
BINDING SETTLEMENT TERM SHEET

By and Between

METRO FLOOD DIVERSION AUTHORITY

and

RICHLAND-WILKIN JOINT POWERS AUTHORITY

and

BUFFALO-RED RIVER WATERSHED DISTRICT

and

CITY OF WOLVERTON, MINNESOTA

and

CITY OF COMSTOCK, MINNESOTA

Dated as of October 27, 2020

**BINDING SETTLEMENT TERM SHEET FOR SETTLEMENT OF DISPUTE
REGARDING FLOOD DIVERSION PROJECT**

1. **Settlement Agreement.** This binding settlement term sheet (the “Term Sheet”) is intended by the Richland-Wilkin Joint Powers Authority (“JPA”), the Metro Flood Diversion Authority (the “Authority”), the Buffalo-Red River Watershed District (“BRRWD”), the City of Wolverton, MN (“Wolverton”), and the City of Comstock, MN (“Comstock”) (collectively, the “Parties”) to be a binding and fully enforceable settlement agreement. The Parties agree that after execution of this Term Sheet, they shall cooperate in good faith to draft a more comprehensive Mutual Settlement Agreement (the “Settlement Agreement”) to add greater specificity to the agreed-upon terms set forth herein, with General Counsel for the Authority serving as the initial and lead drafter of the Settlement Agreement. Prior to completion and execution of the Settlement Agreement, or in the event that the Parties are not able to agree on the Settlement Agreement despite their good faith efforts, this Term Sheet shall be fully binding and enforceable.
2. **Plan B.** Plan B (also referred herein as the “Comprehensive Project”) will be implemented and permitted without subsequent and material design, construction, or operational revisions and without materially increasing the Staging Area. The Authority may make micro-alignment changes or non-material changes to the Final Operating Plan as required to comply with the adaptive management requirements set out in the Minnesota DNR (“MN DNR”) Permit or applicable U.S. Army Corps of Engineers (“USACE”) requirements. The Authority will not proceed with any pre-Plan B alignment or plan. Plan B will be constructed in accordance with the terms and conditions of MDNR Dam Safety and Public Waters Work Permit No. 2018-0819 (the “MDNR Permit”), and any amendments thereto.
3. **Dismissals and Enforcement.** Within thirty (30) days of execution of this binding and enforceable Term Sheet, or within fourteen (14) days of execution of the more comprehensive Settlement Agreement, whichever time period is shorter, the Parties will dismiss the federal case(s), (including any pending appeals to the United States 8th Circuit Court of Appeals) the Minnesota Contested Case, and any state court cases challenging the Comprehensive Project with prejudice. Such dismissals shall not prejudice MDNR’s permitting jurisdiction. The Parties understand and acknowledge that the USACE is a party to the federal case(s) along with certain government personnel in their official capacities and that the MDNR is a party to certain other cases (collectively, those persons and the USACE, the individual federal government personnel, and the MDNR are the “Governmental Parties”), and the Parties agree to work together in good faith to obtain the agreement of the Federal Parties to stipulations of dismissal and any other documents that are reasonably necessary for dismissal with prejudice of the case(s). The Parties agree not to make any demands or seek to impose any conditions on the Governmental Parties in connection with the dismissals of the case(s) other than to request that all parties to the litigation jointly seek dismissals with prejudice without fees or costs to any party. The dismissal of the federal case(s), the Minnesota Contested Case, and any state court cases shall not prejudice the MDNR’s current and/or future permitting authority and the Authority agrees that it will construct Plan B in accordance with the MDNR Permit and USACE requirements as amended from time to time in accordance with applicable

procedures, North Dakota Office of State Engineer Permits (“ND OSE”), federal permits, and this Term Sheet and the Settlement Agreement. Other than as expressly enumerated herein, the Parties represent and warrant that there are no other pending state, judicial, or administrative proceedings to which they are a party that would constitute an Action as defined in Section 27(n).

4. **No Admission.** The Parties enter into this Term Sheet not based upon any admission by any of the Parties as to the propriety, efficacy, or desirability of Plan B or any contention, pro or con, by any of the Parties, but merely to facilitate a settlement. The Parties agree and acknowledge that the Authority can proceed to construct, finance, operate, and maintain the Comprehensive Project in accordance with the MDNR Permit, as amended from time to time in accordance with MDNR permitting procedures, ND OSE Permits, federal permits, this Term Sheet, the Settlement Agreement, and applicable federal and State of North Dakota requirements.
5. **Mutual Releases.** The Parties, Richland County, and Wilkin County mutually release each other with respect to current claims that have been made to date and any and all claims of any kind or nature, current or future, presently known or unknown, that would stop or materially interfere with the design, construction, financing, operation, or maintenance of Plan B in accordance with the MDNR Permit as amended from time to time in accordance with MDNR permitting procedures, ND OSE Permits, federal permits, and this Term Sheet, and the Settlement Agreement. The Parties, Richland County, and Wilkin County covenant not to institute or participate in any administrative proceeding, suit, or action, at law or in equity, seeking to stop or materially interfere with the design, construction, financing, operation, or maintenance of Plan B provided that the Authority is in substantial compliance with the MDNR Permit as amended from time to time in accordance with MDNR permitting procedures, ND Office of State Engineer Permits, federal permits, this Term Sheet, and the Settlement Agreement, and specifically agree that injunctive relief shall be available to enforce this covenant not to sue as damages are not an adequate remedy for a breach thereof.
6. **Remand of BRRWD Permit, Approval and Reimbursement.** BRRWD agrees to reconsider the application by the Authority for a BRRWD permit for Plan B, and deems it to be currently pending before the BRRWD without any further action required by the Authority, with the understanding that the Comprehensive Project will be subject to conditions imposed by MDNR Permit No. 2018-0819 (with the further understanding that the Parties anticipate jointly requesting that condition 22 will be amended as provided for below), and BRRWD’s additional permit conditions as described in the attached **Exhibit A**, which is hereby incorporated into this Term Sheet by reference. In addition, the BRRWD permit for Plan B will include a condition that all the Parties to this Term Sheet must have executed this Term Sheet for the BRRWD permit to become effective. If BRRWD issues a permit for Plan B and an interested party appeals from or otherwise challenges BRRWD’s issuance of the permit for Plan B, the Authority will reimburse and hold BRRWD harmless from any and all costs, expenses, or disbursements (including reasonable attorney’s fees and expenses) incurred in the defenses of appeal or challenge. In the event that the BRRWD does not issue a permit for Plan B or imposes additional conditions beyond those provided for in this Section, this Term Sheet shall be void and of no force and effect.

