

METRO FLOOD DIVERSION AUTHORITY

Thursday, May 17, 2018

3:30 PM

Fargo City Commission Room

Fargo City Hall

200 3rd Street North

1. Call to order
2. Approve minutes from previous meetings **Item 2.** Action
3. Approve order of agenda Action
4. Management
 - a. PMC report
 - b. Corps of Engineers update Information
5. Administrative/Legal
 - a. WBI Transmission Utility Location Agreement **Item 5a.**
 - b. AECOM Master Services Agreement **Item 5b.** Information/action
6. Public Outreach
 - a. Committee report
 - b. Business Leaders Task Force update Information
7. Land Management
 - a. Committee report Information
8. Finance
 - a. Committee report
 - b. Voucher approval
 - c. Recommended contracting actions
 - d. County Roads 16 & 17 Realignment Contract Termination**Item 8a.**
 Item 8b. Information/action
9. Other Business
10. Next Meeting – June 28, 2018
11. Adjournment

cc: Local Media

METRO FLOOD DIVERSION AUTHORITY
APRIL 26, 2018—3:30 PM

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, April 26, 2018, at 3:30 PM in the Fargo City Commission Room with the following members present: Moorhead City Mayor Del Rae Williams; Moorhead City Council Member Chuck Hendrickson; Moorhead City Council Member Joel Paulsen; Clay County Commissioner Kevin Campbell; Clay County Commissioner Grant Weyland; Fargo City Mayor Tim Mahoney; Fargo City Commissioner Tony Grindberg; Fargo City Commissioner Dave Piepkorn; Cass County Commissioner Mary Scherling via conference call; Cass County Commissioner Chad Peterson; Cass County Commissioner Rick Steen; Cass County Joint Water Resource District Manager Rodger Olson via conference call; and West Fargo City Commissioner Mike Thorstad. Also present was Mark Nisbet from the Chamber Business Leaders Task Force.

2. MINUTES APPROVED

MOTION, passed

**Mr. Campbell moved and Mr. Weyland seconded to approve the minutes from the meetings held March 16, 2018, and March 22, 2018, as presented.
Motion carried.**

3. AGENDA ORDER

MOTION, passed

**Mr. Mahoney moved and Mr. Campbell seconded to approve the order of the agenda with the addition of S&S Landscaping Services Agreement.
Motion carried.**

4. MANAGEMENT UPDATE

Martin Nicholson from CH2M provided an update on activities over the last month, which include coordination with MDNR to understand the permit application and review process; outreach presentations on Plan B to over two dozen entities; the submittal of a request to resume in-town levee and OHB levee work; and a project update to the State Water Commission. Priorities for next month include continued coordination of outreach efforts associated with Plan B; continued communication with MDNR; and preparation of advanced finance planning.

Mr. Nicholson provided a brief financial update on the overall program status and said \$424 million has been expended to date and \$9.3 million has been expended from the FY 2018 budget.

Michael Redlinger, Co-Executive Director and Assistant Fargo City Administrator, gave a brief update on behalf of the Corps of Engineers. Mr. Redlinger said Colonel Samuel Calkins, Commander of the U.S. Army Corps of Engineers, Greater Minneapolis-St. Paul Area, intends to visit on Thursday, May 3rd, and a special board meeting may be scheduled.

5. PUBLIC OUTREACH UPDATE

Committee report

The Public Outreach Committee met on April 25th. Rocky Schneider from AE2S said over two dozen public informational meetings with area entities have been held over the past few weeks. Mr. Schneider thanked board members for their participation and attendance at the meetings.

Mr. Campbell said a letter is being formulated to send out to those in newly affected areas.

Business Leaders Task Force

Mr. Nisbet said the task force continues to get the message out about the importance of the project.

6. LAND MANAGEMENT

Eric Dodds from AE2S said the Land Management Committee meeting for April was cancelled.

Mr. Dodds said biotic and geomorphic activity will continue and related field activity is expected to begin in May. Property owners are being notified.

Mr. Dodds said the recent outreach meetings pertaining to Plan B have caused an uptick in inquiries about opportunistic acquisitions from landowners who want to know if and how they will be impacted. Policy information will be formulated for the May committee meeting.

7. FINANCE UPDATE

Committee report

The Finance Committee met on April 25th. Mr. Grindberg said there are continued discussions with the technical team on updating financing forecasts and Plan B financial data.

Voucher approval

The bills for the month are with Cass County Joint Water Resource District (CCJWRD) for costs associated with the Metro Flood Diversion, Dorsey & Whitney for legal services; Ohnstad Twichell, P.C. for legal services; and Erik R. Johnson & Associates, Ltd. for legal services.

MOTION, passed

Mr. Grindberg moved and Mr. Steen seconded to approve the vouchers received through April 20, 2018, in the amount of \$1,103,436.76. On roll call vote, the motion carried unanimously.

Recommended Contracting Actions

Mr. Nicholson discussed two Task Order Amendments approved by the Co-Executive Directors.

Mr. Glatzmaier discussed Change Order 4 with Meyer Contracting, Inc., which addresses several items, including all claims and changes that occurred through December 31, 2017, plus stand-by time costs from January 1, 2018, through April 30, 2018. The total change order is in the amount of \$978,114.72

Mr. Paulsen asked if a winter suspension was included in the contract and if the contractor intended to work from January through April. Mr. Glatzmaier said there was no winter suspension and the intent was to work on electrical and mechanical components inside the structure.

Mr. Peterson asked if the cost of demobilizing the contractor was weighed against the cost of keeping them on stand-by as it is typical for projects to start and stop frequently. Mr. Glatzmaier said after the injunction was put in place there were discussions on a course of action but as the length of the shutdown was unknown, the decision to keep contractors on stand-by seemed to be the best alternative at the time.

Mr. Piepkorn said he is concerned with the last item in the change order, which incorporates a temporary golf cart path at the Oxbow Country Club in the amount of \$8,085. Mr. Piepkorn does not believe public funds should be used for a golf cart path.

MOTION, passed

Mr. Grindberg moved and Mr. Mahoney seconded to approve Change Order 4 with Meyer Contracting, Inc. On roll call vote, the motion carried with Ms. Williams, Mr. Hendrickson, Mr. Paulsen, Mr. Campbell, Mr. Weyland, Mr. Mahoney, Mr. Grindberg, Mrs. Scherling, Mr. Peterson, Mr. Steen, Mr. Thorstad, and Mr. Olson voting “Yes”; Mr. Piepkorn voting “No”.

Proposed 2018 HMG rates

Mr. Redlinger said proposed increases to the HMG rates were tabled at the March Finance Committee meeting with a request for additional information. Jeff Volk and Jeff Ledoux of Houston Moore Group were available at the April Finance meeting and today to provide background and clarification, and the Finance Committee unanimously approved the rate increases.

Mr. Grindberg said a change to the HMG Master Services Agreement in 2017 required Houston Moore Group to obtain additional professional liability insurance without course for reimbursement, which has been the main driver behind rate increases in 2017 and 2018.

MOTION, passed

Mr. Grindberg moved and Mr. Steen seconded to approve the proposed 2018 HMG rates as presented. Discussion: Mr. Campbell asked if the project mileage rate is for reimbursable travel mileage. Mr. Volk said yes. Mr. Campbell said typically governmental agencies follow the federal guidelines for mileage reimbursement, which are not as high as the listed rate. Mr. Volk said the rate was negotiated under the original HMG contract in 2012 and has not been changed since that time. On roll call vote, the motion carried unanimously.

Oxbow lot sales & maintenance agreement

Mr. Redlinger presented an amendment to the Oxbow MOU and an Assignment of Master Agreement that were approved unanimously by the Finance Committee. The documents modify the existing Oxbow lot sales process for the remaining lots and reassign maintenance responsibilities and associated costs to Oxbow. In addition, the Diversion Authority's responsibility for the city park is defined.

Mr. Redlinger said Oxbow will take over the sale of the remaining 33 lots, of which the first \$1 million of net proceeds will be retained by Oxbow. After that threshold is met there will be a 65/35 revenue share split between the Diversion Authority and Oxbow, with the Diversion Authority receiving 65% of revenues and Oxbow receiving 35% of revenues. The lots must be sold for a minimum of 85% of their appraised value, unless otherwise approved by the Co-Executive Directors.

Attorney Erik Johnson drafted the documents and Cass County Auditor Michael Montplaisir provided a financial analysis to ensure that the Diversion Authority will see a positive benefit from the arrangement.

Mr. Redlinger said a cap of \$200,000 will be imposed on the Diversion Authority's funding obligation for the Oxbow City Park, and the Diversion Authority will be removed from future golf course change orders.

Mrs. Scherling arrived for the remainder of the meeting.

MOTION, withdrawn

Mr. Grindberg moved and Mr. Mahoney seconded to approve the Second Amendment to Memorandum of Understanding between the City of Oxbow and the Metro Flood Diversion Board of Authority as presented, and to approve the Assignment of Master Agreement between the City of Oxbow, Cass County Joint Water Resource District, and Oxbow Golf and Country Club as presented.

Discussion: Mr. Olson asked if lots will still be set aside for those who are displaced by the project. Mr. Redlinger said historically, there have not been many people interested in the reserve lots but the matter can be discussed with Oxbow.

Mr. Piepkorn said the Diversion Authority provided flood protection for the lots in question and will now pay the City of Oxbow over \$2 million and Oxbow will keep sale proceeds from the lots. He said he is not in favor of being involved with the golf course. Mr. Mahoney said the Diversion Authority is already responsible for the obligations in question and this is an opportunity to void some of the previous commitments.

Mrs. Scherling said she agrees with Mr. Olson and believes lots should continue to be set aside and opportunities preserved for those displaced by the project as new people will be affected as the project changes.

Mr. Grindberg said an updated spreadsheet and documents should be prepared for approval to include the preservation of lots for those displaced by the project. The motion was withdrawn by Mr. Grindberg and Mr. Mahoney.

S&S Landscaping Services Agreement

Mr. Grindberg said the Finance Committee approved an agreement with S&S Landscaping.

Attorney John Shockley said the federal injunction halted work on Cass Highways 16 and 17 and the OHB Levee. Seeding, maintenance, and damage repair is required in some areas in order to maintain compliance with the ND Storm Water Permit. S&S Landscaping provided a cheaper quote than on-site contractors, and the agreement is in the amount of \$149,952.

MOTION, passed

Mr. Grindberg moved and Mr. Piepkorn seconded to approve the Services Agreement between the Metro Flood Diversion Authority and S&S Landscaping Company, Inc. as presented. On roll call vote, the motion carried unanimously.

8. OTHER BUSINESS

Mr. Peterson said the GFMEDC is working on an update of project impacts and the Diversion Authority will be briefed once it is completed.

9. NEXT MEETING DATE

The next meeting will be held on Thursday, May 24, 2018.

10. EXECUTIVE SESSION

North Dakota state law allows the Board to meet in private session to consult legal counsel to discuss ongoing litigation and contract negotiations.

MOTION, passed

Mr. Piepkorn moved and Mr. Peterson seconded that the Metro Flood Diversion Authority meet in Executive Session pursuant to N.D.C.C. § 44-04-19.2 and N.D.C.C. § 44-04-19.1, subdivision 9, for the purpose of receiving an update from the Diversion Authority's General Counsel and providing negotiating instructions to the Diversion Authority's General Counsel regarding modifications, amendments and/or potential claims regarding the construction contract between the Metro Flood Diversion Authority and Meyer Contracting for combined general construction, electrical and mechanical work. Motion carried.

Diversion Authority Board members, key administrative staff, and Mr. Shockley moved to the River Room at 4:36 PM.

The Executive Session ended at 5:18 PM and the meeting was re-opened to the public.

11. ADJOURNMENT

MOTION, passed

On motion by Mr. Campbell, seconded by Mr. Peterson, and all voting in favor, the meeting was adjourned at 5:19 PM.

Minutes prepared by Brielle Edwards, Cass County HR Assistant

METRO FLOOD DIVERSION AUTHORITY
MAY 3, 2018 1:30 PM

1. MEETING TO ORDER

A special meeting of the Metro Flood Diversion Authority was held Thursday, May 3, 2018, at 1:30 PM in the Fargo City Commission Room with the following members present: Moorhead City Mayor Del Rae Williams; Moorhead City Council Member Chuck Hendrickson; Moorhead City Council Member Joel Paulsen; Clay County Commissioner Kevin Campbell; Clay County Commissioner Grant Weyland via conference call; Fargo City Mayor Tim Mahoney; Fargo City Commissioner Tony Grindberg; Fargo City Commissioner Dave Piepkorn; Cass County Commissioner Mary Scherling; Cass County Commissioner Chad Peterson; Cass County Commissioner Rick Steen; and West Fargo City Commissioner Mike Thorstad. Cass County Joint Water Resource District Manager Roger Olson was absent.

2. INTRODUCTIONS

Board members, staff and dignitaries went around the table and introduced themselves. Present were U.S. Senator John Hoeven; North Dakota Governor Doug Burgum; Colonel Sam Calkins, Commander of the U.S. Army Corps of Engineers, St. Paul District; Judy DeHarnais, Corps of Engineers Deputy District Engineer; Terry Williams, Corps of Engineers Project Manager; Jason Benson, Cass County Engineer; Nathan Boerboom, Fargo City Division Engineer; and Bob Zimmerman, Moorhead City Engineer.

3. OPENING REMARKS

Mayor Williams, Commissioner Scherling, Senator Hoeven, Governor Burgum and Colonel Calkins provided opening remarks about the Diversion project.

Senator Hoeven said \$35 million in federal funding has been requested for FY18 but still needs approval from the Office of Management and Budget (OMB). He said permitting issues and legal challenges still need to be addressed, but he believes they will be resolved in order to keep the project on track.

Colonel Calkins said the Diversion project is critical for the region to provide permanent flood protection. He spoke with MN DNR officials this week who have said that a decision on the permit for Plan B should be made by October or November.

4. PLAN B PRESENTATION

Rocky Schneider from AE2S provided a brief presentation on Plan B, which was submitted to the Minnesota DNR (MN DNR) on March 16th. He said over the last month, staff have provided around two dozen presentations to local entities. The new plan will allow an additional two feet of water through Fargo-Moorhead during a 100-year flood; will include a tie-back levee in Minnesota on the east side of the southern embankment; will revise the western tie-back levee alignment to the south and west of Horace; and will change the location of the southern embankment further to the north in North Dakota to balance the impacts between North Dakota and Minnesota, and to reduce impacts to Richland and Wilkin Counties.

Financial Overview

Mr. Grindberg said project costs continue to increase due to inflation. He discussed funding and cost shares of each entity as follows: North Dakota \$570 million or 26%; Minnesota \$43 million or 2%; Federal \$450 million or 20%; and Local Share (Fargo and Cass County) \$1.1 billion or 52%. He said additional costs from potential project changes are unknown at this time.

Priorities for 2018-2019

The priorities for the Diversion Authority are to resolve the litigation; obtain the necessary permits for North Dakota and Minnesota, including environmental clearances from the Corps of Engineers and MN DNR; complete Phase 1 of the Flowage Easement Valuation Study; and continue in-town construction projects.

5. CORPS OF ENGINEERS ACTIVITIES REPORT

Colonel Calkins provided an update on activities. He said funding in the FY18 work plan will be used for engineering and environmental analysis of changes proposed in Plan B. He said the St. Paul District will prepare a Supplemental Environmental Assessment (SEA) for the project changes and impacts to the public. Col. Calkins said regular communication continues with the MN DNR including weekly and bi-weekly meetings. Survey markers will be permanently placed beginning this month for geomorphic monitoring with fieldwork anticipated to begin in the late summer. He said the Corps sent letters to affected landowners last month to let them know about the work to be done.

6. COMMUNICATIONS FROM MN DNR

Ms. Williams said a letter was sent from the MN DNR to the Metro Flood Diversion Authority confirming the receipt of the permit application for Plan B. In addition, the MN DNR determined that because of the substantial changes to the project, a Supplemental Environmental Impact Statement (SEIS) is needed prior to making a decision on the permit application.

DNR SEIS Income Agreement

Attorney John Shockley said a cost share agreement has been drafted to complete the SEIS with the term of the contract from May 3, 2018, through December 31, 2018 at a cost of \$445,489.00. He recommends the board approve the agreement today to begin the work as soon as possible.

The Finance Committee has not reviewed or approved the agreement. However, Mr. Grindberg said it is important to move forward on the SEIS process. He would like the SEIS to be done before the end of the year and suggested a deadline of November 1st for it to be completed.

MOTION, passed

Mr. Campbell moved and Mr. Grindberg seconded to enter into an income agreement with the Minnesota Department of Natural Resources to prepare a Supplemental Environmental Impact Statement. On roll call vote, the motion carried unanimously.

7. LITIGATION STATUS UPDATE

Mr. Shockley provided an update on three ongoing matters related to the lawsuits filed by the Richland-Wilkin Joint Powers Authority. This week Federal Judge John Tunheim ruled that work on the OHB ring levee and in-town levees may continue. The MN DNR did not object to work continuing on the two projects.

8. RECESS

The board recessed at 2:50 PM for a short break.

9. RECONVENED

The board reconvened at 3:05 PM.

10. OXBOW LOT SALES & MAINTENANCE AGREEMENT

Michael Redlinger, Co-Executive Director and Assistant Fargo City Administrator, said last week the Diversion Board reviewed an amendment to the Oxbow Memorandum of Understanding

(MOU) and Assignment of Master Agreement. The board did not approve the amendment and asked that the agreement include a certain number of lots be reserved for residents living in the staging area who will be displaced because of Plan B. The agreement now includes 10 lots that will be reserved.

Mrs. Scherling asked if the 10 lots are designated in the agreement. Mr. Redlinger said they have not been chosen out of the 33 lots that remain unsold. She believes residents displaced by the project should have the ability to reserve a lot even if they do not plan to relocate by 2020 as outlined in the agreement. Eric Dodds from AE2S said staff will work with individuals who may be interested in a lot but do not want to move right away. He believes the details regarding these types of requests can be resolved as they arise. Mr. Campbell suggested using a Memorandum of Understanding to allow lots to be reserved for individuals who express an interest in relocating to Oxbow.

MOTION, passed

Mr. Campbell moved and Mr. Grindberg seconded to approve the Second Amendment to the Memorandum of Understanding between the City of Oxbow and Metro Flood Diversion Board of Authority. On roll call vote, the motion carried with Ms. Williams, Mr. Hendrickson, Mr. Paulsen, Mr. Campbell, Mr. Mahoney, Mr. Grindberg, Mrs. Scherling, Mr. Peterson, Mr. Steen, and Mr. Thorstad voting “Yes”; Mr. Piepkorn voting “No”.

11. NEXT MEETING DATE

The next meeting will be held on Thursday, May 17, 2018.

12. ADJOURNMENT

MOTION, passed

On motion by Mr. Peterson, seconded by Mrs. Scherling, and all voting in favor, the meeting was adjourned at 3:20 PM.

