



Contract and Authority Work Directive Summary

Date: March 14, 2013

Contract Summary

Description

URS – Master Services Agreement (MSA)

New Contract for Professional Services

AWD Summary

Amount (\$)

HMG - AWD-00025 – Maple River Aqueduct Flow Analysis

15,000

URS – AWD-00026 – Cultural Resources Investigations

25,000

Total of AWD's

\$ 40,000

CONTRACT SUMMARY

URS Corporation:

Master Services Agreement

Agreement between Owner and Engineer for Professional Service, Task Order Edition

This Master Services Agreement (MSA) replaces an existing City of Fargo Contract with URS for cultural resource investigations – anticipated services include assessment of Project area for cultural resources. Task Orders will be issued authorizing specific scopes and fees.

The MSA contains three areas of highlighted text are still being negotiated with URS (primarily liability and insurance issues.) It is recommended that the Diversion Authority approve this MSA subject to final negotiation and review by legal staff.

AWD SUMMARY

Houston-Moore Group, LLC:

AWD-00025

\$ 15,000

Maple River Aqueduct Flow Analysis

Description:

Initiate modeling of Maple River flow through the Maple River Aqueduct, evaluate impacts in the Risk Reduction Area, and establish Maple River Aqueduct design flow rates for the 100-year (1%) and 500-year (0.2%) flood events, and recommend a flow rate for the Standard Project Flood (SPF) event.

Background:

The Diversion Authority Board has previously entered into Task Order No. 9 with Houston-Moore Group (HMG) to provide work-in-kind engineering services for Hydrology and Hydraulic Modeling. Physical and numerical modeling of the Maple River Aqueduct is underway by a USACE contractor and specific design flow rates through the aqueduct are needed to maintain their project scheduled. In order to maintain schedule, this Authority Work Directive is being issued to authorize modeling to determine these design flow rates and maintain project schedule.

This work is creditable as (Work-In-Kind).

Recommendation:

The PMC recommends that the Authority authorize \$15,000 for HMG to initiate modeling of the Maple River Aqueduct Flow and that this \$15,000 be credited against the \$29,900 remaining in the On Call Budget in Task Order No. 9.

URS Corporation:

AWD-00026

\$ 25,000

Cultural Resources Investigations

Description:

Continue the cultural resources investigation of the Diversion Channel that was started in prior years.

Background:

URS has performed Phase 1 cultural resources investigations along most of the Diversion Channel under a City of Fargo Contract. This AWD will be incorporated into a new Task Order under the new URS Master Services Agreement. Approximately 75 acres remain from the 2012 season in Reaches 1, 4, and 5.

This work is creditable as (Work-In-Kind).

Recommendation:

The PMC recommends that the Authority authorize \$25,000 for URS to continue cultural resource investigations.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

TASK ORDER EDITION

Prepared by



and
Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

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This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other.

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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES
TASK ORDER EDITION**

THIS IS AN AGREEMENT effective as of March 14, 2013 (“Effective Date”) between
Diversion Board of Authority (“Owner”) and
URS Corporation (“Engineer”).

From time to time Owner, or the Owner’s Program Management Consultant, may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer’s services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided.
- B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.
- D. Engineer may be entitled to appropriate adjustment in Engineer’s compensation arising from:
 - 1. Changes in the instructions or approvals given by Owner or Program Management Consultant, untimely decisions by Owner or Program Management Consultant, or enactment or revision of codes, Laws or Regulations, or official interpretations that cause an unreasonable number of revisions in previously approved Documents.

2. Significant changes in the Project including, but not limited to, size, quality, complexity, schedule or budget, or procurement method.