7. **Overflow Reach Elevation.** The Overflow Reach for Plan B, which is part of the Southern Embankment Reach SE-1, is located in North Dakota and serves a Probable Maximum Flood (“PMF”) resiliency function. It is designed to overtop during the PMF should there be blockages in the gates for the Red River or Wild Rice River Control Structures. Southern Embankment Reach SE-5, which is located in Minnesota and includes the Wolverton Creek Crossing, is designed to overflow to limit upstream impacts in Wilkin County, Minnesota and ensure that Comstock is not adversely affected during extreme flood events such as the PMF. The Parties acknowledge that due to the natural grade of the Red River Valley the Reach SE-5 overflow and Wolverton Creek Crossing is approximately three (3) inches higher than the Reach SE-1 Overflow Reach. As a result, the overflow elevation is the same level for both the North Dakota Office of State Engineer (“ND OSE”) Permit and the MDNR Permit, and there are grade, soil, hydraulic and engineering reasons that the Southern Embankment may have slight variations in its elevation. The Authority covenants that such variations are consistent with the MDNR Permit as amended from time to time and does not result in disparate treatment as between the State of Minnesota and the State of North Dakota.
8. **Compliance.** The Comprehensive Project shall not be operated unless the Authority is in compliance with all federal, MDNR, BRRWD, and ND OSE permit conditions, as amended from time to time, this Term Sheet, and the Settlement Agreement. The Parties agree and acknowledge that the Comprehensive Project as currently proposed is deemed to be in compliance with all local laws and ordinances of all signatories, Wilkin County, and Richland County.
9. **Remedies Clause.** The Parties agree that except for the individual rights relating to the Crop Insurance Provision and Business Interruption Insurance Provision, and subject to and in accordance with any dispute mechanism provision that may be set forth in the Settlement Agreement, the remedy of damages at law for the breach of any of the covenants contained in this Term Sheet is an inadequate remedy. In recognition of the irreparable harm that a violation of any of the covenants, agreements, or obligations arising under the Term Sheet or the more comprehensive Settlement Agreement would cause, each Party agrees that in addition to any other remedies or relief afforded by law, an injunction against an actual or threatened violation or violations may be issued against him, her, or it and every other Person concerned thereby, it being the understanding of the Parties that both damages and an injunction shall be proper modes of relief and are not to be considered alternative remedies. No bond shall be required prior to the granting of any injunctive relief. In the event of any such actual or threatened violation of this Term Sheet or the Settlement Agreement by either the Authority or BRRWD with respect to the terms and obligations as between the Authority and BRRWD, subject to the procedures set forth in the Dispute Mechanism Provision outlined in Section 10 of this Term Sheet, the prevailing party shall be entitled to its costs, expenses, and reasonable attorney’s fees in pursuing any of its rights and remedies with respect to the actual or threatened violation in addition to actual damages sustained by the prevailing party. The Parties to this Term Sheet agree and acknowledge that the above described prevailing party provision shall only apply to disputes between the Authority and BRRWD and it shall not apply to any other disputes as between the Parties or any third party.

10. **Dispute Mechanism Provision.** The Parties agree that in the event of an alleged breach of this Term Sheet, the Party or Parties making such allegation shall provide written notice to the other Party or Parties of the alleged breach, and provide the Party or Parties alleged to have caused the breach a reasonable time and an opportunity (the reasonableness of the duration and opportunity to correct shall be determined by considering the circumstances and potential harm, injury and/or damages involved in the alleged breach by a party) to correct/remedy the breach, to meet and confer, and to participate in voluntary mediation prior to initiating litigation, arbitration, or any administrative proceeding.
11. **Change of Law Provision.** The Parties agree to meet and confer to determine if any amendments need to be made to this Term Sheet or subsequent Settlement Agreement, in the event of a Change of Law. The intent of the Parties is that, in the event of a Change of Law, the Parties would work collaboratively to ensure that the substance and intent of the Term Sheet is implemented and continues in full force and effect. A Change of Law is defined to include, but not be limited to, new environmental laws, new regulatory requirements, changes to property tax laws, changes to federal crop insurance rules, material changes in cropping choices in the Staging Area, or changes to other areas of law or regulations that could materially impact the Parties' ability to implement and comply with the terms and conditions of the Term Sheet. Nothing herein, however, waives any rights or remedies on the part of the Authority nor requires the Authority to meet and confer if any Party to this Term Sheet adopts a Change of Law that would materially, adversely affect construction or operation of the Comprehensive Project. If such a Change of Law is adopted by any Party to this Term Sheet, the Authority may seek immediate injunctive relief and remedies at law without any obligation to meet and confer.
12. **BRRWD Attorney's Fees.** The Authority will pay BRRWD's out of pocket attorney's fees (fees covered by reimbursements from BRRWD's insurance company shall not be considered out of pocket fees) in an amount not exceeding \$250,000.00 as evidenced by a notarized affidavit signed by the attorneys generating the bills, not later than ten (10) business days after entry of judgment in all litigation matters and issuance of a BRRWD permit for Plan B. The JPA will pay BRRWD's out of pocket attorney's fees (fees covered by reimbursements from BRRWD's insurance company shall not be considered out of pocket fees), exceeding the first \$250,000.00 paid by the Authority as set forth above, provided that such amount shall not exceed \$250,000.00 as evidenced by a notarized affidavit signed by the attorney generating the bills, not later than ten (10) business days after entry of judgment in all litigation matters. JPA's obligation to pay BRRWD's attorneys fees is contingent upon JPA receiving the Initial Deposit from the Authority as set forth in Section 27(h) of this Term Sheet.
13. **Georgetown.** The Authority will provide reasonable and adequate initial and annual funds to the BRRWD to design, construct, operate, and maintain a project for permanent 100-year FEMA Accredited Flood Protection (Period of Record Hydrology) protection for the City of Georgetown, MN ("Georgetown") to close gaps in Georgetown's permanent flood protection and to protect Georgetown against any adverse flood impact(s) of the Comprehensive Project ("Georgetown Project"). The Georgetown Project will include appropriate in-town lift stations needed for flood control. Prior to commencement of the

Georgetown Project, BRRWD and the Authority will reasonably and mutually agree as to the Georgetown Project scope, budget, and timing. BRRWD agrees that it will administer and complete the Georgetown Project. BRRWD and the Authority agree to cooperate in good faith to develop a Memorandum of Understanding (“Georgetown MOU”), specifically setting forth the construction, operations, and maintenance related to the Georgetown Project and the procedures for the initial and annual funding, reviews, reimbursements, and coordination with Minnesota state agencies.

