

FM Diversion Authority
Attention: Pat Zavoral
City Administrator
City of Fargo
200 3rd Street North
Fargo, ND 58102

_____, 2015

Item 10d.

Dear Pat:

Thank you for selecting Ernst & Young Infrastructure Advisors, LLC (“we” or “EYIA”) to perform financial advisory services (the “Services”) for the Flood Diversion Board of Authority (“you” or “Client”). We appreciate the opportunity to assist you and look forward to working with you.

For each component of the project that we agree to undertake for you, we will prepare a Statement of Work describing the particular Services, as well as any advice, presentations, or filings to be made, our estimated fees therefor, and any other project-specific arrangements. Unless the parties mutually agree otherwise, we understand that no Services are to be done without specific written authorization from you and such Services will be described in a Statement of Work executed by the parties. All of the Services will be subject to the terms and conditions of this letter, its attachments, including the General Terms and Conditions, and any applicable Statement of Work (together, this “Agreement”).

We may enter into Statements of Work with you for a period of five years following the date of this letter, although we may agree with you to extend that period, including by executing additional Statements of Work referencing this Agreement.

Please sign this letter in the space provided below to indicate your agreement with these arrangements and return it to Tom Rousakis at your earliest convenience. If you have any questions about any of these materials, please do not hesitate to contact Tom Rousakis so that we can address any issues you identify before we begin to provide any Services.

Very truly yours,

Ernst & Young Infrastructure Advisors, LLC

By: _____
Tom Rousakis, Senior Managing Director

AGREED:

FM Diversion Authority

By: _____
[Name and Title]

General Terms and Conditions

Our relationship with you

1. We will perform the Services in accordance with applicable professional standards, including those established by the American Institute of Certified Public Accountants (“AICPA”).
2. We are a member of the global network of Ernst & Young firms (“EY Firms”), each of which is a separate legal entity.
3. We will provide the Services to you as an independent contractor and not as your employee, agent, partner or joint venturer. Neither you nor we have any right, power or authority to bind the other.
4. We may subcontract portions of the Services to other EY Firms, who may deal with you directly. Nevertheless, we alone will be responsible to you for the Reports (as defined in Section 11), the performance of the Services, and our other obligations under this Agreement. Primarily and/ or exclusively non-CPA personnel may perform the Services.
5. We will not assume any of your management responsibilities in connection with the Services. We will not be responsible for the use or implementation of the output of the Services, although we may otherwise provide advice and recommendations to assist you in your management functions and making decisions.

Your responsibilities

6. You shall assign a qualified person to oversee the Services. You are responsible for all management decisions relating to the Services, the use or implementation of the output of the Services and for determining whether the Services are appropriate for your purposes.
7. You shall provide (or cause others to provide) to us, promptly, the information, resources and assistance (including, if applicable, access to records, systems, premises and people) that we reasonably require to perform the Services.
8. To the best of your knowledge, all information provided by you or on your behalf (“Client Information”) will be accurate and complete in all material respects. The provision of Client Information to us will not infringe any copyright or other third-party rights.
9. We will rely on Client Information made available to us and, unless we expressly agree otherwise, will have no responsibility to evaluate or verify it.

10. You shall be responsible for your personnel’s compliance with your obligations under this Agreement.
- 10.1 All provisions contained in this agreement are subject to the requirements of federal or state law regarding open meetings and open records, including without limitation the North Dakota open record and open meeting law—N.D.C.C. §44-04-17.1 *et sequitur*—and to the extent an obligation contained herein is contrary to an obligation you have under such law or laws, the open meeting law or open record law shall govern. Further, you shall not be liable to us under this agreement for your action or failure to act when such action or failure to act is the result of such obligation to comply with such laws.

