

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

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

RECITALS

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

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

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

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

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

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

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

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

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

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

Dated this ____ day of _____, 2020.

DIVERSION AUTHORITY:

Metro Flood Diversion Authority

Timothy J. Mahoney, Chair
Diversion Authority Board

Joel Paulsen, PE, Executive Director,
Diversion Authority Board

HMG:

Houston-Moore Group LLC

By: _____

Its: _____

EXHIBIT A

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

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

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

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

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

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


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

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

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

DIVERSION AUTHORITY:

HMG:

By: 
Del Rae Williams, Chair
Diversion Authority Board

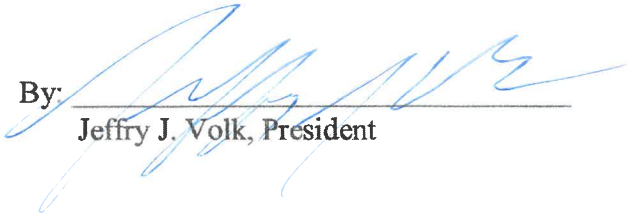
By: 
Jeffrey J. Volk, President

EXHIBIT A

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Related to:

**THE
FARGO-MOORHEAD AREA DIVERSION PROJECT**

BY AND BETWEEN

**METRO FLOOD DIVERSION AUTHORITY
as Diversion Authority**

and

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

Dated as of May 1, 2017

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

Table of Contents

1. EMPLOYMENT	1
2. DEFINITIONS	1
3. AUTHORIZATION TO PROCEED.....	3
4. PRIOR AGREEMENTS	3
5. SCOPE OF SERVICES.....	4
6. CHANGES TO SCOPE OF SERVICES	4
7. RESPONSIBILITY FOR ERRORS OR DELAYS FROM INACCURATE DATA	4
8. TASK ORDERS.....	4
9. PERSONNEL.....	4
10. PERSONNEL IDENTIFIED FOR PROJECT DELIVERY	5
11. SUBCONTRACTORS.....	5
12. TERM.....	5
13. EXTENSION OF TERM	6
14. COMPENSATION.....	6
15. INVOICING AND PAYMENT.....	8
16. RELATIONSHIP BETWEEN PARTIES	9
17. REPRESENTATIONS.....	10
18. WORKING RELATIONSHIP	10
19. INDEPENDENT PROFESSIONAL JUDGMENT	10
20. STANDARD OF CARE	10
21. SUBSURFACE INVESTIGATIONS	11
22. HMG’S PERSONNEL AT CONSTRUCTION SITE.....	11
23. OPINIONS OF COST, FINANCIAL CONSIDERATIONS, AND SCHEDULES	12
24. CONSTRUCTION PROGRESS PAYMENTS	12
25. RECORD DRAWINGS	13
26. CONSULTANT’S INSURANCE.....	13
27. THIRD PARTY DESIGNERS.....	17
28. OPEN RECORDS	17
29. DATA FURNISHED BY THE DIVERSION AUTHORITY	17
30. ACCESS TO FACILITIES AND PROPERTY	17
31. ADVERTISEMENTS, PERMITS, AND ACCESS.....	17
32. TIMELY REVIEW	17

33. PROMPT NOTICE	18
34. ASBESTOS OR HAZARDOUS SUBSTANCES	18
35. CONTRACTOR INDEMNIFICATION AND CLAIMS	18
36. OWNER’S INSURANCE.....	18
37. LITIGATION ASSISTANCE	19
38. INDEMNIFICATION	19
39. LIMITATION OF LIABILITY.....	20
40. BREACH AND REMEDIES	20
41. TERMINATION	20
42. ADDITIONAL PAYMENT	22
43. SUSPENSION, DELAY, OR INTERRUPTION OF WORK	22
44. NOTICE	22
45. PROHIBITION AGAINST ASSIGNMENT	22
46. NO THIRD PARTY BENEFICIARIES	22
47. CONSEQUENTIAL DAMAGES	22
48. MATERIALS AND SAMPLES	23
49. CONSULTANT’S DELIVERABLES	23
50. ACCESS TO HMG’S ACCOUNTING RECORDS AND AUDIT RIGHTS	23
51. OWNERSHIP.....	24
52. REUSE OF PROJECT DOCUMENTS.....	26
53. CONFIDENTIAL INFORMATION AND PUBLICITY	26
54. MODIFICATION.....	27
55. FORCE MAJEURE.....	27
56. WAIVER.....	27
57. BINDING EFFECT.....	27
58. NEGOTIATED AGREEMENT.....	27
59. INTEGRATED SERVICES.....	27
60. SEVERABILITY AND SURVIVAL.....	28
61. WAIVER OF JURY TRIAL	28
62. DISPUTE RESOLUTION	28
63. CONTROLLING LAW AND VENUE	29

