



DIVERSION AUTHORITY BOARD

VIRTUAL MEETING

THURSDAY, MARCH 26, 2020

3:30 P.M.

BASED OUT OF DIVERSION AUTHORITY OFFICE

207 4th Street North

FARGO, NORTH DAKOTA

1. Call to order
2. Approve minutes from previous meeting Item 2.
3. Approve order of agenda
4. *Consent agenda approval Item 4a.
 - a. Contracting actions
 - Master Agreement for Professional Services
Braun Intertec Corporation
 - Master Agreement for Professional Services
Houston-Moore Group
 - Master Agreement for Professional Services
Terracon Consultants, Inc.
 - Statement of Work 5, Amendment 1 – P3 RFP Financial Support Services
Ernst & Young Infrastructure Advisors, LLC - \$2,700,000
 - Contract for Professional Services – Executive Coaching
Executive Management Systems, Inc. - \$26,500
 - Work Package 50B – Property Structure Mitigation
Industrial Builders, Inc. - \$259,918
5. Executive Director Report
6. Finance Item 6a.
Item 6b.
 - a. Financial report
 - b. Voucher approval
 - c. Recommended contracting actions (see consent agenda*)
7. Next Meeting – April 23, 2020
8. Adjournment

**METRO FLOOD DIVERSION AUTHORITY
FEBRUARY 27, 2020—3:30 PM**

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, February 27, 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; Moorhead City Mayor Johnathan Judd; 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 Rick Steen via conference call; Clay County Commissioner Kevin Campbell; Cass County Joint Water Resource District Manager Rodger Olson; and West Fargo City Mayor Bernie Dardis. Fargo City Commissioner Dave Piepkorn; Clay County Commissioner Grant Weyland; and West Fargo City Commissioner Mike Thorstad were absent. Tom Dawson, Chairman of the Chamber Business Leaders Task Force, was also present.

2. MINUTES APPROVED

MOTION, passed

Mrs. Scherling moved and Mr. Peterson seconded to approve the minutes from the January 30, 2020, meeting as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed

Mr. Grindberg moved and Mr. Peterson seconded to approve the order of the agenda. Motion carried.

4. CONSENT AGENDA BRIEFING

Joel Paulsen, Executive Director, is recommending that contracting actions already approved by the committees be placed on a consent agenda for approval. He said items could still be pulled to the regular agenda for discussion if board members had questions. He believes this process will be more efficient and provide more time for other business to be discussed.

5. CONSENT AGENDA APPROVED

MOTION, passed

Mrs. Scherling moved and Mr. Grindberg seconded to approve the consent agenda as follows. On roll call vote, the motion carried unanimously.

- Eide Bailly Audit Engagement Agreement—services to audit financial statements of the Diversion Authority for FY2017 through FY2019 in the amount of \$70,000;
- Houston-Moore Group, LLC (Amended Master Services Agreement)—professional services extending the agreement until April 3, 2020, with no change in the fees;
- Houston-Moore Group, LLC (Task Order 1, Amendment 15)—extend the period of performance until December 31, 2020, and add 2020 subtask budgets in the amount of \$501,073 associated with project management;
- Advanced Engineering and Environmental Services aka AE2S (Master Services Agreement)—professional services agreement to contract directly with the Diversion Authority to expire December 31, 2026, for a reduction in sub-consultant markup;
- Advanced Engineering and Environmental Services aka AE2S (Task Order 1)—consultant services for management of lands program, outreach, and legislative services and to support development of public-private partnership (P3) as it relates to the lands program and outreach in the amount of \$16,175,200;

- Schmidt and Sons Construction, Inc. (Change Order 2)—addition of three properties for mitigation prior to March 27, 2020, and extend the term of the contract to August 28, 2020, in the amount of \$75,555.

6. EXECUTIVE DIRECTOR REPORT

Mr. Paulsen said the overall cost-to-date is \$528 million. He reviewed information available on the financial dashboard to help track costs in real time.

Mr. Paulsen discussed strategic initiatives as follows:

- FY2020 budget for the Army Corp of Engineers includes \$100 million for the project;
- Consultant contract savings of \$2 million as a result of AE2S being removed from the Jacobs contract scope as a subcontractor;
- Interviews for the Executive Assistant position and posting of the Communications Director and Engineering Director positions;
- Release of the P3 Draft 4 Request for Proposals (RFP) and procurement schedule;
- Office of State Engineer to consider the updated mitigation plan the end of March.

7. PUBLIC PRIVATE PARTNERSHIP (P3) EDUCATIONAL SESSION

Mr. Paulsen said today is the first educational session regarding the P3 procurement process. Each month a new topic will be discussed with the board. Today the focus is on risk transfer.

Attorney John Shockley said risk transfer is a management and control strategy that involves contractual shifting of a risk from one party to another. He discussed the difference between traditional design-bid-build and P3 contracts and the risks of each one.

8. CORPS OF ENGINEERS UPDATE

Mr. Paulsen provided a report for Terry Williams, Project Manager from the Corps of Engineers. He said according to Ms. Williams the project is on time and within budget. The physical model of the Red River control structure, located at a research center in Vicksburg, Mississippi, is being studied and will provide cost savings in the project design. Mr. Paulsen traveled to St. Paul and met with staff from the Corps this week. He said communication protocol is being developed to ensure Mr. Paulsen and Corps staff maintain contact with one another on the project.

9. ADMINISTRATIVE/LEGAL UPDATE

WIFIA events update

Mr. 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 the formal application needs to be submitted on April 1st, so it will be on the next board agenda for approval.

10. PUBLIC OUTREACH UPDATE

Committee report

Mr. Olson said the Public Outreach Committee did not meet this month.

Business Leaders Task Force Update

Mr. Dawson said the task force needs to determine what they want to accomplish in its role to support the project and its goal of permanent flood protection for the entire area. He said the task force will hold a meeting in April with Mr. Paulsen to determine how it may assist in the efforts.

11. LAND MANAGEMENT

Committee report

Mrs. Scherling said the Land Management Committee did not meet this month because there were no policy recommendations to address; however, she said land acquisitions and other activities continue. Eric Dodds from AE2S said since the last meeting, five parcels have been acquired, environmental monitoring easements on properties owned by local governments continue to be secured, and agricultural impact mitigation plans continue to be refined.

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.

12. FINANCE UPDATE

Committee report

The Finance Committee met on February 26th. Mr. Grindberg referred to the financial report and said the net cash position is \$94.5 million.

MOTION, passed

Mr. Grindberg moved and Mr. Peterson seconded to receive the financial report as presented. On roll call vote, the motion carried unanimously.

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, Diversion Project assessment (DPAC) expenses, 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 F-M Sertoma Club for a holiday lights display in Lindenwood Park.

MOTION, passed

Mr. Grindberg moved and Mr. Judd seconded to approve the vouchers received through February 21, 2020, in the amount of \$1,877,551.11. On roll call vote, the motion carried unanimously.

13. RECOMMENDED CONTRACTING ACTIONS

The contracting actions were approved under the consent agenda.

14. NEXT MEETING DATE

The next meeting is scheduled for Thursday, March 26, 2020.

15. ADJOURNMENT

MOTION, passed

On motion by Mr. Judd, seconded by Mr. Peterson, and all voting in favor, the meeting was adjourned at 4:14 PM.

Item 4a.



Contract Actions

March 2020



DA Board Approval Contract Actions (Recommendation)

Description	Company	Budget Estimate (\$)
<i>Task Orders – Diversion Authority</i>		
Master Agreement for Professional Services	Braun Intertec Corporation	-
Master Agreement for Professional Services	HMG	-
Master Agreement for Professional Services	Terracon Consultants Inc.	-
Statement of Work 5, Amendment 1 – RFP Support, Financial	EYIA	\$2.7M (total contract value)
Contract for Professional Services – Executive Coaching	Executive Management Systems, Inc.	\$26,500
Work Package 50B – Property Structure Mitigation	Industrial Builders, Inc.	\$259,918



Board Meeting

March 26, 2020

SUBJECT: Master Agreement for Professional Services for Braun Intertec Corporation

RECOMMENDATION: Board Approval

BACKGROUND / KEY POINTS: Master services agreement to contract directly to the Diversion Authority (expires December 31, 2022)

FINANCIAL CONSIDERATIONS: Results in reduction of subconsultant mark-up, standardized regional rates and a reduction in expenses.

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 Braun Intertec Corporation

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Related to:

**THE
FARGO-MOORHEAD AREA DIVERSION PROJECT**

BY AND BETWEEN

**METRO FLOOD DIVERSION AUTHORITY
as Diversion Authority**

and

**BRAUN INTERTEC CORPORATION
as BRAUN**

Dated as of March 26, 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 March 26, 2020 (the “Effective Date”), by and between the Metro Flood Diversion Authority (“Diversion Authority”) and Braun Intertec Corporation (“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 Fargo-Moorhead (FM) Area Diversion Project, commencing on March 26, 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 Braun Intertec Corporation (Braun).

“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 March 26, 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 the Task Order 1, which will remain effective until their respective expiration dates unless terminated pursuant to this Agreement. This Agreement shall supersede the prior agreement, dated May 1, 2017, between the Diversion Authority and the Consultant. Except with respect to the Cass County Joint Water Resource District, any Task Orders between the Diversion Authority or its Member Entities and Consultant including Task Order 1 and those 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 directly or through the Diversion Authority’s designated Project Consultant. Each Task Order will specifically refer to and incorporate this Agreement by reference, and the provisions of this Agreement shall apply to all Task Orders entered into subsequent to the effective date of this Agreement. In general, Consultant’s

services will include services in support of the 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 directly or through its designated Project Consultant. The Diversion Authority shall compensate Consultant only for work contained within the Task Orders. Consultant shall not be obligated to perform any work or services unless such services are set forth in an executed Task Order. If Consultant engages in work beyond the scope of a Task Order, the Diversion Authority shall not compensate Consultant for that work, unless agreed to in writing by the Diversion Authority prior to the work being completed. All amendments to Task Orders must be authorized and provided by the Diversion Authority in writing.
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. PERSONNEL IDENTIFIED FOR PROJECT DELIVERY. Consultant agrees and acknowledges that the following specifically identified individuals shall be assigned the following roles for this Agreement (hereinafter "Key Personnel"):

Individual	Project Title
Nathan McKinney	Principal-In-Charge
Ezra Ballinger	Senior Project Manager

Consultant 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 Executive Director and general counsel of the Diversion Authority. In the event that any of the Key Personnel are not available for the Project, Consultant shall notify the Executive Director of the Diversion Authority within ten (10) calendar days of the Key Personnel's non-availability. Consultant 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, Consultant will propose new Key Personnel.

12. SUBCONTRACTORS. Consultant may enter into agreements with subcontractors in furtherance of their services under this Agreement, as approved by the Executive Director.
13. TERM. Unless terminated under Section 38, this Agreement shall remain in full force and effect for a period of approximately three (3) years from the Effective Date through December 31, 2022. This Agreement shall take full force and effect on March 26, 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.
14. EXTENSION OF TERM. This Agreement may be extended by written amendment.
15. 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 and Unit Rates for services rendered from the Effective Date through December 31, 2020, are listed as follows.

2020 Rates*			
Category	Hourly Rate	Category	Unit Rate
Staff Engineer	\$145	Trip Charge	\$26
Project Engineer	\$183	Nuclear moisture-density meter charge, per hour	\$24
Senior Engineer	\$204	Moisture Density Relationship (ASTM D 698 Standard)	\$202
Principal Engineer	\$248	PID w/10.6 eV lamp, per day	\$167
Project Assistant	\$102	Compressive strength of concrete cylinders (ASTM C 39), per specimen	\$33
Project Manager	\$183	Atterberg Limits: LL & PL (ASTM D 4318), per sample	\$117
Senior Project Manager	\$204	Organic Content (ASTM D 2974), per sample	\$80
Technician I	\$85	Hydrometer-Sieve Analysis (ASTM D 422, per sample	\$191
Technician II	\$102	Density and Moisture of Soil Specimens (ASTM D 2937)	\$37
Technician III	\$117	Sieve Analysis with 200 wash (ASTM C 136 and C117), per sample	\$144
Technician IV	\$130	Loss By Washing Through #200 Sieve (ASTM C 117), per sample	\$80
Staff Scientist	\$145	Moisture Content (ASTM D 2216), per sample	\$21
Project Scientist	\$178	Constant Head Permeability of course-grained soils, (ASTM D 2434), per sample	\$387
Senior Scientist	\$199	Falling Head Permeability, undisturbed (ASTM D 5084), per sample	\$562
Principal Scientist	\$241	Falling Head Permeability, remolded (ASTM D 5084), per sample	\$670
Environmental Technician I	\$85		
Environmental Technician II	\$102		
Environmental Technician III	\$117		
Environmental Technician IV	\$130		

Beginning January 1, 2021, and annually thereafter on January 1, Consultant's Standard Hourly and Unit 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 and Unit 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 A. 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 16 of this Agreement. Invoices are due and payable within thirty (30) days of receipt.

16. INVOICING AND PAYMENT.

A. Consultant must submit invoices to the Diversion Authority on the thirtieth (30th) day of each month for all services provided and allowed expenses incurred during the preceding month. Consultant's Project Principle (as identified in Section 11 hereof) must personally review each invoice before it is sent to the Diversion Authority to determine its accuracy and fairness, and to ensure the invoice complies with the requirements in this Agreement. Each invoice will be entered into the Aconex system and processed by the Diversion Authority for the following month.

B. Consultant must submit each original invoice to:

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 14 herein, Consultant must pay in the first instance all fees, fines, taxes, or other costs of doing business related to the services.
17. 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.

18. 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 Diversion Authority if any representation and warranty becomes untrue.
 - G. THIS WARRANTY SHALL BE IN LIEU OF AND EXCLUDES ALL OTHER IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.
19. WORKING RELATIONSHIP. Consultant's Principal-in-Charge and Senior 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 Management Advisors, LLC; John T. Shockley, local counsel under such terms and conditions as may be set from time to time by the Diversion Authority.

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 in the locale of the services performed for the Project.
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 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 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.
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 24(A)(3) through 24(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 35;
- (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 24(A)(1) and 24(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 24(A)(3) through 24(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: | \$10,000,000 |
| ii. Each Occurrence: | \$10,000,000 |
- (3) Automobile Liability under Section 24(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 Diversion Authority certificates of insurance and any applicable endorsements attesting to the existence of coverage. Consultant will not allow its policies to be cancelled, lapse, and/or terminate or be amended to reduce coverage below the minimums called for in this Agreement without thirty (30) days' notice to the Diversion Authority. The certificates of insurance issued to confirm Consultant's compliance must reference this Agreement.
- G. If required insurance lapses during the term of this Agreement, the Diversion Authority is not required to process invoices after such lapse until Consultant provides evidence of reinstatement that is effective as of the lapse date.
- H. The Diversion Authority shall have no specific responsibility to provide any general liability coverage or 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. TIMELY REVIEW. The Diversion Authority 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 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 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.
34. 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.

35. CONTRACTOR INDEMNIFICATION AND CLAIMS.

- A. The Diversion Authority agrees to include in all construction contracts the provisions of Section 22, 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."

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 Consultant, Consultant's officers, employees, affiliates, and subcontractors.
- C. The Diversion Authority is not responsible for the payment of deductibles owed under Consultant's insurance policies.
- D. The Diversion Authority reserves the right to enter into a program-wide insurance plan at its expense. Consultant agrees to participate in such a program if named as an insured party and if commercially reasonable terms are available.

37. 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.

38. 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. 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 36. 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.

39. LIMITATION OF LIABILITY. Notwithstanding any other provision of this Agreement, to the maximum extent permitted by law, Consultant's liability for the Diversion Authority's damages will not, in the aggregate, exceed ten million dollars (\$10,000,000). 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. Diversion Authority further agrees that its sole and exclusive remedy, and any claim, demand or suit arising from or related to the services under this Agreement shall be directed and/or asserted only against Consultant and not against any of Consultant individual employees, officers, shareholders, affiliated firms or directors. The Diversion Authority knowingly waives all such claims against Consultant's individual employees, officers, shareholders, directors in their individual capacity or any affiliated companies to Consultant.

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

- B. Consultant must give the Diversion Authority notice immediately if Consultant breaches, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a breach under this Agreement.
- C. The Parties will use their Best Efforts to resolve amicably any dispute, including use of alternative dispute resolution options.
- D. All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

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) 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.
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 Consultant's retention by the Diversion Authority.
43. 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.
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 Consultant: _____

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.

45. 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.
46. 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.
47. 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.
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) 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.
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. 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.
50. ACCESS TO CONSULTANT'S ACCOUNTING RECORDS AND AUDIT RIGHTS.
 - A. Consultant must allow the Diversion Authority and its designees to review and audit Consultant's financial documents and records relating to this Agreement. Consultant will maintain accounting records, in accordance with generally accepted accounting principles. These records will be available to the Diversion Authority for a period of two (2) years after Consultant's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The Diversion Authority may only audit accounting records applicable to a cost-reimbursable type compensation. Upon finalization of the audit, the Diversion Authority will submit to Consultant a notice of audit results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to Consultant at the completion of an audit.
 - B. Within 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.

51. 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.

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 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.

53. 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

Diversions Authority, at the Diversions Authority's discretion, and certify to the Diversions 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 Diversions 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 Diversions Authority.
54. 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 Diversions Authority and executed by Consultant and the Chair of the Diversions Authority on behalf of the Diversions 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.
55. 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.
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 Diversions 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.

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

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 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.
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. 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.
63. FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for USEPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, Consultant shall complete and submit to the Diversion Authority the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34,

which are attached in 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.

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

Upon award of this contract, Consultant shall complete and submit to the Diversion Authority the federal certification form regarding 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:

Braun Intertec Corporation

By: _____
Nathan McKinney, Vice President

Exhibit A – Allowable Expenses

Commercial Airfare/Transportation	for travel outside the metro Fargo/Moorhead area	Actual Cost
Private Airfare/Transportation	for travel outside the metro Fargo/Moorhead area with prior approval of the Executive Director	Actual Cost
Lodging and Meals	for travel outside the metro Fargo/Moorhead area	Actual Cost
Per Diem	for travel outside the metro Fargo/Moorhead area	\$70 per day
Project Mileage	- travel outside the metro Fargo/Moorhead area and to the jobsite only	IRS Rates
Parking	for travel outside the metro Fargo/Moorhead area	Actual Cost
Registration/conference/workshop fees	with prior approval of the Executive Director	Actual Cost
Out of Pocket Expenses	with prior approval of the Executive Director	Actual Cost
Outside Services	with approval of the Executive Director for laboratory testing, traffic signs, etc.	Actual Cost +05%

EXHIBIT B

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

CERTIFICATION REGARDING FEDERAL LOBBYING

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- (3) The undersigned shall require that the language of this certification be included in any award documents for any of its subcontractors at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

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

Company/
Entity Name: _____

Signed: _____

Its: _____

Date: _____

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

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

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

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)

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

Official Business Name _____

Date: _____

By: _____

Name and Title of Authorized Representative

Signature of Authorized Representative

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

PAGE 2 - INSTRUCTIONS FOR CERTIFICATION

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

ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE

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

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

The undersigned assures that it will comply with:

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

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

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

Signature of Authorized Official

Title

Print Name

Name of Institution or Agency

Date

Street

City, State, Zip Code

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

Office Email Address



Board Meeting

March 26, 2020

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

RECOMMENDATION: Board Approval

BACKGROUND / KEY POINTS: Master services agreement to contract directly to the Diversion Authority (expires December 31, 2025)

FINANCIAL CONSIDERATIONS: Results in standardized regional rates, a quarterly review by the Executive Director and a reduction in expenses.

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 Houston-Moore Group

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 April 1, 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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DRAFT

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES (the “Agreement”) is made as of April 1, 2020 (the “Effective Date”), 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 as further defined below (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 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 April 1, 2020.

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.

“*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*” or “HMG” 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 April 1, 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 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., a wholly owned subsidiary of Jacobs Engineering Group Inc., its successors and assigns, which provides Program Management Consultant services to the Diversion Authority pursuant to the Master Agreement for Professional Services dated January 31, 2020.

“*Project*” means the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013, and 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.

“*Task*” shall refer to the services or work provided by HMG pursuant to a Task Order approved by the Executive Director and issued by the Diversion Authority.

The terms “work” or “services” as used herein shall refer only to work or services provided by HMG pursuant to a Task Order.

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, except the Task Orders listed in Exhibit A, which will remain effective until services or work under those Task Orders is complete or until such Task Orders are terminated pursuant to this Agreement or at the termination date of this Agreement. This Agreement shall supersede the prior agreements, dated March 8, 2012, and May 1, 2017, between the Diversion Authority and HMG. Except with respect to the Cass County Joint Water Resource District, any Task Orders between the Diversion Authority or its Member Entities and HMG including those listed in Exhibit A and those entered into on or after the effective date of this Agreement shall be subject to the terms of this Agreement. In the event of any conflict between the terms of the Task Orders listed in Exhibit A and this Agreement, the provisions of this Agreement shall control.

5. REQUIRED MEETINGS. On the first Tuesday of every month during the term of this Agreement, or as otherwise agreed to by the parties, HMG 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. HMG's detailed scope of services, work schedule, and cost budget will be mutually agreed upon in writing and set forth in Task Orders approved by the Executive Director and issued by the Diversion Authority under this Agreement. The provisions of this Agreement shall apply to and be incorporated into all Task Orders entered into subsequent to the effective date of this Agreement. In general, HMGs 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 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.
8. 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 services.
9. TASK ORDERS. HMG shall receive assignments for services under this Agreement through Task Orders authorized and provided by the Diversion Authority directly or through its designated Project 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 shall not be responsible for delays in its work or services attributable to the delays of the Diversion Authority in executing a written Task Order or an amendment to a Task Order.
10. 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.

11. 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
Jeff Volk	Principal in Charge
Jeff LeDoux	Principal in Charge
Lee Beauvais	Project Manager
Lyndon Pease	Project Manager
Gregg Thielman	Project Manager
Greg Thompson	Project Manager and H&H Lead
Jeremy McLaughlin	Structural Lead
Jeff Lansink	Transportation Lead
Chris Gross	Lead Design Engineer
Jim Schlieman	Lead Land Surveyor
Kyle Volk	GIS Lead
Mark Aanenson	Lead Environmental/Permitting

HMG shall exercise reasonable efforts to assure that Key Personnel are available to provide services to the Project and as points of contact for the Executive Director 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 Executive Director of the Diversion Authority within ten (10) calendar 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 to the Executive Director and the Executive Director will review the resume and may approve the new Key Personnel. The Executive Director will act in Good Faith and in a reasonable manner when reviewing and approving new Key Personnel. In the event that the Executive Director determines that the new Key Personnel are not acceptable, HMG will propose new Key Personnel.

12. SUBCONTRACTORS. HMG may enter into agreements with subcontractors in furtherance of their services under this Agreement, as approved by the Executive Director, which approval shall not be unreasonably withheld.
13. TERM. Unless terminated under Section 38, this Agreement shall remain in full force and effect for a period of approximately six (6) years from the Effective Date through December 31, 2025. This Agreement shall take full force and effect on April 1, 2020, upon approval and execution by the Diversion Authority Board. Pursuant to Section 14 of this Agreement and

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

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

15. COMPENSATION. For all services rendered by HMG after the Effective Date of this Agreement, the Owner will pay HMG an amount based on the time spent by HMG employees working on the Project and the Standard Hourly Rates applicable to those employees, plus certain reimbursable expenses (as set forth in this paragraph) and Consultant's subconsultant charges, plus a service charge of up to 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. HMG's Standard Hourly Rates for services rendered from the Effective Date through December 31, 2020, are listed in Exhibit B. The Executive Director shall be allowed to review the Standard Hourly and Unit Rates of Consultant on a quarterly basis to review the gross profit margins of the Consultant on the Project. Beginning January 1, 2021, and annually thereafter on January 1, HMG's Standard Hourly Rates may be increased by amounts agreed upon by the Executive Director and HMG. Allowable reimbursable expenses are listed in Exhibit C.

a. Budgetary amounts, excluding taxes, will be established for each Task Order executed under the Agreement. HMG 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. 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. If a Task 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 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 HMG 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 16 of this Agreement. Invoices are due and payable within thirty (30) days of receipt.

16. INVOICING AND PAYMENT.

A. HMG must submit invoices to the Diversion Authority before the thirtieth (30th) 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.

