- C. Either party may terminate this Agreement, in whole or in part, for any or no reason upon thirty (30) days' written notice.
- D. On termination, HMG 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 HMG or the Diversion Authority may terminate this Agreement immediately upon written notice.
- F. Upon receipt of any termination notice from the Diversion Authority related to any specific Task Order, HMG must promptly discontinue all affected services under the Task Order unless the parties mutually agree otherwise.
- G. Upon the end date of the Agreement, which is the date when this Agreement as a whole, along with any pending Task Orders, expires or are terminated pursuant to their terms:
 - (1) The Diversion Authority will be released from compensating HMG for services other than those HMG satisfactorily performed prior to the end date.
 - (2) HMG must submit HMG's final invoice for payment within sixty (60) days of the end date. The Diversion Authority will not pay any HMG invoice received after this period.
 - (3) HMG 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, HMG must terminate its services as soon as it is reasonably possible to do so without (1) prejudice to the Diversion Authority's interests (or the interest of any person represented on the Diversion Authority's behalf) or (2) violation of HMG's statutory or ethical duties.

42. ADDITIONAL PAYMENT. Nothing contained in this Agreement shall obligate the Diversion Authority to make any payment for services rendered in any period after the termination of HMG's retention by the Diversion Authority.
43. SUSPENSION, DELAY, OR INTERRUPTION OF WORK. The Diversion Authority may suspend, delay, or interrupt the Services of HMG for the convenience of the Diversion Authority. In such event, HMG's contract price and schedule shall be equitably adjusted.
44. 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 Diversion Authority:

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

45. 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.
46. NO THIRD PARTY BENEFICIARIES. This Agreement gives no rights or benefits to anyone other than the Diversion Authority and HMG and has no third-party beneficiaries.
47. CONSEQUENTIAL DAMAGES. To the maximum extent permitted by law, HMG and HMG's affiliated corporations, officers, employees, and subcontractors shall not be liable for the Diversion Authority's special, indirect, or consequential 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. In order to protect HMG against indirect liability or third-party proceedings, the Diversion Authority will indemnify HMG for any such damages.

48. MATERIALS AND SAMPLES. Any items, substances, materials, or samples removed from the Project site for testing, analysis, or other evaluation will be returned to the Project site within sixty (60) days of Project close-out unless agreed to otherwise. The Diversion Authority recognizes and agrees that HMG is acting as a bailee and at no time assumes title to said items, substances, materials, or samples.
49. CONSULTANT'S 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. HMG's deliverables are for the Diversion Authority or others' convenience. Any conclusions or information derived or obtained from these files will be at user's sole risk.
50. ACCESS TO HMG'S ACCOUNTING RECORDS AND AUDIT RIGHTS.
 - A. HMG must allow the Diversion Authority and its designees to review and audit HMG's financial documents and records relating to this Agreement. HMG will maintain accounting records, in accordance with generally accepted accounting principles. These records will be available to the Diversion Authority for a period of one (1) year after HMG's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The Diversion Authority may only audit accounting records applicable to a cost-reimbursable type compensation. Upon finalization of the audit, the Diversion Authority will submit to HMG a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to HMG at the completion of an audit.
 - B. Within one hundred eighty (180) days after the date of the Notice of Audit Results, HMG will respond, in writing, to the Diversion Authority indicating (a) whether it concurs with the audit report, (b) clearly explaining the nature and basis for any disagreement as to a disallowed item of expense, and (c) providing a written explanation as to any questioned or no opinion expressed item of expense ("Response"). The Response will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, HMG may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the Diversion Authority. The Response will refer to and apply the language of this Agreement. HMG agrees that failure to submit a Response within the one hundred eighty (180) day period constitutes agreement with any disallowance of an item or expense and authorizes the Diversion Authority to finally disallow any items of questioned or no opinion expressed cost.

- C. The Diversion Authority will make its decision with regard to any Notice of Audit Results and Response within one hundred twenty (120) days after the date of the Notice of Audit Results. If it is determined by a court of competent jurisdiction or by mutual agreement that an overpayment has been made to HMG, HMG will repay the amount to the Diversion Authority or reach an agreement with the Diversion Authority on a repayment schedule within thirty (30) days after the date of an invoice from the Diversion Authority. If HMG fails to repay the overpayment or reach an agreement with the Diversion Authority on a repayment schedule within the thirty (30) day period, HMG agrees that the Diversion Authority will deduct all or a portion of the overpayment from any funds then or thereafter payable by the Diversion Authority to HMG for this project. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be the interest rate on judgments in North Dakota as calculated by the state court administrator pursuant to N.D.C.C. § 28-20-34. The rate of interest will be reviewed annually by the Diversion Authority and adjusted as necessary. HMG expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit to contest the Diversion Authority's decision.
51. OWNERSHIP. Ownership of work product and inventions created by HMG shall be as follows:
- A. Pre-Existing Consultant Materials. The Diversion Authority acknowledges and agrees that in the performance of the services, HMG 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 HMG 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, HMG hereby grants to the Diversion Authority a non-exclusive, non-transferable, royalty-free license, fully assignable to the Diversion Authority's member entities, to utilize the Pre-Existing Consultant Materials for the purpose of the Diversion Authority's Project.
- B. Derivative Consultant Materials. The Diversion Authority acknowledges and agrees that in the performance of the services, Consultant will utilize and develop customization, enhancements, improvements, modifications and adaptations of and to the Pre-Existing Consultant Materials (the "Derivative Consultant Materials"). HMG 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, HMG hereby grants to the Diversion Authority a non-exclusive, non-transferable, royalty-free license, fully assignable to the Diversion Authority's member entities, to utilize the Derivative Consultant Materials.
- C. New Consultant Materials. The Diversion Authority acknowledges and agrees that in the performance of the services, HMG may utilize and develop new software, hardware and

other technology or processes that do not utilize or incorporate, or are not based upon, the Pre-Existing Consultant Materials (“New Consultant Materials”). Between the parties, subject to the license grant-back set forth below, the Diversion Authority will retain all right, title and interest, including without limitation intellectual property rights, in and to the New Consultant Materials. The Diversion Authority shall have the full ownership of such New Consultant Materials without any limitation or restriction.

- D. License Grant Back. Subject to the terms and conditions of the Agreement, the Diversion Authority hereby grants to HMG a non-exclusive, transferable, royalty-free license to utilize the concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software and hardware architecture, and other background technologies that are newly developed by HMG under the Agreement and assigned to the Diversion Authority under this Agreement, to make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, import, and otherwise disposed of any products, technologies, and services and for any purposes without restriction.
- E. License Restrictions. Except as otherwise permitted above, the Diversion Authority and its member entities shall not, and shall not allow any third party to: (i) modify or otherwise create derivative works of the Pre-Existing Consultant Materials; (ii) use the Pre-Existing Consultant Materials for any other purpose, other than the Diversion Authority’s Project; (iii) make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, or import any product that incorporates, embodies and/or is based upon the Pre-Existing Consultant Materials; (iv) sublicense, distribute or otherwise transfer to a third party any of the Pre-Existing Consultant Materials by itself or as incorporated in the services; or (v) reverse engineer, disassemble, decompile or attempt to derive the source code or underlying ideas or algorithms of the Pre-Existing Consultant Materials. Any additional use of the Pre-Existing Consultant Materials shall require a separate written license agreement.
- F. Miscellaneous. Nothing contained in this Agreement shall be construed as conferring to the Diversion Authority or any third party any license or right by implication, estoppel or otherwise to any intellectual property rights of HMG, other than the rights expressly granted under this Agreement. The Diversion Authority and its Member Entities may use said work products for the specific purpose for which the work product was intended. Any other use or reuse, without written verification or adaptation by HMG will be at the user’s sole risk.
- G. Diversion Authority Material. As between the parties, the Diversion Authority is the exclusive owner of all material HMG collects from the Diversion Authority in connection with the services under this Agreement, including copyrights. Within thirty (30) days of the end date of the Agreement, or upon the Diversion Authority’s notice at any time, HMG must give all materials collected to the Diversion Authority (or to another party at the Diversion Authority’s direction). Unless the Diversion Authority specifies otherwise, all files must be saved in Microsoft Word and Excel formats, as applicable. HMG must maintain HMG’s records relating to services under this Agreement and HMG’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 HMG receives final payment under this Agreement; or
- (2) The date when the Diversion Authority resolves with HMG the findings of any final audit.

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

52. REUSE OF PROJECT DOCUMENTS. Services and deliverables are for the exclusive use of the Diversion Authority and are not to be relied upon by third parties. All reports, drawings, specifications, documents, and other deliverables of HMG, 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, HMG agrees to grant to the Diversion Authority an irrevocable license to the Instruments of Service, the Diversion Authority agrees to indemnify HMG and HMG's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to the Diversion Authority's related entities' unauthorized reuse, change or alteration of these Project documents. Nothing in this Agreement shall constitute a waiver of the statutory limits of liability set forth in N.D.C.C. § 32-12.1-03 or a waiver of any available immunities or defenses.

53. CONFIDENTIAL INFORMATION AND PUBLICITY.

A. HMG agrees to hold in confidence the following confidential information:

- (1) All information that the Diversion Authority discloses to HMG; and
- (2) All information to which HMG gains access while providing services under this Agreement.

B. Confidential information does not include any information that HMG can demonstrate has been made available to the public (other than through a breach of this Agreement). As between HMG and the Diversion Authority, the Diversion Authority owns the confidential information, and the Diversion Authority authorizes HMG to use it only for purposes of performing this Agreement. HMG may also disclose the Diversion Authority's confidential information to the extent necessary to comply with law, provided HMG gives the Diversion Authority prior written notice. Upon the end date of this Agreement, HMG must destroy or return all confidential information to the Diversion Authority, at the Diversion Authority's discretion, and certify to the Diversion Authority, in writing, that it has done so; provided, however, such destruction shall include, without limitation, the process of expunging, to the extent reasonably practicable, all such confidential information from any computer, hard drive, word processor, server, backup tape, or other electronic device containing such confidential information. Notwithstanding the foregoing, HMG may retain one 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. HMG must not make any public announcement, press release, or other writing relating to the services under this Agreement without the Diversion Authority's prior written approval.
 - D. HMG understands a breach under this section may result in irreparable damage for which no adequate remedy may be available. Accordingly, injunctive relief and other equitable relief are remedies available to the Diversion Authority.
54. MODIFICATION. This Agreement, including its attachments and schedules, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment approved by the Diversion Authority and executed by HMG and the Chair of the Diversion Authority on behalf of the Diversion Authority. The following attachment is hereby made a part of this Agreement: (1) Exhibit A – General Scope of Services. It 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.
55. FORCE MAJEURE. HMG is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of HMG. In any such event, HMG's contract price and schedule shall be equitably adjusted.
56. WAIVER. A party's waiver of enforcement of any of this Agreement's terms or conditions will be effective only if it is in writing. A party's specific waiver will not constitute a waiver by that party of any earlier, concurrent, or later breach or default.
- The Diversion Authority waives all claims against HMG, including those for latent defects, which are not brought within six (6) years of substantial completion of the facility designed or final payment to HMG, whichever is earlier.
57. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Diversion Authority, its successors and assigns, and any such successor shall be deemed substituted for the Diversion Authority under the terms of this Agreement. This Agreement shall likewise be binding upon HMG, 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.
58. NEGOTIATED AGREEMENT. This Agreement has been arrived at through negotiation between the parties.
59. 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 HMG. This Agreement, and particularly the contractual risk allocation and liability provisions, shall be interpreted and

applied, and the professional accountability determined in such a manner that the integrated nature, shared control of the service performance, and joint decision making roles of the parties and HMG's role as agent for the Diversion Authority shall be given due and full consideration. Further, the Parties agree to re-visit this Agreement, if necessary, to better reflect the Parties' changing roles on the Project, and any changes in HMG's role as the Project proceeds.

60. 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.
61. WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THAT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS AGREEMENT AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS BY OR ON BEHALF OF THE PARTIES FOR PROJECT PROPERTY ACQUISITION AND/OR CONSTRUCTION CONTRACT CLAIMS AND DEFENSES.
62. DISPUTE RESOLUTION. The Diversion Authority and HMG shall endeavor to resolve claims, disputes and other matters in question between them by non-binding mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for non-mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of non-binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

If the parties do not resolve a dispute through non-binding mediation pursuant to this Section, then the method of binding dispute resolution shall be via formal claims filed in a court of competent jurisdiction.

63. CONTROLLING LAW AND VENUE. This Agreement, its interpretation and performance, and any other claims related to it shall be controlled by the laws of the state where the services or work was provided, and any action brought as a result of any claim, demand or cause of action arising under the terms of this Agreement shall be brought in a court of competent jurisdiction within the state where the services or work were provided.

This Agreement is executed the day and year above noted.

DIVERSION AUTHORITY:

Metro Flood Diversion Authority

By: 

Timothy J. Mahoney, Chair
Diversion Authority Board

By: 

Michael V. Redlinger, Co-Executive Director
Metro Flood Diversion Authority

(Additional signature contained on the following page.)

HMG:

Houston-Moore Group, LLC

By: 

Jeffrey J. Volk, President

Fargo-Moorhead Diversion Authority
Houston-Moore Group's Role*

Exhibit A – General Scope of Services

1. General
 - a. Project Management (Current TO 1)
 - b. H & H Support (Current TO 9)
 - c. CLOMR Assistance
 - d. Other In-Town Levee Design/Construction Administration (Current TOs 13 and 17)
2. PPP Related Tasks
 - a. Design related to Bridging Documents
 - b. Permitting
 - c. Environmental Review, Documentation, and Processing
 - d. Adaptive Management Planning and Monitoring
 - e. Recreation Design
 - f. Review of Proposers Concepts During Solicitation/Selection Process
 - g. Land Acquisition in PPP reaches
 - h. Field Services/RPR for PPP (Bridge/Roadway and Local Drainage Features)
3. Upstream Area LERRDs Design/Construction Administration
 - a. Design of Local, State, Federal bridge and highway improvements including I-29, Cass Hwy 81, US Highway 75, Clay County SAHs 7 and 61, and other potential local roadways
 - b. Resident Project Representative tasks associated with construction of upstream LERRDs
 - c. Designer of Record tasks associated with construction of upstream LERRDS
4. Upstream Area non-LERRDs Design/Construction Administration
 - a. Comstock Infrastructure Improvements
 - b. Christine and Wolverton Infrastructure Improvements (if needed)
 - c. Local Drainage/Connecting Channel Design
 - d. Resident Project Representative tasks associated with construction of above items
 - e. Designer of Record tasks associated with construction of above items
5. Upstream Area General
 - a. Technical Review of USACE-led Design Segments
 - b. Permitting
 - c. Environmental Review, Documentation, and Processing
 - d. Adaptive Management Planning and Monitoring
 - e. Design Support for USACE-led Design Segments (if needed)
 - f. Utility Relocation Services in Staging Area
 - g. Land Surveying Associated with HMG designed projects
 - h. Land Surveying Associated with Staging Area Easement/Buyout Acquisition
 - i. Staging Area Mitigation/Demolition Design, including any ring levees and structure mitigation work.
 - j. Land Acquisition in Staging Area

* HMG will coordinate and cooperate in Good Faith with the Authority's Project Management Consultant.

EXHIBIT B

Houston Moore Group LLC	HMG 2018 Rates Diversion Authority Contract
<u>Category</u>	Effective May 1, 2018
Principal Engineer	\$247.00
Senior Project Manager	\$240.00
Senior Professional Engineer	\$223.00
Project Manager	\$200.00
Professional Engineer II	\$195.00
Professional Engineer I	\$184.00
Project Coordinator	\$184.00
Project Engineer	\$156.00
Graduate Engineer	\$139.00
Legislative/Grants/Funding Specialist	\$200.00
Project Manager Assistant	\$134.00
Senior Environmental Project Manager	\$223.00
Senior Environmental Scientist	\$195.00
Environmental Scientist	\$167.00
Scientist	\$148.00
Graduate Scientist	\$134.00
Engineering Specialist	\$172.00
Senior Engineering Designer	\$161.00
Engineering Designer II	\$139.00
Engineering Designer I	\$134.00
Senior Construction Engineer/Specialist	\$182.00
Construction Engineer/Specialist II	\$154.00
Construction Engineer/Specialist I	\$139.00
Graduate Construction Engineer	\$131.00
Engineering Technician III	\$134.00
Engineering Technician II	\$117.00
Engineering Technician I	\$103.00
Technician Intern	\$90.00
Senior GIS Project Manager	\$195.00
GIS Manager	\$179.00
GIS Developer	\$156.00
GIS Programmer III	\$144.00
GIS Programmer II	\$134.00
GIS Programmer I	\$129.00
GIS Technician III	\$129.00
GIS Technician II	\$123.00
GIS Technician I	\$116.00

Houston Moore Group LLC	HMG 2018 Rates Diversion Authority Contract
<u>Category</u>	Effective May 1, 2018
Senior Project Manager – Land Surveying	\$203.00
Senior Land Surveyor	\$184.00
Land Surveyor	\$162.00
Survey Manager	\$144.00
Graduate Land Surveyor	\$129.00
GPS Survey Crew Chief	\$184.00
Survey Crew Chief II	\$139.00
Survey Crew Chief I	\$129.00
Survey Technician III	\$100.00
Survey Technician II	\$89.00
Survey Technician I	\$83.00
CADD Manager	\$144.00
CADD Technician III	\$129.00
CADD Technician II	\$123.00
CADD Technician I	\$116.00
Computer Manager	\$173.00
Computer Technician	\$161.00
Communications Manager	\$179.00
Communications Specialist	\$139.00
Senior Planner	\$203.00
Associate Planner	\$145.00
Technical Writer	\$100.00
Administrative Assistant	\$83.00
Receptionist	\$78.00
Bookkeeper	\$100.00
Controller	\$179.00

Chargeable Expenses

Lodging & Meals*	Actual Cost
Per Diem*	\$60 per day
Project Mileage	IRS Rates
Motorized Offroad Vehicles	\$75/day
Iron Pins	\$1.25 each
Fence Post (each)	\$5 each
Project Expenses	Actual Cost
Sub-Consultants	Actual Cost + 10%

*Out-of-town travel expenses

EXHIBIT B

AMENDMENT NO. 2 TO MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS AMENDMENT (the “Amendment”) made and entered into this 19th day of December, 2019, by and between the Metro Flood Diversion Authority (“Diversion Authority”) and Houston-Moore Group, LLC (“HMG”) (collectively referred to as the “parties”).

RECITALS

WHEREAS, the parties previously entered into a Master Agreement for Professional Services, dated May 1, 2017 (the “Agreement”), whereby HMG would provide project management and engineering services for the Fargo-Moorhead Area Diversion Project, subject to the oversight of the Co-Executive Directors, Executive Director, and the Diversion Authority Board; and

WHEREAS, the Diversion Authority and HMG subsequently entered into the Amendment No. 1 to Master Agreement for Professional Services, dated May 17, 2018, (“Amendment No. 1”) to increase the hourly rates for services rendered by HMG under the Agreement. A copy of Amendment No. 1 is attached hereto as **Exhibit A**, and includes a copy of the Agreement as an exhibit to Amendment No. 1; and

WHEREAS, the term of the Agreement will expire on December 31, 2019; and

WHEREAS, the parties desire to amend the Agreement to extend the termination date for a period of approximately sixty (60) days to allow the Co-Executive Directors, Executive Director, and the Diversion Authority Board to negotiate new terms and conditions of the Agreement; and

WHEREAS, Section 12 of the Agreement allows for the extension of the term of the Agreement by written amendment; and

WHEREAS, Section 54 of the Agreement provides that the Agreement may only be changed by written amendment approved by the Diversion Authority and executed by HMG and the Chair of the Diversion Authority on behalf of the Diversion Authority; and

WHEREAS, the parties desire to enter into this Amendment No. 2 to extend the termination date until March 2, 2020.