EXHIBIT A – GENERAL SCOPE OF SERVICES

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Effective Date” means May 1, 2017.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. **EXTENSION OF TERM.** This Agreement may be extended by written amendment or renewed as set forth in Section 12 of this Agreement. If this Agreement expires before the completion of a Task Order, the Agreement shall be deemed to have been extended until the completion of services under the applicable Task Order.

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

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

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

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

*Out-of-town travel expenses

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

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

- A. **Budget.** Budgetary amounts, excluding taxes, will be established for each Task Order executed under the Agreement. HMG will make reasonable efforts to complete the work within the budget and will keep the Diversion Authority informed of progress toward that end so that the budget or work effort can be adjusted if found necessary. HMG is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is the Diversion Authority obligated to pay HMG beyond these limits. When any budget has been increased, HMG's costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.

- B. Hourly Rates. Hourly rates are those hourly rates charged for work performed on the Project by HMG's employees of the indicated classifications. These rates include all allowances for salaries, overhead, fees, and all expenses, but do not include allowances for subcontracts or outside services allowed by this Agreement.

15. INVOICING AND PAYMENT.

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

- B. HMG must submit each original invoice to:

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

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

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

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

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

- F. After the Diversion Authority receives HMG's invoice, the Diversion Authority will either process the invoice for payment or give HMG specific reasons, in writing within fifteen (15) business days, why part or all of the Diversion Authority's payment is being withheld and what actions HMG must take to receive the withheld amount.
 - G. In the event of a disputed billing, only the disputed portion will be withheld from payment, and the Diversion Authority shall pay the undisputed portion. The Diversion Authority will exercise reasonableness in disputing any bill or portion thereof. Interest will accrue on any disputed portion of the billing determined to be due and owing to HMG.
 - H. Payment does not imply acceptance of services, that expenses are allowable, or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, HMG must credit any payment in error from any payment that is due or that may become due to HMG under this Agreement.
 - I. The Diversion Authority will be charged interest at the rate of one-half percent (1/2%) per month, or that permitted by law if lesser, on all past-due amounts starting thirty (30) days after receipt of invoice. Payments will be first credited to interest and then to principal.
 - J. If the Diversion Authority fails to make payment in full within thirty (30) days of the date due for any undisputed billing, HMG may, after giving seven (7) days' written notice to the Diversion Authority, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, HMG will have no liability to the Diversion Authority for delays or damages caused by the Diversion Authority because of such suspension.
 - K. Without waiving any rights to recover payment for reimbursable taxes, fees or other costs per the provisions of Paragraph 14 herein, HMG must pay in the first instance all fees, fines, taxes, or other costs of doing business related to the services.
16. RELATIONSHIP BETWEEN PARTIES. HMG is retained by the Diversion Authority only for the purposes and to the extent set forth in this Agreement, and its relationship to the Diversion Authority shall, during the period or periods of services under this Agreement, be that of an independent contractor. HMG shall be free to use such portion of HMG's entire time, energy and skill during the course of this Agreement to meet its contractual obligation to the Diversion Authority. Neither HMG, nor its personnel, shall be considered to be employed by the Diversion Authority or entitled to participate in any plans, arrangements or distributions by the Diversion Authority pertaining to or in connection with any benefits accorded the Diversion Authority's regular employees. The Diversion Authority shall not be financially responsible to HMG except for the payment of compensation specifically set forth in this Agreement, and shall not be responsible for the payment of any cost of living allowances, merit increases, medical insurance, employee's retirement, life or disability coverage, sick leave or holiday pay or vacation pay or any benefit of any kind not specifically set forth in this Agreement. Likewise, the Diversion Authority shall not be responsible for wage or salary withholding to the federal or any state government.