Our Reports

11. Subject to applicable law, any information, advice, recommendations or other content of any reports, presentations or other communications we provide under this Agreement (“Reports”), other than Client Information, are for your internal use only (consistent with the purpose of the particular Services).
12. Unless established as a deliverable in a mutually agreed Statement of Work, and subject to such restrictions on its use as may be set forth in such Statement of Work, EYIA will not prepare an EYIA branded Report in connection with the Services. You may disclose a Report (or any portion or summary of a Report) prepared in “white paper” form (that is a report that does not include the name Ernst & Young LLP or Ernst & Young Infrastructure Advisors LLC in it or refer to Ernst & Young LLP or EYIA) at your discretion. However, in the case of any such disclosure you will not label the Report as EYIA. Notwithstanding the foregoing, EYIA may, at your request, participate in meetings with you and third parties to discuss the content of any such Report prepared in “white paper” form.
13. Subject to applicable law, you may disclose to anyone a Report (or a portion thereof) solely to the extent that it relates to tax matters, including tax advice, tax opinions, tax returns, or the tax treatment or tax structure of any transaction to which the Services relate (“Tax Advice”) and, with the exception of tax authorities, you shall inform those to whom you disclose Tax Advice that they may not rely on it for any purpose without our prior written consent.
14. INTENTIONAL LEFT BLANK
15. You may not rely on any draft Report. We shall not be required to update any final Report for circumstances of

which we become aware, or events occurring, after its delivery.

Limitations

16. You (and any others for whom Services are provided) may not recover from us, in contract or tort, under statute or otherwise, any punitive or special damages in connection with claims arising out of this Agreement or otherwise relating to the Services, including any amount for loss of profit, data or goodwill, whether or not the likelihood of such loss or damage was contemplated.
17. You (and any others for whom Services are provided) may not recover from us, in contract or tort, under statute or otherwise, aggregate damages in excess of the greater of (a) fees actually paid for the Services that directly caused the loss in connection with claims arising out of this Agreement or otherwise relating to the Services or (b) the sum of \$2,000,000. This limitation will not apply to losses caused by our fraud or willful misconduct or to the extent prohibited by applicable law or professional regulations but shall apply to all types of damages including consequential, incidental, indirect, punitive or special damages.
18. You shall make any claim relating to the Services or otherwise under this Agreement no later than two years after potential claim for relief may be reasonably discoverable, no later than four years after the completion of the project for which the Services were rendered. This limitation will not apply to the extent prohibited by applicable law or professional regulations.
19. You may not make a claim or bring proceedings relating to the Services or otherwise under this Agreement against any other EY Firm or our or its subcontractors, members, shareholders, directors, officers, partners, principals or employees (“**EY Persons**”). You shall make any claim or bring proceedings only against us provided, however, that we may not claim any defense or argument that we are shielded from liability of such other EY Firm or EY Persons as a result of their being separate entities. We expressly agree to be fully responsible for any claims that would otherwise have been brought against another EY Firm or EY Person. The provisions of Sections 16 through 20 are intended to benefit the other EY Firms and all EY Persons, who shall be entitled to enforce them.

20. INTENTIONALLY LEFT BLANK

Intellectual property rights

21. We may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how that we own or license (“**Materials**”) in performing the Services. Notwithstanding the delivery of any Reports, we retain all intellectual property rights in the Materials (including any improvements or

knowledge developed with respect to the Materials while performing the Services), and in any working papers compiled in connection with the Services (but not Client Information reflected in them).

22. Upon payment for particular Services and subject to the other terms of this Agreement, you may use the Reports relating to those Services, as well as any Materials owned by us that are included therein, solely to the extent necessary to use the Reports.
23. INTENTIONALLY LEFT BLANK
24. Either of us may use electronic media to correspond or transmit information and such use will not in itself constitute a breach of any confidentiality obligations under this Agreement.
25. Unless prohibited by applicable law, we may provide Client Information to other EY Firms (which are listed at www.ey.com) and EY Persons, as well as external third parties providing services on our or their behalf, who may collect, use, transfer, store or otherwise process (collectively, “**Process**”) it in various jurisdictions in which they operate in order to facilitate performance of the Services, to comply with regulatory requirements, to check conflicts, to provide financial accounting and other administrative support services or for quality and risk management purposes. We shall be responsible to you for maintaining the confidentiality of Client Information, regardless of where or by whom such information is Processed on our behalf.
26. With respect to any Services, if U.S. Securities and Exchange Commission auditor independence requirements apply to the relationship between you or any of your associated entities and any EY Firm, you represent, to the best of your knowledge, as of the date of this Agreement and as of the date of each Statement of Work hereunder, that neither you nor any of your affiliates has agreed, either orally or in writing, with any other advisor to restrict your ability to disclose to anyone the tax treatment or tax structure of any transaction to which the Services relate. An agreement of this kind could impair an EY Firm’s independence as to your audit or that of any of your affiliates, or require specific tax disclosures as to those restrictions. Accordingly, you agree that the impact of any such agreement is your responsibility.