NOW THEREFORE, in consideration of the mutual agreements and undertakings of the parties, and for other good and valuable considerations, the parties hereto agree as follows:

1. The above described Agreement is hereby extended and shall remain in effect from December 31, 2019, through March 2, 2020, and the termination date as referred to in Section 12 the Agreement is hereby amended and changed to March 2, 2020.

2. The Agreement, except as amended, revised, or changed by the terms of Amendment No. 1 and this Amendment No. 2, shall remain in full force and effect.

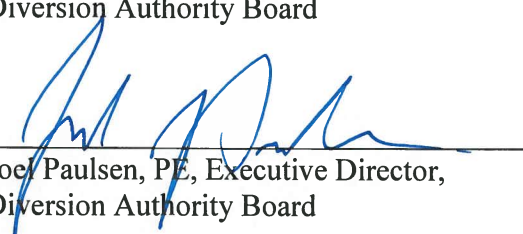
Dated this 14th day of December, 2019.

DIVERSION AUTHORITY:

Metro Flood Diversion Authority



Mary Scherling, Chair
Diversion Authority Board



Joel Paulsen, PE, Executive Director,
Diversion Authority Board

HMG:

Houston-Moore Group LLC

By: 

Its: President



Board Meeting

February 27, 2020

SUBJECT: Task Order 1, Amendment 15 – Project Management
Houston-Moore Group

RECOMMENDATION: Board Approval

BACKGROUND / KEY POINTS: Amendment to extend the period of performance (expires December 31, 2020) and to increase the budget for subtasks to be achieved in FY2020; subtasks are project management, public involvement, and project controls.

FINANCIAL CONSIDERATIONS: Total contract value is **\$7,161,588.05**; this is an increase of **\$501,073.00**

VOTING REQUIREMENTS: Majority of DA Board

Disclaimer: Voting requirements may be subject to changes in the law, parliamentary procedural matters, or other unforeseen issues. The DA General Counsel provides opinion on questions of voting requirements in accordance with the North Dakota State Statutes and parliamentary procedure.

Respectfully Submitted:

Joel Paulsen, PE
Executive Director

Attachments: Task Order 1, Amendment 15 – Program Management

Executive Director Contracting Recommendation

Date: 02/19/2020

RECOMMENDATION FOR ACTION:

The Executive Director has reviewed and recommends approval of the following Contract Action(s).

SUMMARY OF CONTRACTING ACTION:

Per the contract review and approval procedures that were adopted by the Diversion Authority on November 10, 2016 and amended August 23, 2018, the Owner's Program Management Consultant (PMC) or Engineer of Record (EOR) is directed to prepare task orders and task order amendments for existing Master Services Agreements (MSA) and submit them to the Executive Director for review and action. If the task order or amendment is greater than \$150,000, the Executive Director's recommendation shall be submitted to the Finance Committee for review and action, and the Finance Committee shall submit their recommendation to the Diversion Authority Board for approval.

The Owner's PMC has prepared the following Contract Action(s):

Houston-Moore Group, LLC (HMG)

Task Order 1, Amendment 15: Project Management

\$501,073

- Add 2020 subtask budgets
- Extend the Period of Performance (POP) to December 31, 2020

BACKGROUND AND DISCUSSION:

Under Task Order 1, Houston-Moore Group, LLC (HMG) is responsible for providing overall project management of Engineer design teams and subcontractor design teams, coordinating with the Owner and Program Management Consultant (PMC), providing public involvement assistance, and providing on-call services when requested. HMG has provided these professional services from March 8, 2012, to the present time.

The POP for this task order ends February 28, 2019 and these services are needed in 2020 to manage contracted project work. This amendment adds 2020 budgets for the Project Management, Public Involvement, and Project Controls subtasks and extends the POP to December 31, 2020.

The table below summarizes the contracting history for this task order and the current contracting action.

SUMMARY OF CONTRACTING HISTORY AND CURRENT CONTRACT ACTION:

	Budget Change	Initial or Revised Project Cost	Project Start	Project Completion	Comments
Task Order 1 Amendment 0	\$ -	\$961,175	8-Mar-12	30-Sep-12	Initial authorization of subtasks A through C.
Task Order 1 Amendment 1	\$1,075,000	\$2,036,675	10-Oct-12	30-Sep-13	Added subtask D. Insurance, and funding for subtasks A.i (Project Management) and A.ii (Public Involvement Assistance).
Task Order 1 Amendment 2	\$36,000	\$2,072,675	10-Jan-13	30-Sep-13	Added meetings and funding under A.i (Project Management).
Task Order 1 Amendment 3	\$350,000	\$2,422,675	10-Sep-13	30-Sep-14	Extended POP for All Work to 30-Sep-14, and added funding for subtask A.i (Project Management).

	Budget Change	Initial or Revised Project Cost	Project Start	Project Completion	Comments
Task Order 1 Amendment 4	\$65,000	\$2,487,675	13-Feb-14	30-Sep-14	Added funding and reallocated existing funding within subtasks.
Task Order 1 Amendment 5	\$920,000	\$3,407,675	14-Aug-14	30-Sep-15	Extended POP for All Work to 30-Sep-15, and added funding for subtasks A.i (Project Management) and D. (Insurance).
Task Order 1 Amendment 6	\$450,000	\$3,857,675	14-Aug-15	31-Mar-16	Extended POP for All Work to 31-Mar-16, and added funding for subtasks A.i (Project Management), A.ii (Public Involvement Assistance), and D. (Insurance).
Task Order 1 Amendment 7	\$398,000	\$4,255,675	11-Mar-16	31-Dec-16	Add funding for subtasks A.i (Project Management) and A.ii (Public Involvement Assistance). Add insurance requirement for 2016. Add requirements for monthly schedule updates invoicing and status reporting. Extends POP for All Work through 31-Dec-16.
Task Order 1 Amendment 8	\$15,100	\$4,270,775	23-Jun-16	31-Dec-16	Increase Subtask D (Insurance) to cover actual 2016 insurance cost and updated the programmatic schedule activity ID for Project Management subtasks.
Task Order 1 Amendment 9	\$109,752	\$4,380,527	11-Aug-16	31-Dec-16	Add budget for additional monthly reporting and scope and budget for completed work packages GIS submittals.
Task Order 1 Amendment 10	\$790,000	\$5,170,527	01-Jan-17	31-Dec-17	Extend POP for All Work through 31-Dec-17 and add 2017 scope and budget.
Task Order 1 Amendment 11	\$143,038	\$5,313,565	01-Jan-17	31-Dec-17	Incorporate new MSA terms and conditions dated May 01, 2017, and adjust budgets to reflect new MSA billing rates.
Task Order 1 Amendment 12	\$575,310.05	\$5,888,875.05	01-Jan-18	31-Dec-18	Extend POP through 31-Dec-18 and add 2018 budget.
Task Order 1 Amendment 13	\$771,640	\$6,660,515.05	01-Jan-19	31-Dec-19	Add 2019 budgets, reallocate portions of unused budgets, and extend POP through 31-Dec-19.
Task Order 1 Amendment 14	\$0	\$6,660,515.05	01-Jan-20	28-Feb-20	Extend the POP to February 28, 2020.
Task Order 1 Amendment 15	\$501,073	\$7,161,588.05	29-Feb-20	31-Dec-20	Add 2020 subtask budgets and extend the POP to December 31, 2020.

FINANCIAL CONSIDERATIONS:

Amendment 15 to Task Order No. 1 adds 2020 budgets for subtasks 2.A.i (Project Management), 2.A.ii (Public Involvement Assistance) and 2.B (Project Controls), and extends the POP to December 31, 2019.

HMG provided the attached cost proposal for 2020 Project Management services. The PMC has reviewed the level of effort and labor rates in this cost proposal. Because a new MSA is concurrently being prepared and the 2020 labor rates are not yet established, HMG estimated 2020 labor rates based on 2019 rates plus 3.5 percent. This task order is billed on a time and materials basis, and only incurred costs at approved labor rates are invoiced. Below is a summary of the review.

1. Project Management (subtask 2.A.i) – HMG’s proposed \$674,400 Project Management budget includes \$614,400 in HMG services and \$60,000 in subcontractor services.
 - a. The HMG budget includes 2,400 hours of labor at a rate of \$256 per hour. These hours represent approximately a 1.15 Full Time Equivalent (FTE) level of effort. This level of effort matches last year’s level of effort.
 - b. The proposed subcontractor budget of \$60,000 includes an MSA allowed 10 percent HMG mark-up on subcontracted work.
 - i. This assumes a \$1,000 monthly budget for each of HMG’s five (5) subcontracted firms. This level of effort is half of the previous year’s budgeted level of effort, and generally matches the 2019 actual level of effort.
 - ii. Subcontractor services under this task order include invoice preparation, meetings, and other management services.
 - c. The budget remaining on this subtask after December 31, 2019 is \$235,455.
 - d. The PMC recommends a project management subtask budget amendment of \$438,945, which is the difference between the 2020 budget request and the remaining subtask budget.
2. Public Involvement Assistance (subtask 2.A.ii) - HMG’s proposed \$35,568 Public Involvement Assistance budget includes 168 hours of labor at an average rate of approximately \$212 per hour.
 - a. This level of effort is an additional 5.5 hours per month over their actual 2019 level of effort, but is a reasonable estimate for the scoped work.
 - b. The budget remaining on this subtask after December 31, 2019 is \$10,110.
 - c. The PMC recommends a Public Involvement Assistance subtask budget amendment of \$25,458, which is the difference between the 2020 budget request and the remaining subtask budget.
3. Project Controls (subtask 2.B) – HMG’s proposed \$73,104 Project Controls budget includes 456 hours of labor at an average rate of approximately \$160 per hour.
 - a. This level of effort is approximately 7 hours per month more than the 2019 actual level of effort, but is a reasonable estimated for the scoped work.
 - b. The budget remaining on this subtask after December 31, 2019 is \$36,435.
 - c. The PMC recommends a Project Controls subtask budget amendment of \$36,670, which is the difference between the 2020 budget request and the remaining budget.
4. On-Call Services (subtask 2.C) – The budget remaining on this subtask after December 31, 2019 is \$31,379. The PMC feels this is adequate for the 2020 performance period and does not recommend a budget amendment for this subtask.
5. Time Extension: The POP will expire on February 28, 2020, and these services are needed through 2020. Therefore, the PMC recommends that the POP for this task order be extended to December 31, 2020.

TASK ORDER 1 BUDGETS BY SUBTASK:

Subtask (Work Order #)	Activity ID	Current Budget (\$)	Change (\$)	Revised Budget (\$)
A.i Project Management	SW-1160	5,373,305.00	438,945	5,812,250.00
A.ii Public Involvement Assistance	SW-1160	308,487.00	25,458	333,945.00
B. Project Controls	SW-1160	447,965.00	36,670	485,635.00
C. On-Call Services	SW-1160	35,122.00	0	35,122.00
D. Insurance	SW-1160	495,636.05	0	495,636.05
TOTAL		6,660,515.05	501,073	7,161,588.05

The PMC prepared this task order amendment, and feels the information is accurate, complete, and ready for Executive Director review.

ATTACHMENT(S):

1. DRAFT Task Order 1, Amendment 15
2. HMG Cost Proposal for Task Order 1, Amendment 15

Prepared by: Program Management Consultant

John W. Glatzmaier
 John Glatzmaier, P.E.
 Jacobs

February 19, 2020
 Date

Submitted by:

Joel Paulsen Diversion Authority Executive Director
Concur: February 21, 2020 Non-Concur:

Cc: Technical Advisory Group

- Nathan Boerboom, City of Fargo Engineer/Diversion Authority Project Manager
- David Overbo, Clay County Engineer
- Jason Benson, Cass County Engineer
- Robert Zimmerman, Moorhead City Engineer
- Matt Stamness, Assistant Cass County Engineer/Diversion Authority Project Manager
- Dustin Scott, West Fargo City Engineer

Received February 11, 2020



**FM Metro Risk Management Project
Task Order No. 1 - Amendment No. 15**

Task	Activity Description	Personnel Costs												2020 Budgeted Costs	Budget after December 31, 2019	Change in Cost Per Subtask
		Senior Project Manager		Senior Professional Engineer		Project Manager Assistant		GIS Technician III		Bookkeeper		Administrative Assistant				
		Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost			
Additional Services for 2020 HMG Project Management Tasks																
Subtask A.i	Project Management															
A.i	Project management services for the Diversion Authority. Provide primary project managers that oversee, coordinate and ensure all Task Order work is being completed. Attendance at Diversion Authority meetings, TAG, TWG, LSLCTT, CCJWRD and other project coordination calls and meetings.	2400	\$ 614,400	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	\$ 614,400	\$ -	\$ -
A.i	HMG sub-consultant project management services, including Barr Engineering, Braun Intertec, HDR, KLJ and SRF. Assumes each firm performs \$1,000 each month, which includes 10% markup.													\$ 60,000	\$ -	\$ -
A.i	Subtotal													\$ 674,400	\$ 235,455	\$ 438,945
Subtask A.ii	Public Involvement Assistance															
A.ii	Assist Diversion Authority in preparation and attendance at public meetings.	24	\$ 6,144	96	\$ 22,848	0	\$ -	48	\$ 6,576	0	\$ -	0	\$ -	\$ 35,568	\$ 10,110	\$ 25,458
Subtask B	Project Controls															
B	Establish and maintain task order cost and schedules, prepare budget and schedule reports and track and report status for each task order.	96	\$ 24,576	0	\$ -	288	\$ 40,896	0	\$ -	72	\$ 7,632	0	\$ -	\$ 73,104	\$ 36,434	\$ 36,670
Subtask C	On-Call Services															
C	Respond to requests from PMC for tasks not included in defined scopes. No additional budget requested.													\$ 31,379	\$ 31,379	\$ -
Subtask D	Insurance															
D	Insurance coverage is no longer a reimbursable expense under HMG's current MSA effective May 1, 2017.													\$ -	\$ -	\$ -
	Total	2520	\$ 645,120	96	\$ 22,848	288	\$ 40,896	48	\$ 6,576	72	\$ 7,632	0	\$ -	\$ 814,451	\$ 313,378	\$ 501,073
	Grand Totals													\$ 814,451	\$ 313,378	\$ 501,073

Houston-Moore Group, LLC

Task Order No. 1, Amendment 15

MFDA Purchase Order No. 151232

Project Management

In accordance with the Master Agreement for Professional Services related to the Fargo-Moorhead Area Diversion Project by and between Metro Flood Diversion Authority, as Diversion Authority ("Owner") and Houston-Moore Group, LLC (HMG) ("Engineer"), dated May 01, 2017 ("Agreement"), Owner and Engineer agree as follows:

The parties agree that in the event of a conflict between prior versions of this Task Order No. 1 and this Amendment, the terms and conditions in this Amendment shall prevail, provided however, nothing herein shall preclude Engineer from invoicing for work authorized under prior versions of this Task Order and performed prior to effective date of this Amendment, even to the extent such prior work was revised by this Amendment. All other terms and conditions shall remain the same and are hereby ratified and affirmed by the parties.

1. Specific Project Data

- A. Title: Project Management
- B. Description: Provide overall project management of Engineer design teams and subcontractor design teams, coordinate with Owner and Program Management Consultant (PMC), and provide public involvement assistance.
- C. Background:
 - i. Project Management will be led by two lead Project Managers, who will report to and work closely with the PMC to plan, organize, and direct activities required to implement the project. The lead Project Managers will have primary responsibility for satisfactory completion of assigned Task Orders. Engineer will assist Owner with the Owner's public involvement process. Such assistance is anticipated to include, at the request of Owner or PMC, attending public meetings, preparing exhibits, displays, and presentations for public meetings, meeting with individuals or agencies, and other task to be determined.
 - ii. Provide project controls, including general scheduling and reporting, compliance with USACE, Owner, and PMC guidelines and protocols, schedule management, and invoicing.
 - iii. Provide on-call services as requested by Owner or PMC for tasks not included in defined scopes.

2. Services of Engineer

- A. Project Management
 - i. General responsibilities for this task include, but are not limited to, the following:
 - 1. Provide the primary points of contact with the PMC.
 - 2. Provide overall project management to satisfactorily complete assigned Task Orders.
 - 3. Attend Project technical (TAG, TWG, LSLCTT, etc.) and board (Diversion Authority and CCJWRD) as requested by Owner or PMC to support coordination with Diversion Authority and USACE staff.

4. Provide day-to-day management oversight of Engineer's Design Consultant Teams (DCTs) for assigned Task Orders.
- ii. Public Involvement Assistance: General responsibilities for this task include, but are not limited to, the following:
 1. Attend public meetings and meetings with individual property and business owners. For requested public events, attend and give project presentations.
 2. Prepare exhibits, displays, and presentations for public meetings.
 3. Develop project animations of staging area and function of Diversion.
 4. Provide up to 8 staff for individual meetings with residents in the upstream staging area communities of Oxbow, Hickson, and Bakke.
 5. Meet with individuals or agencies, and other tasks determined by Owner or PMC.

Deliverables

- i. Monthly reports
- B. Project Controls: Responsibilities for this task include, but are not limited to, the following:
 - i. General
 1. Establish and maintain task order cost and schedule reporting systems.
 2. Prepare budget and schedule reports, implement cost and schedule variance reporting systems, and issue periodic variance reports.
 3. Establish and maintain a change control system.
 4. Track and report status for each task order.
 - ii. USACE/Diversion Authority Compliance
 1. Develop Project Management Guide/Protocols Document
 2. Develop Project Specific Safety Plan
 3. Develop Project Document Controls/Standards
 4. Develop Quality Assurance Plan (QAP)
 5. Develop survey standards
 - iii. Schedule Management
 1. Review and monitor task order schedules.
 2. Implement a schedule reporting system, which will monitor and manage the progress of project tasks on a monthly basis.
 3. Provide monthly schedule update.
 - a. PMC will provide a P6 schedule prior to the last Friday of each month.
 - b. Engineer will update the actual start and finish dates and provide estimated expected finish dates based on their work progress.
 - c. Monthly schedule updates will be provided by Engineer to PMC by the first Friday of the subsequent month (within one week of month end).

iv. GIS Final Design Submittals

1. Provide project record GIS final design submittals for completed work packages. Submittals include GIS files for completed WP-42 (In-Town Levees) designs, WP-43 (Oxbow-Hickson-Bakke Ring Levee) designs, and Diversion Bridge Channel designs (WP-02 CR-31 Bridge, WP-04 I-29 and Hwy 81 Bridges, WP-07 CR-32 and CR-22 Bridges).

Deliverables

- i. Prepare and submit project controls budget and schedule updates for monthly reports, and monthly invoices.
 - ii. GIS final design submittals.
- C. On-Call Services: Respond to requests for services from PMC for tasks not included in defined scopes. Requests will be provided by PMC in writing. Work will not be performed by Engineer without authorization by PMC or Owner.

Deliverables

- i. On-call service deliverables as requested.
- D. Insurance: Maintain throughout this task order the required insurance as set forth by the Agreement.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in the Agreement.

4. Times for Rendering Services

<u>Phase</u>	<u>Start Time</u>	<u>Completion Time</u>
All Work	March 8, 2012	December 31, 2020

5. Payments to Engineer

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

- i. Compensation for services identified under Subtasks A through D shall be on a Time and Material basis in accordance with the Standard Hourly Rates shown in Paragraph 14 of the Agreement.
- ii. The total compensation for services identified under the Task Order for Subtasks A through D is not-to-exceed amount as defined in the table below.
 1. Engineer will notify Owner when eighty percent (80%) of the budget on Subtasks A.i, A.ii, B, or C is expended.
 2. Engineer will prepare and submit an amendment for additional compensation when ninety percent (90%) of budget on Subtasks A.i, A.ii, B, or C is expended.
 3. Engineer will not perform work beyond one hundred percent (100%) of the budget for Subtasks A.i, A.ii, B, or C without Owner's written authorization.