17. REPRESENTATIONS. HMG represents that the following statements are true:
- A. HMG has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any member of the Diversion Authority with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
 - B. The Team Members performing the work hereunder have no interest that would constitute a conflict of interest with the Diversion Authority during the term of the Project. This does not preclude or prohibit other HMG employees or representatives from working with other parties who may participate on the Project and have potential or actual adverse interest to the Diversion Authority.
 - C. This Agreement does not constitute a conflict of interest or default under any of HMG's other agreements.
 - D. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect HMG's ability to perform under this Agreement.
 - E. HMG is in compliance with all laws, rules, and regulations applicable to its business, including rules of professional conduct (the "Laws and Regulations").
 - F. During the term of this Agreement, HMG must not take any action, or omit to perform any act, that may result in a representation becoming untrue. HMG must immediately notify the Diversion Authority if any representation and warranty becomes untrue.

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

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

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

22. HMG'S PERSONNEL AT CONSTRUCTION SITE.

- A. The presence or duties of HMG's, or its subcontractor's or subconsultant's, personnel at a construction site, whether as onsite representatives or otherwise, do not make HMG or HMG's personnel, or HMG's subcontractors or subconsultants, in any way responsible for those duties that belong to the Diversion Authority and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction contract documents and any health or safety precautions required by such construction work.
- B. HMG and HMG's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except HMG's own personnel.
- C. The presence of HMG's personnel at a construction site is for the purpose of providing to the Diversion Authority a greater degree of confidence that the completed construction work will conform generally to the construction documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the construction contractor(s). HMG neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents.
- D. For this Agreement only, construction sites include places of manufacture for materials incorporated into the construction work, and construction contractors include manufacturers of materials incorporated into the construction work.
- E. The presence of HMG's personnel, subcontractors or subconsultants at a construction site whether as on-site representative or otherwise do not make HMG or HMG's personnel, subcontractors or subconsultants liable for any duties belonging to either Diversion Authority or its Contractor except as specifically outlined in a Task Order. HMG shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall HMG have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any

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

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

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

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

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

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

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

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

A. HMG shall purchase and maintain throughout this Agreement such insurance as is required by this Agreement in the categories and amounts set forth below:

- (1) Claims under workers' compensation, disability benefits, and other similar employee benefit acts;
- (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of HMG's employees;
- (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than HMG's employees;
- (4) Claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - (a) by any person as a result of an offense directly or indirectly related to the employment of such person by HMG, or
 - (b) by any other person for any other reason;
- (5) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
- (6) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.

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

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

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

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

- (9) Either in the policies or in endorsements, contain cross liability/severability of interests, to ensure that all additional parties are covered as if they were all separately covered (with the exception of Workers Compensation and Professional liability policies);
 - (10) Either in the policies or in endorsements, contain a provision that the legal defense provided to the Diversion Authority and the State of North Dakota must be free of any conflict of interest, even if retention of separate legal counsel is necessary;
 - (11) Either in the policies or in endorsements, contain a provision that any attorney who represents the State of North Dakota must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C § 54-12-08;
 - (12) Either in the policies or in endorsements, contain a provision that HMG's policies will be primary and noncontributory regarding any other insurance maintained by or available to the Diversion Authority or the State of North Dakota, and that any insurance maintained by those parties will be in excess of HMG's insurance and will not contribute with it (except for Worker's Compensation and Professional Liability Policies).
- C. The limits of liability for the insurance required by this Section will provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
- (1) Worker's Compensation, and related coverages under Paragraphs 27(A)(1) and 27(A)(2):
 - (a) State: Statutory;
 - (b) Applicable Federal (e.g. Longshoreman's): Statutory;
 - (c) Employer's Liability: \$1,000,000.
 - (2) HMG's General Liability under Paragraphs 27(A)(3) through 27(A)(6) which will include premises or operations coverage, completed operations and product liability coverages, and will eliminate the exclusion with respect to property under the care, custody, and control of HMG:
 - (a) General Aggregate: \$10,000,000
 - (b) Products- Completed Operations Aggregate: \$2,000,000
 - (c) Personal and Advertising Injury: \$2,000,000
 - (d) Each Occurrence (Bodily Injury and Property Damage): \$2,000,000
 - (e) Property damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.
 - (f) Excess or Umbrella liability:
 - i. General Aggregate: \$10,000,000
 - ii. Each Occurrence: \$10,000,000