1.02 *Task Order Procedure*

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement. In the event of a conflict between terms of the duly executed Task Order and this Agreement, the provisions of the duly executed Task Order shall take precedence with regard to the Specific Project referenced in the Task Order.
- B. Engineer will commence performance as set forth in the Task Order upon receipt of executed Task Order.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein, unless expressly stated otherwise in each executed Task Order.
- B. Owner shall compensate Engineer as set forth in each Task Order, pursuant to the applicable terms of Exhibit C.
- C. Owner or Owner’s Program Management Consultant shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner or by Owner’s Program Management Consultant, to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this agreement.
- D. Owner shall provide access to properties and facilities reasonably required for the prosecution of the Work.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for 5 years from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.02 *Times for Rendering Services*

- A. The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, Engineer will perform services and provide deliverables within a reasonable time.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed or

suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project referenced in an executed Task Order, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
- F. If completion of any portion of the Services or Work for the Project or any Specific Project is delayed for causes beyond the control of or without the fault of Engineer, including Force Majeure, the time of performance of the Engineer's Services or Work will be extended for a period equal to the delay and fee equitably adjusted. Neither party shall be liable to the other for failure to perform as a result of an event of Force Majeure. Force Majeure includes, without limitation, acts of God; acts of a public enemy; acts of war, terrorism, acts of federal, state, local, or foreign governments; fires; floods; epidemics; strikes; riots; freight embargoes; lawsuit or court order and unusually severe weather.
- G. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), then Owner and Engineer shall, prior to commencement of final design services, develop a schedule for performance of Engineer's remaining services in order to sequence and coordinate properly such services as are applicable to the work under such separate Construction Contracts. This schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. the compounded amount due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall advise Engineer in writing within 20 days from receipt of invoice of the amount in dispute and the factual basis for the Owner's belief that the invoice need not be paid. Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes sales or use taxes, fees, or charges on Engineer's services or compensation under the Task Order, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

ARTICLE 5 – OPINIONS OF COST

5.01 Opinions of Probable Construction Costs

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's estimate as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 Designing to Construction Cost Limit

- A. If a Construction Cost limit for a Specific Project is established between Owner and Engineer in a Task Order, Engineer's rights and responsibilities with respect thereto will be governed by Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation unless such corrective action is directly attributable to deficiencies in Owner-furnished information. Engineer shall not be responsible for discovering deficiencies in the technical accuracy of information provided by Owner or Owner's Program Management Consultant. Engineer will notify Owner of errors, discrepancies and inconsistencies it may discover. If requested, Engineer shall correct deficiencies in technical accuracy of information or materials supplied by Owner or Owner's Program Management Consultant as an additional service and Engineer's fee shall be equitably adjusted.
- C. *Consultants:* Engineer shall serve as Owner's prime professional under each Task Order. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:* When performing Work under an executed Task Order, Engineer and Owner shall each exercise due care to comply with applicable Laws and Regulations in effect as of the execution of any Task Order.
 - 1. Prior to the execution and Effective Date of each Task Order, Owner shall provide to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under such Task Order. Engineer shall comply with such policies and procedures pursuant to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 2. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of such Task Order. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such certification.

6.02 *Use of Documents*

- A. The specific work product of Engineer for which it is compensated by Owner, including all data, documents, and results that Engineer delivers to Owner during the course of its performance under this Agreement, shall be the property of Owner, but Engineer may reuse such information in the normal course of its business and retains its rights in any standard details or drawings. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely on data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile. In addition, either party to this Agreement may rely on items sent in electronic media format of text, data, graphics, or other types that are furnished by one party to the other unless otherwise designated by the delivering Party. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- D. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.
- E. Owner acknowledges that the Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer. Any such use or reuse by Owner, or any modification of the Documents, without written verification, completion or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or its Consultants. Owner shall release, indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion or adaptation by Engineer.

6.03 *Insurance*

- A. At all times when any Task Order is under performance, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer which is applicable to a Specific Project.
- B. At all times when any Task Order is under performance, Owner shall procure and maintain insurance as set forth herein, or such additional insurance as may be agreed upon by the Parties and set forth in Exhibit G.

- C. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractors.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services under any Task Order and at renewals thereafter during the life of this Agreement.
- E. All policies of property insurance relating to a Specific Project shall contain provisions to the effect that Engineer's and Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner and consented to by Engineer (which such consent shall not be unreasonably withheld), and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner. The additional costs associated with any such additional insurance coverage, increased insurance limits and/or revised deductibles shall be invoiced to, and paid by, Owner in accordance with Article 4.
- H. Engineer's insurance (except for Professional Liability), through a policy or endorsement, shall include: (1) "Waiver of Subrogation" waiving any right to recovery the insurance company may have against an Owner; (2) A provision that the policy or endorsements may not be canceled, non-renewed or reduced without 30 days' prior written notice to Owner; and (3) A provision that the Engineer's Commercial General Liability and Auto Liability insurance coverage shall be primary, and that the Owner's insurance shall be in excess of Engineer's insurance.

