



1 Diversion Inlet Structure Construction

Dewatering of the site is complete. Ames is planning to start excavating the site to grade and partially removing the preload areas after Labor Day. The current construction completion date is June 2023.

Anticipated schedule:

2019: Dewatering, test pile program, complete channel excavation.

2020: Foundations/site work.

2021: Concrete piers/abutments. Control building.

2022: Install bridge deck, gates, and operating machinery.

2023: Paint gates, seed.

2024: Turf established.

2 Wild Rice River Structure Construction

The Request for Proposals (RFP) was issued on 22 July 2019. Proposals are due 5 September. Contract award is anticipated in November 2019. Required construction completion is October 2023. Structure includes 2-40 ft. wide tainter gates.

3 Red River Structure Design

Construction of the physical model (1:40 scale) continues at USACE ERDC Coastal and Hydraulics Laboratory, Vicksburg, MS and should be complete by 18 October (see reverse). Completion of testing is scheduled to be NLT June 2020 and final reports due August 2020. The 35% plans and specs are due February 2020; the overall design schedule is dependent on physical model results and continues to be developed.

4 Southern Embankment – Plan B Design

Detailed design, incorporating the Plan B alignment, is ongoing. Geotechnical borings have commenced and will continue as additional access is secured by the Diversion Authority. Construction of the Western Tieback is scheduled for late FY2020.

5 Cultural Resources Mitigation – Diversion Channel Sites

Completing further investigations of two archaeological sites along the Diversion Channel this summer. Field work under Task Order 1 is complete. Of the 53 acres to investigate, only 5 acres remain to clear under the pending Task Order 2; field work is anticipated to restart week of 26 August.

6 Natural Resource Agency Meeting – 17 September 2019

Quarterly meeting to be held with our natural resource agency partners.



Construction of Red River physical model at ERDC

Looking downstream (north)



MEMO

Fredrikson and Byron
Legislative Update



TO: Chris Volkers and Steve Larson
FROM: Andrew G. Pomroy
DATE: August 15, 2019
SUBJECT: F-M Diversion, legislative update 8-15-19

We now have a schedule for the House Capital Investment Committee tour for the Moorhead area on September 5.

MOORHEAD:

11:15 – 11:30 pm stop at the 11th Street RR grade separation - presentation on bus

Travel time: 15 minutes

MOORHEAD:

11:45 – 1:00 pm - Minnesota State University Moorhead for tour, lunch and presentations

- Clay County Recovery Center
- Community and Aquatics Center

Leave Moorhead and take a flood tour through Perley and Hendrum on way north

The committee's next stop is 2.5 hours away in Thief River Falls and they are scheduled to be there at 3:30pm. I have a call with Moorhead city staff on August 20th to work out the details of where the tour should drive to highlight flood projects in and around the city of Moorhead and the logistics of getting people on and off the bus and returned to their vehicles parked at MSU Moorhead. As is typical with these tours, any elected officials, city/county staff, or other relevant people are encouraged to attend. They are likely welcome to greet the legislators as they arrive at MSUM, to join for lunch and ride the bus with the committee. The presentation on the bus will likely be given by Bob Zimmerman, but that is TBD on the call next week.

There is no word yet out of the Senate on when they will be touring.

I did not hear back from the Department of Agriculture staff that I reached out to in response to the Commissioner's inquiries about the project.

EMPLOYMENT AGREEMENT

BY AND BETWEEN

METRO FLOOD DIVERSION AUTHORITY

AND

JOEL PAULSEN

Dated as of September 1, 2019

Relating to:

**An Agreement outlining the respective roles and responsibilities to serve as the
Executive Director of the Metro Flood Diversion Authority.**

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

INITIAL DRAFT – 8.10.19
V2 – 8.16.19
V3 – 8.19.19
FINAL VERSION – 8.20.19

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EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the “Agreement”) is made effective as of September 1, 2019 (the “Effective Date”), by and between METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota (hereinafter the “Authority”) and JOEL PAULSEN, an individual (hereinafter “Employee”).

WHEREAS, due to the frequent flooding in the Fargo-Moorhead metropolitan area, and the extensive damages caused thereby, the City of Fargo, the City of Moorhead, Cass County, Clay County, and the Cass County Joint Water Resource District joined together to execute the Joint Powers Agreement and form the Authority; and

WHEREAS, under the terms of the Joint Powers Agreement, the Authority may employ an Executive Director to function as the chief administrative officer of the Authority; and

WHEREAS, the role of the Executive Director will be to report directly and be responsible to the Diversion Authority Board for the efficient and effective day-to-day administration and leadership of the Comprehensive Project; and

WHEREAS, after consideration of the Employee’s application and an interview process, the Diversion Authority Board selected the Employee as the most qualified applicant to fill the Executive Director position and extended him an offer of employment; and

WHEREAS, following negotiation of contract terms, the Authority and the Employee desire to memorialize the terms and conditions of the Employee’s employment as the Executive Director in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, the Authority and the Employee agree as follows:

ARTICLE I. DEFINITIONS AND INTERPRETATION

Section 1.01 DEFINITIONS. All capitalized 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 Employment Agreement by and between the Authority and the Employee.

“**Applicable Law**” means, collectively, the Constitutions of the United States and of the State of North Dakota, 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 administrative or judicial precedents or authorities, including the interpretation or 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 the Authority or the Employee.

“Authority” means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota and a permanent, joint powers entity formed through the Joint Powers Agreement to provide the Fargo-Moorhead metropolitan area with permanent and comprehensive flood protection.

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

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

“Cass County Commission” means the governing body of Cass County.

“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.

“Cass County Members” means the three (3) individuals appointed by the Cass County Commission to serve on the Diversion Authority Board.

“Cause” has the meaning set forth in Section 7.02 hereof.

“Chair” means the individual of the Diversion Authority Board who is selected pursuant to the Joint Powers Agreement to preside over meetings of the Diversion Authority Board.

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

“City of Fargo Members” means the three (3) individual members of the Fargo City Commission representing the City of Fargo on the Diversion Authority Board, consisting of two (2) individuals appointed by the Fargo City Commission and the Mayor of the City of Fargo.

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

“City of Moorhead Members” means the two (2) individual members of the Moorhead City Council representing the City of Moorhead on the Diversion Authority Board, consisting of one (1) individual appointed by the Moorhead City Council and the Mayor of the City of Moorhead.

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

“Clay County Commission” means the governing body of Clay County.

“Clay County Members” means the two (2) individual members of the Clay County Commission appointed by the Clay County Commission to serve on the Diversion Authority Board.

“Co-Deputy Executive Director” means the individual(s) selected pursuant to the Joint Powers Agreement who are designated to act as the Executive Director in the event a vacancy exists in the office of the Executive Director.

“Commencement Date” means September 3, 2019.

“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.

“Contract Year” means the 12-month period commencing on the Commencement Date and ending on the date preceding the first anniversary of the Commencement Date and each 12-month period thereafter during the Term commencing on the anniversary of the Commencement Date and ending on the date preceding the next anniversary of the Commencement Date.

“Diversion Authority Board” means the governing body of the Authority.

“Effective Date” means September 1, 2019.

“Employee” means Joel Paulsen, an individual.

“Executive Director” means the chief administrative officer of the Authority.

“Fargo City Commission” means the governing body of the City of Fargo.

“Finance Committee” means a committee of the Authority created by the Joint Powers Agreement for the purpose of providing policy recommendations regarding the management of the financial aspects of the Authority and financial expenditures for the Comprehensive Project.

“Fiscal Agent” means a third party private financial entity or the Bank of North Dakota or a Member Entity appointed by the Diversion Authority Board pursuant to sections 5.09 and 10.03 of the Joint Powers Agreement. The interim Fiscal Agent is the City of Fargo.

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

“Joint Powers Agreement” means the agreement entered into by and between the City of Moorhead, the City of Fargo, Clay County, Cass County, and the Cass County Joint Water Resource District, dated as of June 1, 2016, to create the Authority.

“Member Entity” means the City of Moorhead, the City of Fargo, Clay County, Cass County, or the Cass County Joint Water Resource District, or their successors and assigns, as the context may require; references to **“Member Entities”** means the City of Moorhead, the City of Fargo, Clay County, Cass County, and the Cass County Joint Water Resource District, and their successors or assigns, collectively.

“Minnesota Board Member” includes the Clay County Members and the City of Moorhead Members.

“Moorhead City Council” means the governing body of the City of Moorhead.

“Non-Federal Sponsors” means the City of Fargo, the City of Moorhead, and the Authority.

“Party” means either the Authority or the Employee, 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 Authority and the Employee, collectively, and their respective legal representatives, successors, and permitted assigns.

“Program Management Consultant” means the Authority’s management consultant that will coordinate the planning and implementation of the Comprehensive Project.

“State” means the State of North Dakota.

“Term” means the term of this Agreement as defined by Section 4.01 hereof.

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

“Work Plan Goals” means those goals established by the Diversion Authority Board on an annual basis in accordance with Section 6.01 hereof.

ARTICLE II. POSITION

Section 2.01 POSITION. The Authority agrees to employ Employee as its Executive Director, and the Employee agrees to serve as the Executive Director in accordance with the terms and conditions of this Agreement, the Joint Powers Agreement, and Applicable Law, and to perform such other legally permissible and proper duties and functions as the Authority from time to time assigns.

Section 2.02 HOURS OF WORK. The Employee’s normal working hours shall be 8 a.m. until 5 p.m., and the Authority requires that the Employee attend all meetings of the Diversion Authority Board and of the Authority’s committees even if such meetings occur outside of the

Employee's normal working hours. The Employee may request approval from the Diversion Authority Board to be absent from a meeting.

Section 2.03 EMPLOYMENT RELATIONSHIP. It is specifically agreed that the Employee, as Executive Director, is an employee of the Authority, and the Authority shall have the right to deduct or withhold from the compensation due to the Employee any and all sums required by law to be deducted or withheld, including without limitation, federal income and Social Security taxes and all state or local taxes now applicable or that may be enacted and become applicable in the future.

Section 2.04 AT-WILL EMPLOYMENT. Subject to the notice provisions set forth in section 7.03 of this Agreement, the Employee is employed by the Authority on an at-will basis. Nothing in this Agreement, except as otherwise provided, shall limit the right to terminate the at-will employment.

Section 2.05 COMMENCEMENT DATE. Employee shall commence work on September 3, 2019 (the "Commencement Date").