Minutes prepared by Heather Worden, Cass County Administrative Assistant

AGREEMENT

By and Between
METRO FLOOD DIVERSION AUTHORITY
and
WBI ENERGY TRANSMISSION, INC.

Dated as of May ___, 2018

Relating to:

**Diversion Channel and Associated Infrastructure
for the Fargo-Moorhead Metropolitan
Area Flood Risk Management Project**

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

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Exhibit 1 Indicative Design Channel Profile

Exhibit 2 Submittal Requirements, Project Site and Pipeline Alignment (Bore Profile)

Exhibit 3 Template Easement

UTILITY LOCATION AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of May, 2018 (hereinafter referred to as the “Effective Date”), by and between the Metro Flood Diversion Authority, a North Dakota political subdivision, whose post office address is P.O. Box 2806, Fargo, ND 58108-2806, and WBI Transmission, Inc., whose post office address is 1250 West Century Avenue, Bismarck, ND 58506-5601 (hereinafter referred to as the “Utility”).

RECITALS

WHEREAS, the Metro Flood Diversion Authority is undertaking a Public-Private Partnership (hereinafter referred to as the “P3”) for the construction of the DCAI; and

WHEREAS, the Utility intends to acquire real property interests (hereinafter referred to as “Property Interests”) and install a new natural gas pipeline within the area of the DCAI; and

WHEREAS, it will be necessary for the Property Interests and Natural Gas Transportation Infrastructure to be located in a manner to avoid conflicts with the DCAI to the extent possible; and

WHEREAS, the Utility and the Metro Flood Diversion Authority desire to set forth in writing their mutual understandings and to define the terms and conditions, and each Party’s rights and obligations in connection with the location and placement of the Natural Gas Transportation Infrastructure (hereinafter referred to as the “Utility Location Project”).

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby state as follows:

ARTICLE I. **DEFINITIONS AND INTERPRETATION**

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

“Agreement” means this Agreement by and between the Metro Flood Diversion Authority and WBI Energy Transmission, Inc.

“Best Efforts” means acting in Good Faith and in accordance with generally accepted commercial practices, and using 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.

“Business Day” means a day in which normal business is conducted and excludes weekends and North Dakota holidays.

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

“Comprehensive Project” means the Fargo-Moorhead Metropolitan Area Flood Risk Management Project authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo Moorhead Metropolitan Area Flood Risk Management, dated July 2011 and approved in accordance with the Chief’s Report, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the U.S. Army Engineer, St. Paul, on September 19, 2013.

“Construction Documents Submittal” means the design submittal described in Section 5.04(3) of this Agreement.

“DCAI” means the Diversion Channel and Associated Infrastructure portion of the **Comprehensive Project**, which is being procured by the **Metro Flood Diversion Authority** and includes, but is not limited to, the thirty (30) mile channel, outlet, river and drain inlets, road bridges, railroad bridges, aqueducts, utility relocations, and recreational features.

“Design Exception” means a deviation in design such that the design does not comply with the prevailing requirements.

“Diversion Inlet Structure” means the hydraulic control structures being constructed by USACE at the confluence of County Road 16 and County Road 17.

“Diversion Outlet” means the location where the DCAI merges with the Red River of the North.

“Effective Date” means the date on which both Parties have executed this Agreement.

“Engineer of Record” means an individual, or individuals, properly registered as an engineer, responsible for preparing the Final Design Submittal and the Construction Documents Submittal.

“Excavated Material Berm” or **“EMB”** means a berm constructed from materials that have been excavated from within the Project Footprint.

“Final Design Submittal” means the design submittal described in Section 5.03 of this Agreement.

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

“IDF Line of Protection” means inflow design flood line of protection.

“Interstate” means either Interstate 29 (I-29) or Interstate 94 (I-94).

“LFC” means the low-flow channel constructed in the bottom section of the DCAI from the Diversion Outlet to the Diversion Inlet Structure with minimum low flow rates of 720 cubic feet per second from the Diversion Outlet to the Rush River Inlet; 470 cubic feet per second from the Rush River Inlet to the Maple River Aqueduct; and flow rates determined by the P3 Developer from the Maple River Aqueduct to the Diversion Inlet Structure.

“Maple River Aqueduct” means the element that will convey the flow of the Maple River across the DCAI.

“Metro Flood Diversion Authority” means the political subdivision created by the Joint Powers Agreement, effective June 1, 2016, by and between the City of Moorhead, a political subdivision of the State of Minnesota; the City of Fargo, a political subdivision of the State of North Dakota; Clay County, a political subdivision of the State of Minnesota; Cass County, a political subdivision of the State of North Dakota; and Cass County Joint Water Resource District, a political subdivision of the State of North Dakota and vested with the powers therein.

“Natural Gas Transportation Infrastructure” means all pipe, valves, fittings, markers, fencing, and any other infrastructure that the Utility intends to install within the Project Footprint of the DCAI.

“Other Approvals” means all approvals and permits legally required to complete approved Work on the Utility Location Project, including, but not limited to, construction permits and permits from the applicable water resource district.

“Party” means the Metro Flood Diversion Authority or the Utility, as the context may require, and their respective legal representatives, successors, and permitted assigns, and wherever a reference in this Agreement is made to any Parties hereto, **“Parties”** means the entities party to this Agreement, specifically the Metro Flood Diversion Authority and the Utility.

“Pipeline Easement Property” means those legal descriptions contained within the Easement agreed to between the parties and attached hereto as Exhibit 3.

“P3 Developer” means the private party or entity that enters into the Project Agreement whereby that party agrees to design and build the Project.

“Project Agreement” means a Public-Private Partnership Agreement as authorized by Chapter 48-02.1 of the North Dakota Century Code, by and between the Metro Flood Diversion Authority, or one or more Member Entities authorized by the Metro Flood Diversion Authority, and a P3 Developer for design, construction, financing, operation and maintenance of the Project.

“Project Site” means the physical area within which the DCAI is contained as identified in Exhibit 2.

“Project” means the design, construction, finance, operations, and maintenance of the DCAI.

“Project Property” means real property acquired for the Project, including, but not limited to, land, rights-of-way, easements, licenses, and leases.

“Railroad” means either BNSF Railway Company, a corporation organized and existing under the laws of the State of Delaware, or Red River Valley & Western Railroad Company, a corporation organized and existing under the laws of the State of Minnesota, as the context may require.

“Record Drawings Deliverable” means an organized set of plans, details, specifications, calculations, and related documentation that accurately represents the structure constructed, and the conditions encountered during construction.

“Released for Construction Documents” means all drawings, specifications, revisions thereto, and any other items necessary to construct the work, signed and sealed by an Engineer of Record.

“Rush River Inlet” means the river inlet that conveys the flow of the Rush River into the DCAI.

“Signed and Sealed” means the signature and seal of a licensed professional engineer on a document indicating that the licensee takes professional responsibility for the work and, to the best of the licensee’s knowledge and ability, the work represented in the document is accurate, in conformance with applicable codes at the time of submission and has been prepared in conformity with normal and customary standards of practice and with a view to the safeguarding of life, health, property, and public welfare. The licensed professional engineer certifies that the documents have been signed and sealed in accordance with laws, rules, and regulations of the State.

“Site” means the physical location at which any Work is being done, has been done, or will be done as part of the Utility Location Project.

“State” means the State of North Dakota.

“Substantial Completion” means the time at which the Work, or a specified part thereof, has progressed to the point where, in the opinion of the Metro Flood Diversion

Authority, the Work is sufficiently complete, in accordance with the plan approved by the Metro Flood Diversion Authority.

“**Utility**” means WBI Energy Transmission, Inc.

“**Utility Location Project**” means the process of locating and placing Natural Gas Transportation Infrastructure within the Project Site.

“**USACE**” means the United States Army Corps of Engineers.

“**Work**” means those elements of locating and constructing the Natural Gas Transportation Infrastructure that is within the Project Site.

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

Section 1.03 SURVIVAL OF TERMS. The terms of this **Agreement** shall end at the later of: (i) completion of the **Work** within the **Project Site**, (ii) the grant of the easement outlined in Section 8.01 hereof from the **Metro Flood Diversion Authority** to the **Utility**, or (iii) substantial completion of construction under the **Project Agreement**.

ARTICLE II. PURPOSE OF AGREEMENT

Section 2.01 PURPOSE. The purpose of this **Agreement** is to ensure a coordinated, time efficient, and cost effective process for completing the **Utility Location Project**.

Section 2.02 COORDINATION BETWEEN ENGINEERS. The **Metro Flood Diversion Authority** and the **Utility** are likely to employ the use of professional engineers for the completion of designs, plans, and **Work** and for the analysis and review thereof. Engineers employed by the **Metro Flood Diversion Authority** and the **Utility** shall maintain open lines of communication and shall coordinate and collaborate with engineers employed by other Parties described herein throughout the completion of the **Utility Location Project**.

ARTICLE III. RIGHT OF SITE ACCESS

Section 3.01 RIGHT OF SITE ACCESS FOR INSPECTION. To ensure the **Metro Flood Diversion Authority** is able to properly monitor and ensure proper completion of the **Utility Location Project**, the **Metro Flood Diversion Authority** shall be permitted in, on, over, and across any and all **Sites** and shall have the right to access, enter, and inspect any **Site** on which **Work** has been done, is being done, or will be done as part of the **Utility Location Project**; *provided, however* that the **Metro Flood Diversion Authority** shall notify the **Utility** pursuant to Section 3.04 herein and agrees to allow a **Utility** representative to be present at any and all **Sites** for any and all inspections conducted by the **Metro Flood Diversion Authority**.

Section 3.02 RIGHT OF SITE ACCESS FOR DCAI CONSTRUCTION. To ensure the **Metro Flood Diversion Authority** is able to proceed with construction of the **DCAI** in a timely and efficient manner, the **Utility** consents to the **Metro Flood Diversion Authority**'s use of a **Site** for the construction of the **DCAI**.

Section 3.03 NON-REVOCABLE RIGHT OF THE METRO FLOOD DIVERSION AUTHORITY. Nothing herein shall be construed as limiting or providing for the termination of the rights of access described herein as it pertains to the **Metro Flood Diversion Authority**.

Section 3.04 NOTICE. The **Metro Flood Diversion Authority** shall provide at least forty-eight(48) hour-notice before accessing a **Site** for the purposes described in Section 3.01. Section 3.02 and Section 5.10, except for an instance in which the purpose for **Site** access described in Section 3.01, Section 3.02 or Section 5.10, arises from an event or occurrence the **Metro Flood Diversion Authority** reasonably believes may cause damage or pose a risk to the **DCAI**.

Section 3.05 DELAY FOR SAFETY PURPOSES. If the **Metro Flood Diversion Authority** attempts to exercise the rights of access described in this Article, but doing so would pose a safety hazard in the discretion of the **Utility**, the party shall be kept from accessing, entering, or inspecting the **Site** in question only for as long as is reasonably required to make the **Site** safe for access, entry, and inspection.

Section 3.06 NOTICE OF RETURN. In the event that the **Metro Flood Diversion Authority** cannot access, enter, or inspect a **Site** for safety reasons, as described in Section 3.05, the party denied access shall provide the **Utility** with written notice of the date and time on which access, entry, and inspection must be allowed. If the time between the unsuccessful attempt to enter, access, or inspect and the subsequent attempt to enter, access, or inspect the same **Site** is less than forty-eight (48) hours, no formal notice shall be necessary.

ARTICLE IV. REQUIRED REPORTS

Section 4.01 REQUIRED REPORTS. The **Utility** will prepare any reports, analysis, or other information and materials reasonably related to the **Natural Gas Transportation**

Infrastructure and/or anything that may impact the **Work** on the **Utility Location Project** or the **Project**, as is requested of them by the **Metro Flood Diversion Authority**.

Section 4.02 DEADLINES. All reports, engineering analysis, and other information and materials requested by the **Metro Flood Diversion Authority** shall be provided before the expiration of a reasonable deadline mutually determined by the Parties. The **Utility** shall consider commercially reasonable efforts to produce those items outlined in Section 4.01 when agreeing upon a deadline with the **Metro Flood Diversion Authority**.

Section 4.03 FAILURE TO TIMELY PRODUCE. Should the **Utility** fail to produce any reports, analysis, or other information and materials reasonably requested of them by the **Metro Flood Diversion Authority** by the mutually agreed upon deadline, the **Metro Flood Diversion Authority** shall have the ability to exercise its rights under Article X hereunder.

ARTICLE V. PERFORMANCE AND CONSTRUCTION

Section 5.01 WORK. The **Utility** shall be responsible for the design and performance of all **Work** on the **Utility Location Project**.

Section 5.02 TECHNICAL SPECIFICATIONS. The **Utility Location Project** shall be constructed in accordance with the technical requirements within this Section. The Utility shall install the pipeline in accordance with the following depth specifications: for portions of the pipeline installed within the Project Site, the pipeline must be a minimum of thirty-five (35) feet below the bottom of the low-flow channel (LFC), and a minimum of forty-five feet (45) feet below existing ground on the east and west boundaries of the Project Site. In the event a redesign of the Project Site by the Metro Flood Diversion Authority prior to or during construction of the Project Site requires any relocation or reinstallation of the Utility's pipeline lower than the bore profile attached as Exhibit 2, Metro Flood Diversion Authority shall compensate the Utility for any costs incurred by the Utility to comply with the redesign.

(a) Method of construction – **DCAI** and **IDF line of Protection** crossing – the **Natural Gas Transportation Infrastructure** will be installed by horizontal direction drill (HDD) beneath the **DCAI** and **IDF Line of Protection**.

(1) Directional drilling pits shall be located a minimum of 300 feet away from the east side of the **IDF Line of Protection** and a minimum of 20 feet away from the west side of the **IDF Line of Protection** as shown on the **DCAI** cross section at Station 645+00+- as shown in Exhibit 1. The **Utility** shall follow the *USACE Guidelines for Installation of Utilities Beneath Corps of Engineers Levees Using Horizontal Directional Drilling*. If the conditions of these drilling requirements conflict for work under the **DCAI**, the more stringent requirements apply.

(b) Method of construction – **Excavated Material Berms**, local drainage ditch crossings, and other areas – install **Natural Gas Transportation Infrastructure** by directionally drilling or open cutting, unless otherwise indicated. Do not direct trench **Natural Gas**

Transportation Infrastructure using a plow type installation process. Do not install pipeline by jack and bore process. When installed using an open cut, the bedding and pipe zone of the pipeline can be backfilled with material excavated for pipeline placement. Compact backfill to a minimum ninety-five percent (95%) of maximum dry density. For directional drilling, conform to the requirements for crossing the **DCAI**.

- (c) Geotechnical calculations – Prepare and submit calculations to demonstrate that the **Natural Gas Transportation Infrastructure** has adequate strength, flexibility, and slack to withstand the expected loading, rebound, and settlement beneath levees and other fills and that the selected depth accounts for rebound and settlement. The **Utility** shall base the geotechnical calculations on the **DCAI** cross section at Station 645+00+/- as shown in Exhibit 1. The right and left **EMBs** shall be compacted to ninety-five percent (95%) of maximum dry density as determined by the standard proctor.
- (d) Design requirement – Design and construct the **Natural Gas Transportation Infrastructure** crossing the **IDF Line of Protection** in accordance with the following **USACE** publications. In the case of a conflict with stated requirements, design and construct in accordance with the more stringent requirement, unless otherwise agreed to by the Parties hereto.
 - (1) *Engineer Manual, EM 1110-2-1913, "Design and Construction of Levees"*
- (e) Manual Isolation Valves – Install manual isolation valves for emergency closure that are consistent with the **Utility**'s safety requirements in a location accessible by the **Utility** to the west of the **Project Site** and to the east of the **Project Site** as identified on Exhibit 2 attached hereto. Manual isolation valves may be placed outside of the **Project Site**. Provide security and protective features as required by the **Utility**.
- (f) Casing for utilities – Casing is not required for the **Utility**'s crossings.
- (g) Grouting – Where horizontal directional drilling is used to cross the **DCAI** and **IDF Line of Protection**, grout the annular space between the borehole and the casing or pipe with cementitious grout for fifty (50) linear feet from the end of the pipe at the entrance and exit pits. Inject grout into the annular space at multiple points around the circumference of the pipeline throughout this 50-foot length. Install baskets or other techniques on the pipeline just beyond the 50-foot length to prevent the grout from flowing more deeply into the hole, but completely fill the annular space between the basket and the ground surface. Limit grout pressure to the mud pressure used for the directional drill.
- (h) Crossing identification – Install permanent utility markers in adequate quantity to clearly identify the existence and location of the **Utility**'s pipeline facilities. If requested by the **Metro Flood Diversion Authority**, additional markers will be

installed in advance of channel construction. Use 4" x 8' wooden posts with aluminum warning signs with **Utility** name and phone number, or color coded 4" x 72" fiberglass markers with **Utility** name and phone number. In addition, install warning signs on each isolation valve or other buried appurtenance within the **Project Site**.

Section 5.03 PROPOSALS AND PLANS. The **Utility** has submitted a **Final Design Submittal** and a **Construction Documents Submittal** as detailed in Exhibit 2. The **Metro Flood Diversion Authority** has reviewed Exhibit 2 and provided approval of this Exhibit on March 28, 2018.

(a) The **Metro Flood Diversion Authority**'s review of submittals shall be restricted to a determination of whether the submittal complies with the specifications and requirements set forth in this **Agreement**.

(b) The **Metro Flood Diversion Authority** shall complete a full review and provide comments on submittals within twenty (20) **Business Days** of the date on which the **Metro Flood Diversion Authority** receives a full and complete submittal. The **Utility** shall notify the **Metro Flood Diversion Authority** when it believes a submission is full and complete. Should the **Metro Flood Diversion Authority** determine that a submittal is not in compliance with the terms and specifications provided in this **Agreement**, and the **Utility** resubmits a previously submitted submittal, the **Metro Flood Diversion Authority** shall review the submittal and respond within ten (10) **Business Days**. The **Metro Flood Diversion Authority**'s review of the re-submittal shall be limited to the portions of the initial submittal deemed insufficient as well as any other portions of the submittal which have been amended or added since the initial submission.

(c) Concurrence by the **Metro Flood Diversion Authority** of any **Final Design Approval** or **Construction Documents Submittal** will only mean the plans and specifications meet the subjective standards of the **Metro Flood Diversion Authority**, and concurrence by the **Metro Flood Diversion Authority** will not be deemed to mean that the plans and specifications or construction will be structurally sound and appropriate or that the plans and specifications meet applicable regulations, laws, statutes, or local ordinances.

Section 5.04 REQUIREMENT OF CONCURRENCE. No **Work** shall begin on the **Utility Location Project** to the extent the **Work** is within the **Project Site** until the **Metro Flood Diversion Authority** concurs with the proposals, plans, and timelines required by Section 5.03 hereof.

Section 5.05 CONCURRENCE WITHHELD. Where concurrence is withheld, the **Utility** shall prepare and submit to the **Metro Flood Diversion Authority** a new and complete set of specific plans for the **Work** for which concurrence was withheld no later than thirty (30) days following receipt of the written notice.