6.04 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend a Task Order upon seven days written notice to Engineer.
2. *By Engineer:* If Engineer's services are substantially delayed through no fault of Engineer, then Engineer may, after giving seven days written notice to Owner, suspend services under a Task Order.
3. If Owner suspends services required in any Task Order for more than 90 days, then Engineer's fees shall be adjusted equitably.

- B. *Termination*: The obligation to provide further services under this Agreement, or under a Task Order, may be terminated:
1. For cause:
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement or any Task Order through no fault of the terminating party.
 - b. By Engineer:
 - 1) Upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) Upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.04.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 2. For convenience:
 - a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination*: The terminating party under Paragraph 6.04.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.
- D. *Payments Upon Termination*:
1. In the event of any termination under Paragraph 6.04, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.04.D.1, to

invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.05 *Controlling Law*

- A. This Agreement is to be governed by the laws of the state of North Dakota.

6.06 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer each is hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Any assignment in violation of this provision shall be null and void and unenforceable.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party. Nothing herein shall create or bestow rights or benefits to anyone other than Owner and Engineer, and it is the specific intention of the Owner and Engineer that there be no third party beneficiaries of this Agreement, or any Task Order executed per this Agreement.
 - 3. The Owner agrees that the substance of the provisions of this Paragraph 6.06.C shall appear in any Contract Documents prepared for any Specific Project under this Agreement.

6.07 *Dispute Resolution*

- A. Owner and Engineer agree to use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options. Nothing prevents either party from seeking redress in a court of law.

6.08 *Environmental Condition of Site*

A. With respect to each Task Order, Specific Project, and Site:

1. Owner shall disclose to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
2. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
3. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
4. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Specific Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement or any executed Task Order, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating the executed Task Order or (c) terminating this Agreement for cause on 30 days' notice.
6. Owner acknowledges that Engineer is performing services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.09 *Indemnification and Mutual Waiver*

- ### A. *Indemnification by Engineer:* Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, and employees from reasonable claims, costs, losses, and damages, including reasonable attorney's fees and expenses, arising out of or relating to this Agreement or any executed Task Order, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act, willful misconduct or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and Engineer's officers, directors, members, employees, and agents from reasonable claims, costs, losses, and damages, including reasonable attorneys' fees and expenses, arising out of or relating to this Agreement or any executed Task Order, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act, willful misconduct or omission of Owner or Owner's officers, directors, members, partners, agents, or employees.

Owner shall defend, indemnify and hold harmless Engineer from and against any claims by third party arising from and relating to the right of the Project or Specific Project to proceed, claims or condemnation, taking, or reverse condemnation. In addition, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Subdivision F, below, Limitations of Liability.

- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project or any Specific Project.
- F. *Limitations of Liability:* Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, guarantors, Consultants, and employees, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, a Specific Project or Task Order, from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, guarantors or Consultants, shall not exceed the total amount, individually or collectively, of \$3,000,000.

6.10 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of Work called for in each particular Specific Project.
- F. *Applicability to Task Orders:* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. *Non-Exclusive Agreement:* Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following provisions:
 - 1. *Addenda:* Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.
 - 2. *Additional Services:* Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order which are not included in Basic Services for that Task Order.

3. *Agreement:* This "Agreement between Owner and Engineer for Professional Services – Task Order Edition" including those Exhibits listed in Article 8 and any duly executed Task Order.
4. *Application for Payment:* The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
5. *Asbestos:* Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
6. *Authority Work Directive:* A written directive to the Engineer signed by Owner upon recommendation of the Program Management Consultant, ordering an addition, deletion, or revision in a Task Order Scope of Work. An Authority Work Directive will not change the Task Order Price or Schedule, but is evidence that the parties expect that the change directed or documented by an Authority Work Directive will be incorporated into a subsequent issued Amendment following negotiations by the Parties as to its effect, if any, on the Task Order Price or Schedule.
7. *Basic Services:* Specified services to be performed for or furnished to Owner by Engineer in accordance with a Task Order.
8. *Bid:* The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
9. *Bidding Documents:* The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
10. *Change Order:* A document recommended by Engineer, which is signed by a Contractor and Owner to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times.
11. *Constituent of Concern:* Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Construction Agreement:* The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and a Contractor covering the Work.
13. *Construction Contract:* The entire and integrated written agreement between Owner and Contractor concerning the Work.