ARTICLE III. DUTIES

Section 3.01 JOB DUTIES. The Authority will employ the Employee as Executive Director to perform a wide range of duties and tasks as described in the Joint Powers Agreement, including, but not limited to, the following:

(a) Overseeing the overall management of all administrative affairs and functions under the jurisdiction of the Diversion Authority Board;

(b) Ensuring compliance and enforcement of the Joint Powers Agreement and resolutions of the Diversion Authority Board;

(c) Hiring qualified staff to assist the Executive Director in the performance of duties as approved by the Diversion Authority Board;

(d) Supervising all Authority administration and related functions as directed by the Diversion Authority Board, including:

- (1) Personnel systems;
- (2) Budget systems;
- (3) Purchasing systems;
- (4) Management information systems;
- (5) Communications systems; and
- (6) Planning;

(e) Supervising all Authority purchases including procurement of services as directed by the Diversion Authority Board and pursuant to purchasing regulations established by the Diversion Authority Board;

(f) Administering various agreements and contracts entered into by the Diversion Authority Board;

(g) Attending Diversion Authority Board meetings, making recommendations to the Diversion Authority Board for the adoption of measures necessary for the efficient administration of the Authority's affairs, and keeping the Diversion Authority Board fully informed of the Comprehensive Project;

(h) Identifying expertise and innovative solutions necessary to administer project tasks, leading a diverse team of consultants, contractors, entity staff, and implementing the Comprehensive Project;

(i) In cooperation with the Finance Committee and the Fiscal Agent, preparing and submitting to the Diversion Authority Board a proposed annual budget and long-range capital expenditure program for such period as the Diversion Authority Board may direct, each of which shall include detailed estimates of revenues and expenditures, and enforcing the provisions of the budget when adopted by the Diversion Authority Board;

(j) Examining the books and papers of officers and departments of the Authority as directed by the Diversion Authority Board and reporting the findings to the Diversion Authority Board, keeping the Diversion Authority Board fully advised as to the financial condition and needs of the Authority, and making other reports from time to time as required by the Diversion Authority Board or as the Executive Director deems advisable;

(k) Developing and implementing administrative procedures for the Authority as directed by the Diversion Authority Board;

(l) Representing the Authority in public and at stakeholder meetings and events;

(m) Serving as the Authority's ambassador;

(n) Organizing and directing all aspects of government relations;

(o) Advocating for the Comprehensive Project with local, state, and federal staff and elected officials;

(p) Serving as the Authority's legislative liaison with local, state, and federal officials;

(q) Serving as public information officer for the Authority;

(r) Performing such other management and administrative duties as directed from time to time by the Diversion Authority Board; and

(s) Managing and directing the Program Management Consultant.

Section 3.02 POLICY DECISIONS. All policy decisions regarding the Authority shall be made by the Diversion Authority Board, not by the Employee.

Section 3.03 SCOPE OF EMPLOYMENT. The Employee will faithfully and diligently perform all of the duties, responsibilities, and powers so vested, delegated, or assigned, and will uphold and enforce all laws of the United States and of the State. The Employee will perform his duties as Executive Director with integrity and engage in activities and conduct that reflect positively on the Authority. The Employee will devote full time to his duties and responsibilities to the Authority and will utilize his skills and ability to promote the interests of the Authority. The Employee will not hold any other employment or perform any services for any other entity or person, other than a member of his family, and will not accept any remuneration therefor, without the prior approval of the Authority, except as set forth below:

(a) Employee may continue his position as President of the North Dakota State University Chapter of Engineers Without Borders, USA. Employee shall not devote more than 3 hours per week to this position, without the prior approval of the Authority.

(b) Employee may continue to serve as City Engineer for the City of Middle River, Minnesota. Employee shall not devote more than 4 hours per week to this position without the prior approval of the Authority. Employee is responsible for procuring and maintaining all required professional and/or errors and omissions insurance policies and/or coverages necessary for serving as the City Engineer of the City of Middle River and currently has insurance coverage through State Farm Insurance for his duties as the City Engineer for the City of Middle River. The Authority shall not be responsible for securing any insurance policies associated with serving as the City Engineer for the City of Middle River, Minnesota and the indemnification provisions set forth in Section 9.02 of this Agreement shall not apply to Employee's service as the City Engineer for Middle River.

ARTICLE IV. TERM

Section 4.01 TERM. The Term of this Agreement shall be for a period of three (3) calendar years, beginning on September 3, 2019 (the "Commencement Date"). At least six (6) months prior to the third anniversary of the Commencement Date, the Authority and the Employee shall, in Good Faith, enter into negotiations for the extension of the term of this Agreement. If the Authority and the Employee are unable to come to mutually agreed upon terms for the extension of this Agreement by the third anniversary of the Commencement Date, then this Agreement will automatically terminate upon the third anniversary of the Commencement Date. The Employee's tenure, service, and authority as Executive Director may additionally be terminated by the Authority, or through resignation, in accordance with Article VII hereof.

ARTICLE V. SALARY AND BENEFITS

Section 5.01 SALARY. The Authority shall pay the Employee a base salary of one hundred ninety five thousand dollars (\$195,000.00) per annum, payable once a month.

Section 5.02 COST OF LIVING ADJUSTMENTS. At the end of each Contract Year, the Employee's base salary shall be adjusted upward by three percent (3%) to account for a cost of living adjustment.

Section 5.03 DISCRETIONARY ADJUSTMENTS. At the end of each Contract Year, the Diversion Authority Board has the discretion to provide the Employee additional salary adjustments, outside of cost of living adjustments. Additional salary adjustments will be merit-based and will be awarded by the Diversion Authority Board for satisfactory performance and the achievement of Work Plan Goals. The effective date for any additional salary adjustment will be the anniversary of the Commencement Date.

Section 5.04 BENEFIT AND RETIREMENT PLANS. The Employee will receive benefit and retirement packages through Cass County pursuant to an agreement entered between Cass County and the Diversion Authority. Such benefit and retirement packages will be the same as those offered to other Cass County employees.

Section 5.05 AUTOMOBILE USAGE. The Employee will be allowed to utilize any automobiles that are a part of Cass County's automobile fleet to carry out the job duties described herein. In the event such an automobile is unavailable to the Employee and the Employee must utilize another vehicle, the Diversion Authority will reimburse the Employee for mileage pursuant to the applicable calendar year's standard mileage rate as set by the Internal Revenue Service.

Section 5.06 VACATION LEAVE. Effective upon the Commencement Date, the Employee shall be credited with eighty (80) hours of accrued vacation leave. On the first of each month following the Commencement Date, the Employee shall be credited with an additional twelve (12) hours of accrued vacation leave. The Employee may carry over a maximum of two hundred forty (240) hours of accrued vacation leave at the end of each calendar year. Accrued vacation leave upon the termination or resignation of the Employee will be paid out to the Employee only as required by State law.

Section 5.07 SICK LEAVE. Effective upon the Commencement Date, the Employee shall be credited with twelve (12) hours of accrued sick leave. On the first of each month following the Commencement Date, the Employee shall be credited with an additional eight (8) hours of accrued sick leave. Accrued sick leave upon the termination or resignation of the Employee will be paid out to the Employee only as required by State law.

Section 5.08 HOLIDAY LEAVE. The Employee shall be allowed to observe the following holidays: New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving, and Christmas Day.

Section 5.09 EXPENSES. The Authority agrees to pay or to reimburse the Employee for all reasonable, ordinary, necessary, and documented business expenses incurred during the Term in the performance of his services. The Employee, as a condition precedent to obtaining such payment or reimbursement, shall provide the Authority any and all statements, bills, or receipts evidencing the travel or out-of-pocket expenses for which the Employee seeks payment or reimbursement and any other information as the Authority may from time to time reasonably require.

Section 5.10 CELL PHONE. The Authority will provide, at no cost to Employee, a cell/smart phone with an unlimited data plan, to be used for employment-related activities.

**ARTICLE VI.
PERFORMANCE STANDARDS/REVIEWS**

Section 6.01 WORK PLAN GOALS. Ninety (90) days after the Commencement Date, and thereafter at the end of each Contract Year, the Diversion Authority Board shall establish Work Plan Goals for the Employee. The Work Plan Goals will generally be attainable within the time limitations as specified and within the annual operating and capital budgets and appropriations provided.

Section 6.02 EVALUATION. The Employee shall be given an initial performance review six (6) months following the Commencement Date. The Employee shall have a yearly performance review one (1) year after the Commencement Date each year on the anniversary of the Commencement Date thereafter. The process of evaluation shall be as follows:

(a) The Employee shall prepare a written self-appraisal in which he discusses his performance toward meeting Work Plan Goals, assesses his skills in management of the Diversion Authority Board, and proposes a set of personal performance objectives, considering Work Plan Goals, for the next appraisal period.

(b) The Chair and/or General Counsel for the Diversion Authority shall provide each member of the Diversion Authority Board a form to evaluate the Employee's performance. The Chair and/or General Counsel shall collect the evaluation forms from each board member and shall draft a single comprehensive performance evaluation based upon this information. The Employee and the Chair and/or General Counsel shall meet together to discuss and consolidate the two (2) appraisal documents, including the personal performance objectives for the coming period.

(c) The Chair shall present the completed appraisal to the Diversion Authority Board for discussion (as needed) with the Employee regarding performance review.

**ARTICLE VII.
TERMINATION/RESIGNATION**

Section 7.01 TERMINATION. Pursuant to section 5.09 of the Joint Powers Agreement, the decision whether to terminate this Agreement shall be determined by a simple majority vote of the members of the Diversion Authority Board present; provided, however, that at least one (1) affirmative vote to terminate must be cast by a Minnesota Board Member, a City of Fargo Member, and a Cass County Member. Termination may occur with or without Cause and at any time.

Section 7.02 TERMINATION FOR CAUSE. The Authority, by direction of the Diversion Authority Board, shall be entitled to terminate the Agreement and to discharge the Employee for Cause effective upon the giving of written notice. The term "Cause" shall include the following grounds:

(a) the Employee's failure or refusal to perform his duties and responsibilities as set forth in Article III to the satisfaction of the Authority or to abide by the directives of the Diversion Authority Board or the Employee's failure to devote all of his time and attention exclusively to the business and affairs of the Authority in accordance with the terms hereof;

(b) the misappropriation of the funds or property of the Authority;

(c) the use of illegal drugs or the abuse of alcohol;

(d) the commission of any act that constitutes a felony or any crime involving moral turpitude, dishonesty, or theft;

(e) the commission in bad faith by the Employee of any act that materially injures or could reasonably be expected to materially injure the reputation, business, or business relationships of the Authority;

(f) any misconduct or negligence by the Employee in the performance of his duties;
and

(g) any breach (not covered by any of the causes (a) through (f) above) of any material provision of this Agreement.