Subtask (Work Order #)	Activity ID	Current Budget (\$)	Change (\$)	Revised Budget (\$)
A.i Project Management	SW-1160	5,373,305	438,945	5,812,250
A.ii Public Involvement Assistance	SW-1160	308,487	25,458	333,945
B. Project Controls	SW-1160	447,965	36,670	484,635
C. On-Call Services	SW-1160	35,122	0	35,122
D. Insurance	SW-1160	495,636.05	0	495,636.05
TOTAL		6,660,515.05	501,073	7,161,588.05

- B. Compensation and payments are as per the Agreement effective May 01, 2017.
- C. When invoicing work, Engineer shall note the Activity ID (shown in table above) associated with each invoiced activity.

6. Consultants:

- A. Barr Engineering Company
- B. Braun Intertec Corporation
- C. HDR, Inc.
- D. Kadrmas, Lee & Jackson
- E. Northern Technologies, Inc.
- F. SRF Consulting Group, Inc.

7. Other Modifications to Agreement: None

8. Attachments: None

9. Documents Incorporated By Reference: None

10. Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer 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 March 8, 2012.

ENGINEER:

Houston-Moore Group, LLC

Signature _____ Date _____

Jeffry J. Volk

Name

President

Title

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

C. Gregg Thielman

Name

Sr. Project Manager

Title

925 10th Avenue East
West Fargo, ND 58078

Address

cgthielman@houstoneng.com

E-Mail Address

(701) 237-5065

Phone

Fax

OWNER:

Fargo-Moorhead Metro Diversion Authority

Signature _____ Date _____

Joel Paulsen

Name

Executive Director

Title

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

Nathan Boerboom

Name

Diversion Authority Project Manager, City of Fargo

Title

225 4th Street North
Fargo, ND 58102

Address

nboerboom@cityoffargo.com

E-Mail Address

701) 476-6743

Phone

Fax



Board Meeting

February 27, 2020

SUBJECT: Master Agreement for Professional Services for Advanced Engineering and Environmental Services

RECOMMENDATION: Board Approval

BACKGROUND / KEY POINTS: Master services agreement to contract directly to the Diversion Authority (expires December 31, 2026)

FINANCIAL CONSIDERATIONS: Results in reduction of subconsultant mark-up (\$1.6 million)

VOTING REQUIREMENTS: Majority of DA Board

Disclaimer: Voting requirements may be subject to changes in the law, parliamentary procedural matters, or other unforeseen issues. The DA General Counsel provides opinion on questions of voting requirements in accordance with the North Dakota State Statutes and parliamentary procedure.

Respectfully Submitted:

Joel Paulsen, PE
Executive Director

Attachments: Master Agreement for Professional Services for Advanced Engineering and Environmental Services

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Related to:

**THE
FARGO-MOORHEAD AREA DIVERSION PROJECT**

BY AND BETWEEN

**METRO FLOOD DIVERSION AUTHORITY
as Diversion Authority**

and

**ADVANCED ENGINEERING AND ENVIRONMENTAL SERVICES, INC.
as AE2S**

Dated as of February 28, 2020

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

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MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES (the “Agreement”) is made as of February 28, 2020 (the “Effective Date”), by and between the Metro Flood Diversion Authority (“Diversion Authority”) and Advanced Engineering and Environmental Services, Inc. (“Consultant”) (collectively, the “Parties”).

WHEREAS, the Diversion Authority and the United States Army Corps of Engineers (“USACE”) have completed significant work in readying the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Project”) for implementation; and

WHEREAS, using a Split Delivery Method, the multiple Project features will be split into those implemented by the Diversion Authority and those implemented by the USACE, with the Diversion Authority delivering the majority of the Diversion Authority’s features through a Public-Private Partnership (“P3”) delivery method; and

WHEREAS, the portions of the Project that the Diversion Authority will implement through a P3 are collectively referred to as the Diversion Channel and Associated Infrastructure Work Package (“DCAI WP”); and

WHEREAS, the Diversion Authority has selected Consultant to provide the Diversion Authority with professional services, subject to the oversight of the Executive Director and the Diversion Authority Board; and

WHEREAS, the Diversion Authority desires to enter into a master agreement for professional services with Consultant and retain Consultant to provide professional services for the Project, commencing on February 28, 2020.

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

1. **EMPLOYMENT.** The Diversion Authority hires Consultant, which accepts the hiring with the Diversion Authority pursuant to this Agreement. Consultant is an independent contractor under this Agreement. Nothing in this Agreement shall be construed to create an employer-employee relationship between the Parties.
2. **DEFINITIONS.** All capitalized terms used and not otherwise defined herein shall have the meanings given to them in this Agreement as defined in this Section, unless a different meaning clearly applies from the context.

“Agreement” means this Master Agreement for Professional Services by and between the Metro Flood Diversion Authority and Advanced Engineering and Environmental Services, Inc. (AE2S).

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

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

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

“Consultant” means the individual or entity with which the Owner has contracted for performance of the services as set forth in this Agreement.

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

“Effective Date” means February 28, 2020.

“Executive Director” means the Chief Administrative Officer of the Metro Flood Diversion Authority.

“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 of business.

“Governing Body” means the body which performs the legislative and governmental functions of a political subdivision, including but not limited to, a board, council, or commission. For example, the Cass County Commission, the Clay County Commission, the Moorhead City Council and the Fargo City Commission are the Governing Body of each of said entities as the board for the CCJWRD is the Governing Body for that entity.

“JPA” or “Joint Powers Agreement” means the agreement dated as of June 1, 2016, by and between the Member Entities.

“LJPA” or “Limited Joint Powers Agreement” means the agreement dated July 11, 2011, and subsequently amended, which was entered into between the City of Moorhead, the City of Fargo, Clay County, Cass County, the Buffalo-Red River Watershed District and the Cass County Joint Water Resource District in order to cooperate in the planning and design phase of the Locally Preferred Plan.

“Member Entities” shall mean the City of Moorhead, the City of Fargo, Clay County, Cass County, and Cass County Joint Water Resource District.

“Metro Flood Diversion Authority” means the political subdivision created by the LJPA and continued through and vested with the powers set forth in the JPA.

“Owner” means the individual or entity with which the Consultant has contracted regarding the services set forth herein, and which has agreed to pay Consultant for the performance of the services, pursuant to the terms of this Agreement.

“Person” means any natural or legal person, county, city, municipality, political subdivision, public benefit corporation, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority, or other entity.

“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 further amended by the Final Supplemental Environmental Assessment, Modifications to the Fargo Moorhead Metropolitan Area Flood Risk Management Program dated February 2019 and the Fargo-Moorhead Flood Risk Management Project, Final Supplemental Environmental Impact Statement dated November 12, 2018.

3. AUTHORIZATION TO PROCEED. Execution of this Agreement by the Diversion Authority will be authorization for Consultant to proceed with the services, unless otherwise provided for in this Agreement.
4. PRIOR AGREEMENTS. Any prior agreements between the Diversion Authority or its Member Entities and Consultant shall, upon execution of this Agreement, be terminated and have no further force and effect. Except with respect to the Cass County Joint Water Resource District, any Task Orders between the Diversion Authority or its Member Entities and Consultant entered into on or after the effective date of this Agreement shall be subject to the terms of this Agreement.
5. REQUIRED MEETINGS. On the first Tuesday of every month during the term of this Agreement, or as otherwise agreed to by the parties, Consultant will meet with the Diversion Authority Executive Director and the Program Management Consultant (PMC) to review the current status of services under this Agreement and to coordinate with other consultants under separate agreements with the Diversion Authority.
6. SCOPE OF SERVICES. Consultant’s detailed scope of services, work schedule, and cost budget will be mutually agreed upon in writing and set forth in Task Orders issued by the Diversion Authority under this Agreement as directed by the Executive Director. 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.

7. CHANGES TO SCOPE OF SERVICES. The Diversion Authority may make or approve changes within the general scope of services in this Agreement. If such changes affect Consultant's cost of or time required for performance of the services as set out in any applicable Task Order, then an equitable adjustment will be made through an amendment to the applicable Task Order or this Agreement.
8. RESPONSIBILITY FOR ERRORS OR DELAYS FROM INACCURATE DATA. Consultant and the Diversion Authority acknowledge that the reliability of Consultant's services depends upon the accuracy and completeness of the data supplied to Consultant. The Diversion Authority accepts sole responsibility for errors or delays in services resulting from inaccurate or incomplete data supplied to Consultant, and the Diversion Authority acknowledges and agrees that any additional services thereby necessitated will result in additional fees payable by the Diversion Authority to Consultant. Consultant must receive promptly the information to deliver the services as well as the Diversion Authority's prompt updates to any information where there has been a material change which may affect the scope or delivery of the services, such as a change in the nature of the Diversion Authority's products or equipment, systems, and/or processes that are the focus of Consultant's services.
9. TASK ORDERS. Consultant shall receive assignments for services under this Agreement through Task Orders authorized and provided by the Diversion Authority as directed by the Executive Director. The Diversion Authority shall compensate Consultant only for work contained within the Task Orders. Consultant shall not be obligated to perform any work or services unless such services are set forth in an executed Task Order. If Consultant engages in work beyond the scope of a Task Order, the Diversion Authority shall not compensate Consultant for that work, unless agreed to in writing by the Diversion Authority prior to the work being completed. All amendments to Task Orders must be authorized and provided by the in writing.
10. PERSONNEL. All persons assigned by Consultant to perform services as set forth in Task Orders issued under this Agreement shall be fully qualified to perform the work assigned to them. Consultant shall devote such personnel and resources, time, attention, and energies to the Diversion Authority's business as are necessary to fulfill the duties and responsibilities required by the Diversion Authority and agreed to by Consultant in any given Task Order. Consultant must endeavor to minimize turnover of personnel performing services under this Agreement. If the Diversion Authority is dissatisfied with any of Consultant's personnel, the Diversion Authority reserves the right to require removal of those personnel from the Task Order. The Diversion Authority shall provide Consultant with a written statement, including reasonable detail, outlining its reasons for desiring removal. Replacement personnel for the removed person shall be fully qualified for the position.
11. SUBCONTRACTORS. Consultant may enter into agreements with subcontractors in furtherance of their services under this Agreement, as approved by the Executive Director.
12. TERM. Unless terminated under Section 42, this Agreement shall remain in full force and effect for a period of approximately seven (7) years from the Effective Date through December 31, 2026. This Agreement shall take full force and effect on February 28, 2020, upon approval and execution by the Diversion Authority Board. Pursuant to Section 13 of this Agreement

and upon expiration of the initial term of this Agreement, this contract may be renewed by mutual agreement of the Parties.

13. EXTENSION OF TERM. This Agreement may be extended by written amendment. If this Agreement expires before the completion of a Task Order, the Agreement shall be deemed to have been extended until the completion of services under the applicable Task Order.
14. COMPENSATION. For all services rendered by Consultant, the Diversion Authority will pay Consultant an amount based on the time spent by those Consultant employees working on the Project and the Standard Hourly Rates applicable to those Consultant employees, plus certain reimbursable expenses (as set forth in this paragraph) and Consultant's subconsultant charges, plus a service charge of five percent (5%) on Consultant's approved subconsultants and reimbursable expenses, plus applicable sales, use, value added, business transfer, gross receipts, or other similar taxes. Consultant's Standard Hourly Rates for services rendered from the Effective Date through December 31, 2020, are listed in Exhibit A. Beginning January 1, 2021, and annually thereafter on January 1, Consultant's Standard Hourly Rates may be increased by amounts agreed upon by the Executive Director and the Consultant. The Executive Director shall be allowed to review the Standard Hourly Rates of Consultant on a quarterly basis to review the gross profit margins of the Consultant on the Project. Reimbursable expenses shall include non-unit based costs incurred by the Consultant, such as airfare, lodging, and meals and are listed in Exhibit B. Reimbursable expenses shall not include unit-based expenses, such as mileage and printing costs.
 - A. Budgetary amounts, excluding taxes, will be established for each Task Order executed under the Agreement. Consultant will make reasonable efforts to complete the services within the budget amount stated therein and will keep the Diversion Authority informed of progress toward that end so that the budget or work effort can be adjusted if found necessary. Consultant is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is the Diversion Authority obligated to pay Consultant beyond these limits. When any budget has been increased, Consultant's costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.
 - B. If a Task Order issued under this Agreement contains a not-to-exceed compensation amount, the Diversion Authority will only pay compensation to Consultant for fees and/or expenses that are less than or equal to the not-to-exceed amount stated on the Task Order, unless the Task Order has been amended pursuant to Section 7 of this Agreement.
 - C. The compensation is payable following the end of each month upon submission by Consultant of a monthly invoice setting forth the services performed in that month on behalf of the Owner. Invoices shall be sent as required in Section 15 of this Agreement. Invoices are due and payable within thirty (30) days of receipt.
15. INVOICING AND PAYMENT.
 - A. Consultant must submit invoices to the Diversion Authority before the fifteenth (15th) day of each month for all services provided and allowed expenses incurred during the preceding month. Consultant's Project Principle or Project Manager must personally

review each invoice before it is sent to the Diversion Authority to determine its accuracy and fairness, and to ensure the invoice complies with the requirements in this Agreement. Each invoice will be processed by the Diversion Authority and entered into the Aconex system for the following month.

B. Consultant must submit each original invoice to:

Diversion Authority:	APInvoicesFMDiv@jacobs.com
and	
Joel Paulsen:	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 each activity performed for each day in which services were 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 the Task Order Budgetary Breakdown;
- (8) Total amount of fees and costs "billed to date," including the preceding month;
- (9) Preferred remittance address, if different from the address on the invoice's coversheet; and
- (10) All of the work performed during that billing period, in accordance with the Task Order Budgetary Breakdown.

D. Consultant's invoice must be printed on a printed bill head and signed by the Project Principle or other authorized signatory.

E. If any Consultant invoices contain requests for expense reimbursement, Consultant must include copies of the corresponding invoices and receipts with that invoice.

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

G. In the event of a disputed billing, only the disputed portion will be withheld from payment, and the Diversion Authority shall pay the undisputed portion. The Diversion Authority will exercise reasonableness in disputing any bill or portion thereof. Interest will accrue on any disputed portion of the billing determined to be due and owing to Consultant.

- H. Payment does not imply acceptance of services, that expenses are allowable, or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, Consultant must credit any payment in error from any payment that is due or that may become due to Consultant under this Agreement.
 - I. The Diversion Authority will be charged interest at the rate of one-half percent (1/2%) per month, or that permitted by law if lesser, on all past-due amounts starting thirty (30) days after receipt of invoice. Payments will be first credited to interest and then to principal.
 - J. If the Diversion Authority fails to make payment in full within thirty (30) days of the date due for any undisputed billing, Consultant may, after giving seven (7) days' written notice to the Diversion Authority, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, Consultant will have no liability to the Diversion Authority for delays or damages caused by the Diversion Authority because of such suspension.
 - K. Without waiving any rights to recover payment for reimbursable taxes, fees or other costs per the provisions of Paragraph 15 herein, Consultant must pay in the first instance all fees, fines, taxes, or other costs of doing business related to the services.
16. RELATIONSHIP BETWEEN PARTIES. Consultant is retained by the Diversion Authority only for the purposes and to the extent set forth in this Agreement, and its relationship to the Diversion Authority shall, during the period or periods of services under this Agreement, be that of an independent contractor. Consultant shall be free to use such portion of Consultant's entire time, energy and skill during the course of this Agreement to meet its contractual obligation to the Diversion Authority. Neither Consultant, nor its personnel, shall be considered to be employed by the Diversion Authority or entitled to participate in any plans, arrangements or distributions by the Diversion Authority pertaining to or in connection with any benefits accorded the Diversion Authority's regular employees. The Diversion Authority shall not be financially responsible to Consultant, except for the payment of compensation specifically set forth in this Agreement, and shall not be responsible for the payment of any cost of living allowances, merit increases, medical insurance, employee's retirement, life or disability coverage, sick leave or holiday pay or vacation pay or any benefit of any kind not specifically set forth in this Agreement. Likewise, the Diversion Authority shall not be responsible for wage or salary withholding to the federal or any state government.
17. REPRESENTATIONS AND WARRANTIES. Consultant represents that the following statements are true:
- A. Consultant has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any member of the Diversion Authority with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
 - B. The Consultant team members performing the services hereunder have no interest that would constitute a conflict of interest with the Diversion Authority during the term of the Project. This does not preclude or prohibit other Consultant employees or representatives

from working with other parties who may participate on the Project and have potential or actual adverse interest to the Diversion Authority.

- C. This Agreement does not constitute a conflict of interest or default under any of Consultant's other agreements.
 - D. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Consultant's ability to perform under this Agreement.
 - E. Consultant is in compliance with all laws, rules, and regulations applicable to its business, including rules of professional conduct (the "Laws and Regulations").
 - F. During the term of this Agreement, Consultant must not take any action, or omit to perform any act, that may result in a representation becoming untrue. Consultant must immediately notify the Executive Director 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.
19. WORKING RELATIONSHIP. Consultant's Principal-in-Charge, Project Manager, and Deputy Project Manager shall be the individual(s) that will engage with the Diversion Authority's Executive Director. Consultant shall work in close cooperation and coordinate with the Diversion Authority's Program Management Consultant, advisors, and their staff as appropriate: Kimberly Daily and Paul Barthel, PMC; Martin Nicholson, Program Advisor Services, LLC; John T. Shockley, local counsel, under such terms and conditions as may be set from time to time by the Diversion Authority.
- Consultant recognizes that the Diversion Authority has assigned to the CCJWRD the tasks of acquiring property rights in North Dakota and to the Moorhead Clay County Joint Powers Authority (MCCJPA) the task of acquiring property rights in Minnesota. Under this Agreement, Consultant shall answer to and comply with all CCJWRD and MCCJPA work directives in furtherance of those responsibilities of the CCJWRD and MCCJPA which are in accordance with Consultant's scope of work.
20. INDEPENDENT PROFESSIONAL JUDGMENT. Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by Consultant in accordance with the independent professional judgment of each of its employees. Consultant shall perform the services rendered in accordance with accepted principals of its profession. 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 of the State of North Dakota.
21. 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 and at the same locality said services are

performed. Consultant will re-perform any services not meeting this standard without additional compensation.

22. SUBSURFACE INVESTIGATIONS. In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of Consultant.

23. CONSULTANT'S PERSONNEL AT CONSTRUCTION SITE.

- A. The presence or duties of Consultant's, or its subcontractor's or subconsultant's, personnel at a construction site, whether as onsite representatives or otherwise, do not make Consultant or Consultant's personnel, or Consultant's subcontractors or subconsultants, in any way responsible for those duties that belong to the Diversion Authority and/or the construction contractors or other entities, except as specifically outlined in a Task Order, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction contract documents and any health or safety precautions required by such construction work; for the safety precautions and programs incident thereto; for security or safety at any Project Site; or for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- B. Consultant and Consultant's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except Consultant's own personnel.
- C. For this Agreement only, construction sites include places of manufacture for materials incorporated into the construction work, and construction contractors include manufacturers of materials incorporated into the construction work.
- D. Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform work at the Project in accordance with any plans, specifications, drawings, details, or other construction or design documents prepared for the Project.
- E. For each service performed or furnished, Consultant shall be responsible only for those construction phase services that have been itemized and expressly required of Consultant in the authorizing Task Order. With the exception of such expressly required services, Consultant shall have no design, shop drawing review, or other obligations during construction and Diversion Authority assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction

observation and review, and all other necessary construction phase engineering and professional services. Consultant shall not be liable to the Diversion Authority for any construction phase professional services except for those services that are expressly required of Consultant in the authorizing Task Order.

24. OPINIONS OF COST, FINANCIAL CONSIDERATIONS, AND SCHEDULES.

- A. Consultant has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, Consultant makes no warranty that the Diversion Authority's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from any opinions of Project costs, financial analyses, economic feasibility projections, or schedules for the Project included in Consultant's services deliverables for the Project.
- B. If the Diversion Authority wishes greater assurance as to any element of Project cost, feasibility, or schedule, the Diversion Authority will employ an independent cost estimator, contractor, or other appropriate advisor.