- 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) calendar 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) calendar days of the date due for any undisputed billing, HMG may, after giving seven (7) calendar 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 15 herein, HMG must pay in the first instance all fees, fines, taxes, or other costs of doing business related to the services.
17. 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.
18. 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 HMG 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.
 - G. 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.
19. WORKING RELATIONSHIP. HMG's Principal-in-Charge and Project Manager shall be the individual(s) that will engage with the Diversion Authority's Executive Director. HMG 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 Management Advisors, LLC; John T. Shockley, local counsel under such terms and conditions as may be set from time to time by the Diversion Authority.
20. 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 the Standard of Care as set out in Section 21 of this agreement. 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.
21. STANDARD OF CARE. The standard of care applicable to HMG for all professional engineering and related services performed or furnished by HMG under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. HMG makes no warranties, express or implied, under this Agreement or otherwise, in connection with HMG's services. HMG 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 HMG.
23. 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; 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. 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, outside of the Diversion Channel and Associated Infrastructure (DCAI) 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. 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 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.

24. 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.

25. 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.

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. 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.

27. 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 general liability policies of insurance required by this Section will:

- (1) With respect to insurance required by above 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, lapsed or terminated 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), except in the event of non-payment of premium, in which case the insurer will provide at least ten (10) days notice;
- (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 one (1) years after final payment is due for services rendered under this Agreement.
 - (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 the time final payment is due for services rendered under this Agreement and one (1) 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 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 26(A)(1) and 26(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 Sections 27(A)(3) through 27(A)(6) and 27(B)(1) through 27(B)(12), 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 Section 26(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.
 - (7) The Diversion Authority shall reimburse HMG for all cost and expense incurred to purchase and maintain Professional Liability insurance policies with liability limits of \$20,000,000 per claim and in the aggregate, subject to a \$25,000 deductible (the “Limits”) for the 2020 calendar year. At least sixty (60) days prior to the above Professional Liability policy, HMG shall notify the Diversion Authority in writing of the expiration date of such policy and shall not procure a new policy or renew the said policy without the mutual consent of the Diversion Authority regarding the limits of liability and deductible. The Diversion Authority agrees to reimburse HMG for costs incurred to maintain the professional liability coverage at these Limits for the entire duration of this Agreement and for any period subsequent to the termination of the Agreement where the Agreement requires that HMG maintain professional liability insurance. The Limits and applicable deductible may be revised only upon the mutual written agreement of the Diversion Authority and HMG.
- 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 conclusion of HMG’s work or 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.
 - 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 workers’ compensation coverage for the benefit of HMG’s employees during the terms of this Agreement.
28. 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 the 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.
29. 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.
30. 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.
31. 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.
32. 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.

33. 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.
34. 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, HMG's subcontractors and the Diversion Authority's third-party designers or construction contractors which may affect HMG's work.
35. 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. The Diversion Authority 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.
36. 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."

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 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.

38. 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.

39. INDEMNIFICATION. For General Liability claims unrelated to HMG's professional services, 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 (the "Indemnitees"), 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, its subcontractors, its subconsultants, its suppliers, 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 under this paragraph will continue for a period of not less than three (3) years following completion or termination of HMG's services under this Agreement.

For claims arising out of HMG's provision of professional services, HMG agrees to indemnify and hold harmless the Indemnities identified above from and against any and all claims, demands, suits, losses, costs and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses, brought or made by a third party against any of the Indemnitees for property damage or bodily injury, including death, to the proportionate extent caused by any negligent act or omission of HMG, its subcontractors, its subconsultants, its suppliers, 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. HMG's obligations to indemnify, and hold harmless under this paragraph will continue for a period of not less than three (3) years following completion or termination of HMG's services under this Agreement.

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.

40. 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, suppliers, subcontractors, and employees, to Diversion Authority, its members and the State of North Dakota resulting from or in any way related to the Project or Task Order shall not exceed the total amount, individually, collectively or in the aggregate 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 regardless of whether HMG's liability arises under breach of contract or warranty; tort, including negligence, strict liability, statutory liability, professional negligence, gross negligence, indemnity obligations or any other wrongful conduct or cause of action. This limitation of liability shall include and apply to HMG's officers, affiliated corporations, employees, and HMG's subcontractors, subconsultants, suppliers and 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. 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.

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. 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 reasonable 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 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) calendar 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:

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 HMG and has no third-party beneficiaries.
48. 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.
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 HMG 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. 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.
51. 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 two (2) years 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) calendar 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) calendar 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) 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 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) calendar 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) calendar 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) 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. 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.

52. 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, HMG 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 HMG's 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. Upon full payment to HMG, 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 the New Consultant Materials 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 dispose 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) calendar days of the conclusion or termination of HMG's services under this Agreement, whichever event occurs last, 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 provides its final services under this Agreement and the Diversion Authority has not disputed the final invoice as per Section 16.G of 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.

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 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, Consultant agrees to grant to the Diversion Authority an irrevocable license to the instruments of service. The Diversion Authority agrees to release and hold harmless 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 unauthorized reuse, change or alteration of these Project documents by the Diversion Authority, its member entities, related entities, or its other consultants or contractors. 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.

54. 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.
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 HMG 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. 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.
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 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.

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 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.
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 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.
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. 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) 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 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.

64. 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.
65. 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, HMG shall complete and submit to the Diversion Authority the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34, which are attached in Exhibits to this Agreement. HMG 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.
66. DEBARMENT AND SUSPENSION. HMG 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>. HMG 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, HMG shall complete and submit to the Diversion Authority the federal certification form regarding debarment and suspension, which is attached as an Exhibit to this Agreement.
67. CIVIL RIGHTS OBLIGATIONS. HMG shall comply with the following, federal non-discrimination requirements:

- A. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
- B. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
- C. The Age Discrimination Act of 1975, which prohibits age discrimination.
- D. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
- E. 40 CFR Part 7, as it relates to the foregoing.
- F. Executive Order No. 11246.

Upon award of this contract, Consultant shall complete and submit to the Diversion Authority the federal certification form regarding 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: _____
Timothy J. Mahoney, Chair
Diversion Authority Board

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

(Additional signature contained on the following page.)

HMG:

Houston-Moore Group, LLC

By: _____
Jeffry J. Volk, President

DRAFT

Exhibit A – Task Orders

TASK ORDER	SUBTASKS
Task Order 1 (Project Management)	Public Involvement Assistance
	Project Controls
	On-Call Services
	Project Management Phase 201 & 301
Task Order 6 (Land Management Services - Minnesota)	Right Of Entry Services
Task Order 13 (Levee Design)	WP-43D Design
	WP-43E Design
	Right-of-Way Surveying
	OHB Wetland Mitigation Design
Task Order 15 (Draft Operations Plan)	2.A-2.C Draft Operations Plan
	2.D Draft Water Control Manual Support
Task Order 16 (Permit Submittal Preparation and Other Related Services)	Permit Preparation
	Development of Post Project Floodplain Ordinances
	On-Call Services
Task Order 17 (WP-42 SDB/SDC)	Services During Construction
	On-Call Services
Task Order 20 (SEAI WIK Design Services) - I-29 grade raise, etc.	Hwy 81/75 Preliminary Design
	SEAI Wetland Mitigation Preliminary Design
	I-29 Detailed Design
Task Order 21 (P3 RFP Procurement Support)	Draft RFP Comments and RFIs
	Innovative Technical Concepts
	Interim Technical Submittals
	Technical Proposals
	Geotechnical Services
Task Order 22 (Mitigation Support Services)	Upstream Mitigation Support Services
	Meetings and Coordination
Task Order 23 (WP-43 SDB/SDC)	Project Management
	On-Call Services
	WP-43CD SDC
	WP-43D5 SDB
	WP-43G SDB
	WP-43D5 SDC
	WP-43G5 SDC
Task Order 25 (Hydrology and Hydraulic Modeling)	NDSU Agricultural Impact Study
	Phase 9 Model Updates
Task Order 26 (Work In Kind)	SEAI Local Drainage Updates
	SEAI Transportation Updates
	SEAI Utilities Updates
	SEAI Design Reviews
	SEAI Hydraulic Modeling Support
Task Order 28 (Boundary Surveying Services)	Boundary Surveying
Task Order 29 (Third Party Work Compliance Observation)	WBI Utility Installation Observation
	Allowance for Future Observations
Task Order 30 (Property Structure Mitigation) - SDB/SDC subtasks	WP-50A SDC
	WP-50B Bidding
	WP-50B SDC
	WP-50B Project Management
	WP-50B Design
Task Order 31 (Permit Compliance Monitoring)	Update Permit Compliance and Monitoring Plan
	Monitoring and Reporting

Exhibit B – HMG 2020 Billing Rates

<u>Category</u>	Hourly Rate
Principal Engineer	\$230.00
Senior Project Manager	\$224.00
Senior Professional Engineer	\$208.00
Project Manager	\$187.00
Professional Engineer II	\$181.00
Professional Engineer I	\$171.00
Project Coordinator	\$171.00
Project Engineer	\$145.00
Graduate Engineer	\$129.00
Legislative/Grants/Funding Specialist	\$187.00
Project Manager Assistant	\$124.00
Senior Environmental Project Manager	\$208.00
Senior Environmental Scientist	\$181.00
Environmental Scientist	\$156.00
Scientist	\$138.00
Graduate Scientist	\$124.00
Engineering Specialist	\$161.00
Senior Engineering Designer	\$149.00
Engineering Designer II	\$129.00
Engineering Designer I	\$124.00
Senior Construction Engineer/Specialist	\$169.00
Construction Engineer/Specialist II	\$143.00
Construction Engineer/Specialist I	\$129.00
Graduate Construction Engineer	\$122.00
Engineering Technician III	\$124.00
Engineering Technician II	\$109.00
Engineering Technician I	\$95.00
Technician Intern	\$84.00
Senior GIS Project Manager	\$181.00
GIS Manager	\$167.00
GIS Developer	\$145.00
GIS Programmer III	\$135.00
GIS Programmer II	\$124.00
GIS Programmer I	\$120.00
GIS Technician III	\$120.00
GIS Technician II	\$115.00
GIS Technician I	\$108.00

<u>Category</u>	Hourly Rate
Senior Project Manager – Land Surveying	\$190.00
Senior Land Surveyor	\$171.00
Land Surveyor	\$150.00
Survey Manager	\$135.00
Graduate Land Surveyor	\$120.00
GPS Survey Crew Chief	\$171.00
Survey Crew Chief II	\$129.00
Survey Crew Chief I	\$120.00
Survey Technician III	\$93.00
Survey Technician II	\$83.00
Survey Technician I	\$76.00
CADD Manager	\$135.00
CADD Technician III	\$120.00
CADD Technician II	\$115.00
CADD Technician I	\$108.00
Computer Manager	\$162.00
Computer Technician	\$149.00
Communications Manager	\$167.00
Communications Specialist	\$129.00
Senior Planner	\$190.00
Associate Planner	\$136.00
Technical Writer	\$93.00
Administrative Assistant	\$76.00
Receptionist	\$71.00
Bookkeeper	\$93.00
Controller	\$167.00

Exhibit C – Allowable Expenses

Commercial Airfare/Transportation	for travel outside the metro Fargo/Moorhead area	Actual Cost
Private Airfare/Transportation	for travel outside the metro Fargo/Moorhead area with prior approval of the Executive Director	Actual Cost
Lodging and Meals	for travel outside the metro Fargo/Moorhead area	Actual Cost
Per Diem	for travel outside the metro Fargo/Moorhead area	\$70 per day
Project Mileage	- travel outside the metro Fargo/Moorhead area and to the jobsite and for survey only	IRS Rates
Parking	for travel outside the metro Fargo/Moorhead area	Actual Cost
Registration/conference/workshop fees	with prior approval of the Executive Director	Actual Cost
Professional Liability Insurance and all required Tail Insurance Policies per Section 27 (C)(7)	Per Paragraphs 27, 39 and 40 of this MSA	Actual Cost
Motorized Offroad Vehicle	for survey and jobsite use	\$75 per day

EXHIBIT D

**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

March 26, 2020

SUBJECT: Master Agreement for Professional Services for Terracon Consultants, Inc.

RECOMMENDATION: Board Approval

BACKGROUND / KEY POINTS: Master services agreement to contract directly to the Diversion Authority (expires December 31, 2022)

FINANCIAL CONSIDERATIONS: Results in reduction of subconsultant mark-up, standardized regional rates and a reduction in expenses.

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 Terracon Consultants, Inc.

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Related to:

**THE
FARGO-MOORHEAD AREA DIVERSION PROJECT**

BY AND BETWEEN

**METRO FLOOD DIVERSION AUTHORITY
as Diversion Authority**

and

**TERRACON CONSULTANTS, INC.
as TERRACON**

Dated as of March 26, 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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EXHIBIT A – ALLOWABLE EXPENSES

EXHIBIT B – FEDERAL CERTIFICATION FORMS

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES (the “Agreement”) is made as of March 26, 2020 (the “Effective Date”), by and between the Metro Flood Diversion Authority (“Diversion Authority”) and Terracon Consultants, 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 Fargo-Moorhead (FM) Area Diversion Project, commencing on March 26, 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 Terracon Consultants, Inc. (Terracon).

“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 March 26, 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 Task Order 1, which will remain effective until its respective expiration date unless terminated pursuant to this Agreement. This Agreement shall supersede the prior agreement, dated August 14, 2014, between the Diversion Authority and the Consultant. Except with respect to the Cass County Joint Water Resource District, any Task Orders between the Diversion Authority or its Member Entities and Consultant including Task Order 1 and those 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 directly or through the Diversion Authority’s designated Project Consultant. Each Task Order will specifically refer to and incorporate this Agreement by reference, and the provisions of this Agreement shall apply to all Task Orders entered into subsequent to the effective date of this Agreement. In general, Consultant’s

services will include services in support of the 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 directly or through its designated Project Consultant. The Diversion Authority shall compensate Consultant only for work contained within the Task Orders. Consultant shall not be obligated to perform any work or services unless such services are set forth in an executed Task Order. If Consultant engages in work beyond the scope of a Task Order, the Diversion Authority shall not compensate Consultant for that work, unless agreed to in writing by the Diversion Authority prior to the work being completed. All amendments to Task Orders must be authorized and provided by the Diversion Authority in writing.
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. PERSONNEL IDENTIFIED FOR PROJECT DELIVERY. Consultant agrees and acknowledges that the following specifically identified individuals shall be assigned the following roles for this Agreement (hereinafter "Key Personnel"):

Individual	Labor Classification
Jonathan B. Ellingson	Office Manager
Scott J. Mathson	Department Manager
Jeffrey J. Mathson	Senior Project Manager
Gregory A. Johnson	Senior Engineer
Dustin M. Lemke	Laboratory Coordinator

Consultant 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 Executive Director and general counsel of the Diversion Authority. In the event that any of the Key Personnel are not available for the Project, Consultant shall notify the Executive Director of the Diversion Authority within ten (10) calendar days of the Key Personnel's non-availability. Consultant 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, Consultant will propose new Key Personnel.

12. SUBCONTRACTORS. Consultant may enter into agreements with subcontractors in furtherance of their services under this Agreement, as approved by the Executive Director.
13. TERM. Unless terminated under Section 38, this Agreement shall remain in full force and effect for a period of approximately three (3) years from the Effective Date through December 31, 2022. This Agreement shall take full force and effect on March 26, 2020, upon approval and execution by the Diversion Authority Board. Pursuant to Section 14 of this Agreement and upon expiration of the initial term of this Agreement, this contract may be renewed by mutual agreement of the Parties.
14. EXTENSION OF TERM. This Agreement may be extended by written amendment.
15. 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 Exhibit A) 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 A. 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 16 of this Agreement. Invoices are due and payable within thirty (30) days of receipt.

16. INVOICING AND PAYMENT.

A. Consultant must submit invoices to the Diversion Authority on the thirtieth (30th) day of each month for all services provided and allowed expenses incurred during the preceding month. Consultant's Department Manager (as identified in Section 11 hereof) must personally review each invoice before it is sent to the Diversion Authority to determine its accuracy and fairness, and to ensure the invoice complies with the requirements in this Agreement. Each invoice will be entered into the Aconex system and processed by the Diversion Authority for the following month.

B. Consultant must submit each original invoice to:

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 Department Manager or other authorized signatory.
- E. If any Consultant invoices contain requests for expense reimbursement, Consultant must include copies of the corresponding invoices and receipts with that invoice.
- F. After the Diversion Authority receives Consultant's invoice, the Diversion Authority will either process the invoice for payment or give Consultant specific reasons, in writing within fifteen (15) business days, why part or all of the Diversion Authority's payment is being withheld and what actions Consultant must take to receive the withheld amount.
- G. In the event of a disputed billing, only the disputed portion will be withheld from payment, and the Diversion Authority shall pay the undisputed portion. The Diversion Authority will exercise reasonableness in disputing any bill or portion thereof. Interest will accrue on any disputed portion of the billing determined to be due and owing to Consultant.
- H. Payment does not imply acceptance of services, that expenses are allowable, or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, Consultant must credit any payment in error from any payment that is due or that may become due to Consultant under this Agreement.
- I. The Diversion Authority will be charged interest at the rate of one-half percent (1/2%) per month, or that permitted by law if lesser, on all past-due amounts starting thirty (30) days after receipt of invoice. Payments will be first credited to interest and then to principal.
- J. If the Diversion Authority fails to make payment in full within thirty (30) days of the date due for any undisputed billing, Consultant may, after giving seven (7) days' written notice to the Diversion Authority, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, Consultant will have no liability to the Diversion Authority for delays or damages caused by the Diversion Authority because of such suspension.
- K. Without waiving any rights to recover payment for reimbursable taxes, fees or other costs per the provisions of Paragraph 14 herein, Consultant must pay in the first instance all fees, fines, taxes, or other costs of doing business related to the services.

17. 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.
18. 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 Diversion Authority if any representation and warranty becomes untrue.
 - G. THIS WARRANTY SHALL BE IN LIEU OF AND EXCLUDES ALL OTHER IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.

19. WORKING RELATIONSHIP. Consultant's Department Manager and Senior 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 Management Advisors, LLC; John T. Shockley, local counsel under such terms and conditions as may be set from time to time by the Executive Director and the Diversion Authority.
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 in the locale of the services performed for the Project.
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 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 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.

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 24(A)(3) through 24(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 35;
- (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 aeneral 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 24(A)(1) and 24(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 24(A)(3) through 24(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: \$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 Section 24(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 Diversion Authority certificates of insurance and any applicable endorsements attesting to the existence of coverage. Consultant will not allow its policies to be cancelled, lapse, and/or terminate or be amended to reduce coverage below the minimums called for in this Agreement without thirty (30) days’ notice to the Diversion Authority. The certificates of insurance issued to confirm Consultant’s compliance must reference this Agreement.

- G. If required insurance lapses during the term of this Agreement, the Diversion Authority is not required to process invoices after such lapse until Consultant provides evidence of reinstatement that is effective as of the lapse date.
- H. The Diversion Authority shall have no specific responsibility to provide any general liability coverage or 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. TIMELY REVIEW. The Diversion Authority 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 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 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.
34. 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.

35. CONTRACTOR INDEMNIFICATION AND CLAIMS.

- A. The Diversion Authority agrees to include in all construction contracts the provisions of Section 22, 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."

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 Consultant, Consultant's officers, employees, affiliates, and subcontractors.
- C. The Diversion Authority is not responsible for the payment of deductibles owed under Consultant's insurance policies.
- D. The Diversion Authority reserves the right to enter into a program-wide insurance plan at its expense. Consultant agrees to participate in such a program if named as an insured party and if commercially reasonable terms are available.

37. 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.

38. 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. 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 36. 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.

39. 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 three million dollars (\$3,000,000). 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.

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

- B. Consultant must give the Diversion Authority notice immediately if Consultant breaches, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a breach under this Agreement.
- C. The Parties will use their Best Efforts to resolve amicably any dispute, including use of alternative dispute resolution options.
- D. All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

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) 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.
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 Consultant's retention by the Diversion Authority.
43. 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.
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 Consultant: Office Manager
 Terracon Consultants, Inc.
 860 9th St. NE, Unit K
 West Fargo, ND 58078

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.

45. 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.
46. 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.
47. 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.
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) 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.
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. 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.
50. ACCESS TO CONSULTANT'S ACCOUNTING RECORDS AND AUDIT RIGHTS.
 - A. Consultant must allow the Diversion Authority and its designees to review and audit Consultant's financial documents and records relating to this Agreement. Consultant will maintain accounting records, in accordance with generally accepted accounting principles. These records will be available to the Diversion Authority for a period of two (2) years after Consultant's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The Diversion Authority may only audit accounting records applicable to a cost-reimbursable type compensation. Upon finalization of the audit, the Diversion Authority will submit to Consultant a notice of audit results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to Consultant at the completion of an audit.
 - B. Within 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.

51. 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.

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 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.

53. 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

Diversions Authority, at the Diversions Authority's discretion, and certify to the Diversions 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 Diversions 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 Diversions Authority.
54. 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 Diversions Authority and executed by Consultant and the Chair of the Diversions Authority on behalf of the Diversions 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.
55. 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.
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 Diversions 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.

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

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 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.
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. 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.
63. FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for USEPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, Consultant shall complete and submit to the Diversion Authority the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34,

which are attached in 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.

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

Upon award of this contract, Consultant shall complete and submit to the Diversion Authority the federal certification form regarding 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:

Terracon Consultants, Inc.