Section 7.03 TERMINATION WITHOUT CAUSE. Notwithstanding anything contained in Section 7.02 to the contrary, the Authority, by direction of the Diversion Authority Board, shall have the right at any time during the Term to terminate the employment of the Employee without Cause by giving ninety (90) days' written notice to the Employee setting forth a date of termination. In the event that the Authority exercises its rights under this section, Employee and Authority will develop a transition employment plan covering the Employee's job duties during the final ninety (90) days of his employment.

Section 7.04 TERMINATION FOR DEATH OR DISABILITY. In the event of the Employee's death, the date of termination of this Agreement shall be the date of the Employee's death. In the event the Employee shall be unable to perform his duties hereunder by virtue of illness or physical or mental incapacity or disability (from any cause or causes whatsoever) in substantially the manner and to the extent required hereunder prior to the commencement of such disability (all such causes being herein referred to as "disability") for periods aggregating forty five (45) days, whether or not continuous, in any continuous period of three hundred sixty (360) days, the Authority shall have the right to terminate the Employee's employment hereunder at the end of any calendar month during the continuance of such disability upon written notice to him.

Section 7.05 RESIGNATION. The Employee may resign from his position as Executive Director at any time by providing ninety (90) calendar days advanced written notice to the Co-Deputy Executive Directors.

ARTICLE VIII. DISPUTE RESOLUTION

Section 8.01 INTENT AND PROCEDURE. The Parties will cooperate and use their best efforts to ensure that the various 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, the following procedure will be used.

Section 8.02 MEDIATION. If there is a failure between the Parties to resolve a dispute on their own, the Parties will first attempt to mediate the dispute. The Parties will agree upon a single mediator or, if an agreement cannot be reached within ten (10) calendar days, the mediator shall be selected by the American Arbitration Association ("AAA") in accordance with its Commercial Industry Mediation Rules and Procedures then in effect. Any mediator selected by mutual agreement of the Parties or through the AAA selection process must have no current or on-going relationship with either Party. The Parties agree that only one (1) mediator shall be selected as the AAA mediator, and the Parties will each pay fifty percent (50%) of any costs for mediation services.

Section 8.03 LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within forty-five (45) calendar days after the selection of the mediator pursuant to Section 8.02, the Parties may litigate the matter.

Section 8.04 LITIGATION; VENUE. Any litigation arising out of this Agreement shall be heard in the state or federal courts located in Cass County, North Dakota, and all Parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 8.05 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 Parties and does not apply to third party claims or suits.

ARTICLE IX. MISCELLANEOUS

Section 9.01 CONFLICTS OF INTEREST. The Employee shall avoid conflicts, potential or real, between his own personal and financial interests and that of the Authority, and the Employee shall notify the Diversion Authority Board as soon as possible of any potential conflict of interest that may arise.

Section 9.02 INDEMNIFICATION. The Authority shall, to the fullest extent authorized by law, and subject to the qualifications set forth herein, indemnify and hold Employee harmless against any and all claims, suits, actions, debts, damages, costs, charges and expenses, including

court costs and attorney's fees, and legal fees or disbursements paid or incurred, and against all liability, losses, and damages of any nature whatsoever, to any person who makes or asserts a claim against Employee for acts occurring within the scope of his employment as set forth in this Agreement. Nothing herein shall be deemed a waiver by the Authority of the limits on liability set forth in N.D.C.C. § 32-12.1-03 or a waiver of any available immunities or defenses. The Authority's obligation to hold and save Employee harmless shall be limited by the limitations on liability set forth in N.D.C.C. § 32-12.1-03, as amended from time to time. This indemnification and hold harmless obligation shall not apply to any act or omission of Employee for which the Employee is guilty of malfeasance in office, willful neglect of duty, or bad faith. This indemnity and hold harmless obligation shall survive the termination of this Agreement for a period of six (6) years after this Agreement has been terminated.

Section 9.03 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. Employee agrees and acknowledges that employment with a public agency in North Dakota requires his compliance with North Dakota Open Records requirements and that, as permitted under North Dakota law, his personnel file may be subject to release or inspection pursuant to a North Dakota open records request.

Section 9.04 AMENDMENTS. This Agreement shall be amended or modified only by mutual consent of both Parties, unless otherwise provided for herein.

Section 9.05 COUNTERPARTS. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 9.06 MERGER. This Agreement supersedes all prior oral or written communications between the Parties.

Section 9.07 ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties with respect to the employment relationship between the Authority and the Employee and replaces all prior agreements or understandings.

Section 9.08 SEVERABILITY. In case any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

Section 9.09 BINDING EFFECT. The terms and conditions of this Agreement are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective Parties.

IN WITNESS WHEREOF, the Authority and the Employee caused this Agreement to be executed.

(Remainder of page intentionally left blank.)

Signature Page for the Metro Flood Diversion Authority

The Governing Body of the Metro Flood Diversion Authority approved this Agreement on the 22nd of August, 2019.

AUTHORITY:

**METRO FLOOD DIVERSION
AUTHORITY**

By: _____
MARY SCHERLING, Chair

By: _____
MICHAEL J. REDLINGER, Co-
Deputy Executive Director

By: _____
ROBERT W. WILSON, Co-Deputy
Executive Director

ATTEST:

HEATHER WORDEN, Secretary

APPROVED AS TO FORM AND CONTENT

JOHN T. SHOCKLEY, General Counsel

Signature Page for Employee

By signing below, I agree and acknowledge that: I have been provided a copy of this Employment Agreement more than twenty-one (21) days prior to its Effective Date; I have had ample time to review the terms and conditions of this Agreement; and, I have had an opportunity to have it reviewed by my attorney.

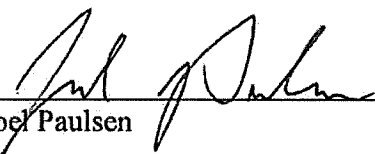
The initial draft of the Employment Agreement was provided to me on 8-10-2019.

Version 2 of the Employment Agreement was provided to me on 8-16-2019.

Version 3 of the Employment Agreement was provided to me on 8-19-2019.

The final version of the Employment Agreement was provided to me on 8-20-2019.

EMPLOYEE:



Joel Paulsen

Dated: August 20th, 2019

DIVERSION PROJECT COST SHARE AGREEMENT

**BY AND BETWEEN
THE METRO FLOOD DIVERSION AUTHORITY
AND
THE CITY OF HORACE, NORTH DAKOTA**

Dated as of August ____, 2019

Relating to:

An agreement outlining the Diversion Authority Infrastructure Fund and cost share responsibilities of the Metro Flood Diversion Authority and the City of Horace with regard to public infrastructure projects undertaken by the City of Horace

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

Draft: 8-21-19

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DIVERSION PROJECT COST SHARE AGREEMENT

THIS COST SHARE AGREEMENT (the “Agreement”) is entered this _____ day of August, 2019, by and between the METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota (the “Authority”), and the CITY OF HORACE, North Dakota, a political subdivision of the State of North Dakota (the “City”).

WHEREAS, the City wishes to undertake various infrastructure projects (“City Projects”) within and adjacent to the City, and in cooperation with the Fargo-Moorhead Area Diversion Project (the “Comprehensive Project”); and

WHEREAS, in conjunction with the City Projects, the Authority has established a segregated infrastructure fund (the “Infrastructure Fund”) to fund costs associated with the City Projects through a cost share arrangement; and

WHEREAS, the Parties wish to share costs related to the City Projects in the manner provided in this Agreement in an effort resolve disputes surrounding the impact of the Fargo-Moorhead Area Diversion Project to regional infrastructure, and to mitigate the impact of activities associated with the Project within and adjacent to the City of Horace; and

NOW THEREFORE, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, the City and Authority agree as follows:

ARTICLE I. DEFINITIONS AND INTERPRETATION

Section 1.01 DEFINITIONS. All capitalized 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.

“Applicable Law” means, collectively, the Constitutions of the United States and the 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 administrative or judicial precedents or authorities, including the interpretation or 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 the City or the Authority.

“Authority” means the Metro Flood Diversion Authority, a North Dakota political subdivision created by the Joint Powers Agreement consisting of the City of Fargo, North Dakota; the City of Moorhead, Minnesota; Cass County, North Dakota; Clay County, Minnesota; and the Cass County Joint Water Resource District in North Dakota.

“Best Efforts” means an entity 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 Law.

“City” means the City of Horace, North Dakota, a political subdivision of the State of North Dakota.

“City Project” means any infrastructure project permitted under North Dakota law and approved by the City of Horace City Council pursuant to a vote taken at a public meeting.

“Comprehensive Project” means the Locally Preferred Plan (“LPP”) Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013, and as amended by the Governors’ Task Force and applicable permit requirements, and as approved by the Dam Safety and Public Waters Work Permit No. 2018-0819 granted by the Minnesota Department of Natural Resources on December 27, 2018, and referred to as the Plan B alignment. The Comprehensive Project as referred to in this Agreement, includes only the Plan B alignment and any non-material changes made to the alignment authorized by the applicable federal or state environmental regulatory agencies and no other alignments previously considered or approved subsequent to the date of this Agreement, unless mutually agreed to by the Authority and the City.

“Diversion Channel and Associated Infrastructure” means an element of the Comprehensive Project consisting of a large channel and embedded levy commencing at a point beginning south of the City at the Diversion Inlet Structure and extending north and west for approximately 30 miles and discharging in the Red River west of Georgetown, MN, with approximately 12 County Highway bridge crossings, two interstate bridge crossings and 4 rail crossings.

“Effective Date” means _____, 2019, the date last executed by the parties below.

“Fiscal Agent” means a third party private financial entity or the Bank of North Dakota or a Member Entity appointed by the Diversion Authority Board pursuant to the Joint Powers Agreement, dated June 1, 2016. The Fiscal Agent shall establish and maintain for the management of Project funds including but not limited to annual budgets, revenues, proceeds of debt obligations and the repayment of debt service on the debt obligations. If for any reason the Fiscal Agent shall neglect or fail to perform its fiduciary duties, the Diversion Authority Board and its member entities may intervene and take any action necessary to avoid a default in payment of the debt service on debt obligations or other payments.