25. CONSTRUCTION PROGRESS PAYMENTS. Recommendations by Consultant to the Diversion Authority for periodic construction progress payments to the construction contractor(s) will be based on Consultant's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by Consultant to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that Consultant has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to the Diversion Authority free and clear of liens, claims, security interests, or encumbrances; or that there are no other matters at issue between the Diversion Authority and the construction contractors that affect the amount that should be paid.

26. RECORD DRAWINGS. Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. Consultant is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.

27. 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 services itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
- (6) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.

B. The policies of insurance required by this Section will:

- (1) With respect to insurance required by Sections 27(A)(3) through 27(A)(6) inclusive, be written on an occurrence basis, included as additional insureds (subject to any customary exclusion regarding Professional liability and Workers Compensation) the Diversion Authority, the State of North Dakota, and any other individuals or entities identified, all of whom will be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insured, and the insurance afforded to these additional insureds will provide primary coverage for all claims covered in the General Liability and Automobile Liability Policies;
 - (a) All insurance policies required under this Agreement, including the Excess or Umbrella Liability policies, must be from insurers rated "A-" or better by the A.M. Best Company, Inc.
- (2) Include at least the specific coverages and be written for not less than the limits of liability specified or required by Laws or Regulations, whichever is greater;
- (3) Contain a provision or endorsement that the coverage afforded will not be canceled or renewal refused until at least thirty (30) days prior written notice has been given to the Diversion Authority and to each other additional insured identified to whom a certificate of insurance has been issued (and the certificates of insurance furnished by Consultant pursuant to this section will so provide);

- (4) Remain in effect at least until final payment and at all times thereafter when Consultant may be correcting, removing, or replacing defective services;
- (5) Include completed operations coverage:
 - (a) Such insurance will remain in effect for two (2) years after final payment.
 - (b) Consultant will furnish the Diversion Authority and each other additional insured identified, to whom a certificate of insurance has been issued, evidence satisfactory to the Diversion Authority and any such additional insured of continuation of such insurance at final payment and one (1) year thereafter.
- (6) Not limit in any way Consultant's duties to defend, indemnify, and hold harmless the Diversion Authority and the State of North Dakota, and those parties' officers, employees, agents, consultants, subcontractors, and representatives in accordance with Section 39;
- (7) Either in the policies or in endorsements, contain a "waiver of subrogation" (except for in the Professional Liability Policy and Workers Compensation policy) that waives any right to recovery any of Consultant's insurance companies might have against the Diversion Authority or the State of North Dakota;
- (8) Either in the policies or in endorsements, contain a provision that Consultant's insolvency or bankruptcy will not release the insurers from payment under the policies, even when Consultant's insolvency or bankruptcy prevents Consultant from meeting the retention limits under the policies;
- (9) Either in the policies or in endorsements, contain cross liability/severability of interests, to ensure that all additional parties are covered as if they were all separately covered (with the exception of Workers' Compensation and Professional Liability policies);
- (10) Either in the policies or in endorsements, contain a provision that the legal defense provided to the Diversion Authority and the State of North Dakota must be free of any conflict of interest, even if retention of separate legal counsel is necessary;
- (11) Either in the policies or in endorsements, contain a provision that any attorney who represents the State of North Dakota must first qualify as and be appointed by the North Dakota Attorney General as a special assistant attorney general as required under N.D.C.C § 54-12-08;
- (12) Either in the policies or in endorsements, contain a provision that Consultant's policies will be primary and noncontributory regarding any other insurance maintained by or available to the Diversion Authority or the State of North Dakota, and that any insurance maintained by those parties will be in excess of Consultant's insurance and will not contribute with it (except for 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 Sections 27(A)(1) and 27(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 Sections 27(A)(3) through 27(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: | \$2,000,000 |
| (c) Personal and Advertising Injury: | \$1,000,000 |
| (d) Each Occurrence (Bodily Injury and Property Damage): | \$2,000,000 |
| (e) Property damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable. | |
| (f) Excess or Umbrella liability: | |
| i. General Aggregate: | \$3,000,000 |
| ii. Each Occurrence: | \$4,000,000 |

(3) Automobile Liability under Section 27(A)(6) (which will include coverage for any auto, including owned, non-owned, and hired):

- | | |
|----------------------|-------------|
| (a) Bodily injury: | |
| i. Each person: | \$2,000,000 |
| ii. Each accident: | \$2,000,000 |
| (b) Property Damage: | |
| i. Each accident: | \$2,000,000 |
| OR | |
| (c) Combined Single | |
| i. Limit of: | \$2,000,000 |

(4) Professional Liability coverage will provide coverage for not less than the following amounts:

- | | |
|-----------------------|-------------|
| (a) Each claim made: | \$3,000,000 |
| (b) Annual Aggregate: | \$3,000,000 |

(5) The following will be included as additional insured on all of Consultant's general liability and automobile insurance policies required under this Agreement:

- (a) Cass County Joint Water Resource District;

- (b) Diversion Authority; and
- (c) State of North Dakota.

- (6) If Consultant is domiciled outside of the State of North Dakota, Consultant will purchase and maintain employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on Consultant's Workers' Compensation and General Liability Policies.
- D. Consultant will ensure that any of its subcontractors or subconsultants secure and maintain insurance policies and endorsements required of Consultant and the Diversion Authority in limits no less than those specified and required to be passed down to subcontractors in paragraph 8 of the Diversion Authority's contract with the North Dakota State Water Commission.
- E. If any required policy is written on a "claims made" form, Consultant must maintain the coverage continuously throughout the term of this Agreement, and, without lapse, for three (3) years beyond the termination or expiration of this Agreement and the Diversion Authority's acceptance of all services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that services commence under this Agreement.
- F. Before Consultant begins performing services, Consultant must send the Executive Director certificates of insurance and any applicable endorsements attesting to the existence of coverage. Consultant will not allow its policies to be cancelled, lapse, and/or terminate or be amended to reduce coverage below the minimums called for in this Agreement without thirty (30) days' notice to the Executive Director. The certificates of insurance issued to confirm Consultant's compliance must reference this Agreement.
- G. If required insurance lapses during the term of this Agreement, the Diversion Authority is not required to process invoices after such lapse until Consultant provides evidence of reinstatement that is effective as of the lapse date.
- H. The Diversion Authority shall have no specific responsibility to provide any general liability coverage or workers' compensation coverage for the benefit of Consultant's employees during the terms of this Agreement.
28. THIRD PARTIES. The Diversion Authority and Consultant acknowledge and agree that some of the design services for the Project will be separately engaged by the Diversion Authority through retention of separate professionals. Notwithstanding any provision to the contrary, Consultant shall have no responsibility for the accuracy or sufficiency of the services provided by such individuals. Consultant will notify the Diversion Authority of errors, discrepancies and inconsistencies it may discover in such services. If such errors, discrepancies or inconsistencies cause an increase in cost or the time for performance, Consultant shall be entitled to an equitable adjustment.
29. OPEN RECORDS. Consultant will cooperate with the Diversion Authority in responding to any request for documents by any third party to the extent such documents may be required

to be disclosed under Chapter 44-04 of North Dakota Century Code regarding open records laws.

30. DATA FURNISHED BY THE DIVERSION AUTHORITY. The Diversion Authority will provide to Consultant all data in the Diversion Authority's possession relating to Consultant's services on the Project. Consultant may reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the Diversion Authority.
31. ADVERTISEMENTS, PERMITS, AND ACCESS. Unless otherwise agreed to in the Scope of Services of a Task Order, the Diversion Authority will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for Consultant's services or Project construction.
32. ACCESS TO FACILITIES AND PROPERTY. The Diversion Authority will make its facilities accessible to Consultant as required for Consultant's performance of its services and will provide labor and safety equipment as required by Consultant for such access. The Diversion Authority will perform, at no cost to Consultant, such tests of equipment, machinery, pipelines, and other components of the Diversion Authority's facilities as may be required in connection with Consultant's services.
33. TIMELY REVIEW. The Executive Director will examine Consultant's studies, reports, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the Executive Director deems appropriate; and render in writing decisions required by the Executive Director in a timely manner.
34. PROMPT NOTICE. The Diversion Authority will give prompt written notice to Consultant whenever the Diversion Authority observes or becomes aware of any development that affects the scope or timing of Consultant's services, or of any suspected or actual defect in the work of Consultant or its subcontractors.
35. ASBESTOS OR HAZARDOUS SUBSTANCES. If asbestos or hazardous substances in any form are encountered or suspected, Consultant will stop its own work in the affected portions of the Project to permit testing and evaluation. If asbestos is suspected, Consultant will, if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated. If hazardous substances other than asbestos are suspected, Consultant will, if requested, conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary remedial measures at an additional fee and contract terms to be negotiated. The Diversion Authority recognizes that Consultant assumes no risk and/or liability for a waste or hazardous waste site originated by other than Consultant.
36. CONTRACTOR INDEMNIFICATION AND CLAIMS.
 - A. The Diversion Authority agrees to include in all construction contracts the provisions of Section 23, Consultant's Personnel at Construction Site, and provisions providing

contractor indemnification of the Diversion Authority and Consultant for contractor's negligence.

- B. The Diversion Authority shall require construction contractor(s) to name the Diversion Authority, the State of North Dakota, Consultant, and its subcontractors as additional insureds on the contractor's general liability insurance policy.
- C. The Diversion Authority agrees to include the following clause in all contracts with construction contractors, and equipment or materials suppliers: "Contractors, subcontractors, and equipment and material suppliers on the Project, or their sureties, shall maintain no direct action against Consultant, Consultant's officers, employees, affiliated corporations, and subcontractors for any claim arising out of, in connection with, or resulting from the consulting services performed. The Diversion Authority will be the only beneficiary of any undertaking by Consultant."

37. OWNER'S INSURANCE.

- A. The Diversion Authority will maintain property insurance on all pre-existing physical facilities associated in any way with the Project.
- B. The Diversion Authority will provide for a waiver of subrogation as to all Owner-carried property damage insurance, during construction and thereafter, in favor of Consultant, Consultant's officers, employees, affiliates, and subcontractors.
- C. The Diversion Authority will provide (or have the construction contractor(s) provide) a Builders Risk All Risk insurance policy for the full replacement value of all Project work including the value of all onsite Owner-furnished equipment and/or materials associated with Consultant's services. Such policy will include coverage for loss due to defects in materials and workmanship and errors in design, and will provide a waiver of subrogation as to Consultant and the construction contractor(s) (or the Diversion Authority), and their respective officers, employees, agents, affiliates, and subcontractors. The Diversion Authority will provide Consultant a copy of such policy.
- D. The Diversion Authority is not responsible for the payment of deductibles owed under Consultant's insurance policies.
- E. The Diversion Authority reserves the right to enter into a program-wide insurance plan at its expense. Consultant agrees to participate in such a program if named as an insured party and if commercially reasonable terms are available.

38. LITIGATION ASSISTANCE. Services required or requested of Consultant by the Diversion Authority to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the Diversion Authority, except for suits or claims between the parties to this Agreement, will be defined in an authorized Task Order and reimbursed as mutually agreed.

39. INDEMNIFICATION. Consultant will defend, indemnify, and hold harmless the Diversion Authority and the State of North Dakota, and those parties' officers, employees, agents, consultants, subcontractors, and representatives, from and against any and all claims, losses,

liabilities, damages, expenses, demands, suits, fines, judgments, costs, expenses, and fees (including all fees and charges of attorneys, engineers, architects, and other professionals and all court, arbitration, mediation, or other resolution costs) arising out of or relating to claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by any negligent act or omission of Consultant, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the services or anyone for whose acts any of them may be liable, and including all costs, expenses, and fees incurred by the Diversion Authority or the State of North Dakota in establishing and litigating the existence, scope, or any other matters relating to Consultant's obligations to defend, indemnify, and hold harmless. Consultant's obligations to defend will be free of any conflicts of interest, even if retention of separate legal counsel is necessary. Subject to Consultant's liability limit in Section 40, Consultant's duties to defend, indemnify, and hold harmless include anything in excess of any minimum insurance requirements described in the Contract Documents, and anything in excess of any of Consultant's insurance policy limits. Consultant's obligations to defend, indemnify, and hold harmless will continue for a period of not less than six (6) years following completion of the Project or any termination or expiration of the Contract Documents.

The indemnified party shall provide notice to Consultant after obtaining knowledge of any claim that it may have pursuant to this Section 39. 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.

40. **LIMITATION OF LIABILITY.** To the maximum extent permitted by law, Consultant's liability for the Diversion Authority's damages will not, in the aggregate, exceed five million dollars (\$5,000,000). This article takes precedence over any conflicting article 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.

41. **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) calendar days following notice (or within a longer period if specified in the notice).

B. Consultant must give the Executive Director notice immediately if Consultant breaches, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a breach under this Agreement.

- C. The Parties will use their Best Efforts to resolve amicably any dispute, including use of alternative dispute resolution options.
- D. All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

42. 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) calendar days of written notice and diligently complete the correction thereafter.
- B. The Diversion Authority may terminate this Agreement, in whole or in part, or modify or limit Consultant's services, and proportionately, Consultant's compensation, if:
 - (1) The Diversion Authority determines that having Consultant provide services has become infeasible due to changes in applicable laws or regulations, or
 - (2) Expected or actual funding to compensate Consultant is withdrawn, reduced, or limited.
- C. Either Party may terminate this Agreement, in whole or in part, for any or no reason upon thirty (30) calendar days' written notice.
- D. On termination, Consultant will be paid for all authorized services performed up to the termination date plus termination expenses, such as, but not limited to, reassignment of personnel, subcontract termination costs, and related closeout costs.
- E. In the event a federal or state tax or employment agency concludes that an independent contractor relationship does not exist, either Consultant or the Diversion Authority may terminate this Agreement immediately upon written notice.
- F. Upon receipt of any termination notice from the Diversion Authority related to any specific Task Order, Consultant must promptly discontinue all affected services under the Task Order unless the Parties mutually agree otherwise.
- G. Upon the end date of the Agreement, which is the date when this Agreement as a whole, along with any pending Task Orders, expires or are terminated pursuant to their terms:
 - (1) The Diversion Authority will be released from compensating Consultant for services other than those Consultant satisfactorily performed prior to the end date.
 - (2) Consultant must submit Consultant's final invoice for payment within sixty (60) calendar days of the end date. The Diversion Authority will not pay any Consultant invoice received after this period.

- (3) Consultant will be released from performing services, except for services in any non-terminated portion of the Agreement.
- H. All rights and duties with respect to services performed prior to the expiration or termination of this Agreement, and continuing obligations specified in this Agreement to be performed following expiration or termination of this Agreement, will survive the expiration or termination of this Agreement.
- I. In the event of termination, expiration, or removal/withdrawal, Consultant must terminate its services as soon as it is reasonably possible to do so without (1) prejudice to the Diversion Authority's interests (or the interest of any person represented on the Diversion Authority's behalf) or (2) violation of Consultant's statutory or ethical duties. Consultant must notify the Diversion Authority of any further services, prior to withdrawal or substitution, which Consultant believes are necessary to avoid prejudice to the Diversion Authority's interests (or the interest of any person represented on the Diversion Authority's behalf), and obtain the Diversion Authority's consent prior to performing such services.
43. ADDITIONAL PAYMENT. Nothing contained in this Agreement shall obligate the Diversion Authority to make any payment for services rendered in any period after the termination of Consultant's retention by the Diversion Authority.
44. SUSPENSION, DELAY, OR INTERRUPTION OF WORK. The Diversion Authority may suspend, delay, or interrupt the services of Consultant for the convenience of the Diversion Authority. In such event, Consultant's contract price and schedule shall be equitably adjusted.
45. 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: AE2S
Eric Dodds
4170 28th Ave. S
Fargo, ND 58104

If to Diversion Authority: Executive Director
Metro Flood Diversion Authority
207 4th St. N, Suite A
Fargo, ND 58102

Each such mailed notice or communication will be deemed to have been given on the date that is three (3) calendar 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.

46. PROHIBITION AGAINST ASSIGNMENT. This is a bilateral personal services Agreement. Neither Party shall have the power to, nor 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.
47. NO THIRD PARTY BENEFICIARIES. This Agreement gives no rights or benefits to anyone other than the Diversion Authority and Consultant and has no third-party beneficiaries.
48. CONSEQUENTIAL DAMAGES. To the maximum extent permitted by law, Consultant and Consultant's affiliated corporations, officers, employees, and subcontractors shall not be liable for the Diversion Authority's special, indirect, or consequential 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.
49. MATERIALS AND SAMPLES. Any items, substances, materials, or samples removed from the Project site for testing, analysis, or other evaluation will be returned to the Project site within sixty (60) calendar days of Project close-out unless agreed to otherwise. The Diversion Authority recognizes and agrees that Consultant is acting as a bailee and at no time assumes title to said items, substances, materials, or samples.
50. CONSULTANT'S 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 Diversion Authority or others' convenience. Any conclusions or information derived or obtained from these files will be at user's sole risk.
51. ACCESS TO CONSULTANT'S ACCOUNTING RECORDS AND AUDIT RIGHTS.
- A. Consultant must allow the Diversion Authority and its designees to review and audit Consultant's financial documents and records relating to this Agreement. Subject to Chapter 44-04 of North Dakota Century Code and any other applicable law, the Diversion Authority shall use best efforts to protect Consultant's confidential information and trade secrets disclosed to the Diversion Authority pursuant to Section 15 or this Section 51. Consultant will maintain accounting records, in accordance with generally accepted accounting principles. These records will be available to the Diversion Authority for a period of two (2) years after Consultant's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The Diversion Authority may only audit accounting records applicable to a cost-reimbursable type compensation. Upon finalization of the audit, the Diversion Authority will submit to Consultant a notice of audit results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to Consultant at the completion of an audit.
- B. Within 180 calendar days after the date of the notice of audit results, Consultant will respond, in writing, to the Diversion Authority indicating (a) whether it concurs with the audit report, (b) clearly explaining the nature and basis for any disagreement as to a

disallowed item of expense, and (c) providing a written explanation as to any questioned or no opinion expressed item of expense (“Response”). The Response will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, Consultant may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the Diversion Authority. The Response will refer to and apply the language of this Agreement. Consultant agrees that failure to submit a Response within the 180-day period constitutes agreement with any disallowance of an item or expense and authorizes the Diversion Authority to finally disallow any items of questioned or no opinion expressed cost.

- C. The Diversion Authority will make its decision with regard to any notice of audit results and Response within 120 calendar days after the date of the notice of audit results. If it is determined by a court of competent jurisdiction or by mutual agreement that an overpayment has been made to Consultant, Consultant will repay the amount to the Diversion Authority or reach an agreement with the Diversion Authority on a repayment schedule within thirty (30) calendar days after the date of an invoice from the Diversion Authority. If Consultant fails to repay the overpayment or reach an agreement with the Diversion Authority on a repayment schedule within the thirty (30) calendar day period, Consultant agrees that the Diversion Authority will deduct all or a portion of the overpayment from any funds then or thereafter payable by the Diversion Authority to Consultant for this project. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) calendar days from the date of the invoice. The rate of interest will be the interest rate on judgments in North Dakota as calculated by the state court administrator pursuant to N.D.C.C. § 28-20-34. The rate of interest will be reviewed annually by the Diversion Authority and adjusted as necessary. Consultant expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit to contest the Diversion Authority’s decision.

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

- A. Pre-Existing Consultant Materials. The Diversion Authority acknowledges and agrees that in the performance of the services, Consultant will utilize its proprietary data, concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software, works of authorship, software and hardware architecture, databases, tools, other background technologies and standards of judgment that developed or licensed from third parties prior to the Effective Date of this Agreement (the “Pre-Existing Consultant Materials”) and that Consultant shall retain all right, title and interest, including intellectual property rights in the Pre-existing Consultant Materials. Subject to the terms and conditions of this Agreement, Consultant hereby grants to the Diversion Authority a non-exclusive, non-transferable, royalty-free license, fully assignable to the Diversion Authority’s member entities, to utilize the Pre-Existing Consultant Materials for the purpose of the Diversion Authority’s Project.