Section 5.06 OTHER APPROVALS. Prior to the initiation of **Work** on the **Utility Location Project**, the **Utility** shall provide documentation that it has applied for and obtained all

Other Approvals necessary for the **Utility Location Project**. The **Utility** shall abide by these approvals, as required, throughout the completion of the **Work**.

Section 5.07 INITIATION OF WORK. The **Utility** shall deliver **Released for Construction Documents** to the **Metro Flood Diversion Authority** for the **Utility Location Project** once the **Metro Flood Diversion Authority** has reviewed and concurred with the **Construction Documents Submittal**. Along with the **Released for Construction Documents**, the **Utility** shall provide written confirmation of compliance with the following requirements to the **Metro Flood Diversion Authority**:

- (a) Review comments are incorporated and comment responses are resolved, responded to, and documented.
- (b) No **Design Exceptions** or deviations from this **Agreement** exist that have not been accepted by the **Metro Flood Diversion Authority**.
- (c) **Construction Documents Submittal** complies with this **Agreement**.

Section 5.08 ADJUSTMENTS TO THE DCAI. Should the planned route of the **DCAI** change prior to January 31, 2018, the **Utility** and **Metro Flood Diversion Authority** shall immediately interface to adjust plans for the **Utility Location Project** as necessary.

Section 5.09 ADJUSTMENT TO THE UTILITY ADJUSTMENT WORK. Any changes or modifications to the **Released for Construction Documents** during construction that materially affect the performance or construction of the **Work** will be subject to written approval by the **Metro Flood Diversion Authority**. The **Utility** will submit the proposed changes or modifications to the **Metro Flood Diversion Authority**. The **Metro Flood Diversion Authority** will provide approval or a written explanation of its specific objections to the changes or modifications within twenty (20) **Business Days** of receipt of the proposed changes or modifications by the **Utility**

Section 5.10 INSPECTION. The **Utility** shall be responsible for inspection of all **Work**; however, the **Metro Flood Diversion Authority** shall also have the right to inspect any **Work** on the **Utility Location Project** that is located within the **Project Site** or any **Work** on the **Utility Location Project** that is located outside of the **Project Site** to the extent inspection is necessary to confirm conformance with the technical requirements provided in Section 5.02.

Section 5.11 SUBSTANTIAL COMPLETION. The **Utility** will provide the **Metro Flood Diversion Authority** with written notice of the anticipated **Substantial Completion** at least sixty (60) calendar days and fifteen (15) **Business Days** prior to the anticipated date for **Substantial Completion**. Within ten (10) **Business Days** of the anticipated date for **Substantial Completion**, the **Utility** and the **Metro Flood Diversion Authority** will conduct a final inspection of the **Work** to determine whether the **Work** meets the **Released for Construction Documents** and any material changes or modifications made per Section 5.08. If the **Metro Flood Diversion Authority** finds the construction is not in conformance with the **Released for Construction Documents** or any approved material changes or modifications, the **Metro Flood**

Diversion Authority will notify the **Utility** of such fact and the **Utility** will correct such nonconformance in the construction work and re-notify for inspection.

Section 5.12 RECORD DRAWINGS DELIVERABLE.

(a) The **Utility** shall cooperate with the **Authority** in the development of Record Drawings Deliverable for the **Utility Location Project**.

(b) The **Utility** shall submit GPS coordinates and pipe depths at approximately fifty (50) yard intervals along the alignment of the **Utility Location Project** to the extent the **Utility Location Project** is within the **Project Site**.

**ARTICLE VI.
PAYMENT OF COSTS**

Section 6.01 RESPONSIBILITY. The **Utility** shall be responsible for all costs of the **Utility Location Project**. This Section shall not be construed to apply to costs incurred to relocate the **Utility** facilities in the event relocation is necessitated by a change in the **Project Site**, occurring after completion of the **Utility Location Project**.

**ARTICLE VII.
THIRD-PARTY BENEFICIARIES**

Section 7.01 P3 DEVELOPER. The **Metro Flood Diversion Authority** and **Utility** specifically agree, acknowledge, and covenant that the **P3 Developer** selected to build the **DCAI** under the **Project Agreement** is an intended third-party beneficiary and may enforce the terms and conditions of this **Agreement**, including, but not limited to, securing a court judgment against the **Utility** to perform its obligations under this **Agreement**. Should the **Utility** fall into breach or default of this **Agreement**, the **Utility** shall indemnify and hold the **P3 Developer** and **Metro Flood Diversion Authority** harmless for any liability either party incurs as a result of such breach or default. In addition to the foregoing, the **P3 Developer** shall have all other rights available to it at law or in equity, and all of the rights and remedies provided hereunder are deemed cumulative and not exclusive of any right or remedies. Any and all rights, responsibilities, and obligations that this **Agreement** assigns to the **Metro Flood Diversion Authority** may be assigned to the **P3 Developer**, at the sole discretion of the **Metro Flood Diversion Authority**.

**ARTICLE VIII.
FUTURE RIGHTS AND RESPONSIBILITIES**

Section 8.01 Diversion Project. The parties agree and recognize that the **Project Site** is a public facility, and that the **Metro Flood Diversion Authority**'s use of the **Pipeline Easement Property** for purposes of proper reasonable construction, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of the **Project Site** takes priority over the **Utility**'s use of the **Pipeline Easement Property**. The **Metro Flood Diversion Authority** will take reasonable care to avoid any damages to the **Utility**'s pipeline and related

structures; however, the **Metro Flood Diversion Authority** will not be liable or responsible for any damages to the pipeline or related structures, or to any of the Utility's authorized fixtures, equipment, or other personal property, resulting from any reasonable construction, inspection, reconstruction, modification, operation, maintenance, repair or improvement of the Project Site by the **Metro Flood Diversion Authority**, and its officers, agents, representatives, employees, or contractors. In the event the **Utility's** pipeline and associated infrastructure malfunctions, destructs, or otherwise causes ongoing damage to the **Project Site** or associated infrastructure, the **Metro Flood Diversion Authority** may take reasonable action to stop ongoing damage and shall notify the **Utility** of such reasonable action in a timely manner.

Should the **Metro Flood Diversion Authority** have a license, construction easement, access easement, or other right of way on land other than the **Pipeline Easement Property** ("Diversion Easement Property") for purposes of constructing the **Project Site**, the **Utility** will not interfere with any **Project Site** construction activities that may occur on the **Diversion Easement Property**. Any license, construction easement, access easement, or other right of way conveyed to the **Metro Flood Diversion Authority** within the **Project Site** will take priority over any license, easement, or right of way conveyed to the **Utility** on such property. Before accessing the **Pipeline Easement Property** within the **Project Site** for the installation, construction, maintenance, repair, replacement, or removal of the pipeline, the Utility will first coordinate with and receive approval from the **Metro Flood Diversion Authority** to ensure that the **Utility's** activities do not interfere with the activities of the **Metro Flood Diversion Authority**, and/or the **P3 Developer**.

The **Utility** understands that the **Project Site** is currently in the planning phase, and the **Project Site** footprint and other currently proposed construction plans are subject to change, which may require the **Utility's** pipeline to be relocated or re-installed at a greater depth or an alternative location for purposes related directly or indirectly to **Project Site** construction, maintenance, or operation. In the event a re-design of the **Project Site** prior to or during construction of the **Project Site** requires the **Utility's** pipeline and associated facilities to be relocated, the **Metro Flood Diversion Authority** agrees to bear all costs associated with relocating the **Utility's** pipeline and associated facilities. For all other issues which occur following construction of the **Project Site**, making relocation or reinstallation necessary for purposes of constructing, cleaning, inspecting, reconstructing, modifying, operating, maintaining, repairing, improving the **Project Site** or for any other reason, the **Utility** agrees to relocate and/or reinstall its pipeline at a greater depth or at a mutually agreeable alternative location determined by the **Metro Flood Diversion Authority**, if requested to do so, at the **Utility's** own cost.

Section 8.02 EASEMENT INSIDE THE PROJECT SITE. The **Metro Flood Diversion Authority** shall grant the **Utility** an easement at a mutually agreed upon value for the **Utility Location Project** crossings within the **Project Site**. The easement granted shall have the following restrictions:

The **Utility** will be responsible for all maintenance, repair, and replacement of any of **Utility's** property, including, but not limited to, the pipeline and associated infrastructure, which

is located on the **Pipeline Easement Property**. Except in cases of emergency, the **Utility** shall provide the **Metro Flood Diversion Authority** with at least five (5) days' written notice of any maintenance, repair, or replacement which causes ground disturbance which it intends to do on the **Pipeline Easement Property** outside of the **Project Site**. Notwithstanding the above notice requirement, in the event the pipeline and associated infrastructure, or any of the **Utility's** other property located on the **Pipeline Easement Property**, malfunctions, destructs, or otherwise begins to cause ongoing damage to the **Project Site**, the **Utility** shall take immediate action to stop ongoing damage to the **Project Site**, and shall immediately notify the **Metro Flood Diversion Authority** of such action.

The **Utility** will be responsible for timely inspection of the natural gas pipeline and associated infrastructure; however, the **Metro Flood Diversion Authority** shall have the right to inspect the **Pipeline Easement Property** and associated infrastructure from time to time, to ensure that any maintenance, repair, or replacement activity does not interfere with the **Metro Flood Diversion Authority's** use of the **Pipeline Easement Property** for purposes of constructing, maintaining, or operating the **Project Site**. The **Utility** shall have the right to have representatives present for any inspection by the **Metro Flood Diversion Authority**, at the **Utility's** option.

The **Utility** will be solely responsible for any damages to the **Pipeline Easement Property**, the **Project Site** and associated infrastructure, or other adjacent property owned by the **Metro Flood Diversion Authority** that are a result of any maintenance, repair, or replacing of the natural gas pipeline or any improvements, fixtures, equipment, or other personal property on the Pipeline Easement, or otherwise as a result of the **Utility's** entry upon or use of the **Pipeline Easement Property**.

In the event the **Utility** ceases to use the **Pipeline Easement Property** for the purpose stated herein for a period of five (5) consecutive years, the **Utility** shall, within a reasonable period of time, release the Easement or file for abandonment with the appropriate regulatory body, as applicable. The **Utility** shall, within twelve (12) months from the release of the Pipeline Easement or receipt of regulatory abandonment approval, as applicable, either remove or abandon the pipeline in place. The **Metro Flood Diversion Authority** shall also have the right to request, during the twelve (12) month period, that the **Utility** turn over full ownership of the pipeline to **Metro Flood Diversion Authority**. Upon final abandonment of said pipeline, the **Utility** shall comply with any rule or regulation concerning the condition the pipeline must be left in if it is abandoned, and shall remain responsible for any hazardous or dangerous condition resulting from the pipeline if it is abandoned in the ground and left in place.

Section 8.03 USE OF EXISTING EASEMENT. In the event **Natural Gas Transportation Infrastructure** is relocated within the **Utility's** currently existing easement, the **Utility** shall be bound by the requirements and obligations contained in Section 8.01. The requirements of this Section shall survive so long as the **Utility** has **Natural Gas Transportation Infrastructure** located within the **Project Site**.

Section 8.04 EASEMENT OUTSIDE THE PROJECT FOOTPRINT. If the **Metro Flood Diversion Authority** owns property outside of the **Project Site** in fee and the **Utility** needs an easement over, across, or under the property, the **Metro Flood Diversion Authority** shall grant the **Utility** an easement in the form of the easement template attached hereto as Exhibit 3 at a mutually agreed upon price.

Section 8.05 RECORD KEEPING. The **Utility** shall maintain or cause to be maintained (by way of contract and enforcement of such contract) a complete set of records detailing all costs it incurs in the **Utility Relocation Project**, in accordance with the recordkeeping and audit requirements of this **Agreement** and the laws of the **State**.

Section 8.06 FUTURE PERMITS. Should the **Utility** file a formal permit application pertaining to the **Utility** line relocated pursuant to this **Agreement** with the **Metro Flood Diversion Authority** after the **Effective Date**, the **Metro Flood Diversion Authority** shall grant, at no cost to the **Utility**, the permit application so long as the permit application meets all reasonable requirements listed in the instructions to said permit application and the proposed crossing would not unreasonably risk harm to the **DCAI** or interfere with other facilities already contained within the **Project Site**, as determined by the **Metro Flood Diversion Authority**. Should the **Utility** desire to modify an existing **Utility** line, the **Metro Flood Diversion Authority**, in its sole discretion shall determine whether the modification is allowable under a previously existing permit or whether the modification is significant enough in its nature or effect to require the **Utility** to apply for a new permit.

ARTICLE IX. **DISPUTES WITH CONTRACTORS AND OTHER THIRD PARTIES**

Section 9.01 COORDINATION. The Parties shall coordinate with respect to any dispute with third parties. Such coordination shall include any potential or ongoing litigation, and each Party shall bear its own fees and costs in connection therewith.

ARTICLE X. **DISPUTES BETWEEN THE UTILITY AND METRO FLOOD DIVERSION AUTHORITY**

Section 10.01 INTENT AND PROCEDURE. The **Utility** and the **Metro Flood Diversion Authority** shall cooperate and use their **Best Efforts** to ensure that the provisions of this **Agreement** are fulfilled. The **Parties** agree to act in **Good Faith** to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this **Agreement**. If disputes cannot be resolved informally by the **Parties** or under other, situation-specific dispute resolution mechanisms contained herein, the following procedures shall be used.

Section 10.02 MEDIATION. If there is a failure between the **Parties** to resolve a dispute on their own, the **Parties** shall first attempt to mediate the dispute. The **Parties** shall agree upon a single mediator, or if they cannot agree, shall each contribute three (3) names to a list of mediators and select a mediator by alternately striking names until one (1) remains. The **Metro**

Flood Diversion Authority shall strike the first name, followed by the **Utility**, until one (1) name remains.

Section 10.03 LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within forty-five (45) days after the selection of the mediator pursuant to Section 10.02, the **Parties** may litigate the matter.

Section 10.04 LEGAL FEES. Each **Party** will be responsible for its own attorney's fees in connection with a dispute under this Article.

Section 10.05 WAIVER OF JURY TRIAL. THE **PARTIES** HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS **AGREEMENT** OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS **AGREEMENT**, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY **PARTY** HERETO RELATING TO THIS **AGREEMENT**. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL **PARTIES** ENTERING INTO THIS **AGREEMENT**. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE **UTILITY** AND **METRO FLOOD DIVERSION AUTHORITY** 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.

ARTICLE XI. **USE OF EMINENT DOMAIN**

Section 11.01 EMINENT DOMAIN. Nothing in this **Agreement** shall be construed as limiting the **Metro Flood Diversion Authority**'s or the **Utility**'s ability to exercise its powers of eminent domain.

ARTICLE XII. **MISCELLANEOUS**

Section 12.01 NOTICE. All notices under the **Agreement** will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses:

(a) All notices to the **Metro Flood Diversion Authority**, including **Project** correspondence, submittals, and samples, will be marked as regarding the **Project** and will be delivered to the following address or as otherwise directed by the **Metro Flood Diversion Authority**'s authorized representative:

64 4th Street North, Suite 300
Fargo, North Dakota 58102

and

Box 2806
211 Ninth Street South
Fargo, North Dakota 58102

(b) All notices to the **Utility** will be marked as regarding the **Project** and will be delivered to the following address or as otherwise directed by the **Utility's** authorized representative:

WBI Energy Transmission, Inc.
Attn: VP of Operations
1250 W. Century Ave.
Bismarck, ND 58503

(c) Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central Time and all other notices received after 5:00 p.m. Central Time will be deemed received on the first **Business Day** following delivery.

Section 12.02 WORKERS' COMPENSATION. Each **Party** shall be responsible for injuries or deaths of its own personnel. Each **Party** will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are providing assistance pursuant to this **Agreement**. Notwithstanding any other provision of this **Agreement**, each **Party** waives the right to pursue a legal action against one of the other **Parties** for any workers' compensation benefits paid to its own employee or volunteer or their dependents, even if the injuries are caused wholly or partially by the negligence of any other **Party** or its officers, employees, or volunteers.

Section 12.03 INSURANCE. The **Utility** will, during the term of this **Agreement**, at its own expense, purchase or self-insure and maintain Commercial General Liability Insurance and Automobile Liability (any auto) Insurance on the **Pipeline Easement Property**, and Property Insurance for the natural gas pipeline, fixtures, equipment, and associated infrastructure, and all other items of personal property located on or within the **Pipeline Easement Property**, by insurance companies authorized to do business in North Dakota, with a policy or policies which will include coverage for bodily injury, property damage, personal injury, and advertising injury, with a combined policy limit of at least \$2,000,000 per occurrence and \$3,000,000 aggregate. The policies will name the **Utility** as the insured, and will name the **Metro Flood Diversion Authority** and **CCJWRD** as an additionally insured parties. Upon the execution of the **Project Agreement**, the **Utility** will also name the selected **P3 Developer** as an additional insured until the expiration of the Project Agreement. The policies must contain, where allowed by law, a "waiver of subrogation," waiving any right to recovery an insurance company might have against

the **Metro Flood Diversion Authority**, and, if applicable, the **P3 Developer**. The policies must contain a provision that the policies and any endorsements may not be cancelled or modified, insomuch as it affects coverage required herein, without thirty (30) days' prior written notice to each of the additionally insured parties. Within five (5) days of the execution of this **Agreement**, the **Utility** will deliver to the **Metro Flood Diversion Authority** certificates of insurance and endorsements certifying that the insurance required under this **Agreement** is in full force and effect. The **Utility** will release, defend, indemnify, protect, and hold harmless the **Metro Flood Diversion Authority**, **CCJWRD**, and the **P3 Developer**, as well as the officers, agents, representatives, employees, or contractors of the **Metro Flood Diversion Authority**, **CCJWRD**, and **P3 Developer**, in excess of the minimum insurance requirements set forth above. The receipt by the **Metro Flood Diversion Authority**, **CCJWRD**, and, if applicable, the **P3 Developer** of any policies and endorsements required under this **Agreement** does not in any way affect the **Utility's** duties and obligations to maintain the insurance required under this **Agreement**. The **Utility** must ensure that any of the **Utility's** contractors, subcontractors, and material suppliers purchase and maintain the same insurance with the same conditions and terms required of the **Utility** under this **Agreement**.