“Good Faith” means an honest intention to abstain from taking any unconscientious advantage of another even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious.

“Governing Body” means the body which performs the legislative and governmental functions of a political subdivision, including but not limited to, a board, council, or commission. For example, the Horace City Council and the Diversion Authority Board are the Governing Body of each of said entities.

“Infrastructure Fund” means the sum of money held by the Authority in a segregated interest-bearing escrow account as set forth in Section 3.01 of this Agreement.

“P3 Developer” means the private party or entity which enters into a Project Agreement, whereby that party agrees to design, build, finance, operate and maintain an element of the Comprehensive Project.

“P3 Memorandum of Understanding” or “P3 MOU” means a Memorandum of Understanding by and between the City and the Authority relating to the relocation, realignment and/or rerouting of municipal utilities, drainage, bike paths, trails, streets, highway and/or roads crossing over, or under the Diversion Channel and Associated Infrastructure as part of the P3 Developers construction program relating to the Diversion Channel and Associated Infrastructure undertaken pursuant to the Project Agreement.

“Party” means either the City or the Authority, as the context may require, and its respective legal representatives, successors, and permitted assigns, and together, the **“Parties.”**

“Project Agreement” means an agreement by between the Authority and a P3 Developer, authorizing the P3 Developer to design, build, finance and maintain the Diversion Channel and Associated Infrastructure.

“State” means the State of North Dakota.

“Substantial Completion” or “Substantially Complete” means the time at which all of the Comprehensive Project is available for its intended purpose.

“Termination Date” means a period of five years ending after the Authority’s Executive Director gives written notice to the City that the Comprehensive Project is substantially complete.

Section 1.02 INTERPRETATION. The headings of Articles and Sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of this Agreement. Any and all exhibits to this Agreement are hereby incorporated by reference. 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 as set forth herein), (b) any reference herein to any person shall be

construed to include such person's permitted 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, (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this Agreement, and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

ARTICLE II. INTENT

Section 2.01 INTENT. The Parties to this Agreement hereby resolve any and all of their differences and claims regarding the Comprehensive Project by execution of this Agreement. The Parties recognize and agree that the areas within the City affected by the Comprehensive Project need additional infrastructure to be installed and coordinated planning with the Authority to mitigate impacts of the Comprehensive Project. By executing this Agreement, the Parties acknowledge the necessity to cooperate on long-term infrastructure projects, including those contemplated herein, for the betterment of the greater Fargo-Moorhead region.

ARTICLE III. INFRASTRUCTURE FUND

Section 3.01 CREATION OF THE FUND. The Authority hereby establishes an Infrastructure Fund to be held by the Authority's Fiscal Agent on behalf of the City. In order to provide funds through a cost share with City Projects, the Parties agree that a minimum principal balance of \$2,500,000.00 (the "Initial Deposit") shall be deposited in the Infrastructure Fund thirty (30) days after the Authority executes a Project Agreement or when a contract is awarded to commence construction on a majority of the Diversion Channel and Associated Infrastructure. The Authority shall deposit the remaining \$2,500,000.00 one (1) year after the Initial Deposit. The Executive Director of the Authority shall notify the City when the Project Agreement with the P3 Developer is executed. The Infrastructure Fund shall be held by the Authority's Fiscal Agent in a segregated, money market interest-bearing escrow account, which provides a higher interest rate than a standard savings account. The City will receive quarterly statements regarding the balance in this account.

Section 3.02 DISTRIBUTIONS FROM THE INFRASTRUCTURE FUND.

- (a) Notice. In the event the City determines that it desires to utilize funds from the Infrastructure Fund for a City Project, the City will notify the Authority that it will be using the Infrastructure Fund for a City Project. The notice will be in writing, may be delivered electronically, and will provide the following information:
- (i) The estimated cost of the City Project;
 - (ii) The amount of cost share the City intends to use;

- (iii) Engineer's estimates for the City Project;
 - (iv) The date the City Project will be bid out; and
 - (v) The estimated date the funds will be needed.
- (b) Procurement for City Projects. The City will be solely responsible for the following regarding a City Project:
- (i) Procuring a licensed engineer for purposes of preparing plans and specifications;
 - (ii) Designing and constructing the City Project, including selection of project components and features;
 - (iii) Demonstrating compliance with applicable engineering and technical criteria;
 - (iv) Complying with all applicable bidding requirements;
 - (v) Acquiring and owning all requisite right of way, including the necessary title to all land, easements, and other property interests, as well as any fixtures, equipment, or personal property necessary for the City Project;
 - (vi) Administering and constructing the City Project, including all City Project bidding, contract administration, and other duties necessary for the purposes of construction of the City Project;
 - (vii) Owning, maintaining, operating, and insuring the City Project;
 - (viii) Providing the Authority with an engineer's estimate for City Projects the City determines to use the Infrastructure Fund for reimbursement;
 - (ix) Providing the Authority with fully executed and pay requests for payments approved by the City's Governing Body;
 - (x) Providing a final engineer's payment/close out for a City Project; and
 - (xi) Paying all costs and expenses associated with and regarding the City Project, less any cost participation received from any other entity, including the Authority,
- (c) Distribution. Once the City has awarded a contract for a City Project, it will notify the Authority. Thereafter, as the City approves pay requests for City Projects, it will forward them to the Authority for payment with instructions to either reimburse the City or to send the payment directly to the contractor. All activities and expenses contemplated in Section 3.02(b) as responsibilities of the City for City Projects are eligible for payment through the Infrastructure Fund.

- (d) Accounting. On a monthly basis, the Authority shall provide the City with an accounting of the Infrastructure Fund. The Authority will be responsible for reporting to the City, the current balance of the Infrastructure Fund, interest accrued, and a detailed description of prior withdrawals from the City for City Projects.
- (e) Other Funding Sources. The City may secure funding from various federal, state, and other sources to contribute to the financing of City Projects, to defray Projects costs, if available. As contemplated by the Parties, such funding sources include a joint request by the Parties to the State of North Dakota State Water Commission to seek grant funding.

Section 3.03 DURATION OF THE INFRASTRUCTURE FUND. The Infrastructure Fund shall remain in existence until fifteen (15) years after the Authority's Executive Director has notified the City in writing that the Comprehensive Project is substantially complete.

Section 3.04 REMAINING FUNDS. Any unused funds remaining in the Infrastructure Fund after the Termination Date as set forth in Section 5.01 of this Agreement shall be returned to the Authority.

ARTICLE IV. COST SHARE

Section 4.01 COST SHARE AMOUNT. The Authority will contribute 80% of the cost of a City Project until the initial deposit in the Infrastructure Fund is exhausted or this Agreement is terminated, whichever event occurs first. As set forth in Section 3.01 of this Agreement, the Authority will contribute \$ 5,000,000.00 to the Infrastructure Fund, which shall be reduced by each and every draw made by the City for a City Project, all in accordance with the policies and procedures set forth in this Agreement. The City will contribute a 20% match to the contribution from the Authority for the cost of a City Project, all in accordance with the policies and procedures set forth in this Agreement. Nothing herein shall be construed as limiting the City from using all or part of the Infrastructure Fund for a single City Project.

ARTICLE V. TERM AND TERMINATION

Section 5.01 TERM. The term of this Agreement shall begin on the Effective Date and shall terminate fifteen (15) years after the Authority's Executive Director has notified the City in writing that the Comprehensive Project is substantially complete (the "Termination Date").

ARTICLE VI. DEFAULT AND REMEDIES

Section 6.01 DEFAULT. Failure to comply with any of the terms and conditions of this Agreement, which failure continues for thirty (30) days after written notice from either Party shall constitute a default of this Agreement.

Section 6.02 REMEDIES. Upon the occurrence of any Default, either Party may bring legal action to enforce the terms hereof, but the non-defaulting Party shall not be entitled to damages of any kind, with the exception of attorneys' fees. Attorneys' fees shall be the obligation of the defaulting Party should a Court find a breach of this Agreement. Prior to initiating any legal action for injunctive relief, the Parties shall attempt, in Good Faith, to negotiate a settlement or resolution of the Default. If the Parties are unable to settle or resolve the Default after attempting to negotiate, the Parties shall then participate in non-binding mediation pursuant to Article VIII prior to initiating a legal action.

ARTICLE VII. RELEASE AND COOPERATION

Section 7.01 FUTURE AGREEMENTS. This is a binding agreement. The Parties may enter future binding agreements or memoranda of understanding for the described infrastructure projects as projects proceed and more details for the projects emerge, consistent with the commitments made herein for City Project construction. The Parties recognize that such agreements involve more details and analysis than can be provided as of the date of this Agreement. The Parties will cooperate in Good Faith to negotiate the terms of any agreements necessary so that City Projects are completed consistent with the terms of this Agreement.

Section 7.02 PROJECT SUPPORT AND GOOD FAITH. By executing this Agreement, the City agrees and understands that the Parties are resolving questions of the impact of the Comprehensive Project in and around the City of Horace. The City recognizes the need for long-term flood protection in the region and will support increased Comprehensive Project funding at both the state level (Minnesota and North Dakota) and the federal level to realize flood protection and regional development in the City's interest. The Authority recognizes the City's need to promote long-term development and to provide for City infrastructure to support long-term growth of the City. The Diversion Authority, and its constituent entities, will work in Good Faith to realize those City goals.

Section 7.03 PUBLIC PRIVATE PARTNERSHIP (P3) MEMORANDUM OF UNDERSTANDING (MOU). The City will cooperate in Good Faith with the Authority to execute a P3 MOU addressing approvals, if any, needed for construction of the Diversion Channel and Associated Infrastructure.

ARTICLE VIII. DISPUTE RESOLUTION

Section 8.01 INTENT AND PROCEDURE. The Parties will cooperate and use their Best Efforts to ensure that the various 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, the Parties will use the following procedure.

Section 8.02 MEDIATION. If there is a failure between the Parties to resolve a dispute on their own, the Parties will first attempt to mediate the dispute. The Parties will agree upon a single mediator or, if an agreement cannot be reached within ten (10) calendar days, each Party will propose two (2) potential individuals to serve as mediator, for a total of four (4) individuals.

The Parties will then select a mediator by alternatively striking the names of the proposed individuals, with the City striking first, followed by the Authority. The Parties will each pay fifty percent (50%) of any costs for mediation services.

Section 8.03 LITIGATION. If the dispute is not resolved within forty-five (45) calendar days after the selection of the mediator pursuant to the prior Section, the Parties may litigate the matter.