14. *Construction Cost:* The cost to Owner of those portions of an entire Specific Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
15. *Consultants:* Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors. The term Engineer includes Engineer's Consultants.
16. *Contract Documents:* Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
17. *Contract Price:* The moneys payable by Owner to a Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.
18. *Contract Times:* The numbers of days or the dates stated in a Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
19. *Contractor:* The entity or individual with which Owner has entered into the Construction Contract.
20. *Correction Period:* The time after Substantial Completion during which a Contractor must correct, at no cost to Owner, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.
21. *Defective:* An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.
22. *Documents:* Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
23. *Drawings:* That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by a Contractor. Shop Drawings are not Drawings as so defined.
24. *Effective Date of the Construction Agreement:* The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date

on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

25. *Effective Date of the Agreement*: The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
26. *Effective Date of the Task Order*: The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
27. *Engineer*: The individual or entity named as such in this Agreement.
28. *Field Order*: A written order issued by Engineer which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
29. *General Conditions*: That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project.
30. *Hazardous Waste*: The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
31. *Laws and Regulations; Laws or Regulations*: Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
32. *Owner*: The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any construction contracts concerning the Project.
33. *PCBs*: Polychlorinated biphenyls.
34. *Petroleum*: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
35. *Program*: The total Fargo-Moorhead Area Diversion.
36. *Program Management Consultant*: Professional firm retained by Owner to assist Owner with the management of the Program.
37. *Project*: A discrete engineering or construction project carried out under the Program. Also referred to as a Specific Project.
38. *Radioactive Materials*: Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

39. *Record Drawings:* The Drawings as issued for construction on which Engineer, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which Engineer considers significant based on record documents furnished by Contractor to Engineer and which were annotated by Contractor to show changes made during construction.
40. *Reimbursable Expenses:* The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for a Specific Project for which Owner shall pay Engineer as indicated in Exhibit C.
41. *Resident Project Representative:* The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR agreed to by Owner. The duties and responsibilities of the RPR will be as set forth in each Task Order.
42. *Samples:* Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
43. *Shop Drawings:* All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work.
44. *Site:* Lands or areas indicated in the Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of a Contractor.
45. *Specifications:* That part of the Contract Documents prepared by Engineer consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work to be performed by a Contractor and certain administrative details applicable thereto.
46. *Specific Project:* An undertaking of Owner as set forth in a Task Order.
47. *Subcontractor:* An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at a Site.
48. *Substantial Completion:* The time at which the Work has progressed to the point where, in the opinion of Engineer, the Work is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it is intended.
49. *Supplementary Conditions:* That part of the Contract Documents which amends or supplements the General Conditions.
50. *Supplier:* A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

51. *Task Order*: A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
52. *Total Project Costs*: The sum of the Construction Cost, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner.
53. *Work*: The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by those Contract Documents.
54. *Work Change Directive*: A written directive to a Contractor signed by Owner upon recommendation of the Engineer, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits

Attachment 1, Task Order (Suggested Form)

Exhibit A, Engineer's Services – Not Included

Exhibit B, Owner's Responsibilities

Exhibit C, Payments to Engineer for Services and Reimbursable Expenses

Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative – Not Included

Exhibit E, Notice of Acceptability of Work – Not Included

Exhibit F, Construction Cost Limit – Not Included

Exhibit G, Insurance

Exhibit H, Dispute Resolution – Not Included

Exhibit I, Limitations on Liability – Not included

Exhibit J, Special Provisions – Not Included

Exhibit K, Amendment to Task Order (Suggested Form) – Not Included

8.02 *Total Agreement*

- A. This Agreement (together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format provided in Exhibit K to this Agreement, "Amendment to Task Order."