Section 12.04 INDEMNIFICATION. The **Utility** agrees to release, defend, indemnify, protect, and hold harmless the **Metro Flood Diversion Authority** and its member entities, and the **P3 Developer**, and the successors and assigns, as well as the officers, agents, representatives, employees, consultants, and contractors of the **Metro Flood Diversion Authority** and its member entities, and the **P3 Developer**, from and against any and all liability arising from claims, suits, actions, administrative proceedings, costs (including reimbursement for reasonable attorneys' fees and costs of investigation), expenses, damages, losses, fines, interest, penalties, assessments, judgments, demands, causes of action and litigation/arbitration of any kind or character (individually, a "Claim" and collectively, "Claims"), together with all other costs and expenses of any kind or nature suffered by or asserted as a result of, arising out of, or are in any way connected with the use of or entry upon the **Pipeline Easement Property** by the **Utility** or by any of the **Utility's** agents, contractors, subcontractors, material suppliers, members, guests, or invitees; **Utility's** activities, omissions, or work on or about the **Pipeline Easement Property**; the activities, omissions, or work of any of **Utility's** agents, contractors, subcontractors, material suppliers, members, guests, or invitees on or about the **Pipeline Easement Property**; or as a result of **Utility's** performance or failure to perform under this **Agreement**, that may be imposed on, incurred by or asserted by a third party against the **Metro Flood Diversion Authority** and its member entities, and/or the **P3 Developer**, and including any costs, expenses, and attorneys' fees incurred in establishing the indemnification provided in this **Agreement**. The liability assumed by the **Utility** will not be affected the fact, if it is a fact, that any destruction, damage, death, injury, or Claim was occasioned by or contributed to by the negligence of the **Metro Flood Diversion Authority** and its member entities, or the **P3 Developer**, or the officers, agents, representatives, employees, consultants, and contractors of the **Metro Flood Diversion Authority** and its member entities, and the **P3 Developer**. The **Utility** may not settle any indemnified Claim unless such settlement includes a release of the **Metro Flood Diversion Authority**, its member entities, and the **P3 Developer**.

Section 12.05 RELATIONSHIPS CREATED. The **Parties** agree this **Agreement** does not create any agency, partnership, joint venture, or any other relationship between the **Parties** and that **Utility** is solely responsible for its own actions or omissions.

Section 12.06 GOVERNING LAW. This **Agreement** shall be controlled by the laws of the State of North Dakota. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this **Agreement** shall be venued in Cass County in the State of North Dakota, and the **Parties** waive any objection to personal jurisdiction.

Section 12.07 SEVERABILITY. Each provision, section, sentence, clause, phrase, and word of this **Agreement** is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this **Agreement**.

Section 12.08 MODIFICATIONS. Any modifications or amendments to this **Agreement** must be in writing and signed by both **Parties** to this **Agreement**.

Section 12.09 BINDING EFFECT. This **Agreement** shall be binding upon and inure to the benefit of the **Parties** hereto and their respective personal representatives, successors, and assigns.

Section 12.10 REPRESENTATION. The **Parties**, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this **Agreement**, and agree they have not been influenced by any representations or statements made by any other **Parties**.

Section 12.11 HEADINGS. Headings in this **Agreement** are for convenience only and will not be used to interpret or construe its provisions.

Section 12.12 COUNTERPARTS. This **Agreement** may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the **Parties** and delivered to the other **Party**.

Section 12.13 REPRESENTATION OF AUTHORITY. Each party signing this **Agreement** represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this **Agreement** and that the **Agreement** is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

Section 12.14 TERMINATION. This **Agreement** may be terminated by the **Metro Flood Diversion Authority**; provided, however, that to the extent an easement is granted by the **Metro Flood Diversion Authority** to the **Utility** hereunder, such easement shall continue and shall not terminate with this **Agreement**.

(Signatures appear on the following pages.)

IN WITNESS WHEREOF, the Parties executed this Agreement on the date first written above.

METRO FLOOD DIVERSION AUTHORITY

BY: _____
Timothy J. Mahoney, Chair

BY: _____
Michael J. Redlinger, Co-Deputy Executive
Director

BY: _____
Robert W. Wilson, Co-Deputy Executive
Director

BY: _____
Heather Worden, Secretary

WBI ENERGY TRANSMISSION, INC.

BY:

Jeffrey J. Rust
Vice President – Operations

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Related to:

**THE
FARGO-MOORHEAD AREA DIVERSION PROJECT**

BY AND BETWEEN

**METRO FLOOD DIVERSION AUTHORITY
as Diversion Authority**

and

**AECOM TECHNICAL SERVICES, INC.
as AECOM**

Dated as of March 15, 2018

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

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EXHIBIT A – GENERAL SCOPE OF SERVICES

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES (the “Agreement”) is made as of March 15, 2018 (the “Effective Date”), by and between the Metro Flood Diversion Authority (“Diversion Authority”) and AECOM Technical Services, Inc. (“AECOM”) (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 AECOM to provide the Diversion Authority with professional services, subject to the oversight of the Co-Executive Directors, Executive Director, and the Diversion Authority Board; and

WHEREAS, the Diversion Authority desires to enter into a master agreement for professional services with AECOM and retain AECOM to provide professional services for the Fargo-Moorhead (FM) Area Diversion Project, commencing on March 15, 2018.

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

1. EMPLOYMENT. The Diversion Authority hires AECOM, which accepts the hiring with the Diversion Authority pursuant to this Agreement. AECOM 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 AECOM Technical Services, Inc.

“*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; and with respect to AECOM’s provision of the Services, means that AECOM will act in accordance with the Standard of Care set forth in Article 20

of this Agreement; 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.

“Buffalo-Red River Watershed District” means the Buffalo-Red River Watershed District, a political subdivision of the State of Minnesota.

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

“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.

“Chair” means the chair of the Diversion Authority Board as determined by the JPA.

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

“City of Moorhead” means the City of Moorhead, a Minnesota Home Rule City and political subdivision of the State of Minnesota.

“Clay County” means Clay County, a Minnesota County and political subdivision of the State of Minnesota.

“Construction Contract” means the entire and integrated written agreement between the Owner and Consultant concerning the Work.

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

“Contract Documents” means those items so designated in the Construction Contract, including drawings, specifications, construction agreement and general and supplementary conditions.

“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 March 15, 2018.

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

“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 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.

“Governmental Authority” means any court, federal, state, or local government, department, commission, board, bureau, agency, or other regulatory or governmental authority.

“Initial Agreement” means the agreement dated as of March 14, 2013, between the Diversion Authority Board and URS Corporation (“URS”).

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

“Key Personnel” means those individuals identified in Section 10 hereof.

“Laws and Regulations” means collectively, the Constitution of the United States and the applicable state, all common law and principles of equity, and all federal, state, and local laws including, without limitation, all environmental laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administration thereof by any Governmental Authority charged with the enforcement, interpretation, or administration thereof, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations and permits of, and agreements with, any Governmental Authority, and, with respect to any person, the articles of incorporation, bylaws, or other organizational or governing documents of such person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to (a) the Diversion Authority, (b) AECOM, or (c) the Services.

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

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

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

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

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

“Program Management Consultant” means CH2M HILL Engineers, Inc., its successors and assigns, which provides Program Management Consultant services to the Diversion Authority pursuant to the Master Agreement for Professional Services dated January 13, 2017.

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

“Project Site” means lands or areas indicated in the Contract Documents for a Specific Project as being identified by the Owner upon which the Service is to be performed.

“Services” means those services set forth in Section 5 hereof and Exhibit A attached hereto.

“Specific Project” means an undertaking of the Owner as set forth in a Task Order.

“Task Order” means a document executed by the Owner and Consultant, including amendments if any, stating the scope of Services, the Consultant’s compensation, times for performance of Services and other relevant information for a Specific Project. All Task Orders must be mutually agreed upon by the Owner and Consultant.

3. **AUTHORIZATION TO PROCEED.** Execution of this Agreement by the Diversion Authority will be authorization for AECOM to proceed with the Services mutually agreed to in a Task Order, unless otherwise provided for in this Agreement.
4. **PRIOR AGREEMENTS.** Any prior agreements between the Diversion Authority or its Member Entities and URS shall, upon execution of this Agreement, be terminated and have no further force and effect. Upon execution of this Agreement, the Initial Agreement shall terminate and have no further force and effect. URS remitted its final invoice #2000023492, dated February 21, 2018, pursuant to the Initial Agreement. Any Task Orders executed and completed per the Initial Agreement shall remain subject to the terms and conditions set forth in the Initial Agreement. Any Task Orders between the Diversion Authority or its Member Entities and URS entered into on or after the effective date of this Agreement shall be subject to the terms of this Agreement. Nothing herein shall affect the Initial Agreement or any Task Orders executed or issued under the Initial Agreement.

5. **SCOPE OF SERVICES.** The Diversion Authority has requested AECOM provide cultural resources investigations for the Project generally as set forth in the attached Exhibit A. AECOM's detailed scope of services, work schedule, and cost budget will be mutually agreed upon in writing and set forth in Task Orders issued by the Diversion Authority under this Agreement directly or through the Diversion Authority's designated Program Management Consultant. Each Task Order will specifically refer to and incorporate this Agreement by reference, and the provisions of this Agreement shall apply to all Task Orders entered into subsequent to the effective date of this Agreement. In general, AECOM's services will include services in support of the Project as mutually agreed upon between the Parties.
6. **CHANGES TO SCOPE OF SERVICES.** The Diversion Authority may make or approve changes within the general scope of Services in this Agreement. If such changes affect AECOM's cost of, risk, or time required for performance of the Services as set out in any applicable Task Order, then an equitable adjustment will be subject to mutual agreement and thereupon made through an amendment to the applicable Task Order or this Agreement.
7. **RESPONSIBILITY FOR ERRORS OR DELAYS FROM INACCURATE DATA.** AECOM and the Diversion Authority acknowledge that the reliability of AECOM's Services depends upon the accuracy and completeness of the data supplied to AECOM. The Diversion Authority accepts sole responsibility for errors or delays in Services resulting from inaccurate or incomplete data supplied to AECOM, and the Diversion Authority acknowledges and agrees that any additional Services thereby necessitated will result in additional fees payable by the Diversion Authority to AECOM. AECOM 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 AECOM's Services.
8. **TASK ORDERS.** AECOM shall receive assignments for Services under this Agreement through Task Orders authorized and provided by the Diversion Authority directly or through its designated Program Management Consultant. The Diversion Authority shall compensate AECOM only for work contained within the Task Orders. AECOM shall not be obligated to perform any work or services unless such services are set forth in an executed Task Order. If AECOM engages in work beyond the scope of a Task Order, the Diversion Authority shall not compensate AECOM for that work, unless agreed to in writing by the Diversion Authority. 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 AECOM will perform Services and provide deliverables within a reasonable time. AECOM is not responsible for any delays in execution of its Services or work due to the absence of an executed Task Order or amendment to a Task Order. All Task Orders must be mutually agreed upon by the Diversion Authority and AECOM.
9. **PERSONNEL.** All persons assigned by AECOM to perform services as set forth in Task Orders issued under this Agreement shall be fully qualified to perform the work assigned to them. AECOM 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 AECOM in any given Task Order.

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

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

Individual	Labor Classification	Billing Rate/Hour
Andreas, Jennie M	Health & Safety Specialist	\$82
Armbruster, Anjal N	Administrative Assistant 1	\$82
Bender, Marcia L	Archaeologist 3	\$113
Eiceman, Thomas L	Archaeologist 2	\$67
Fariello, Juston J	Field Technician 3	\$103
Gagnon, Patricia A	Project Accountant/Controller 2	\$82
Jacques, Phillip	GIS Specialist 2	\$103
Killam, David G	Archeologist 3	\$113
Killam, William R	Principal Level 3	\$273
McCarthy, Melinda M	Architect Historian 2	\$88
Molthen, Alexa	Environmental Scientist	\$67
Pelton, Jason P	Web/Database Level 3	\$165
Postiglione, Stuart A	Archaeologist 2	\$113
Powell-Rummel, Hilary	Archaeologist 3	\$113
Rehor, Jay	Geoarchaeologist 3	\$139
Rigley, Joseph F	GIS Specialist 2	\$108
Roberts, Robin M	Archaeologist 2	\$113
Rose, Kimberly D	Project Administrator 2	\$88
Sanchez, Randy J	Web/Database Developer	\$108
Shaw, Brittany A	Health & Safety Specialist 2	\$108
Torres, Aileen R	Administrative Assistant 2	\$93
Tucker, Gordon C	Project Manager 2	\$170
Waterworth, Laura J	Word Processor 3	\$98

AECOM shall use its Best Efforts to assure that Key Personnel are available to provide services to the Project and as points of contact for the Co-Executive Directors and general counsel of the Diversion Authority. In the event that any of the Key Personnel are not available for the Project, AECOM shall notify the Co-Executive Directors of the Diversion Authority within ten (10) calendar days of the Key Personnel's non-availability. AECOM 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, AECOM will propose new Key Personnel.

11. **SUBCONTRACTORS.** AECOM may enter into agreements with subcontractors in furtherance of their Services under this Agreement, as approved by the Co-Executive Directors, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, AECOM shall be entitled to subcontract its Services under this Agreement to AECOM's corporate affiliates without approval by the Co-Executive Directors.
12. **TERM.** Unless terminated under Section 38, this Agreement shall remain in full force and effect for a period of five (5) years from the Effective Date through March 15, 2023. Task Order No. 2 will be executed in conjunction with this Agreement and will expire on December 31, 2018. A general description of the tasks included in Task Order No. 2 is included in Exhibit A attached hereto. This Agreement shall take full force and effect on March 15, 2018, upon approval and execution by the Diversion Authority Board. Pursuant to Section 13 of this Agreement and upon expiration of the initial term of this Agreement, this contract may be renewed by mutual agreement of the Parties.
13. **EXTENSION OF TERM.** This Agreement may be extended by written amendment or renewed as set forth in Section 12 of this Agreement. If this Agreement expires before the completion of a Task Order, the Agreement shall be deemed to have been extended until the completion of services under the applicable Task Order.
14. **COMPENSATION.** For all services rendered by AECOM, the Diversion Authority will pay AECOM based on the time spent by those AECOM team members working on the Project and the hourly charging rates applicable to those AECOM team members, plus subcontracts with non AECOM-affiliated companies and outside services, plus a service charge of ten percent (10%) on subcontracts and outside services, plus applicable sales, use, value added, business transfer, gross receipts, or other similar taxes. Time will be tracked and billed in half (1/2) hour increments for each AECOM team member. AECOM's hourly rates for services rendered through December 31, 2018, are listed below. Beginning January 1, 2019, the hourly rates schedule and reimbursable expenses may be increased, but will not be increased by an amount exceeding three and one-half percent (3.5%) of the preceding year's rates, rounded to the nearest dollar. (For example, the 2019 rate of a health & safety specialist cannot exceed \$85.00 per hour). Additionally, AECOM's reimbursable expenses for services rendered through December 31, 2019, are listed below.

2018 Rates*			
Category	Hourly Rate	Category	Hourly Rate
Health & Safety Specialist	\$82	Environmental Scientist	\$67
Administrative Assistant 1	\$82	Web/Database Level 3	\$165
Archaeologist 3	\$113	Geoarchaeologist 3	\$139
Archaeologist 2	\$67	GIS Specialist 2	\$108
Field Technician 3	\$103	Project Administrator 2	\$88
Project Accountant/Controller 2	\$82	Web/Database Developer	\$108

GIS Specialist 2	\$103	Health & Safety Specialist 2	\$108
Principal Level 3	\$273	Administrative Assistant 2	\$93
Architect Historian 2	\$88	Project Manager 2	\$170
Word Processor 3	\$98		

*Nonexempt staff paid on an hourly rate will be charged at an overtime rate of 1.50 times their regular hourly rate for time in excess of eight (8) hours per workday, per weekend day, or per holiday.

2018 and 2019 Reimbursable Expenses	
Item Description	Unit/Fee \$
Mileage	Prevailing IRS Rate
Per Diem (including cell phones, digital camera, meals, lodging, and laptop)	Rate: GSA rate/day Meals: GSA rate
Supplies, materials, shipping, postage, equipment rental, and other miscellaneous expenses	Actual Cost
Subcontracted work	Actual Cost + 10%

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

The compensation is payable following the end of each month upon submission by AECOM of a monthly invoice setting forth the services performed in that month on behalf of the Diversion Authority. Invoices shall be sent as required in Section 15 of this Agreement. Invoices are due and payable within thirty (30) days of receipt. If a Task Order issued under this Agreement contains a not-to-exceed compensation amount, the Diversion Authority will only pay compensation to AECOM 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 6 of this Agreement.

- A. Budget. Budgetary amounts, excluding taxes, will be established for each Task Order executed under the Agreement. AECOM will make reasonable efforts to complete the work within the budget and will keep the Diversion Authority informed of progress toward that end so that the budget or work effort can be adjusted if found necessary. AECOM is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is the Diversion Authority obligated to pay AECOM beyond these limits. When any budget has been increased, AECOM's costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.
- B. Hourly Rates. Hourly rates are those hourly rates charged for Services performed on the Project by AECOM's employees of the indicated classifications. These rates include all

allowances for salaries, overhead, fees, and all expenses, but they do not include allowances for subcontracts or outside services allowed by this Agreement.

15. INVOICING AND PAYMENT.

- A. AECOM must submit invoices to the Diversion Authority on the fifteenth (15th) day of each month for all services provided and allowed expenses incurred during the preceding month. AECOM's Project Manager 2 (as identified in Section 10 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. AECOM must submit each original invoice to:

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

and

APIvoicesFMDiv@ch2m.com

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

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

- D. AECOM's invoice must be printed on a printed bill head and signed by the Project Manager 2 or other authorized signatory.

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

- F. After the Diversion Authority receives AECOM's invoice, the Diversion Authority will either process the invoice for payment or give AECOM 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 AECOM 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 AECOM.
- 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, AECOM must credit any payment in error from any payment that is due or that may become due to AECOM 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, AECOM 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, AECOM 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, AECOM must pay in the first instance all fees, fines, taxes, or other costs of doing business related to the Services.

16. **RELATIONSHIP BETWEEN PARTIES.** AECOM 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. AECOM shall be free to use such portion of AECOM's entire time, energy and skill during the course of this Agreement to meet its contractual obligation to the Diversion Authority. Neither AECOM, 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 AECOM, except for the payment of compensation specifically set forth in this Agreement, and shall not be responsible for the payment of any cost of living allowances, merit increases, medical insurance, employee's retirement, life or disability coverage, sick leave or holiday pay or vacation pay or any benefit of any kind not specifically set forth in this Agreement. Likewise, the Diversion Authority shall not be responsible for wage or salary withholding to the federal or any state government.

17. **REPRESENTATIONS.** AECOM represents that the following statements are true:

- A. AECOM 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. To AECOM's knowledge, the AECOM 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 AECOM 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 AECOM's other agreements.
- D. To AECOM's current knowledge, no suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect AECOM's ability to perform under this Agreement.
- E. AECOM is, to AECOM's current knowledge, 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, AECOM must not knowingly take any action, or omit to perform any act, that may result in a representation becoming untrue. AECOM must immediately notify the Diversion Authority if AECOM becomes aware that any representation and warranty becomes untrue.