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

(a) Bodily injury:

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

(b) Property Damage:

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

OR

(c) Combined Single

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40. BREACH AND REMEDIES.

A. A breach exists under this Agreement if either party:

- (1) Makes a material misrepresentation in writing; or
- (2) Fails or is unable to meet or perform any material promise in this Agreement, and
 - (a) Is incapable of curing the failure, or
 - (b) Does not cure the failure within twenty (20) days following notice (or within a longer period if specified in the notice).

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

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

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

41. TERMINATION.

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

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

- B. The Diversion Authority may terminate this Agreement, in whole or in part, or modify or limit HMG's services, and proportionately, HMG's compensation, if:
 - (1) The Diversion Authority determines that having HMG provide services has become infeasible due to changes in applicable laws or regulations, or
 - (2) Expected or actual funding to compensate HMG is withdrawn, reduced, or limited.
- C. Either party may terminate this Agreement, in whole or in part, for any or no reason upon thirty (30) days' written notice.
- D. On termination, HMG will be paid for all authorized services performed up to the termination date plus termination expenses, such as, but not limited to, reassignment of personnel, subcontract termination costs, and related closeout costs.
- E. In the event a federal or state tax or employment agency concludes that an independent contractor relationship does not exist, either HMG or the Diversion Authority may terminate this Agreement immediately upon written notice.
- F. Upon receipt of any termination notice from the Diversion Authority related to any specific Task Order, HMG must promptly discontinue all affected services under the Task Order unless the parties mutually agree otherwise.
- G. Upon the end date of the Agreement, which is the date when this Agreement as a whole, along with any pending Task Orders, expires or are terminated pursuant to their terms:
 - (1) The Diversion Authority will be released from compensating HMG for services other than those HMG satisfactorily performed prior to the end date.
 - (2) HMG must submit HMG's final invoice for payment within sixty (60) days of the end date. The Diversion Authority will not pay any HMG invoice received after this period.
 - (3) HMG will be released from performing services, except for services in any non-terminated portion of the Agreement.
- H. All rights and duties with respect to services performed prior to the expiration or termination of this Agreement, and continuing obligations specified in this Agreement to be performed following expiration or termination of this Agreement, will survive the expiration or termination of this Agreement.
- I. In the event of termination, expiration, or removal/withdrawal, HMG must terminate its services as soon as it is reasonably possible to do so without (1) prejudice to the Diversion Authority's interests (or the interest of any person represented on the Diversion Authority's behalf) or (2) violation of HMG's statutory or ethical duties.

HMG must notify the Diversion Authority of any further services, prior to withdrawal or substitution, which HMG believes are necessary to avoid prejudice to the Diversion Authority's interests (or the interest of any person represented on the Diversion Authority's behalf), and obtain the Diversion Authority's consent prior to performing such services.

42. ADDITIONAL PAYMENT. Nothing contained in this Agreement shall obligate the Diversion Authority to make any payment for services rendered in any period after the termination of HMG's retention by the Diversion Authority.
43. SUSPENSION, DELAY, OR INTERRUPTION OF WORK. The Diversion Authority may suspend, delay, or interrupt the Services of HMG for the convenience of the Diversion Authority. In such event, HMG's contract price and schedule shall be equitably adjusted.
44. NOTICE. Any notice or election required or permitted to be given or served by any party to this Agreement upon any other will be deemed given or served in accordance with the provisions of this Agreement if said notice or election is (1) delivered personally, or (2) mailed by United States certified mail, return receipt requested, postage prepaid and in any case properly addressed as follows:

If to HMG:	Attn: Jeffrey J. Volk Houston-Moore Group 925 10 th Ave. E West Fargo, ND 58078
------------	---

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 days after the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this Agreement.