Section 8.04 VENUE. All litigation between the Parties arising out of or pertaining to this Agreement or its breach will be filed, heard, and decided in the District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

Section 8.05 WAIVER AND RELEASE. IN CONSIDERATION FOR THIS COST SHARE AGREEMENT AND THE AUTHORITY'S PROMISES AND COVENANTS CONTAINED HEREIN, THE CITY WAIVES, RELEASES, AND DISCHARGES ANY AND ALL KNOWN AND UNKNOWN PAST OR FUTURE LIABILITY, ACTIONS, CLAIMS, DEMANDS, CAUSES OF ACTION, RIGHTS OF CONTRIBUTION, JUDGMENTS, DAMAGES, PENALTIES, FINES, COSTS, INTERESTS, OR LOSSES, INCLUDING COSTS, EXPENSES, ATTORNEYS' FEES, TOGETHER WITH ALL OTHER COSTS AND EXPENSES OF ANY KIND OR NATURE, AGAINST THE AUTHORITY, OR ANY OF THE AUTHORITY'S MEMBER ENTITIES, OFFICERS, EMPLOYEES, AGENTS, ENGINEERS, CONSULTANTS, CONTRACTORS, AND REPRESENTATIVES, ON ACCOUNT OF, ARISING OUT OF, OR IN ANY WAY REGARDING AND/OR RELATING TO THE COMPREHENSIVE PROJECT AS DEFINED HEREIN.

ARTICLE IX. MISCELLANEOUS

Section 9.01 ASSIGNMENT. Neither Party may assign this Agreement without the prior written consent of the other Party. The Parties' rights and obligations under this Agreement will be passed to the assignees to which those rights and obligations have been permissibly assigned.

Section 9.02 MAINTENANCE OF CITY PROJECTS. The Authority will not responsible for maintenance and control of any City Projects.

Section 9.03 MODIFICATION. This Agreement may only be amended or modified by written instrument signed by both Parties, unless otherwise provided for herein.

Section 9.04 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

Section 9.05 SEVERABILITY. In case any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

Section 9.06 NO WAIVER. No waiver of any Party of any right or remedy pursuant to this Agreement will be deemed to be a waiver of any other or subsequent right or remedy pursuant to this Agreement. The consent of one Party to any act by the other Party requiring such consent will not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

Section 9.07 ACKNOWLEDGMENT. Each of the Parties affirm and acknowledge that it has fully read and appreciates, and understands the words, terms, conditions and provisions of this Agreement and is fully satisfied with the same. Each Party affirms and acknowledges that it has been, or had the opportunity to be represented by legal counsel of its choice.

Section 9.08 AUTHORITY. Each Party represents and warrants that it has the power and authority to enter this Agreement. Each Party further represents and warrants that the person or persons executing this Agreement on its behalf has full and complete legal authority to do so, and thereby binds the Party and, to the extent permitted by this Agreement, its successors and assigns.

Section 9.09 NO THIRD PARTY BENEFICIARIES. Nothing contained in this Agreement is intended or will be construed as creating or conferring any right, benefits, or remedies upon, or creating any obligations of the Parties hereto toward, any person or entity not a Party to this Agreement, except those rights expressly contained herein.

Section 9.10 ENTIRE AGREEMENT. This Agreement contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter, except as otherwise provided herein.

Section 9.11 COUNTERPARTS. This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 9.12 SURVIVAL. The indemnifications, limitations, releases, obligations, and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement will survive the expiration or earlier termination of this Agreement.

Section 9.13 AUTHORIZED REPRESENTATIVES.

(a) The Authority and the City hereby designate the following individuals as their initial representatives, respectively, to administer this Agreement on their respective behalves:

- (1) The Authority Representative: Its Executive Director
- (2) The City Representative: Its City Administrator

- (b) The representatives will be reasonably available to each other during the term of this Agreement and will have the authority to issue instructions and other communications on behalf of the Authority and the City, respectively, and will be the recipients of notices and other written communications from the other Party pursuant to this Agreement, except as otherwise provided in this Agreement. Such representatives, however, will not have the authority to make decisions or give instructions binding upon the Authority or the City, except to the extent expressly authorized by the Authority or the City, as the case may be, in writing.
- (c) In the event either the Authority or the City designates a different representative, it will give the other Party written notice of the identity of and contact information for the new representative, as the case may be.

Section 9.14 NOTICES.

- (a) All notices under this Agreement shall be in writing and: (1) delivered personally; (2) sent by certified mail, return receipt requested; (3) sent by a recognized overnight mail or courier services, with delivery receipt requested; or (4) sent by email communication followed by a hard copy, to the following addresses.
- (b) All notices to the Authority shall be marked as regarding this Agreement and shall be delivered to the following address or as otherwise directed by the City Representative:

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

- (c) All notices to the City shall be marked as regarding this Agreement and shall be delivered to the following address or as otherwise directed by the City Representative:

Attn: City Administrator
City of Horace
P.O. Box 99
Horace, ND 58047-0099

- (d) Notices shall 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. shall be deemed received on the first calendar day following delivery.

Section 9.15 FORCE MAJEURE. Neither Party will be liable to the other during any period in which its performance is delayed or prevented, in whole or in part, by circumstance beyond its reasonable control. Circumstances include, but are not limited to, the following: act of

God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Party of the same.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

(Remainder of page intentionally left blank.)

Signature Page for the Metro Flood Diversion Authority

The governing body of the Metro Flood Diversion Authority, approved this Agreement on the ___ day of _____, 2019.

METRO FLOOD DIVERSION
AUTHORITY

By: _____
Mary Scherling, Chair

ATTEST:

Executive Director

Signature Page for the City of Horace, North Dakota

The governing body of the City of Horace, North Dakota, approved this Agreement on the ____ day of _____, 2019.

CITY OF HORACE, NORTH DAKOTA

By: _____
Kory Peterson, Mayor

ATTEST:

Brenton Holper, City Administrator



Fargo-Moorhead Metropolitan Area Flood Risk Management Project

Jacobs Task Order 6 Summary

Background

- ▶ Overall relationship governed by MSA – 1/13/17
 - ▶ Allows for specific task orders
 - ▶ Delayed restart to finalize finance plan
- ▶ Task Order 6 (TO6)
 - ▶ Title: P3 Procurement Support and Design and Construction Contract Monitoring Activities
 - ▶ Term: Approval until sixty (60) days after Project Final Completion
 - ▶ Generally:
 - ▶ Resume the P3 procurement
 - ▶ Assist in the selection of a preferred Proposer
 - ▶ Assist in the execution of a Project Agreement with a Developer
 - ▶ Assist with administering the Project Agreement
 - ▶ Provide oversight
 - ▶ Federal court authorized P3 procurement to recommence
 - ▶ All costs included within Project Cost Estimate

