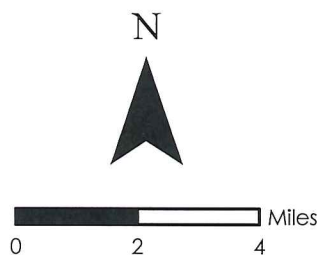


Information depicted may include data unverified by AE2S. Any reliance upon such data is at the user's own risk. AE2S does not warrant this map or its features are either spatially or temporally accurate. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Edited by: cwickenheiser | C:\Data\Projects\GIS Projects\FM Area Diversion\FMDiversionParcelStatus.aprx



FM DIVERSION OUTREACH TO AFFECTED JURISDICTIONS

Date: 4/26/2018



SERVICES AGREEMENT

**BY AND BETWEEN
METRO FLOOD DIVERSION AUTHORITY
AND
S & S LANDSCAPING COMPANY, INC.**

Dated as of April 25, 2018

Relating to:

A Services Agreement to perform work pursuant to WP-28A and WP43-A.

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

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DRAFT

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2018, by and between the METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota, whose address is Box 2806, 211 9th Street South, Fargo, North Dakota 58108-2806 (the “Authority”), and S & S LANDSCAPING COMPANY, INC., a corporation organized and existing under the laws of the State of North Dakota with a principal office at 2777 Fiechtner Drive South, Fargo, North Dakota 58103-2332 (“SLC”) (the Authority and SLC collectively referred to as “Parties”).

RECITALS

WHEREAS, in March 2018, the Authority issued a Request for Quotes for WP-28A, pertaining to grading and seeding, and WP-43A, pertaining to washout repairs and seeding, seeding and mulching, and tree planting in locations in Cass County, North Dakota; and

WHEREAS, on or prior to April 6, 2018, SLC, along with three (3) other contractors, submitted quotes in response to the Authority’s Request for Quotes; and

WHEREAS, of the quotes submitted, SLC submitted the lowest quote for WP-28A and for WP-43A; and

WHEREAS, the Authority is of the opinion that SLC has the necessary qualifications, experience, and abilities to provide the services required in WP-28A and WP-43A; and

WHEREAS, SLC agrees to provide such services to the Authority on the terms and conditions provided in this Agreement; and

WHEREAS, the Authority agrees to compensate SLC for such services on the terms and conditions provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

AGREEMENT

1. Services Provided. The Authority hereby agrees to engage SLC to provide the Authority with the following described list of services for both WP-28A and WP-43A (the “Services”).

A. WP-28A (Cass County Road 16 & 17 Grading and Seeding)

a. The scope of work includes grading of topsoil stockpile areas and seeding of areas depicted on attached Exhibit A attached hereto and described below:

i. Topsoil grading: for areas identified on Exhibit A as Broadcast Seed, grade area such that water does not pond and drains to an established ditch.

ii. Seeding (Temporary Cover Crop) – Broadcast Seed areas: for areas identified on Exhibit A as Broadcast Seed, seed areas per the following:

(1) North Dakota Department of Transportation (NDDOT) 2014 Standard Specification, Section 251 Seeding (Temporary Cover Crop).

(A) Fertilize areas with less than two (2) inches of topsoil.

(B) Use a broadcast seeding method where noted and include mulch.

iii. Seeding (Temporary Cover Crop) – Drill Seed areas: for areas identified on Exhibit A as Drill Seed, seed areas per the following:

(1) North Dakota Department of Transportation (NDDOT) 2014 Standard Specification, Section 251 Seeding (Temporary Cover Crop).

(A) Fertilize areas with less than two (2) inches of topsoil.

iv. Seeding (Class II) – Broadcast Seeding areas: for areas identified on Exhibit A as Broadcast Seed, seed areas per the following:

(1) NDDOT 2014 Standard Specification, Section 251 Seeding (Class II).

(2) Use a broadcast seeding method where noted and include mulch.

v. Seeding (Class II) – Drill Seed areas: for areas identified on Exhibit A as Drill Seed, seed areas per the following:

(1) NDDOT 2014 Standard Specification, Section 251 Seeding (Class II).

vi. Mulching: for areas identified on Exhibit A as Drill Seed and Broadcast Seed, mulch areas per the following:

(1) NDDOT 2014 Standard Specification, Section 253
Mulching (Straw).

(A) Punch mulch into soil to anchor.

B. WP-43A (OHB Ring Levee Washout Repairs and Seeding)

a. The scope of work includes washout repairs, reseeding of a portion of the exterior slope of the 43A levee, grading and reseeding, mulching, maintenance, and weed control of areas depicted on Exhibits B through E attached hereto and described below:

i. Washout repairs and seeding: there are approximately thirty (30) washouts along the scope of the WP-43A levee that require repairs in the hatched area identified on Exhibit B. The Houston-Moore Group (“HMG”) will field mark and quantify the washouts to be repaired by SLC.

(1) Assume washouts are approximately four (4) feet wide by four (4) inches deep by fifty (50) feet long.

(2) Include topsoil import to fill washouts. Topsoil to be tilled into existing ground.

(3) Seed repaired areas with WP-43A seed specification mixture, as identified on Exhibit G attached hereto.

(4) Install an Erosion Control Blanket (“ECB”) per the following:

(A) NDDOT 2014 Standard Specification, Sections 255 and 856 Erosion Control Blanket (Type 1).

(a) Type 1 Straw ECB.

(b) Anchor using staples.

ii. Seeding – Levee Outside Slope: areas within the hatched area on Exhibit C attached hereto require reseeding. HMG will field mark and quantify areas to be seeded. Seed per WP-43A seed specifications, attached hereto as Exhibit G.

(1) Remove (fill with topsoil or disk and level) vehicle wheel ruts outside of the fifteen (15) foot wide original roadway prior to seeding. This work will be incidental.

iii. Seeding – Temporary Roadway Area: areas within the hatched area on Exhibit D attached hereto require reseeding. Seed per WP-43A seed specifications, attached hereto as Exhibit G.

(1) Remove (fill with topsoil or disk and level) vehicle wheel ruts outside of the fifteen (15) foot wide original roadway prior to seeding. This work will be incidental.

iv. Mulching – Levee Outside Slope: for areas disturbed, mulch per WP-43A seed specifications attached hereto as Exhibit G.

v. Mulching – Temporary Roadway Area: for areas disturbed, mulch per WP-43A seed specifications attached hereto as Exhibit G.

vi. Maintenance: provide three (3) years of native prairie grass maintenance per WP-43 seed specifications attached hereto as Exhibit G. Maintenance shall be for the area shown in the blue hatched area on Exhibit E attached hereto. The Authority anticipates an additional twenty (20) acres of Oxbow levee and associated area, not shown on Exhibit E, will be added to this Agreement for 2019 and 2020. Provide maintenance for those areas starting in 2019. The actual additional acres added for the 2019 and 2020 seasons will be determined at the start of each season.

(1) 2018 maintenance: assume a maximum of four (4) site visits per year to provide the following services – mow monthly and provide periodic (assume less than a month) watering and fertilizer per WP-43A seed specifications attached hereto as Exhibit G.

(2) 2019 maintenance: assume a maximum of two (2) site visits per year to provide the following services – provide periodic mowing (assume twice per year) and water as required per WP-43A seed specifications attached hereto as Exhibit G.