- B. Derivative Consultant Materials. The Diversion Authority acknowledges and agrees that in the performance of the services, Consultant will utilize and develop customization, enhancements, improvements, modifications and adaptations of and to the Pre-Existing Consultant Materials (the “Derivative Consultant Materials”). Consultant shall retain all right, title and interest, including intellectual property rights in the Derivative Consultant Materials. Subject to the terms and conditions of this Agreement, Consultant hereby grants to the Diversion Authority a non-exclusive, non-transferable, royalty-free license, fully assignable to the Diversion Authority’s Member Entities, to utilize the Derivative Consultant Materials.
- C. New Consultant Materials. The Diversion Authority acknowledges and agrees that in the performance of Consultant’s services, Consultant may utilize and develop new software, hardware and other technology or processes that do not utilize or incorporate, or are not based upon, the Pre-Existing Consultant Materials (“New Consultant Materials”). Between the Parties, subject to the license grant-back set forth below, the Diversion Authority will retain all right, title and interest, including without limitation intellectual property rights, in and to the New Consultant Materials. The Diversion Authority shall have the full ownership of such New Consultant Materials without any limitation or restriction.
- D. License Grant Back. Subject to the terms and conditions of the Agreement, the Diversion Authority hereby grants to Consultant a non-exclusive, transferable, royalty-free license to utilize the concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software and hardware architecture, and other background technologies that are newly developed by Consultant under the Agreement and assigned to the Diversion Authority under this Agreement, to make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, import, and otherwise disposed of any products, technologies, and services and for any purposes without restriction.
- E. License Restrictions. Except as otherwise permitted above, the Diversion Authority and its Member Entities shall not, and shall not allow any third party to: (i) modify or otherwise create derivative works of the Pre-Existing Consultant Materials; (ii) use the Pre-Existing Consultant Materials for any other purpose, other than the Diversion Authority’s Project; (iii) make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, or import any product that incorporates, embodies and/or is based upon the Pre-Existing Consultant Materials; (iv) sublicense, distribute or otherwise transfer to a third party any of the Pre-Existing Consultant Materials by itself or as incorporated in the services; or (v) reverse engineer, disassemble, decompile or attempt to derive the source code or underlying ideas or algorithms of the Pre-Existing Consultant Materials. Any additional use of the Pre-Existing Consultant Materials shall require a separate written license agreement.
- F. Miscellaneous. Nothing contained in this Agreement shall be construed as conferring to the Diversion Authority or any third party any license or right by implication, estoppel or otherwise to any intellectual property rights of Consultant, other than the rights expressly granted under this Agreement. The Diversion Authority and its Member Entities may use said work products for the specific purpose for which the work product was intended. Any

other use or reuse, without written verification or adaptation by Consultant will be at the user's sole risk.

G. Diversion Authority Material. As between the Parties, the Diversion Authority is the exclusive owner of all material Consultant collects from the Diversion Authority in connection with the services under this Agreement, including copyrights. Within thirty (30) calendar days of the end date of the Agreement, or upon the Diversion Authority's notice at any time, Consultant must give all materials collected to the Diversion Authority (or to another party at the Diversion Authority's direction). Unless the Diversion Authority specifies otherwise, all files must be saved in Microsoft Word and Excel formats, as applicable. Consultant must maintain Consultant's records relating to services under this Agreement and Consultant's invoices, and all other materials, in an accessible location and condition for a period of not less than one (1) year after the later of:

- (1) The date when Consultant receives final payment under this Agreement; or
- (2) The date when the Diversion Authority resolves with Consultant the findings of any final audit.

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

53. REUSE OF PROJECT DOCUMENTS. Services and deliverables are for the exclusive use of the Diversion Authority and are not to be relied upon by third parties. All reports, drawings, specifications, documents, and other deliverables of Consultant, whether in hard copy or in electronic form, are instruments of service for this Project, whether the Project is completed or not. Upon full payment for services due under this Agreement, Consultant agrees to grant to the Diversion Authority an irrevocable license to the instruments of service.

54. CONFIDENTIAL INFORMATION AND PUBLICITY.

A. Consultant agrees to hold in confidence the following confidential information:

- (1) All information that the Diversion Authority discloses to Consultant; and
- (2) All information to which Consultant gains access while providing services under this Agreement.

B. Confidential information does not include any information that Consultant can demonstrate has been made available to the public (other than through a breach of this Agreement). As between Consultant and the Diversion Authority, the Diversion Authority owns the confidential information, and the Diversion Authority authorizes Consultant to use it only for purposes of performing this Agreement. Consultant may also disclose the Diversion Authority's confidential information to the extent necessary to comply with law, provided Consultant gives the Diversion Authority prior written notice. Upon the end date of this Agreement, Consultant must destroy or return all confidential information to the

Diversion Authority, at the Diversion Authority's discretion, and certify to the Diversion Authority, in writing, that it has done so; provided, however, such destruction shall include, without limitation, the process of expunging, to the extent reasonably practicable, all such confidential information from any computer, hard drive, word processor, server, backup tape, or other electronic device containing such confidential information. Notwithstanding the foregoing, Consultant may retain one archival copy of the confidential information in its confidential files for the purpose of complying with applicable laws or established company procedure regarding the preservation of business records.

- C. Consultant must not make any public announcement, press release, or other writing relating to the services under this Agreement without the Diversion Authority's prior written approval.
 - D. Consultant understands a breach under this Section may result in irreparable damage for which no adequate remedy may be available. Accordingly, injunctive relief and other equitable relief are remedies available to the Diversion Authority.
55. MODIFICATION. This Agreement, including its Exhibits and schedules, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment approved by the Diversion Authority and executed by Consultant, the Executive Director and the Chair of the Diversion Authority on behalf of the Diversion Authority. It 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.
56. 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.
57. WAIVER. A Party's waiver of enforcement of any of this Agreement's terms or conditions will be effective only if it is in writing. A Party's specific waiver will not constitute a waiver by that Party of any earlier, concurrent, or later breach or default.

The Diversion Authority waives all claims against Consultant, including those for latent defects, which are not brought within six (6) years of substantial completion of the facility designed or final payment to Consultant, whichever is earlier.

58. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Diversion Authority, its successors and assigns, and any such successor shall be deemed substituted for the Diversion Authority under the terms of this Agreement. This Agreement shall likewise be binding upon Consultant, its successors and assigns. As used in this Agreement, the term "successor" shall include any person, firm, corporation or other business entity which at any time whether by merger, purchase or otherwise acquires all or substantially all of the assets or business of the corporation.

59. NEGOTIATED AGREEMENT. This Agreement has been arrived at through negotiation between the Parties.
60. INTEGRATED SERVICES. Notwithstanding anything in the Agreement to the contrary, the Parties recognize and support the integrated nature of the Project team in the performance and delivery of professional services by Consultant. This Agreement, and particularly the contractual risk allocation and liability provisions, shall be interpreted and applied, and the professional accountability determined in such a manner that the integrated nature, shared control of the Service performance, and joint decision making roles of the Parties and Consultant's role as agent for the Diversion Authority shall be given due and full consideration. Further, the Parties agree to re-visit this Agreement, if necessary, to better reflect the Parties' changing roles on the Project, and any changes in Consultant's role as the Project proceeds.
61. 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.
62. WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THAT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS AGREEMENT AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS BY OR ON BEHALF OF THE PARTIES FOR PROJECT PROPERTY ACQUISITION AND/OR CONSTRUCTION CONTRACT CLAIMS AND DEFENSES.
63. 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 an appropriate venue in the State of North Dakota.
64. 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 Executive Director the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34,

which are attached in Exhibits to this Agreement. Consultant shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

65. DEBARMENT AND SUSPENSION. Consultant certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 CFR Part 32 to participate in the Project. Suspension and debarment information can be accessed at <http://www.sam.gov>. Consultant represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement. Upon award of this contract, Consultant shall complete and submit to the Executive Director the federal certification form regarding debarment and suspension, which is attached as an Exhibit to this Agreement.
66. CIVIL RIGHTS OBLIGATIONS. Consultant shall comply with the following, federal non-discrimination requirements:
- A. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
 - B. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
 - C. The Age Discrimination Act of 1975, which prohibits age discrimination.
 - D. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
 - E. 40 CFR Part 7, as it relates to the foregoing.
 - F. Executive Order No. 11246.

Upon award of this contract, Consultant shall complete and submit to the Executive Director the federal certification form regarding civil rights, which is attached as an Exhibit to this Agreement.

This Agreement is executed the day and year above noted.

(Signatures contained on the following pages.)

DIVERSION AUTHORITY:

Metro Flood Diversion Authority

By: _____
Dr. Tim Mahoney, Chair
Diversion Authority Board

By: _____
Joel Paulsen, Executive Director
Metro Flood Diversion Authority

(Additional signature contained on the following page.)

CONSULTANT:

Advanced Engineering and Environmental Services, Inc.

By: _____
Grant Meyer, Chief Executive Officer

Exhibit A – Hourly Fee Schedule
ADVANCED ENGINEERING AND ENVIRONMENTAL SERVICES, INC.
2020 HOURLY FEE SCHEDULE

Labor Rates*

Administrative I	\$60.00		
Administrative II	\$73.00		
Administrative III	\$88.00		
Communications Specialist I	\$92.00	I&C Assistant	\$86.00
Communications Specialist II	\$107.00	I&C Technician I	\$105.00
Communications Specialist III	\$123.00	I&C Technician II	\$118.00
Communications Specialist IV	\$148.00	I&C Technician III	\$133.00
Communications Specialist V	\$163.00	I&C Technician IV	\$144.00
		I&C Technician V	\$157.00
Construction Services I	\$141.00	I&C Specialist	\$171.00
Construction Services II	\$153.00	I&C Senior Specialist	\$181.00
Construction Services III	\$173.00	I&C Manager	\$190.00
Construction Services IV	\$190.00		
Construction Services V	\$209.00	IT I	\$110.00
		IT II	\$150.00
		IT III	\$180.00
Engineering Assistant 1	\$72.00	Land Surveyor Assistant	\$85.00
Engineering Assistant 2	\$92.00	Land Surveyor I	\$102.00
Engineer I	\$115.00	Land Surveyor II	\$122.00
Engineer II	\$139.00	Land Surveyor III	\$137.00
Engineer III	\$165.00	Land Surveyor IV	\$151.00
Engineer IV	\$187.00		
Engineer V	\$199.00	Operations Specialist I	\$86.00
Engineer VI	\$221.00	Operations Specialist II	\$104.00
Engineer VII	\$236.00	Operations Specialist III	\$131.00
Engineer VIII	\$246.00	Operations Specialist IV	\$148.00
		Operations Specialist V	\$172.00
Engineering Technician I	\$71.00		
Engineering Technician II	\$90.00	Program Coordinator I	\$185.00
Engineering Technician III	\$107.00	Program Coordinator II	\$199.00
Engineering Technician IV	\$125.00	Program Coordinator III	\$210.00
Engineering Technician V	\$141.00		
Engineering Technician VI	\$156.00	Project Coordinator I	\$103.00
Engineering Technician VII	\$173.00	Project Coordinator II	\$114.00
		Project Coordinator III	\$125.00
Financial Analyst I	\$95.00	Project Coordinator IV	\$140.00
Financial Analyst II	\$110.00	Project Coordinator V	\$158.00
Financial Analyst III	\$129.00		
Financial Analyst IV	\$145.00	Project Manager I	\$175.00
Financial Analyst V	\$163.00	Project Manager II	\$192.00
Financial Analyst VI	\$183.00	Project Manager III	\$212.00
Financial Analyst VII	\$199.00	Project Manager IV	\$226.00
Financial Analyst VIII	\$218.00		
GIS Specialist I	\$92.00	Technical Expert I	\$260.00
GIS Specialist II	\$111.00	Technical Expert II	\$283.00
GIS Specialist III	\$131.00	Technical Expert III	Negotiable
GIS Specialist IV	\$147.00		
GIS Specialist V	\$161.00		
GIS Specialist VI	\$182.00		

EXHIBIT B
ADVANCED ENGINEERING AND ENVIRONMENTAL SERVICES, INC.
2020 EXPENSE SCHEDULE

Reimbursable Expense Rates

Out of Town Transportation	IRS Rate
Survey Vehicle	\$0.85/mile
UAS - Photo/Video Grade	\$100.00/day
Video Production Equipment	\$100.00/each
Total Station – Robotic	\$35.00/hour
Mapping GPS	\$25.00/hour
Fast Static/RTK GPS	\$50.00/hour
All-Terrain Vehicle/Boat	\$100.00/day
Air Transportation – Cirrus	\$700.00/hour
Outside Services**	cost *1.05
Out of Pocket Expenses	cost * 1.00
Project Specific Equipment	Negotiable

* Position titles are for labor rate grade purposes only.

** Includes laboratory testing, architectural and engineering consultants, surveying, etc.

*** Includes toll telephone, shipping, postage, subsistence, technical literature, equipment rental, etc.

These rates are subject to adjustment each year on January 1.

EXHIBIT C

**FEDERAL CERTIFICATION FORMS REGARDING
LOBBYING, DEBARMENT AND SUSPENSION, AND CIVIL RIGHTS**

CERTIFICATION REGARDING FEDERAL LOBBYING

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

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

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

Company/
Entity Name: _____

Signed: _____

Its: _____

Date: _____

PLEASE RETURN TO:
Metro Flood Diversion Authority
207 4th St. N, Suite A
Fargo, ND 58102

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

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

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)

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

Official Business Name _____

Date: _____

By: _____
Name and Title of Authorized Representative

Signature of Authorized Representative

PLEASE RETURN TO:
Metro Flood Diversion Authority
207 4th St. N, Suite A
Fargo, ND 58102

PAGE 2 - INSTRUCTIONS FOR CERTIFICATION

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

ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE

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

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

The undersigned assures that it will comply with:

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

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

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

Signature of Authorized Official

Title

Print Name

Name of Institution or Agency

Date

Street

City, State, Zip Code

PLEASE RETURN TO:
Metro Flood Diversion Authority
207 4th St. N, Suite A
Fargo, ND 58102

Office Email Address



Board Meeting

February 27, 2020

SUBJECT: Task Order 1 – AE2S Consultant Services
Advanced Engineering and Environmental Services

RECOMMENDATION: Board Approval

BACKGROUND / KEY POINTS: Authorization to proceed with the management of the lands program, outreach, and legislative services and to support development of the public-private partnership as it relates to the lands program and outreach.

FINANCIAL CONSIDERATIONS: Total contract value is **\$16,175,200.00**

VOTING REQUIREMENTS: Majority of DA Board

Disclaimer: Voting requirements may be subject to changes in the law, parliamentary procedural matters, or other unforeseen issues. The DA General Counsel provides opinion on questions of voting requirements in accordance with the North Dakota State Statutes and parliamentary procedure.

Respectfully Submitted:

Joel Paulsen, PE
Executive Director

Attachments: Task Order 1 – AE2S Consultant Services

Task Order 1

Metro Flood Diversion Authority

Fargo-Moorhead Area Diversion Project

In accordance with Article 1 of the *MASTER AGREEMENT FOR PROFESSIONAL SERVICES* (“AGREEMENT”), between the Metro Flood Diversion Authority (“OWNER”) and ADVANCED ENGINEERING AND ENVIRONMENTAL SERVICES, INC. (AE2S) (“CONSULTANT”), dated February 28, 2020, OWNER and CONSULTANT agree to the scope of services, work schedule, and compensation as follows:

Title: AE2S Consultant Services

Term: This Task Order shall commence on February 28, 2020, and terminate on December 31, 2026, unless terminated sooner in accordance with the AGREEMENT and/or as set forth in this Task Order.

Description: The AGREEMENT establishes the terms and conditions for the CONSULTANT to assist the OWNER with the management and implementation of the Fargo-Moorhead Area Diversion Project (“PROJECT”). OWNER responsibilities as PROJECT Non-Federal Sponsors are described in several agreements with the US Army Corps of Engineers (USACE), including the *Project Partnership Agreement* signed July 11, 2016, and amended on March 19, 2019.

The functions and activities to be provided by the CONSULTANT to assist the OWNER with managing and implementing the PROJECT generally include managing the acquisition of property rights and mitigation of impacted properties, managing the outreach and legislative affairs required for the PROJECT. The services of CONSULTANT are split into three phases including:

1. Consultant Services, Outreach, and Legislative Services
2. Lands Program Services
3. P3 Support Services

A full description of the scope of services to be provided by CONSULTANT is presented in detail in this Task Order 1.

CONSULTANT has committed and will provide staff and resources to support the anticipated activities and deliver the work described in the Scope of Services of this Task Order 1. The proposed schedule of deliverables included in this Task Order 1 is based on the best knowledge available at the time of executing the Task Order. CONSULTANT may contract with subconsultants as necessary to meet the needs of the PROJECT, provided that any contract with subconsultants shall be approved by the OWNER.

Scope of Services: The general scope of services authorized within this Task Order 1 are summarized in Table 1 and described in detail by task following the table. In performance of services, CONSULTANT shall take direction from OWNER’s Executive Director or the Executive Director’s designee.

Table 1 – Scope of Work Summary

Task	Title	Summary
Phase 1 – Consultant Services, Outreach, and Legislative Services		
1-A	Consultant Services	Assist in providing program direction, strategy assistance, coordination, and governance as well as general implementation support as needed. Provide input on the program financial plan, cost estimates, funding sources, and financial-related schedules. Provide input to support development and maintenance of Diversion Authority program and annual budgets.
1-B	Public Involvement and Outreach Support	Manage OWNER’s public outreach, involvement, and education program.
1-C	Legislative Support	Manage OWNER’s legislative engagement efforts in Bismarck, ND and St. Paul, MN; provide state legislative outreach and engagement services; and provide coordination for federal legislative outreach and engagement efforts.
Phase 2 – Lands Program Services		
2-A	Property Rights Acquisition Management	Manage the OWNER’s property acquisition and mitigation program.
2-B	Property Surveying Services	Manage and perform property surveying services for the PROJECT.
2-C	Property Management	Manage the properties acquired by the PROJECT.
Phase 3 – P3 Support Services		
3-A	P3 Procurement Support	Assist in the P3 procurement services to support preparation of RFP drafts.
3-C	Management of Utilities and Third-Party Agreements	Assist in the development of memoranda of understanding (Third-Party MOUs and Utility MOUs) and general liaison with Utilities and Third Parties whose assets must be updated or relocated because of, or required for, carrying out Developer’s work.

Phase 1 – Consultant Services, Outreach, and Legislative Services**Task 1-A: Consultant Services**

The scope of services for Task 1-A generally include providing communications, coordination, advisory services related to the property acquisition and mitigation program, public outreach program, and legislative program to assist OWNER in managing and implementing the PROJECT. CONSULTANT will perform activities at the direction of Executive Director to accomplish the scope described herein, as well as other services which may be mutually agreed to by the parties pursuant to the terms of the Agreement. The scope of services for Task 1-A generally includes the following:

1. Program Assistance, Strategy Support, Advisory Services, Coordination, and Governance – Assist in providing direction to support implementation of the PROJECT through the following activities:
 - a. Provide guidance, strategy assistance, coordination, communications, and organizational assistance through prepared materials, meetings, and conference calls.
 - b. Prepare for monthly meetings with OWNER representatives to discuss, coordinate, and build a consensus around the intended services to be performed during that month.
 - c. Prepare for and participate in OWNER’s Executive Leadership calls as directed by the Executive Director to assist in planning, organizing, and directing activities required to implement the PROJECT.
2. Prepare for and attend OWNER’s Board and Committee (Finance, Land, and Outreach) meetings as directed by the Executive Director and report on property acquisition program activities, public outreach program activities, and legislative activities.
3. Support the development of an annual cash budget, in addition to an anticipated 5-year budget, based on projected expenditures for the property acquisition and mitigation program, and the outreach program.
4. Assist in monitoring compliance of contract terms and conditions and support Lands, Outreach, and Legislative delivery with respect to scope, schedule, and budget performance. Assist in maintaining compliance records for contract terms and conditions on third-party contracts including insurance certifications and related items in the areas of Lands, Outreach, and Legislative.
5. Assist in review and processing of invoices for land acquisition firms, appraisers, and other service providers for the property acquisition program.
6. Provide input to the established PROJECT Financial Plan developed by OWNER’s Financial Advisor, through coordination with OWNER and OWNER’s consultants as needed. Provide input to the financial plan for existing and potential new revenue sources and alternative sources of local and state financing. Provide input and support to update the PROJECT Financial Plan, as needed.
7. Provide Lands, Outreach, and Legislative input and support through coordination with OWNER, the Executive Director and OWNER’s consultants to assist with annual Cash Budgets based on projected expenditures consistent with the OWNER’s approved Program Budget. Provide Lands, Outreach, and Legislative input to components of the Program Budget, as needed.
8. Deliverables and Schedule
 - a. Decision papers, presentation materials, meeting agendas, conference calls, and policy papers as requested.
 - b. Provide Lands, Outreach, and Legislative materials for OWNER’s Land Management and Public Outreach Committee meeting packets – one week prior to the meetings. The PMC will be included on the distribution list for all materials for purposes of archiving in the PROJECT record.