By: _____
[Gregory A. Johnson, Senior Engineer]

Exhibit A – Rate Schedule

2020 MATERIALS FEE SCHEDULE

I. TESTS OF CONCRETE, MASONRY AND RELATED ITEMS

A.	Testing and Reporting 6" x 12" Cylinders	Each	\$25.00
	Testing and Reporting 4" x 8" Cylinders*	Each	\$22.00
	*ACI 318 requires 3 specimens @ specified age		
1.	Spare 6" x 12" Cylinder and Not Tested	Each	\$25.00
2.	Spare 4" x 8" Cylinder and Not Tested	Each	\$22.00
3.	Splitting Tensile	Each	\$49.00
4.	Contractor Cast or Submitted Cylinders	Each	\$28.00
	6" x 12"	Each	\$28.00
	4" x 8"	Each	\$25.00
5.	Trimming Fee for Defective Specimens	Each	\$16.00
B.	Testing and Reporting 6" x 6" x 22" Flexural Beams	Each	\$54.00
C.	Job Site Tests of Concrete		
1.	Perform job site tests including slump and air content tests Determine unit weight and cast compression or flexural specimens. Minimum one hour (portal to portal)	Per Hour	\$88.00
	a. Trip Charge (local)	Per Trip	\$10.00
	b. Outside Metro Area (Portal to Portal)	Per Mile	\$0.95
2.	Measuring and Reporting Floor Flatness/Floor Levelness	Per Hour	\$300.00
3.	Temperature/Maturity Logger	Each	\$77.00
D.	Nondestructive Testing of Insitu Concrete by Pulse Velocity Utilizing the V-Meter		Q.O.R.
E.	Concrete Coring (portal to portal)		
1.	One man and equipment	Per Hour	\$170.00
2.	Technician to Aid - when necessary	Per Hour	\$88.00
3.	Bit Wear, Concrete or Asphalt: 4"	Per Inch	\$2.50
	Bit Wear, Concrete or Asphalt: 6"	Per Inch	\$3.50
F.	Tests of Drilled Cores		
1.	Measure Length (ASTM:C174)	Each	\$47.00
2.	Compression (includes preparing ends)	Each	\$67.00
3.	Density	Each	\$52.00
G.	Petrographic Examination of Hardened Concrete (outside service)		
1.	ASTM:C856 Cincinnati, OH	Each	Q.O.R.
2.	Air Content - ASTM:C457 Cincinnati, OH		
3.	Fly Ash Documentation		
H.	Concrete Mix Designs		
1.	ACI Method I		
	a. Establish Strength Curves	Each	\$1,500.00
	b. Mix Proportions	Each	\$160.00
2.	ACI Method II		
	a. Collection and statistical analysis of available data	Applicable Personnel Rate	
	b. Mix Proportions	Each	\$160.00
3.	ACI Method III	Each	\$160.00
4.	Batch Proportioning-based on previous experience	Each	\$160.00

I.	Laboratory Trial Batch Mix Cylinders		
1.	Laboratory Batch Mix (individual batches) *Cylinders and beams charged at fee schedule rate.	Each	\$575.00
2.	Project Time - Material Pickup and Preparation	Per Hour	\$88.00
3.	Drying Shrinkage (ASTM C157) (Set of 3)	Each	\$470.00
4.	Time of Set (ASTM C403)		\$470.00
J.	Concrete Cylinder Molds		
1.	6"x12" (case of 20 molds)	Per Case	\$58.00
2.	4"x8" (case of 36 molds)	Per Case	\$55.00
3.	6"x12" Individual Molds	Each	\$3.75
4.	3"x6" Individual Molds	Each	\$2.00
5.	4"x8" Individual Molds	Each	\$2.30
K.	Tests of Fly Ash		Q.O.R.
L.	Tests of Cement		Q.O.R.
M.	Tests of Hollow Masonry Units		
1.	Compression, Dimension, Moisture & Absorption (set of 3)	Per Set	\$373.00
2.	Moisture and absorption only, per block	Each	\$106.00
3.	Compression only, per block	Each	\$105.00
4.	Drying Shrinkage (set of 3)	Per Set	\$1,065.00
5.	Efflorescence (set of 3)	Per Set	\$278.00
N.	Block Prism Compressive Strength		
1.	Field fabrication, 6", 8", 10" or 12"	Each	\$146.00
2.	Field fabrication, 12" or 14"	Each	\$158.00
3.	Field fabrication, 16"	Each	\$185.00
4.	Tensile bond strength - brick prisms	Each	\$134.00
O.	Tests of Masonry Mortar		
1.	Mortar Mix Design	Each	\$420.00
2.	3"x6" cylinders and grout prisms	Each	\$37.00
3.	Standard 2" cubes	Each	\$29.25
P.	Test of Brick Masonry - Freeze Thaw 50 Cycles	Each Set	\$845.00

II. COMPACTION CONTROL

A.	Field Density Tests (Nuclear Method)	Each	\$45.00
	Field Density Tests (Sand-Cone Method)	Each	\$47.00
	Field Density Tests (per hour)	Hour	\$88.00
1.	Trip Charge (Local)	Per Trip	\$10.00
2.	Outside Metro Area (Portal-to-Portal)	Per Mile	\$0.95
B.	Moisture-Density Relations of Soil		
1.	ASTM:D698 or AASHTO:T99	Each	\$176.00
	a. Check Point	Each	\$69.00
2.	ASTM:D1557 or AASHTO:T180	Each	\$204.00
	a. Check Point	Each	\$76.00
3.	Sample preparation of fat clay soils	Each	\$67.00
3.	Maximum-minimum relative density of cohesionless soil	Each	\$275.00

III. BITUMINOUS MATERIALS AND RELATED ITEMS

A	Bituminous Mix Design (Marshall)	Each	\$1,900.00
1.	Includes the following:	Each Additional Material	
	a. Gradation - 3 materials	Add	\$370.00
	b. Blending calculations		
	c. Specific Gravity and Absorption of Aggregate		
	d. 3 Marshall Specimens at 4AC Contents		
	e. Maximum Mix Gravity (ASTM:D2041)		
	f. Marshall Stability and Flow		
	g. Reporting		
2.	Additional Batches (voids search)	Each	\$315.00
	Includes Aggregate Blending, Batching of Prepared Aggregate		
	Marshall Specimens (3) and Max. Mix Gravity		
3.	TSR/Lotman	Each	\$305.00
	a. Batch and Preparation	Each	\$467.00
B.	SuperPave Mix Design	Each	\$3,255.00
1.	Includes the following:	Each Additional Material	
	a. Gradation - 3 materials	Add	\$425.00
	b. Blending calculations		
	c. Specific Gravity and Absorption of Aggregate		
	d. Fine and Coarse Aggregate Angularity		
	e. Gyratory Specimens at 3AC Contents		
	f. Maximum Mix Gravity (ASTM D2041)		
	g. Reporting		
2.	Additional Batches (voids search)	Each	\$425.00
	Includes Aggregate Blending, Batching of Prepared Aggregate,		
	Gyratory Specimens and Maximum Mix Gravity		
3.	TSR/Lotman	Each	\$305.00
	a. Batch and Preparation	Each	\$467.00
C.	Individual Tests Series of Bituminous Mixture		
1.	Marshall density, flow, stability, maximum mix gravity, and void	Set of 3	\$400.00
	a. Maximum Mix Gravity corrected by dry back	Per Point	\$80.00
2.	Marshall density, flow and stability	Set of 3	\$220.00
3.	Marshall density and Maximum Mix Gravity (Voids Update)		
	a. Marshall	Set of 3	\$300.00
	b. Gyratory	Set of 2	\$345.00
4.	Marshall density only	Set of 3	\$150.00
5.	Marshall stability and flow	Set of 3	\$150.00
6.	Maximum Mix Gravity	Each	\$110.00
7.	Bituminous Extraction-Gradation		
	a. Ignition Method	Each	\$275.00
	b. Chemical (Centrifuge)	Each	\$336.00
8.	Bituminous Extraction		
	a. Ignition Method	Each	\$190.00
	b. Chemical (Centrifuge)	Each	\$240.00
9.	a. Bituminous Density (Nuclear)	Each	\$45.00
	b. Core Density (ND/DOT)	Each	\$45.00
	c. Core Density (MNDOT)	Each	\$68.00
D.	Tests of Bituminous Materials		
1.	Kinematic Viscosity of Cut Back Asphalt (CTL)	Each	\$240.00
2.	Saybolt Furol Viscosity and Sieve Test of Emulsified Asphalt (ND/DOT Method)	Each	\$165.00
3.	Other Tests		Q.O.R.
4.	Disposal Fee		\$50.00

IV. AGGREGATE TESTS AND RELATED ITEMS

A. Base or Bituminous Aggregates			
1.	Mechanical analysis thru #200	Each	\$136.00
	a. With curve	Each	\$173.00
2.	Mechanical analysis and lightweight particles (ND/DOT Method)	Each	\$185.00
3.	Mechanical analysis, lightwt particles & fractures (ND/DOT Meth	Each	\$244.00
4.	Lightweight particles only (ND/DOT Method)	Each	\$158.00
5.	Plasticity Index (ASTM:D4318)	Each	\$110.00
	a. Sample preparation (Wet Method)	Each	\$70.00
6.	a. Clay content, ASTM D422 (.005 mm)	Each	\$176.00
	b. Materials Finer than 75- μ m (No. 200) Sieve (ASTM D1140)	Each	\$72.00
7.	Particle Shape (+#4 Basis)		
	a. Fractures and Thin and Elongated Pieces	Each	\$131.00
	b. Fractures only	Each	\$99.00
8.	Flakiness Index	Each	\$98.00
9.	Fine Aggregate Angularity	Each	\$152.00
	a. Fine Aggregate Angularity run on Extraction	Each	\$99.00
10.	Specific Gravity		
	a. Fine Aggregate	Each	\$182.00
	b. Coarse Aggregate	Each	\$116.00
11.	Sand Equivalent	Each	\$200.00
12.	Sample Bags	Each	\$2.31
B. Tests of Concrete or Masonry Aggregates			
1.	Fine Aggregate		
	a. Mechanical analysis and quality	Each	\$160.00
	1. Mechanical analysis only	Each	\$106.00
	2. Quality only	Each	\$110.00
	3. Mechanical analysis and shale	Each	\$139.00
	b. Mortar strength	Each	\$580.00
	c. Specific gravity and absorption	Each	\$182.00
2.	Coarse Aggregate		
	a. Mechanical analysis and quality	Each	\$215.00
	1. Mechanical analysis only	Each	\$99.00
	1.a. Mechanical analysis with % passing #200 (ASTM C117)	Each	\$139.00
	1.b. Mechanical Analysis and shale only/(or Carbonates only)		\$179.00
	2. Quality only	Each	\$158.00
	2.a. Carbonates only		\$92.00
	c. Specific gravity and absorption	Each	\$130.00
3.	Pit Run Aggregate		
	a. Gradation	Each	\$176.00
	b. Gradation and Lightweight - Coarse and Fine	Each	\$265.00
	c. Gradation and Quality - Coarse and Fine	Each	\$360.00
	d. Quality only - Coarse and Fine	Each	\$268.00
4.	Examination with heavy liquid (2.0-2.4)	Each	\$215.00
5.	a. Unit Weight (loose or rodded)	Each	\$120.00
	b. Unit Weight (loose and rodded)	Each	\$211.00
6.	Los Angeles Abrasion test		
	a. ASTM C131	Each	\$250.00
	b. ASTM C535	Each	\$350.00
7.	Soundness test		
	a. Fine Aggregate (4 pans)	Each	\$490.00
	b. Coarse Aggregate (3 pans)	Each	\$420.00
	c. Combined	Each	\$782.00
8.	Ledge rock sample preparation for L.A.R. of soundness	Per Hour	\$88.00

B. Tests of Concrete or Masonry Aggregates (Cont'd)

9.	Potential Alkali Reactivity of Aggregates (Mortar Bar Method)		
	a. Fine Aggregate - As received (Mn/DOT Modified)	Each	\$735.00
	b. Fine Aggregate - Graded to Standard C1260 Properties	Each	\$788.00
	c. Coarse Aggregate - Graded to Standard C1260 Properties	Each	\$945.00
	d. Blend of Coarse & Fine - Graded to Standard C1260 Properties	Each	\$1,312.00
	e. Additional Charge for Extending Test to 28 Days	Each	\$262.00
10.	Other Potential Reactivity of Aggregate (Mortar Bar Method)	Each	Q.O.R.
11.	Petrographic Examination	Each	Q.O.R.
12.	Freeze-thaw of coarse aggregate	Each	Q.O.R.

V. STEEL CONSTRUCTION TESTS

A.	Structural Steel Erection Observations (welds or bolts)	Per Hour	\$95.00
	1. Certified Weld Inspector	Per Hour	\$160.00
B.	Paint Thickness Tests (Magnetic Gauge)	Per Hour	\$124.00
C.	Nondestructive Testing - Field Radiography, Liquid Penetration, Magnetic Particle, Ultrasonic		Q.O.R.

VI. MISCELLANEOUS TESTS

A.	Test of Built up Roofing Samples		
	1. Complete sample (including flood coat & gravel surface)		\$585.00
	2. Felts and moppings only		\$445.00
B.	Testing of Windows Utilizing Devac Window Testing Equipment	Per Hour	\$255.00
	1. Report preparation	Per Hour	\$160.00
	2. Technician to aid when necessary	Per Hour	\$88.00
	3. Materials		Actual +15%
C.	Testing of Fireproofing		
	1. Field Observations and Report preparation	Per Hour	\$125.00
	2. Technician to aid when necessary	Per Hour	\$88.00
	3. Materials		Actual +15%
D.	Testing of Geo Membranes (PVC)		
	1. Peel and Shear (submitted sample)	Each	\$104.00
	2. Field Sampling and Testing	Per Hour	\$124.00
	3. Mobilization	Per Mile	\$0.95

VII. HOURLY RATES FOR PERSONNEL (Portal to Portal)

A.	Principal Engineer	Per Hour	\$255.00
B.	Senior Engineer	Per Hour	\$185.00
C.	Project Engineer	Per Hour	\$165.00
D.	Staff Engineer/Geologist	Per Hour	\$130.00
E.	Project Manager	Per Hour	\$125.00
F.	ICC Special Inspector	Per Hour	\$105.00
G.	Engineering Technician	Per Hour	\$88.00
H.	Clerical	Per Hour	\$77.00
I.	Mileage (to and from site)	Per Mile	\$0.95
J.	Living expenses when personnel are required to remain away from home overnight		Actual +15%

NOTE: Special equipment utilized by personnel will be in addition to the above rates. Special rates will be extended to projects of long duration by week or on a monthly basis.

2020 SOIL INVESTIGATION FEE SCHEDULE

I. FIELD WORK

A.	1.	Standard two-man field crew and truck-mounted rotary drill capable of performing standard penetration borings, with boring advancement by flight or hollow stem auger, or by rotary mud drilling methods.	Per Hour	\$	275.00
	2.	Same as A.1., but with all-terrain vehicle.	Per Hour	\$	325.00
	3.	Standard two-man field crew for boring layout, utility locations, elevations, site clean-up, and standby time due to site access or other site problems.	Per Hour	\$	195.00
	4.	Same as A.3., but with ATV-mounted drill rig.	Per Hour	\$	220.00
	5.	Additional crew man when use will reduce overall cost of work.	Per Hour	\$	106.00
	6.	Overtime			
		a. Saturday			Rate x \$1.25
		b. Sunday or Holiday			Rate x \$1.40
B.	1.	Mobilization to and from sites outside the immediate vicinity of the laboratory. Truck-mounted drill rig, support vehicle and standard two-man crew.	Per Mile	\$	5.00
	2.	Mobilization to and from all job sites. ATV-mounted drill rig and tractor-trailer, support vehicle and two-man crew.	\$200.00	\$	6.00
C.		Job Site Mileage	Per Mile	\$	1.15
D.		Job Site Services or Consultation (Portal to Portal)			
	1.	Principal Engineer	Per Hour	\$	255.00
	2.	Senior Engineer	Per Hour	\$	185.00
	3.	Project Engineer	Per Hour	\$	165.00
	4.	Certified Senior Engineering Technician	Per Hour	\$	130.00
	5.	Staff Engineer/Geologist	Per Hour	\$	125.00
	6.	Certified Engineering Technician	Per Hour	\$	105.00
	7.	Engineering Technician	Per Hour	\$	88.00
	8.	Clerical	Per Hour	\$	77.00
	9.	Mileage	Per Mile	\$	0.95
E.		Living expenses when personnel are required to remain away from home overnight.			Actual +20%
F.		Miscellaneous job expenses such as snow removal, communication charges, freight charges and rental of special equipment.			Actual +20%
G.		Materials.			Actual +20%
H.		Required Permits.			Actual
I.		Decontamination of equipment with hot water pressure:			
	1.	Drill rig and tools before job	Per Job	\$	440.00
	2.	Rental of hot water pressure washer--on site	Per Day	\$	220.00
J.		Abandoned sampling equipment, casing or auger, when it is considered more economical to abandon than to recover.			Actual Value
K.		Case of soil sample jars (24).		\$	50.00
		Thin Walls (3")		\$	25.00

II. LABORATORY TESTS

A.		Unconfined Compressive Strength ASTM:D2166			
	1.	Reporting maximum stress at failure		\$	75.00
	2.	Reporting complete stress strain curve		\$	82.00
	3.	Sample preparation - recompact		\$	115.00

B.	Moisture Content and Density		
1.	Hg immersion or direct measurement method		\$ 65.00
2.	In-tube measurement		\$ 6.00
3.	Moisture only		
C.	Atterberg Limits		
1.	Liquid and Plastic Limit		\$ 110.00
2.	Liquid Limit or Plastic Limit only		\$ 90.00
3.	Shrinkage Limit ASTM:D427		\$ 105.00
D.	Specific Gravity ASTM:D854		\$ 125.00
E.	Mechanical Analysis (Jar Samples)		
1.	Through #200 sieve ASTM:D422		\$ 103.00
2.	Percent Passing #200 ASTM:D1140		\$ 72.00
3.	Through .001 mm size, hydrometer analysis ASTM:D422		\$ 205.00
4.	Determine .005 or 0.02 mm (clay content)		\$ 175.00
F.	Determination of Organic Soil		
1.	ASTM:D2487		\$ 145.00
2.	Organic Content (combustion method) ASTM:D2974		\$ 105.00
G.	Coefficient of Permeability		
1.	Falling Head Method		
2.	Falling Head Method (ASTM:D5856) - Recompacted		\$ 440.00
3.	Constant Head Method (Granular Soils) ASTM:D2434		\$ 435.00
4.	Flexible Wall (ASTM:D5084)		\$ 545.00
a.	Sample preparation - recompacted		\$ 105.00
H.	Moisture-Density Relations of Soils		
1.	ASTM:D698 or AASHTO:T99	Each	\$ 176.00
a.	Method "A"-#4 basis		
b.	Method "B"-3/8" basis		
c.	Method "C"-3/4" basis		
2.	ASTM:D1557 or AASHTO:T180	Each	\$ 204.00
a.	Method "A"-#4 basis		
b.	Method "B"-3/8" basis		
c.	Method "C"-3/4" basis		
3.	Preparation of Fat Clay Soils	Each	\$ 67.00
I.	Tests of Expansive Soils ASTM:D4546		
1.	Percent Swell		\$ 199.00
2.	Swell pressure		\$ 389.00
J.	Hand Penetrometer		\$ 4.00
K.	Consolidation Tests ASTM:D2435		
1.	Reporting log p-e curve		\$ 610.00
2.	Reporting log p-e curve with time settlement curves		\$ 795.00
3.	Cyclic loadings	Per Load	\$ 55.00
L.	California Bearing Ratio (CBR) ASTM:D1883		
1.	Granular material	First Point	\$ 335.00
a.	Additional points	Per Point	\$ 200.00
2.	Cohesive material	First Point	\$ 425.00
a.	Additional points	Per Point	\$ 250.00
M.	Field CBRs (in accordance with Chapter 8 of the Asphalt Institute for Design of Asphalt Pavement Structures, MS-10).		Hourly Rate Per Section I
N.	Plate Load Tests (Client to provide reaction)		
1.	Engineer, portal to portal	Per Hour	\$ 149.00
2.	Technician to aid when necessary	Per Hour	\$ 88.00
3.	Mileage	Per Mile	\$ 0.95

O.	Pile Load Tests (Client to provide reaction)		
	1. Engineer, portal to portal	Per Hour	\$ 149.00
	2. Technician to aid when necessary	Per Hour	\$ 88.00
	3. Pile Driving Analyzer		Quote on Request
	4. Mileage	Per Mile	\$ 0.95
P.	Field Resistivity Tests		
	1. Engineering Technician & Equipment, portal to portal	Per Hour	\$ 149.00
	2. Mileage	Per Mile	\$ 0.95
Q.	Direct Shear Tests (per normal pressure)		
	1. Unconsolidated-undrained		\$ 210.00
	2. Consolidated-undrained		
	a. Granular soil		\$ 270.00
	b. Cohesive soil		\$ 375.00
	3. Consolidated-drained ASTM:D3080		
	a. Granular soil		\$ 315.00
	b. Cohesive soil		\$ 480.00
	4. Sample preparation - recompacted		\$ 115.00
	5. Sample preparation - fragile specimens	Per Hour	\$ 140.00
R.	Triaxial Compression Test (per confining pressure)		
	1. Unconsolidated-undrained ASTM:D2850		\$ 350.00
	2. Consolidated-undrained ASTM:D4767 (inc. pore-pressure readings)		\$ 425.00
	3. Consolidated-drained (inc. pore-pressure readings)		Quote on Request
	4. Back pressure saturation		\$ 260.00
	5. Staged confining pressure		50% of above
	6. Sample preparation-recompacted		\$ 115.00
S.	Chemical Tests of Soil		
	1. Redox		\$ 100.00
	2. Sulfate content		\$ 70.00
	3. Chloride content		\$ 70.00
	4. Electrical conductivity		\$ 70.00
	5. pH		\$ 27.00
T.	Miller Box Resistivity	Per Point	\$ 225.00
U.	Pinhole Test ASTM D4647		\$ 395.00

III. OFFICE AND LABORATORY

A.	Analysis, Consultation and Reporting		
	1. Principal Engineer	Per Hour	\$ 255.00
	2. Senior Engineer	Per Hour	\$ 185.00
	3. Project Engineer	Per Hour	\$ 165.00
	4. Certified Senior Engineering Technician	Per Hour	\$ 130.00
	5. Staff Engineer/Geologist	Per Hour	\$ 125.00
	6. Certified Engineering Technician	Per Hour	\$ 105.00
	7. Engineering Technician	Per Hour	\$ 88.00
	8. Clerical	Per Hour	\$ 77.00
B.	Reproduction of reports		
	1. Additional copies beyond first 3 copies	Per Page	\$ 0.65
	2. Additional reports at a later date		
	a. Copied		\$45.00 +\$0.65/page
	b. Faxed		\$45.00 +\$1.30/page
	c. Emailed		\$45.00

E. EQUIPMENT RENTAL (personnel time not included)

Development, Sampling and Test Equipment	
Bailer (SS).....	\$75.00/day
Bailer (disposable).....	\$36.00 each
Hand auger soil sampling kit.....	\$60.00/day
Hand pump (PVC).....	\$41.00/day
4" electric pump.....	\$135.00/day
Temperature, pH, conductivity meters.....	\$46.00/day
Bladder pump 1.8" OD SS (with controller & compressor).....	\$210.00/day
Sediment sampler.....	\$36.00/day
Electric water level indicator.....	\$46.00/day
Data acquisition station w/ transducer.....	\$155.00/day
Global positioning device (GPS).....	\$25.00/day
Additional transducers.....	\$82.50/day
Recorder, multi-channel portable sequential water sampler.....	\$72.50/day
or flow meter/chart recorder	
Portable sequential water sampler with flow meter/chart recorder.....	\$135.00/day
2" redi-flow pump.....	\$120.00/day
Monitoring Equipment	
Toxic gas detector (single gas).....	\$52.00/day
Hydrocarbon/water interface probe.....	\$82.50/day
Photoionization detector.....	\$175.00/day
Ion selective meter.....	\$72.50/day
Metal/cable detector.....	\$62.00/day
Air velocity indicator (anemometer).....	\$57.00/day
Air sampling pump, personal.....	\$47.00/day
Air sample pump, detector tube.....	\$36.00/day
Sound level meter (Quest Type 2) and calibrator.....	\$110.00/day
Noise dosimeter.....	\$67.00/day
Viable microorganism sampler/pump.....	\$105.00/day
Carbon monoxide monitor (single gas).....	\$57.00/day
Indoor air quality monitor (TSI).....	\$105.00/day
Oxygen/combustible gas/H2S Monitor.....	\$72.00/day
Carbon dioxide monitor (single gas).....	\$62.00/day
Dissolved oxygen meter.....	\$67.00/day
Turbidity meter.....	\$68.00/day
Landfill gas monitor (CH4/CO2/O2, Infrared).....	\$150.00/day
Mercury vapor analyzer.....	\$180.00/day
Moisture meter (Protimeter).....	\$30.00/day
Thermohygrometer.....	\$10.00/day
Rescue/retrieval tripod and winch.....	\$120.00/day
Manhole ventilator.....	\$92.50/day
Lead/Asbestos Equipment	
XRF (lead in paint analyzer).....	\$325.00/day
High volume sample pump.....	\$52.00/day
Microscope (phase contrast).....	\$42.00/day



2019-2020

Schedule of Services and Fees

Environmental – North Dakota

A. PROFESSIONAL STAFF

Table with 2 columns: Job Title and Hourly Rate. Includes Environmental Technician I (\$75.00/hour), Field Scientist / Environmental Technician II (\$85.00/hour), Field Geologist / Staff Scientist / Environmental Technician III (\$90.00/hour), Field Industrial Hygienist (\$95.00/hour), Field Engineer / Environmental Technician IV (\$100.00/hour), Staff Industrial Hygienist / Staff Geologist / Senior Staff Scientist (\$105.00/hour), Staff Engineer (\$110.00/hour), Project Scientist / Project Manager / Senior Staff Geologist (\$125.00/hour), Senior Staff Industrial Hygienist / Senior Staff Engineer (\$130.00/hour), Senior Scientist / Project Engineer / Project Geologist (\$140.00/hour), Senior Engineer / Senior Geologist (\$145.00/hour), Senior Project Manager / Project Industrial Hygienist (\$150.00/hour), Program Manager / Senior Industrial Hygienist (\$175.00/hour).

Professional labor time is charged for project related meetings, travel, telephone consultation, and services performed in the office and at the project site.

Increase hourly rates by 1.5 for Saturday, Sunday, and Terracon recognized Holidays; minimum 4 hours

NOTE: Deposition and court testimony at 1.75 times regular rate – minimum of \$250.00 / hour

C. ADMINISTRATIVE STAFF

Table with 2 columns: Job Title and Hourly Rate. Includes Administrative Staff II (\$65.00/hour), Senior Administrative Staff (\$85.00/hour), CAD Operator (\$85.00/hour).