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

- 18. **WORKING RELATIONSHIP.** AECOM's Project Manager 2 shall be the individual that will engage with the Diversion Authority Board and the Diversion Authority's Executive Director(s). AECOM shall work in close cooperation and coordinate with the Diversion Authority's Program Management Consultant.
- 19. **INDEPENDENT PROFESSIONAL JUDGMENT.** Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of Services by AECOM in accordance with the independent professional judgment of each of its employees. AECOM shall perform the Services rendered in accordance with accepted principals of its profession. AECOM personnel are subject to the rules and regulations of any and all licensing and professional organizations or associations to which those personnel may from time to time belong, and the laws and regulations in the locale of the services performed for the Project.
- 20. **STANDARD OF CARE.** The standard of care applicable to AECOM'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. AECOM will re-perform any Services not meeting this standard without additional compensation.

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

22. **AECOM'S PERSONNEL AT CONSTRUCTION SITE.**

- A. The presence or duties of AECOM's, or its subcontractor's or subconsultant's, personnel at a construction site, whether as onsite representatives or otherwise, do not make AECOM or AECOM's personnel, or AECOM'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. AECOM and AECOM'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 AECOM'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. AECOM 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, AECOM shall be responsible only for those construction phase Services that have been itemized and expressly required of AECOM in the authorizing Task Order. With the exception of such expressly required Services, AECOM 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. AECOM shall not be liable to the Diversion Authority for any construction phase professional services except for those Services that are expressly required of AECOM in the authorizing Task Order.

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

- A. AECOM 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, AECOM 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 AECOM'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.

24. CONSULTANT'S INSURANCE. AECOM shall maintain throughout this Agreement the following insurance:

- A. AECOM 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 AECOM's employees;
 - (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than AECOM'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 AECOM, 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 included 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 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 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 AECOM pursuant to this section will so provide);
- (4) Remain in effect at least until final payment and at all times thereafter when AECOM 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) AECOM will furnish the Diversion Authority and each other additional insured identified, to whom a certificate of insurance has been issued, evidence of continuation of such insurance at final payment and one (1) year thereafter.
- (6) Not limit in any way AECOM'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 AECOM'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 AECOM's insolvency or bankruptcy will not release the insurers from payment under the policies, even when AECOM's insolvency or bankruptcy prevents AECOM 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 AECOM's policies providing additional insured status 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 AECOM's insurance and will not contribute with it (except for Workers' Compensation, Employer's Liability, and Professional Liability Policies).
- C. The limits of liability for the insurance required by this Section will provide coverage for 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) AECOM'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 AECOM:

(a) General Aggregate:	\$5,000,000
(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 (total limits may be satisfied by any combination of primary and excess limits): | |
| i. General Aggregate: | \$5,000,000 |
| ii. Each Occurrence: | \$5,000,000 |
|
 | |
| (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 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 AECOM'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 AECOM is domiciled outside of the State of North Dakota, AECOM will purchase and maintain employer's liability or "stop gap" insurance of \$1,000,000 as an endorsement on AECOM's Workers' Compensation and General Liability Policies. | |
|
 | |
| D. AECOM will ensure that any of its subcontractors or subconsultants secure and maintain insurance policies and endorsements required of AECOM and the Diversion Authority in limits 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, AECOM 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 AECOM begins performing Services, AECOM must send the Diversion Authority certificates of insurance and any applicable endorsements attesting to the existence of coverage. AECOM will not allow its policies to be cancelled, lapse, and/or terminate or be amended to reduce coverage below the amounts called for in this Agreement without thirty (30) days' notice to the Diversion Authority. The certificates of insurance issued to confirm AECOM'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 AECOM 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 AECOM's employees during the terms of this Agreement.
25. **THIRD PARTIES**. The Diversion Authority and AECOM acknowledge and agree that some of the cultural resources investigations for the Project may be separately engaged by the Diversion Authority through retention of separate professionals. Notwithstanding any provision to the contrary, AECOM shall have no responsibility for the accuracy or sufficiency of the services provided by such individuals. AECOM 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, AECOM shall be entitled to an equitable adjustment.
26. **OPEN RECORDS**. AECOM 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.
27. **DATA FURNISHED BY THE DIVERSION AUTHORITY**. The Diversion Authority will provide to AECOM all data in the Diversion Authority's possession relating to AECOM's Services on the Project. AECOM may reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the Diversion Authority.
28. **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 permits and licenses required by local, state, or federal authorities and land, easements, rights-of-way, and access necessary for AECOM's Services or Project construction.
29. **TIMELY REVIEW**. The Diversion Authority will examine AECOM'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.
30. **PROMPT NOTICE**. The Diversion Authority will give prompt written notice to AECOM whenever the Diversion Authority observes or becomes aware of any development that affects

the scope or timing of AECOM's Services, or of any suspected or actual defect in the work of AECOM or its subcontractors.

31. **ASBESTOS OR HAZARDOUS SUBSTANCES.** If asbestos or hazardous substances in any form are encountered or suspected, AECOM will stop its own work in the affected portions of the Project to permit testing and evaluation. If asbestos is suspected, AECOM will, if requested and mutually agreed upon via separate Task Order, 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, AECOM will, if requested and mutually agreed upon via separate Task Order, 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 AECOM assumes no risk and/or liability for a waste or hazardous waste site originated by other than AECOM. Under no circumstances shall AECOM 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.

32. **CONTRACTOR INDEMNIFICATION AND CLAIMS.**

- A. The Diversion Authority agrees to include in all construction contracts the provisions of Section 22, AECOM's Personnel at Construction Site, and provisions providing contractor indemnification of the Diversion Authority and AECOM for contractor's negligence.
- B. The Diversion Authority shall require construction contractor(s) to name the Diversion Authority, the State of North Dakota, AECOM, 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 AECOM, AECOM'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 AECOM."

33. **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 AECOM, AECOM's officers, employees, affiliates, and subcontractors.
- C. The Diversion Authority is not responsible for the payment of deductibles owed under AECOM's insurance policies.

D. The Diversion Authority reserves the right to enter into a program-wide insurance plan at its expense. AECOM agrees to participate in such a program if named as an insured party and if commercially reasonable terms are available.

34. **LITIGATION ASSISTANCE**. Services required or requested of AECOM 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.

35. **INDEMNIFICATION**. AECOM 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 AECOM, 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 AECOM's obligations to defend, indemnify, and hold harmless. URS's obligations to defend will be free of any conflicts of interest, even if retention of separate legal counsel is necessary. AECOM'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 AECOM's insurance policy limits. AECOM'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 AECOM 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 AECOM.

36. **LIMITATION OF LIABILITY**. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability for each Task Order, in the aggregate, of AECOM and AECOM's officers, directors, members, partners, agents, guarantors, consultants, subconsultants, subcontractors, and employees, to Diversion Authority, its members and the State of North Dakota, and anyone else claiming by, through, or resulting from, or in any way related to the Project or Task Order, from any negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of AECOM or AECOM's officers, directors, members, partners, agents, consultants, subconsultants, subcontractors or employees shall be based upon the compensation received pursuant to such Task Order in accordance with the following schedule:

A. If the compensation received under the Task Order is greater than \$0 but equal to or less than \$50,000, then the total liability for such Task Order is \$100,000;

- B. If the compensation received under the Task Order is greater than \$50,000 but equal to or less than \$250,000, then the total liability for such Task Order is \$500,000;
- C. If the compensation received under the Task Order is greater than \$250,000 but equal to or less than \$500,000, then the total liability for such Task Order is \$1,000,000; and
- D. If the compensation received under the Task Order is greater than \$500,000, then the total liability for such task order is \$5,000,000.

Each Task Order shall contain a total liability section, identifying the level of total liability based upon the estimated compensation that will be paid under the Task Order. Nonetheless, however, AECOM's actual total liability for each Task Order will be based upon the compensation received by AECOM under the Task Order and will be determined upon final payment. Accordingly, in the event, (i) the actual compensation received by AECOM is greater than the estimated amount originally included in the Task Order and (ii) that increase in compensation results in a higher tier of the total liability schedule to apply, then the higher tier of the total liability schedule shall apply.

This Section 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 AECOM'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 AECOM'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 AECOM and not against any of AECOM individual employees, officers, shareholders, affiliated firms or directors. Diversion Authority knowingly waives all such claims against AECOM's individual employees, officers, shareholders, directors in their individual capacity or any affiliated companies to AECOM.

37. 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 receipt of written notice (or within a longer period if specified in the notice).
- B. AECOM must give the Diversion Authority notice promptly upon learning of any AECOM 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.

38. **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 limit AECOM's services, and proportionately, AECOM's compensation, if:

- (1) The Diversion Authority determines that having AECOM provide Services has become infeasible due to changes in applicable laws or regulations, or
- (2) Expected or actual funding to compensate AECOM 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, AECOM 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 AECOM 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, AECOM 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 AECOM for Services other than those AECOM satisfactorily performed prior to the end date.
- (2) AECOM must submit AECOM's final invoice for payment within sixty (60) calendar days of the end date. The Diversion Authority will not pay any AECOM invoice received after this period.
- (3) AECOM 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, AECOM 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 AECOM's statutory or ethical duties. AECOM must notify the Diversion Authority of any further Services, prior to withdrawal or substitution, which AECOM 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.
 - 39. 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 AECOM's retention by the Diversion Authority.
 - 40. SUSPENSION, DELAY, OR INTERRUPTION OF WORK. The Diversion Authority may suspend, delay, or interrupt the Services of AECOM for the convenience of the Diversion Authority. In such event, AECOM's contract price and schedule shall be equitably adjusted.
 - 41. 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 AECOM:

Attn: Gordon C. Tucker, Jr.
AECOM
6200 S. Quebec Street
Greenwood Village, CO 80111

If to Diversion Authority:

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

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

42. **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.

43. **NO THIRD PARTY BENEFICIARIES.** This Agreement gives no rights or benefits to anyone other than the Diversion Authority and AECOM and has no third-party beneficiaries.
44. **CONSEQUENTIAL DAMAGES.** To the maximum extent permitted by law, AECOM and AECOM's affiliated corporations, officers, employees, and subcontractors shall not be liable for the Diversion Authority's special, indirect, or consequential damages, (including without limitation lost profits, loss of revenue, increased cost of construction, loss of use, or interruption of business), whether such damages arise out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action.
45. **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 AECOM is acting as a bailee and at no time assumes title to said items, substances, materials, or samples.
46. **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. AECOM's deliverables are for the Diversion Authority's or others' convenience. Any conclusions or information derived or obtained from these files will be at user's sole risk.
47. **ACCESS TO AECOM'S ACCOUNTING RECORDS AND AUDIT RIGHTS.**
 - A. AECOM must allow the Diversion Authority and its designees to review and audit AECOM's financial documents and records relating to this Agreement. AECOM will maintain accounting records, in accordance with generally accepted accounting principles. These records will be available to the Diversion Authority for a period of one (1) year after AECOM'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 AECOM a notice of audit results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to AECOM at the completion of an audit.
 - B. Within 180 calendar days after the date of the notice of audit results, AECOM 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, AECOM 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. AECOM 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 AECOM, AECOM 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 AECOM fails to repay the overpayment or reach an agreement with the Diversion Authority on a repayment schedule within the thirty (30) calendar day period, AECOM 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 AECOM 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. AECOM 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.
48. **OWNERSHIP**. Ownership of work product and inventions created by AECOM shall be as follows:
- A. **Pre-Existing Consultant Materials**. The Diversion Authority acknowledges and agrees that in the performance of the services, AECOM 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 AECOM 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, AECOM hereby grants to the Diversion Authority a non-exclusive, non-transferable, non-sublicensable, royalty-free license, fully assignable to the Diversion Authority's member entities (subject to their written assent to the non-transferability and non-sublicensability of the assigned license), 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, AECOM will utilize and develop customization, enhancements, improvements, modifications and adaptations of and to the Pre-Existing Consultant Materials (the "Derivative Consultant Materials"). AECOM 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, AECOM hereby grants

to the Diversion Authority a non-exclusive, non-transferable, non-sublicensable, royalty-free license, fully assignable to the Diversion Authority's Member Entities (subject to their written assent to the non-transferability and non-sublicensability of the assigned license), to utilize the Derivative Consultant Materials.

- C. New Consultant Materials. The Diversion Authority acknowledges and agrees that specifically and exclusively in the performance of AECOM's Services, AECOM 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 AECOM 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 AECOM under the Agreement and assigned to the Diversion Authority under above Section 48.C of 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 AECOM, 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 AECOM 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 AECOM 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, AECOM 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. AECOM must maintain AECOM's records relating to Services under this Agreement and AECOM'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 AECOM receives final payment under this Agreement; or
- (2) The date when the Diversion Authority resolves with AECOM the findings of any final audit.

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

49. **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 AECOM made specifically and exclusively under this Agreement, 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, AECOM agrees to grant to the Diversion Authority an irrevocable license to the aforementioned instruments of service.

50. **CONFIDENTIAL INFORMATION AND PUBLICITY.**

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

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

B. Confidential information does not include any information that AECOM can demonstrate has been made available to the public (other than through a breach of this Agreement). As between AECOM and the Diversion Authority, the Diversion Authority owns the confidential information, and the Diversion Authority authorizes AECOM to use it only for purposes of performing this Agreement. AECOM may also disclose the Diversion Authority's confidential information to the extent necessary to comply with law, regulation, or court order or subpoena, provided AECOM gives the Diversion Authority prior written notice, to the extent permitted by the applicable law, regulation, order, or subpoena. Upon the end date of this Agreement, AECOM 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, AECOM may retain archival copies 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 or held electronically in archival or backup systems pursuant to company procedures.

- C. AECOM 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. AECOM 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.

51. **MODIFICATION**. This Agreement, including its attachments and schedules, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment approved by the Diversion Authority and executed by AECOM and the Chair of the Diversion Authority on behalf of the Diversion Authority. The following attachment is hereby made a part of this Agreement: (1) Exhibit A – General Scope of Services. It may be modified as to terms and conditions from time to time upon the mutual consent of the parties; however, such modification shall be reduced to writing, signed by the parties and the document appended to and made a part of this Agreement.

52. **FORCE MAJEURE**. AECOM is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of AECOM. In any such event, AECOM's contract price and schedule shall be equitably adjusted.

53. **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 AECOM, including those for latent defects, which are not brought within six (6) years of substantial completion of the facility designed or final payment to AECOM, whichever is earlier.

54. **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 AECOM, 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.

55. **NEGOTIATED AGREEMENT**. This Agreement has been arrived at through negotiation between the Parties.

56. **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 AECOM. 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 AECOM'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 AECOM's role as the Project proceeds.
57. **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.
58. **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.
59. **DISPUTE RESOLUTION.** The Diversion Authority and AECOM 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 Effective 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.

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

This Agreement is executed the day and year above noted.

DIVERSION AUTHORITY:

Metro Flood Diversion Authority

By: _____
Del Rae Williams, Chair
Diversion Authority Board

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

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

AECOM:

AECOM Technology Services, Inc.

By:

Noelle R. Cochran, Vice President

Fargo-Moorhead Diversion Authority
AECOM Corporation's Role*

Exhibit A – General Scope of Services

1. General
 - a. Conduct Phase I Cultural Resources Investigations (Current TO 2)
2. Management and Coordination
 - a. Key Personnel shall meet the Secretary of the Interior's Professional Qualifications Standards for Archaeology and Architectural History
 - b. Obtain cultural resources permits from MN and ND, as appropriate
 - c. Conduct a survey of Project area by pedestrian examination, documenting prehistoric and historic archaeological sites, as well as standing structures
 - d. Conduct subsurface testing
 - e. Record survey and testing results using field notes, maps, subsurface-testing forms, and photos.
 - f. Delineate boundaries of sites and subsurface tests with GPS
 - g. Prepare state site forms
 - h. Provide recommendations for Phase II testing and evaluation measures, including time and cost estimates
 - i. Evaluate buildings fifty (50) years old or older for eligibility to the National Register of Historic Places
 - j. Cultural artifacts located during fieldwork belong to property owners
 - k. Make curatorial arrangements with Minnesota Historical Society and State Historical Society of North Dakota, meeting requirements of 36 CFR Part 79
 - l. Cease activity in the vicinity if human remains are found, associated and/or unassociated objects of cultural patrimony
 - m. Provide a right-of-entry to facilitate notification of property owners and compliance with right-of-entry agreements
 - n. Each subtask incorporates project and subtask management; correspondence and other communication with client, project manager, and federal, state, and local agencies; preparation of project budgets; and general coordination
3. On-Call Services
 - a. Provide on-call services as authorized by the Authority or the Authority's Program Management consultant

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

Land Management Committee Policy

Discussion Document – Opportunistic Acquisitions

The following policy document was discussed at the May 2018 Land Management Committee Meeting, and recommended for approval by the Diversion Authority Board, pending review by the Diversion Authority's litigation team in coordination with MDNR.

Opportunistic Acquisitions Philosophy

General Categories

1. Active sellers (property is for sale on the “market”)
 - a. Property Impacted by Project (yes, no, fringe?)
 - b. Not impacted, but near the Project
2. Willing sellers (property owner desires a buyout)
 - a. Property Impacted by Project (yes, no, fringe?)
 - b. Not impacted, but near the Project

Summary and Recommendations

All Potential Opportunistic Acquisitions

Each potential opportunistic acquisition will be reviewed for the individual and unique circumstances.

Category 1A: Actively Listed Properties, Impacted by Project

- **Summary:** Under this category, the Diversion Authority has an opportunity, and potentially a duty to purchase property that is actively being sold on the open market (so that a different buyer does not inadvertently purchase a property that need to be purchased for the Project).
- **Recommendation:** If the property is impacted by the Project, the Diversion Authority should approach the selling party and initiate discussions to purchase the property.

Category 1B: Actively Listed Properties, Near the Project

- **Summary:** Under this category, the Diversion Authority has an opportunity to purchase property that is actively being sold on the open market.
- **Recommendation:** Given that these properties are not expected to be impacted by the Project, the Diversion Authority should consider whether the property for sale could be a valuable asset for the Project, such as replacement land, used for mitigation of project impacts, or other purposes. If it is determined that the property could be valuable, it is recommended to initiate discussions with the selling party.