- c. Provide Lands, Outreach, and Legislative materials for inclusion in OWNER's Board and Finance Committee meeting packets – ten days prior to the meetings.
- d. Provide Lands, Outreach, and Legislative materials for USACE coordination meetings as requested.
- e. Provide Lands, Outreach, and Legislative input for development of annual cash budgets in September.
- f. Provide Lands, Outreach, and Legislative materials for the DA Executive Leadership meetings prior to the meetings as necessary.
- g. Provide Lands, Outreach, and Legislative input and materials as requested for ad hoc meetings that may be required or develop over the term of this agreement.

Task 1-B: Public Involvement and Outreach Services

The scope of services for Task 1-B generally include managing the OWNER's public involvement and outreach programs as approved by the Executive Director. CONSULTANT will perform activities to accomplish the scope described herein, as well as other services which may be mutually agreed to by the parties pursuant to the terms of the Agreement.

CONSULTANT shall provide services under Task 1-B through December 31, 2021.

The specific services included in Task 1-B include:

1. Assist OWNER in managing its Public Outreach program as directed by the Executive Director. Activities may include the following:
 - a. Monitor and manage outreach services related to the PROJECT in accordance with the OWNER-approved Communications Plan.
 - b. Coordinate and communicate with OWNER representatives, public information officer, and OWNER's governmental entities as directed by the Executive Director.
 - c. Coordinate with OWNER's staff and Diversion Committees as necessary for outreach activities. Execute activities upon approval from the Executive Director.
 - d. Review and update OWNER's Communications Plan, as directed by the Executive Director.
2. Advise, provide input, and assist OWNER with public outreach, involvement, and education, as directed by the Executive Director. Such assistance is anticipated to include:
 - a. Coordinate public meetings.
 - b. Organize materials for and/or present at outreach events with individuals or agencies related to the development of the PROJECT.
 - c. Produce and update maps and other documents, including educational materials for distribution to the public.
 - d. Prepare and present PROJECT information to civic and business groups, at conferences and on tours.
 - e. Maintain a web portal for property owners to access information related to their parcel(s) and other general land acquisition related education documents.
 - f. Produce and distribute materials to impacted property owners to share news and updates about the PROJECT and property acquisition program on a quarterly basis.

- g. Coordinate with USACE and other agencies on outreach efforts.
 - h. Develop for Executive Director's review and written approval, answers to the public, media, opposition, and others interested in the PROJECT. Deliver responses as directed by the Executive Director.
 - i. Maintain the PROJECT brand and engage with partners and OWNER's consultants to ensure all PROJECT materials utilize the consistent brand and are easily identifiable as being related to the PROJECT. Review and update Consistency Guide. Share the PROJECT brand documents with OWNER and OWNER's consultants as necessary.
 - j. Prepare and distribute official correspondence as directed by the Executive Director, including, but not limited to, press releases, news alerts, and talking points.
 - k. Produce educational videos, flyover update videos utilizing drone and animation technology of PROJECT progress, and general outreach videos presenting PROJECT information. Coordinate with OWNER's technical consultant on flyover need and frequency.
 - l. Maintain a PROJECT YouTube channel that includes educational and meeting videos.
 - m. Monitor social media activity regarding the PROJECT, including maintaining a consistently updated educational and informative Twitter feed for use on Twitter, fmdiversion.gov and fargond.gov.
 - n. Prepare PROJECT related articles for publication in the North Dakota Water magazine.
- 3. Coordinate with Business Leaders Flood Taskforce, including coordination with the business group staffs and quarterly meetings and presentations with the task force, as directed by the Executive Director.
 - 4. Perform media tracking and analysis, including daily monitoring of media and notification to project stakeholders, and production of a monthly media tracking and analysis report.
 - 5. Maintain and support a public website (www.fmdiversion.gov) to provide information about the PROJECT a publicly accessible library of public meeting documentation and studies.
 - 6. Prepare and distribute monthly newsletter, and:
 - a. Maintain and update the distribution list for the newsletter, including offering a subscription service on the website www.fmdiversion.gov;
 - b. Prepare draft content for Executive Director review; and
 - c. Finalize and publish articles to the quarterly electronic newsletter upon written approval of the Executive Director.
 - 7. Coordinate with and support legal counsel on outreach items involved in litigation as directed by the Executive Director.
 - 8. Coordinate with the construction PIOs from the various other entities involved in construction outreach, including the P3 Developer, USACE, Department of Transportation, Railroad, County, City, etc, regarding regular and responsive construction outreach as directed by the Executive Director.
 - 9. Deliverables and Schedule
 - a. Maps (hard copy) as required
 - b. Correspondence, press releases, and talking points as needed
 - c. Updated Communications Plan
 - d. Updated Consistency Guide

- e. Monthly media tracking and analysis report
- f. Public website and a quarterly “Diversion Dialogue” E-newsletter
- g. Monthly article for North Dakota Water magazine
- h. Daily media tracking e-mail reports
- i. Project Twitter and YouTube pages maintenance
- j. Outreach to impacted upstream property owners within a month after receiving CLOMR and Property Rights Acquisition and Mitigation Plan approvals.
- k. Newsletter to impacted property owners – quarterly.
- l. Online interactive GIS and mapping, as needed.
- m. Presentations, maps, and educational materials related to property acquisition program.

Deliverables shall be prepared in coordination with others, as appropriate.

Task 1-C: Legislative Support Services

The scope of services for Task 1-C generally include providing communication and coordination services related to OWNER’s legislative affairs programs. CONSULTANT will perform activities at the direction of the Executive Director to accomplish the scope described herein, as well as other services which may be mutually agreed to by the parties pursuant to the terms of the Agreement.

CONSULTANT shall provide services under Task 1-C through December 31, 2021.

The specific services included in Task 1-C include:

1. Provide local and state legislative outreach and engagement services at the direction of the Executive Director, including:
 - a. Advise, provide input, and assist OWNER with pre-legislative session activities in North Dakota and Minnesota.
 - b. Advise, provide input, and assist OWNER during the North Dakota and Minnesota legislative sessions including legislative committee meetings regarding the PROJECT.
 - i. Monitor and review introduced legislation in North Dakota as it pertains to the PROJECT.
 - ii. Produce a weekly legislative tracking and analysis report for items pertaining to the PROJECT during the North Dakota legislative session.
 - iii. Advise, provide input, and assist OWNER with legislative reporting requirements, including to the ND Water Topics Overview Committee.
 - iv. Manage Minnesota legislative activities through coordination with OWNER’s Minnesota public affairs consultant.
 - v. Manage North Dakota Coordinate ND legislative activities in coordination with OWNER and OWNER’s ND Lobbyist.
 - c. Advise, provide input, and assist OWNER in routine reporting to the ND State Water Commission and other state agencies as required.
 - d. Advise, provide input, and assist OWNER with facilitating conferences and engagement with local, state, and federal elected leaders or their representatives.

- e. Prepare communications or information regarding legislative activities for OWNER to provide to local, state, and federal elected leaders at the OWNER's request in coordination with and approved by the Executive Director.
- f. Coordinate and provide information to civic and business groups about PROJECT legislation at the Executive Director's request.
- g. Prepare agenda for regular ND Legislative Team meetings during and leading up to ND Legislative Session.

2. Deliverables and Schedule

- a. Position papers, speaking points, briefing notes as required.
- b. North Dakota Legislative Action planning for each legislative session.
- c. Regular legislative updates as requested by the Executive Director at Executive Leadership coordination meetings, Board and Committee meetings, or as needed due to legislative session timelines.
- d. Presentations, communications, and supporting materials as directed by the Executive Director.

Phase 2 – Lands Program Services

The Lands Program Services included in this Task Order are based on the condition that OWNER has assigned the role of acquiring property rights in North Dakota to the Cass County Joint Water Resource District ("CCJWRD"). In addition, this Task Order is also based on the condition that OWNER has assigned the role of acquiring property rights in Minnesota to the Moorhead Clay County Joint Powers Authority (MCCJPA).

The scope of services for this Task Order 1 includes the functions and activities of the CONSULTANT's team to assist the OWNER, CCJWRD, and MCCJPA with managing the acquisition of property rights and mitigation of impacted properties required for the PROJECT. The property acquisition management services in this Task Order will position the OWNER to deliver the property rights necessary for the Public Private Partnership (P3) developer, for the USACE constructed features of the PROJECT, as well as the Upstream Mitigation Area.

CONSULTANT has developed the Property Rights Acquisition and Mitigation (PRAM) Plan, version 5, dated January 2020. The processes, procedures, and policies included in the PRAM Plan shall be utilized for the property acquisition program for the PROJECT. The PRAM Plan may be updated from time to time, as necessary, with input, review, and approval by OWNER's Land Management Committee and the Executive Director.

In performing services under this Task Order, CONSULTANT will answer to and comply with all work directives of the CCJWRD and MCCJPA to manage property rights acquisitions, relocations, property management, and related issues.

OWNER will provide recommendations to CCJWRD, MCCJPA, and CONSULTANT at the regular Land Coordination meetings and OWNER's monthly Land Management Committee meetings. OWNER will advise CCJWRD, MCCJPA, and CONSULTANT on OWNER's policy decisions regarding acquisition of property rights, property management, and impacted property mitigation.

To facilitate property acquisitions in North Dakota, CCJWRD shall contract with land acquisition firms and appraisal firms. To facilitate property acquisitions in Minnesota, MCCJPA shall also contract with land acquisition firms and appraisal firms. The land acquisition firms will conduct activities, such as serving as the

primary point of contact with property owners, developing and maintaining relationships with property owners, sending notices to property owners, obtaining rights of entry for performing surveys and inspections, presenting initial purchase offers to property owners, negotiating with property owners, developing term sheets to assist legal counsel for OWNER, CCJWRD, and MCCJPA with developing purchase agreements, coordinating and attending property closings, providing and coordinating relocation assistance for displaced persons, and assisting as required with eminent domain proceedings if necessary.

CCJWRD and MCCJPA will maintain contracts with land acquisition firms Houston-Moore Group, Inc., ProSource Technologies, and Ulteig Engineers, Inc., and other land acquisition firms, as deemed necessary by the Diversion Authority ("land acquisition firms"). In addition, CCJWRD and MCCJPA shall contract directly with appraisal firms for the purposes of determining the market value of the property rights needed for the PROJECT.

Task 2-A: Property Rights Acquisition Management

The scope of services for Task 2-A generally include managing the acquisition of the necessary property rights for the PROJECT and managing the mitigation of properties impacted by the PROJECT. CONSULTANT will perform activities at the direction of the Executive Director to accomplish the scope described herein, as well as other services which may be mutually agreed to by the parties pursuant to the terms of the Agreement. The specific services included in Task 2-A include:

1. Management of Policies, Procedures, and Programs
 - a. Monitor, review, and update the Property Rights Acquisition and Mitigation (PRAM) Plan with OWNER and Executive Director, as necessary. The PRAM Plan shall serve to document the policies, procedures, and processes for acquisition of property rights and property mitigation for the PROJECT.
 - b. Assist OWNER, CCJWRD, and MCCJPA in managing acquisition of property rights for the PROJECT, as defined in the PRAM Plan.
 - c. Manage the analysis and development of improved strategies, policies, plans, methods, procedures, and systems of acquisition management programs.
 - d. Provide guidance to Executive Director, OWNER, CCJWRD, and MCCJPA on issues that affect property management, acquisitions, appraisals, negotiations, relocations, or transferring title of properties after being acquired. These may include early acquisitions, opportunistic acquisitions, temporary easements, and management and disposition of properties.
 - e. Assist in establishing the OWNER's local cemetery mitigation team, and then work with the local cemetery mitigation team to develop/update the OWNER's Cemetery Mitigation Plan. Coordinate with the Executive Director and OWNER's Technical Consultant to develop and update the details of the OWNER's Cemetery Mitigation Plan.
 - f. Develop the OWNER's supplemental crop loss program for mitigation of impacts to farmland caused by summer operation of the PROJECT at the direction of the Executive Director.
 - g. Develop the OWNER's post-operation private lands clean-up plan at the direction of the Executive Director.
 - h. Develop the OWNER's post-operation public lands repair and clean-up plan at the direction of the Executive Director.

- i. Manage the review, socializing, and finalization of the sample flowage easement with additional stakeholders such as permitting agencies, agricultural industry representatives, and others.
- j. Develop alternative mitigation options, with assistance from the Diversion Authority's Technical Consultant and staff, other than full acquisition and removal for residential and non-residential structures in the upstream mitigation area at the direction of the Executive Director.
- k. Manage the Flowage Easement Valuation Study.
- l. Manage the development of an update to the Ag Impacts report by NDSU Agribusiness and Applied Economics department.
- m. Support activities related to PROJECT lawsuits, including support for developing administrative records, testimony development, and other services as requested by legal counsel. Participate in conference calls and meetings as requested by the Executive Director or the OWNER's legal advisors.

2. Process Management and Reporting

- a. Based on designs and recommendations by others (USACE, P3 Developer, Jacobs and HMG), identify, assess, and recommend to OWNER the properties to be acquired. Coordinate with designers and others as necessary to provide all necessary affidavits required to establish the necessity of property rights for litigation purposes, if needed.
- b. Prepare and present Land Acquisition Directives (LADs) for approval to the OWNER's Finance Committee. Each LAD shall include parcel map exhibits, area of taking estimates, acquisition schedule, and acquisition budget. The parcel exhibits shall be based on the design and geodatabase files received from the PROJECT designers (OWNER's technical consultant and/or USACE). It is assumed that the design will be completed to a sufficient status to determine the required property rights. The parcel exhibit shall delineate the acquisition type (e.g. easement, fee title, temporary easement, flowage easement etc.).
- c. Recommend, in coordination with others, to CCJWRD and MCCJPA the parcels where a right of entry (ROE) is necessary to conduct boundary surveys for the purposes of acquiring property rights.
- d. Receive and process requests from USACE to obtain ROE for various design, cultural, and environmental surveys with the approval of the Executive Director.
- e. Coordinate with OWNER's technical consultant to track the status of ROE.
- f. Manage and maintain impacted parcel data by updating owner information and parcel geometry from County data sources as needed. Coordinate the assignment of new OIN's as needed for Project modifications, parcel splits, etc.
- g. Prepare for and participate in ROE coordination calls with USACE, OWNER's legal and technical consultants.
- h. Develop and recommend appraisal services assignments and Task Orders for CCJWRD and MCCJPA consideration.
- i. Manage and maintain a common set of data and background resources for appraisal firms to utilize in performing property valuations. The resources shall include PROJECT designs and engineering plans, permits, planning documents, zoning requirements, responses to common questions, certificates of survey, and other information.

- j. Monitor and measure appraisal firms' activities related to valuing property rights for the PROJECT. Review and analyze progress reports from appraisal firms, and manage the schedule of deliverables with input from OWNER's review appraiser. Measure progress against appraiser approved schedules and completeness of appraisal reports.
- k. Coordinate with PROJECT representatives as necessary to gather information and responses to questions from appraiser firms.
- l. Conduct appraisal reviews in accordance with procedures outlined in the PRAM Plan.
- m. Develop and recommend land acquisition services assignments and Task Orders for CCJWRD and MCCJPA consideration.
- n. Coordination with land acquisition firms to monitor and measure the following activities of land acquisition firms: (a) obtaining rights of entry (ROE), (b) communicating and negotiating with property owners, (c) acquiring property rights for the PROJECT, (d) establishing relocation benefits for displaced persons, and (e) performing replacement housing studies and develop replacement housing differential payment (RHDP) recommendations. Conduct regular coordination calls and meetings with land acquisition firms.
- o. Review and analyze regular progress reports and schedules from land acquisition firms.
- p. Organize and conduct regular training for land acquisition firms in regards to processes, procedures, and policies established for the PROJECT. Training sessions will also include sharing technical information developed for the PROJECT.
- q. Organize and assemble PROJECT information and resources for land acquisition firms to use in interactions with property owners.
- r. Coordinate with PROJECT representatives as necessary to gather information and responses to questions from property owners received through the land acquisition firms.
- s. Manage and conduct bi-weekly land coordination meetings with PROJECT representatives from OWNER, OWNER's consultants, CCJWRD, and/or MCCJPA. Among other items, the land coordination meeting shall be utilized to review negotiations and acquisition of property rights.
- t. Organize, manage, and coordinate with a strategic negotiations team as necessary to discuss sensitive property acquisitions and negotiations.
- u. Organize and conduct, as necessary, meetings with OWNER's Technical Consultant and OWNER's staff to discuss property owner requested modifications or adjustments to the proposed property rights acquisitions during negotiations.
- v. Monitor the acquisition of property rights, negotiations, and impacted property mitigation to ensure consistency with the PRAM Plan.
- w. Coordinate with Appraisers and Relocation Experts to ensure that delineation between buy-out and relocation is handled consistently with each property owner, especially for impacted Commercial and Farmstead properties.
- x. Coordinate with relocation specialists from each land acquisition firm regarding the determination of and consistent approach for relocation benefits due to property owners and tenants.

- y. Receive and review relocation benefit claims from property owners via relocation specialists, and organize and submit the relocation benefit claims to CCJWRD and MCCJPA for processing.
- z. Assist land acquisition firms with negotiations, including preparation and negotiation of Replacement Housing Agreements and Purchase Agreements. CONSULTANT shall not conduct direct negotiations with property owners without prior approval from OWNER.
- aa. Manage and monitor property rights acquisition data to track acquisition status and identify acquisition risks.
- bb. Report on the progress of the property acquisitions program, including cost, schedule, and performance reporting. Prepare monthly property acquisition status report for presentation at the OWNER's Land Management Committee, Land Coordination, CCJWRD Board, and MCCJPA Board meetings.
- cc. Review land acquisition expenses to ensure they are properly tracked to the Work Package & OIN level.
- dd. Provide weekly and monthly data exports of property acquisition program status information. Assist with development and review of progress schedules and comparison of actual vs budgeted expenditures for lands program.
- ee. Provide input and support to update and maintain a cost-loaded schedule of activities (Primavera P6) to monitor and track costs by categories associated with the property acquisition program for the PROJECT through completion.
- ff. Provide input and support to update and maintain the cost management tool (Source) relating to program budget, fiscal year budget, contract budget, and invoiced costs. Provide input and support to develop and prepare reports for OWNER on program expenditures, budget status, and projected cash flows.
- gg. Monitor and periodically update the real estate program cost estimate for the PROJECT, including the Project 5-year budget. The updated cost estimate shall take into account actual sales prices of acquired parcels, signed purchase agreements, appraised values and trends, assessed values and trends, and other information. The cost estimate updates shall include comparisons to historical acquisition cost estimates.
- hh. Cartographic Production: Prepare maps and exhibits (graphs, maps, educational documents, etc.) for use in property acquisitions. Prepare/extract data for use in property acquisitions.
- ii. Prepare for and attend CCJWRD's and MCCJPA's regular board meetings, as well as special board meetings to report on progress and activities, and provide or present informational materials, as requested by OWNER, CCJWRD, or MCCJPA.
- jj. Coordinate with OWNER's, CCJWRD's, and MCCJPA's legal counsel, as necessary to address legal questions related to the property acquisition program.
- kk. Review third-party contract invoices from land acquisition firms, appraisal firms, and land management firms for payment by OWNER, CCJWRD, and MCCJPA.