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of each respective party. Each Task Order shall likewise designate representatives of the two parties.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER:

ENGINEER:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Engineer License or Firm's
Certificate No. _____

State of : _____

Date Signed: _____

Date Signed: _____

Address for giving notices:

Address for giving notices:

DESIGNATED REPRESENTATIVE
(Paragraph 8.03.A):

DESIGNATED REPRESENTATIVE
(Paragraph 8.03.A):

Title: _____

Title: _____

Phone Number: _____

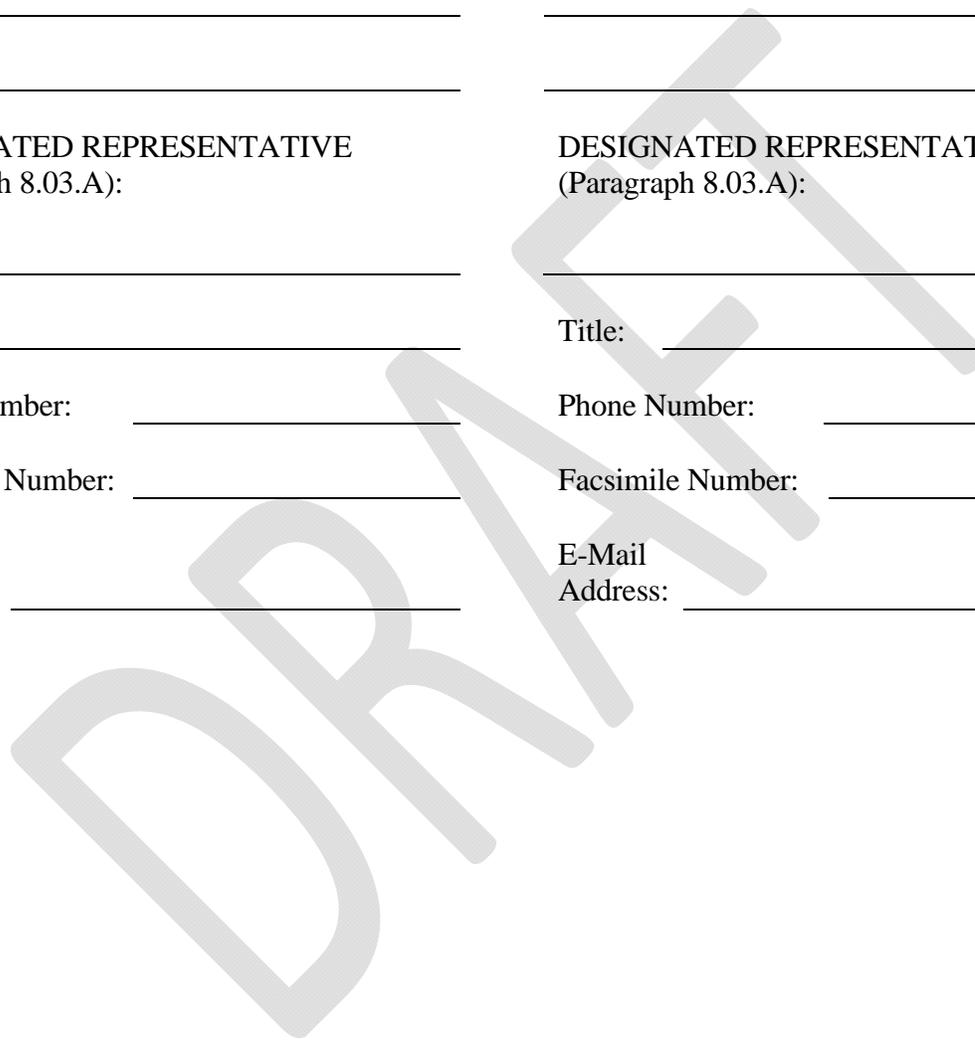
Phone Number: _____

Facsimile Number: _____

Facsimile Number: _____

E-Mail
Address: _____

E-Mail
Address: _____



SUGGESTED FORM OF
TASK ORDER

This is Task Order No. _____, consisting of _____ pages.
--

Task Order

[NOTE TO USER: Modify as to scope, compensation, schedule, and other key items.]