(3) 2020 maintenance: assume a maximum of two (2) site visits to provide the following services – provide periodic mowing (assume twice per year) and watering as required per WP-43A seed specifications attached hereto as Exhibit G.

vii. Weed control: provide three (3) years of spot sprayed, non-selective herbicide weed control. Maintenance shall be for areas shown in the blue and orange hatched areas on Exhibit E attached hereto. Additional areas not shown on Exhibit E within the Oxbow levee area may require weed control. HMG will notify SLC of additional locations and work will be paid under this item.

(1) Regulations:

(A) General: herbicide applications will be performed according to federal, state, and local regulations. Herbicide products should be used consistent with their labeling. Herbicide applications will be pursued as a vegetation management tool when needed. All herbicide products, mixes, and applications must be approved by HMG. Applicators must use extreme caution when applying herbicides near water, adjacent properties with crops that might be damaged, or other landscaped areas.

(B) Herbicide applications: SLC is responsible for the purchase, storage, recordkeeping, and disposal of herbicides. Herbicides will only be applied by qualified applicators, following herbicide labels and manufacturer's recommendation for application rates. A qualified applicator is an individual who has been trained regarding the product and application method and meets any federal, state, and local laws and regulations. This individual is required to hold a certified applicator's license or be under the direct supervision of a certified applicator. Supervisors of qualified applicators are required to hold a certified applicator's license in the State of North Dakota.

(C) Herbicide reports: all herbicide applications will be reported to HMG using SLC's herbicide report. Reports will be submitted to HMG on a weekly basis. It is SLC's responsibility to maintain reports for review by the North Dakota Department of Agriculture.

(2) Application: shall be uniformly applied at the rate as labeled by the manufacturer to areas requested and designated by HMG to control unwanted vegetation.

(3) 2018 weed control: spot spray areas requested and designated by HMG. Payment will be for actual areas treated. Assume a maximum of two (2) site visits per year, done during a mowing site visit.

(4) 2019 weed control: spot spray areas requested and designated by HMG. Payment will be for actual areas treated. Assume a maximum of two (2) site visits per year.

(5) 2020 weed control: spot spray areas requested and designated by HMG. Payment will be for actual areas treated. Assume a maximum of two (2) site visits per year.

viii. Sequencing of work: schedule and perform work in the following sequence:

- (1) Washout repairs;
- (2) Levee Outside Slope – seeding and mulching;
- (3) Temporary Roadway Area – seeding and mulching; and
- (4) Maintenance and weed control.

C. WP-43A (OHB Ring Levee Tree Planting)

a. The scope of work includes planting of tree stems in the hatched area on Exhibit F attached hereto and as described below:

i. Tree planting: following industry standard tree planting guidelines and plant the following tree seedlings.

(1) Provide 2,000 stems per acre and assume a total of three (3) acres of stems to be planted within the depicted area.

(2) Tree types and percentages:

- | | |
|---------------------------------------|------------|
| (A) Elm/Green Ash | 30 percent |
| (B) Box Elder | 30 percent |
| (C) Burr Oak/Black Willow/Cotton Wood | 30 percent |
| (D) Hackberry | 10 percent |

ii. Sequencing of work: schedule and perform work after seeding and mulching of Temporary Roadway Area has been completed.

The Services may also include any other tasks which the Parties agree on through prior written agreement signed by both Parties. SLC hereby agrees to provide such Services to the Authority, and the Authority agrees to provide the agreed-upon compensation for such Services.

2. Notice to Proceed. SLC will not commence Services until receipt of a notice to proceed from the Authority. The Authority will not issue a notice to proceed to SLC until SLC provides (i) evidence of performance and payments bonds to the Authority in the full amount of this Agreement and (ii) copies of the insurance policies required by this Agreement. Additionally, the Authority will initially issue SLC a limited notice to proceed, delaying the commencement of “Seeding – Temporary Roadway Area” and “Mulching – Temporary Roadway Area” of WP-43 (OHB Ring Levee Washout Repairs and Seeding) and all of the Services under WP-43 (OHB Ring Levee Tree Planting). SLC shall complete Services within the time period allotted in the notice to proceed.

3. Term of Agreement. The term of this Agreement (the “Term”) will begin on the date of the execution of this Agreement and will expire on December 31, 2020, subject to earlier termination as provided in this Agreement. The Term may be extended with the prior written consent of both Parties. Either Party may terminate this Agreement, in whole or in part, for cause if either Party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within thirty (30) calendar days of written notice and diligently complete the correction thereafter.

4. Compensation and Payment. The Authority agrees to pay the following to SLC for completion of the Services:

A.	WP-28A (Cass County Road 16 & 17 Grading and Seeding):	\$22,785.00
B.	WP-48A (OHB Ring Levee Washout Repairs and Seeding):	\$69,595.50
C.	WP-48A (OHB Ring Levee Tree Planting):	<u>\$57,598.00</u>
	TOTAL	\$149,951.50

5. Invoicing.

A. SLC shall invoice to the Authority on the fifteenth day (15th) day of each month for all Services provided. SLC must review each invoice before it is sent to the Authority to determine its accuracy and to ensure the invoice complies with the requirements in this Agreement. Each invoice will be entered into the Aconex system and processed by the Authority for the following month.

B. SLC must submit each original invoice to:

Metro Flood Diversion Authority

c/o Nathan Boerboom

N.Boerboom@cityoffargo.com

and

APInvoicesFMDiv@ch2m.com

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

- a. SLC's name and address;
- b. SLC's federal employer identification number;
- c. Unique invoice number;
- d. Billing period;
- e. Description of each activity performed for each day in which Services were performed;
- f. Work order number associated with each activity, in accordance with Task Order Budgetary Breakdown;
- g. Name, billing rate, and hours worked by each person involved in each activity, in accordance with the Task Order Budgetary Breakdown;
- h. Total amount of fees and costs "billed to date," including the preceding months;
- i. Preferred remittance address, if different from the address on the invoice's coversheet; and
- j. All of the work performed during that billing period, in accordance with the Task Order Budgetary Breakdown.

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

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

F. Payment does not imply acceptance of Services or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, SLC must credit any payment in error from any payment that is due or that may become due to SLC under this Agreement.

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

H. If the Authority fails to make payment in full within thirty (30) days of the date due for any undisputed billing, SLC may, after giving seven (7) days' written notice to the Authority, suspend Services under this Agreement until paid in full, including interest. In the event of suspension of services, SLC will have no liability to the Authority for delays or damages caused by the Authority because of such suspension.

6. Trade Secrets. Trade secrets include but are not limited to any data or information, technique or process, tool or mechanism, formula or compound, pattern, or test results relating to the business of the Authority, which are secret and proprietary to the Authority, and the use, appropriation, or dissemination of which will give the business a competitive advantage (the "Trade Secrets"). SLC will not disclose, divulge, report, appropriate, disseminate, or use, for any purpose, any Trade Secrets which SLC has obtained, or will obtain, except as authorized by the Authority under prior written and signed authority or as required by law. These obligations of confidentiality will apply during the Term of this Agreement and will survive indefinitely upon termination of this Agreement.

7. Ownership of Intellectual Property. All intellectual property and related material, including any Trade Secrets, moral rights, goodwill, relevant registrations or applications for registration, and rights in any patent, copyright, trademark, trade dress, industrial design, and trade name (the “Intellectual Property”) that is developed or produced under this Agreement is a “work made for hire” and will be the sole property of the Authority. The use of the Intellectual Property by the Authority will not be restricted in any manner. SLC may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Authority. SLC will be responsible for any and all damages resulting from the unauthorized use of the Intellectual Property.