Category 2A: Willing Sellers, Impacted by Project

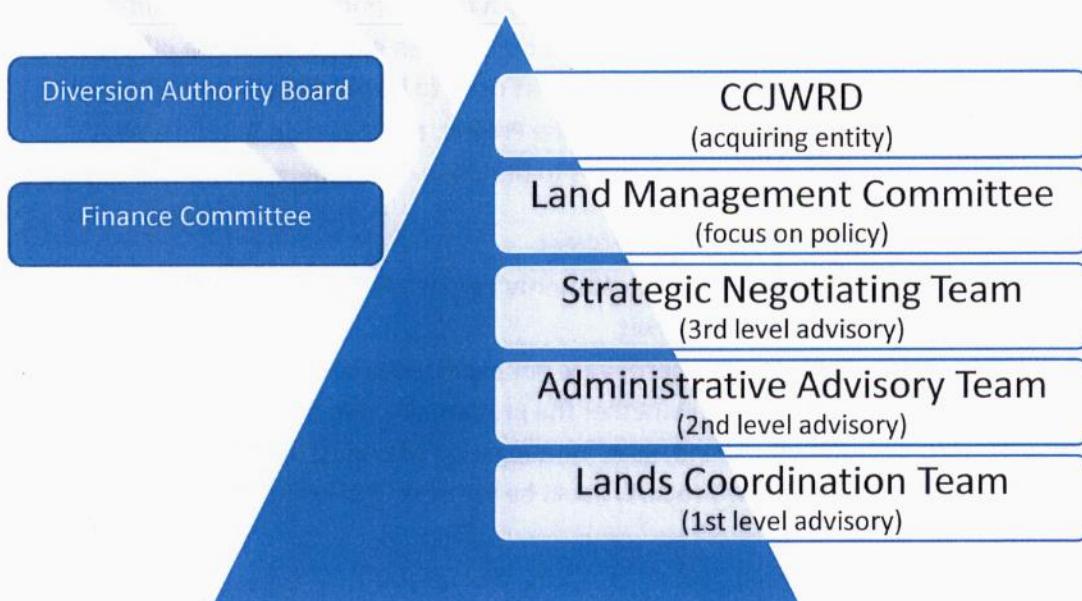
- **Summary:** Under this category, the Diversion Authority has an opportunity to purchase property from a willing seller who has approached the Diversion Authority with a desire to sell. Note that the Diversion Authority is not pursuing conversations with property owners at this time.
- **Recommendation:**
 - If the property is impacted by the Project, the Diversion Authority should respond to the selling party's request and hold discussions to purchase the property.
 - If the property is on the "fringe" of impacts, the Diversion Authority should hold off on taking any property rights action until the impacts are further defined through environmental review, technical refinements (hydraulic modeling, design, etc.), and/or permitting.
 - The "fringe" is defined as structures with less than two-feet of impact at the structure.

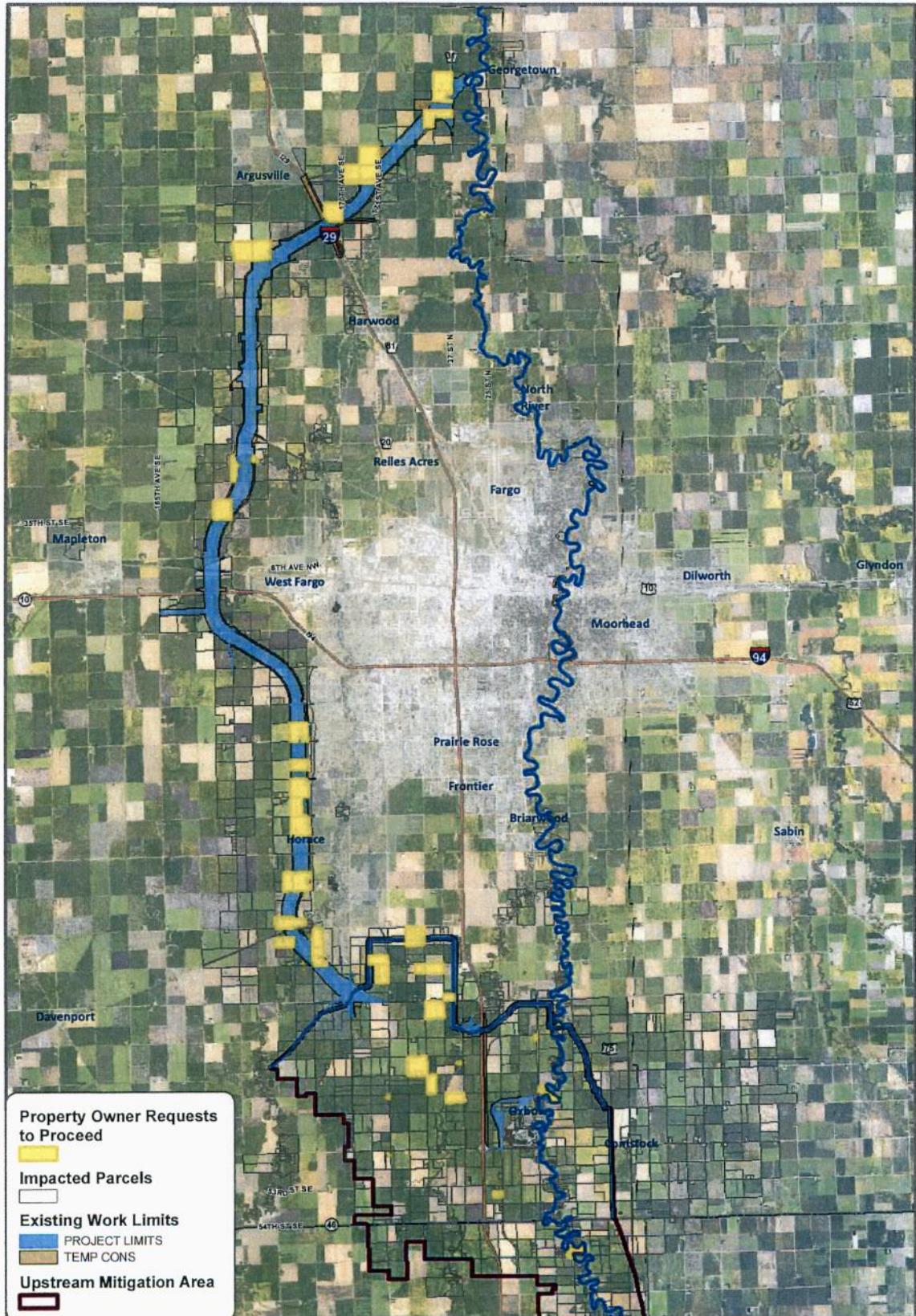
Category 2B: Willing Sellers, Near the Project

- **Summary:** Under this category, the Diversion Authority has an opportunity to purchase property near the Project from a willing seller who has approached the Diversion Authority with a desire to sell. Note that the Diversion Authority is not pursuing conversations with property owners at this time.
- **Recommendation:** The Diversion Authority should generally not purchase properties in this category. If extenuating circumstances warrant other consideration, the opportunistic property shall be brought for discussion to the lands coordination team.

Property Rights Acquisition Program Decision Making Structure

- Five-level structure for property rights acquisition program.
- Decisions should be made at the "lowest level" possible following established policy.

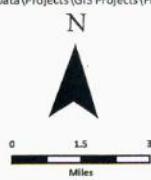




Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use.

All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.

Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Edited by: cwickenheiser
C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Overall LA Maps\PropertyOwnerRequeststoProceed20180516.mxd



PROPERTY OWNER REQUESTS TO PROCEED FM AREA DIVERSION PROJECT

FM AREA DIVERSION
Map Date: 5/16/2018



FM Metropolitan Area Flood Risk Management Project
Fiscal Accountability Report Design Phase (Fund 790)
As of 04/30/2018

	2011	2012	2013	2014	2015	2016	2017	2018	Cumulative Totals
Revenues									
City of Fargo	443,138	7,652,681	7,072,961	19,373,131	28,310,373	35,212,877	31,790,784	9,252,407	139,108,353
Cass County	443,138	7,652,681	7,072,961	19,373,131	28,310,373	111,715,540	14,193,826	4,645,747	193,407,397
State Water Commission			3,782,215	602,918	31,056,740	101,436,302	23,650,143	5,976,014	166,504,332
Other Agencies	98,475	1,700,595	1,571,769	4,305,140	6,291,194	(13,260,368)	-		706,805
Reimbursements						33,880	49,699	3,638	87,217
Lease/Rental Payments			17,358	154,180	180,341	260,806	350,720	806	964,211
Asset Sales				616,774	315,892	175,190	117,079	-	1,224,935
Miscellaneous			226	626	427		505,157	77,816	584,252
Total Revenues	984,751	17,005,957	19,517,490	44,425,900	94,465,340	235,574,227	70,657,409	19,956,429	502,587,502
Expenditures									
7905 Army Corp Payments	-	-	875,000	1,050,000	2,725,000	47,279,000	1,230,000	-	53,159,000
7910 WIK - Administration	107,301	331,321	77,614	169,019	282,227	545,555	500,885	206,420	2,220,343
7915 WIK - Project Design	149,632	5,366,147	3,220,859	9,118,723	4,660,226	2,719,505	2,631,656	698,920	28,565,668
7920 WIK - Project Management	679,037	7,223,650	4,695,477	3,579,339	4,500,955	8,464,392	14,714,801	2,454,166	46,311,817
7925 WIK - Recreation		163,223					-	-	163,223
7930 LERRDS - North Dakota	48,664	3,843,620	2,763,404	17,013,358	55,948,209	46,717,049	40,728,316	2,810,924	169,873,544
7931 LERRDS - Minnesota		27,996	287,907	13,068	32,452	1,815,566	35,457	967	2,213,413
7940 WIK Mitigation - North Dakota				587,180			225,293	31,828	844,301
7941 WIK Mitigation - Minnesota							-	-	-
7950 Construction - North Dakota				1,738,638	19,269,055	42,263,916	5,976,235	340,347	69,588,191
7951 Construction - Minnesota							-	-	-
7952 Construction - O/H/B				11,282,504	5,044,001	776,720	7,365,462	3,880,228	28,348,915
7955 Construction Management				556,209	2,867,422	5,182,366	1,498,050	120,911	10,224,958
7980 Operations & Maintenance							6,403	28,538	34,941
7990 Project Financing		50,000	70,000	216,376	566,600	5,435,289	8,305,600	1,002,374	15,646,239
7995 Project Eligible - Off Formula Costs						-	-	-	-
7999 Non Federal Participating Costs	116						221,568	-	221,684
Total Expenditures	984,750	17,005,957	11,990,261	45,324,414	95,896,147	161,199,358	83,439,726	11,575,624	427,416,237

FM Metropolitan Area Flood Risk Management Project
Statement of Net Position
April 30, 2018

	Amount
Assets	
Cash	\$ 75,025,355
Receivables	
State Water Commission *	1,713,047
Proceeds from Oxbow Lot Sales	796,881
Total assets	<u>77,535,283</u>
Liabilities	
Vouchers payable	943,941
Retainage payable	1,420,077
Total liabilities	<u>2,364,017</u>
NET POSITION	<u>\$ 75,171,266</u>

* Receivable balance is as of 3.31.2018

FM Metropolitan Area Flood Risk Management Project
FY 2018 Summary Budget Report (In Thousands)
As of 30 April 2018

	FY 2018 Approved Budget	Current Month	Fiscal Year To Date	% Expended	Outstanding Encumbrances	Remaining Budget Balance
Revenue Sources						
City of Fargo	-	1,428	9,252			
Cass County	-	993	4,646			
State of ND - 50 % Match	-	39	5,753			
State of ND - 100% Match	-	-	223			
State of Minnesota	-	-	-			
Other Agencies	-	-	-			
Financing Proceeds	-	-	38			
Reimbursements	-	-	3			
Sales of Assets	-	-	0			
Property Income	-	-	1			
10-00 Miscellaneous	-	29	40			
Total Revenue Sources	82,554	2,488	19,956	-	-	62,598
Funds Appropriated						
Diversion Channel & Assoc. Infrastructure	-	124	310	0%	3,339	(3,649)
Southern Embankment & Assoc. Infrastructure	17	0	0	2%	2,336	(2,319)
Other Mitigation Projects	6,139	54	4062	66%	3,800	(1,722)
In-Town Flood Protection	44,227	97	478	1%	262	43,487
Enabling Work / Other	-	2	65	0%	2,927	(2,991)
Land Acquisition & Mitigation	6,881	1,031	2564	37%	24,160	(19,843)
Engineering & Design Fees	241	134	1004	416%	4,297	(5,060)
Program Management	11,489	655	2190	19%	9,625	(327)
Contingency	5,000	-	0	0%	-	5,000
Debt Service	8,460	174	874	10%	809	6,776
Maintenance	100	-	29	29%	-	71
Total Appropriations	82,554	2,272	11,576	14%	51,556	19,423

METRO FLOOD DIVERSION AUTHORITY

Tuesday, 8 May 2018

Data Through Date: Monday, April 30, 2018

Summary of Expenses
EXP-2018-04

Account_Number	Check Date	Check Number	Vendor_Name	Transaction Amount	Description	Project Number	Project_Description
790-0000-206.10-00	4/12/2018	286301	INDUSTRIAL BUILDERS INC	\$50,000.00	Retainage PO #181346	V02812	2ND ST NORTH FLOODWALL
	4/19/2018	286511	LANDWEHR CONSTRUCTION INC	\$5,237.68	Retainage PO #193316	V03901	DEMO RIVERBEND ROAD
Retainage				\$55,237.68			
790-7910-429.33-20	4/27/2018	JB04180013	CITY OF FARGO-AUDITORS OFFICE	\$4,979.17	CHARGE FOR COF TIME-04/18	V00102	General & Admin. WIK
Other Services / Accounting Services				\$4,979.17			
790-7910-429.33-25	4/3/2018	668	P CARD BMO	\$42,975.17	OHNSTAD TWICHELL ATTOR	V00102	General & Admin. WIK
	4/5/2018	286184	OXBOW, CITY OF	\$740.00	TURMAN & LANG	V02407	OXBOW MOU-LEGAL SERVICES
	4/26/2018	286704	OXBOW, CITY OF	\$1,305.00	TURNAM & LANG	V02407	OXBOW MOU-LEGAL SERVICES
	5/3/2018	286811	ERIK R JOHNSON & ASSOCIATES	\$2,272.50	METRO FLOOD PROJECT	V00102	General & Admin. WIK
Other Services / Legal Services				\$47,292.67			
790-7910-429.33-98	4/12/2018	286252	CPS HR CONSULTING	\$968.84	RECRUITING EXPENSES	V03601	EXEC DIRECTOR RECRUITMENT
Other Services / Personelle Recruitment				\$968.84			
790-7910-429.38-68	4/3/2018	668	P CARD BMO	\$3,500.00	FREDRIKSON AND BYRON P	V00102	General & Admin. WIK
790-7910-429.38-68	5/4/2018	670	P CARD BMO	\$3,500.00	FREDRIKSON AND BYRON P	V00102	General & Admin. WIK
Other Services / Lobbyist				\$7,000.00			
790-7915-429.33-05	4/19/2018	286494	HOUSTON-MOORE GROUP LLC	\$80,283.00	PERMIT SUBMITTAL PREP	V01616	PERMIT SUBMITTAL PREP
Other Services / Engineering Services				\$80,283.00			
790-7920-429.33-05	4/19/2018	286494	HOUSTON-MOORE GROUP LLC	\$53,327.70	PROJECT MANAGEMENT	V01601	HMG - PROJECT MANAGEMENT
Other Services / Engineering Services				\$53,327.70			
790-7920-429.33-79	4/5/2018	286184	OXBOW, CITY OF	\$150.00	MOORE ENGINEERING, INC.	V02421	OXBOW MOU-MOORE PROJ MGMT
	4/5/2018	286184	OXBOW, CITY OF	\$2,712.75	MOORE ENGINEERING, INC.	V02421	OXBOW MOU-MOORE PROJ MGMT
	4/12/2018	286250	CH2M HILL ENGINEERS INC	\$268,348.28	PROGRAM MGMT & SERVICES	V00207	CH2M HILL-1.14.17-4.1.18
	4/12/2018	286250	CH2M HILL ENGINEERS INC	\$142,195.17	PROGRAM MGMT & SERVICES	V00207	CH2M HILL-1.14.17-4.1.18
	4/12/2018	286250	CH2M HILL ENGINEERS INC	\$129,962.02	PROGRAM MGMT & SERVICES	V00207	CH2M HILL-1.14.17-4.1.18
	4/26/2018	286704	OXBOW, CITY OF	\$2,086.90	MOORE ENGINEERING, INC.	V02421	OXBOW MOU-MOORE PROJ MGMT
Other Services / Construction Management				\$545,455.12			
790-7930-429.33-05	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$4,123.08	HOUSTON-MOORE GROUP	V01201	Cass Joint Water ROE
	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$1,063.00	ULTEIG ENGINEERING	V01201	Cass Joint Water ROE
	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$7,907.56	AE2S	V01202	Cass Joint Water DPAC
Other Services / Engineering Services				\$13,093.64			

METRO FLOOD DIVERSION AUTHORITY

Tuesday, 8 May 2018

Data Through Date: Monday, April 30, 2018

Summary of Expenses**EXP-2018-04**

Account_Number	Check Date	Check Number	Vendor_Name	Transaction Amount	Description	Project Number	Project_Description
790-7930-429.33-25	4/3/2018	668 P CARD BMO		\$6,462.50 OHNSTAD TWICHELL ATTOR	V00103	General & Admin. LERRDS	
	4/3/2018	668 P CARD BMO		\$125,834.11 DORSEY AND WHITNEY LLP	V00101	Dorsey Whitney Legal	
	4/3/2018	668 P CARD BMO		\$87,530.16 DORSEY AND WHITNEY LLP	V00101	Dorsey Whitney Legal	
	5/3/2018	286793 CASS COUNTY JOINT WATER RESOURCE DI		\$4,130.23 OHNSTAD TWICHELL, P.C.	V01202	Cass Joint Water DPAC	
	5/3/2018	286793 CASS COUNTY JOINT WATER RESOURCE DI		\$7,594.00 OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE	
	5/3/2018	286793 CASS COUNTY JOINT WATER RESOURCE DI		\$3,183.00 OHNSTAD TWICHELL, P.C.	V01203	Cass Joint Water OHB	
	5/3/2018	286793 CASS COUNTY JOINT WATER RESOURCE DI		\$168.00 OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE	
	5/3/2018	286793 CASS COUNTY JOINT WATER RESOURCE DI		\$295.00 OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE	
	5/3/2018	286793 CASS COUNTY JOINT WATER RESOURCE DI		\$4,352.99 OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE	
	5/3/2018	286793 CASS COUNTY JOINT WATER RESOURCE DI		\$1,370.00 OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE	
	5/3/2018	286793 CASS COUNTY JOINT WATER RESOURCE DI		\$198.00 OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE	
	5/3/2018	286793 CASS COUNTY JOINT WATER RESOURCE DI		\$2,918.00 OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE	