14. **Wolverton.** The Authority will provide reasonable and adequate initial and annual funds to the BRRWD to design, construct, operate and maintain a project for permanent 100-year FEMA Accredited Flood Protection (applying Period of Record Hydrology) for Wolverton to close Wolverton’s permanent flood protection as set forth in BRRWD’s already proposed flood protection project and protect against any adverse flood impact(s) of the Comprehensive Project to Wolverton (“Wolverton Project”). The Wolverton Project shall include flood protection for a minimum of a one square mile circumference measured from Wolverton’s city limits and make provisions to protect its current lift station and city cemetery. The Wolverton Project will include appropriate in-town lift stations needed for flood control and provide levees that are above the 500-year flood elevation. Prior to commencement of the Wolverton Project, BRRWD and the Authority will reasonably and mutually agree as to the Wolverton Project scope, budget, and timing. BRRWD agrees that it will administer and complete the Wolverton Project. BRRWD and the Authority agree to cooperate in good faith to develop a Memorandum of Understanding (“Wolverton MOU”), specifically setting forth the construction, operations, and maintenance related to the Wolverton Project and the procedures for the initial and annual funding, reviews, reimbursements, and coordination with Minnesota state agencies.
15. **Christine.** The Authority will provide reasonable and adequate initial and annual funds to Christine to design, construct, operate, and maintain a flood control project in Christine, ND (“Christine”), to protect against any adverse flood impact(s) of the Comprehensive Project to Christine (“Christine Project”). The Christine Project will include appropriate in-town lift stations needed for flood control and provide 100-year FEMA Accredited Flood Protection (applying Period of Record Hydrology) and provide levees that are above the 500-year flood elevation. The Christine Project shall include flood protection for a minimum of a one square mile circumference measured from Christine’s city limits. Prior to commencement of the Christine Project, Christine and the Authority will reasonably and mutually agree as to the Christine Project scope, budget, and timing. Christine will administer and complete the Christine Project. Christine and the Authority agree to cooperate in good faith to develop a Memorandum of Understanding (“Christine MOU”), specifically setting forth the construction, operations, and maintenance related to the Christine Project and the procedures for reviews, reimbursements, and coordination with North Dakota state agencies.
16. **Comstock.**
 - a. The Authority will provide reasonable and adequate initial and annual funds to Comstock to design, construct, operate, and maintain a flood control project in Comstock to protect against any adverse flood impacts of the Comprehensive Project

- to Comstock within a reasonable area to the west of Comstock to Highway 75 and within a reasonable area to the east of Comstock (the “Comstock Flood Control Project”). The Authority and Comstock will work in good faith to determine if there are any adverse physical, environmental, water related, flood insurance impacts or non-monetary impacts to Comstock caused by the Comprehensive Project.
- b. The Authority will provide funds to Comstock to develop, construct, complete and finalize the construction of a new lagoon (the “Lagoon Project”).
 - c. The Authority will also coordinate with Clay County to provide additional funds to assist in the repair or replacement of Clay County Highway 2 within Comstock city limits (the “Highway Project”). The Authority will coordinate with the Clay County Engineer to determine if the Highway Project can be constructed using storm sewers rather than rural section ditches.
 - d. Prior to commencement of the Comstock Flood Control Project, the Lagoon Project, and the Highway Project, Comstock and the Authority agree to cooperate in good faith to reasonably and mutually agree as to the Projects’ scope, budget, and timing. Comstock will administer and complete the Projects. Comstock and the Authority agree to cooperate in good faith to develop a Memorandum of Understanding (“Comstock MOU”), specifically setting forth the construction, operations, and maintenance related to the Projects and the procedures for the initial and annual funding, reviews, reimbursements, and coordination with Minnesota state agencies.
17. **Cemeteries.** The Authority will provide reasonably sufficient initial and annual funds to affected cemeteries within the Staging Area (there are no cemeteries within the “inundation area”) to develop and construct reasonable cemetery protection plans, which plans may include, but are not limited to, ring dikes/levees, maintenance requirements, and/or an internal water management and discharge system inside the ring dikes/levees, surrounding the cemetery to eliminate and prevent any impact, including erosion, of the project to said cemeteries. Said plans shall also include payment by the Authority for debris removal and other damages caused by the operation of the Comprehensive Project and the Authority will ensure that access will be maintained to the cemeteries when the Comprehensive Project is not operating (such as during construction of the Comprehensive Project). The Authority agrees to cooperate in good faith with the individual cemetery boards to develop the scope, budget, and timing of the cemetery protection plan. Each cemetery will approve and administer their individual cemetery protection plan. In the event the initial cemetery protection plan developed by the Authority and cemetery involved is inadequate to address adverse impacts arising from the operation of the Comprehensive Project, the Authority and the cemetery involved will cooperate in good faith and develop modifications/amendments to the initial cemetery protection plan. If there are costs associated with the modification/amendments the Authority shall fund such costs. The JPA will assist the Authority in coordinating with the leadership/management of each of the impacted cemeteries. The Authority covenants to complete the cemetery mitigation projects/mitigation before the Comprehensive Project operates, unless a cemetery board refuses to agree to a mitigation project or makes unreasonable demands with regard to mitigation.

18. **Post-Operation Debris Removal and Restoration.** The Authority will implement and fund a Post-Operation Debris Clean-up and Restoration Plan to provide for the cleanup of debris and property restoration arising out of the operation of Plan B. The Post-Operation Debris Clean-up and Restoration Plan shall provide that debris shall be removed by the Authority, and non-structural property damage shall be repaired/remedied, restored at its cost, within ten (10) days of the completion of Comprehensive Project operation and upon notification by property owners that flood waters have receded from affected properties, as long as local conditions permit such removal. If debris or non-structural property damage is not removed or repaired/remedied and restored within ten (10) days of notification that flood waters have receded, the landowner or tenant may arrange for such removal to the side of a township or county road/highway and submit the costs of removal to the Authority for reimbursement. The Post Operation Debris Clean-up and Restoration Plan will include a provision that allows landowners and/or tenants to repair/remedy/restore damaged non-structural property and/or remove the debris and receive reasonable compensation for such activities before or after said ten (10) day period. The Parties recognize that the amount of debris that will need to be removed will depend upon specific conditions, including prior years' crops, size and duration of the operation of the Staging Area and other factors. As such, the Parties recognize that, over time, having an adaptive program for Debris Removal will be beneficial to landowners and the Parties. The Authority will create and support a Debris Removal and Property Damage Sub-Committee to adaptively manage debris clean up and non-structural property damage repair/remediation/restoration. The JPA agrees to secure two (2) full-time farm operators from the Staging Area to be voting members of a Debris Removal and Property Damage Sub-Committee to assist in further clarifying and refining the Debris Removal and Restoration Program over time.
19. **Crop Damage.** Beginning not later than March 1 in the first year of Substantial Completion of the Comprehensive Project¹ (estimated 2027) and continuing for as long as any floodwaters are diverted by operation of the Comprehensive Project, the Authority will implement and fund, at no cost to landowners/producers, a program including growing season crop insurance and prevent plant insurance programs for damages caused by the operation of the Comprehensive Project. These programs will include the following requirements:
- a. The growing season crop insurance will reimburse one hundred percent (100%) of any crop loss proximately caused by the operation of the Comprehensive Project, i.e. to ensure that producers are reimbursed for crop loss up to said producer's proven yield as established through crop insurance or governmental filings. The growing season crop insurance program will include a rebuttable presumption that if growing crops in the storage area are damaged by flood waters and the Comprehensive Project operated, that the crop damages were due to Comprehensive Project Operation. The parties contemplate that a crop insurance rider will be designed, and the rider will be paid for by the Authority at no cost to landowners/producers.