8. Return of Property. Upon termination of this Agreement or expiration of its Term, SLC will return to the Authority any property, documentation, records, or confidential information which is the Authority’s property.

9. Capacity/Independent Contractor. In providing the Services under this Agreement, SLC is acting as an independent contractor and not as an employee. SLC and the Authority acknowledge that this Agreement does not create a partnership or joint venture between them and is exclusively a contract for service. The Authority is not required to pay, or make any contributions to, any social security, local, state, or federal tax, unemployment compensation, workers’ compensation, insurance premium, profit-sharing, pension, or any other employee benefit for SLC during the Term. SLC is responsible for paying, and complying with reporting requirements for, all local, state, and federal taxes related to payments made to SLC under this Agreement.

10. Indemnification. SLC agrees to release, hold harmless, defend, and indemnify the Authority, Cass County Joint Water Resource District, the City of Fargo, Cass County, and the State of North Dakota, and expressly assumes all risk of personal injury, death, and property damage or loss, from whatever cause, arising out of the performance of any obligation under this Agreement or incurred in connection with this Agreement. Such obligation shall extend to any risk, damage, or loss incurred through the action or failure to act of SLC’s employees, subcontractors, agents, assignees, or invitees, or any employees, subcontractors, agents, assignees, or invitees of SLC’s agents. SLC’s obligation to indemnify the Authority, Cass County Joint

Water Resource District, the City of Fargo, Cass County, and the State of North Dakota shall include, but is not limited to: any and all claims, demands, liabilities, causes of action, penalties, losses, costs, damages, and expenses, including reasonable investigation and attorneys' fees and expenses and court costs, that may arise against or incurred by the Authority or the State of North Dakota in any way related to, caused by, or arising out of or in connection with the subject matter of this Agreement. SLC shall not be required to indemnify the Authority, Cass County Joint Water Resource District, the City of Fargo, Cass County, or the State of North Dakota for claims, liabilities, damages, losses, or expenses caused by wrongful acts or omissions of the entities, their agents, or their employees. The provisions of this Section shall survive the Term or any termination of this Agreement.

11. Insurance. SLC agrees to maintain and shall cause its subcontractors to maintain the following insurance coverage in relation to their performance of the Services provided under this Agreement:

A. Commercial General Liability ("CGL") Insurance with combined single limits of \$2 million per occurrence and \$4 million in the aggregate;

B. Automobile Liability Insurance for claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired, and/or non-owned vehicle with a combined single limit of \$2 million; and

C. Workers' Compensation Insurance in the amount required by law.

The Authority and the State of North Dakota shall be added as additional insureds to any policy. The CGL policy shall be considered primary insurance without recourse to or contribution from any similar insurance carried by the Authority. The insurance certificate shall contain a provision that coverage afforded under the policy evidenced by such certificate will not be cancelled or changed without at least thirty (30) calendar days' prior written notice to the Authority. SLC shall deliver certificates of insurance to the Authority evidencing the existence of such policy within twenty-eight (28) calendar days from the effective date of this Agreement.

12. Performance. Each Party will perform its respective obligations under this Agreement and do everything necessary to ensure that the terms of this Agreement take effect.

13. Dispute Resolution. The Authority and SLC shall endeavor to resolve claims, disputes, and other matters in question between them through non-binding mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Practices in effect on the effective date of this Agreement. A request for non-binding mediation shall be made in writing, delivered to the other Party to this Agreement and filed with person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution, but in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) calendar days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order. The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Cass County, North Dakota, unless another location is mutually agreed upon by the Parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the Parties do not resolve a dispute through non-binding mediation pursuant to this Section, then the method of binding dispute resolution shall be via formal claims filed in a court of competent jurisdiction.

14. Modification. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

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

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

If to SLC: David Liquin
S & S Landscaping Co., Inc.
2777 Fiechtner Drive
Fargo, ND 58103

The Parties may confirm in a prior written and signed writing to change or waive their notice address. Any notice given under this Agreement shall be deemed properly delivered (a) immediately upon being served personally, (b) five (5) calendar days after being deposited with the postal service if served by registered mail, or (c) the following day after being deposited with an overnight courier.

16. Time of Essence. Time is of the essence in the execution and performance of this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

17. Good Faith, Fair Dealing, and Cooperation. The Parties affirmatively represent that they are entering into this Agreement in good faith, complete cooperation, due diligence, and honesty, and with the full and complete intention to uphold the provisions of this Agreement. The Parties agree to deal fairly and cooperate with the other party regarding the purpose of this Agreement. The Parties must perform their obligations under this Agreement with reasonable skill and diligence and may not intentionally interfere with or prevent the other Party's performance of its obligations under this Agreement. The Parties will seek to resolve any dispute arising under or in connection with this Agreement through cooperation.

18. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and their respective successors and assigns and shall not be deemed to confer upon third parties any remedy, claim, liability, or reimbursement, claim of action, or other right.

19. Assignment. SLC will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Authority.

20. Merger. This Agreement constitutes the entire agreement between the Parties. All negotiations and previous agreements or conditions concerning the subject matter of this Agreement are merged into this Agreement. This Agreement contains no representation, warranty, or collateral condition except as expressly provided for in this Agreement.

21. Benefit. This Agreement will inure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators, successors, and assigns.

22. Interpretation. This Agreement shall be interpreted so as to enforce its purpose and the Parties' mutual intentions to the fullest extent allowable under law and equity. The headings and titles of this Agreement are for the convenience of the Parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and neuter and vice versa.

23. Choice of Law and Forum. This is a North Dakota contract which shall be governed by and construed in accordance with the laws of the State of North Dakota. Any action arising from or in connection to this Agreement shall find its forum and be venued in a district court in Cass County, North Dakota.

24. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

25. Remedies and Waiver. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the Parties thereto under and pursuant to this Agreement. The waiver by either Party of a breach, default, delay, or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

26. Currency. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in United States dollars.

27. Representations. Each of the Parties hereto represents and warrants to the other that the Party executing this Agreement has the authority to do so, knowing that each of the other Parties to this Agreement are acting in reliance upon such representation. The provisions of this Section shall survive the termination of this Agreement.

28. 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.

29. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall not be effective until a counterpart has been signed by each Party to be bound by it. Signatures provided by electronic transmission or facsimile shall be deemed as valid as original signatures.

30. Force Majeure. SLC is not responsible for damages or delays in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of SLC.

(Remainder of page intentionally left blank.)

This Agreement is executed the day and year above noted.