3. Systems and Tools

- a. Maintain and manage the ESRI Workflow Manager (WMX) tool to track the progress of property rights acquisition activities and serve as a repository for all property acquisition documents.

- b. Coordinate with the City of Fargo IS Department regarding ongoing requirements and/or issues related to ESRI WMX for support, maintenance, and performance of the application.
- c. Provide ESRI WMX application access, training, and support to PROJECT representatives, as requested.
- d. Perform acquisition audits to verify that required inputs are tracked and noted in ESRI WMX. Audits will ensure proper use of tool, proper population of extended properties with critical schedule and dates, uploading of documents, and comments regarding land owner and other communications.
- e. Coordinate weekly ESRI WMX backups and database compressions with City of Fargo staff (Backups and compressions to be performed by City of Fargo).
- f. Maintain and manage the Survey123 application to serve as tool to log and track notes and communications with impacted property owners.
- g. Provide, maintain, and manage a GIS based web map application (ESRI Web Map App) for graphical display of PROJECT features, construction progress, and parcel acquisition status, and other information. Coordinate the data for display in Web Map with other PROJECT representatives, including designers and construction managers.
- h. Data Coordination/Database Management: Coordinate with OWNER, and other PROJECT representatives, including designers and construction managers to obtain and maintain accurate datasets for mapping.

4. Deliverables and Schedule:

- a. Property Rights Acquisition and Mitigation Plan Updates – as required
- b. Maintain the Property Acquisition Schedule – monthly (see Attachment C)
- c. Property Management Summary – monthly, for OWNER's monthly Committee and Board meetings, for CCJWRD Board meetings, and for MCCJPA Board meetings
- d. Agenda items for CCJWRD board meetings – twice-monthly
- e. Agenda items for MCCJPA meetings – monthly
- f. Property Acquisition Summary documents – as needed
- g. Maps, exhibits, and exported data reports – as needed
- h. Land Acquisition Directives (LADs) – as needed
- i. Land Acquisition Firm Task Orders and Amendments – as needed
- j. GIS maintenance and updates – ongoing, as design files are updated and shared, as property boundaries and ownerships change, and as property acquisition progresses
- k. QA/QC checks of ESRI WMX data – weekly
- l. Prepare draft and final agreements, task orders, and amendments for property acquisition services for OWNER, CCJWRD, and MCCJPA review – as necessary.
- m. Review invoices for payment – monthly, or more frequently if required

Task 2-B: Property Surveying Services

The scope of services for Task 2-B generally includes managing and performing the property surveying work necessary to acquire property rights for the PROJECT. In addition, the scope of services includes platting of acquired lands for the Diversion Channel. CONSULTANT will perform activities to accomplish the scope described herein, as well as other services which may be mutually agreed to by the parties pursuant to the terms of the Agreement. The specific services included in Task 2-B include:

1. Surveying Management. Manage the production of boundary surveys, certificates of survey, and cadastral surveys that are necessary for the PROJECT. Develop and maintain a schedule of survey needs, review of work products by others, coordinate with project leadership, and manage workload.
2. Boundary Surveying. Conduct boundary surveys for parcels impacted by the PROJECT. This may include boundary surveying to support footprint impacted parcels, flowage easements, and easements required for the biotic and geomorphic monitoring program.
3. Boundary Survey Documents. Prepare necessary boundary documents such as certificates of survey and plats for the acquisition of property rights for partial parcels being subdivided and acquired for the PROJECT. Boundary documents may not be required for acquisition of full parcels. Prepare certificates of survey for asset land parcel subdivisions (for subdividing parcels that were acquired in full from willing sellers prior to disposing of the unneeded remnant lands).
4. Cadastral Surveying Services:
 - a. Perform cadastral surveying services for the Public Land Survey System (PLSS) sections along the Southern Embankment alignment in Minnesota. Includes researching corner locations, field surveying and establishing corners, setting monuments and associated ties, and preparing and recording corner records for section and one-quarter section corners (not including center quarter corners).
 - b. Incorporate the cadastral surveying work completed for the Certificates of Survey.
5. Platting. Perform platting of all CCJWRD-owned lands for the Diversion Channel and Associated Infrastructure. Plats shall be produced on a 'per township' basis such that a single plat contains all the subject lands within each township. Tasks including, but not limited to:
 - a. Research easements encumbering subject lands.
 - b. Coordinate and/or attend pre-platting planning meetings.
 - c. Coordination with proper road and township authorities.
 - d. Coordinate all required platting approval process submittals.
 - e. Plat subject lands per Cass County and ND state requirements.
 - f. Assist with plat ratifications as needed.
 - g. Attend Planning Commission and County Commission meetings as needed during plat approval process.
6. The specific parcels or areas included in this Task Order are identified in the map in Attachment E, and generally include:
 - a. Parcels impacted by the Diversion Channel and Associated Infrastructure (DCAI), including the mobility improvements associated with P3.

- b. Parcels impacted by the Minnesota portion of the Southern Embankment and Associated Infrastructure (SEAI), including parcels impacted by mobility improvements in Minnesota.
 - c. Parcels in the Minnesota portion of the Upstream Mitigation Area (parcels where the floodway intersects the parcel, and parcels where the flowage easement boundary bisects the parcel).
 - d. Biotic and Geomorphic Monitoring Program parcels associated with the Red River of the North.
 - e. Parcels impacted by non-P3 mobility improvements adjacent to the Diversion Channel.
 - f. Property surveying for parcels not identified in the attached map will generally be split along I-94.
7. Provide Boundary Survey Documents in accordance with PROJECT schedule.
- a. Draft and Preliminary Boundary Survey Documents
 - i. The Draft Boundary Survey Documents shall be produced in a format acceptable for recording in the Office of the County Recorder in which the parcel is located.
 - ii. Upload the Preliminary Boundary Survey Documents to the FM Diversion WMX site, using the following file naming convention:
 - 1. Filename format: OIN# Owner's Last Name PRELIM COS [Upload Date]
 - 2. Example filename: OIN 1234 Smith PRELIM COS 01.01.18
 - iii. Deliver the Preliminary Boundary Survey Documents to the land acquisition firms and appraiser assigned to the parcel as a basis for appraising the property rights being taken for the PROJECT.
 - b. Final Boundary Survey Documents
 - i. The Boundary Survey Documents shall be finalized after the negotiated purchase agreement for the property is finalized, or if eminent domain actions become necessary.
 - ii. The Final Boundary Survey Documents shall incorporate any changes or modifications necessary to describe the final taking.
 - iii. File the Final Boundary Survey Documents with the County Recorder's office at the same time as the final property acquisition documents, which will be filed by OWNER's Attorney.
 - iv. Upload the Final Boundary Survey Documents to the FM Diversion WMX site when the county recorder's office has completed the recording of the property acquisition. Use the following file naming convention:
 - 1. Filename format: OIN# Owner's Last Name SIGNED COS [Survey Stamp Date]
 - 2. Example filename: OIN 1234 Smith SIGNED COS 03.01.18.
8. Deliverables and Schedule:
- a. Boundary Survey Documents as outlined above, in accordance with Project schedule.
 - b. Cadastral survey of section corners for Southern Embankment in Minnesota shall be complete according to a schedule to be agreed with USACE.
 - c. Preliminary and final plats per township.

Task 2-C: Property Management

The scope of services for Task 2-C generally includes managing the property that has been acquired for the PROJECT, prior to giving control of the property to the P3 Developer or other Contractor(s). CONSULTANT will perform activities at the direction of the Executive Director to accomplish the scope described herein, as well as other services which may be mutually agreed to by the parties pursuant to the terms of the Agreement. CONSULTANT will work with Executive Director, OWNER, CCJWRD, and/or MCCJPA to determine which property management services may be better handled by OWNER entity staff (i.e., Cass County, City of Fargo, Clay County, and City of Moorhead) for services such as mowing, weed management, etc. The specific services included in Task 2-C include:

1. Assist in development of recommendations for short term and long term use, salvage, demo, removal, disposal, and/or final disposition for OWNER, CCJWRD, or MCCJPA acquired property. Update the recommendations as needed.
2. Provide information to OWNER regarding the salvage, demo, removal, disposal, and/or final disposition of OWNER, CCJWRD, and MCCJPA acquired property. This may include providing information to the Executive Director for coordinating the development of removal/demolition plans and specifications (prepared by others), coordinating the solicitation of bids from contractors, coordinating asbestos or other testing as necessary prior to demo/removal of homes, coordinating with Habitat for Humanity for salvage of appliances and other items, coordinating with emergency response teams (fire departments, SWAT, etc.) for training exercises, coordinating public sale of assets, and other activities as necessary.
3. Provide property management support to manage and maintain OWNER's, CCJWRD's, or MCCJPA's residential, commercial, farmstead buildings, and farmland properties prior to their removal, disposal, demolition, auction, or incorporation into the PROJECT.
4. Perform exterior inspections of residential and commercial properties. External inspections include drive by and/or physical check that doors and windows are secure. Inspection frequency for each property will be determined by the Executive Director.
5. Perform interior inspections of residential and commercial properties. Inspection frequency for each property will be determined by the Executive Director.
6. Upon property acquisition, coordinate utility services, including shutting off water service, turning down heat, switching billing, pulling water and electric meters, etc.
7. Coordinate with OWNER's farmland management firm (Pifer's) to assist with management and maintenance of OWNER's farmland properties prior to the disposal or use for the PROJECT.
8. Deliverables & Schedule:
 - a. Property Management Status Report – Quarterly, for the CCJWRD's and/or MCCJPA's meetings. Include the property status and disposition, including if the property is rented, available for rent, and when the property is anticipated to be needed for the PROJECT.

Phase 3 – P3 Support Services

The OWNER has retained the services of others (P3 Leads) to lead the procurement of a P3 Developer. OWNER requests support from CONSULTANT to assist in completing the P3 procurement process, including assisting with the development and review of portions of the final RFP and assistance in the selection of a preferred Proposer.

Task 3-A: P3 Procurement Support

The scope of services for Task 3-A generally include supporting the P3 Leads in the development of the public private partnership (P3) procurement documents for OWNER to advertise for and select a P3 Developer for the PROJECT. CONSULTANT will perform activities at the direction of the Executive Director to accomplish the scope described herein, as well as other services which may be mutually agreed to by the parties pursuant to the terms of the Agreement. The specific services included in Task 3-A include:

1. Assist in the development of the fourth draft RFP, any subsequent draft RFPs, and the final RFP.
 - a. Provide input for the development of procurement documents related to outreach, communications, lands, property management, mapping, and related elements.
 - b. Incorporate the appropriate terms of Third-Party MOUs, Utility MOUs and Property Owner Commitments into the Technical Requirements and arrange their incorporation into the Project Agreement.
2. Assist with confidential one-on-one discussions with Proposers as needed.
3. Assist with addressing Clarification Requests (CRs) and Innovative Technical Concepts (ITCs). Participate as requested in ITC decision meetings. Develop responses to technical CRs and ITCs as requested.
4. Assist with responding to stakeholder comments as requested.
5. Assist with Initial Review of the Technical Proposals for completeness. Make a Responsive or Non-Responsive recommendation to P3 Leads for each Technical Proposal.
6. Support Technical Proposal evaluation team.
7. Assist with review of the Technical Proposal per the RFP requirements and provide recommendations on the following sections:
 - a. Flooding Management
 - b. Communication Management
 - i. Outline Communication Plan
 - c. Environmental Management
8. Advise in the determination by the P3 Leads of Compliant and Non-Compliant Technical Proposals.

Task 3-B: Management and Coordination of Utilities and Third-party Agreements

The scope of services for Task 3-B include:

1. Assist with facilitating and managing negotiations with Utilities and Third Parties, whose assets are affected or required to be moved.
2. Assist with finalizing the terms of Third-Party MOUs and Utility MOUs, with drafting documents and reviewing/commenting on Third-Party MOUs and Utility MOUs with agencies including the following:
 - a. AT&T
 - b. BNSF
 - c. Barnes Township
 - d. Berlin Township

- e. Cass County
 - f. Cass County Electric
 - g. Cass Rural Water
 - h. Century Link
 - i. CHS, Inc
 - j. Dakota Carrier Network
 - k. Drain Water Resource Districts
 - l. Harwood Township
 - m. Horace, Stanley and Warren Townships
 - n. Magellan
 - o. Mapleton Township
 - p. Midcontinent
 - q. Minnkota
 - r. Moorhead Public Service
 - s. NDDOT
 - t. NuStar
 - u. Ottertail
 - v. Raymond Township
 - w. SBA Communications
 - x. Sprint
 - y. North Dakota State Water Commission
 - z. WAPA
 - aa. Warren Township
 - bb. WBI
 - cc. West Fargo
 - dd. Wiser Township
 - ee. Xcel
3. If required, attend meetings with OWNER, P3 Leads, and Developer to clarify the requirements of the Project Agreement, Technical Requirements and Third-Party MOUs or Utility MOUs concerning the management and coordination of Utilities and Third Parties.

References:

The following documents are referenced in this Task Order 1.

- Master Agreement for Professional Services between the OWNER and CONSULTANT dated February 28, 2020, and any attachments and executed amendments.
- Property Rights Acquisition and Mitigation Plan, version 5, dated January 2020.

Attachments:

The following documents are attached to this Task Order 1.

- Attachment A – OWNER's Responsibilities
- Attachment B – Annual Budget Summary by Task
- Attachment C – Property Acquisition Schedule
- Attachment D – Map of Major Project Features for Property Acquisition
- Attachment E – Map of Parcels for Boundary Surveying

Obligations of OWNER:

OWNER's responsibilities shall be as shown Sections Thirty-two (32) through Forty (40), inclusive, of the AGREEMENT and Attachment A to this Task Order 1.

SUBCONSULTANTS:

- None identified at this time

Other Modifications to AGREEMENT:

- None

Conflicts:

- If any part of this Task Order 1 is determined to be in conflict with the terms and conditions of the AGREEMENT, then the terms and conditions of the AGREEMENT shall prevail.

Budget and Payments to CONSULTANT:

The budgetary amount established for services under this Task Order 1 is **\$16,175,200**. Compensation and payments are as per the AGREEMENT, including the cost reimbursement provisions. The expected distribution of the budgetary amount by task and by year for the term of this Task Order 1 is presented in Attachment B. OWNER and CONSULTANT agree and acknowledge that Attachment B is an estimate.

As part of the OWNER's Program Budget development, review, and approval, and at least on an annual basis, CONSULTANT shall submit to the Executive Director a spending curve reflecting costs to date and the anticipated expenditures for the term of this Task Order 1. The spending curve will be adjusted to reflect the Program Budget approved by the OWNER. The initial spending curve will reflect the anticipated expenditures as shown in Attachment B and will be submitted to the Executive Director as part of to the

first scheduled Program Budget development, review, and approval process after execution of this Task Order 1.

On a monthly basis, CONSULTANT will report on the actual expenditures of this Task Order 1 against the currently approved spending curve.

CONSULTANT will advise the Executive Director or the Executive Director's designee when 80 percent of the budgetary amount for this Task Order 1 is expended. If necessary, CONSULTANT will prepare and submit to the Executive Director or the Executive Director's designee an amendment for additional compensation when 90 percent of the budgetary amount for this Task Order 1 is expended. CONSULTANT will not perform work beyond 100 percent of the budgetary amount for this Task Order 1 without Executive Director's written authorization by amendment to this Task Order.

Owner's Rights

The OWNER may suspend services and/or terminate this Task Order 1 upon thirty (30) days' written notice. Suspension and termination provisions shall be in accordance with the AGREEMENT. In the event that the AGREEMENT is terminated, this Task Order 1 shall also terminate.

Effective Date of this Task Order:

February 28, 2020

Approval:

Approval and Acceptance of this Task Order 1, including the references and attachments listed above, shall incorporate this document as part of the AGREEMENT. CONSULTANT is authorized to begin performance as stated herein.

Metro Flood Diversion Authority

Signature: _____

Name _____ Joel Paulsen

Title: _____ Executive Director

Date: _____

ADVANCED ENGINEERING and ENVIRONMENTAL SERVICES, INC.

Signature: _____

Name _____ Grant L. Meyer

Title: _____ Chief Executive Operations

Date: _____

Attachment A – OWNER’s Responsibilities

1. Track and report funding status.
2. Track WIKS/LERRDs crediting and report to USACE, if required.
3. Designate OWNER’s staff to serve as points of contact for property acquisition program activities.
4. Review, process, and pay invoices for OWNER-held agreements and task orders.
5. Designate OWNER’s staff to coordinate Authority governance activities such as JPA extensions, fiscal year budget development, contracting actions, and other agreements.
6. Lead and facilitate Admin Advisory Staff meetings, Executive Leadership Team meetings, and monthly Board and Committee meetings.
7. Execute agreements to implement the PROJECT as approved.
8. Continue the agreement with ACONEX to provide an EDMS platform and host an “ACONEX Local Copy” on the OWNER’s IT infrastructure.
9. Continue to own, host, and maintain ESRI software and data on the OWNER’s IT infrastructure.
10. Participate in public outreach, legislative support, and engagement activities.
11. Assist with communications with impacted property owners, agencies, and elected leaders.
12. Obtain rights of entry (ROE) in a timely fashion as necessary to complete the property acquisition program.
13. Retain appraisal firms.
14. Retain land acquisition firms.
15. Retain legal counsel to provide legal services as necessary for the property acquisition program.
16. OWNER’s Attorney shall produce a memo detailing the quick take processes required in North Dakota and Minnesota.
17. Complete the closing on property rights needed for the PROJECT.

Attachment B – Annual Budgetary Summary by Phase and Task

Task Order 1 Budget Summary		2020	2021	2022	2023	2024	2025	2026	Total
Phase 1 – Consultant Services, Outreach, and Legislative Services									
1-A	Consultant Services	\$410,300	\$424,900	\$264,000	\$273,900	\$301,300	\$315,100	\$345,600	\$2,335,100
1-B	Public Involvement/Outreach	\$719,800	\$621,700	\$-	\$-	\$-	\$-	\$-	\$1,341,500
1-C	Legislative Services	\$40,100	\$135,700	\$-	\$-	\$-	\$-	\$-	\$175,800
	Expenses	\$51,600	\$51,800	\$-	\$-	\$-	\$-	\$-	\$103,400
	<i>Sub-Total Phase 1</i>	<i>\$1,221,800</i>	<i>\$1,234,100</i>	<i>\$264,000</i>	<i>\$273,900</i>	<i>\$301,300</i>	<i>\$315,100</i>	<i>\$345,600</i>	<i>\$3,955,800</i>
Phase 2 – Lands Program Services									
2-A	Property Rights Acquisition Management	\$1,500,450	\$1,164,450	\$1,216,600	\$1,217,700	\$1,284,550	\$1,281,100	\$1,213,200	\$8,878,050
2-B	Property Surveying Services	\$703,500	\$761,250	\$-	\$-	\$-	\$-	\$-	\$1,464,750
2-C	Property Management	\$96,600	\$100,800	\$110,000	\$114,400	\$125,350	\$132,250	\$142,800	\$822,200
	Expenses	\$126,900	\$113,600	\$79,700	\$80,500	\$85,700	\$86,700	\$85,300	\$658,400
	<i>Sub-Total Phase 2</i>	<i>\$2,427,450</i>	<i>\$2,140,100</i>	<i>\$1,406,300</i>	<i>\$1,412,600</i>	<i>\$1,495,600</i>	<i>\$1,500,050</i>	<i>\$1,441,300</i>	<i>\$11,823,400</i>
Phase 3 – P3 Support Services									
3-A	P3 Procurement Support	\$238,000							\$238,000
3-B	Mgmt and Coordination of Utilities and Third-party Agreements	\$138,000							\$138,000
	Expenses	\$20,000							\$20,000
	<i>Sub-Total Phase 3</i>	<i>\$396,000</i>							<i>\$396,000</i>
TOTAL		\$ 4,045,250	\$ 3,374,200	\$ 1,670,300	\$ 1,686,500	\$ 1,796,900	\$ 1,815,150	\$ 1,786,900	\$ 16,175,200

Attachment C – Property Acquisition Schedule and Milestones

The following schedule is based on the project understanding and best state of knowledge at the time of executing this Task Order.