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated _____ ("Agreement"), Owner and Engineer agree as follows:

1. Specific Project Data

A. Title: _____

B. Description: _____

2. Services of Engineer

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 and in this executed Task Order subject to the following: *[Here state any additions or modifications to Exhibit B, for this Specific Project.]*

4. Times for Rendering Services

Phase

Completion Date

5. Payments to Engineer

A. Owner shall pay Engineer for services rendered as follows:

Category of Services

Compensation Method

*Lump Sum, or Estimate
of Compensation for
Services*

Choose One:

- A. Lump Sum
- B. Standard Hourly Rates
- C. *[Insert any other compensation method]*

B. The terms of payment are set forth in Article 4 of the Agreement and in Exhibit C.

6. Consultants:

7. Other Modifications to Agreement:

[Supplement or modify Agreement and Exhibits, if appropriate.]

8. Attachments:

9. Documents Incorporated By Reference:

10. Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is _____, _____.

OWNER:

ENGINEER:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Engineer License or Firm's
Certificate No. _____
State of: _____

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK
ORDER:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

E-Mail
Address: _____

E-Mail
Address: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

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Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

B2.01 Owner or, at Owner's designation, Owner's Program Management Consultant shall provide the following services:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project identified in any executed Task Order, including design objectives and constraints, land acquisition information and requirements, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, or investigation at or adjacent to the Site of the Specific Project.
- C. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, furnish or otherwise make available such additional Specific Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 2. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to a Specific Project, the Site and adjacent areas.
 3. Data or consultations as required for a Specific Project but not otherwise identified in the Agreement, the Exhibits thereto, or the Task Order.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as set forth in the Task Order as required.
- F. Arrange for safe access to and make provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Task Order.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer for the Specific Project (including obtaining advice of an attorney,

insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

- H. Obtain, arrange, provide and/or pay for reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Specific Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project or any Specific Project.
- I. If Owner designates it Program Management Consultant, a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- J. If more than one prime contract is to be awarded for the Work of the Specific Project designed or specified by Engineer, designate in the Task Order a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors. Define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work for the Specific Project with appropriate professional interpretation thereof.
- L. Provide Engineer with the findings and reports generated by any independent testing laboratory, if Engineer is required to review such documents.
- M. Inform Engineer of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

This is **EXHIBIT C**, consisting of ____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 Method of Payment

- B. Owner shall pay Engineer for services in accordance with one or more of the following methods as identified in each Task Order:
1. Method A: Lump Sum
 2. Method B: Standard Hourly Rates
 3. Method C: [Identify any other method to be used to compensate Engineer for some or all of its services]

C2.02 Explanation of Methods

A. Method A – Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
3. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Method B – Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Specific Project, plus Reimbursable Expenses and Consultant's charges, if any.
2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.
4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses, and Consultants' charges, if any.
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.
6. The Standard Hourly Rates and Reimbursable Expenses Schedule may be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer.

C. Method C – *[Identify and define any other method to be used to compensate Engineer for some or all of its services]*

C2.03 *Reimbursable Expenses*

Costs incurred by Engineer in the performance of the Task Order in the following categories constitute Reimbursable Expenses:

- A. Transportation and subsistence incidental thereto; advertisements, postage, and shipping costs; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and their assistants; toll telephone calls, faxes, and telegrams; and reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Specific Project-related items in addition to those required under Exhibit A. If authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment. Reimbursable expenses shall be paid at rates set forth in Appendix 1 to this Exhibit C which may be adjusted annually (as of January 1st) to reflect equitable changes in the rates.
- B. The amounts payable to Engineer for Reimbursable Expenses will be the project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to a Specific Project, the latter multiplied by a Factor of 1.0. In addition, all invoiced Consultants Expenses allocated to a Specific Project or Task Order multiplied by a factor of 1.05.
- C. The actual cost for a project based Professional Liability Insurance Policy, with limits as outlined in Exhibit G, for the Engineer and all of their Consultants, unless Professional Liability Insurance is provided for the Engineer and Consultants by the Owner.