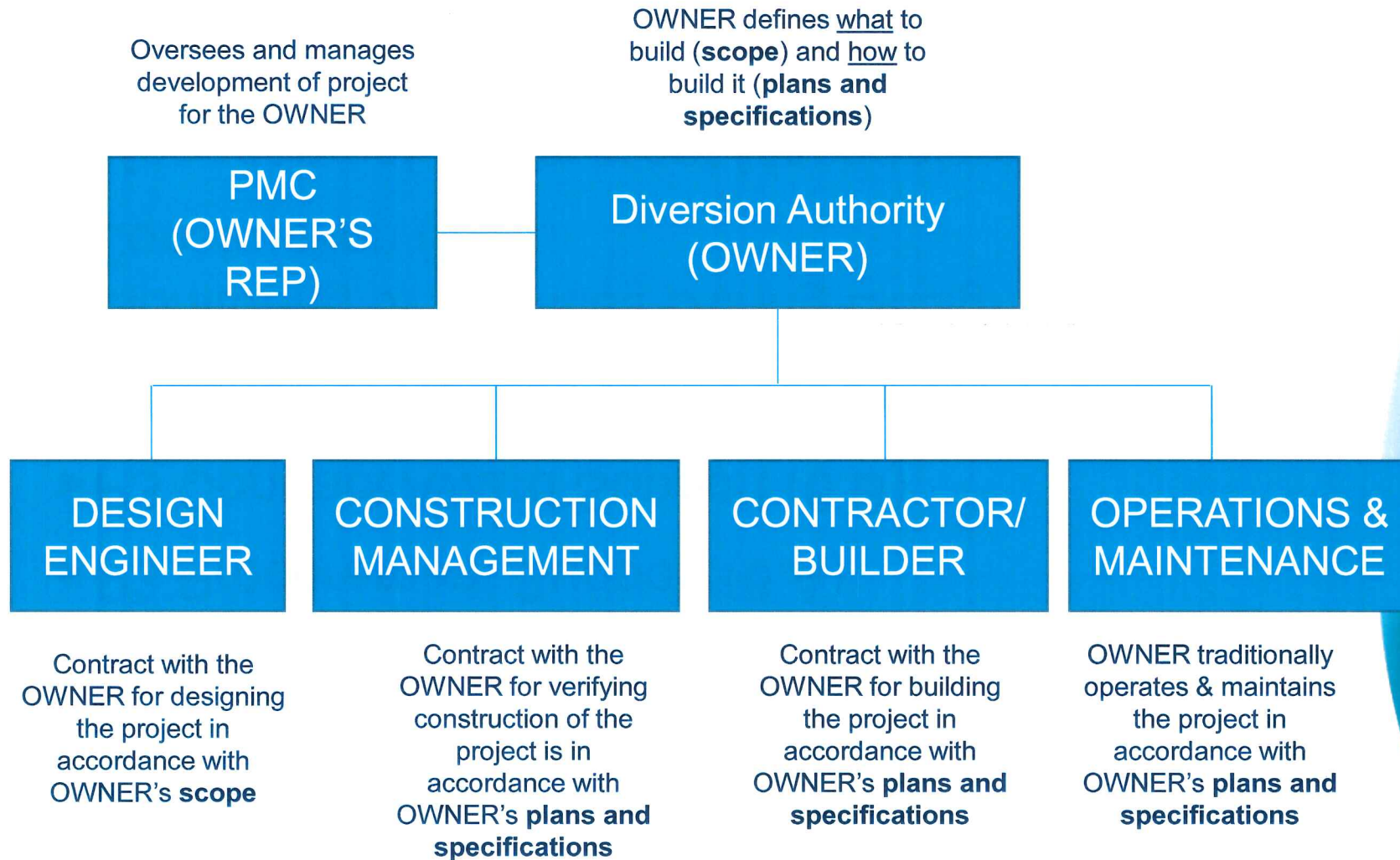


List of Specific Work Tasks

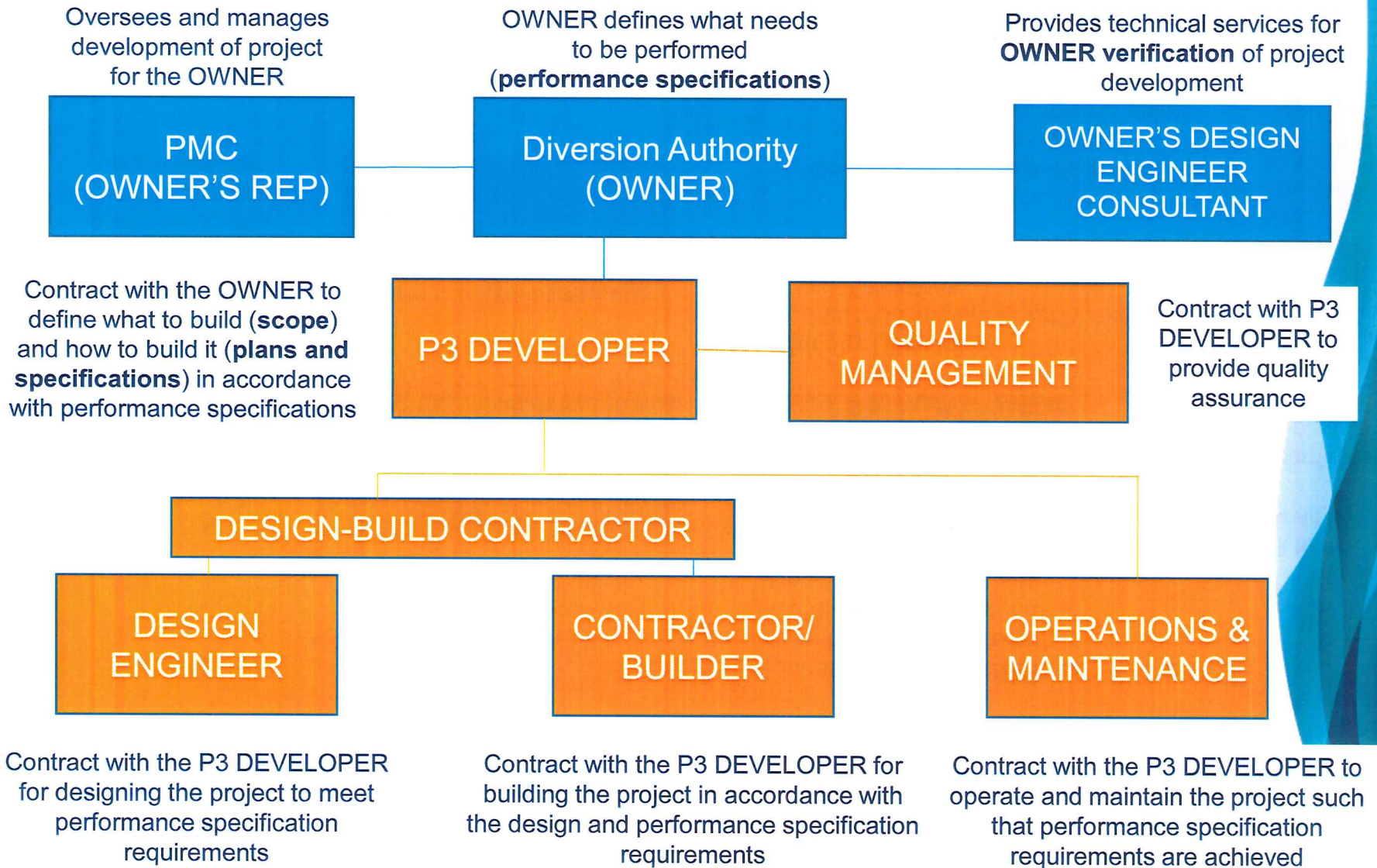
- ▶ P3 Procurement Support (6.A)
- ▶ P3 Contract Award Support (6.B)
- ▶ Issuance of Notices to Proceed (NTP) (6.C)
- ▶ Monitoring of Activities During Design and Construction (6.D)
- ▶ Management of Payment Mechanisms (6.E)
- ▶ Design & Construction Period Completions (6.F)
- ▶ Management of Utilities & Third-Party Agreements (6.G)



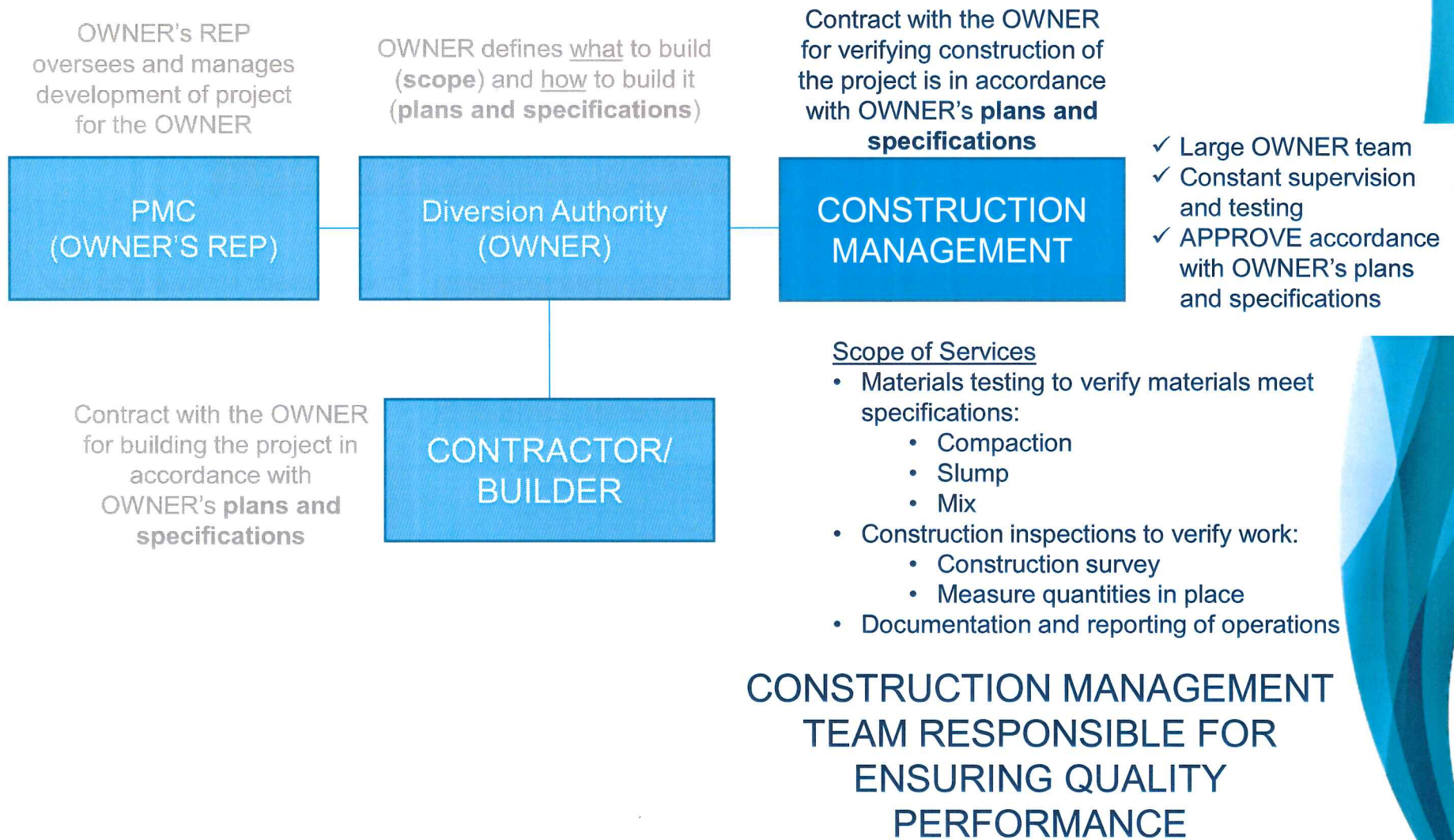
Traditional Delivery



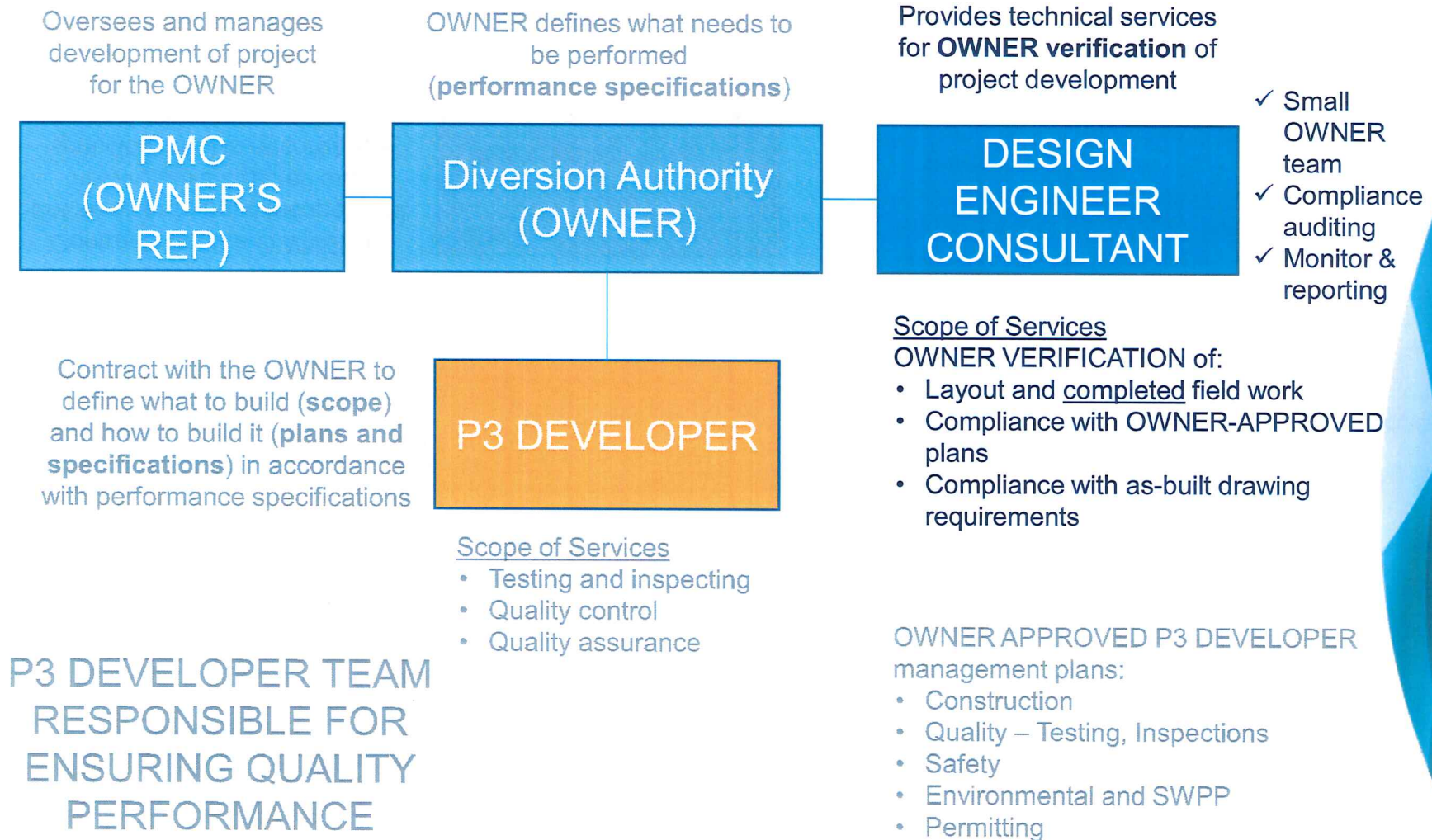
Public-Private Partnership (P3) Delivery