¹ Substantial Completion of the Comprehensive Project may be further defined in the Settlement Agreement, but means herein that the Comprehensive Project can be operated, but may have a list of punch list items, from seeding, to correcting doors, fixtures, stripping and other items that need to be completed to close out the project, but which will not prevent it from operating.

- b. The prevent plant program will be funded by the Authority for producers located within the Staging Area.
- c. The crop insurance and prevent plant programs contemplated in this Section 19 shall contain the following provisions:
 - i. If an agricultural crop is grown for the non-GMO (Genetically Modified Organism) or certified organic marketplace and the premium for production of the non-GMO or certified organic crop is lost because of staging water in the Staging Area, contamination or other reasons due to operation of the Comprehensive Project, the crop insurance and prevent plant rider provided by the Authority must provide compensation for the lost premium based upon Actual Production History for the non-GMO or certified organic crop.
 - ii. The crop insurance and prevent plant rider provided by the Authority must provide that if Comprehensive Project operation causes farmland within the Staging Area to be contaminated and such contamination causes the farmland to no longer qualify in the non-GMO or certified organic market place, the landowner or tenant involved shall be compensated for all crop loss caused by such failure to qualify.
- d. The crop insurance and prevent plant rider provided by the Authority must provide that a producer Actual Production History Yield (“APH”), is not adversely affected by a reduced yield caused by the operation of the Comprehensive Project, the crop insurance program shall include a provision/rider that the Risk Management Agency (“RMA”) shall not include yields in their RMA calculation for any year in which the Comprehensive Project is operated.

20. Business Damage. Beginning not later than March 1 in the first year of Substantial Completion of the Comprehensive Project (estimated 2027) and continuing for as long as any floodwaters are diverted to any degree by the project into the Staging Area, the Authority will implement and fund a program, at no cost to a business that provides a significant percentage of its business to agricultural property in the Staging Area, including business interruption insurance, that will reimburse business within the Staging Area for business loss or damage directly caused by the operation of the Comprehensive Project. The Parties do not intend that this program would be available to an equipment dealer, car dealership, or other like business.

21. Access.

- a. The Authority will guarantee reasonable, timely, and if necessary for safety reasons, emergency access to fields flooded in the Staging Area. If washouts or other damage to township and county roads occurs as a result of staging operations, the roads will be repaired by the township or county having jurisdiction over the road in a manner approved by the township or county. The Authority will reimburse the township or county for the road repair costs.

- b. When the Comprehensive Project is not operated, during construction or thereafter, the Authority shall take reasonable precautions and actions to ensure that township and county roads are not damaged, blocked, or detoured by Comprehensive Project construction, operations, and/or maintenance any more than reasonably necessary so as to allow farmers to access their fields within minimal interruption or delay, i.e. detours shall be implemented so as to provide minimal delay or alternative routes, and road lifts or side roads shall be constructed as opposed to providing long detour routes. All costs for temporary closures and road openings shall be paid by the Authority, either through actual construction and cost payment by the Authority or by reimbursement to the townships and counties as set forth in Section 21(a) of this Term Sheet.
22. **Third Party Enforceability of Sections 18, 19, and 20.** The Parties agree that the Settlement Agreement will provide the ability for third parties to enforce Sections 18, 19, and 20 of this Term Sheet, provided, however, that the Authority and/or the Authority's Insurance Provider must be provided reasonable notice of an alleged breach by the Authority, and/or the Authority's Insurance Provider must be given a reasonable opportunity and time to correct such alleged breach, and the opportunity to meet and confer with the person(s) or organizations claiming there is breach prior to any initiation of any litigation, arbitration, or administrative proceedings. Third parties shall not have the right to enforce any other terms of this Term Sheet except for Sections 18, 19, and 20.
23. **Flexible Compensation/Mitigation.** Subject to MDNR, ND OSE, and applicable federal permit requirements, if requested by a landowner as an alternative to an acquisition of property rights, the Authority will fund and approve flexible compensation/mitigation efforts within the Staging Area to compensate landowners for water damage to their properties. Compensation/mitigation of structures upstream of the Southern Embankment shall be completed in accordance with the federal and state statutes and regulations and constitutional requirements (depending upon the location of the property), and the Authority, with the landowner's agreement, consent to use the Compensation/Mitigation Flexibility Plan, to be more fully developed by the Parties to the extent it is permitted to do so under applicable state and federal permit requirements. The Authority shall work in good faith with the other Parties to this Term Sheet and Settlement Agreement to secure agreement from the MDNR for the use of the Compensation/Mitigation Flexibility Plan.
24. **Flowage Easements and Real Property Purchases.**
- a. The Authority will continue to purchase real property, including flowage easements and fee simple interests and will continue with acquisitions and mitigation for individual landowners. These costs and mitigation dollars are separate and distinct from the Relief Fund provided for herein.
- b. The general terms of the Flowage Easement Agreement must be mutually agreed between the landowner and the entity acquiring the easement, except that nothing herein shall allow terms prohibited by applicable law or prohibit the Authority or its Member Entities from using eminent domain if an agreement cannot be reached with the landowner.