45. PROHIBITION AGAINST ASSIGNMENT. This is a bilateral personal services Agreement. Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable.
46. NO THIRD PARTY BENEFICIARIES. This Agreement gives no rights or benefits to anyone other than the Diversion Authority and HMG and has no third-party beneficiaries.
47. CONSEQUENTIAL DAMAGES. To the maximum extent permitted by law, HMG and HMG's affiliated corporations, officers, employees, and subcontractors shall not be liable for the Diversion Authority's special, indirect, or consequential damages, whether such damages arise out of breach of contract or warranty, tort including negligence, strict or

statutory liability, or any other cause of action. In order to protect HMG against indirect liability or third-party proceedings, the Diversion Authority will indemnify HMG for any such damages.

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

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

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

- D. License Grant Back. Subject to the terms and conditions of the Agreement, the Diversion Authority hereby grants to HMG a non-exclusive, transferable, royalty-free license to utilize the concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software and hardware architecture, and other background technologies that are newly developed by HMG under the Agreement and assigned to the Diversion Authority under this Agreement, to make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, import, and otherwise disposed of any products, technologies, and services and for any purposes without restriction.
- E. License Restrictions. Except as otherwise permitted above, the Diversion Authority and its member entities shall not, and shall not allow any third party to: (i) modify or otherwise create derivative works of the Pre-Existing Consultant Materials; (ii) use the Pre-Existing Consultant Materials for any other purpose, other than the Diversion Authority’s Project; (iii) make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, or import any product that incorporates, embodies and/or is based upon the Pre-Existing Consultant Materials; (iv) sublicense, distribute or otherwise transfer to a third party any of the Pre-Existing Consultant Materials by itself or as incorporated in the services; or (v) reverse engineer, disassemble, decompile or attempt to derive the source code or underlying ideas or algorithms of the Pre-Existing Consultant Materials. Any additional use of the Pre-Existing Consultant Materials shall require a separate written license agreement.
- F. Miscellaneous. Nothing contained in this Agreement shall be construed as conferring to the Diversion Authority or any third party any license or right by implication, estoppel or otherwise to any intellectual property rights of HMG, other than the rights expressly granted under this Agreement. The Diversion Authority and its Member Entities may use said work products for the specific purpose for which the work product was intended. Any other use or reuse, without written verification or adaptation by HMG will be at the user’s sole risk.
- G. Diversion Authority Material. As between the parties, the Diversion Authority is the exclusive owner of all material HMG collects from the Diversion Authority in connection with the services under this Agreement, including copyrights. Within thirty (30) days of the end date of the Agreement, or upon the Diversion Authority’s notice at any time, HMG must give all materials collected to the Diversion Authority (or to another party at the Diversion Authority’s direction). Unless the Diversion Authority specifies otherwise, all files must be saved in Microsoft Word and Excel formats, as applicable. HMG must maintain HMG’s records relating to services under this Agreement and HMG’s invoices, and all other materials, in an accessible location and condition for a period of not less than one (1) year after the later of:

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

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

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

53. CONFIDENTIAL INFORMATION AND PUBLICITY.

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

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

B. Confidential information does not include any information that HMG can demonstrate has been made available to the public (other than through a breach of this Agreement). As between HMG and the Diversion Authority, the Diversion Authority owns the confidential information, and the Diversion Authority authorizes HMG to use it only for purposes of performing this Agreement. HMG may also disclose the Diversion Authority's confidential information to the extent necessary to comply with law, provided HMG gives the Diversion Authority prior written notice. Upon the end date of this Agreement, HMG must destroy or return all confidential information to the Diversion Authority, at the Diversion Authority's discretion, and certify to the Diversion Authority, in writing, that it has done so; provided, however, such destruction shall include, without limitation, the process of expunging, to the extent reasonably practicable, all such confidential information from any computer, hard drive, word processor, server, backup tape, or other electronic device containing such confidential information. Notwithstanding the foregoing, HMG may retain one archival copy of the

confidential information in its confidential files for the purpose of complying with applicable laws or established company procedure regarding the preservation of business records.