C2.04 *Serving as a Witness*

- A. For services performed by Consultant's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceedings, the rate of 1.3 times the witness's standard hourly rate. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

C2.05 *Other Provisions Concerning Payment*

- A. *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*
1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1 to EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Standard Form of Agreement between Owner and Engineer for Professional Services – Task Order Edition**, dated _____, _____.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates for reimbursable expenses effective on the date of this Agreement are:

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This is **Appendix 2 to EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____, _____

Standard Hourly Rates Schedule

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services effective on the date of this Agreement are:

DRAFT

This is **EXHIBIT G**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____, _____.

Insurance

Paragraph 6.03 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.03 Insurance

A. The limits for the insurance required by Paragraphs 6.03.A and 6.03.B of the Agreement are as follows:

1. *By Engineer:*

- | | | |
|--|---|-------------|
| a. | Workers' Compensation: | Statutory |
| b. | Employer's Liability – | |
| | 1) Each Accident: | \$1,000,000 |
| | 2) Disease, Policy Limit: | \$1,000,000 |
| | 3) Disease, Each Employee: | \$1,000,000 |
| c. | General Liability – * | |
| | 1) Each Occurrence
(Bodily Injury and Property Damage): | \$3,000,000 |
| | 2) General Aggregate: | \$3,000,000 |
| d. | Excess or Umbrella Liability – * | |
| | 1) Each Occurrence: | \$ - 0 - |
| | 2) General Aggregate: | \$ - 0 - |
| *Or, General Liability can remain at \$2,000,000 with Umbrella Liability set at \$1,000,000 | | |
| e. | Automobile Liability – | |
| | 1) Combined Single Limit
(Bodily Injury and Property Damage):
Each Accident | \$2,000,000 |
| f. | Professional Liability – | |
| | 1) Each Claim Made: | \$3,000,000 |
| | 2) Annual Aggregate: | \$3,000,000 |
| g. | Other (specify): | \$ _____ |

2. *By Owner:*
- a. Workers' Compensation: Statutory
 - b. Employer's Liability –
 - 1) Each Accident: \$1,000,000
 - 2) Disease, Policy Limit: \$1,000,000
 - 3) Disease, Each Employee: \$1,000,000
 - c. General Liability –
 - 1) Each Occurrence
(Bodily Injury and Property Damage): \$2,000,000
 - 2) General Aggregate: \$2,000,000
 - d. Excess or Umbrella Liability –
 - 1) Each Occurrence: \$NA
 - 2) General Aggregate: \$NA
 - e. Automobile Liability –
 - 1) Combined Single Limit
(Bodily Injury and Property Damage):
Each Accident \$NA
 - f. Other (specify): \$_____



AUTHORITY WORK DIRECTIVE

AWD-00025 REV-0

Maple River Aqueduct Flow Analysis

TO:	<u>Houston-Moore Group, LLC</u>	WORK TYPE:	<u>WIK</u>
PROJECT:	<u>Fargo-Moorhead Diversion Engineering Design</u>	DATE INITIATED:	<u>3/14/2013</u>
OWNER:	<u>Fargo-Moorhead Metro Diversion Authority</u>	PROJECT NO.:	<u>Choose an item.</u>

The following additions, deletions, or revisions to the Work have been ordered and authorized:

OBJECTIVE:

Provide modeling of Maple River flow across the Maple River Aqueduct and establish Maple River design flow rates across the Maple River Aqueduct for the 100-year (1%) and 500-year (0.2%) flood events, and recommend a flow rate for the Standard Project Flood (SPF) event.

BACKGROUND:

The Diversion Authority Board has previously entered into Task Order No. 9 with Houston-Moore Group (HMG) to provide work-in-kind engineering services for Hydrology and Hydraulic Modeling. Physical and numerical modeling of the Maple River Aqueduct is underway by a USACE contractor and specific Maple River design flow rates across the aqueduct are needed to maintain the project schedule. In order to maintain schedule, this Authority Work Directive is being issued to authorize modeling to determine requested design flow rates.

SCOPE:

1. Conduct modeling of Maple River flows across the proposed Maple River Aqueduct and into the Risk Reduction Area.
 - a. Use the latest HEC-RAS model for the FMMFRM Project and the best available topographic data.
 - b. The study area is the area within the Risk Reduction Area that is affected by the flow coming across the Maple River Aqueduct.
 - c. Account for coincident flows on the Sheyenne River and other local drains and ditches.
 - d. Select Maple River design flows such that insurable structures in the Risk Reduction Area, and within the expected future 1% Maple River floodplain, are not affected by the Maple River design flows and the coincident flows on the Sheyenne River and other local drains and ditches in the Risk Reduction Area.
2. Establish Maple River design flows across the Maple River Aqueduct for the 1% and 0.2% flood events.
3. Recommend a maximum Maple River flow across the Maple River Aqueduct for the SPF event.