D. EXPENSES, SUPPLIES, AND SUBCONTRACTED SERVICES

Table with 2 columns: Service Category and Rate. Includes Transportation (personal vehicle) - IRS Rate, Transportation (pickup truck or van) - \$75.00/day, Remediation vehicle and tools - \$100.00/day, Plus IRS Rate/mile, Per diem (meals) - IRS Rate, Lodging - Cost, Public transportation - Cost, Packaging and shipping test samples - Cost, Subcontracted services - Cost + 5%, Equipment rental - Cost, Remedial equipment - Cost, Analytical laboratory tests - Cost + 5%, Instrument use - Customary Rental Rate.

EXHIBIT B

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

CERTIFICATION REGARDING FEDERAL LOBBYING

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

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

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

Company/
Entity Name: Terracon Consultants, Inc,

Signed: _____

Its: Senior Engineer

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: Terracon Consultants, Inc.

Date: _____

By: Gregory A. Johnson, Senior Engineer

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

Gregory A. Johnson
Print Name

Date

Senior Engineer
Title

Terracon Consultants, Inc.
Name of Institution or Agency

860 9th St. NE, Unit K
Street

West Fargo, ND 58078
City, State, Zip Code

greg.johnson@terracon.com
Office Email Address

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



Board Meeting

March 26, 2020

SUBJECT: Statement of Work 5, Amendment 1 – Ernst & Young Infrastructure Advisors, LLC

RECOMMENDATION: Board Approval

BACKGROUND / KEY POINTS: Amendment to continue financial advisory services
(expires June 1, 2021)

FINANCIAL CONSIDERATIONS: Total Contract Value (\$2,700,000)

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: Statement of Work 5, Amendment 1 – Ernst & Young Infrastructure Advisors, LLC

Ernst & Young Infrastructure Advisors, LLC

Statement of Work No. 05, Amendment 1

Financial Plan revisions, Request for Proposal Phase Support, Proposal Evaluation Support

In accordance with the Agreement between **Metro Flood Diversion Authority** ("Client") and **Ernst & Young Infrastructure Advisors, LLC** ("EYIA") for Professional Services, dated May 14, 2015 ("Agreement"), Client and EYIA agree that the Statement of Work include the following elements, with specific activities to be directed by the Client as follows:

1. Specific Project Data
 - A. Title: Request for Proposal support, responses to Proposer Q&A, Proposal evaluation support
2. Services of EYIA
 - A. Financial Plan and financing/ procurement strategy
 - a. Work with the Client's municipal advisors to manage or refine on an ongoing basis, the financial plan for the project.
 - b. Assist the Client in explaining the nature and delivery of the financial plan to stakeholders, as requested
 - c. Participate in P3 Working Group and other meetings
 - d. Assist the Client in its interactions with credit rating agencies and the US Environmental Protection Agency on the pursuit of the Water Infrastructure Financing Innovation Act loan
 - B. Continue to support the Client in its interactions with the US Army Corps of Engineers
 - C. Assist the Client in preparing, revising and responding to question on due diligence materials to support procurement and for inclusion in the data-room, including financial White Papers
 - D. Request for Proposals (RFP) Support

Assist the Client in managing the RFP process, including the following elements:

 - a. Responding to Proposer questions on financial aspects of the RFP
 - b. Support in revisions to financial aspects of the RFP drafts and Final RFP
 - c. Participation in one-on-one meetings with shortlisted Proposers
 - d. Finalization of financial proposal requirements
 - E. At Client's request or direction, refine financial model at various stages to test or reflect financial impact of changes to different deal parameters that arise.
 - F. Assist with the Client's evaluation of Financial Proposals, including support in developing briefing materials for stakeholders and Client leadership regarding Developer selection
 - G. Support Client in its negotiations with the apparent best value proposer as necessary to establish a final contract and reach financial close, including financing and security package. Benchmark financing terms for financial close. Prepare and present briefing papers for Client management summarizing deal terms. Support Client in addressing conditions precedent to financial close.
 - H. Assist Client in the closing process, clearing conditions precedent and finalizing loan documentation.
 - I. Meetings, Calls, and Working Groups
 - a. Attend P3 working group meetings, project team meetings and conference calls regarding the procurement to coordinate activities and present deliverables, as required.

3. Deliverables:

- A. Financial analysis and stakeholder presentations
- B. Financial model outputs
- C. Input into draft and Final RFP documents
- D. Summary of Financial Proposals
- E. White Paper(s) and decision memos

4. Times for Rendering Services

- A. Period of Performance of this Statement of Work ends on June 1, 2021.

5. Payments to EYIA

- A. Client shall pay EYIA for services rendered in accordance with Agreement and the rate schedule in Attachment A. The following table presents the estimated budget breakdown by Subtask. This Statement of Work shall be authorized and limited by the total budget amount. Subtask amounts are estimates and shall not be considered limits.
- B. EYIA will only invoice for actual expenses related to taxi, parking, airfare (coach class only) and lodging. Hotel expenses will be invoiced at the GSA per diem amount for North Dakota lodging plus tax. Current GSA rates are available at: <https://www.gsa.gov/portal/content/104877>. EYIA will not invoice expenses for meals during travel for Client purposes.

Subtask	Description	Amended Budget Estimate (\$)
A	Financial Plan and financing/ procurement strategy	\$400,000
B	Support USACE interactions	\$20,000
C	Due Diligence	\$300,000
D	RFP support	\$1,000,000
E	Model analysis updates for deal terms	\$80,000
F	Financial Proposal Evaluation support	\$180,000
G&H	Closing support	\$200,000
G	Meetings, calls and working groups	\$400,000
	Direct costs (travel, accommodation, etc)	\$120,000
	TOTAL	\$2,700,000

6. Consultants: None

7. Other Modifications to Agreement: None

8. Attachments: Attachment A, Rate Schedule

9. Documents Incorporated By Reference: Agreement dated May 14, 2015

10. In performing the services, EYIA will not take any action that EYIA reasonably believes could impair its independence with respect to any of its audit clients or those of other EY member firms. For example, EY will not instruct, supervise or contract with an entity, without first determining in its sole discretion that such an action would not impair our independence.

11. Because EY is Jacobs' external auditor, EYIA's roles and responsibilities in connection with the services that relate to certain activities or deliverables of Jacobs are subject to certain restrictions as determined solely by EY. For example, EYIA will not direct, manage, oversee or have any direct responsibility for any activities by or on behalf of Jacobs or any other audit clients. Further, EYIA will not work under the supervision or direction of Jacobs, and Client shall not request that Jacobs supervise or direct EYIA.

Terms and Conditions: Execution of Statement of Work by Client and EYIA shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. EYIA is authorized to begin performance as of the date of the Agreement for Professional Services.

EYIA:

Ernst & Young Infrastructure Advisors, LLC



January 31, 2020

Signature *Date*

Tom P. Rousakis

Name

Senior Managing Director

Title

DESIGNATED REPRESENTATIVE:

Tom P. Rousakis

Name

Senior Managing Director

Title

5 Times Square
New York, NY 10036

Address

Tom.Rousakis@ey.com

E-Mail Address

Office (212) 773-2228; Cell: (917) 442-2701

Phone

Fax

CLIENT:

Metro Flood Diversion Authority

Signature *Date*

Name

Chairman, Board of Authority

Title

DESIGNATED REPRESENTATIVE:

Name

211 9th Street South
PO Box 2806
Fargo, ND 58108-2806

Address

E-Mail Address

Phone

Fax

Attachment A – Rate Schedule

Labor:

Title	Rate¹
Senior Managing Director / EY Principal	\$550
Managing Director / EY Executive Director	\$500
Senior Vice President / EY Senior Manager	\$475
Vice President / EY Manager	\$425
Senior Associate / EY Senior Consultant	\$365
Analyst / EY Staff	\$260

¹Rates are subject to escalation on January 1, 2017, and annually thereafter at the greater of 3.5% or CPI.

Expenses:

Actual cost



Board Meeting

March 26, 2020

SUBJECT: Contract for Professional Services – Executive Management Systems, Inc.

RECOMMENDATION: Board Approval

BACKGROUND / KEY POINTS: Contract for Executive Coaching

FINANCIAL CONSIDERATIONS: Total Contract Value (\$26,500)

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: Contract Letter for Executive Management Systems, Inc.



Melvin D. Nelson
President and CEO

4302 13th Ave S – Suite 4 • Fargo, ND • 58103
mdn@ExecutiveManagementSystems.com
701+364-9500

January 31, 2020

Schedule A 1.1

Joel Paulsen, Executive Director
Flood Diversion Board of Authority
Box 2806
211 Ninth Street South
Fargo ND 58108

Dear Joel:

We have had several conversations over the last 2-3 months. Early in our conversations you identified at a very high level what you would like to accomplish: *“To implement the project on time and on budget.”*

This letter is written to capture a high level summary of those conversations and define Schedule A1.1 [to be added to the Consulting Agreement] as a point of entry in defining the initial services to be performed by Executive Management Systems, Inc. for the FM Diversion Authority (FMDA).

As our conversations expanded, you identified three big areas of improvement that you would like to have Executive Management Systems help you to achieve:

- Improved communication with the board
- Role clarity – a better understanding of jobs and responsibilities
- Improved ability for the FMDA to be fair, flexible, and friendly

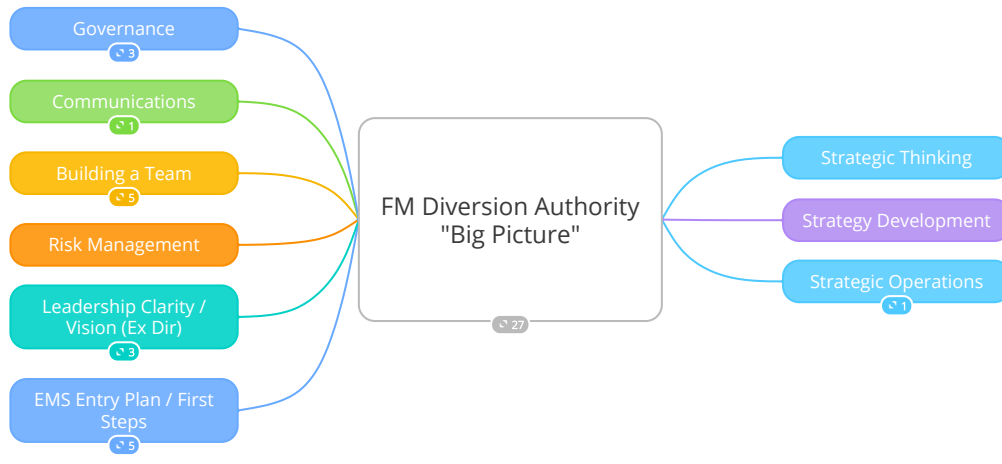
As I digested the conversations we had on our November 7th phone call and our discussion on December 13th and 18th, I presented an overall summary in our discussion on January 8th. There were three over-arching areas we identified for project success:

- Strategic Thinking
- Strategic Development
- Strategic Operations

I also presented a digest of the five over-arching opportunities to achieve these three ends:

- Governance
- Communications
- Building a Team
- Risk Management
- Leadership Clarity & Vision – Executive Director

These elements providing a high-level, big picture summary of our discussions are represented in the following graphic:



The question in my mind, “Where do I start to support your efforts?” was answered as we discussed and quickly prioritized your needs. We selected the development of two of these five areas (Leadership Clarity and Building a Team) as our initial starting point – with development of job benchmarks for three positions:

- Leadership Clarity & Vision*
 - Executive Director job benchmark and talent assessment
- Building a Team*
 - Job benchmarks for two of the first hires
 - Deputy Executive Director
 - Director of Engineering

This diagram further expands areas of development work for these two categories*:



Executive Management Systems' Approach

Your needs as defined above are embraced by Executive Management Systems, Inc.'s professional abilities, competencies and experience. The approach I am recommending builds a foundation to achieve your objectives. This foundation is a comprehensive process:

- It identifies the talent required for success in the job
- It defines the performance standard for the job
- It is very useful in the coaching and leadership, should you choose to include that talent development option in the future
- It summarizes the qualities being sought, which are very useful in developing the job posting to seek qualified job candidates
- It provides very useful, specific, competency-based questions to be asked in the selection interview process for a successor

This solid foundation can be built out step by step as you develop your team in 2020.

Framework & Timeline

Based on our discussion, this is a framework that spells out our initial engagement:

Step	Focus	Who	When
1	Executive Director Job Benchmark	Joel, Martin & Mel	February 6 9:00 am – 4:00 pm
2	Engineering Director Job Benchmark		
3	Deputy Executive Director Job Benchmark		
4	Job Benchmark Debriefing	Joel, Martin (?) & Mel	TBD (Two ½-day sessions)
5	Strategy Development – Talent Selection		
6	Executive Director Talent Assessment & Job Benchmark/Talent Debrief	Joel & Mel	TBD (Two ½-day sessions)

Let me summarize these steps:

1. Job Benchmarks

A panel of subject matter experts (SMEs – those familiar with the jobs and areas of responsibility – in this case Joel Paulsen and Martin Nicholson) will be guided through a process that defines the five key results areas (KRAs) that define success in each of these jobs.

We will use a proven talent model that defines the talent the job would ask for if it could speak. The process “gives the job a voice” by defining “what the job is looking for.”

Outputs from the process include a job talent summary (with verbiage that can be used in advertising for the job), a talent template for the job (which can be used to evaluate candidates’ talents against the job requirements), competency-based questions (which will be incorporated in the job interviews), and the KRAs that will be incorporated into the positions’ job descriptions. The talent template identifies 23 capacities, 6 values/motivators, and 12 behaviors.

In a six-hour session on February 6th, we will complete three job benchmarks, one each for the positions identified (Executive Director, Deputy Executive Director, and Engineering Director). Using a proven job benchmarking process, we will have an in-depth discussion of each position, one by one, after which the SMEs will complete a 192-question on-line instrument that will give us an in-depth analysis of the talent required for each job.

2. Benchmark Debriefing

Upon completion of the benchmarks, I will compile and summarize the results for a briefing for the SMEs. We will schedule a ½-day briefing and discussion to leverage the high value of this information for building the team you require.

This briefing is the first step to mine the rich data discovered in the job benchmarking. This briefing flows right into the next ½-day working session for strategy development.

3. Strategy Development

This is the third building block in the series of foundational steps to help you to build the winning team you seek. As we discussed earlier, Joel, it’s not easy to attract and hire talent these days. The international conference I attended – a network I’ve been in for the last 15 years – underscored the challenges faced by employers in seeking talent.

I have identified two colleagues that are good contacts for this, but we need to weave together a game plan/fabric as a critical next step, building on steps 1 and 2 above.

4. Executive Director Coaching Debrief

This step (#6 above) enables you to see firsthand – as Executive Director – what the process in action looks and feels like. It will let you personally experience the powerful, focused and comprehensive insights to be gained from the talent model.

We will assess your talent and fit with the challenges of the job – a very solid first step in leveraging the process for leadership coaching and development. This step will include one or two ½-day sessions to give you a personal feel for the high value from the model for not only talent selection, but also talent management in the long run.

Value

Joel, as fellow engineers, we discussed the project cost/benefit ratio for the overall project. Clearly, there has to be a reasonable cost/benefit ratio for any services I perform for the FDA.

A very useful rule of thumb for talent selection with the critical high-level jobs you are seeking to fill is this: Mistakes in hiring the wrong person is costly. The impact of having to replace a poor hire is three times the annual salary of that position. For a \$100,000 position, the cost of a poor hire to the organization is \$300,000 in terms of lost productivity, time and cost required to replace a poor hire.

The work proposed in this letter and Schedule A1.1 and the investment required can be compared to this cost to approximate the cost/benefit ratio of the investment in Executive Management Systems' services.

Your Investment

Your investment in the services proposed above is \$26,500. Not included in this cost are meeting room costs and amenities, meals (if necessary), and printing of reports. Out of pocket costs if out-of-town travel, meals or lodging is required are also not included.

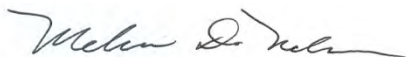
Next Steps

Joel, it's obvious that we need to ensure that the overall consulting agreement serves as the umbrella you seek, under which we can define specific projects to address your needs. This letter, Schedule A1.1 defines specific projects that Executive Management Systems, Inc. will begin after your approval to proceed.

1. Upon approval to proceed, I will prepare for the February 6th job benchmarking session. I will need at least two days' notice (by next Tuesday).
2. We can schedule the two ½-day sessions to follow. (If possible, I would recommend that we do a 1:00 to 5:00 pm session followed by a 8:00 am to Noon session the next day.)
3. The personal debrief for you on your job and your talent assessment we can schedule when you prefer. This is a very important and foundational step in the application of the overall talent model.

Joel, I stand by, ready to assist you as the opportunities develop. Please don't hesitate to give me a call or to suggest a meeting if there are any areas that require clarification or additional detail. Thanks for the opportunity to be considered to serve you and the FDA in this way.

Sincerely,



Melvin D. Nelson



Board Meeting

March 26, 2020

SUBJECT: Work Package 50B Property Structure Mitigation Bid Package – Industrial Builders

RECOMMENDATION: Board Approval

BACKGROUND / KEY POINTS: Bid package

FINANCIAL CONSIDERATIONS: Total Contract Value (\$259,918)

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: WP50B Property Structure Mitigation



64 4th Street North
Suite 300
Fargo, ND 58102

www.jacobs.com

March 19, 2020

Metro Flood Diversion Authority Attention: Tim Mahoney, Chair
211 9th Street South, Box 2806
Fargo, ND 58108

Subject: Work Package 50B, Property Structure Mitigation - Recommendation of Award

Dear Board Members:

The contract for construction of Work Package 50B (WP-50B), Property Structure Mitigation, was publicly bid and two (2) bids were received at the public bid opening on March 18, 2020.

The bids received, in the amounts of \$259,918 and \$274,060, are within five (5) percent of each other. This bid consistency generally indicates that the bidding documents were explicit, and the bidders understood the scope of the work. The low bid is forty three (43) percent higher than the Engineer's Opinion of Probable Cost, which was based on past mitigation projects with lower than typical bid pricing. With the addition of new WIFIA contracting requirements and economic uncertainty surrounding the Coronavirus response, the higher bid prices seem reasonable. The low bid appears to be a full and valid bid.

Jacobs, Program Management Consultant (PMC), has reviewed and evaluated the bids and recommends the Metro Flood Diversion Authority award the construction contract for WP-50B to Industrial Builders Inc. in the amount of \$259,918.00 as the lowest responsive bidder. Enclosed are the project Bid Summary and a copy Industrial Builders Inc.'s bid.

Please contact me at john.glatzmaier@jacobs.com if you have any questions regarding this recommendation.

Yours sincerely

John Glatzmaier/Jacobs
PMC Project Manager

Encl.

C: Joel Paulsen/Executive Director
Nathan Boerboom/City of Fargo

Matt Stamness/Cass County
Chris Gross/HMG
John Shockley/Ohnstad Twichell

Work Package 50B

Property Structure Mitigation

BID SUMMARY

BID OPENING: March 18, 2020 @ 2:30 pm



Bidder Name	Bid Bond	Contractor License	Addenda Acknowledgement	MBE/WBE Subcontractor Solicitation Information form	Certification regarding Debarment, Suspension, and other Responsibilities	DBE Subcontractor Utilization form	DBE Subcontractor Performance form	Bid Price
Industrial Builders, Inc.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	\$259,918.00
Schmidt and Sons Construction, Inc.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	\$274,060.00

BID FORM

Property Structure Mitigation

Work Package 50B

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Metro Flood Diversion Authority
c/o Cass County Finance Office
211 Ninth Street South Box 2806
Fargo, ND 58108-2806

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 30 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- B. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- C. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

- D. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.
- E. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- F. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- G. Bidder has given Owner's Representative written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Owner's Representative is acceptable to Bidder.
- H. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- I. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	BID UNIT PRICE	BID PRICE
1.	Mobilization	LS	1.0	\$ 10,000.00	\$ 10,000.00
2.	Clearing & Grubbing	LS	1.0	\$ 10,000.00	\$ 10,000.00
3.	Removals - OIN 573, ND	LS	1.0	\$ 22,000.00	\$ 22,000.00
4.	Removals - 4510 112th Ave S, ND	LS	1.0	\$ 45,000.00	\$ 45,000.00
5.	Removals - 4107 124th Ave S, ND	LS	1.0	\$ 26,000.00	\$ 26,000.00
6.	Removals - 17554 Pfiffer Dr, ND	LS	1.0	\$ 25,000.00	\$ 25,000.00
7.	Removals - 17107 50th St SE, ND	LS	1.0	\$ 45,000.00	\$ 45,000.00
8.	Removals - 16678 3rd St SE, MN	LS	1.0	\$ 40,000.00	\$ 40,000.00
9.	Top Soil Import	CY	1,010	\$ 6.00	\$ 6,060.00
10.	Imported Fill	CY	2,595	\$ 9.00	\$ 23,355.00
11.	Seeding and Mulching	SY	12,505	\$ 0.60	\$ 7,503.00
Total of All Bid Price Items					\$ 259,918.00

Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

**Total Bid Price
(words)**

Two hundred fifty-nine thousand nine hundred eighteen and no/100

Dollars

and Cents

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with this Bid in a separate envelope, and made a condition of this Bid:
 - A. Required Bid security
 - B. Contractor's North Dakota License
 - C. Acknowledgment of Addenda
- 7.02 The following documents are submitted with this bid in the same envelope, and made a condition of this Bid:
 - A. MBE/WBE Subcontractor Solicitation Information form
 - B. Certification regarding Debarment, Suspension, and other Responsibilities form
 - C. DBE Subcontractor Utilization form
 - D. DBE Subcontractor Performance form

ARTICLE 8 – DEFINED TERMS

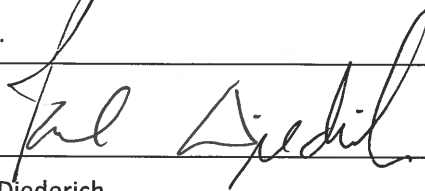
- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

Industrial Builders, Inc.

By:
[Signature]



[Printed name]

Paul Diederich

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature]



[Printed name]

Carl Hanson

Title:

Contract Administrator

Submittal Date:

3/18/2020

Address for giving notices:

PO Box 406

Fargp, ND 58107

Telephone Number:

701-282-4977

Fax Number:

701-281-1409

Contact Name and e-mail address:

Bmeyer@industrialbuilders.com

Bidder's License No.:

ND Contractors License No: 214 Class: A / Minnesota Contractor Registration No: IR767612

Industrial Builders, Inc.

PAUL W. DIEDERICH, PRESIDENT
DONN O. DIEDERICH, EXECUTIVE VICE PRESIDENT



General Contractors

PHONE 701/282-4977 FAX 701/281-1409
P.O. BOX 406 FARGO, NORTH DAKOTA 58107-0406

The following resolution was adopted by the Board of Directors of
Industrial Builders, Inc. on December 20th, 2018:

Now be it resolved that Paul W. Diederich, Donn O. Diederich, Roger A. Haberman, Kent M. Sand, Troy R. Erickson and Brittany J. Diederich are authorized to bind the Corporation by affixing his or her signature to official documents involving quotations, bids, construction contracts, and purchase/lease agreements, provided such signature is accompanied by the impression of the official seal of the Corporation, when required.

Paul W. Diederich
President

Kent M. Sand
Secretary

ARTICLE 10 – SUPPLEMENT

10.01 The supplements listed below, and following “END OF SECTION” are part of this Bid Form.

- A. MBE/WBE Subcontractor Solicitation Information form
- B. Certification regarding Debarment, Suspension, and other Responsibilities form
- C. DBE Subcontractor Utilization form
- D. DBE Subcontractor Performance form

END OF SECTION

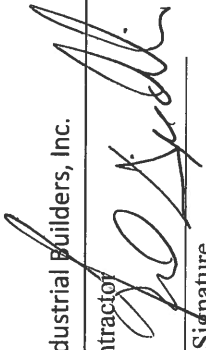
MBE/WBE SUBCONTRACTOR SOLICITATION INFORMATION

Name, Address, & Phone Number of Subcontractor Contacted	Date that Quote was Requested	Description of Work Offered	Date of Follow-up & Person Contacted	Amount of Quote or Reason Not Quoting *	Quote Accepted? If not, List Reason for Rejection*	Indicate if MBE/WBE or non MBE/WBE
AJ Construction 590 1st St. N Horace, ND 58047 701-729-2264	3-9-20	Trucking, seeding and skid loader-operated	3-11-20 Al Enno	Skid Loader-Operated at \$ 85.00 / hour	Yes, 50 hours accepted	MBE
JR Dawsen Const. 12178 Riverview Dr. Sidney, MT 59270 408-332-6572	3-13-20	Trucking	3-17-20 David Baltrush	Too far away, too small of project	They did not quote	WBE
Naastad Brothers, Inc. 1785 149th Ave NE Hatton, ND 58240 701-543-3821	3-11-20	Trucking	No Response	No Response	They did not quote	WBE
Quality Dirtworks Max, ND 58759 701-240-4957	3-11-20	Trucking	No Response	No Response	They did not quote	MBE
Red Lake Builders, Inc. 10323 MN-89 Red Lake, MN 56671	3-11-20	Trucking	No Response	No Response	They did not quote	MBE
Please see attached list for all email addresses that were used in an effort to solicit a quote to be used to meet the requirements of this project						

* Use additional sheets if necessary.