- c. All cash values for farm purchases must be based on the property's highest and best use as determined in accordance with federal and state statutory and constitutional requirements and eminent domain law.
 - d. The Authority will provide the JPA, BRRWD, MDNR, and USACE with a draft of the general form of the Flowage Easement proposed to be applicable in their respective jurisdictions for their review and input. The Authority will consider the input of the JPA, BRRWD, MDNR, and USACE with respect to the general form of the Flowage Easement and engage in a good faith dialogue with the JPA, BRRWD, MDNR, and USACE regarding whether its input can be incorporated into the form of the Flowage Easement while complying with (i) applicable state law, (ii) regulatory agency requirements, (iii) MDNR Permit Requirements, and (iv) USACE land acquisition requirements.
25. **Active Farm Operations and Business Relocations.** Active Farm Operations and business relocations must be rebuilt with the same productive and operational capacity as the original sites. The Authority will create and fund an F-M Diversion Rural Impact Mitigation Program to provide a forgivable loan program *in addition to* funds received as part of property rights acquisitions, to assist in the relocation and replacement of displaced Active Farm Operations and rural businesses. The purpose of the program is to create a forgivable loan that allows the recipient to rebuild and continue in business with modern facilities, and, so long as the recipient or the recipient's heirs, successors, and assigns stay in operation for a period of ten (10) years, the loan will be fully forgivable. All utilities and transportation access must be equal to or exceed the existing location.
26. **Applicability of Sections 19-25.** Subject to the exceptions set forth herein, the provisions in Sections 19, 20, 21, 22, 23, 24, and 25 of this Term Sheet shall be applicable to any land within the Staging Area. In the event a property located outside of the Staging Area is damaged by the operation of the Comprehensive Project, the Authority will pay that landowner its actual damages and the property owner may opt in to Sections 19, 20, 21, 22, 23, 24, or 25 of this Term Sheet at the same time that he, she, or it enters into a Flowage Easement with the Authority, which Flowage Easement shall provide reasonable compensation to the property owner in a similar manner as is paid to all property owners who have previously executed Flowage Easements and in compliance with applicable law. The Parties intend that the benefits of the above described mitigation arise out of impacts from the Comprehensive Project and as a result, securing a flowage easement is a reasonable condition precedent for properties to benefit from the provisions set forth in Sections 19, 20, 21, 22, 23, 24, or 25 of this Term Sheet.
27. **Economic Impact Relief Fund.**
- a. An Economic Impact Relief Fund ("Relief Fund) will be created and administered by the JPA, with said funds to be used by the JPA generally for the following items:
 - i. to pay back Richland County, Wilkin County, and BRRWD for legal fees incurred related to the proposed diversion and to be used to pay for future legal and

administrative fees incurred by the JPA and Richland County related exclusively to the administration/implementation of this Agreement;

- ii. for Richland County and Wilkin County to be used for public infrastructure;
 - iii. for economic assistance and infrastructure for various political subdivisions within Richland County and Wilkin County, including, but not limited to, the BRRWD, the Richland Water Resource District, Christine, Wolverton, Comstock, Kindred Public School District #2, Richland #44 School District, Barnesville School District, Independent School District #846 in Breckenridge, MN, Richland County Jobs Development Authority, Wilkin County Jobs Development Authority, Walcott Township, Eagle Township, Wolverton Township, and Holy Cross Township. Nothing in this Term Sheet prevents the JPA from distributing funds to political subdivisions other than those enumerated in this subsection; and further, nothing in this Term Sheet obligates the JPA to distribute funds to the political subdivisions enumerated in this subsection.
 - iv. The Parties agree and acknowledge that the Authority is currently working with Holy Cross Township to develop a Memorandum of Understanding (“Holy Cross MOU”), which is intended to provide mutually agreeable terms with respect to Holy Cross Township flood protection and implementation of the Comprehensive Project. Upon execution by both parties of the Holy Cross MOU, Holy Cross Township shall automatically be deleted from Section 27(a)(iii) without any further action by the parties, and further, the Authority will notify the Parties to this Term Sheet regarding execution of the Holy Cross MOU and that this Term Sheet has been automatically modified to delete Holy Cross Township from being listed in Section 27(a)(iii).
- b. The JPA will not distribute any portion of the Relief Fund as gifts or compensation to private individuals.
 - c. Distributions from the Relief Fund shall be made in accordance with North Dakota law.
 - d. The JPA shall require every person, entity, and local unit of government (the “Signatory”), as a precondition to receiving any direct monetary distribution, loan, or grant from the Relief Fund, to execute an agreement (the “Distribution Agreement”), which includes the following mandatory terms and conditions: (i) a provision requiring that the Signatory to the Distribution Agreement not take any Action (an “Action,” the definition of which is expanded upon below) to stop or materially interfere with the design, construction, financing, operation or maintenance of the Comprehensive Project (“Action Clause”), (ii) a provision requiring that if the Signatory to the Distribution Agreement does take such Action then it must repay the distribution from the Relief Fund to the JPA, plus liquidated damages of ten percent (10%) interest (“Liquidated Damages”) on such monies to compensate for the impacts of such an Action which are inherently difficult to quantify (“Clawback Clause”), and (iii) a provision granting the Authority the status of Third Party Beneficiary under the Distribution Agreement with the right to enforce the terms and conditions of the

Distribution Agreement. The JPA further agrees to not distribute any portion of the Relief Fund to persons, entities, units of local government, or organizations who are taking any Action to stop or materially interfere with the design, construction, financing, operation, or maintenance of the Comprehensive Project, including but not limited to enacting new or amended laws that have the purpose or effect of materially interfering with the Comprehensive Project, or initiating or participating in any administrative proceeding, suit, or Action, at law or in equity with the same effect. The JPA shall include the above required language in the Distribution Agreement after the Authority provides language to the JPA that is compatible and consistent with this Term Sheet to implement and enforce this Section 27(d). Prior to distributing any monies from the Relief Fund, the JPA will provide the Authority with a copy of its Distribution Agreement for distributions from the Relief Fund. The failure of the JPA to include items (i) through (iii) set forth in this subsection with any distribution of monies from the Relief Fund shall be deemed a breach of this Term Sheet and subsequent Settlement Agreement. The JPA will provide the Authority with fully executed copies of all Distribution Agreements within thirty (30) days of the date that such Distribution Agreement is executed.

- e. *[This section not used.]*
- f. The Relief Fund will be administered by the JPA and held in a designated account by the Richland County Auditor as fiscal agent for the JPA. The Richland County Auditor will act as a fiduciary when handling monies contained within the Relief Fund. The JPA will coordinate with the various political subdivisions impacted by the Comprehensive Project, as set forth above. The JPA will provide a summary of the anticipated distributions to the Relief Fund, and the North Dakota State Auditor shall have the right to audit the use of funds as with any other North Dakota public entity.
- g. The costs associated with any obligation of the Authority set forth in this Term Sheet, other than those arising under this Section 27 of this Term Sheet, including but not limited to land acquisition, flowage easements, individual mitigation efforts, cemeteries, Georgetown, Christine, Comstock, and Wolverton flood reduction/mitigation projects, crop insurance, business interruption insurance, debris removal, and road repair, will be independently funded by the Authority and will not be funded through the Relief Fund.
- h. Payments having a value of \$75,000,000 in 2020 dollars will be provided by the Authority to the Relief Fund, with an initial payment of \$35,000,000 to be made not later than ten (10) days after the latter of the following events: (1) issuance of a permit by BRRWD for the Plan B Project as provided for above, (2) entry of Judgment of Dismissal with Prejudice (or the reasonable equivalent thereof if such a judgment is not available in a Minnesota administrative matter) in Minnesota OAH Docket No. 65-2002-36151, in In the Matter of the Dam Safety and Public Waters Work Permit No. 2018-0819 for the Fargo-Moorhead Flood Risk Management Project, Clay and Wilkin Counties, Minnesota and Cass and Richland Counties, North Dakota (the “MN CCH”) and the issuance of the MDNR Permit, (3) entry of Judgment of Dismissal with Prejudice in Richland/Wilkin Joint Powers Authority v. United States Army Corps of Engineers, et al., U.S. District Court, District of Minnesota, Civil File No. 0:13-cv-