DIVERSION AUTHORITY:

Metro Flood Diversion Authority

By: _____
Del Rae Williams, Chair
Diversion Authority Board

By: _____
Michael J. Redlinger, Co-Executive Director
Metro Flood Diversion Authority

By: _____
Robert W. Wilson, Co-Executive Director
Metro Flood Diversion Authority

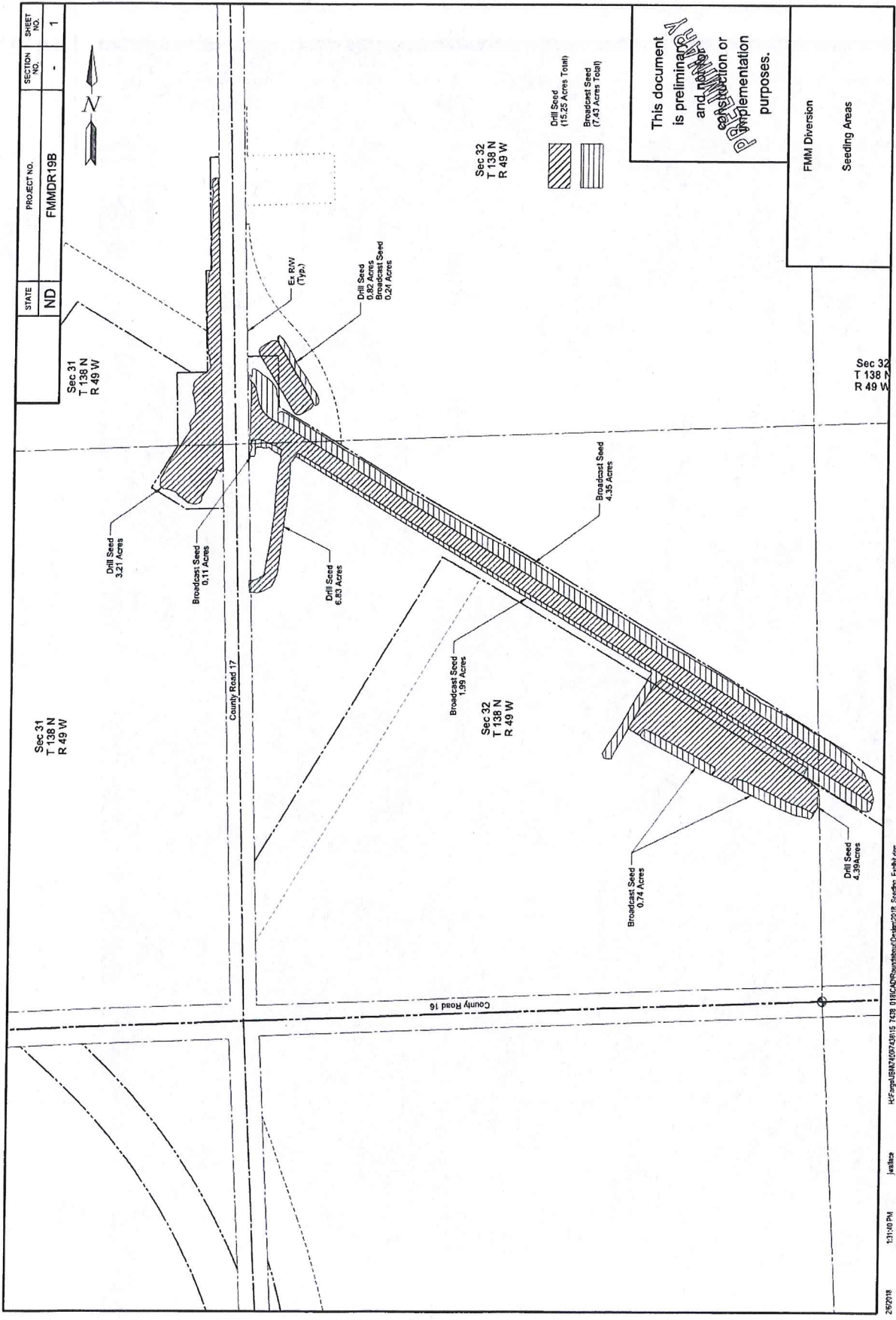
DRAFT

SLC:

S & S Landscaping Company, Inc.

By: _____
Its: _____

DRAFT



STATE ND PROJECT NO. FMMDR19B SECTION NO. - SHEET NO. 1

Sec 31
T 138 N
R 49 W

Sec 31
T 138 N
R 49 W

Sec 32
T 138 N
R 49 W

Sec 32
T 138 N
R 49 W

Drill Seed
3.21 Acres

Broadcast Seed
0.11 Acres

Drill Seed
6.83 Acres

Drill Seed
0.82 Acres
Broadcast Seed
0.21 Acres

Ex ROW
(Typ.)

Broadcast Seed
1.99 Acres

Broadcast Seed
0.74 Acres

Broadcast Seed
4.35 Acres

Drill Seed
4.39 Acres

Drill Seed
(15.25 Acres Total)
Broadcast Seed
(7.43 Acres Total)

This document is preliminary and not for construction or implementation purposes.

FMM Division
Seeding Areas

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Julita

13:10 PM




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EXHIBIT "A"



Any reliance upon this map is at user's own risk. AES does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use.



-  2018 Washout Repair Area
-  Oxbow Hickson Bakke Levee
-  Red River of the North

Date: 2/23/2018 | Coordinate System: NAD 1983 StatePlane North Dakota North FPS 3301 Feet

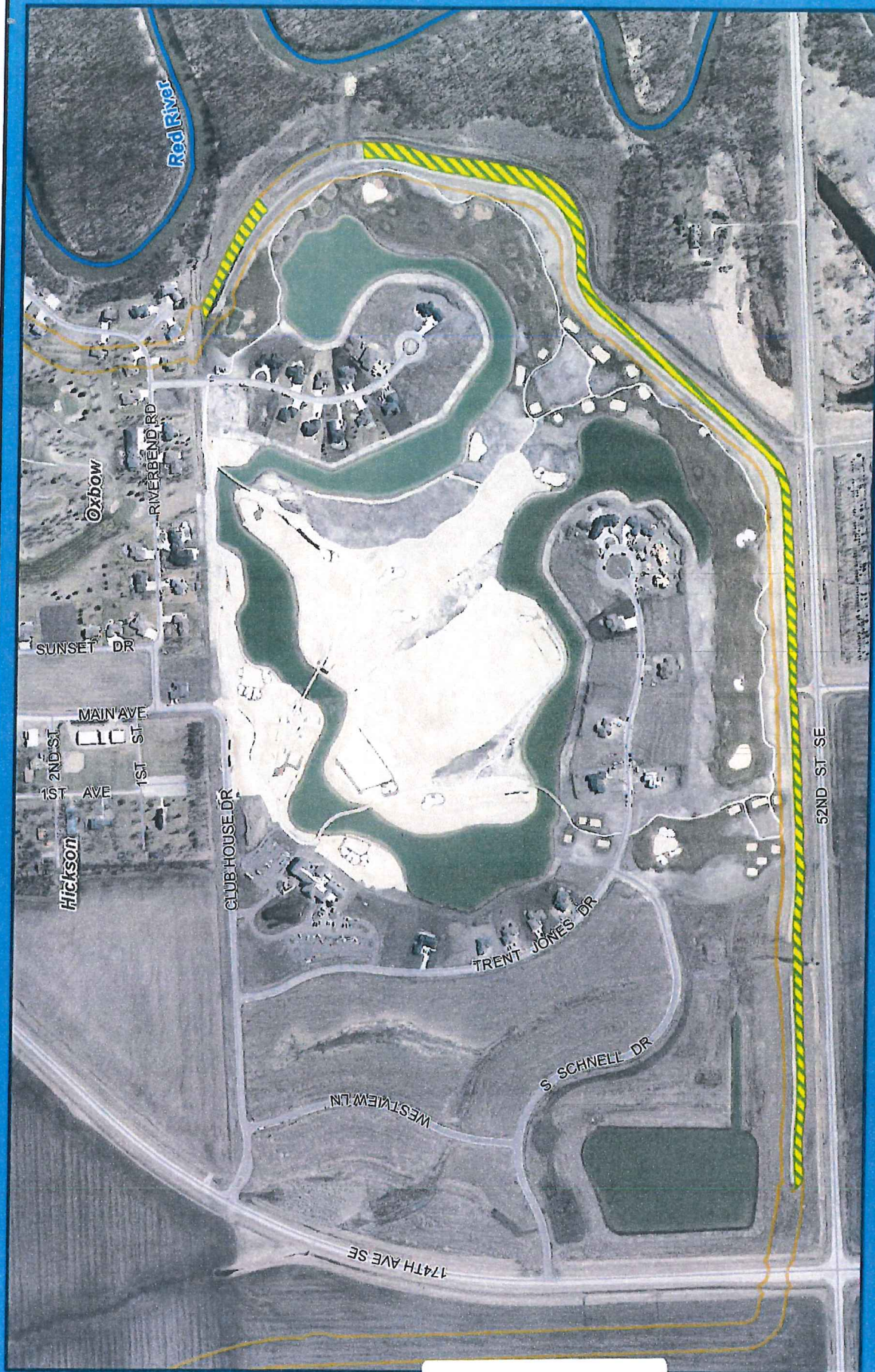
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2018 Washout Repair Area Oxbow Levee