The undersigned hereby certifies that the above information is true and correct.

SUBMIT THIS COMPLETED FORM WITH BID OR PROPOSAL PACKAGE

Industrial Builders, Inc.
Contractor
By:  President
Signature Title
Date 3/18/2020

yecllc@gmail.com; cgtunheim@msn.com; jneltbel@gmail.com; tntconc@wildblue.net;
rainyrose@live.com; gadolph854@aol.com; manstrucking@goesp.com; info@sc-recon.com;
sehnfive@bis.midco.net; june_seng@sstransport.com; slnoonan50@gmail.com;
krystal@rockkontrucks.com; rmrtransportation@gmail.com; rizzagain@yahoo.com;
dreiner@reinercontracting.com; rlbltrs@paulbunyan.net; steven.carleton@ranieng.com; rdcdriill@rdc-drill.com;
info@qualitydirtworksllc.com; info@progressivepii.com; sales@pcs-nd.com;
office@pipedetectivesinc.com; parascontracting@yahoo.com; accounting@p3-i.com;
laurakmont@yahoo.com; cenervold@yahoo.com; jaked@ndoss.com; jfahnestock@northwindgrp.com;
nicole@naspinc.com; kallie@naastadbrothers.com; mpm@rrt.net; mountainwestdrivers@gmail.com;
edna@midwestselectcontracting.com; midwestbores@gmail.com; mity.ds@gmail.com;
maxtraxtransport@yahoo.com; karla@mrsigncompany.com; lawnanddriveway@runestone.net;
wied28@yahoo.com; carrie@koppelfab.com; kari@kleconstruction.net; jrcombine@aol.com;
matthewsda@aol.com; jacki@jrdawsen.com; blueearthbucs95@gmail.com;
patty@hudsonincorporated.com; hochunktrucking@gmail.com; hsg@gondtc.com; bgguth@daktel.com;
cenervold@yahoo.com; jodigoldade@gmail.com; cliff@globalpublicintelligence.com;
georgeposey2@gmail.com; lm@fullmoonmt.com; ert@eaglerocktimber.com; dcdinc590@gmail.com;
[wendy@shipdavisfreight.com](mailto>wendy@shipdavisfreight.com); jamied@dallmannservicesco.com; dakotaexcinc@gmail.com;
dandbportables@hotmail.com; juliaespey@courtlandllc.net; sandra@cormicansinc.com;
herb.fricke@akana.us; rachelled@cd3services.com; carlo@carloelectrical.com; info@bx-cc.com;
kathy@boyswaterproducts.com; bountifultrucking@yahoo.com; contact@bgtruckingnd.com;
bellhartransport@gmail.com; amitenterpriseinc@gmail.com; ajinc590@gmail.com

**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 Industrial Builders, Inc.

Date: 3/17/2020

By: Paul Diederich President
Name and Title of Authorized Representative


Signature of Authorized Representative

SUBMIT THIS COMPLETED FORM WITH BID OR PROPOSAL PACKAGE

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.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

An EPA Water Infrastructure Finance and Innovation Act (WIFIA) program Recipient must require its prime contractors to provide the information contained in this Form. This Form is intended to capture the Prime Contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. A WIFIA program Recipient must require its prime contractors to complete this form and include it in the bid or proposal package, Prime Contractors should also maintain a copy of this form on file.

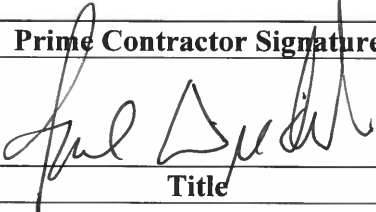
Subcontractor Name		Project Name Property Structure Mitigation	
Bid/ Proposal No. WP-50B	WIFIA Loan ID No: (If Known)	Point of Contact Brian Meyer	
Address PO Box 406, Fargo, ND 58107			
Telephone No. 701-282-4977		Email Address bmeyer@industrialbuilders.com	
Prime Contractor Name Industrial Builders, Inc.		Issuing/Funding Entity: Metro Flood Diversion Authority	

I have Identified potential DBE certified subcontractors	<u> X </u> Yes	<u> </u> No	
If Yes Please Complete the Table Below. If no, please explain in the box below:			
Subcontractor Name/Company Name	Company Address/Phone/Email	Est. Dollar Amt	Currently DBE Certified?
AJ Construction	590 1st St. N, Horace, ND 58047	\$ 4,250.00	Yes

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202
² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

Subcontractor Name/Company Name	Company Address/Phone/Email	Est. Dollar Amt	Currently DBE Certified?

I certify under penalty of Perjury that the foregoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
	Paul Diederich
Title	Date
President	3/18/2020

SUBMIT THIS COMPLETED FORM WITH BID OR PROPOSAL PACKAGE

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

An EPA Water Infrastructure Finance and Innovation Act (WIFIA) program Recipient must require its contractors to provide this form. This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the Prime Contractor. An EPA WIFIA program Recipient must require its Prime Contractor to have its DBE subcontractors complete this form and include all completed forms in the Prime Contractors Bid or proposal package.

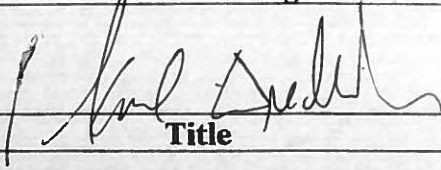
Subcontractor Name AJ Construction, Inc.		Project Name Property Structure Mitigation	
Bid/ Proposal No. WP-50B	WIFIA Loan ID No: (If Known)	Point of Contact Al Enno	
Address 590 1st Street N, Horace, ND 58047			
Telephone No. 701-729-2264		Email Address ajinc590@gmail.com	
Prime Contractor Name Industrial Builders, Inc.		Issuing/Funding Entity: Metro Flood Diversion Authority	

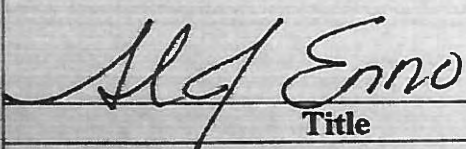
Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
2, 10	Skid Loader Rental with Operator 50 hours x \$ 85.00/hour	\$ 4,250.00
DBE Certified By: <input checked="" type="checkbox"/> DOT <input type="checkbox"/> SBA <input type="checkbox"/> Other: _____		Meets/Exceeds EPA certification standards? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

I certify under penalty of Perjury that the foregoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
	Paul Diederich
Title	Date
President	3/18/2020

Subcontractor Signature	Print Name
	Al J Enno
Title	Date
President	3/18/20

SUBMIT THIS COMPLETED FORM WITH BID OR PROPOSAL PACKAGE

Item 6a.

FM Metropolitan Area Flood Risk Management Project
 Fiscal Accountability Report Design Phase (Fund 790)
 As of 02/29/20

	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	42,565,943	30,112,100	30,150,091	32,835,957	-	198,516,375
Cass County	443,138	7,652,681	7,072,961	19,373,131	28,310,373	115,636,848	13,925,658	14,305,401	13,939,645	-	220,659,836
State Water Commission	-	-	3,782,215	602,918	31,056,740	104,501,111	25,892,783	9,227,010	25,932,184	-	200,994,960
Other Agencies	98,475	1,700,595	1,571,769	4,305,140	6,291,194	(13,260,368)	-	-	-	-	706,805
City of Oxbow MOU Repayment	-	-	-	-	-	-	1,258,082	328,354	297,208	60,970	1,944,614
Reimbursements	-	-	-	-	-	33,880	44,719	27,396	22,600	-	128,595
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	114,479	-	-	-	1,222,335
Interest Income	-	-	-	-	-	-	505,157	1,246,875	1,885,896	255,108	3,893,036
Miscellaneous	-	-	226	626	427	-	2,600	356	-	-	4,235
Total Revenues	984,751	17,005,957	19,517,490	44,425,900	94,465,340	249,913,410	72,206,300	55,751,976	75,627,781	336,353	630,235,258
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	576,519	1,002,509	997,706	89,127	4,178,897
7915 WIK - Project Design	149,632	5,366,147	3,220,859	9,118,723	4,660,226	2,975,689	2,907,309	2,142,880	2,405,492	5,116	32,952,073
7920 WIK - Project Management	679,037	7,223,650	4,695,477	3,579,339	4,500,955	9,315,429	15,211,372	6,817,589	8,264,954	2,570	60,290,375
7925 WIK - Recreation	-	163,223	-	-	-	-	-	-	40,000	75,000	278,223
7930 LERRDS - North Dakota	48,664	3,843,620	2,763,404	17,013,358	55,948,209	52,472,770	38,273,194	8,114,895	30,199,377	183,457	208,860,947
7931 LERRDS - Minnesota	-	27,996	287,907	13,068	32,452	1,815,566	35,153	4,914	5,352	-	2,222,408
7940 WIK Mitigation - North Dakota	-	-	-	587,180	-	-	256,326	69,283	12,357	988	926,134
7941 WIK Mitigation - Minnesota	-	-	-	-	-	-	-	-	-	-	-
7950 Construction - North Dakota	-	-	-	1,738,638	19,269,055	43,084,726	5,267,083	4,384,090	16,727,231	4,062	90,474,885
7951 Construction - Minnesota	-	-	-	-	-	-	-	-	-	-	-
7952 Construction - O/H/B	-	-	-	11,282,504	5,044,001	791,619	10,907,637	4,111,617	365,793	-	32,503,172
7955 Construction Management	-	-	-	556,209	2,867,422	5,746,224	1,002,575	296,092	665,226	440	11,134,187
7980 Operations & Maintenance	-	-	-	-	-	-	6,403	28,538	41,493	-	76,434
7990 Project Financing	-	50,000	70,000	216,376	566,600	6,944,623	6,914,504	9,879,405	11,249,235	537,394	36,428,136
7995 Project Eligible - Off Formula Costs	-	-	-	-	-	-	-	-	-	-	-
7999 Non Federal Participating Costs	116	(0)	-	-	-	-	221,568	-	-	-	221,684
Total Expenditures	984,750	17,005,957	11,990,261	45,324,414	95,896,147	170,971,201	82,809,643	36,851,812	70,974,216	898,153	533,706,555

FM Metropolitan Area Flood Risk Management Project
Statement of Net Position
February 29, 2020

	<u>Amount</u>
Assets	
Cash	\$ 93,873,118
Receivables	
State Water Commission *	<u>4,225,503</u>
Total assets	<u>98,098,621</u>
Liabilities	
Retainage payable	1,563,919
Rent Deposit	<u>6,000</u>
Total liabilities	<u>1,569,919</u>
NET POSITION	<u><u>\$ 96,528,703</u></u>

* Receivable balance is as of 1.31.2020

FM Metropolitan Area Flood Risk Management Project
 FY 2019 Summary Budget Report (In Thousands)
 As of 29 Feb 2020

	2020 Approved Budget	Current Month	Fiscal Year To Date	% Expended	Outstanding Encumbrances	Remaining Budget Balance
Revenue Sources						
City of Fargo	-	3,608	7,216			
Cass County	-	990	1,981			
State of ND - 50 % Match	-	3,444	6,888			
State of ND - 100% Match	-	2,622	5,243			
State of Minnesota	-	-	-			
Other Agencies	-	-	-			
City of Oxbow MOU Reimbursement	-	(61)	(61)			
Financing Proceeds	-	(143)	(31)			
Reimbursements	-	-	-			
Sales of Assets	-	-	-			
Property Income	-	-	20			
Miscellaneous	-	-	-			
Total Revenue Sources	138,559	10,460	21,256	-	-	117,303
Funds Appropriated						
Diversion Channel & Assoc. Infrastructure	7,744	702	1291	0%	3,626	2,827
Southern Embankment & Assoc. Infrastructure	1,373	39	252	18%	1,447	(326)
Other Mitigation Projects	2,872	-	4	0%	604	2,263
In-Town Flood Protection	24,894	-	260	1%	979	23,656
Enabling Work / Other	26	-	0	0%	-	26
Land Acquisition & Mitigation	71,079	3,109	3377	5%	66,220	1,482
Engineering & Design Fees	3,135	397	486	15%	3,952	(1,302)
Program Management	16,244	945	1545	10%	79,444	(64,745)
Contingency	-	-	0	0%	-	-
Debt Service	11,100	343	501	5%	141	10,458
Maintenance	90	-	0	0%	-	90
Total Appropriations	138,559	5,535	7,716	6%	156,415	(25,572)

METRO FLOOD DIVERSION AUTHORITY

Friday, March 20, 2020

Data Through Date: Saturday February, 29 2020

Summary of Expenses

EXP-2020-02

Account_Number	Check Date	Check Number	Vendor_Name	Transaction Amount	Description	Project Number	Project_Description
790-0000-206.10-00	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$11,207.06	REVERSE 2019 YEAR END AP	V02823	LANDSCAPING & PLANTINGS
Retainage				-\$11,207.06			
790-7910-429.11-00	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$16,250.00	REVERSE 2019 YEAR END AP	V00106	EXECUTIVE DIRECTOR
Full Time Staff / Salary				-\$16,250.00			
790-7910-429.20-01	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$1,465.00	REVERSE 2019 YEAR END AP	V00106	EXECUTIVE DIRECTOR
Employee Benefits / Health Insurance				-\$1,465.00			
790-7910-429.20-03	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$40.00	REVERSE 2019 YEAR END AP	V00106	EXECUTIVE DIRECTOR
Employee Benefits / Dental Insurance				-\$40.00			
790-7910-429.21-01	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$962.34	REVERSE 2019 YEAR END AP	V00106	EXECUTIVE DIRECTOR
Employee Benefits / FICA 6.2%				-\$962.34			
790-7910-429.21-02	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$225.06	REVERSE 2019 YEAR END AP	V00106	EXECUTIVE DIRECTOR
Employee Benefits / Medicare 1.45%				-\$225.06			
790-7910-429.22-07	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$1,992.25	REVERSE 2019 YEAR END AP	V00106	EXECUTIVE DIRECTOR
Employee Benefits / Retirement Diversion				-\$1,992.25			
790-7910-429.33-20	2/26/2020	JB02200015	CITY OF FARGO-AUDITORS OFFICE	\$5,378.90	CHARGE FOR COF TIME-02/20	V00102	General & Admin. WIK
Other Services / Accounting Services				\$5,378.90			
790-7910-429.33-25	2/13/2020	302364	ERIK R JOHNSON & ASSOCIATES	\$285.60	JAN-GEN LEGAL MATTERS	V00102	General & Admin. WIK
	3/4/2020	781	P CARD BMO	\$50,591.73	Ohnstad Twichell PC	V00102	General & Admin. WIK
Other Services / Legal Services				\$50,877.33			
790-7910-429.38-68	3/4/2020	781	P CARD BMO	\$3,000.00	FREDRIKSON AND BYRON P	V00102	General & Admin. WIK
Other Services / Lobbyist				\$3,000.00			
790-7910-429.53-20	2/6/2020	302196	CASS COUNTY FINANCE	\$54.52	DIVERSION PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Communications / Cellular Phone Service				\$54.52			
790-7910-429.57-60	2/6/2020	302196	CASS COUNTY FINANCE	\$1,521.73	DIVERSION PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Out of State Travel / Out of State Travel Expense				\$1,521.73			
790-7910-429.68-30	2/6/2020	302196	CASS COUNTY FINANCE	\$112.72	DIVERSION PAYROLL EXPENSE	V00106	EXECUTIVE DIRECTOR
Miscellaneous / Meeting Incidentals				\$112.72			
790-7915-429.33-05	2/6/2020	302231	HOUSTON-MOORE GROUP LLC	\$19,549.61	LEVEE DESIGN & SUPPORT	V01613	LEVEE DESIGN & SUPPORT

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	2/6/2020	302272	OXBOW, CITY OF	\$1,502.50	MOORE ENGINEERING, INC.	V02416	OXBOW MOU-MISC INFRA ENG
	2/13/2020	302389	HOUSTON-MOORE GROUP LLC	\$11,706.02	LEVEE DESIGN & SUPPORT	V01613	LEVEE DESIGN & SUPPORT
	2/13/2020	302389	HOUSTON-MOORE GROUP LLC	\$43,818.84	TASK 26 WORK IN KIND	V01626	WORK-IN-KIND (WIK)
	2/13/2020	302389	HOUSTON-MOORE GROUP LLC	\$39,378.94	TASK 26 WORK IN KIND	V01626	WORK-IN-KIND (WIK)
	2/13/2020	302389	HOUSTON-MOORE GROUP LLC	\$179,512.89	TASK 26 WORK IN KIND	V01626	WORK-IN-KIND (WIK)
	2/13/2020	302389	HOUSTON-MOORE GROUP LLC	\$38,637.50	TASK 26 WORK IN KIND	V01626	WORK-IN-KIND (WIK)
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$179,512.89	REVERSE 2019 YEAR END AP	V01626	WORK-IN-KIND (WIK)
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$116,793.71	REVERSE 2019 YEAR END AP	V01620	SEAI-I29 GRADE RAISE DSGN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$73,626.86	REVERSE 2019 YEAR END AP	V01620	SEAI-I29 GRADE RAISE DSGN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$43,818.84	REVERSE 2019 YEAR END AP	V01626	WORK-IN-KIND (WIK)
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$39,378.94	REVERSE 2019 YEAR END AP	V01626	WORK-IN-KIND (WIK)
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$38,637.50	REVERSE 2019 YEAR END AP	V01626	WORK-IN-KIND (WIK)
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$24,075.19	REVERSE 2019 YEAR END AP	V01616	PERMIT SUBMITTAL PREP
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$19,549.61	REVERSE 2019 YEAR END AP	V01613	LEVEE DESIGN & SUPPORT
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$11,706.02	REVERSE 2019 YEAR END AP	V01613	LEVEE DESIGN & SUPPORT
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$4,123.00	REVERSE 2019 YEAR END AP	V01622	MITIGATION SUPPORT SRVCS
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$935.00	REVERSE 2019 YEAR END AP	V01625	HYDROLOGY/HYDRAULIC MODEL
Other Services / Engineering Services				-\$218,051.26			
790-7920-429.33-05	2/13/2020	302389	HOUSTON-MOORE GROUP LLC	\$64,736.26	PROJECT MANAGEMENT	V01601	HMG - PROJECT MANAGEMENT
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$64,736.26	REVERSE 2019 YEAR END AP	V01601	HMG - PROJECT MANAGEMENT
Other Services / Engineering Services				\$0.00			
790-7920-429.33-79	2/6/2020	302272	OXBOW, CITY OF	\$1,377.75	MOORE ENGINEERING, INC.	V02421	OXBOW MOU-MOORE PROJ MGMT
	2/13/2020	302349	CH2M HILL ENGINEERS INC	\$326,069.39	PROGRAM MGMT & SERVICES	V00211	CH2M HILL-6/2019-12/2021
	2/13/2020	302349	CH2M HILL ENGINEERS INC	\$319,109.35	SUPPORT SERVICES	V00212	P3 PROCUREMENT SUPPORT
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$493,851.01	REVERSE 2019 YEAR END AP	V00212	P3 PROCUREMENT SUPPORT
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$469,487.21	REVERSE 2019 YEAR END AP	V00211	CH2M HILL-6/2019-12/2021
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$326,069.39	REVERSE 2019 YEAR END AP	V00211	CH2M HILL-6/2019-12/2021
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$319,109.35	REVERSE 2019 YEAR END AP	V00212	P3 PROCUREMENT SUPPORT
Other Services / Construction Management				-\$961,960.47			
790-7930-429.33-05	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$1,365.00	HOUSTON-MOORE GROUP	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$73,084.23	HOUSTON-MOORE GROUP	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$9,292.04	ULTEIG ENGINEERING	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$47,788.33	PROSOURCE TECHNOLOGIES LL	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$32,683.07	HOUSTON-MOORE GROUP	V01201	Cass Joint Water ROE

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	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$73,084.23	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$47,788.33	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$34,519.85	REVERSE 2019 YEAR END AP	V01628	BOUNDARY SURVEYING SRVCS
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$32,683.07	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$21,994.28	REVERSE 2019 YEAR END AP	V01630	PROPERTY STRUCTURE MITGTN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$9,292.04	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$1,365.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
Other Services / Engineering Services				-\$56,514.13			
790-7930-429.33-25	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$2,379.00	OHNSTAD TWICHELL, P.C	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$14,660.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$3,662.00	OHNSTAD TWICHELL, P.C	V01203	Cass Joint Water OHB
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$1,969.50	OHNSTAD TWICHELL, P.C	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$11,559.00	OHNSTAD TWICHELL, P.C	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$6,085.00	OHNSTAD TWICHELL, P.C	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$16,009.50	OHNSTAD TWICHELL, P.C	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$10,011.00	OHNSTAD TWICHELL, P.C	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$3,622.00	OHNSTAD TWICHELL, P.C	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$1,587.00	OHNSTAD TWICHELL, P.C	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$2,508.00	OHNSTAD TWICHELL, P.C	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$1,117.50	OHNSTAD TWICHELL, P.C	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$8,845.75	OHNSTAD TWICHELL, P.C	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$26,283.50	OHNSTAD TWICHELL, P.C	V01201	Cass Joint Water ROE
	3/4/2020	781	P CARD BMO	\$121,611.48	DORSEY AND WHITNEY LLP	V00101	Dorsey Whitney Legal
	3/4/2020	781	P CARD BMO	\$5,598.12	Ohnstad Twichell PC	V00103	General & Admin. LERRDS
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$26,283.50	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$16,009.50	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$14,660.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$11,559.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$10,011.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$8,845.75	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$6,085.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$3,662.00	REVERSE 2019 YEAR END AP	V01203	Cass Joint Water OHB
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$3,622.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$2,508.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$2,379.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE

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	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$1,969.50	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$1,587.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$1,117.50	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
Other Services / Legal Services				\$127,209.60			
790-7930-429.33-32	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$2,500.00	TRIEBWASSER APPRAISAL SER	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$3,500.00	GE BOCK REAL ESTATE LLC	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$3,500.00	GE BOCK REAL ESTATE LLC	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$5,775.00	PATCHIN MESSNER VALUATION	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$16,000.00	INTEGRA REALTY RESOURCES	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$45,900.00	COMPASS LAND CONSULTANTS	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$45,900.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$16,000.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$5,775.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$3,500.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$3,500.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$2,500.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
Other Services / Appraisal Services				\$0.00			
790-7930-429.33-79	2/13/2020	302349	CH2M HILL ENGINEERS INC	\$155,722.10	PROPERTY ACQUISITION MGMT	V00210	CH2M HILL-LAND ACQUISITON
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$231,500.75	REVERSE 2019 YEAR END AP	V00210	CH2M HILL-LAND ACQUISITON
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$155,722.10	REVERSE 2019 YEAR END AP	V00210	CH2M HILL-LAND ACQUISITON
Other Services / Construction Management				-\$231,500.75			
790-7930-429.34-65	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	GILLE PROPERTIES LLC	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	BIRCH TREE INVESTMENTS	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	COLLIN MCCOY	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	JAN LANGTON	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	DARIN SLUSHER	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	MARK SIMMONS	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	BRENDA FRADET	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$375.00	JAMES ANDERSON	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$375.00	LISA ANDERSON	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	RONALD HOFFMAN	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	CULLEN WELLS	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	HIGH PLANS PROPERTIES LLC	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$1,500.00	OAKWOOD CEMETARY	V01704	ND LAND - BIOTIC GEO MORP