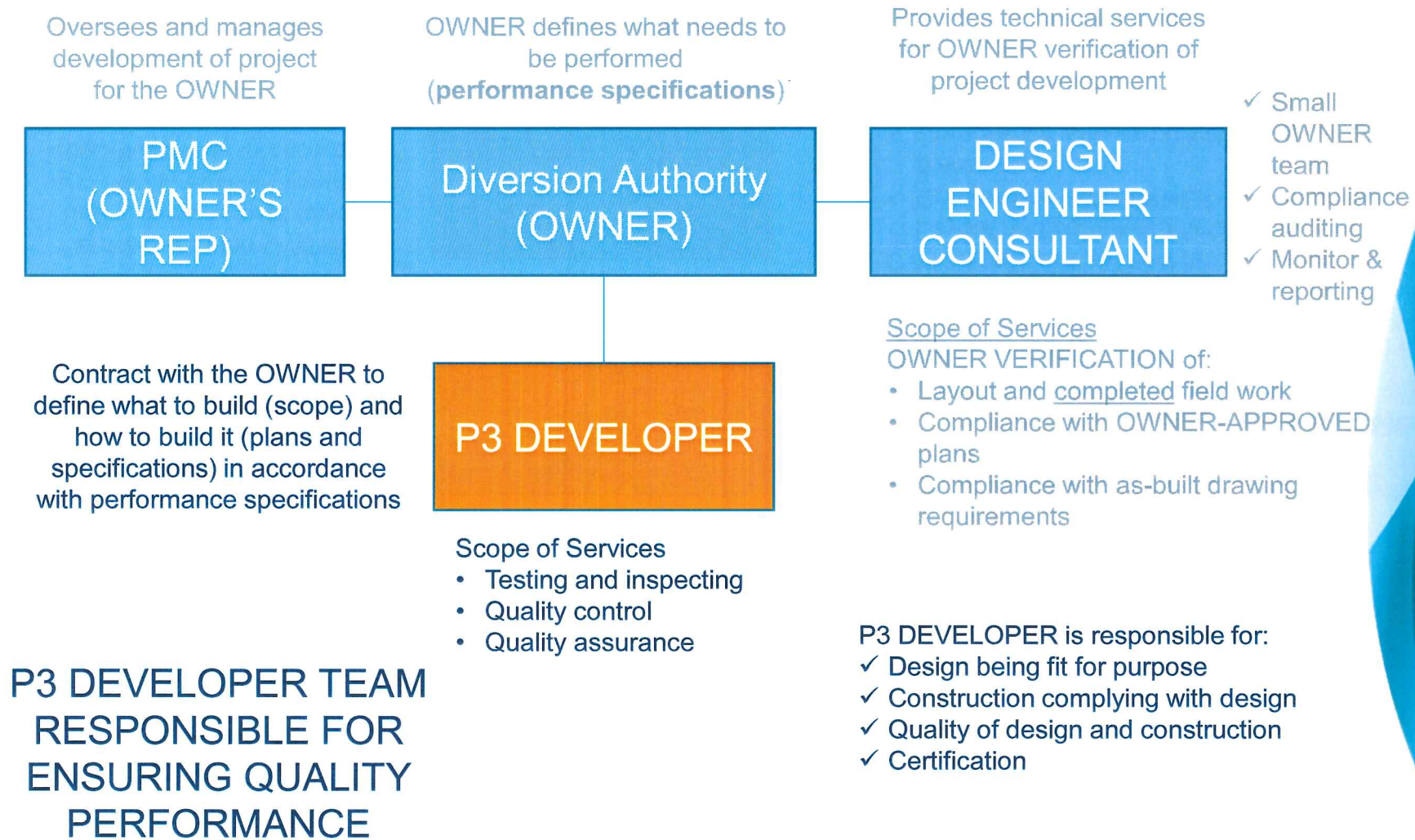
Traditional Delivery



Public-Private Partnership (P3) Delivery



Public-Private Partnership (P3) Delivery



Accountability for Performance Quality

TRADITIONAL DELIVERY

OWNER accountable for all quality risk

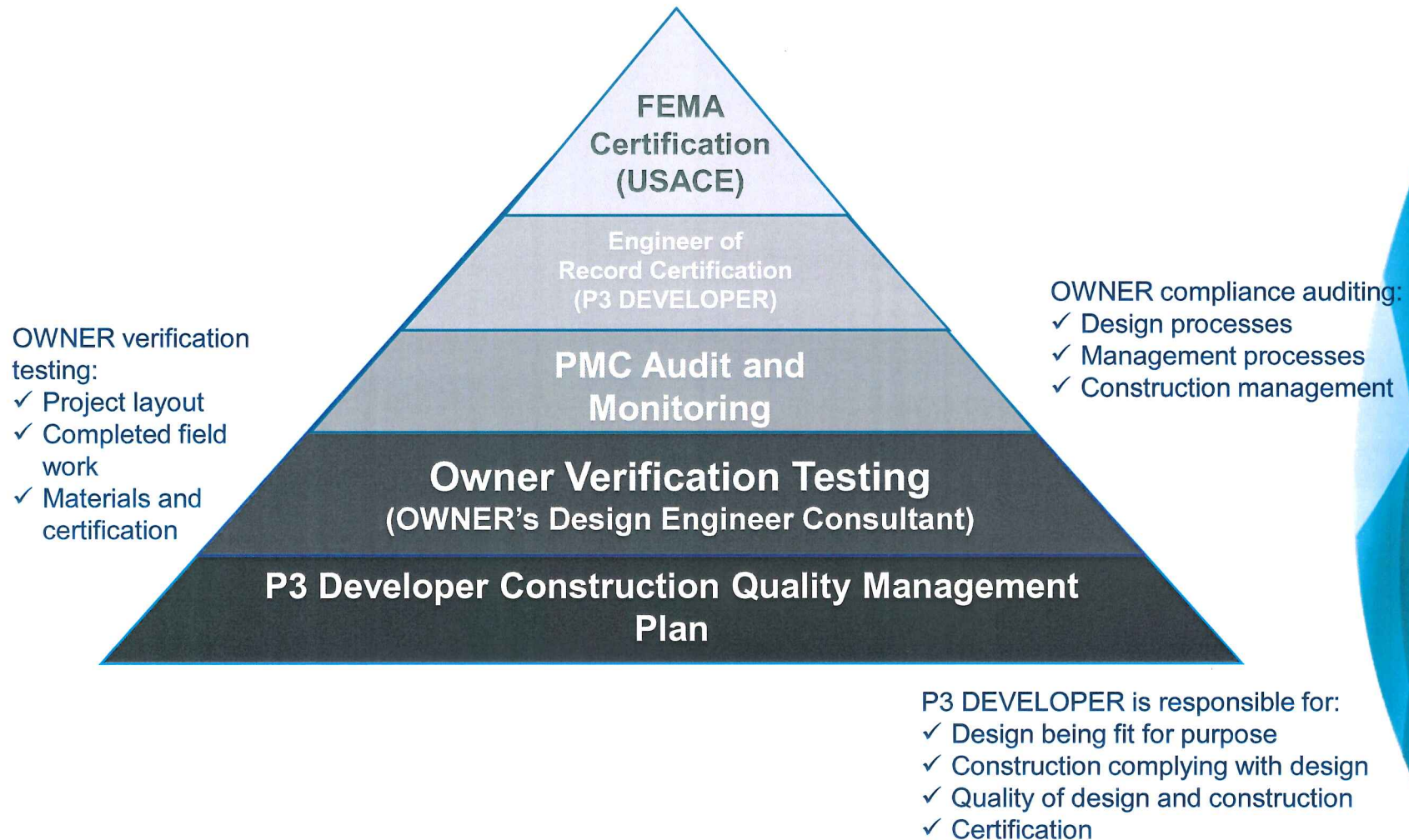
- ✓ Comprehensive inspection and testing scopes
- ✓ Administration of multiple contracts
 - Design Engineer
 - Construction Contractor
 - Construction Management & Inspection/Testing
 - Operations
- ✓ Management of large teams

PUBLIC-PRIVATE PARTNERSHIP

P3 DEVELOPER accountable for all quality risk

- ✓ Delivered in accordance with P3 DEVELOPER QMP
- ✓ Small OWNER team to monitor compliance
- ✓ Quality ensured through:
 - OWNER-approval of QMP
 - OWNER-managed non-compliance regime
 - Lenders inspections
 - OWNER verification testing (quality assurance)

Public-Private Partnership (P3) Delivery



P3 Procurement Support (6.A)