Major Project Feature	Work Limits Defined	Start Acquisition Process ¹	Complete Acquisition Process	Notes
Diversion Channel				2
Parcels with Structures	June 2017	January 2019	September 1, 2020	
Parcels without Structures	June 2017	January 2019	October 15, 2020	
Southern Embankment				3
Wild Rice Control Structure	January 2019	January 2019	April 17, 2020	
Red River Control Structure				
Early Borrow Pit Parcels	October 2019	October 2019	November 2020	
Remaining Work Limits	July 2020	August 2020	August 2021	
I-29 Road Raise	January 2020	February 2020	November 2020	
ND Embankment Reach 1	November 2019	November 2019	September 2020	
ND Embankment Reach 2A	March 2020	April 2020	November 2021	
ND Embankment Reach 2B	March 2020	April 2020	October 2022	
ND Embankment Reach 3	March 2020	April 2020	September 2025	
MN Embankment Reach 4	March 2020	August 2022	October 2023	
ND Embankment Reach 5	March 2020	August 2022	September 2024	
Upstream Mitigation Area				4
ND Flowage Easements	March 2020	April 2021	September 2025	5
MN Flowage Easements	October 2020	April 2021	September 2024	5
ND Structures	March 2020	April 2020	September 2025	6
MN Structures	October 2020	November 2020	September 2024	7

¹ The acquisition schedule for Project features will depend on the design and construction plan for each feature. It is assumed that property acquisitions will begin upon receipt of the 65-percent design submittal.

² The acquisition schedule for the Diversion Channel and Associated Infrastructure is based on the procurement schedule for the P3 Developer, dated December 2019.

³ The acquisition schedule for the components of the Southern Embankment will depend on USACE design schedule. It is assumed that property acquisitions will begin upon receipt of the Preliminary Engineering Report for the Southern Embankment from USACE.

⁴ It is assumed that a Conditional Letter of Map Revision (CLOMR) will be obtained from FEMA in March 2020. It is assumed that the North Dakota State Engineer will approve the Property Rights Acquisition and Mitigation Plan in March 2020. It is assumed that the upstream mitigation area requirements in Minnesota will be fully established and approved by October 2020.

⁵ The acquisition of flowage easements options will begin after completion of the Phase 2 Flowage Easement Valuation Study. It is assumed that the Phase 2 Flowage Easement Valuation Study will start in April 2020 and be complete by April 2021. It is assumed that the options will be exercised prior to the acquisition completion dates shown.

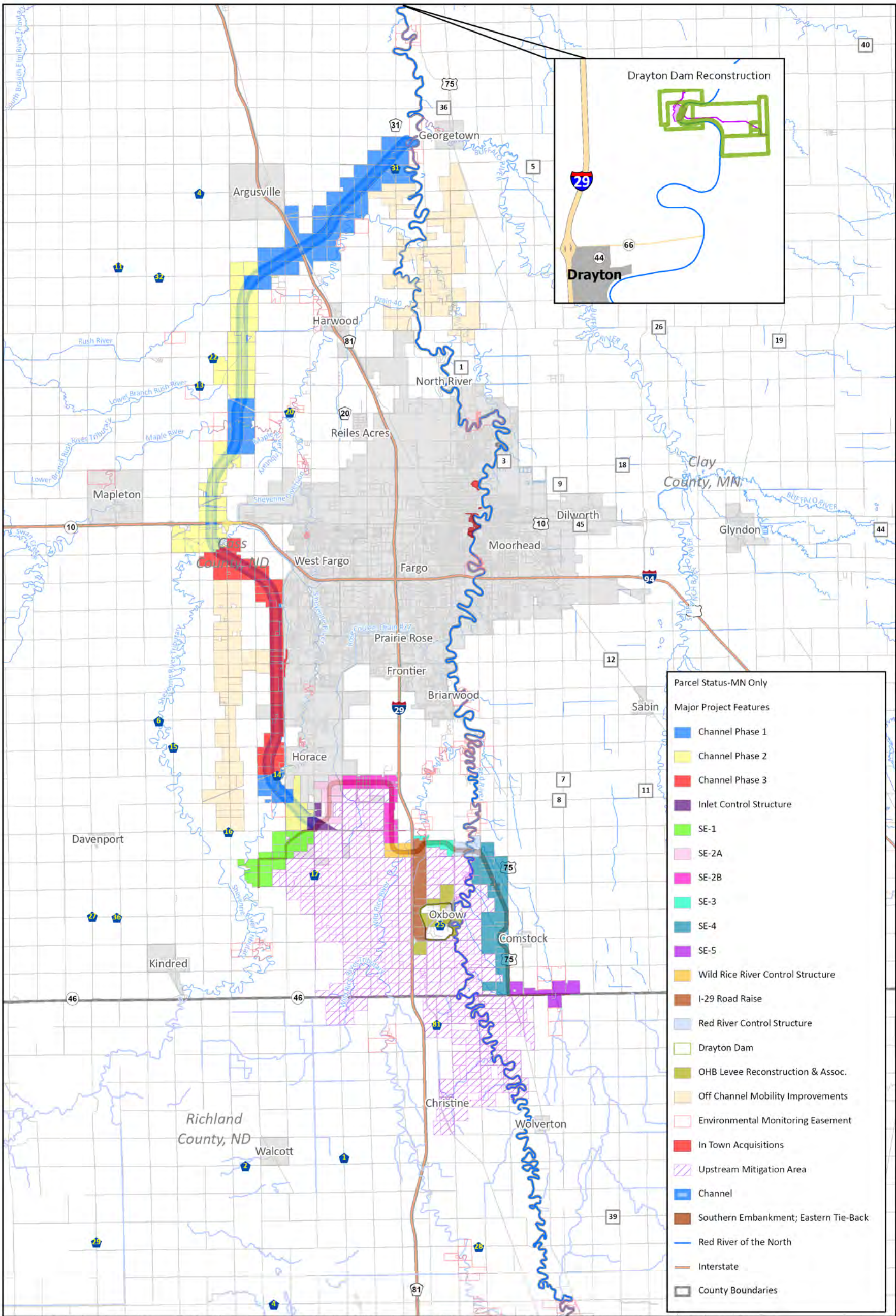
⁶ The acquisition of structure sites in the upstream mitigation area in North Dakota will begin upon receipt of the final work limits for the Southern Embankment, approval of the conditional letter of map revision (CLOMR), and approval of the Property Rights Acquisition and Mitigation Plan.

⁷ The acquisition of structure sites in the upstream mitigation area in Minnesota is assumed to begin in November 2020.

Major Project Feature	Work Limits Defined	Start Acquisition Process¹	Complete Acquisition Process	Notes
Drayton Dam Reconstruction	February 2020	March 2020	March 2021	
Off Channel Mobility Improvements	July 2021	August 2021	August 2022	
Biotic & Geomorphic Monitoring Sites	December 2018	January 2019	April 2022	8
In-Town Acquisitions				9

⁸ The acquisition of biotic and geomorphic monitoring site easements in North Dakota will begin in January 2019. The monitoring sites in Minnesota will first require obtaining a right-of-entry, initial monitoring by USACE, and then the acquisition of easements.

⁹ It is assumed that the City of Fargo and City of Moorhead will acquire the property rights necessary for construction of future levees in each city.



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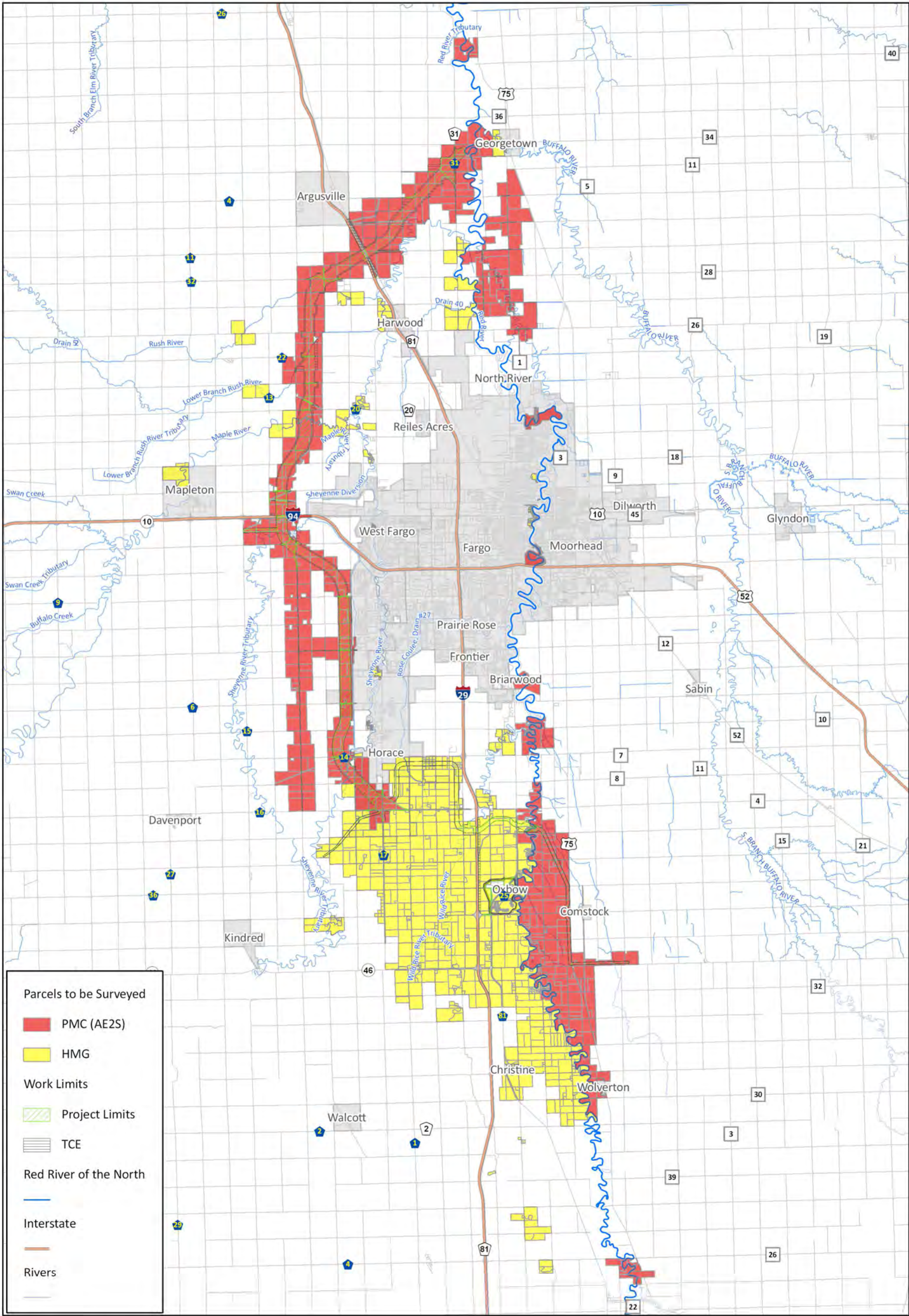
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FM AREA FLOOD DIVERSION PROJECT MAJOR PROJECT FEATURES

Date: 2/14/2020





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FM AREA FLOOD DIVERSION PROJECT BOUNDARY SURVEYING RESPONSIBILITY

Date: 12/17/2018





Board Meeting

February 27, 2020

SUBJECT: Change Order – WP50A Property Structure Mitigation
Schmidt and Sons Construction, Inc.

RECOMMENDATION: Board Approval

BACKGROUND / KEY POINTS: A change to add 3 properties for mitigation prior to Milestone 1 (March 27, 2020) and an extension to the term of the contract (expires August 28, 2020).

FINANCIAL CONSIDERATIONS: Total contract value is **\$202,753.16**; this is an increase of **\$75,555.00**

VOTING REQUIREMENTS: Majority of DA Board

Disclaimer: Voting requirements may be subject to changes in the law, parliamentary procedural matters, or other unforeseen issues. The DA General Counsel provides opinion on questions of voting requirements in accordance with the North Dakota State Statutes and parliamentary procedure.

Respectfully Submitted:

Joel Paulsen, PE
Executive Director

Attachments: Change Order – WP50A Property Structure Mitigation

Technical Advisory Group Recommendation

Meeting Date: 02/24/2020

RECOMMENDATION FOR ACTION:

The Technical Advisory Group has reviewed and recommends approval of the following Contract Action(s).

SUMMARY OF CONTRACTING ACTION:

Per the contract review and approval procedures that were adopted by the Diversion Authority on November 10, 2016 and amended August 23, 2018, the Owner's Program Management Consultant (PMC) or Engineer of Record (EOR) shall submit construction Change Order requests that are greater than \$50,000 to the Technical Advisory Group. The Technical Advisory Group shall review the Change Order request during its next regular meeting after receiving the Change Order request, and make a recommendation as to approval or denial of the Change Order request.

The Owner's Representative has prepared the following Contract Action(s):

Description	Budget Estimate (\$)
WP-50A: Schmidt and Sons Construction, Inc.	
<i>Change Order 2</i>	\$75,555.00
<ul style="list-style-type: none"> Add removals at three (3) properties to the Contract Change the Contract Times 	

Summary of Contracting History and Current Contract Action:

The Diversion Authority awarded the WP-50A (Property Structure Mitigation WP-50A) construction contract to Schmidt and Sons Construction, Inc. (Contractor) on June 3, 2019, and Notice To Proceed was granted June 5, 2019.

This change order adds removals at three (3) properties to the Contract, along with Contract Time changes.

The following is a summary of contracting history to date along with the current contracting action.

Original Agreement or Amendment	Budget (\$) Change	Original Project Cost	Revised Project Cost	Project Start	Project Completion	Comments
Original Contract		\$109,680.00		05-Jun-19	31-May-20	Contract Award.
Change Order No. 1	\$17,518.86		\$127,198.86	05-Jun-19	31-May-20	Incorporate Field Order 1 and change the Contract Times.
Change Order No. 2	\$75,555.00		\$202,753.16	05-Jun-19	28-Aug-20	Add removals at three (3) properties and changes the Contract Times.

Financial Considerations:

Attached for your review and action is draft WP-50A Change Order No. 2 (CO-2). The PMC and the EOR have reviewed CO-2 and feel the proposed costs and level of effort are reasonable for the scope of work. This change order increases the total Contract Price \$75,555.00 and changes the Contract Times. The following items are included in this change order:

1. Contract Price – add removals at 3 properties: The structures at three (3) Diversion Authority owned properties are vulnerable to 2020 spring flooding. In lieu of protecting these structures from spring flooding, a change proposal was requested from the WP-50A Contractor to move or demolish them before the 2020 spring flood season. The Contractor provided the attached cost proposal to move the structures. Below is a summary of the proposed changes for the addition of these three (3) properties to the WP-50A Contract.
 - a. Attached is draft CO-2, which provides details about the proposed changes and costs. The work includes Mobilization, Clearing and Grubbing, structural Removals at three (3) properties, Topsoil Import, Imported Fill, and Seeding and Mulching. The Contractor shall comply with the WP-50A Contract Plans and Specifications, and:
 - i. shall be solely responsible and liable for any and all risk, including flooding, associated with the structures on these three (3) properties,
 - ii. shall coordinate service disconnections with utility companies: Polar Telephone regarding disconnection and removal of phone service, and Cass County Electric Cooperative regarding disconnection and removal of power service,
 - iii. shall employ a certified, licensed well contractor to seal the water well,
 - iv. shall coordination with lessee of property,
 - v. shall comply with hazardous material disposal requirements, and
 - vi. shall schedule all earthmoving and removals work at 17413 and 17408 Horse Haven Drive, ND with the USACE Archaeologist for the project.
 - b. This change order adds the following Bid Items.
 - i. Pay Item 15, *CO-2 Mobilization*: a Lump Sum (LS) item, quantity equal to one, and LS cost equal to \$4,500.00.
 - ii. Pay Item 16, *CO-2 Clearing & Grubbing*: a LS item, quantity equal to one, and LS cost equal to \$6,000.00.
 - iii. Pay Item 17, *CO-2 Removals - 17411 Horse Haven Dr, ND*: a LS item, quantity equal to one, and LS cost equal to \$18,000.00.
 - iv. Pay Item 18, *CO-2 Removals - 17413 Horse Haven Dr, ND*: a LS item, quantity equal to one, and LS cost equal to \$7,000.00.
 - v. Pay Item 19, *CO-2 Removals - 17408 Horse Haven Dr, ND*: a LS item, quantity equal to one, and LS cost equal to \$7,000.00.

- vi. Pay Item 20, *CO-2 Topsoil Import*: a Unit Price item, estimated quantity equal to 610 Cubic Yards (CY) at a Unit Price of \$15.00 per CY, for a proposed cost equal to \$9,150.00.
 - vii. Pay Item 21, *CO-2 Imported Fill*: a Unit Price item, estimated quantity equal to 185 CY at a Unit Price of \$11.00 per CY, for a proposed cost equal to \$2,035.00.
 - viii. Pay Item 22, *CO-2 Imported Fill*: a Unit Price item, estimated quantity equal to 7,290 Square Yards (SY) at a Unit Price of \$3.00 per SY, for a proposed cost equal to \$21,870.00.
2. Contract Time: This change order adds Milestone 1 for a portion of this change order work, extends Substantial completion for agreed to weather delays in 2019, and extends Final Completion to allow for completion of this change order work.
- a. Milestone 1: Substantially complete March 27, 2020. Milestone 1 Work shall include complete demolition or structure moves off the project sites at 17411 Horse Haven Drive, ND; 17413 Horse Haven Drive, ND; and 17408 Horse Haven Drive, ND. Work included in Milestone 1 is NOT subject to Project Substantial Completion.
 - i. This change order also adds Milestone 1 Liquidated Damages in the amount of \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion until the Work is substantially complete.
 - b. Substantial and Final Completion: The Contractor requested seven (7) additional days due to weather delays in 2019 and the Engineer and Owner's Representative agreed to this request. For completion of Milestone 1 work, it is recommended that eighty nine (89) calendar days be added to Final Completion. This change will replace Agreement paragraph 4.02C in its entirety with the following:
 - i. The Work will be substantially completed on November 7, 2019, as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions by August 28, 2020.

ATTACHMENT(S):

1. Draft Change Order No. 2 with attachments
2. Contractor's proposal

Prepared by: Program Management Consultant

John W. Glatzmaier

John Glatzmaier, P.E.
Jacobs

February 24, 2020

Date

Submitted by:

Nathan Boerboom, City of Fargo Engineer,
Diversion Authority Project Manager

Concur: February 25, 2020 Non-Concur:

Robert Zimmerman, Moorhead City Engineer

Concur: February 25, 2020 Non-Concur:

David Overbo, Clay County Engineer

Concur: February 25, 2020 Non-Concur:

Matt Stamness, Assistant Cass County Engineer,
Diversion Authority Project Manager

Concur: February 25, 2020 Non-Concur

Jason Benson, Cass County Engineer

Concur: Non-Concur

Dustin Scott, West Fargo City Engineer

Concur: Non-Concur

Cc:

- Joel Paulsen, Diversion Authority Executive Director