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	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$2,250.00	SMEBY LAND TRUST	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	DALE NEUBAUER	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	CHARLES RICHARD	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	EMILY & DAVID RADENBAUGH	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$375.00	JEFF JONES	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	JOSHUA BREDING	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$375.00	ANN JONES	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	DENIS MCCARTHY	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	MICHAEL AMUNDSON	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$375.00	DUANE R BREITLING	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$375.00	MARY JANE BREITLING	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	DESIGNER HOMCES OF FM	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$2,000.00	ORTON PERHUS	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$500.00	ORTON PERHUS	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$500.00	JEFFREY R DONAT TRUST	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$1,500.00	DAVID GERMANSON	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	DAVID GERMANSON	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$500.00	DAVID GERMANSON	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$1,000.00	CHERYL EVERT ET AL	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$250.00	CARL FELIX	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$1,750.00	ORTON PERHUS	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$250.00	PAUL AND CAROLYN THOEN	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$250.00	DAVID GERMANSON	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$1,500.00	LARRY BRANDT TRUST	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$1,000.00	RAY KVALVOG	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	LEON HETLAND	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$2,250.00	GARY AND LOUISE VETSCH	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$375.00	MAURICE WILLIAMS	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$375.00	SUE CHANDLER WILLOWS	V01704	ND LAND - BIOTIC GEO MORP
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$750.00	LEON BACKER	V01704	ND LAND - BIOTIC GEO MORP
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$2,250.00	REVERSE 2019 YEAR END AP	V01704	ND LAND - BIOTIC GEO MORP
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$2,250.00	REVERSE 2019 YEAR END AP	V01704	ND LAND - BIOTIC GEO MORP
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$2,000.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$1,750.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$1,500.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE

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Account_Number	Check Date	Check Number	Vendor_Name	Transaction Amount	Description	Project Number	Project_Description
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$250.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$250.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$250.00	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
Technical Services / Right of Entry Requests				\$0.00			
790-7930-429.41-05	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$34.70	CASS RURAL WATER USERS	V01701	ND LAND PURCH-OUT OF TOWN
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$34.70	CASS RURAL WATER USERS	V01701	ND LAND PURCH-OUT OF TOWN
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$29.70	CASS RURAL WATER USERS	V01701	ND LAND PURCH-OUT OF TOWN
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$29.70	CASS RURAL WATER USERS	V01701	ND LAND PURCH-OUT OF TOWN
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$118.20	CITY OF FARGO	V01703	ND LAND PURCH - IN TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$118.20	REVERSE 2019 YEAR END AP	V01703	ND LAND PURCH - IN TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$34.70	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$34.70	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$29.70	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$29.70	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
Utility Services / Water and Sewer				\$0.00			
790-7930-429.52-10	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$2,472.53	MARSH & MCLENNAN AGENCY	V01701	ND LAND PURCH-OUT OF TOWN
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$4,450.55	MARCH & MCLENNAN AGENCY	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$4,450.55	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$2,472.53	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
Insurance / Property Insurance				\$0.00			
790-7930-429.61-50	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$6.80	CASS COUNTY JOINT WRD	V01201	Cass Joint Water ROE
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$214.15	CASS COUNTY JOINT WRD	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$214.15	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$6.80	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
General Supplies / Postage				\$0.00			
790-7930-429.62-50	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$73.59	XCEL ENERGY	V01703	ND LAND PURCH - IN TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$73.59	REVERSE 2019 YEAR END AP	V01703	ND LAND PURCH - IN TOWN
Energy / Natural Gas				\$0.00			
790-7930-429.62-51	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$270.44	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$51.52	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$199.26	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$681.73	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$44.04	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN

METRO FLOOD DIVERSION AUTHORITY

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	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$50.12	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$152.64	XCEL ENERGY	V01703	ND LAND PURCH - IN TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$681.73	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$270.44	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$199.26	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$152.64	REVERSE 2019 YEAR END AP	V01703	ND LAND PURCH - IN TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$51.52	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$50.12	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$44.04	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
Energy / Electricity				\$0.00			
790-7930-429.62-52	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$190.00	DAKOTA PLAINS AG	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$190.00	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
Energy / Propane				\$0.00			
790-7930-429.67-11	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$5,837.31	FETTES TRANSPORTATION SYS	V01701	ND LAND PURCH-OUT OF TOWN
	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$5,439.36	BRIAN AND EMILY POTTER	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$5,837.31	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$5,439.36	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
Relocation / Residential Buildings				\$0.00			
790-7930-429.68-10	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$164.25	CASS COUNTY JOINT WRD	V01201	Cass Joint Water ROE
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$164.25	REVERSE 2019 YEAR END AP	V01201	Cass Joint Water ROE
Miscellaneous / Miscellaneous				\$0.00			
790-7930-429.71-30	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$278,164.68	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$278,164.68	REVERSE 2019 YEAR END AP	V01701	ND LAND PURCH-OUT OF TOWN
Land / Land Purchases				\$0.00			
790-7930-429.73-20	2/13/2020	302452	SCHMIDT AND SONS CONSTRUCTION INC	\$38,724.86	PROP STRUCT. MITIGATION	V03802	PROPERTY STRUCTR MITIGATN
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$38,724.86	REVERSE 2019 YEAR END AP	V03802	PROPERTY STRUCTR MITIGATN
Infrastructure / Site Improvements				\$0.00			
790-7931-429.62-51	2/6/2020	302204	CASS COUNTY JOINT WATER RESOURCE DI	\$133.99	RED RIVER VALLEY COOP POW	V02302	MN LAND PURCHASE-HARDSHIP
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$133.99	REVERSE 2019 YEAR END AP	V02302	MN LAND PURCHASE-HARDSHIP
Energy / Electricity				\$0.00			
790-7950-429.73-52	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$218,682.59	REVERSE 2019 YEAR END AP	V02825	2ND ST S FLOOD MITIGATION

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Infrastructure / Flood Control				-\$218,682.59			
790-7950-429.73-66	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$7,949.88	REVERSE 2019 YEAR END AP	V02823	LANDSCAPING & PLANTINGS
Infrastructure / Landscaping				-\$7,949.88			
790-7952-429.33-05	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$4,364.10	REVERSE 2019 YEAR END AP	V01623	CONSTRUCTN/BID SVCS WP43
Other Services / Engineering Services				-\$4,364.10			
790-7955-429.33-05	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$28,412.71	REVERSE 2019 YEAR END AP	V02806	CONSTRUCTION SVCS WP42
Other Services / Engineering Services				-\$28,412.71			
790-7990-429.33-05	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$11,220.50	REVERSE 2019 YEAR END AP	V01621	P3 RFP PROCUREMENT SUPPRT
Other Services / Engineering Services				-\$11,220.50			
790-7990-429.33-25	2/13/2020	302328	ASHURST LLP	\$38,494.80	LEGAL COUNSEL	V03001	P3 LEGAL COUNSEL-ASHURST
	2/13/2020	302328	ASHURST LLP	\$74,313.90	LEGAL COUNSEL	V03001	P3 LEGAL COUNSEL-ASHURST
	2/13/2020	302328	ASHURST LLP	\$168,578.55	LEGAL COUNSEL	V03001	P3 LEGAL COUNSEL-ASHURST
	2/13/2020	302328	ASHURST LLP	\$48,375.45	LEGAL COUNSEL	V03001	P3 LEGAL COUNSEL-ASHURST
	3/4/2020	781	P CARD BMO	\$56,202.46	Ohnstad Twichell PC	V00102	General & Admin. WIK
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$168,578.55	REVERSE 2019 YEAR END AP	V03001	P3 LEGAL COUNSEL-ASHURST
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$74,313.90	REVERSE 2019 YEAR END AP	V03001	P3 LEGAL COUNSEL-ASHURST
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$48,375.45	REVERSE 2019 YEAR END AP	V03001	P3 LEGAL COUNSEL-ASHURST
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$38,494.80	REVERSE 2019 YEAR END AP	V03001	P3 LEGAL COUNSEL-ASHURST
	Other Services / Legal Services				\$56,202.46		
790-7990-429.33-47	2/6/2020	302279	PROGRAM ADVISOR SERVICES, LLC	\$4,500.00	PROGRAM CONSULTING SERVIC	V05801	CONSULTING SERVICES
	2/27/2020	302715	PROGRAM ADVISOR SERVICES, LLC	\$54,375.00	PROGRAM CINSULTING SERVIC	V05801	CONSULTING SERVICES
Other Services / Consulting Services				\$58,875.00			
790-7990-429.34-55	2/13/2020	302366	ERNST & YOUNG INFRASTRUCTURE	\$53,077.89	FINANCIAL ADVISORY SERVIC	V03301	PPP FINANCL ADVISORY SVCS
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$90,366.80	REVERSE 2019 YEAR END AP	V03301	PPP FINANCL ADVISORY SVCS
	3/3/2020	JF20200201	CITY OF FARGO-AUDITORS OFFICE	-\$53,077.89	REVERSE 2019 YEAR END AP	V03301	PPP FINANCL ADVISORY SVCS
Technical Services / Financial Advisor				-\$90,366.80			
790-7990-520.80-20	2/13/2020	302346	CASS COUNTY FINANCE	\$168,418.67	JAN 2020 LOAN INTEREST	V02906	\$100M 2017 CASS WF ADVANC
	2/12/2020	JB02200007	CITY OF FARGO-AUDITORS OFFICE	\$76,450.91	1.2.20 WF INTEREST PMT	V02905	\$100M 2017 COF WF ADVANCE
	2/12/2020	JB02200007	CITY OF FARGO-AUDITORS OFFICE	\$19,278.12	1.2.20 WF UNUSED FEE	V02905	\$100M 2017 COF WF ADVANCE
Debt Service / Interest on Bonds				\$264,147.70			

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Total Amount Invoiced this period				-\$1,293,784.94			
				<u>-\$11,207.06</u>	Less Paid Retainage		
				-\$1,282,577.88	Total Less Paid Retainage		

FM Metropolitan Area Flood Risk Management Project
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Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
CASS COUNTY JOINT WATER RESOUR	\$ 263,920,743.43	\$ 197,700,257.14	\$ 66,220,486.29	Land Purchases, O/H/B Ring Levee, DPAC, & ROE
CH2M HILL ENGINEERS INC	\$ 134,989,971.02	\$ 56,869,723.18	\$ 78,120,247.84	Program, Project, Construction and Land Management
ARMY CORP OF ENGINEERS	\$ 53,159,000.00	\$ 53,159,000.00	\$ -	Local Share
HOUSTON-MOORE GROUP LLC	\$ 50,918,203.93	\$ 45,873,115.04	\$ 5,045,088.89	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	\$ 30,116,678.46	\$ 30,116,678.46	\$ -	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	\$ 15,160,602.62	\$ 367,064.32	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	\$ 4,225,305.51	\$ 3,570,237.30	PPP (P3) Legal Counsel
DORSEY & WHITNEY LLP	\$ 7,588,169.51	\$ 7,588,169.51	\$ -	Legal Services
CASS COUNTY FINANCE	\$ 7,537,824.13	\$ 7,514,249.08	\$ 23,575.05	Property Taxes and Bank Loan Advance DS Payments
OHNSTAD TWICHELL PC	\$ 3,931,216.83	\$ 3,931,216.83	\$ -	ROE and Bonding Legal Fees
ERNST & YOUNG INFRASTRUCTURE	\$ 3,377,000.00	\$ 3,236,050.82	\$ 140,949.18	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
TITLE COMPANY	\$ 2,383,317.16	\$ 2,383,317.16	\$ -	Land Purchases
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	Electronic Data Mgmt and Record Storage System
TERRACON CONSULTING ENGINEERS	\$ 909,149.49	\$ 882,451.41	\$ 26,698.08	Materials Testing
RILEY BROTHERS CONSTRUCTION	\$ 807,871.82	\$ 807,871.82	\$ -	Construction - County Roads 16 & 17 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	\$ 58,875.00	\$ 591,125.00	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	\$ 560,379.63	\$ 560,379.63	\$ -	Legal Services
RED RIVER BASIN COMMISSION	\$ 501,000.00	\$ 501,000.00	\$ -	Retention Projects - Engineering Services
CROWN APPRAISALS INC	\$ 500,000.00	\$ 500,000.00	\$ -	Flowage Easements Valuation
HOFFMAN & MCNAMARA 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	\$ 462,103.66	\$ 16,273.20	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

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Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
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	\$ -	Electronic Data Mgmt and Record 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
SPRINT	\$ 256,409.37	\$ 256,409.37	\$ -	Utility Relocation
ACON 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	\$ 208,592.36	\$ 208,592.36	\$ -	Lobbying Services
ROBERT TRENT JONES	\$ 200,000.00	\$ 200,000.00	\$ -	Oxbow MOU - Golf Course Consulting 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
MIDCONTINENT 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

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Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
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
BUILDING & GROUNDS MANAGEMENT	\$ 2,977.50	\$ 2,977.50	\$ -	Lawn Mowing Services
BNSF RAILWAY COMPANY	\$ 2,925.00	\$ 2,925.00	\$ -	MOU Agreement
SEIGEL COMMUNICATIONS 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
ND WATER EDUCATION 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	\$ -	SEEDING, ROAD REPAIR, DUST CONTROL
FARGO-MOORHEAD SERTOMA CLUB	\$ 1,000.00	\$ -	\$ 1,000.00	Holiday Lights Display
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
RED RIVER VALLEY COOPERATIVE A	\$ 536.96	\$ 536.96	\$ -	Electricity - Home Buyouts
FERRELLGAS	\$ 496.00	\$ 496.00	\$ -	Propane - Home Buyouts
BROKERAGE PRINTING	\$ 473.33	\$ 473.33	\$ -	Custom Printed Forms
KOCHMANN, CARTER	\$ 315.00	\$ 315.00	\$ -	Lawn Mowing Services
GALLAGHER BENEFIT SERVICES INC	\$ 250.00	\$ 250.00	\$ -	Job Description Review
DONS PLUMBING	\$ 240.00	\$ 240.00	\$ -	Winterize - Home Buyouts
HARWOOD TOWNSHIP, CASS, ND	\$ 208.91	\$ 208.91	\$ -	Township Meeting Expenses
WALMART STORE #4352	\$ 161.97	\$ 161.97	\$ -	Meeting Incidentals
CURTS LOCK & KEY SERVICE INC	\$ 138.10	\$ 138.10	\$ -	Service Call - Home Buyouts

FM Metropolitan Area Flood Risk Management Project
 Cumulative Vendor Payments Since Inception
 As of February 29, 2020

Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
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	\$ 690,120,892.60	\$ 533,706,374.32	\$ 156,414,518.28	

**FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of February 29, 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 February 29, 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 (condemnation) - SAUVAGEAU LIFE EST.	7/3/2019	1,189,220.00	-	-	-	1,189,220.00
16835 47 ST SE - Buster Farms LLLP		1,755.00	-	-	-	1,755.00
Easements - Piezometer						
67-0000-12719-010 - Adams - OIN-1201	3/13/2017	1,500.00	-	-	-	1,500.00
Easements - Minnesota						
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 - Hoglelund	7/21/2014	989,706.03	-	-	-	989,706.03
NW 1/4 14-140-50 - Hoglelund	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 February 29, 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	-	9,439.36	-	856,267.93
East Half of the NE Quarter of Section 25, Township 138 North Range 50 West of the 5th Principle Meridian	12/26/2019	305,654.24	-	-	-	305,654.24
Lot One, In Block One of Bellmore First Subdivision	12/26/2019	828,373.27	-	-	-	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 Pricpal Meridian	12/26/2019	60,830.60	-	-	-	60,830.60
NE Quarter of Section 27, Township 140 North Range 50 West of 5th Principal 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 February 29, 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				820.00
Government Lot 1, Section 18, Township 137 North, Range 49 West of the Fifth Principal Meridian	10/29/2019	278,164.68		5,837.31		284,001.99
		<u>113,199,191.35</u>	-	<u>35,147,867.88</u>	<u>(1,107,856.01)</u>	<u>147,239,203.22</u>
			(32,000.00)		10,000.00	
				Property Management Expense		2,225,561.63
					Grand Total	<u>\$ 149,464,764.85</u>

**FM Metropolitan Area Flood Risk Management Project
In-Town Levee Work
as of February 29, 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
V02805	ICS	WP-42A.1/A.3 - 4th St Pump Station & Gatewell and 2nd St Floodwall S	\$ 17,612,237.19	\$ 17,500,178.16
V02806	HMG	WP42 - Services During Construction	\$ 6,185,022.82	\$ 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
V02823	Hoffman & McNamara Nursery & 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	\$ 39,408,806.85	\$ 38,191,367.34
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
			\$ 155,926,033.24	\$ 153,474,365.56

**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: January 1, 2020 - January 31, 2020

Drawdown Request No: 99	
Requested Amount:	\$ 114,099.62
Total Funds Expended This Period:	228,199.23
SB 2020 Matching Requirements	50%
Total Funds Requested at 50% Match	114,099.62
Total Funds Requested:	114,099.62

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)
Less: Payment #99 - FM Metro Area Flood Risk Management Project		(114,099.62)
Total Funds Reimbursed		(278,348,202.49)
Total State Fund Balances Remaining		92,151,797.51

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 March 2020

Vendor	Description		
Cass County Joint Water Resource District	Diversion bills	\$	5,586,021.04
Dorsey & Whitney	Legal services rendered through January 31, 2020	\$	179,502.01
Dorsey & Whitney	Legal services rendered for Wells Fargo loan	\$	7,500.00
Ohnstad Twichell, P.C.	Professional services rendered	\$	135,564.07
Cass County	Reimburse misc expenses for Executive Director	\$	2,555.67
City of Fargo	Reimburse complementary in-town flood projects	\$	1,916,168.94
City of Fargo	Reimburse 2019 lift station operation/maintenance costs	\$	35,327.57
Total Bills Received through March 20, 2020		\$	7,862,639.30



Cass County
Joint Water
Resource
District

March 4, 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 Lougheed
Manager
Gardner, North Dakota

Enclosed please find copies of bills totaling \$5,586,021.04 regarding the above referenced projects. The breakdown is as follows:

Jacob Gust
Manager
Fargo, North Dakota

Metro Flood Diversion	\$5,564,424.71
DPAC	733.50
Oxbow-Hickson-Bakke Ring Levee	20,489.38
In-Town Levees	373.45

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
wrld@casscountynd.gov
casscountynd.gov

METRO FLOOD DIVERSION RIGHT OF ENTRY/LAND ACQUISITION COST SHARE INVOICES							3/4/2020
Invoice	Invoice	Invoice	Project	Amount	Vendor	Description	
Paid	Date	No.	No.				
				62.90	Cass County Joint WRD	Postage for formal offers	
				63.00	Cass County Joint WRD	252 pages printed for formal offers	
				6.90	Cass County Joint WRD	remailing of returned formal offer letter	
				4.05	Cass County Joint WRD	mailing for meeting	
2/14/2020	1/24/2020	166815	130007	7,978.50	Ohnstad Twichell, P.C.	Legal-Diversion ROW Acquisition	
2/14/2020	1/24/2020	166818	160007	851.00	Ohnstad Twichell, P.C.	Legal-Diversion Authority Agreement-Drains	
2/14/2020	1/24/2020	166819	160007	5,441.50	Ohnstad Twichell, P.C.	Legal-Channel Phase I	
2/14/2020	1/24/2020	166820	160007	9,354.50	Ohnstad Twichell, P.C.	Legal-Channel Phase II	
2/14/2020	1/24/2020	166821	160007	9,342.50	Ohnstad Twichell, P.C.	Legal-Channel Phase III	
2/14/2020	1/24/2020	166830	187007	27,562.00	Ohnstad Twichell, P.C.	Legal-Southern Embankment	
2/14/2020	1/24/2020	166823	170007	6,816.00	Ohnstad Twichell, P.C.	Legal-Upstream Mitigation Area	
2/14/2020	1/24/2020	166845	197007	1,235.50	Ohnstad Twichell, P.C.	Legal-ROW Wild Rice Structure	
2/14/2020	1/24/2020	166846	197007	7,264.00	Ohnstad Twichell, P.C.	Legal-Western Tie Back	
2/14/2020	1/21/2020	765278	38810.00003	76.00	Larking Hoffman	Legal-CCJT v. v Anderson/Prairie Scale	
2/14/2020	1/21/2020	22863	19706	965.00	Moore Engineering, Inc.	Engineering - FM Diversion Des Coord - MOU Review	
2/14/2020	12/31/2019	21068	3283-00	25,051.01	ProSource Technologies LLC	Task Order 2 - Project mgmt, and acquisition services	
2/14/2020	1/15/2020	124-2019-0286		31,500.00	Integra Realty Resources	Appraisal Package 11	
2/14/2020	1/28/2020	50-1909	1906	3,500.00	GE Bock Real Estate, LLC	appraisal on OIN 1906	
2/14/2020	1/28/2020	50-1910-14	9383	3,500.00	GE Bock Real Estate, LLC	appraisal on OIN 9383	
2/14/2020				750.00	7 Horseshoe Bend, LLC	Environmental Monitoring Easement	
2/14/2020				1,500.00	Scott Anderson	Environmental Monitoring Easement	
2/14/2020				1,500.00	Mamie Anderson	Environmental Monitoring Easement	
2/14/2020				750.00	Gail Bakko	Environmental Monitoring Easement	
2/14/2020				1,500.00	Estate of Mavis Bartel	Environmental Monitoring Easement	
2/14/2020				750.00	Brian Boer	Environmental Monitoring Easement	
2/14/2020				750.00	Wallace Frandson	Environmental Monitoring Easement	
2/14/2020				750.00	Amanda Geiger	Environmental Monitoring Easement	
2/14/2020				375.00	Wade Hanson	Environmental Monitoring Easement	
2/14/2020				375.00	Jennifer Hanson	Environmental Monitoring Easement	
2/14/2020				4,500.00	Heiden Family, LLLP	Environmental Monitoring Easement	
2/14/2020				375.00	Edward Hongess	Environmental Monitoring Easement	
2/14/2020				375.00	Tammy Hongess	Environmental Monitoring Easement	
2/14/2020				1,500.00	William Kuehn	Environmental Monitoring Easement	
2/14/2020				375.00	James Moe	Environmental Monitoring Easement	
2/14/2020				375.00	Kelsey Moe	Environmental Monitoring Easement	
2/14/2020				750.00	Keith Monson	Environmental Monitoring Easement	
2/14/2020				375.00	Tracy Nicholson	Environmental Monitoring Easement	
2/14/2020				375.00	Michael Nicholson	Environmental Monitoring Easement	
2/14/2020				750.00	Dana Otterson	Environmental Monitoring Easement	
2/14/2020				250.00	Jon Peterson and Joann Peterson LT	Environmental Monitoring Easement	
2/14/2020				200.00	Judy Kilen	Environmental Monitoring Easement	
2/14/2020				300.00	Linda Peterson Binstock	Environmental Monitoring Easement	
2/14/2020				750.00	Sheyenne Estates Condo Assoc	Environmental Monitoring Easement	
2/14/2020				750.00	Vernon and Shirley Williams LT	Environmental Monitoring Easement	
2/14/2020		190165909		851.55	Cass County Finance	Tax on Dubord property	
2/14/2020	1/25/2020	15609		27.00	Cass Rural Water Users District	service on 4107 124th Ave S	
2/14/2020	1/25/2020	16095		27.00	Cass Rural Water Users District	Service on 5150 170th Ave S	
2/14/2020	1/25/2020	16146		27.81	Cass Rural Water Users District	Service on 16918 50 St SE	
2/14/2020	1/25/2020	15311		32.00	Cass Rural Water Users District	Service on 17554 Pffifer Dr	
2/14/2020	2/4/2020	9142001		222.58	Red River Valley Coop Power	Service to 16678 3rd St S Moorhead MN	
2/14/2020	2/5/2020	1133018		258.46	Cass County Electric Cooperative	Service to 4115 124 Av S	
2/14/2020	2/5/2020	1125415		43.32	Cass County Electric Cooperative	Service to 4510 112 Av S	
2/14/2020	2/5/2020	1134578		46.15	Cass County Electric Cooperative	Service to 16918 50 St SE	
2/14/2020	2/5/2020	1125687		596.76	Cass County Electric Cooperative	Service to 17411 Horse Haven Dr	
2/14/2020	2/5/2020	1125656		272.37	Cass County Electric Cooperative	Service to 17554 Pffifer Dr	
2/14/2020				750.00	Andrea Alfstad	Environmental Monitoring Easement	
2/14/2020				750.00	Richard and Sandra Ihland	Environmental Monitoring Easement	
2/14/2020				413,907.88	The Title Company	Property purchase - Schmitz & Brennan LLC	