2/23/2018



EXHIBIT "B"



Any reliance upon this map is at user's own risk. AESZ does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use.



2018 Seeding/Mulching
 Oxbow Hickson Bakke Levee
 Red River of the North

Date: 2/7/2018 | Coordinate System: NAD 1983 StatePlane North Dakota North FIPS 3301 Feet

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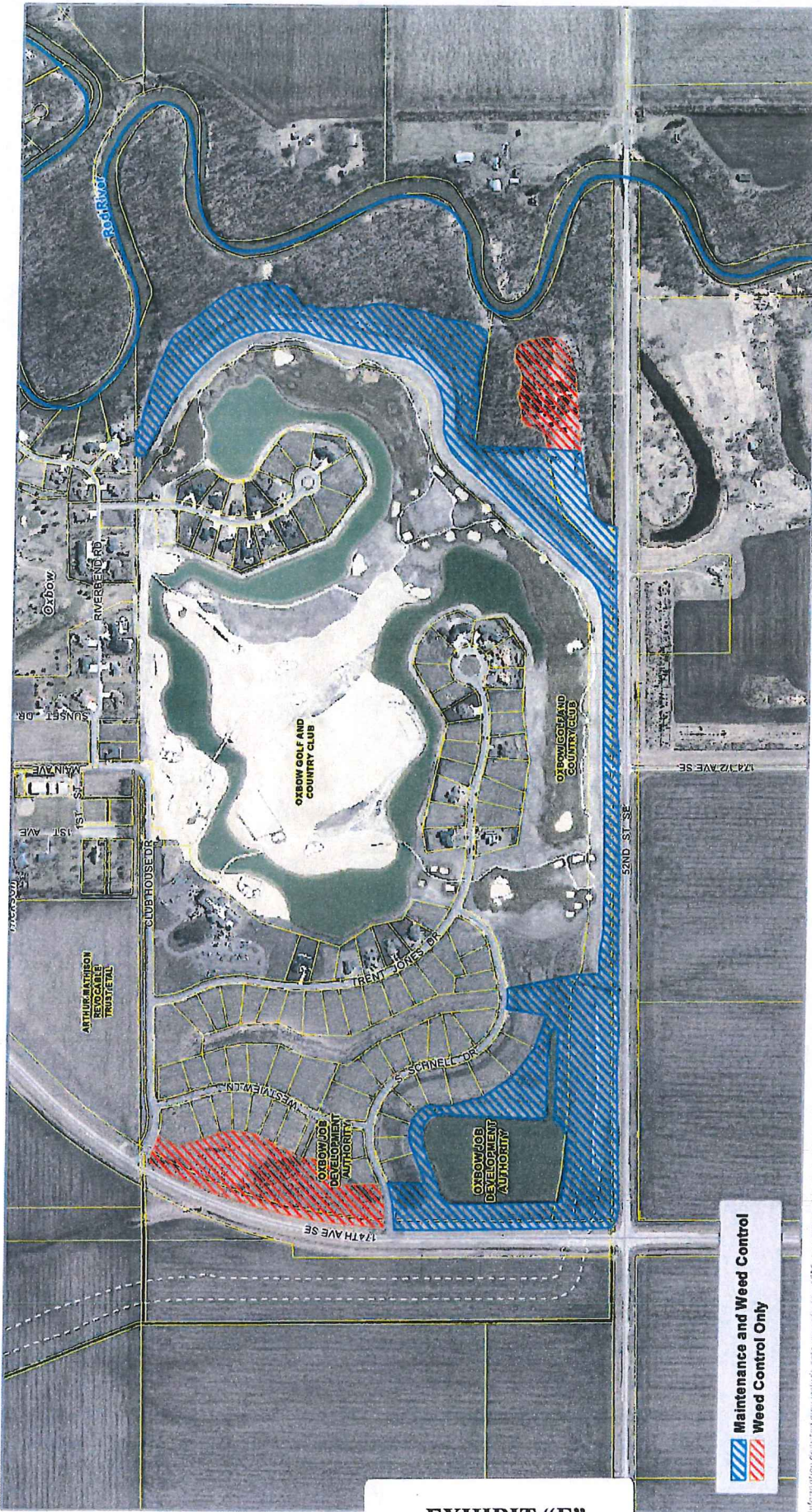


2018 Seeding and Mulching Oxbow Levee Outside Slope

2/7/2018

EXHIBIT "C"

EXHIBIT "E"