- 02262-JRT-LIB (the “Federal Case”), and (4) entry of judgments of dismissal with prejudice in the pending appeal to the Eighth Circuit Court of Appeals. The balance of \$40,000,000 in 2020 dollars is to be paid in equal annual payments over roughly thirty-three (33) years with the first payment being made on the date of Substantial Completion of the Comprehensive Project or December 31, 2031, which ever event occurs first, and with interest accruing at 2% per annum.
- i. The Authority may decide to pre-fund all of its obligations under the Settlement Agreement at any time upon six (6) months’ written notice to the JPA.
 - j. The State of North Dakota will have the authority to audit the Relief Fund and to request reports as to how the funds have been spent. None of the Relief Fund shall ever be returned to the Authority.
 - k. In the event the JPA ever ceases to exist, the JPA will identify another North Dakota political subdivision to administer the Relief Fund and obtain approval from the North Dakota State Auditor.
 - l. The Diversion Authority’s payments to the Relief Fund are contingent on the JPA, Wolverton, Comstock, Richland County, and/or Wilkin County not taking any Action to stop and/or interfere with the Comprehensive Project from being designed, constructed, financed, operated, or maintained. If the JPA, Wolverton, Comstock, Wilkin County, or Richland County takes any Action to stop and/or interfere with the Comprehensive Project from being designed, constructed, financed, operated, or maintained, the Authority shall invoke the Dispute Mechanism Process set forth in Section 10 of this Term Sheet. If a voluntary resolution of the dispute does not occur and the Parties proceed to litigation, payments to the Relief Fund required to be made after a formal complaint has been served upon the JPA, would be deposited into an escrow fund held by a third party or court, and any further distribution of the funds will be as determined according to the results of the proceeding commenced by the Authority. Specifically, if the court determines that the JPA, Wolverton, Comstock, Wilkin County, or Richland County has breached its obligations under this Section, the Authority is entitled to reclaim any escrowed funds and its obligation to make future payments to the Relief Fund is terminated. If the court determines that the party is not in breach, all escrowed funds shall be paid to the JPA and future direct payments to the JPA shall continue in accordance with the terms and conditions of this Term Sheet and any subsequent Settlement Agreement.
 - m. The Parties agree that the Authority shall be designated as a Third Party Beneficiary under the Distribution Agreement(s) and shall have the direct right to enforce those terms and conditions of the Distribution Agreement(s) identified in Section 27(d) as the Action Clause and the Clawback Clause and any related provisions (collectively, the “Authority Enforceable Terms”) as though it were a party to the Distribution Agreement(s), and shall be entitled to exercise all of the JPA’s rights and remedies under the Distribution Agreement(s) with respect to the Authority Enforceable Terms as though it were the JPA. In any Action to enforce the Distribution Agreement(s), the Parties agree that the principal funds advanced from the Relief Fund to the Signatory that are recovered from the Signatory would be refunded to the JPA and the Authority

shall be entitled to amounts referenced in Section 27(d) as Liquidated Damages to offset against any Authority costs associated with enforcing the Distribution Agreement(s). The JPA, Wolverton, Comstock, Wilkin County, and/or Richland County agree to cooperate in good faith with the Authority and not to interfere in any Action by the Authority to enforce the terms and conditions of the Distribution Agreement(s) pursuant to this Section and Section 27(d). The Authority shall reimburse the JPA for all reasonable attorney's fees incurred by the JPA with respect to its cooperation with the Authority relating exclusively to the Authority's enforcement of the Authority Enforceable Terms in a court having personal and subject matter jurisdiction over the matter. The Authority shall have no obligation to reimburse the JPA for enforcement actions under the Distribution Agreement(s) unrelated to the Authority Enforceable Terms. Nothing in this subsection 27(m) requires the JPA to file a legal action in a court having personal and subject matter jurisdiction to enforce the Authority Enforceable Terms. At all times, the JPA agrees to act in good faith to administratively enforce the Distribution Agreements' terms relating to the Authority Enforceable Terms, and the JPA has the discretion to enforce terms and conditions of the Distribution Agreement(s) unrelated to the Authority Enforceable Terms as it deems appropriate and necessary to enforce its rights and is solely responsible for the costs of enforcing terms and conditions of the Distribution Agreement(s) unrelated to the Authority Enforceable Terms. It is anticipated and intended that the JPA's "agreement to act in good faith to administratively enforce" as set forth above will likely require the JPA to send a notice of default to a Signatory of a Distribution Agreement when it has reasonable grounds to do so, in accordance with the procedures to be set forth in the Distribution Agreement(s).

- n. Notwithstanding anything to the contrary and subject to the Dispute Mechanism Provision set forth in this Term Sheet, the JPA, Comstock, Wolverton, Wilkin County, and Richland County are not precluded from enforcing the terms and conditions of this Term Sheet, with specific reference to the Authority's obligations set forth in Section 8 of this Term Sheet, which such enforcement shall not be deemed an Action as defined herein.

"Action" is defined as commencing or participating in any and all proceedings adverse to the Comprehensive Project, including but not limited to litigation, lobbying, enacting or enforcing local ordinances, local legislation or invoking/using any federal, state, or local administrative activities, remedies, processes, or proceedings and invoking any state or federal administrative proceedings to prevent, delay, or encumber the Comprehensive Project from being designed, financed, constructed, operated, or maintained in accordance with the terms and conditions of this Term Sheet, the Settlement Agreement, MDNR Permit, ND OSE Permits, and federal permits.

- 28. **Opposition or Support.** Although they may choose to take a supporting position for certain Authority activities after the Settlement Agreement is executed, the Parties, other than the Authority, will neither oppose nor support the Comprehensive Project in the media or at any state or political subdivision level. The Parties understand that the Parties have no control over supporting or opposing positions being taken by members of the public. The JPA will shut down and cease operation of the JPA editorial team and will not allow its name to be used to oppose the Comprehensive Project.

29. Final Operating Plan.

- a. Whenever the Master Water Control Manual, Fargo-Moorhead Metro Area Flood Risk Management Project changes in any respect, those changes shall be provided in writing to the JPA within ten (10) business days after the changes are adopted by the Authority. Further, within ten (10) business days after the Master Water Control Manual, Fargo-Moorhead Metro Area Flood Risk Management Project is adopted as a final document, said document shall be provided to the JPA and BRRWD within ten (10) business days after it has been adopted.
- b. Subject to the Change of Law clause, if changes in the Master Water Control Manual, Fargo-Moorhead Metro Area Flood Risk Management Project cause material increases in the elevation of the Staging Area/Inundation Levels or materially lengthen the duration of the water detention, the Authority shall be responsible for supplemental compensation and mitigation for affected land, landowners, and businesses, as determined by the then-in-affect Property Rights Acquisition and Mitigation Plan (“PRAM”).