2/14/2020					505,635.00	The Title Company	Property purchase - Kulas
2/21/2020	2/12/2020	91295		R12.00049	884.68	Ulteig Engineers	Engineering - TO 2 - Proj Mgmt, ROW, and Relocation
2/28/2020					472,135.00	The Title Company	Property purchase - Doris Nelson
2/28/2020					2,640,140.00	The Title Company	Property purchase - Contractors Leasing
3/3/2020	2/11/2020	167070			37,777.50	Ohnstad Twichell, P.C.	Legal-Bio/Geo Easements
3/3/2020	2/11/2020	167076			4,922.68	Ohnstad Twichell, P.C.	Legal-2019 ROE Court Actions
3/3/2020	2/11/2020	766485			237.00	Larking Hoffman	Legal-CCJT v. V Anderson/Prairie Scale
3/3/2020	2/17/2020	23061	19706		1,050.00	Moore Engineering, Inc.	Engineering - FM Diversion Des Coord - MOU Review
3/3/2020	2/18/2020	1939	2001		4,422.50	Houston-Moore Group	Engineering - ROE Services
3/3/2020	2/18/2020	1941	2005		40,288.68	Houston-Moore Group	Engineering - Task 5 - Property Acquisition Services
3/3/2020					375.00	Davis Leino-Mills	Environmental Monitoring Easement
3/3/2020					375.00	Pamela Leino-Mills	Environmental Monitoring Easement
3/3/2020					750.00	Brian Nelson	Environmental Monitoring Easement
3/3/2020					750.00	Kim Stokes	Environmental Monitoring Easement
3/3/2020	2/12/2020				300.00	Cass County Electric Cooperative	metered service installed at 3703 124 Av S Horace
3/3/2020	2/14/2020	1121701			348.86	Cass County Electric Cooperative	Service to 4107 124th Ave S
3/3/2020	2/14/2020	1156251			410.08	Cass County Electric Cooperative	Service to 5150 170 Av SE
3/3/2020	2/14/2020	1140519			48.57	Cass County Electric Cooperative	Service to 17406 Horse Haven Dr
3/3/2020	1/31/2020	21155	3283-00		32,897.39	ProSource Technologies LLC	Task Order 2 - Project mgmt, and acquisition services
3/4/2020	2/28/2020				1,241,289.53	The Title Company	Property purchase - Cossette
					Total	5,564,424.71	
DIVERSION PROJECT ASSESSMENT DISTRICT (DPAC) INVOICES							
Invoice Paid	Invoice Date	Invoice No.	Project No.		Amount	Vendor	Description
2/14/2020	1/24/2020	166814	120007		733.50	Ohnstad Twichell, P.C.	Legal-DPAC
					Total	733.50	
OXBOW-HICKSON-BAKKE RING LEVEE INVOICES							
Invoice Paid	Invoice Date	Invoice No.	Purchase Order No.	Project No.	Amount	Vendor	Description
2/14/2020	1/24/2020	166816		140007	327.00	Ohnstad Twichell, P.C.	Legal-Oxbow-Hickson-Bakke Levee project
2/14/2020	12/31/2019	21065		2830-00	1,442.00	ProSource Technologies, LLC	Oxbow Area Work Order - acquisition
2/14/2020		170167431			4,077.55	Cass County Finance	2017 Tax on 78-0010-00390-000
2/14/2020		180168255			3,660.34	Cass County Finance	2018 Tax on 78-0010-00390-000
2/14/2020		1901690003			1,619.00	Cass County Finance	2019 Tax on 78-0010-00390-000
2/14/2020		170167432			4,077.55	Cass County Finance	2017 Tax on 78-0010-00400-000
2/14/2020		180168256			3,660.34	Cass County Finance	2018 Tax on 78-0010-00400-000
2/14/2020		190169004			1,619.00	Cass County Finance	2019 Tax on 78-0010-00400-000
3/3/2020		190163330			6.60	Cass County Finance	2019 tax on 57-0000-10356-080
					Total	20,489.38	
IN-TOWN LEVEES INVOICES							
Invoice Paid	Invoice Date	Invoice No.		Project No.	Amount	Vendor	Description
2/14/2020	2/3/2020	671510007			111.14	Xcel Energy	Gas service to 419 3rd St N
3/3/2020	2/21/2020	673989570			262.31	Xcel Energy	Elec service to 419 3rd St N
					Total	373.45	
					Grand Total	5,586,021.04	



RECEIVED
DATE 2/27

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

February 25, 2020
Invoice No. 3561581

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

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

For Legal Services Rendered Through January 31, 2020

INVOICE TOTAL

Total For Current Legal Fees	\$176,873.50
Total For Current Disbursement and Service Charges	\$2,628.51
Total For Current Invoice	\$179,502.01

* 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

March 9, 2020

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

Re: Metro Flood Diversion Project

Dear Kent:

I am enclosing a Summary Invoice dated February 25, 2020 from the Dorsey & Whitney Firm in Minneapolis for their professional services rendered through January 31, 2020 on the Metro Flood Diversion Project. If you have any questions, please feel free to contact me. Please remit payment directly to Dorsey Whitney.

Sincerely,

Erik R. Johnson

ERJ/lmw
Enclosure
cc: Bruce Grubb





JENNIFER L. HANSON
(612) 492-6959
FAX (612) 340-2644

December 19, 2019

Mr. Kent Costin
Finance Director
City of Fargo
225 Fourth Street N.
Fargo, ND 58102-4817

Re: \$100,000,000 Maximum Principal Amount Tax-Exempt Direct-Funded
Loan from the City of Fargo, North Dakota to Wells Fargo Bank,
National Association

Dear Mr. Costin:

Enclosed is our statement for services rendered in connection with the above
matter. If you have any questions concerning the statement, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to be 'JLH', written over a faint, larger version of the signature.

Jennifer L. Hanson

JLH/pmh
Enclosure



MINNEAPOLIS OFFICE
612-340-2600

(Tax Identification No. 41-0223337)

STATEMENT OF ACCOUNT FOR PROFESSIONAL SERVICES

City of Fargo, North Dakota
Attn: Kent Costin, Finance Director
225 Fourth Street N.
Fargo, ND 58102-4817

December 18, 2019
Invoice No. 3546697

Client-Matter No.: 865513-00039

\$100,000,000 Maximum Principal Amount Tax-Exempt Direct-Funded Loan From the City of Fargo,
North Dakota to Wells Fargo Bank, National Association

For Legal Services Rendered Through November 30, 2019

INVOICE TOTAL

Total For Current Legal Fees	\$7,500.00
Total For Current Invoice	\$7,500.00

398-8502-520.33-25

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

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



MINNEAPOLIS OFFICE
612-340-2600

(Tax Identification No. 41-0223337)

STATEMENT OF ACCOUNT FOR PROFESSIONAL SERVICES

City of Fargo, North Dakota
Attn: Kent Costin, Finance Director
225 Fourth Street N.
Fargo, ND 58102-4817

December 18, 2019
Invoice No. 3546697

Client-Matter No.: 865513-00039

\$100,000,000 Maximum Principal Amount Tax-Exempt Direct-Funded Loan From the City of Fargo, North Dakota to Wells Fargo Bank, National Association

For Legal Services Rendered Through November 30, 2019

For legal services rendered as Bond Counsel in connection with the extension of the above-referenced loan; including research as to legal authorities and procedures; telephone calls and correspondence with parties involved; review of resolution, operative documents and closing papers and rendering legal opinion, including disbursements

Total For Legal Fees	\$7,500.00
Total This Invoice	\$7,500.00

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

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

OHNSTAD TWICHELL, P.C.

Attorneys at Law

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

15-1395

JTS Invoice # 167542

Flood Diversion Board
Bond Counsel Work - PPP

Date: March 17, 2020

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

PROFESSIONAL SERVICES RENDERED					
	Jan. Hours	Jan. Rate	Hours	Rate	Totals
JTS			163.9	\$310.00	\$50,809.00
CMM			0.3	\$310.00	\$93.00
ADC			22.9	\$310.00	\$7,099.00
SNW			0.4	\$310.00	\$124.00
LDA			1.8	\$310.00	\$558.00
RGH			0.4	\$310.00	\$124.00
KJB			59.1	\$310.00	\$18,321.00
TJL			66.4	\$290.00	\$19,256.00
SRH	0.2	\$250.00	6.6	\$275.00	\$1,865.00
ABG			15.9	\$275.00	\$4,372.50
JRS			2.7	\$260.00	\$702.00
KJD			102.3	\$210.00	\$21,483.00
EMM			2	\$275.00	\$550.00
BTB			0.3	\$275.00	\$82.50
JDR			0.7	\$175.00	\$122.50
AJR			52.1	\$175.00	\$9,117.50
CRA			3.1	\$150.00	\$465.00
Total Fees:	0.2		500.9		\$135,144.00
Westlaw					\$48.03
NDRIN					\$217.00
Travel/Mileage					\$138.56
Meals					\$16.48
Total Expenses:					\$420.07
Grand Total					\$135,564.07

		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	\$310.00
TJL	Tyler J. Leverington, Associate	\$290.00
CBC	Calley B. Campbell, Associate	\$275.00
LWC	Lukas W. Croaker, Associate	\$285.00
SRH	Stephen R. Hanson, Associate	\$275.00
ABG	Bo Gruchala, Associate	\$275.00
JRS	J.R. Strom, Associate	\$260.00
KJD	Kathryn J. DelZoppo, Associate	\$210.00
LRC	Leah R. Carlson, Associate	\$275.00
EMM	Elle M. Molbert, Associate	\$275.00
BTB	Brent T. Boeddeker, Associate	\$275.00
CAS	Carol A. Stillwell, Paralegal	\$175.00
JDR	Joshua D. Roaldson, Paralegal	\$175.00
AJR	Andrea J. Roman, Paralegal	\$175.00
CRA	Christie R. Axness, Paralegal	\$150.00
DLR	Dena L. Ranum, Legal Administrative Assistant	\$150.00

PROFESSIONAL SERVICES RENDERED

15-1395 JTS Invoice # 167542 Flood Diversion Board		Bond Counsel Work - PPP
FILE NUMBER	MATTER DESCRIPTION	INVOICE - TOTAL FEES
151395-1	General Topics (Includes General Governance Questions, Notices, etc.)	\$17,385.50
151395-2	Executive Director	\$155.00
151395-3	P3 Procurement	\$9,887.50
151395-4	Public Finance Issues	\$28,083.50
151395-5	Consultant Contract Review/Development	\$3,956.50
151395-6	Support of External Litigation Counsel	\$4,175.00
151395-7	Coordination with Member Entities	\$101.00
151395-9	Environmental Permitting Issues/NEPA	\$122.50
151395-11	Legislative Interface/Lobbying Support	\$992.00
151395-12	USACE Interface/Questions	\$93.00
151395-13	Third Party Utility MOU's	\$46,089.50
151395-14	ICS Issues	\$7,364.50
151395-17	EPA WIFIA Loan	\$16,428.50
151395-20	USDOT PABs	\$310.00
TOTAL		\$135,144.00

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

DATE: 3/05/20

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
	2/06/20	BEGINNING BALANCE			215,432.69
	2/10/20	PAYMENT			54.52-
	2/10/20	PAYMENT			1,521.73-
	2/10/20	PAYMENT			112.72-
	2/18/20	PAYMENT			190,168.67-
AUDIT	3/05/20	FM DIVERSION			139,533.33
		FEBRUARY INTEREST			
AUDIT	3/05/20	FM DIVERSION			21,561.29
		PAYROLL EXPENSES			
AUDIT	3/05/20	FM DIVERSION			2,555.67
		MISC EXPENSES			

Submitted for approval at
Mar. board meeting

2,555.67

Current	30 days	60 days	90 days
187225.34			

DUE DATE: 4/06/20

PAYMENT DUE: 187,225.34
TOTAL DUE: \$187,225.34

PLEASE DETACH AND SEND THIS COPY WITH REMITTANCE

DATE: 3/05/20 DUE DATE: 4/06/20 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 ND 58108-2806
(701) 241-5606

TOTAL DUE: \$187,225.34



FINANCE OFFICE

PO Box 2083
 225 4th Street North
 Fargo, ND 58102
 Phone: 701.241.1333 | Fax: 701.476.4188
 www.FargoND.gov

March 11, 2020

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

Dear Metro Flood Diversion Board of Authority,

The City of Fargo is submitting for reimbursement invoices paid totaling \$1,916,168.94. These costs are for work on complementary in-town flood protection projects for the period December 1, 2019 through February 29, 2020.

Project Narrative, this request:

Project Number	Project Description	Amount
590202	Mickelson Field Area Flood Risk Management	\$2,622.00
FLDADM	Flood Administration Expense	993.48
FLDBUY	Flood Buyouts - Property Acquisition Expense	10,390.89
FLDSPC	Tax Payments on Flood Buyout Properties	47,551.20
FM1413	Copperfield Court/Oakcreek – Flood Risk Management	197,172.52
FM1471	Drain 27 Lift Station #56 Flood Risk Management	62,965.58
FM15F	Harwood, Hackberry, & River Drive – Flood Risk Management	5,005.75
FM15J	Belmont Flood Risk Management Project	697,197.03
FM15K	Rosewood Addition – Flood Risk Management	353,663.63
FM19A	Riverwood Addition Area – Flood Risk Management	19,389.14
FM19B	Royal Oaks Area – Flood Risk Management	10,417.91
FM19C	Woodcrest Drive Area – Flood Risk Management	11,999.00
FM19E	Elm Circle Area – Flood Risk Management	19,885.02
FM19F	Oak Grove Area – Flood Risk Management	344,288.41
FM19H	University Drive Floodwall – Geotechnical Evaluation	9,568.75
HD18A	Oakcreek, Copperfield, & University – Demo	22,024.16
HD19A	City Wide – Demo/Restore	1,257.35
MP19K1	Backfill Old Borrow Pit Site	29,595.12

NR19B	Storm Lift Rehab - #24	70,182.00
	Total Expense for Period	\$1,916,168.94

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

Sincerely,



Kent Costin
Director of Finance, City of Fargo

City of Fargo, North Dakota

Schedule of Complementary In-Town Flood Protection Costs

December 1, 2019 - February 29, 2020

Project Number	Description	Transaction Amount	V-Code	In DA Budget	Description of Expense
590202	DIKE CONST Mickelson	2,622.00	V05416	N	Remove concrete at Mickelson Field Storm Lift #29
FLDADM	FLOOD ADMINISTRATION	993.48	v05417	N	Placards for Diversion members
FLDBUY	FLOOD ACQUISITION	10,390.89	v05418	Y - Various	Legal and abstract expense and rent revenue for Flood Buyouts
FLDSPC	FLOOD SPECIALS PAYOFF	47,551.20	v05420	N	2019 Tax Payments on flood buyout properties
FM1413	DR 27 IMP OAK CRK PHASE 3	197,172.52	V05404	Y - FM1413	Engineering, Capital Admin, and Construction Expense
FM1440	FLOOD RISK-Harwd Hack Rvr	5,005.75	V05401	Y - FM15F2	Engineering Expense
FM1471	FLOOD MIT-Dr 27 42st-l29	62,965.58	V05406	Y - FM1471	CCEC Aid To Construction'
FM15J0	FLOOD MIT-Belmont Park	51,388.25	V05405	Y - FM15J2	Engineering Expense
FM15J2	FLOOD MIT-Belmont Park	639,446.28	V05405	Y - FM15J2	Capital Admin and Construction Expense
FM15J4	FLOOD MIT-Belmont Park/wall	6,362.50	V05405	Y - FM15J2	Engineering Expense
FM15K0	FLOOD MIT-RoseCoulee	2,713.00	V05402	Y - FM15K1	Engineering Expense
FM15K1	FLOOD MIT-RoseCoulee	350,950.63	V05402	Y - FM15K1	Capital Admin, Construction, and Land Expense
FM19A0	FLOOD MIT-Riverwood Addn	13,971.50	V05407	Y - FM19A1	Engineering Expense
FM19A1	FLOOD MIT-Riverwood Addn	5,000.00	V05407	Y - FM19A1	Appraisal Expense
FM19A2	FLOOD MIT-Riverwood Addn	417.64	V05407	Y - FM19A1	Engineering Expense
FM19B0	FLOOD MIT-Royal Oaks Dr	10,417.91	V05408	Y - FM19B1	Engineering and Electricity on flood buyouts
FM19C0	FLOOD MIT-Woodcrest	11,999.00	V05409	Y - FM19C1	Engineering Expense
FM19E0	FLOOD MIT-Elm Circle	19,885.02	V05410	Y - FM19E1	Engineering and Electricity on flood buyouts
FM19F0	FLOOD MIT-Oak Grove Area	21,893.80	V05411	Y - FM19F1	Engineering Expense
FM19F1	FLOOD MIT-Oak Grove Area	322,394.61	V05411	Y - FM19F1	Capital Admin and Land Expense
FM19H0	FLOOD MIT-52 Ave S/Univ	9,568.75	V05413	N	Engineering Expense
HD18A1	DEMO RESTOR-City Wide	22,024.16	V05403	Y - HD18A1	Capital Admin and Construction Expense
HD19A1	DEMO RESTOR-City Wide	1,257.35	V05412	Y - HD19XX	Electricity on flood buyouts
MP19K1	Flood Reimb	29,595.12	v05421	N	Back fill old borrow pit site and capital admin
NR19B0	STORM LIFT RHAB #24	70,182.00	V05419	Y - NN-20-XX	Engineering Expense
	Overall - Total	1,916,168.94			
		-			

City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
December 1, 2019 - February 29, 2020

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name
590202	DIKE CONST Mickelson	46035305106810	REMOVE 138 SF CONCRETE	2,622.00	301230	6461	12/18/2019	KEY CONTRACTING INC
460-3530-510.33-10 - Total				2,622.00				
590202 - Total				2,622.00				
FLDADM	FLOOD ADMINISTRATION	46035305106810	OFFICE SIGN COMPANY -	993.48	774	12/15-12/27/19	01/04/2020	P CARD BMO
460-3530-510.68-10 - Total				993.48				
FLDADM - Total				993.48				
FLDBUY	FLOOD ACQUISITION	46000003618500	Flood Property Monthly	-1,000.00	MR	MR	12/05/2019	City of Fargo
FLDBUY	FLOOD ACQUISITION	46000003618500	Flood Property Monthly	-1,000.00	MR	MR	01/02/2020	City of Fargo
FLDBUY	FLOOD ACQUISITION	46000003618500	Flood Property Monthly	-1,000.00	MR	MR	02/06/2020	City of Fargo
460-0000-361.35-00 - Total				-3,000.00				
FLDBUY	FLOOD ACQUISITION	46035305103325	FLOOD RELATED ACQUISITION	1,624.00	301038	2839-	12/12/2019	ERIK R JOHNSON & ASSOCIATES
FLDBUY	FLOOD ACQUISITION	46035305103325	SERKLAND LAW FIRM	1,300.50	773	12/15-12/27/19	01/04/2020	P CARD BMO
FLDBUY	FLOOD ACQUISITION	46035305103325	SERKLAND LAW FIRM	203.09	773	12/15-12/27/19	01/04/2020	P CARD BMO
FLDBUY	FLOOD ACQUISITION	46035305103325	SERKLAND LAW FIRM	512.50	773	12/15-12/27/19	01/04/2020	P CARD BMO
FLDBUY	FLOOD ACQUISITION	46035305103325	ABSTRACT-CASE PLAZA	200.00	301854	244206	01/16/2020	RED RIVER TITLE SERVICES INC
FLDBUY	FLOOD ACQUISITION	46035305103325	FLOOD RELATED ACQUISITION	2,459.20	301765	2848-	01/16/2020	ERIK R JOHNSON & ASSOCIATES
FLDBUY	FLOOD ACQUISITION	46035305103325	FLOOD RELATED ACQUISITION	1,392.00	301765	2827-	01/16/2020	ERIK R JOHNSON & ASSOCIATES
FLDBUY	FLOOD ACQUISITION	46035305103325	ABSTRACT-VANDEVOORT TRUST	330.00	302152	244378	01/30/2020	RED RIVER TITLE SERVICES INC
FLDBUY	FLOOD ACQUISITION	46035305103325	ABSTRACT CONTINUATION / N	300.00	302281	244429	02/06/2020	RED RIVER TITLE SERVICES INC
FLDBUY	FLOOD ACQUISITION	46035305103325	SERKLAND LAW FIRM	1,333.00	778	01/15-01/27/20	02/04/2020	P CARD BMO
FLDBUY	FLOOD ACQUISITION	46035305103325	SERKLAND LAW FIRM	496.00	778	01/15-01/27/20	02/04/2020	P CARD BMO
FLDBUY	FLOOD ACQUISITION	46035305103325	SERKLAND LAW FIRM	2,091.00	778	01/15-01/27/20	02/04/2020	P CARD BMO
FLDBUY	FLOOD ACQUISITION	46035305103325	FLOOD RELATED ACQUISITION	999.60	302222	2859-	02/06/2020	ERIK R JOHNSON & ASSOCIATES
FLDBUY	FLOOD ACQUISITION	46035305103325	EXAMINATION OF ABSTRACT O	150.00	302267	41862	02/06/2020	O'KEEFFE,O'BRIEN, LYSON & FOSS LTD
460-3530-510.33-25 - Total				13,390.95				
FLDBUY - Total				10,390.89				
FLDSPC	FLOOD SPECIALS PAYOFF	46035305208012	SALES TAX FLOOD PROJECTS	24,008.90	302344	2/12/2020 REQ	02/13/2020	CASS COUNTY FINANCE
FLDSPC	FLOOD SPECIALS PAYOFF	46035305208012	SALES TAX FLOOD PROJECTS	2,923.04	302615	02/25/2020	02/27/2020	CASS COUNTY FINANCE
FLDSPC	FLOOD SPECIALS PAYOFF	46035305208012	SALES TAX FLOOD PROJECTS	10,797.43	302615	02/25/2020	02/27/2020	CASS COUNTY FINANCE
FLDSPC	FLOOD SPECIALS PAYOFF	46035305208012	SALES TAX FLOOD PROJECTS	6,677.84	294259	2/8/19 REQ	2/8/2019	CASS COUNTY FINANCE
460-3530-520.80-12 - Total				44,407.21				
FLDSPC	FLOOD SPECIALS PAYOFF	46035305208016	SALES TAX FLOOD PROJECTS-	3,143.99	302344	2/12/2020 REQ	02/13/2020	CASS COUNTY FINANCE
460-3530-520.80-16 - Total				3,143.99				
FLDSPC - Total				47,551.20				
FM1413	DR 27 IMP OAK CRK PHASE 3	46000002062000	Retainage and Retainage R	-7,920.50	301084	FM1413 Est #4	12/12/2019	KEY CONTRACTING INC
460-0000-206.20-00 - Total				-7,920.50				
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305103301	Cap Proj Admin Dec 2019	15,841.00	SS20191210	SS20191210	12/31/2019	City of Fargo
460-3530-510.33-01 - Total				15,841.00				
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305103305	DRAIN 27 40TH AVE	19,657.57	301066	0046172	12/12/2019	HOUSTON ENGINEERING INC
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305103305	DRAIN 27 40TH AVE S	11,184.45	302100	0046738	01/30/2020	HOUSTON ENGINEERING INC
460-3530-510.33-05 - Total				30,842.02				
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305107352	Flood Mitigation	6,180.00	301084	FM1413 Est #4	12/12/2019	KEY CONTRACTING INC
460-3530-510.73-52 - Total				6,180.00				
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305107356	Paving	3,640.00	301084	FM1413 Est #4	12/12/2019	KEY CONTRACTING INC
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305107356	Alternate # 1	1,400.00	301084	FM1413 Est #4	12/12/2019	KEY CONTRACTING INC
460-3530-510.73-56 - Total				5,040.00				

City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
December 1, 2019 - February 29, 2020