- C. HMG must not make any public announcement, press release, or other writing relating to the services under this Agreement without the Diversion Authority's prior written approval.
 - D. HMG understands a breach under this section may result in irreparable damage for which no adequate remedy may be available. Accordingly, injunctive relief and other equitable relief are remedies available to the Diversion Authority.
54. MODIFICATION. This Agreement, including its attachments and schedules, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment approved by the Diversion Authority and executed by HMG and the Chair of the Diversion Authority on behalf of the Diversion Authority. The following attachment is hereby made a part of this Agreement: (1) Exhibit A – General Scope of Services. It may be modified as to terms and conditions from time to time upon the mutual consent of the parties; however, such modification shall be reduced to writing, signed by the parties and the document appended to and made a part of this Agreement.
55. FORCE MAJEURE. HMG is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of HMG. In any such event, HMG's contract price and schedule shall be equitably adjusted.
56. WAIVER. A party's waiver of enforcement of any of this Agreement's terms or conditions will be effective only if it is in writing. A party's specific waiver will not constitute a waiver by that party of any earlier, concurrent, or later breach or default.

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

57. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Diversion Authority, its successors and assigns, and any such successor shall be deemed substituted for the Diversion Authority under the terms of this Agreement. This Agreement shall likewise be binding upon HMG, its successors and assigns. As used in this Agreement, the term "successor" shall include any person, firm, corporation or other business entity which at any time whether by merger, purchase or otherwise acquires all or substantially all of the assets or business of the corporation.
58. NEGOTIATED AGREEMENT. This Agreement has been arrived at through negotiation between the parties.
59. INTEGRATED SERVICES. Notwithstanding anything in the Agreement to the contrary, the parties recognize and support the integrated nature of the Project team in the performance and delivery of professional services by HMG. This Agreement, and particularly the contractual risk allocation and liability provisions, shall be interpreted and

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

60. SEVERABILITY AND SURVIVAL. If any court of competent jurisdiction declares, for any reason, any provision or part of this Agreement to be invalid, illegal, or unenforceable, all remaining terms and provisions of this Agreement will remain binding and enforceable. Limitations of liability, indemnities, and other express representations shall survive termination of this Agreement for any cause.

61. WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THAT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS AGREEMENT AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS BY OR ON BEHALF OF THE PARTIES FOR PROJECT PROPERTY ACQUISITION AND/OR CONSTRUCTION CONTRACT CLAIMS AND DEFENSES.

62. DISPUTE RESOLUTION. The Diversion Authority and HMG shall endeavor to resolve claims, disputes and other matters in question between them by non-binding mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for non-mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of non-binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

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

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

This Agreement is executed the day and year above noted.

DIVERSION AUTHORITY:

Metro Flood Diversion Authority

By: 

Timothy J. Mahoney, Chair
Diversion Authority Board

By: 

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

(Additional signature contained on the following page.)

HMG:

Houston-Moore Group, LLC

By:



Jeffrey J. Volk, President

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

Exhibit A – General Scope of Services

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

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

EXHIBIT B

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

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

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

*Out-of-town travel expenses

EXHIBIT B

AMENDMENT NO. 2 TO MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

RECITALS

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

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

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

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

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

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

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

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

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

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

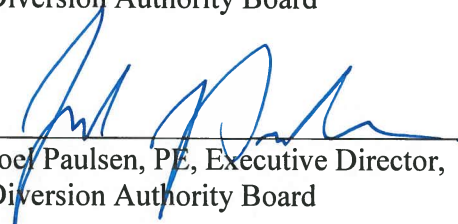
Dated this 14th day of December, 2019.

DIVERSION AUTHORITY:

Metro Flood Diversion Authority




Mary Scherling, Chair
Diversion Authority Board



Joel Paulsen, PE, Executive Director,
Diversion Authority Board

HMG:

Houston-Moore Group LLC

By: 

Its: President