30. Retention Projects. The Authority will continue to commit to reasonably fund upstream retention projects when (i) such project(s) lower and/or reduce the frequency of the water in the storage area, (ii) a sponsoring political subdivision is willing to undertake the upstream retention project, and (iii) the sponsoring political subdivision is able to secure the appropriate real property interests (fee simple, easement, or other necessary rights).

31. Individual Rights. Nothing in the Settlement Agreement shall be construed to supersede, give up, waive, or affect an individual or unrelated entity’s ability or right to be compensated for land taken by eminent domain or other relief.

32. Affirmative Covenants of the Authority. The Authority is a permanent and perpetual North Dakota political subdivision, as created by the Joint Powers Agreement dated June 11, 2016, and is a Non-Federal Sponsor of the Comprehensive Project as set forth in the Project Partnership Agreement with the United States Department of Army. Pursuant to the Joint Powers Agreement and the obligations set forth in the Project Partnership Agreement, in the event the Authority should ever dissolve all obligations to third parties will continue in full force and effect and the Comprehensive Project Property and Liabilities shall be transferred to the City of Fargo and the City of Moorhead as the other Non-Federal Sponsors. The Settlement Agreement will provide the above covenants and provide that it is consistent with this Section.

33. Cooperation with USACE. The Parties recognize and acknowledge that the USACE is not a party to this Term Sheet and will not be a party to the Settlement Agreement, and agree that they are not seeking and do not require any agreement by the USACE with the terms set forth herein or as will be set forth in the Settlement Agreement. Additionally, no Party is representing that it speaks for the USACE or has the authority to bind the USACE. No Party shall be liable for any actions or decisions of the USACE. The Parties agree to cooperate in good faith to ensure that the actions carried out pursuant to this Term Sheet

and/or the Settlement Agreement do not violate any applicable USACE requirements. The Parties agree that if, notwithstanding the foregoing, any Party claims that some action or decision by the USACE has resulted in a Change of Law or an alleged breach of the terms of the Term Sheet or of the Settlement Agreement, the Party making such an allegation shall notify the other Parties in writing and provide a reasonable opportunity for consultation with the USACE to attempt to mitigate, resolve, or cure the alleged breach. In the event the terms of Section 11 (Change of Law) shall be applicable, i.e. in the event of a Change of Law, the Parties would work collaboratively to ensure that the substance and the intent of this Term Sheet is implemented and continues in full force and effect via an Amendment to this Term Sheet or subsequent Settlement Agreement.

34. **Cooperation with MDNR.** The Parties recognize and acknowledge that the MDNR is not a party to this Term Sheet and will not be a party to the Settlement Agreement, and agree that they are not seeking and do not require any agreement by the MDNR with the terms set forth herein or as will be set forth in the Settlement Agreement. Additionally, no Party is representing that it speaks for the MDNR or has the authority to bind the MDNR. No Party shall be liable for any actions or decisions of the MDNR. The Parties agree to cooperate in good faith to ensure that the actions carried out pursuant to this Term Sheet and/or the Settlement Agreement do not violate any applicable MDNR requirements. The Parties agree that if, notwithstanding the foregoing, any Party claims that some action or decision by the MDNR has resulted in a Change of Law or an alleged breach of the terms of the Term Sheet or of the Settlement Agreement, the Party making such an allegation shall notify the other Parties in writing and provide a reasonable opportunity for consultation with the MDNR to attempt to mitigate, resolve, or cure the alleged breach. In the event the terms of Section 11 (Change of Law) shall be applicable, i.e. in the event of a Change of Law, the Parties would work collaboratively to ensure that the substance and the intent of this Term Sheet is implemented and continues in full force and effect via an Amendment to this Term Sheet or subsequent Settlement Agreement.
35. **Covenant to Operate Comprehensive Project.** The Authority affirmatively covenants that pursuant to and in accordance with the Project Partnership Agreement between the Department of the Army, the City of Fargo, North Dakota, the City of Moorhead, Minnesota and the Metro Flood Diversion Authority for the Construction of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 11, 2016² and as amended on March 19, 2019 (the “PPA”), along with the Joint Powers Agreement³ creating the Authority, the Authority affirmatively covenants that it is the political subdivision responsible for the operation of the Comprehensive Project in accordance with the Master Water Control Manual, Fargo-Moorhead Metro Area Flood Risk Management Project, MDNR Permit 2018-0819, and applicable federal permits.

² Article II, section I of the PPA provides that “[t]he Non-Federal sponsors, at no cost to the Government [USACE], shall operate, maintain, repair, rehabilitate, and replace the Project in a manner compatible with the authorized purposes of the Project in accordance with the applicable Federal laws and the OMRR&R Manuals, and any subsequent modification thereto.”

³ Article XIII of the Joint Powers Agreement grants the Authority the rights, obligations, and responsibility of operating the Comprehensive Project.

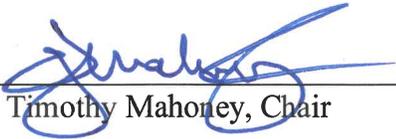
36. **Prohibition on Assignment**. No Party to this Term Sheet may transfer or assign this Term Sheet or any of its rights or obligations under this Term Sheet without the express written consent of all of the Parties.
37. **Legal Review**. The Parties have reviewed the Term Sheet and have had the opportunity to consult with their legal counsel regarding the terms and conditions set forth herein.
38. **Dismissal**. Following execution of this binding Term Sheet and issuance of the BRRWD permit as described in Section 6, the Parties shall direct their respective litigation counsel to notify applicable federal and state courts, and the MN OAH Administrative Law Judge, that the Parties have reached a settlement and respectfully request that issuance of any decisions be stayed pending submission of papers seeking dismissal, except that the Parties shall not seek to delay the Federal District Court's decision regarding the USACE's request to modify the federal injunction to allow for construction of the I-29 road raise project. With regard to the MN CCH matter pending at the Minnesota OAH, the Parties agree to represent to the Administrative Law Judge and the MDNR that the challenges to the MDNR Permit are withdrawn and the Parties recommend that the order of the MDNR issuing such permit become a final order. The Parties further agree to mutually recommend to the MDNR that it modify permit condition 22 in the manner recommended by the Authority in the recommended Findings of Fact and Conclusions of Law that it submitted to the Administrative Law Judge.
39. **Authorization**. The representatives of the Parties signing this Term Sheet each represent and acknowledge that they have each been duly authorized by the governing body of their respective entity to execute this binding and enforceable Term Sheet.

(Signatures appear on the following pages.)