 Maintenance and Weed Control
 Weed Control Only

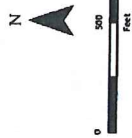


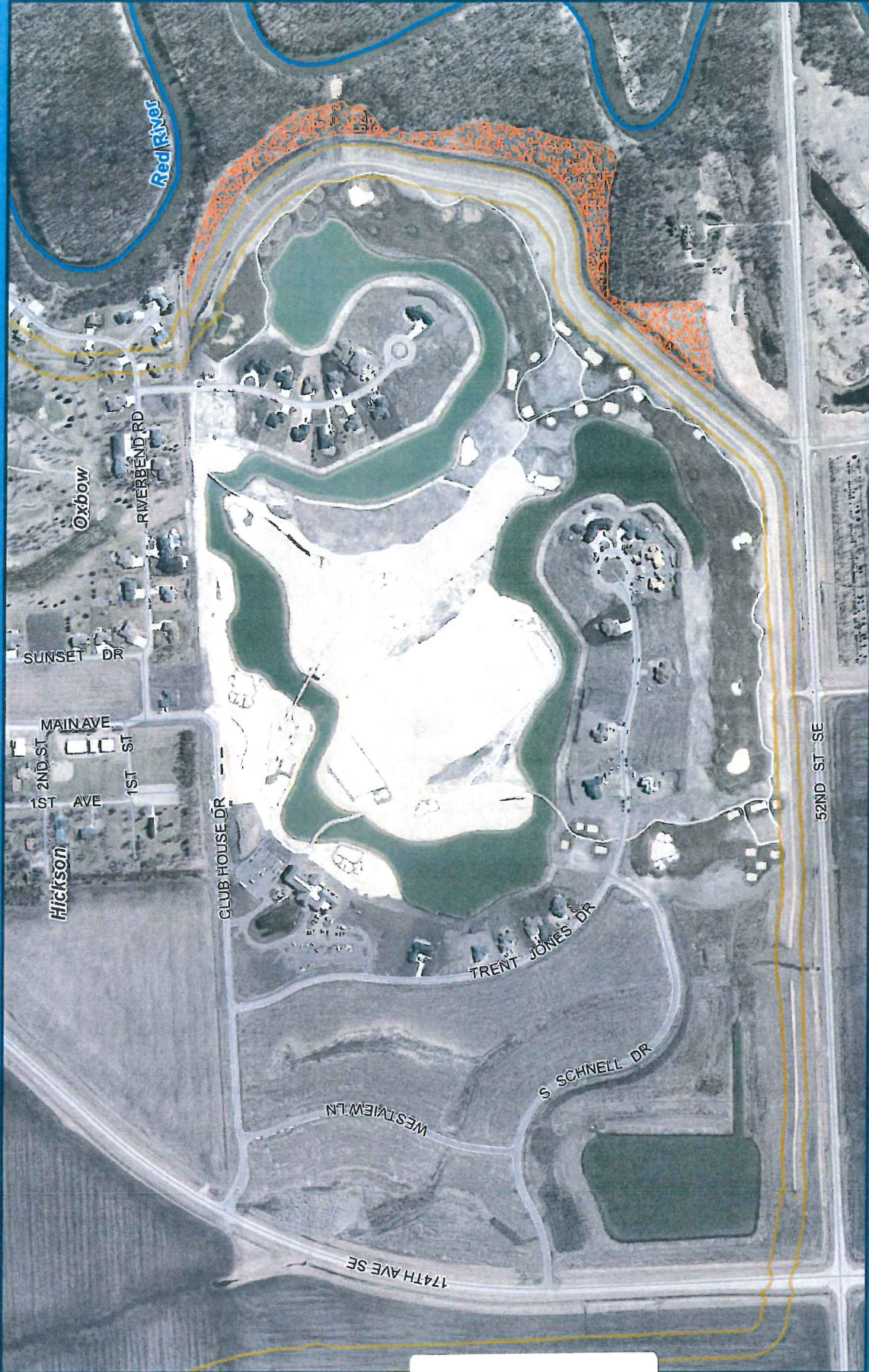
EXHIBIT: WP-43 MAINTENANCE

FM AREA FLOOD DIVERSION PROJECT

Map Date: 3/14/2018



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2018 Tree Planting Area
 Oxbow Hickson Bakke Levee
 Red River of the North

Date: 2/7/2018 | Coordinate System: NAD 1983 StatePlane North Dakota North FIPS 3301 Feet

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**2018
 Tree Planting Area
 Oxbow Levee**
 2/7/2018

EXHIBIT "F"

**SECTION 32 92 19.00 13
SEEDING**

PART 1 GENERAL

1.01 GENERAL

- A. The drawings contain landscape plans which indicate the locations for the various seed mixes. Wherever possible, all seed shall be drilled. Other seeding methods are subject to approval. Existing turf areas which have been damaged during the contract operations, and which are outside of the limits designated to be seeded, shall be restored following the requirements in this section, at no additional cost to the Owner.

1.02 REFERENCES

- A. The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.
1. U.S. Department of Agriculture (USDA): AMS Seed Act (1995) Federal Seed Act Regulations Part 201.
 2. North Dakota Department Of Transportation (NDDOT) Standard Specifications for Road and Bridge Construction: NDDOT 708 (2008) Erosion Control.

1.03 SUBMITTALS

- A. The following shall be submitted:
1. Product Data:
 - a. Manufacturer's Literature;
 - b. The Contractor shall submit manufacturer's literature discussing physical characteristics, applications, guarantees, and installation of the seed, mulch, and fertilizer. The Contractor shall submit manufacturer's literature for equipment showing application and installation instructions.
 2. Test Reports:
 - a. Seed Test; The Contractor shall submit test reports for a purity and germination test following the Association of Official Seed Analysts (AOSA) rules for each seed mixture.
 - b. Quantity Check; Bag count or bulk weight measurements of material used compared with area covered to determine the application rate and quantity installed.
 - c. Maintenance Record; Maintenance work performed, area repaired or reinstalled, diagnosis for unsatisfactory stand of grass plants.

3. Certificates:
 - a. Certificates of Compliance;
 - 1) Prior to the delivery of materials, certificates of compliance attesting that materials meet the specified requirements. Certified copies of the material certificates shall include the following:
 - a) Seed. Mixture percentage, percent pure live seed, percent germination, weed seed content, and date tested.
 - b) Mulch. Composition and source.

1.04 DELIVERY, INSPECTION, STORAGE, AND HANDLING

- A. Seed shall be inspected upon arrival at the job site for conformity to species and quality. Seed materials shall be delivered in manufacturer's original, unopened containers with labels and tags intact and legible. Seed that is wet, moldy, or bears a test date more than five months old, shall be rejected. Unacceptable materials shall be removed from the job site.
 1. Storage: Materials shall be stored in areas provided by the Contractor. The storage areas shall be made accessible to the Owner's Representative so that application rates can be verified. Seed and fertilizer shall be stored in cool, dry locations away from contaminants. Chemical treatment materials shall be stored according to manufacturer's instructions and not with seed.
 2. Handling: Except for bulk deliveries, materials shall not be dropped or dumped from vehicles.
 3. Soil Amendments: Soil amendments shall be delivered to the site in the original, unopened containers bearing the manufacturer's chemical analysis. In lieu of containers, soil amendments may be furnished in bulk. Provide chemical analysis for bulk deliveries.
 4. Invasive Species: In order to limit the possible spread of invasive plant species to the site, the Contractor shall ensure that equipment to be used is decontaminate prior to entry on the site. Decontamination shall consist of removal of dirt, debris, etc. through high-powered washing or an equivalent method approved by the Owner's Representative.

PART 2 PRODUCTS

2.01 SEED

- A. Substitutions will not be allowed without written request from the Contractor and approval from the Owner's Representative. The mixing of seed may be done by the seed supplier prior to delivery, or on site in the presence of the Owner's Representative. Seed delivered to the site shall be in labeled, standard containers. Seed that has become wet, moldy or otherwise damaged will not be acceptable. All seed shall be endophyte enhanced unless noted.

1. Seed Classification: State-certified seed of the latest season's crop shall be provided in original sealed packages bearing the producer's guaranteed analysis for mixture percentage, purity, germination, weed seed content, and inert material. Labels shall be in conformance with AMS Seed Act and applicable state seed laws.
2. Seed Labels: Seed tags shall be provided with each bag of seed used on the project and shall be given to the Engineer. Certifications shall be provided with each bag of seed used on the project. Certifications shall be provided upon request. Seed labels shall contain the following:
 - a. Name and address of supplier.
 - b. Lot Number.
 - c. Origin for each kind of seed.
 - d. Purity percentage and germination for each kind of seed.
 - e. Date of last test.
 - f. Pounds of bulk seed and pure live seed for each type of seed and for total mix in each bag.
3. Permanent Seed Species and Mixtures: Permanent seed species and mixtures shall be proportioned by weight of pure live seed (PLS) as follows:

Dry Mixture: Zone 3			
Common Name	Rate (lb/ac)	% of Mix (by weight)	Seed/sq ft
big bluestem	2.00	5.48%	7.35
Indian grass	2.00	5.48%	8.82
side-oats grama	1.60	4.39%	3.53
little bluestem	1.60	4.39%	8.82
nodding wild rye	1.17	3.20%	2.23
slender wheatgrass	1.00	2.73%	2.53
kalm's brome	0.50	1.37%	1.47
prairie dropseed	0.07	0.18%	0.39
switchgrass	0.06	0.17%	0.32
Grasses Subtotal	10.00	27.39%	35.46
black-eyed susan	0.31	0.86%	10.56
purple prairie clover	0.19	0.51%	1.03
Early Sunflower	0.13	0.34%	0.29
blue giant hyssop	0.06	0.15%	1.82
lead plant	0.06	0.15%	0.25
Canada milk vetch	0.06	0.17%	0.39
white prairie clover	0.06	0.17%	0.44
Canada tick trefoil	0.06	0.18%	0.13
stiff sunflower	0.06	0.17%	0.09
wild bergamot	0.06	0.17%	1.61
stiff goldenrod	0.06	0.17%	0.94

Dry Mixture: Zone 3			
Common Name	Rate (lb/ac)	% of Mix (by weight)	Seed/sq ft
smooth aster	0.06	0.17%	1.26
hoary vervain	0.06	0.17%	0.64
golden alexanders	0.06	0.15%	0.23
common milkweed	0.04	0.10%	0.06
butterfly milkweed	0.04	0.10%	0.06
blue vervain	0.04	0.12%	1.50
rough blazing star	0.03	0.08%	0.18
great blazing star	0.03	0.09%	0.13
heath aster	0.03	0.09%	2.30
Forbs Subtotal	1.50	4.11%	23.89
Oats**	25.00	68.50%	11.14
Cover Crop Subtotal	25.00	68.50%	11.14
Total	36.50	100.00%	70.49

4. Temporary Seed Species: Seed species for winter erosion protection, temporary surface erosion control shall consist of 100 pounds of oats or 100 pounds of winter wheat per acre.
5. Quality: Weed seed shall be a maximum 1 percent by weight of the total mixture. Inoculents shall consist of the proper bacteria applied in the amount and manner recommended by the manufacturer to all legumes in the seed mix.

2.02 FERTILIZER

A. Granular Fertilizer:

1. Natural based fertilizer having a minimum of 50 percent of the mass and 50 percent of the macronutrients derived from natural or organic material. The product shall be a dry granulated product with a moisture content of less than 10 percent. The approximate size of the granules shall be between 2.8-0.6mm (#7 and 30 sieve).
2. Fertilizer shall be a commercial product, free flowing and suitable for application with mechanical equipment, delivered in sealed containers, each fully used and bearing the name, trade-name or trademark and warranty of producer.
3. Fertilizer for Zones 3 and 4 seed mix shall be 17 percent nitrogen, 10 percent phosphorus, and 7 percent potassium (17-10-7) by weight.
4. Fertilizer for Zone 2 shall be 5 percent nitrogen, 10 percent phosphorus, and 5 percent potassium (5-10-5) by weight.

2.03 MULCH

A. Straw Mulch:

1. Mulches shall be free from weeds, mold, and other deleterious materials. Mulch shall meet the requirements of NDDOT 708, and consist of native hay or straw from cereal grain (i.e., oats, wheat) and shall be seed free to prevent introduction of weeds as defined by the rules and regulations of the North Dakota Department of Agriculture. All Mulch bales shall be in an air-dried condition at the time of delivery and be relatively dry when applied.
2. Dry mulching material that breaks and does not bend is unacceptable. Mulch shall have a consistency for placing with commercial mulch blowing equipment.

- B. Hydro-Mulch: The mulch shall be uniformly applied at a rate of one ton per acre and shall cover the entire seedbed area up to 95 percent. The mulch shall permit the percolation of water to the underlying soil. The mulching shall consist of a wood cellulose fiber (strands) that has not been treated with any germination or growth inhibitive substances. The mulch shall be treated with a tackifier to enhance mulch placement and adherence to the soil. The mulch shall contain no foreign matter or noxious substances or seeds that would be detrimental to seed growth. No sawdust byproduct mulch will be allowed.

2.04 WATER

- A. Water as required for a period of 8 weeks. Water shall be the responsibility of the Contractor, unless otherwise noted. Water shall not contain elements in concentrations toxic to plant life. The contractor shall water areas seeded as necessary to achieve the required growth.

2.05 SPECIAL SEEDING AND MULCHING EQUIPMENT

- A. Equipment: Only pneumatic-tired tractors shall be permitted on areas having topsoil. Special equipment such as mulch spreaders may be used if approved by the Owner's Representative. The request for approval well in advance of the planned planting date and include information on equipment and materials.
- B. Seed Mix: Plant the seed mix using a Truax or equal seed drill.
- C. If new topsoil is required, it shall be essentially free of subsoil, organic debris, objects larger than two (2) inches in diameter, substances harmful to plant growth and any other material detrimental to grading, seeding or sodding, and maintenance operations. It shall be of the sandy loam type unless otherwise specified.

PART 3 EXECUTION

3.01 INSTALLING SEED TIME AND CONDITIONS

- A. Notification: Notify the Owner's Representative 24 hours in advance of beginning seeding or of any changes in turf establishment operations.
- B. Seeding Time: Install seed from April 15th to October 1th. No finished construction area shall be left untopsoiled and unseeded during the winter months. When substantially complete areas are not seeded within the specified seeding times for fall planting, place a temporary winter cover shall be placed.
- C. Seeding Conditions: Seeding operations shall be performed only during periods when beneficial results can be obtained. When drought, excessive moisture, or other unsatisfactory conditions prevail, the work shall be stopped when directed. When special conditions warrant a variance to the seeding operations, submit proposed alternate times for approval.
- D. Tillage: After the subsoil has been shaped to the design specifications, it shall be deep disked to a depth of 6 to 8 inches. Topsoil shall be placed over the disked subsoil to a depth as indicated on the plans. The topsoil shall be incorporated to a depth of two inches into the subsoil but not excessively mixed. Tillage operations shall be conducted only during periods when, in the opinion of the Owner's Representative, beneficial results are likely to be obtained. Soil compacted by construction equipment or soil on compacted slopes or grades shall be tilled to a minimum depth of four inches by disking or tilling before applying seed. Cohesive shall not be tilled when wet to prevent cloddy or puddle conditions.

3.02 SEEDING

- A. The seedbed soil density shall be checked for appropriate compaction to ensure sufficient seed/soil contact. Seeding shall not occur on a seedbed that is too loose or too compact. The seedbed shall have a friable structure that allows infiltration of moisture; does not puddle or become compacted by seeding equipment or rainfall; can be easily worked to incorporate seed into the soil; and has a firm soil beneath the seeding depth. When preparing for drill seeding, footprints shall not leave an indentation of more than one inch deep. Soil can be firmed with a cultipacker or roller to prevent seed from being buried too deep. Seeding operations shall not take place when the wind velocity will prevent uniform seed distribution.
 - 1. Equipment: Gravity feed applicators, which drop seed directly from a hopper onto the prepared soil, shall not be used because of the difficulty in achieving even coverage.
 - 2. Drill Seeding: Drill seed shall be accomplished with approved equipment with drills set not more than 6 inches apart. Depth of seed placement shall be such to obtain a final planting depth of 1/8 to 3/8 inch at the rate specified

for the mix. Row markers with the drill seeder. The drilling equipment shall be maintained with half full seed boxes during the seeding operations. When slopes exceed 1 vertical on 5 horizontal, baffle plates spaced not more than 6 inches apart shall be installed in the seed box.