METRO FLOOD DIVERSION AUTHORITY

Tuesday, 8 May 2018

Data Through Date: Monday, April 30, 2018

Summary of Expenses**EXP-2018-04**

Account_Number	Check Date	Check Number	Vendor_Name	Transaction Amount	Description	Project Number	Project_Description
	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$909.00	OHNSTAD TWICHELL, P.C.	V01203	Cass Joint Water OHB
	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$1,359.50	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
Other Services / Legal Services					\$246,304.49		
790-7930-429.41-05	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$32.00	CASS RURAL WATER USERS	V01701	ND LAND PURCH-OUT OF TOWN
	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$101.40	CITY OF FARGO	V01703	ND LAND PURCH - IN TOWN
Utility Services / Water and Sewer					\$133.40		
790-7930-429.62-50	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$592.09	XCEL ENERGY	V01703	ND LAND PURCH - IN TOWN
Energy / Natural Gas					\$592.09		
790-7930-429.62-51	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$233.78	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$52.36	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$270.32	XCEL ENERGY	V01703	ND LAND PURCH - IN TOWN
Energy / Electricity					\$556.46		
790-7930-429.67-11	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$6,961.27	ROBERT AND MAXINE NORDICK	V01701	ND LAND PURCH-OUT OF TOWN
	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$25,000.00	ROGER & MELISSA CAMPBELL	V01701	ND LAND PURCH-OUT OF TOWN
	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$7,182.00	TODD AND DEBRA DEBATES	V02411	OXBOW MOU-RESIDENT RLCTN
	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$27,497.86	SAMSON CONSTRUCTION	V02411	OXBOW MOU-RESIDENT RLCTN
Relocation / Residential Buildings					\$66,641.13		
790-7930-429.71-30	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$831,535.25	THE TITLE COMPANY	V01701	ND LAND PURCH-OUT OF TOWN
Land / Land Purchases					\$831,535.25		
790-7930-429.71-31	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$500.00	HICKSON PLEASANT SENIOR	V01701	ND LAND PURCH-OUT OF TOWN
Land / Easements					\$500.00		
790-7930-429.73-20	4/19/2018	286511	LANDWEHR CONSTRUCTION INC	\$46,146.34	RIVERBEND ROAD DEMO WORK	V03901	DEMO RIVERBEND ROAD
Infrastructure / Site Improvements					\$46,146.34		
790-7930-429.80-17	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$1,718.86	CASS COUNTY TREASURER	V01701	ND LAND PURCH-OUT OF TOWN
Debt Service / Property Tax - FMDA					\$1,718.86		
790-7931-429.62-51	5/3/2018	286793	CASS COUNTY JOINT WATER RESOURCE DI	\$419.45	RED RIVER VALLEY COOP POW	V02302	MN LAND PURCHASE-HARDSHIP
Energy / Electricity					\$419.45		
790-7950-429.33-05	4/19/2018	286494	HOUSTON-MOORE GROUP LLC	\$2,480.50	SERVICES DURING CONST	V01624	CONSTRUCTN/BID SVCS WP28A
Other Services / Engineering Services					\$2,480.50		

METRO FLOOD DIVERSION AUTHORITY

Tuesday, 8 May 2018

Data Through Date: Monday, April 30, 2018

Summary of Expenses**EXP-2018-04**

Account_Number	Check Date	Check Number	Vendor_Name	Transaction Amount	Description	Project Number	Project_Description
790-7950-429.38-99	4/19/2018	286463	CASS COUNTY TREASURER	\$307.90	BARRICADES	V04201	DUST/TRAFFIC CONTRL-INLET
Other Services / Other Services				\$307.90			
790-7950-429.73-52	4/12/2018	286301	INDUSTRIAL BUILDERS INC	\$11,821.81	2 ST N PUMP STATION	V02801	2ND ST NORTH PUMP STATION
	4/12/2018	286301	INDUSTRIAL BUILDERS INC	\$39,148.13	2 ST N FLOODWALL	V02812	2ND ST NORTH FLOODWALL
Infrastructure / Landscaping				\$50,969.94			
790-7955-429.33-05	4/26/2018	286663	HOUSTON-MOORE GROUP LLC	\$42,422.74	CONST WORK PKG #42	V02806	CONSTRUCTION SVCS WP42
Other Services / Engineering Services				\$42,422.74			
790-7990-429.33-05	4/19/2018	286494	HOUSTON-MOORE GROUP LLC	\$205.70	PROPOSAL PROCCUREMENT SUP	V01621	P3 RFP PROCUREMENT SUPPRT
Other Services / Engineering Services				\$205.70			
790-7990-429.33-25	4/3/2018	668 P CARD BMO		\$17,427.00	OHNSTAD TWICHELL ATTOR	V00102	General & Admin. WIK
Other Services / Legal Services				\$17,427.00			
790-7990-429.34-55	4/12/2018	286318	JP MORGAN CHASE-LOCKBOX PROCESSING	\$35,570.24	FINANCIAL ADVISORY SERV	V03301	PPP FINANCL ADVISORY SVCS
	4/19/2018	286505	JP MORGAN CHASE-LOCKBOX PROCESSING	\$807.20	FINANCIAL ADVISORY SERVIC	V03301	PPP FINANCL ADVISORY SVCS
Technical Services / Financial Advisor				\$36,377.44			
790-7990-520.80-20	4/12/2018	286247	CASS COUNTY TREASURER	\$174,466.67	WELLS FARGO INTEREST	V02906	\$100M 2017 CASS WF ADVANC
Debt Service / Interest on Bonds				\$174,466.67			
Total Amount Invoiced this period				\$2,326,843.18			
				\$55,237.68 Less Paid Retainage			
				\$2,271,605.50 Total Less Paid Retainage			

FM Metropolitan Area Flood Risk Management Project

Cumulative Vendor Payments Since Inception

As of April 30, 2018

Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
CASS COUNTY JOINT WATER RESOUR	\$ 190,284,409.26	\$ 166,523,994.31	\$ 23,760,414.95	Land Purchases, O/H/B Ring Levee, DPAC, & ROE
ARMY CORP OF ENGINEERS	\$ 53,159,000.00	\$ 53,159,000.00	\$ -	Local Share
CH2M HILL ENGINEERS INC	\$ 50,450,594.31	\$ 41,851,732.04	\$ 8,598,862.27	Program, Project, Construction and Land Management
HOUSTON-MOORE GROUP LLC	\$ 44,943,772.94	\$ 38,229,238.69	\$ 6,714,534.25	Engineering Services
INDUSTRIAL BUILDERS INC	\$ 39,516,601.93	\$ 39,484,817.78	\$ 31,784.15	Const - 2nd St North Pump Station Project and 2nd Street Floodwall
INDUSTRIAL CONTRACT SERVICES I	\$ 17,576,871.19	\$ 17,493,762.16	\$ 83,109.03	Const - 4th St Pump Station and 2nd Street Floodwall
OXBOW, CITY OF	\$ 15,514,718.85	\$ 14,871,929.46	\$ 642,789.39	MOU Agreement
MEYER CONTRACTING INC	\$ 11,932,004.45	\$ 8,816,008.84	\$ 3,115,995.61	Construction/Demolition Services
ASHURST LLP	\$ 6,715,133.70	\$ 3,889,763.01	\$ 2,825,370.69	PPP (P3) Legal Counsel
DORSEY & WHITNEY LLP	\$ 5,882,433.75	\$ 5,882,433.75	\$ -	Legal Services
RILEY BROTHERS CONSTRUCTION	\$ 3,677,920.95	\$ 751,409.95	\$ 2,926,511.00	Construction - County Roads 16 & 17 Realignment
JP MORGAN CHASE-LOCKBOX PROCES	\$ 3,377,000.00	\$ 2,567,647.23	\$ 809,352.77	Financial Advisor
CASS COUNTY TREASURER	\$ 2,738,135.75	\$ 2,738,135.75	\$ -	Property Taxes and Bank Loan Advance DS Payments
CENTURYLINK	\$ 2,586,742.00	\$ 2,586,742.00	\$ -	Utility Relocation
OHNSTAD TWICHELL PC	\$ 2,357,024.88	\$ 2,357,024.88	\$ -	ROE and Bonding Legal Fees
CITY OF FARGO	\$ 2,356,753.93	\$ 2,356,753.93	\$ -	Digital Imagery Project, Utility Relocation, Accounting Svcs, and Bank Loan Advance DS Payments
MINNESOTA DNR	\$ 2,325,472.35	\$ 2,325,472.35	\$ -	EIS Scoping
LANDWEHR CONSTRUCTION INC	\$ 2,305,627.66	\$ 2,285,697.16	\$ 19,930.50	Const - In-Town Demolition Contracts
URS CORPORATION	\$ 1,922,118.42	\$ 1,805,670.90	\$ 116,447.52	Engineering Services
KENNELLY & OKEEFFE	\$ 1,729,110.56	\$ 1,729,110.56	\$ -	Home Buyouts
HOUGH INCORPORATED	\$ 1,726,847.35	\$ 1,634,666.45	\$ 92,180.90	Const - 2nd Street South Flood Control
REINER CONTRACTING INC	\$ 1,599,646.21	\$ 1,599,646.21	\$ -	Const - El Zagal Flood Risk Management
ACONEX (NORTH AMERICA) INC	\$ 1,322,146.00	\$ 306,856.00	\$ 1,015,290.00	Electronic Data Mgmt and Record Storage System
CONSOLIDATED COMMUNICATIONS	\$ 1,063,096.11	\$ 1,063,096.11	\$ -	Utility Relocation
TERRACON CONSULTING ENGINEERS	\$ 830,792.49	\$ 830,520.16	\$ 272.33	Materials Testing
XCEL ENERGY	\$ 753,515.88	\$ 753,515.88	\$ -	Utility Relocation
MOORE ENGINEERING INC	\$ 662,468.17	\$ 662,468.17	\$ -	Engineering 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	\$ 545,708.18	\$ 545,708.18	\$ -	Legal Services
CROWN APPRAISALS INC	\$ 500,000.00	\$ 100,000.00	\$ 400,000.00	Flowage Easements Valuation
RED RIVER BASIN COMMISSION	\$ 500,000.00	\$ 500,000.00	\$ -	Retention Projects - Engineering Services
HOFFMAN & MCNAMARA NURSERY&LAN	\$ 495,801.98	\$ 440,633.49	\$ 55,168.49	Construction - Landscape
NORTHERN TITLE CO	\$ 484,016.00	\$ 484,016.00	\$ -	Land Purchases
AT & T	\$ 461,031.30	\$ 461,031.30	\$ -	Utility Relocation
BRAUN INTERTEC CORP	\$ 384,389.25	\$ 304,155.00	\$ 80,234.25	Quality Testing
SCHMIDT AND SONS CONSTRUCTION	\$ 351,178.00	\$ 335,906.00	\$ 15,272.00	Oxbow Housing Relocation
BEAVER CREEK ARCHAEOLOGY	\$ 276,990.00	\$ 146,109.77	\$ 130,880.23	Engineering Services
702 COMMUNICATIONS	\$ 266,892.07	\$ 266,892.07	\$ -	Utility Relocation
SPRINT	\$ 256,409.37	\$ 256,409.37	\$ -	Utility Relocation
FARGO MOORHEAD METROPOLITAN	\$ 253,858.35	\$ 253,858.35	\$ -	Lidar Imaging
AON RISK SERVICES CENTRAL, INC	\$ 240,000.00	\$ 183,813.50	\$ 56,186.50	P3 Risk Advisory Services
NDSU BUSINESS OFFICE	\$ 231,650.00	\$ 183,408.50	\$ 48,241.50	Ag Risk Study Services

FM Metropolitan Area Flood Risk Management Project

Cumulative Vendor Payments Since Inception

As of April 30, 2018

Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
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 Oxbow MOU - Golf Course Consulting Agreement
ROBERT TRENT JONES	\$ 200,000.00	\$ 200,000.00	\$ -	Financial Advisor
SPRINGSTED INCORPORATED	\$ 178,010.15	\$ 178,010.15	\$ -	Fredrikson & BYRON, PA
FREDRIKSON & BYRON, PA	\$ 148,230.06	\$ 141,230.06	\$ 7,000.00	Lobbying Services
PFM PUBLIC FINANCIAL MANAGEMEN	\$ 146,460.00	\$ 146,460.00	\$ -	Financial Advisor
GRAY PANNELL & WOODWARD LLP	\$ 143,800.68	\$ 143,800.68	\$ -	Legal Services
AT&T NETWORK OPERATIONS	\$ 125,238.30	\$ 125,238.30	\$ -	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
CENTURYLINK ASSET ACCOUNTING-B	\$ 102,773.54	\$ 102,773.54	\$ -	Utility 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
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
MIDCONTINENT COMMUNICATIONS	\$ 37,318.95	\$ 37,318.95	\$ -	Utility Relocation
WARNER & CO	\$ 35,308.00	\$ 35,308.00	\$ -	General Liability Insurance
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
CPS HR CONSULTING	\$ 32,793.22	\$ 28,678.87	\$ 4,114.35	HR Consulting
WESTERN AREA POWER ADMINISTRAT	\$ 30,000.00	\$ 30,000.00	\$ -	P3 Support Services
ND WATER USERS ASSOCIATN	\$ 20,000.00	\$ 20,000.00	\$ -	Membership Dues
XCEL ENERGY-FARGO	\$ 16,275.85	\$ 16,275.85	\$ -	Utility Relocation
PRIMORIS AEVENIA INC	\$ 16,230.00	\$ 16,230.00	\$ -	Utility Relocation
MOORHEAD, CITY OF	\$ 15,062.90	\$ 15,062.90	\$ -	ROE Legal Fees
BRIGGS & MORGAN PA	\$ 12,727.56	\$ 12,727.56	\$ -	Legal Services
PROSOURCE TECHNOLOGIES, INC	\$ 8,324.94	\$ 8,324.94	\$ -	Vibrating Wire Piezometer Equipment
MAP SERVICE CENTER	\$ 7,250.00	\$ 7,250.00	\$ -	Permit fee
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
SEIGEL COMMUNICATIONS SERVICE	\$ 2,345.00	\$ 2,345.00	\$ -	Public Outreach
BNSF RAILWAY CO	\$ 2,325.00	\$ 2,325.00	\$ -	Permits for In-Town Levee Projects
FORUM COMMUNICATIONS (LEGALS)	\$ 2,224.20	\$ 2,224.20	\$ -	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

FM Metropolitan Area Flood Risk Management Project

Cumulative Vendor Payments Since Inception

As of April 30, 2018

Vendors	Approved Contract/Invoice Amount	Liquidated	Outstanding Encumbrance	Purpose
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
BNSF RAILWAY COMPANY	\$ 600.00	\$ 600.00	\$ -	MOU Agreement
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
DAWSON INSURANCE AGENCY	\$ 388.52	\$ 388.52	\$ -	Property Insurance - Home Buyouts
KOCHMANN, CARTER	\$ 315.00	\$ 315.00	\$ -	Lawn Mowing Services
GALLAGHER BENEFIT SERVICES INC	\$ 250.00	\$ 250.00	\$ -	Job Description Review
DONS PLUMBING	\$ 240.00	\$ 240.00	\$ -	Winterize - Home Buyouts
HARWOOD TOWNSHIP, CASS, ND	\$ 208.91	\$ 208.91	\$ -	Township Meeting Expenses
WALMART STORE #4352	\$ 161.97	\$ 161.97	\$ -	Meeting Incidentals
CURTS LOCK & KEY SERVICE INC	\$ 138.10	\$ 138.10	\$ -	Service Call - Home Buyouts
GOOGLE LOVEINTHEOVEN	\$ 116.00	\$ 116.00	\$ -	Meeting Incidentals
FEDERAL EXPRESS CORPORATION	\$ 71.89	\$ 71.89	\$ -	Postage
AEVENIA, INC	\$ -	\$ -	\$ -	Utility Relocation
AON RISK SERVICES CENTRAL INC	\$ -	\$ -	\$ -	P3 Risk Advisory Services
BOIS DE SIOUX WATERSHED DISTRI	\$ -	\$ -	\$ -	Retention Projects - Engineering Services
CABLE ONE (FARGO)	\$ -	\$ -	\$ -	Utility Relocation
CENTURYLINK COMMUNICATIONS	\$ -	\$ -	\$ -	Utility Relocation
ULTEIG ENGINEERS INC	\$ -	\$ -	\$ -	Engineering Services
Grand Total	\$ 478,972,379.49	\$ 427,416,236.81	\$ 51,556,142.68	

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of April 30, 2018

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	-	1,347,908.42	-	2,404,346.55
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	-	1,187,586.13	-	2,165,878.36
477 Oxbow Drive - OIN 9614 - Henry & Suzanne Mertz	10/27/2017	25,020.58	-	-	-	25,020.58

**FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of April 30, 2018**

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
Home Buyouts - Hickson						
17495 52nd St SE 4985 and 4989 Klitzke Drive, Pleasant Twp	4/28/2015 7/20/2016	785,747.66 245,926.71	- -	27,604.74 92,817.44	- -	813,352.40 338,744.15
Home Buyouts - Horace						
2914 124th Ave S 17471 49th St SE - Campbell - OIN 9403 17465 49th St SE - Campbell - OIN 9411 17474 52nd St SE - Leher - OIN 1889/1990/2182 17449 50th Street SE - Scott Young 4848 CR 81 S, Horace, ND _ OIN 9405 15-0000-02690-010 & 15-0000-02690-020 - Cossette _ OIN 229 & 230 5021 171st Ave. Southeast, Horace, ND _ OIN 1955	12/29/2016 2/16/2017 2/21/2017 7/11/2017 9/1/2017 9/15/2017 11/29/2017 12/18/2017	50,981.00 883,581.00 828,561.00 909,905.00 398,936.66 451,185.00 2,433,020.59 248,677.89	- - - - - - - -	- 149,000.00 183,000.00 - - - 36,153.08 -	- - - - - - - -	50,981.00 1,032,581.00 1,011,561.00 909,905.00 398,936.66 487,338.08 2,433,020.59 248,677.89
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 72 2nd St N - Borthem Oak Terrace Condos - 2 N Terrace N Fercho Family Farms,	10/9/2014 4/13/2016 3/30/2016 3/25/2015	76,000.00 37,020.00 5,588.00 50,000.00	- - - -	- - - -	- - - -	76,000.00 37,020.00 5,588.00 50,000.00
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 64-0000-02730-000 - Sauvageau 64-0000-027400-000 - Duboard 64-0000-02700-010 - Rheault 15-141-49 NW1/4 160.00 AC **12-31-98 COMB FRM 44-0000-00580-000 & 44-0000-00570-000 - Larson Trust (Nygren) Southwest corner of County Road 17 S and 112th Avenue S (condemnation) - SAUVAGEAU LIFE EST. 16835 47 ST SE - Buster Farms LLLP	6/1/2016 6/1/2016 9/15/2016 1/31/2017 6/20/2017 - 3/25/2015	- 1,113,101.57 177,399.29 2,243.06 32,340.00 373,437.00 1,755.00	- - - - - - -	- - - - - - -	- - - - - - -	1,113,101.57 177,399.29 2,243.06 32,340.00 373,437.00 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 2 Tracts in the E 1/2-2-137-49 - Sorby/Maier 3 Tracts NW1/4 1-140-50, NW1/4 11-140-50, & S1/2 25-141-50 - Rust (OINs 0511,0512,0880,0897)	1/20/2014 1/24/2014 2/18/2014	959,840.00 1,636,230.00 3,458,980.70	- - -	- - -	- - -	959,840.00 1,636,230.00 3,458,980.70
11-140-50 NE1/4 (Raymond Twp) - Diekrager NW 1/4 36-141-50 - Monson W 1/2 SE 1/4 SW 1/4 SW 1/4 2-137-49 - Gorder SW 1/4-11-140-50 - Hoglund NW 1/4 14-140-50 - Hoglund SW 1/4 2-140-50 -Rust 2-140-50 S 1/2 of NW 1/4 & Lot 4A - Pile Fercho Family Farms, W 1/2 NW 1/4 2-141-49 - Heiden (Raymond Twp) - Subdivision: Part of 23-140-50, 155.82 acres - Henke (Raymond Twp) - Subdivision: Part of Sec. 23., Less Gust Sub and Jason Sub T140N R50W - Henke	4/15/2014 5/7/2014 5/13/2014 7/21/2014 10/23/2014 10/29/2014 3/4/2015 3/25/2015 4/24/2015 6/17/2015 6/17/2015	991,128.19 943,560.05 321,386.00 989,706.03 948,782.22 955,901.00 594,108.00 464,600.00 433,409.00 857,144.00 339,071.00	- - - - - - - - - - -	- - - - - - - - - - -	- - - - - - - - - - -	991,128.19 943,560.05 321,386.00 989,706.03 948,782.22 955,901.00 594,108.00 464,600.00 433,409.00 857,144.00 339,071.00
15-141-49 NW1/4 160.00 AC **12-31-98 COMB FRM 44-0000-00580-000 & 44-0000-00570-000 - Larson Trust (Nygren) 64-0000-02720-000 - Ulstad (Condemnation) Peter Biegler, Jr - OIN 9748 19-141-49 NE 1/4 A 160.00 - Schoenberg Farms SHEY RIV - Chose W 1/2d 1/2 10-141-49 & NW 1/4 10-141-49 - Larson Family Farm Trust S1/2 W1/2 NW1/4 - Conyers 27th St SE, between 169th Ave SE and I-29 - Nelson Meridian, Cass County, ND - Heiden Family, LLLP 2368 173rd Ave SE & Rural Land Part of SE1/4 35-142-49, Wiser, ND - Kevin & Pamela Heiden 20-141-49 SW 1/4 A 160.00 - Lloyd & Alice Amundson 5251 174 1/2 Ave SE, Pleasant Township, ND 58047	6/20/2017 11/10/2016 7/17/2017 7/18/2017 7/28/2017 8/1/2017 8/3/2017 8/4/2017 8/4/2017 8/9/2017 8/18/2017	291,840.00 1,221,931.50 250,185.00 3,470,167.12 60,128.07 1,402,847.99 33,150.00 1,024,189.50 614,439.02 123,563.38 254,354.28	- - - - - - - - - - -	- - - - - - - - - - -	- - - - - - - - - - -	291,840.00 1,221,931.50 250,185.00 3,470,167.12 60,128.07 1,402,847.99 33,150.00 1,024,189.50 614,439.02 123,563.38 254,354.28