Representatives of the Parties:

For the Authority

Date: October 26, 2020



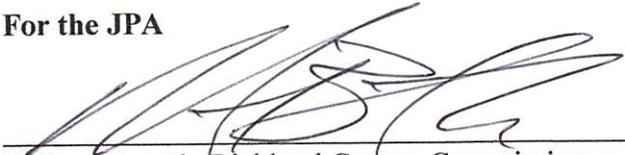
Dr. Timothy Mahoney, Chair



Joel Paulsen, Executive Director

For the JPA

Date: October 26, 2020



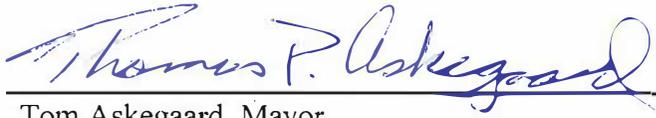
Nathan Berseth, Richland County Commissioner



Dennis Larson, Wilkin County Commissioner

For the City of Comstock

Date: October 23, 2020



Tom Askegaard, Mayor



Pamela Guest, Clerk



For the City of Wolverton

Date: 10 | 26 | 20

Nancy Olthoff
Nancy Olthoff, Mayor

Jessi Kappes
Jessi Kappes, Clerk

For the BRRWD

Date: October 26, 2020

Peter V. Fjestad
Peter Fjestad, President

Catherine Affield
Catherine Affield, Vice President

EXHIBIT A

A Buffalo-Red River Watershed District (BRRWD) Permit is granted and will remain valid subject to the Binding Settlement Term Sheet, Settlement Agreement, and the following conditions:

1. **ADDITIONAL FLOOD MITIGATION:** With impacts expected to flood levels at Wolverton and Georgetown, the Permittee shall provide the BRRWD with funding for permanent 100-year FEMA Accredited Flood Protection (period of Record Hydrology) protection for the City of Georgetown and the City of Wolverton. Flood protection for the Cities of Georgetown and Wolverton will be designed and constructed by the BRRWD and may, subject to Permittee providing proof of sufficient funding, commence prior to acquisition of all flowage easements for the proposed maximum flood pool and to acquisition of property rights for dam construction. Notwithstanding the foregoing, Permittee shall ensure that it immediately begins the process of engaging personally with all landowners in negotiations for flowage easement and property rights. The BRRWD will seek reasonable funding assistance options for the Georgetown and Wolverton flood mitigation projects. Maintenance and operation of the flood protection for the Cities of Georgetown and Wolverton to be paid for by the Permittee.
2. **SITE ACCESS:** The Permittee shall grant access to the Minnesota portions of the project site at all reasonable times during and after construction to BRRWD authorized representatives and the Board of Managers for inspection of the work authorized hereunder.
3. **PROPERTY RIGHTS:** Minnesota property rights shall be acquired, or option agreements shall be signed for all property necessary for construction and operation of the Project in Minnesota prior to the commencement of construction in Minnesota. Permittee shall, to the extent it has not already done so, immediately begin the process of engaging personally with all landowners in negotiations for such rights. Property rights shall include fee simple absolute acquisition of all property of the Project footprint (Plan B eastern tieback could be by easement). Construction of the Red River Control Structure, In-Town projects, and road improvements within the BRRWD's jurisdiction can proceed when all property rights necessary for their individual construction are acquired.

All lands with residential or farmstead structures that will be impacted by Project operation will be acquired in fee simple absolute, unless the:

- a. landowner prefers a mutually agreeable alternative, and
- b. other regulatory authorities (such as Army Corps, FEMA, and Department of Natural Resources). BRRWD will permit the alternative (assumed to be no more restrictive than current statewide floodplain regulations), and
- c. the alternative is cost effective (costs less than full fee simple absolute purchase).

Mitigation for structures upstream of the Southern embankment within the Fringe Area of the Staging Area shall be acquired in accordance with the Minnesota Constitution regarding landowner compensation provided that the Permittee will coordinate in good faith with willing landowners to voluntarily remove project impacts from structures, farmsteads, rural residences, and business structures through the use of ring levees, structure elevation, or other methods acceptable under the Minnesota Constitution, applicable federal and state requirements, and the MDNR Permit to secure necessary property rights for the operation of the Comprehensive Project. For purposes of this Permit the term "Fringe Area" means those areas within BRRWD's permit jurisdiction in which the impact of staging water from the operation of the Comprehensive Project increases the water surface elevation by more than .10 of a foot (1.2 inches) but less than .50 of a foot (six inches).

For all other property impacted when the dam is operated at maximum capacity that is not acquired in fee simple absolute, flowage easements are required. The demolition and/or cleanup of bought-out structures, construction associated with relocation, elevating, floodproofing, or ring diking of farmstead or rural residences, and construction associated with landowner preferred alternatives may commence prior to acquisition of all flowage easements.

4. **SUBMITTALS:** All submittals required by the Minnesota Department of Natural Resources Permit No. 2018-0819 conditions shall also be provided concurrently to the BRRWD.
5. **WOLVERTON CREEK CROSSING:** The Permittee shall coordinate the final design of the Wolverton Creek Structure with the BRRWD to ensure compatibility with the Wolverton Creek Restoration Project. The BRRWD recommends the Wolverton Creek Structure and Plan B Eastern Tieback levee be moved to the County line. No construction of the Wolverton Creek Structure is allowed by this permit until written approval of the final design is obtained from the BRRWD staff.
6. **OPERATION, MAINTENANCE, MONITORING. AND INSPECTION PLAN:** Any changes to the Operation and Maintenance Plan require prior written approval of the BRRWD staff.
7. **CONSTRUCTION PHASE APPROVAL:** Written approval must be obtained from the BRRWD staff prior to the start of construction of any components of the dam in Minnesota. Permittee shall submit to the BRRWD detailed plans and specifications at least 120 days prior to construction. The intention of the plan review and approval is to ensure consistency with the original project design and ensure local drainage accommodations and erosion control are adequate.
8. **PROJECT MAINTENANCE:** The Permittee may, at its cost, maintain the project in Minnesota without a permit from the BRRWD, as long as the maintenance restores the system to its original constructed configuration. Permittee shall ensure that all flood related debris and damage caused by operation of the Project, including that on property belonging

to private citizens is cleaned and remediated in a timely manner at the cost of the Permittee. The Permittee shall notify the BRRWD of any modification in excess of \$100,000 in estimated construction cost.

9. APPLICABLE FEDERAL, STATE, OR LOCAL REGULATIONS: This permit does not release the permittee from any rules, regulations, requirements ordinances, or standards of any applicable federal, state, or local agencies. This includes all Department of Natural Resources Project Permit No. 2018-0819 requirements.

10. COMPLETION DATE: Construction work authorized under this permit shall be completed on or before December 31, 2027. The Permittee may request an extension of the time to complete the project by submitting a written request six (6) months prior to permit expiration, stating the reason(s) therefor to the BRRWD. Any extension of time made and granted by the BRRWD shall be made in writing.