3. **Hydroseeding:** Hydroseeding is only allowed for the Pond Seeding. The hydroseeding operation shall apply the seed, mulch, and fertilizer simultaneously. The seed shall be applied at the rate indicated in the Seed Mixture Table. The mulch shall be applied at a rate of about 1 ton per acre. During application, the spray shall be directed to obtain a uniform material distribution as evidenced by a formation of a "blotter-like" cover, with about 5 percent void area. The mulch shall permit percolation of water to the underlying soil. The seed mixed with water and fertilizer shall be applied within 1 hour after adding to the tank.
 4. **Tillage:** Disk the subsoil to a depth of 6 to 8 inches after shaping to the design contours. Place topsoil over the disked subsoil to the depth indicated. Incorporate the topsoil to a depth of two inches into the subsoil but do not excessively mix. Conduct tillage operations during periods when, in the opinion of the Owner's Representative, beneficial results are likely to be obtained. Till soil compacted by construction equipment or soil on compacted slopes or grades to a minimum depth of four inches by disking or tilling before applying seed. Do not till cohesive soil when wet to prevent cloddy or puddle conditions.
 5. **Seeding:** Check the seedbed soil density for appropriate compaction to obtain sufficient seed/soil contact. Do not seed on a seedbed that is too loose or too compact. Obtain a seedbed having a friable structure that allows infiltration of moisture; does not puddle or become compacted by seeding equipment or rainfall; can be easily worked to incorporate seed into the soil; and has a firm soil beneath the seeding depth. When preparing for drill seeding, check that footprints do not leave an indentation of more than one inch deep. Firm soil with a cultipacker or roller to prevent seed from being buried too deep. Do not seed when the wind velocity will prevent uniform seed distribution. All debris, vegetation, and stones larger than 2 inches in diameter shall be removed from the site. Ground surfaces shall conform to plan grades. The ground shall then be tilled to a depth of 4 inches, the surface after which shall be free from lumps and irregularities. If perennial weeds of any kind are present before tilling, they shall be controlled by the application of a pre-emergence herbicide at least 2 weeks before seeding. Two applications shall be required. This shall not be allowed, however, within 200 feet of streams, rivers, legal drains, or wetlands.
- B. **Fertilizer:** Fertilizer shall be applied at a rate of 150 lbs/acre for the levee and ditch areas. Fertilizer shall be applied at a rate of 120 lbs/acre for all other areas. For any seeding type specified, the fertilized area shall be thoroughly watered 24-48 hours after fertilizing.

C. Mulching:

1. Hay or Straw Mulch: Spread hay or straw mulch uniformly at the rate of 1-1/2 tons per acre, except as modified for native grasses. Spread mulch by hand, blower-type mulch spreader, or other approved method. Start mulching on the windward side of relatively flat areas or on the upper part of steep slopes and continued uniformly until the area is covered. The mulch shall not be bunched or clumped. Do not completely exclude sunlight from penetrating to the ground surface. Mulch areas installed with seed on the same day as the seeding. Anchor mulch immediately following spreading.
2. Mechanical Anchor: Mechanical anchor shall be a V-type-wheel land packer; a scalloped-disk land packer designed to force mulch into the soil surface; or other suitable equipment.
3. Wood Cellulose Fiber, Paper Fiber, and Recycled Paper: Apply wood cellulose fiber, paper fiber, or recycled paper as part of the hydroseeding operation. Mix and apply the mulch in accordance with the manufacturer's recommendations.

- D. Initial Watering: Start watering immediately after completing the seeding of an area. Apply water to supplement rainfall at a rate sufficient to achieve moist soil conditions to a minimum 3 inch depth. Prevent run-off and puddling. Do not drive watering trucks over turf areas, unless otherwise directed.

3.03 RESTORATION AND CLEAN UP

- A. Immediately upon completion of the seeding operation in an area, protect the area against traffic or other use by erecting barricades, providing signage, or as directed. Restore existing turf areas, pavements, and facilities that have been damaged from the seeding operation. Remove excess and waste material from the seeded areas and dispose of offsite. Clean adjacent paved areas.

3.04 MAINTENANCE

- A. Maintenance Watering: Water after planting to promote adequate growth and development. Water with equipment that does not erode or disturb the mulch. If the grass wilts, or if the soil becomes crusted and desiccated during germination, the Owner's Representative may direct watering. Perform watering directed by the Owner's Representative within 48 hours after notice by the Owner's Representative.
- B. Mowing: Use mowing to control pioneering weeds and other competition. For the purposes of this project, a weed is defined as a plant not native to prairies in this part of North Dakota. Perform mowing after seeding and starting when the majority of the vegetation is 12-18-inches high. Perform mowing before the weed species set seed. Conduct mowing as needed, depending on weed growth at a

minimum of once per month during the first growing season. Multiple mowings may be necessary. Mow at a height of 6 to 8 inches. Perform periodic and final grass mowing within the limits of work until final inspection and acceptance.

- C. General Maintenance: Maintenance of the seeded areas shall include eradicating weeds, protecting embankments and ditches from surface erosion, maintaining erosion control materials and mulch, protecting installed areas from traffic, mowing, watering, and post-fertilization. If any portion of the surface becomes rilled, gullied, damaged, or destroyed, repair that portion to re-establish the area. Control erosion during the maintenance period by using ditch checks, sod swales, silt fences or other methods until a proper stand of turf is established.
 - 1. Repair or reinstall unsatisfactory stand of grass plants and mulch, and fill eroded areas. Replace and secure mulch material that has been removed by wind or other causes. Maintenance shall include protecting embankments and ditches from erosion and maintaining erosion control material.
- D. Maintenance Record: Furnish a record of each site visit, describing the maintenance work performed; areas repaired or reinstalled; and diagnosis for unsatisfactory stand of grass plants.

3.05 ACCEPTANCE

- A. Turf establishment after seeding shall extend for 12 months after completion of the seeding on the entire project, unless desired growth is established, and shortening the period of the Contractor's responsibility for acceptably established areas is authorized by the Owner's Representative. Grass plants shall be evaluated for species and health when the grass plants are a minimum 1 inch high.
- B. An acceptable stand of turf for the seed mixtures specified for this project is defined as a spacing of 1 - 6 inches between plants in each row and a maximum spacing of 8 inches between rows for areas that are planted using a seed drill. For areas planted by broadcast seeding, a stand of turf is considered acceptable when the area required to be seeded has produced the specified species over a minimum of 75 percent of the total area. Owner's Representative will determine percent coverage by the use of a 1 meter square with 100 blocks of 100cm² (10 cm grid) at selected locations. If 25 blocks of the 1 -meter square do not contain one or more of the species listed in the specified seed mixtures, that section will be deemed unacceptable. For either seeding method, a minimum of 50 percent of the specified species planted shall be alive and present, and a minimum of 50 percent of the vegetation shall be the permanent species. The permanent species refers to the specified species other than oats or winter wheat.

3.06 SURFACE EROSION CONTROL

- A. Where indicated or as directed, install surface erosion control material in accordance with manufacturer's instructions. Place the material without damage to installed material or without deviation to finished grade. When directed during contract delays affecting the seeding operation or when a quick cover is required to prevent surface erosion, seed areas designated with a temporary seed crop.

END OF SECTION