FM Metropolitan Area Flood Risk Management Project
Lands Expense - Life To Date
As of April 30, 2018

Property Address	Purchase Date	Purchase Price	Earnest Deposit	Relocation Assistance	Sale Proceeds	Total
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

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

88,061,371.43	-	34,475,975.38	(1,107,856.01)	121,429,490.80
		(32,000.00)	10,000.00	Property Management Expense
				1,976,705.59

Grand Total \$ 123,406,196.39

FM Metropolitan Area Flood Risk Management Project
In-Town Levee Work
as of April 30, 2018

Vcode #	Vendor Name	Descriptions	Contract Amount	Amount Paid
V02801	Industrial Builders	WP42.A2 - 2nd Street North Pump Station	\$ 8,696,548.46	\$ 8,695,471.79
V02802	Terracon Consulting	WP-42 (In Town Levees) Materials Testing	\$ 830,792.49	\$ 830,520.16
V02803	Consolidated Communications	2nd Street Utility Relocation	\$ 1,178,781.73	\$ 1,178,781.73
V02804	702 Communications	2nd Street Utility Relocation WP-42A.1/A.3 - 4th St Pump Station & Gatewell and 2nd St	\$ 266,892.07	\$ 266,892.07
V02805	ICS	Floodwall S	\$ 17,583,287.19	\$ 17,500,178.16
V02806	HMG	WP42 - Services During Construction	\$ 5,343,413.00	\$ 5,099,114.19
V02807	CCJWRD	In-Town Levee Work	\$ 6,212,413.40	\$ 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	\$ 16,689,883.67
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	\$ 1,726,847.35	\$ 1,634,666.45
V02822	City of Fargo	COF - 2016 O&M on Lifts	\$ 34,941.05	\$ 34,941.05
	Hoffman & McNamara Nursery			
V02823	& Lan	WP-42G General Landscaping and Planting	\$ 495,801.98	\$ 440,633.49
V01703	Various	In-Town Property Purchases	\$ 39,288,445.77	\$ 37,836,959.75
			<hr/>	<hr/>
			\$ 121,440,751.06	\$ 119,156,178.29

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: March 1, 2018 - March 31, 2018 - OHB Levee Related

Drawdown Request No: 65	
Requested Amount:	\$ 31,576
Total Funds Expended This Period:	\$ 63,153
SB 2020 Matching Requirements	50%
Total Funds Requested at 50% Match	31,576
Total Funds Requested:	\$ 31,576

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	
Anticipated appropriations to be funded in 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	
Total State Funds	266,000,000	304,000,000
Less: Payment #1 through #35 - City of Fargo	(55,510,209)	
Less: Payment #1 - Cass County	(136,039)	
Less: Payment #1 through #7 - Interior Flood Control	(60,000,000)	
Less: Payment #1 through #28 - FM Diversion Authority	(38,049,107)	
Less: Payment #29 through #50 - FM Metro Area Flood Risk Management Project	(76,542,741)	
Less: Payment #51 - FM Metro Area Flood Risk Management Project	(1,501,080)	
Less: Payment #52 - FM Metro Area Flood Risk Management Project	(1,565,228)	
Less: Payment #53 - FM Metro Area Flood Risk Management Project	(708,163)	
Less: Payment #54 - FM Metro Area Flood Risk Management Project	(897,057)	
Less: Payment #55 - FM Metro Area Flood Risk Management Project	(488,613)	
Less: Payment #56 - FM Metro Area Flood Risk Management Project	(1,105,872)	
Less: Payment #57 - FM Metro Area Flood Risk Management Project	(1,377,451)	
Less: Payment #58 - FM Metro Area Flood Risk Management Project	(1,792,502)	
Less: Payment #59 - FM Metro Area Flood Risk Management Project	(1,625,005)	
Less: Payment #60 - FM Metro Area Flood Risk Management Project	(65,355)	
Less: Payment #61 - FM Metro Area Flood Risk Management Project	(780,105)	
Less: Payment #62 - FM Metro Area Flood Risk Management Project	(772,390)	
Less: Payment #63 - FM Metro Area Flood Risk Management Project	(901,954)	
Less: Payment #64 - FM Metro Area Flood Risk Management Project	(7,127)	
Less: Payment #65 - FM Metro Area Flood Risk Management Project	(31,576)	
Total Funds Reimbursed	(243,857,575)	
Total State Fund Balances Remaining	\$ 60,142,425	

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	\$	78,689,391
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 #29-50 - FM Metro Area Flood Risk Management Project		(18,968,395)
Less: Match Used on Payment #51 - FM Metro Area Flood Risk Management Project		(1,336,028)
Less: Match Used on Payment #52 - FM Metro Area Flood Risk Management Project		(294,854)
Less: Match Used on Payment #54 - FM Metro Area Flood Risk Management Project		(595,622)
Less: Match Used on Payment #55 - FM Metro Area Flood Risk Management Project		(278,292)
Less: Match Used on Payment #58 - FM Metro Area Flood Risk Management Project		(222,923)
Balance of Local Matching Funds Available	\$	4,297,908

Finance Committee Bills through May 11, 2018

Vendor	Description	
Cass County Joint Water Resource District	Diversion bills	\$ 1,131,598.68
Dorsey & Whitney	Legal services rendered through March 31, 2018	\$ 90,025.20
Ohnstad Twichell, P.C.	Professional Services Rendered	\$ 45,674.83
Total Bills Received through May 11, 2018		\$ 1,267,298.71



Cass County
Joint Water
Resource
District

Dan Jacobson
Chairman
West Fargo, North Dakota

Rodger Olson
Manager
Leonard, North Dakota

Lance Yohe
Manager
West Fargo, North Dakota

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

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

Greetings:

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

Enclosed please find copies of bills totaling \$1,131,598.68 regarding the above referenced projects. The breakdown is as follows:

Metro Flood Diversion	\$ 746,468.93
DPAC	1,593.99
Oxbow-Hickson-Bakke Ring Levee	46,791.14
In-Town Levees	336,744.62

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

1201 Main Avenue West
West Fargo, ND 58078-1301

Enclosures

701-298-2381
FAX 701-298-2397
wrd@casscountynd.gov
casscountygov.com

METRO FLOOD DIVERSION RIGHT OF ENTRY/LAND ACQUISITION COST SHARE INVOICES

Updated 5/8/18

Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description
4/6/2018	4/6/2018	155214		707,530.88	The Title Company	Karen Culberg Rechtschaffen Rev Trust prop purchase
4/12/2018	3/26/2018	155226	130007	10,071.50	Ohnstad Twichell, P.C.	Legal-Diversion ROW Acquisition
4/12/2018	3/26/2018	155227	160007	697.50	Ohnstad Twichell, P.C.	Legal-Channel Phase I
4/12/2018	3/26/2018	155227	160007	3,829.63	Ohnstad Twichell, P.C.	Legal-Channel Phase II
4/12/2018	3/26/2018	155207	900007	1,387.00	Ohnstad Twichell, P.C.	Legal-Basin Project 2009
4/12/2018	3/26/2018	155235	170007	861.00	Ohnstad Twichell, P.C.	Legal-Upstream Mitigation Area
4/12/2018	3/13/2018	72557	R12.00049	1,608.00	Uteig Engineering	Engineering - Project mgmt, ROW services and relocation ass't
4/12/2018	4/5/2018	1132078		49.00	Cass County Electric Cooperative	Service to 17449 50 St S
4/12/2018	3/25/2018	13618		32.00	Cass Rural Water Users	Service to 5021 171 Ave SE and 4848 Co Rd 81 S
4/12/2018	3/25/2018	13690		32.00	Cass Rural Water Users	Service to 17449 50 St S
4/12/2018	3/25/2018	13697		32.00	Cass Rural Water Users	Service to 16678 3rd St S
4/12/2018	4/4/2018	850.04		286.56	Red River Valley Coop Power Assoc	Engineering-Proj mgmt, ROW services, and Relocation assistance
4/26/2018	4/11/2018	1608	R12.00049	9,875.91	Houston-Moore Group	Engineering - Project mgmt and ROW services
4/26/2018	4/5/2018	72882		1,851.00	Uteig Engineering	service to 5021 171 Ave SE and 4848 Co Rd 81
4/26/2018	4/16/2018	1129748		176.58	Cass County Electric Cooperative	insurance (vacant & occupied properties)
4/26/2018	4/20/2018	2189		7,632.27	Dawson Insurance	liability to 5 locations
4/27/2018	4/25/2018	13690		85.00	Rainbow International	carpet cleaning at 4848 Hwy 81 S
4/27/2018	4/25/2018	13618		327.00	Cass Rural Water Users	service to 4848 Co Rd 81
4/27/2018	4/25/2018	13697		34.70	Cass Rural Water Users	Service to 5021 171st Ave SE
				34.70	Cass Rural Water Users	Service to 17449 50 St S
						Total 746,458.93

DIVERSION PROJECT ASSESSMENT DISTRICT (DPAC) INVOICES

Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description
4/12/2018	3/26/2018	155211	120007	435.19	Ohnstad Twichell, P.C.	Legal - Assessment District
4/12/2018	3/21/2018	17970	15043	500.00	Moore Engineering, Inc.	Engineering - Diversion project assessment calculation
4/12/2018	3/27/2018	57340	P11473-2012-000	658.80	AES2S	Engineering - Financial Services - Dev & Implementation
						Total 1,593.99

OXBOW-HICKSON-BAKKE RING LEVEE INVOICES

Invoice Paid	Invoice Date	Invoice No.	Purchase Order No.	Project No.	Amount	Vendor	Description
4/11/2018	4/10/2018	155216		140007	13,849.44	The Title Company	Podolak replacement housing
4/26/2018	3/26/2018	18677		2830-00	1,578.50	Ohnstad Twichell, P.C.	Legal-Oxbow-Hickson-Bakke Levee project
4/26/2018	1/30/2017	18678		5,190.80	8,874.20	ProSource Technologies, LLC	proj mgmt, relocation, and construction draw payments thru Nov
4/26/2018	1/23/2017	18678		9,266.40	5,190.80	ProSource Technologies, LLC	proj mgmt, acquisition, relocation and const draw payment thru Dec
4/26/2018	1/31/2018	18761		2830-00	3,989.70	ProSource Technologies, LLC	proj mgmt and construction draw payments thru Jan
4/26/2018	2/28/2018	18817		2830-00	4,042.10	ProSource Technologies, LLC	proj mgmt and construction draw payments thru Feb
4/26/2018	3/31/2018	18900		2830-00			Proj mgmt, acquisition, relocation and const draw payment thru Mar
							Total 46,791.14

Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description
				0.00		Total

IN-TOWN LEVEES INVOICES						
Invoice Paid	Invoice Date	Invoice No.	Project No.	Amount	Vendor	Description
4/12/2018	3/30/2018	588304827		254.18	Xcel Energy	Electric service to 419 3rd St N
4/12/2018	3/30/2018	588307978		281.04	Xcel Energy	Gas service to 419 3rd St N
4/24/2018	4/24/2018			336,108.00	The Title Company	property purchase - Fargo Housing and Redevelopment Authority
4/26/2018	4/6/2018	6000052129		101.40	City of Fargo	Service to 419 3 St N
				336,744.62		
				Grand Total		
				1,131,598.68		



Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

May 4, 2018

Kent Costin
Finance Director
City of Fargo
200 North Third Street
Fargo, ND 58102

Re: Metro Flood Diversion Project

Dear Kent:

I am enclosing a Summary Invoice dated April 25, 2018 from the Dorsey & Whitney Firm in Minneapolis for their professional services rendered through March 31, 2018 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,

A handwritten signature in black ink, appearing to read "ERJ".

Erik R. Johnson

ERJ/lmw
Enclosure
cc: Bruce Grubb





MINNEAPOLIS OFFICE
612-340-2600

RECEIVED

DATE 4-30-18

(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

April 25, 2018
Invoice No. 3418829

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

For Legal Services Rendered Through March 31, 2018

INVOICE TOTAL

Total For Current Legal Fees	\$87,520.50
Total For Current Disbursements and Service Charges	\$2,504.70
Total For Current Invoice	\$90,025.20

Summary of Account

*Prior Balance Due	\$105,192.58
Total Amount Due	\$195,217.78

*If payment has been submitted for prior balance due, please disregard.

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

OHNSTAD TWICHELL, P.C.**Attorneys at Law**

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

15-1395

JTS

Invoice # 155988

Flood Diversion Board
 Bond Counsel Work - PPP

Date: May 7, 2018

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

PROFESSIONAL SERVICES RENDERED

	Hours	Hourly Rate	Totals
JTS	49.35	\$310.00	\$15,298.50
CMM	3.1	\$310.00	\$961.00
KJB	47.8	\$285.00	\$13,623.00
TJL	12.6	\$250.00	\$3,150.00
LWC	19.8	\$225.00	\$4,455.00
MPS	0.4	\$200.00	\$80.00
JDR	2.3	\$165.00	\$379.50
AJM	45.3	\$165.00	\$7,474.50
Total Fees:	180.65		\$45,421.50
Westlaw (max. charge \$500)			\$231.70
AT&T Calls			\$21.63
Total Expenses:			\$253.33
Grand Total			\$45,674.83

2018 Hourly 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
KJB	Katie J. Bertsch, Associate	\$285.00
TJL	Tyler J. Leverington, Associate	\$250.00
CBC	Calley B. Campbell, Associate	\$225.00
LWC	Lukas W. Croaker, Associate	\$225.00
MPS	Michael P. Sly, Associate	\$200.00
CAS	Carol A. Stillwell, Paralegal	\$165.00
JDR	Joshua D. Roaldson, Paralegal	\$165.00
AJM	Andrea J. Murphy, Paralegal	\$165.00
LRK	Lisa R. Kilde, Paralegal	\$155.00
HCG	Hannah C. Gilbert, Paralegal	\$140.00

OHNSTAD TWICHELL, P.C.

WEST FARGO, NORTH DAKOTA 58078

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

PROFESSIONAL SERVICES RENDERED

15-1395 JTS Invoice # 155516	Flood Diversion Board	Bond Counsel Work - PPP
FILE NUMBER	MATTER DESCRIPTION	INVOICE - TOTAL FEES
151395-1	General Topics (Includes General Governance Questions, Notices, etc.)	\$11,259.50
151395-2	Executive Director	\$132.00
151395-3	P3 Procurement	\$3,090.50
151395-4	Public Finance Issues	\$3,765.00
151395-5	Consultant Contract Review/Development	\$6,279.00
151395-6	Support of External Litigation Counsel	\$1,998.50
151395-7	Coordination With Member Entities	\$462.00
151395-8	MNDNR Permit Issues	\$1,264.50
151395-12	USACE Interface/Questions	\$379.50
151395-13	Third Party Utility MOU's	\$16,791.00
TOTAL		\$45,421.50

I John Glatzmaier
DIVERSION AUTHORITY

FM Diversion, WP-42E: Bid Results and notice of Bi... 8:17 AM
GENERAL CORRESPO... FMDA-GNC-000299

I John Glatzmaier
DIVERSION AUTHORITY

Fwd: FM Diversion, WP-42E: Bid Results and notice... 8:20 AM
GENERAL CORRESPO... FMDA-GNC-000300



MAIL TYPE

General Correspondence

MAIL NUMBER

FMDA-GNC-000299

REFERENCE NUMBER

FMDA-GNC-000299

FM Diversion, WP-42E: Bid Results and notice of Bid Rejection

From John Glatzmaier - Diversion Authority
To (22) Ken Russell - Dakota Fence (+21 more...)
Cc (20) John Glatzmaier - Diversion Authority (+19 more...)
Sent Friday, May 18, 2018 8:17:26 AM CDT (GMT -05:00)
Status N/A

DETAILS

Sub-Program Mitigation and Associated Infrastructure
Project Name WP42E - Dwtn Levees Main Ave. Lift Station and Gatewell
Functional Area/Discipline Contract Administration

MESSAGE

FM Diversion
2nd Street South and Main Avenue Flood Mitigation
Work Package 42E
Bid results and notice of rejection of bids

Plan holders:

The contract for construction of WP-42E, 2nd Street South and Main Avenue Flood Mitigation, was publicly bid and 1 bid was received at the public bid opening on May 15, 2018.

The bid, in the amount of \$9,969,447.26, was approximately 42 percent higher than the engineer's estimate of \$7,000,000.00.

The Metro Flood Diversion Authority rejected the bid and will rebid the project at a future date.

John Glatzmaier/Jacobs, formerly CH2M
Owner's Representative