- ▶ Generally: To provide P3 procurement services, including managing the preparation of RFP drafts and developing comparative cost estimates and schedules, leading to the selection of the preferred Proposer
- ▶ Task Overview:
 - ▶ Develop and issue draft and final RFPs
 - ▶ Manage information and discussions with Proposers
 - ▶ Manage and review submittals by Proposers
 - ▶ Provide recommendations to DA
- ▶ Commences upon execution of TO6 by DA



P3 Contract Award Support (6.B)

- ▶ Generally: To provide P3 contract award support following selection of the preferred Proposer, including subtasks for Commercial Close and Financial Close
- ▶ Task Overview:
 - ▶ Prepare contract award recommendation report
 - ▶ Participate in negotiations prior to the execution of the Project Agreement
 - ▶ Arrange for signing and execution of the Project Agreement
- ▶ Commences upon notification from DA



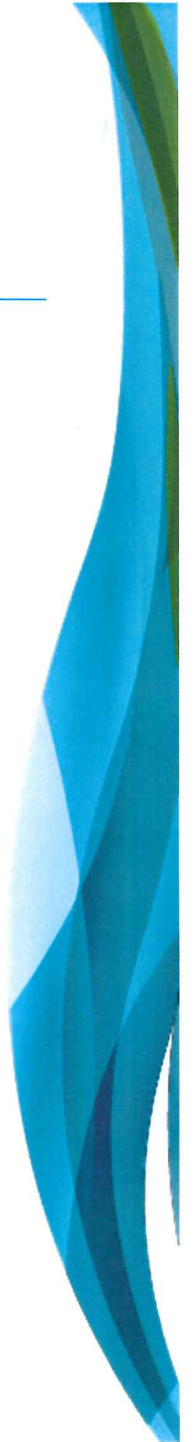
Issuance of Notices to Proceed (NTP) (6.C)

- ▶ Generally: To review the Developer's submittals in accordance with the conditions of the Project Agreement and recommend issuance of NTP1 and NTP2
- ▶ Task Overview:
 - ▶ Review and confirm conditions precedent to NTP1 and NTP2
 - ▶ Recommend NTP1 and NTP2 actions
 - ▶ Issue NTP1 and NTP2
- ▶ Commences upon notification from DA



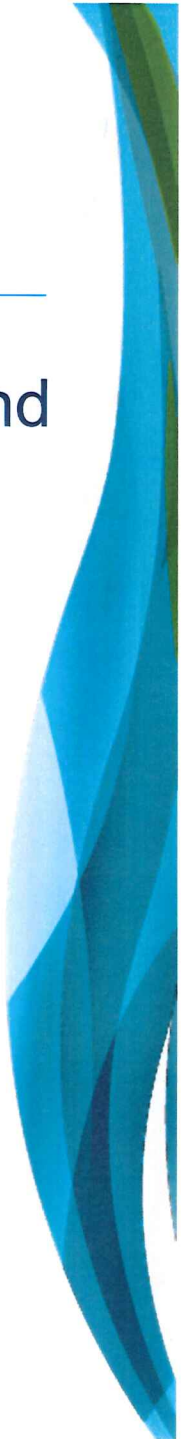
Monitoring of Activities During Design and Construction (6.D)

- ▶ Generally: To develop and implement a Construction Management Services plan, an audit schedule, and processes and procedures to monitor the Developer's activities, including a Compliance Checking Program to identify and record non-compliant work
- ▶ Task Overview:
 - ▶ Prepare and review plans and submittals and provide updates
 - ▶ Prepare comments on plans and submittals and monitor compliance
 - ▶ Direct and manage work of DA's Design Engineer Consultant
- ▶ Commences upon notification from DA



Management of Payment Mechanisms (6.E)

- ▶ Generally: To develop and implement processes and procedures for Milestone Payments and payment deductions
- ▶ Task Overview:
 - ▶ Assist DA's financial advisor
 - ▶ Develop and implement processes and procedures for review of requests for payment and for payment
- ▶ Commences upon notification from DA



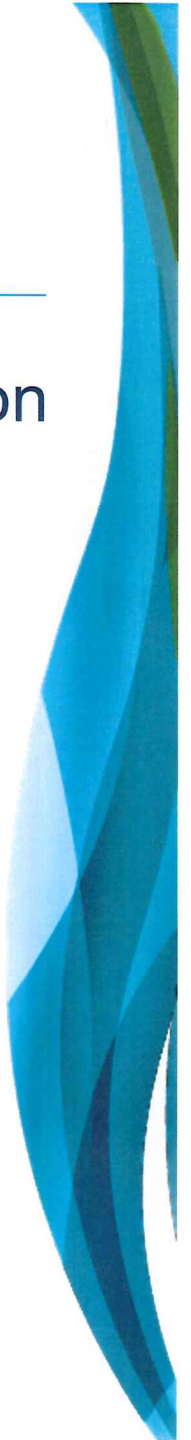
Design & Construction Period Completions (6.F)

- ▶ Generally: To review and recommend Project Element Interim Completions, Milestone One Completion, Substantial Completion, and Project Final Completion
- ▶ Task Overview:
 - ▶ Review and inspect work
 - ▶ Verify completion of stages of construction
 - ▶ Make recommendations to DA regarding completion of stages of construction
 - ▶ Direct and manage work of DA's Design Engineer Consultant
- ▶ Commences upon notification from DA

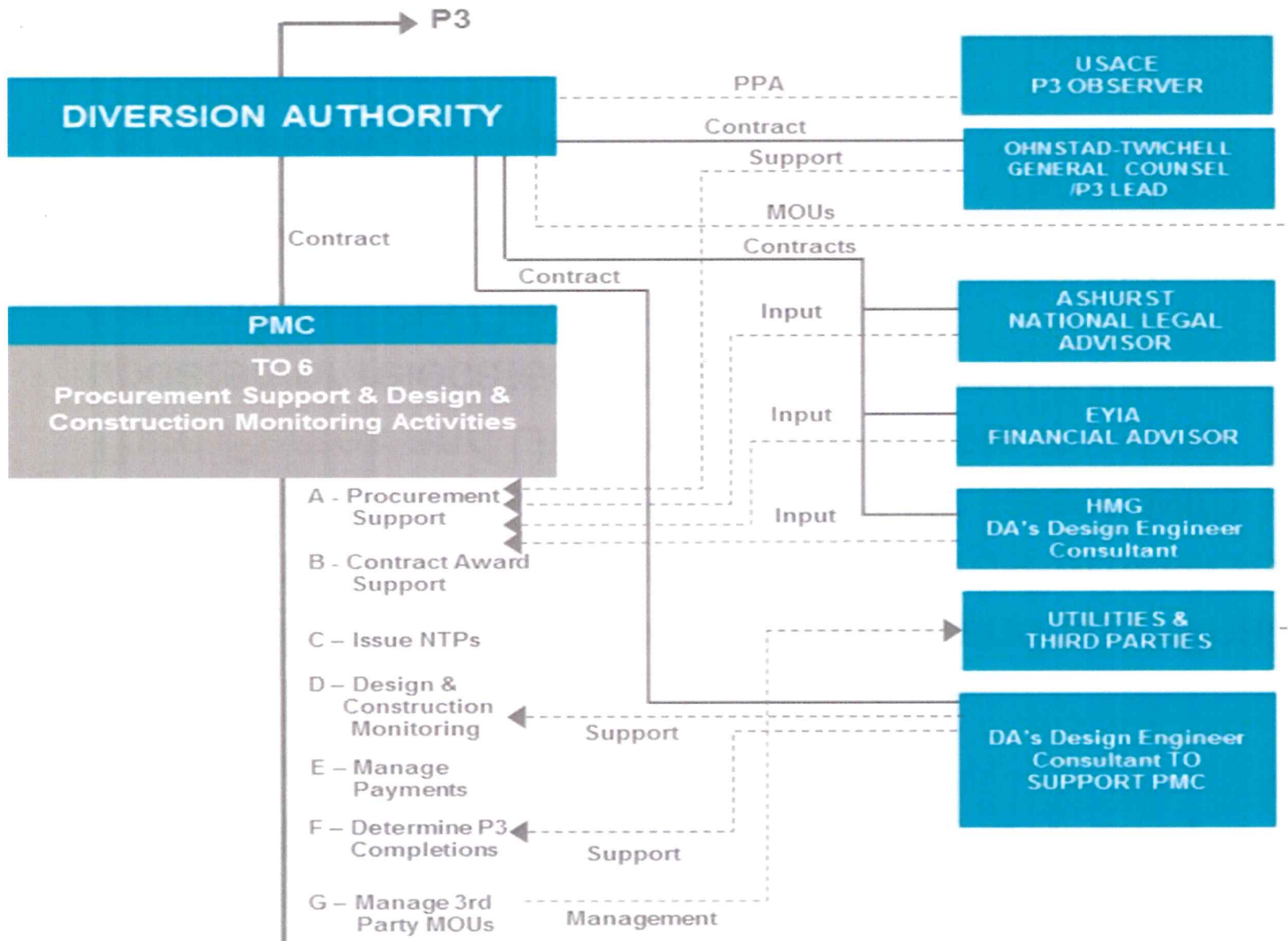


Management of Utilities & Third-Party Agreements (6.G)

- ▶ Generally: To provide management and coordination of memoranda of understanding (Third-Party MOUs and Utility MOUs) and act as general liaison with Third Parties and Utilities whose assets must be updated or relocated because of, or required for, carrying out the Developer's work
- ▶ Task Overview:
 - ▶ Facilitate and manage negotiations with Third Parties and Utilities
 - ▶ Finalize terms with Third Parties and Utilities
- ▶ Commences upon execution of TO6 by DA



Organizational Chart



Cost Estimate

- ▶ Estimated budget for TO6: \$43,710,115
 - ▶ 6.A (P3 Procurement Support) → \$4,978,048
 - ▶ 6.B (P3 Contract Award Support) → \$779,138
 - ▶ 6.C (Issuance of Notices to Proceed) → \$394,069
 - ▶ 6.D (Monitoring During Design & Construction) → \$29,243,961
 - ▶ 6.E (Management of Payment Mechanisms) → \$362,458
 - ▶ 6.F (Design & Construction Period Completions) → \$3,954,987
 - ▶ 6.G (Management of Utilities & Third Parties) → \$3,997,457
- ▶ On an annual basis, Jacobs will submit a spending curve reflecting costs today and the anticipated expenditures for the term
- ▶ On a monthly basis, Jacobs will report on actual expenditures against the approved spending curve



Questions