DELIVERABLES:

1. Draft HEC-RAS models, depth grids, and flooded outline polygons used to develop draft design flow values.
2. Draft Technical Memorandum documenting how the design flow rates were determined.

- 3. Final unsteady HEC-RAS input and output files.
- 4. Final Technical Memorandum.

SCHEDULE:

Begin upon receipt of AWD. The above scope of work will be incorporated into Task Order No. 9 - Hydrology and Hydraulic Modeling, which will supersede this AWD.

HOW WORK IS PERFORMED:

This work will be performed on a time and material basis.

COST:

Cost incurred under this AWD is not to exceed \$15,000. This limit will not be exceeded without further written approval. The above scope of work will be incorporated into future task orders, which will supersede this AWD. Costs associated with this AWD will be invoiced under Task Order No. 9 - Hydrology and Hydraulic Modeling.

REASON FOR CHANGE(S):

Maintain project schedule.

ATTACHMENTS (List Supporting Documents):

None

It is understood that this Authority Work Directive will not change the Contract Price or Times, but is evidence that the parties expect a Contract Amendment to be subsequently issued reflecting the changes.

Recommended by: CH2M HILL
Program Management Consultant

Bruce Spiller
Name

PMC Technical Services Manager
Title

Signature

Date

Ordered by: Fargo-Moorhead Metro Diversion Authority
Owner

Darrell Vanyo
Name

Board Chair
Title

Signature

Date



AUTHORITY WORK DIRECTIVE

AWD-00026 REV-0

Cultural Resources Investigations

TO:	<u>URS Corporation</u>	WORK TYPE:	<u>WIK</u>
PROJECT:	<u>Fargo-Moorhead Diversion Engineering Design</u>	DATE INITIATED:	<u>3/14/2013</u>
OWNER:	<u>Fargo-Moorhead Metro Diversion Authority</u>	PROJECT NO.:	<u>Choose an item.</u>

The following additions, deletions, or revisions to the Work have been ordered and authorized:

OBJECTIVE:

Initiate the 2013 cultural resources field investigations for the Diversion Project.

BACKGROUND:

URS has performed Phase 1 cultural resources investigations along portions of the Diversion Channel in previous field seasons under a City of Fargo, ND contract. Cultural resources investigations are needed in 2013 in order to complete the work. This AWD will be incorporated into a new task order under the new URS Master Services Agreement.

SCOPE:

Initiate 2013 Phase 1 cultural resources investigations on approximately 75 acres that remain from the 2012 season in Reaches 1, 4, and 5. Conduct all field investigations under the standards and care delineated in the current URS agreement with the City of Fargo.

DELIVERABLES:

1. Field notes—one copy
2. Field report(s)—letter report

SCHEDULE:

Begin upon receipt of AWD. The above scope of work will be incorporated into Task Order No. 1, which will supersede this AWD.

HOW WORK IS PERFORMED:

This work will be performed on a time and material basis.

COST:

Cost incurred under this AWD is not to exceed \$25,000. This limit will not be exceeded without further written approval. The above scope of work will be incorporated into future Task Order No. 1, which will supersede this AWD. Costs associated with this AWD will be invoiced under Future Task Order No. 1.

REASON FOR CHANGE(S):

To assign the contract for this work from the City of Fargo, ND to the Diversion Authority.

ATTACHMENTS (List Supporting Documents):

None

It is understood that this Authority Work Directive will not change the Contract Price or Times, but is evidence that the parties expect a Contract Amendment to be subsequently issued reflecting the changes.

Recommended by: CH2M HILL
Program Management Consultant

Bruce Spiller
Name

PMC Technical Services Manager
Title

Signature

Date

Ordered by: Fargo-Moorhead Metro Diversion Authority
Owner

Darrell Vanyo
Name

Board Chair
Title

Signature

Date