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305107358	Miscellaneous	3,500.00	301084	FM1413 Est #4	12/12/2019	KEY CONTRACTING INC
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305107358	Storm Sewer	10,000.00	301084	FM1413 Est #4	12/12/2019	KEY CONTRACTING INC
460-3530-5107358 - Total				13,500.00				
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305107359	Paving	46,758.00	301084	FM1413 Est #4	12/12/2019	KEY CONTRACTING INC
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305107359	Alternate # 1	2,922.00	301084	FM1413 Est #4	12/12/2019	KEY CONTRACTING INC
460-3530-5107359 - Total				49,680.00				
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305107367	Miscellaneous	14,000.00	301084	FM1413 Est #4	12/12/2019	KEY CONTRACTING INC
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305107367	Flood Mitigation	51,460.00	301084	FM1413 Est #4	12/12/2019	KEY CONTRACTING INC
460-3530-5107367 - Total				65,460.00				
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305107369	Flood Mitigation	16,743.40	301084	FM1413 Est #4	12/12/2019	KEY CONTRACTING INC
FM1413	DR 27 IMP OAK CRK PHASE 3	46035305107369	Alternate # 1	1,806.60	301084	FM1413 Est #4	12/12/2019	KEY CONTRACTING INC
460-3530-5107369 - Total				18,550.00				
FLOOD RISK-Harwd Hack Rvr				2,362.75				
FM1440	FLOOD RISK-Harwd Hack Rvr	46035305103300	FLOOD RISK MANAGEMENT PRO	2,362.75	302100	0046739	01/30/2020	HOUSTON ENGINEERING INC
460-3530-5103300 - Total				2,362.75				
FLOOD MIT-Dr 27				62,965.58				
FM1471	FLOOD MIT-Dr 27	46035305103899	AID TO CONSTRUCTION	62,965.58	108241	04919	02/13/2020	CASE COUNTY ELECTRIC-1160 22 AVE SW
460-3530-5103899 - Total				62,965.58				
FLOOD MIT-Belmont Park				34,978.99				
FM15J0	FLOOD MIT-Belmont Park	46035305103305	BELMONT FLOOD MITIGATION	34,978.99	301998	100038498	12/24/2019	HDR ENGINEERING INC
FM15J0	FLOOD MIT-Belmont Park	46035305103305	BELMONT FLOOD MITIGATION	17,309.75	301974	1200240141	01/23/2020	HDR ENGINEERING INC
460-5530-5103305 - Total				52,288.75				
FM15J0 - Total				51,388.25				
FM15J2	FLOOD MIT-Belmont Park	46000002062000	Retainage and Retainage R	-30,449.82	301222	FM15J2 Est #3	12/18/2019	INDUSTRIAL BUILDERS INC
460-0000-2062000 - Total				-30,449.82				
FM15J2	FLOOD MIT-Belmont Park	46035305103301	Cap Proj Admin Dec 2019	60,899.65	SS20191210	SS20191210	12/31/2019	City of Fargo
460-3530-5103301 - Total				60,899.65				
FM15J2	FLOOD MIT-Belmont Park	46035305107352	Flood Mitigation	486,221.45	301222	FM15J2 Est #3	12/18/2019	INDUSTRIAL BUILDERS INC
460-3530-5107352 - Total				486,221.45				
FM15J2	FLOOD MIT-Belmont Park	46035305107358	Removals	250.00	301222	FM15J2 Est #3	12/18/2019	INDUSTRIAL BUILDERS INC
FM15J2	FLOOD MIT-Belmont Park	46035305107358	Storm Sewer	39,025.00	301222	FM15J2 Est #3	12/18/2019	INDUSTRIAL BUILDERS INC
460-3530-5107358 - Total				39,275.00				
FM15J2	FLOOD MIT-Belmont Park	46035305107359	Removals	1,000.00	301222	FM15J2 Est #3	12/18/2019	INDUSTRIAL BUILDERS INC
460-3530-5107359 - Total				1,000.00				
FM15J2	FLOOD MIT-Belmont Park	46035305107361	Miscellaneous	75,000.00	301222	FM15J2 Est #3	12/18/2019	INDUSTRIAL BUILDERS INC
460-3530-5107361 - Total				75,000.00				
FM15J2	FLOOD MIT-Belmont Park	46035305107363	Storm Sewer	6,300.00	301222	FM15J2 Est #3	12/18/2019	INDUSTRIAL BUILDERS INC
460-3530-5107363 - Total				6,300.00				
FM15J2	FLOOD MIT-Belmont Park	46035305107366	Removals	750.00	301222	FM15J2 Est #3	12/18/2019	INDUSTRIAL BUILDERS INC
460-3530-5107366 - Total				750.00				
FM15J2	FLOOD MIT-Belmont Park	46035305107369	Erosion And Sediment Cont	450.00	301222	FM15J2 Est #3	12/18/2019	INDUSTRIAL BUILDERS INC
460-3530-5107369 - Total				450.00				
FM15J2 - Total				639,446.28				
FM15J4	FLOOD MIT-Belmnt Prk/wall	46035305103305	RIVER RD FLOODWALL ANALYS	4,427.50	302109	10130085	01/30/2020	KADRMAS LEE & JACKSON INC
FM15J4	FLOOD MIT-Belmnt Prk/wall	46035305103305	RIVER RD FLOODWALL ANALYS	1,935.00	302241	10130143	02/09/2020	KADRMAS LEE & JACKSON INC
460-3530-5103305 - Total				6,362.50				

City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
December 1, 2019 - February 29, 2020

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name
FM15K0	FLOOD MIT-RoseCoulee	46035305103305	FLOOD MITIGATION	1,222.00	301793	10130081	01/16/2020	KADRMAS LEE & JACKSON INC
FM15K0	FLOOD MIT-RoseCoulee	46035305103305	FLOOD MITIGATION	1,491.00	302241	10132140	02/06/2020	KADRMAS LEE & JACKSON INC
460-3530-510.33-05 - Total				2,713.00				
FM15K0 - Total				2,713.00				
FM15K1	FLOOD MIT-RoseCoulee	4600002062000	Retainage and Retainage R	141,746.70	300894	FM15K1 Est #20	12/05/2019	INDUSTRIAL BUILDERS INC
460-0000-206.20-00 - Total				141,746.70				
FM15K1	FLOOD MIT-RoseCoulee	46035305103301	Cap Proj Admin Dec 2019	9,987.96	SS20191210	SS20191210	12/31/2019	City of Fargo
FM15K1	FLOOD MIT-RoseCoulee	46035305103301	Cap Proj Admin Jan 2020	9,030.58	SS20200109	SS20200109	01/31/2020	City of Fargo
460-3530-510.33-01 - Total				19,018.54				
FM15K1	FLOOD MIT-RoseCoulee	46035305107110	LOT 21.BLOCK 2.ROSEWOOD	90,305.75	302003	20-002-009	01/23/2020	O'KEEFFE,O'BRIEN, LYSON & FOSS LTD
460-3530-510.71-10 - Total				90,305.75				
FM15K1	FLOOD MIT-RoseCoulee	46035305107352	Earthwork	10,444.00	300894	FM15K1 Est #20	12/05/2019	INDUSTRIAL BUILDERS INC
FM15K1	FLOOD MIT-RoseCoulee	46035305107352	Floodwall	550.39	300894	FM15K1 Est #20	12/05/2019	INDUSTRIAL BUILDERS INC
460-3530-510.73-52 - Total				10,994.39				
FM15K1	FLOOD MIT-RoseCoulee	46035305107358	Storm Sewer	2,449.15	300894	FM15K1 Est #20	12/05/2019	INDUSTRIAL BUILDERS INC
FM15K1	FLOOD MIT-RoseCoulee	46035305107358	Storm Sewer Lift Station	15,004.50	300894	FM15K1 Est #20	12/05/2019	INDUSTRIAL BUILDERS INC
460-3530-510.73-58 - Total				17,453.65				
FM15K1	FLOOD MIT-RoseCoulee	46035305107367	Earthwork	61,726.90	300894	FM15K1 Est #20	12/05/2019	INDUSTRIAL BUILDERS INC
460-3530-510.73-67 - Total				61,726.90				
FM15K1	FLOOD MIT-RoseCoulee	46035305107369	Miscellaneous	9,704.70	300894	FM15K1 Est #20	12/05/2019	INDUSTRIAL BUILDERS INC
460-3530-510.73-69 - Total				9,704.70				
FM15K1 - Total				350,950.63				
FM19A0	FLOOD MIT-Riverwood Addn	46035305103305	RIVERWOOD FLOOD MITIGATIO	10,811.25	301390	0046294	12/26/2019	HOUSTON ENGINEERING INC
FM19A0	FLOOD MIT-Riverwood Addn	46035305103305	RIVERWOOD FLOOD MITIGATIO	3,160.25	302100	0046708	01/30/2020	HOUSTON ENGINEERING INC
460-3530-510.33-05 - Total				13,971.50				
FM19A0 - Total				13,971.50				
FM19A1	FLOOD MIT-Riverwood Addn	46035305103332	APPRAISAL SERVICES	2,500.00	301263	CF-90241ST	12/18/2019	PAGAN, JORGE L
FM19A1	FLOOD MIT-Riverwood Addn	46035305103332	APPRAISAL SERVICES	2,500.00	301680	CF-90242ND	01/09/2020	PAGAN, JORGE L
460-3530-510.33-32 - Total				5,000.00				
FM19A1 - Total				5,000.00				
FM19A3	FLOOD MIT-Riverwood Addn	46035305103308	FLOOD MITIGATION RIVERWOOD	417.64	302733	13448.25-1	02/27/2020	SRF CONSULTING GROUP
460-3530-510.33-08 - Total				417.64				
FM19A3 - Total				417.64				
FM19B0	FLOOD MIT-Royal Oaks Dr	46035305103305	ROYAL OAKS FLOOD MITIGATI	5,478.35	301398	0046295	12/26/2019	HOUSTON ENGINEERING INC
FM19B0	FLOOD MIT-Royal Oaks Dr	46035305103305	OAKS FLOOD MITIGATION	1,028.75	302100	0046709	01/30/2020	HOUSTON ENGINEERING INC
460-3530-510.33-05 - Total				6,507.10				
FM19B0	FLOOD MIT-Royal Oaks Dr	46035305103899	51-9464640-5 ELECT SERV	406.73	301169	662249871	12/12/2019	XCEL ENERGY
FM19B0	FLOOD MIT-Royal Oaks Dr	46035305103899	51-9464640-5 ELECTRIC SER	507.08	301892	665805414	01/16/2020	XCEL ENERGY
460-3530-510.33-99 - Total				913.81				
FM19B0 - Total				8,338.71				
FM19C0	FLOOD MIT-Woodcrest	46035305103305	WOODCREST MITIGATION PROJ	10,480.00	301390	0046296	12/26/2019	HOUSTON ENGINEERING INC
FM19C0	FLOOD MIT-Woodcrest	46035305103305	WOODCREST FLOOD MITIGATIO	1,548.50	302100	0046710	01/30/2020	HOUSTON ENGINEERING INC
460-3530-510.33-05 - Total				12,028.50				
FM19C0 - Total				12,028.50				
FM19E0	FLOOD MIT-Elm Circle	46035305103305	ELM CIRCLE FLOOD MITIGATI	15,126.53	301390	0046297	12/26/2019	HOUSTON ENGINEERING INC
FM19E0	FLOOD MIT-Elm Circle	46035305103305	ELM CIRCLE FLOOD MITIGATI	4,632.25	302100	0046711	01/30/2020	HOUSTON ENGINEERING INC
460-3530-510.33-05 - Total				19,758.78				
FM19E0 - Total				19,758.78				

City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
December 1, 2019 - February 29, 2020

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name
FM19E0	FLOOD MIT-Elm Circle	46035305103899	51-9464640-5 ELECT SERV	40.29	301169	662249871	12/12/2019	XCEL ENERGY
FM19E0	FLOOD MIT-Elm Circle	46035305103899	51-9464640-5 ELECTRIC SER	42.82	301892	665805414	01/16/2020	XCEL ENERGY
FM19E0	FLOOD MIT-Elm Circle	46035305103899	51-9464640-5	43.11	302317	669309704	02/06/2020	XCEL ENERGY
460-3530-510-33-99 - Total				126.22				
FM19E0 - Total				126.22				
FM19F0	FLOOD MIT-Oak Grove Area	46035305103305	OAK GROVE FLOOD MITIGATIO	21,321.80	301390	0046298	12/26/2019	HOUSTON ENGINEERING INC
FM19F0	FLOOD MIT-Oak Grove Area	46035305103305	OAK GROVE FLOOD MITIGATIO	572.00	302100	0046712	01/30/2020	HOUSTON ENGINEERING INC
460-3530-510-33-05 - Total				21,893.80				
FM19F0 - Total				21,893.80				
FM19F1	FLOOD MIT-Oak Grove Area	46035305103301	Cap Proj Admin Feb 2020	29,308.60	SS20200210	SS20200210	02/28/2020	City of Fargo
460-3530-510-33-01 - Total				29,308.60				
FM19F1	FLOOD MIT-Oak Grove Area	46035305107110	LOT 29, BLOCK 1 OAK GROVE	293,086.01	302697	20-200-012	02/27/2020	CYKOFFEL O'BRIEN, LYSON & FOSS LTD
460-3530-510-71-10 - Total				293,086.01				
FM19F1 - Total				293,086.01				
FM19H0	FLOOD MIT-52 Ave S/Univ	46035305103306	BRAUN INTERTEC CORP	2,799.25	770	1109-12/14/19	01/04/2020	P CARD BMO
FM19H0	FLOOD MIT-52 Ave S/Univ	46035305103306	BRAUN INTERTEC CORP	6,454.00	773	12/15-12/27/19	01/04/2020	P CARD BMO
FM19H0	FLOOD MIT-52 Ave S/Univ	46035305103306	BRAUN INTERTEC CORP	375.50	778	01/15-01/27/20	02/04/2020	P CARD BMO
460-3530-510-33-06 - Total				9,568.75				
FM19H0 - Total				9,568.75				
HD18A1	DEMO RESTOR-City Wide	46000002062000	Retainage and Retainage R	5,743.61	301948	HD18A1 Est #6	01/23/2020	DIRT DYNAMICS
460-0000-206-20-00 - Total				5,743.61				
HD18A1	DEMO RESTOR-City Wide	46035305103301	Cap Proj Admin 2019 P13	1,480.05	SS20191308	SS20191308	01/31/2020	City of Fargo
460-3530-510-33-01 - Total				1,480.05				
HD18A1	DEMO RESTOR-City Wide	46035305107320	Site #4 - South Universit	720.00	301948	HD18A1 Est #6	01/23/2020	DIRT DYNAMICS
460-3530-510-73-20 - Total				720.00				
HD18A1	DEMO RESTOR-City Wide	46035305107356	Site #2 - #1525 South Riv	9,660.00	301948	HD18A1 Est #6	01/23/2020	DIRT DYNAMICS
460-3530-510-73-56 - Total				9,660.00				
HD18A1	DEMO RESTOR-City Wide	46035305107356	Site #4 - South Universit	432.00	301948	HD18A1 Est #6	01/23/2020	DIRT DYNAMICS
460-3530-510-73-56 - Total				432.00				
HD18A1	DEMO RESTOR-City Wide	46035305107356	Site #2 - #1525 South Riv	2,436.00	301948	HD18A1 Est #6	01/23/2020	DIRT DYNAMICS
460-3530-510-73-56 - Total				2,436.00				
HD18A1	DEMO RESTOR-City Wide	46035305107356	Site #2 - #1525 South Riv	1,536.00	301948	HD18A1 Est #6	01/23/2020	DIRT DYNAMICS
460-3530-510-73-56 - Total				1,536.00				
HD18A1 - Total				1,257.35				
HD19A1	DEMO RESTOR-City Wide	46035305103899	51-9464640-5 ELECT SERV	73.57	301169	662249871	12/12/2019	XCEL ENERGY
HD19A1	DEMO RESTOR-City Wide	46035305103899	1104615 ELECTRIC SERV	135.38	301188	12/5/2019	12/18/2019	CASS COUNTY ELECTRIC COOP(BOX 6088)
HD19A1	DEMO RESTOR-City Wide	46035305103899	51-9464640-5 ELECTRIC SER	72.52	301892	665805414	01/16/2020	XCEL ENERGY
HD19A1	DEMO RESTOR-City Wide	46035305103899	1104615 ELECTRIC SERVICE	168.33	302062	1/7/2020	01/30/2020	CASS COUNTY ELECTRIC COOP(BOX 6088)
HD19A1	DEMO RESTOR-City Wide	46035305103899	51-9464640-5	626.02	302317	669309704	02/06/2020	XCEL ENERGY
HD19A1	DEMO RESTOR-City Wide	46035305103899	ACCT 1104615 ELECTRIC SER	181.53	302614	02/05/2020	02/27/2020	CASS COUNTY ELECTRIC COOP(BOX 6088)
460-3530-510-33-99 - Total				1,257.35				
HD19A1 - Total				1,257.35				
MP19K1	Flood Reimb	46035305103301	Cap Proj Admin 2019 P14	2,690.47	SS20191401	SS20191401	02/26/2020	City of Fargo
460-3530-510-33-01 - Total				2,690.47				
MP19K1	Flood Reimb	46035305107320	REIMB REPAIR/BACKFILL	26,904.65	302215	02/06/2020	02/06/2020	DESIGNER HOMES OF FARGO-MHD, LLC
460-3530-510-73-20 - Total				26,904.65				
MP19K1 - Total				26,904.65				

City of Fargo, North Dakota
Schedule of Complementary In-Town Flood Protection Costs
December 1, 2019 - February 29, 2020

Project Number	AP Project Description	Account Number	Description	AP Transaction Amount	Payment Number	AP Invoice Number	Payment Date	Vendor Name
NR19B0	STORM LIFT RHAB #24	46035305103305	WWTF PH IIB STORMWATER	32,204.00	301178	10052	12/18/2019	APEX ENGINEERING GROUP INC
NR19B0	STORM LIFT RHAB #24	46035305103305	WWTF PH IIB STORMWATER	7,872.00	301730	10219	01/16/2020	APEX ENGINEERING GROUP INC
NR19B0	STORM LIFT RHAB #24	46035305103305	STORMWATER LIFT #24	30,106.00	302519	10258	02/20/2020	APEX ENGINEERING GROUP INC
46035305103305 - Total				70,182.00				
NR19B0 - Total				70,182.00				
Overall - Total				1,916,168.94				
Feb 19, 2020					1			4:27:17 PM



FINANCE OFFICE

PO Box 2083
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1333 | Fax: 701.476.4188
www.FargoND.gov

March 13, 2020

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

Dear Metro Flood Diversion Board of Authority,

The City of Fargo is submitting for reimbursement invoices paid totaling \$35,327.57. These costs are for the 2019 operation and maintenance of Lift Stations #18 (304 4th St S) and #23 (200 2nd St N) and their associated generators.

Pursuant to Section 13 of the Joint Powers Agreement, the Metro Flood Diversion Authority shall reimburse Member Entities for reasonable costs incurred related to the management, operation, improvement, modification, or maintenance of the Project.

In 2018, the Metro Flood Diversion and the City of Fargo signed two MOUs that detail the cost share arrangements for the generators that serve the DA's lift stations. Pursuant to these MOUs, the DA will be responsible for 35% of the operation and maintenance costs of the generator that serves Storm Lift Station #23 and Fargo City Hall and 60% of the operation and maintenance costs of the generator that serves Storm Sewer Lift #18 and City of Fargo Sanitary Sewer Lift #1.

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

Sincerely,

Kent Costin
Director of Finance, City of Fargo

2019 Maintenance Costs - Lifts #18 and #23
COF Expense to be Reimbursed by DA

Electrical Expense:

<u>Location</u>	<u>Account Number</u>	<u>Statement Date</u>	<u>Service Dates</u>	<u>COF Check Number</u>	<u>COF Paid Date</u>	<u>Amount</u>
200 2nd St N	51-0011458648-5	1/31/2019	12/29/18 - 01/30/2019	294550	2/14/2019	1,159.17
200 2nd St N	51-0011458648-5	3/4/2019	1/30/2019 - 3/3/2019	295145	3/13/2019	1,277.51
200 2nd St N	51-0011458648-5	4/2/2019	3/3/2019 - 4/1/2019	295760	4/11/2019	678.18
200 2nd St N	51-0011458648-5	5/1/2019	4/1/2019 - 4/30/2019	296498	5/16/2019	694.09
200 2nd St N	51-0011458648-5	5/31/2019	4/30/2019 - 5/30/2019	297060	6/13/2019	616.01
200 2nd St N	51-0011458648-5	7/3/2019	5/30/2019 - 6/30/2019	298032	7/25/2019	800.46
200 2nd St N	51-4341057-3	8/6/2019	6/30/2019 - 7/30/2019	Pcard	8/13/2019	966.07
200 2nd St N	51-4341057-3	9/27/2019	7/30/2019 - 8/28/2019	Pcard	10/14/2019	515.53
200 2nd St N	51-4341057-3	10/30/2019	8/28/2019 - 10/2/2019	Pcard	11/20/2019	924.34
200 2nd St N	51-4341057-3	12/2/2019	10/2/2019 - 10/28/2019	Pcard	12/12/2019	785.66
200 2nd St N	51-4341057-3	12/30/2019	10/28/2019 - 11/26/2019	Pcard	1/8/2020	754.79
						<u>9,171.81</u>
304 4th St S	51-0011489710-7	2/15/2019	1/16/19 - 2/14/2019	Pcard	2/22/2019	3,032.65
304 4th St S	51-0011489710-7	3/19/2019	2/14/2019-3/18/2019	295427	3/28/2019	2,306.24
304 4th St S	51-0011489710-7	4/17/2019	3/18/2019 - 4/16/2019	296170	5/2/2019	2,328.85
304 4th St S	51-0011489710-7	5/16/2019	4/16/2019 - 5/15/2019	296635	5/23/2019	1,139.94
304 4th St S	51-0011489710-7	6/17/2019	5/15/2019 - 6/16/2019	297419	6/27/2019	956.23
304 4th St S	51-4341057-3	8/6/2019	6/16/2019 - 7/16/2019	Pcard	8/13/2019	1,414.97
304 4th St S	51-4341057-3	9/27/2019	7/16/2019 - 8/16/2019	Pcard	10/14/2019	958.81
304 4th St S	51-4341057-3	9/27/2019	8/14/2019 - 9/15/2019	Pcard	10/14/2019	947.06
304 4th St S	51-4341057-3	10/30/2019	9/15/2019 - 10/14/2019	Pcard	11/20/2019	1,183.28
304 4th St S	51-4341057-3	12/2/2019	10/14/2019 - 11/12/2019	Pcard	12/12/2019	1,322.66
304 4th St S	51-4341057-3	12/30/2019	11/2/2019 - 12/15/2019	Pcard	1/8/2020	1,567.95
						<u>17,158.64</u>
Total Electric Expense						<u>26,330.45</u>

Insurance Expense:

<u>Location</u>	<u>Insurance Type</u>	<u>COF Check Number</u>	<u>COF Paid Date</u>	<u>Total Costs</u>	<u>DA Share</u>	<u>Amount</u>
200 2nd St N - Pump Station	SFT - 7/1/2019 - 6/30/2020	298268	8/7/2019	2,726.71	100%	2,726.71
304 4th St S - Pump Station	SFT - 7/1/2019 - 6/30/2020	298268	8/7/2019	1,942.25	100%	1,942.25
304 4th St S - Generator	SFT - 7/1/2019 - 6/30/2020	298268	8/7/2019	298.31	60%	178.99
225 4th St N - Generator	SFT - 7/1/2019 - 6/30/2020	298268	8/7/2019	197.11	35%	68.99
200 2nd St N - Pump Station	Boiler - 1/1/19-1/1/2020	293669	1/10/2019	1,168.00	100%	1,168.00
304 4th St S - Pump Station	Boiler - 1/1/19-1/1/2020	293669	1/10/2019	832.00	100%	832.00
304 4th St S - Generator	Boiler - 1/1/19-1/1/2020	293669	1/10/2019	128.00	60%	76.80
Total Insurance Expense						<u>6,993.73</u>

Yearly Cleaning and Inspection:

<u>Location</u>	<u>Labor</u>	<u>Equipment</u>	<u>Other Costs</u>	<u>Total Costs</u>	<u>DA Share</u>	<u>Amount</u>
200 2nd St N	320.00	261.84	3,357.26	3,939.10	35%	1,378.69
304 4th St S	240.00	196.38	604.79	1,041.17	60%	624.70
	<u>560.00</u>	<u>458.22</u>	<u>3,962.05</u>	<u>4,980.27</u>		

Total Cleaning & Inspection Expense 2,003.39

Total Expense for Period **35,327.57**