Data protection

27. If we Process Client Information that can be linked to specific individuals (“**Personal Data**”), we will Process it in accordance with Section 25 of this Agreement, as well as applicable law and professional regulations, including, where applicable, the European Union Safe Harbor program of the U.S. Department of Commerce, in which EYIA’s affiliate Ernst & Young LLP participates. We will require any service provider that Processes Personal Data on our behalf to adhere to such

requirements. If any Client Information is protected health information under the Health Insurance Portability and Accountability Act, as amended, this Agreement is deemed to incorporate all of the terms otherwise required to be included in a business associate contract relating to such information.

28. You warrant that you have the authority to provide the Personal Data to us in connection with the performance of the Services and that the Personal Data provided to us has been Processed in accordance with applicable law. In order to provide the Services, we may need to access Personal Data consisting of protected health information, financial account numbers, Social Security or other government-issued identification numbers, or other data that, if disclosed without authorization, would trigger notification requirements under applicable law ("Restricted Personal Data"). In the event that we need access to such information, you will consult with us on appropriate measures (consistent with professional standards applicable to us) to protect the Restricted Personal Data, such as deleting or masking unnecessary information before it is made available to us, encrypting any data transferred to us, or making the data available for on-site review at a Client site. You will provide us with Restricted Personal Data only in accordance with mutually agreed protective measures.

Fees and expenses generally

29. You shall pay our professional fees and specific expenses in connection with the Services as detailed in the applicable Statement of Work. You shall also reimburse us for other reasonable expenses incurred in performing the Services. Unless otherwise set forth in the applicable Statement of Work, payment is due within 45 days following receipt of each of our invoices. We may receive rebates in connection with certain purchases, which we use to reduce charges that we would otherwise pass on to you.
30. We may charge additional professional fees if events beyond our control (including your acts or omissions) affect our ability to perform the Services as originally planned or if you ask us to perform additional tasks.
31. If we are required by applicable law, legal process or government action to produce information or personnel as witnesses with respect to the Services or this Agreement, you shall as mutually agreed through discussions in good faith reimburse us for any professional time and expenses (including reasonable external and internal legal costs) incurred to respond to the request, unless we are a party to the proceeding or the subject of the investigation.

Force majeure

32. Neither you nor we shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond your or our reasonable control.

Term and termination

33. This Agreement applies to the Services whenever performed (including before the date of this Agreement).
34. This Agreement shall terminate upon the completion of the Services. Either of us may terminate it, or any particular Services, earlier upon 30 days' prior written notice to the other. In addition, we may terminate this Agreement, or any particular Services, immediately upon written notice to you if we reasonably determine that we can no longer provide the Services in accordance with applicable law or professional obligations.
35. You shall pay us for all work-in-progress, Services already performed, and expenses incurred by us up to and including the effective date of the termination of this Agreement. Payment is due within 30 days following receipt of our invoice for these amounts.
36. The provisions of this Agreement that give either of us rights or obligations beyond its termination shall continue indefinitely following the termination of this Agreement, except that our respective confidentiality obligations shall continue thereafter for three years only.

Governing law and dispute resolution

37. This Agreement, and any non-contractual matters or obligations arising out of this Agreement or the Services, including (without limitation) claims arising in tort, fraud, under statute or otherwise relating to the Services, or questions relating to the scope or enforceability of this Section 37, shall be governed by, and construed in accordance with, the laws of North Dakota applicable to agreements made, and fully to be performed, therein by residents thereof. Except as otherwise expressly provided in the Cover Letter, any dispute relating to this Agreement or the Services shall be resolved as set forth in Appendix 1 to these Terms and Conditions.

Miscellaneous

38. This Agreement constitutes the entire agreement between us as to the Services and the other matters it covers, and supersedes all prior agreements, understandings and representations with respect thereto, including any confidentiality agreements previously delivered.

39. Both of us may execute this Agreement (including Statements of Work), as well as any modifications thereto, by electronic means and each of us may sign a different copy of the same document. Both of us must agree in writing to modify this Agreement or any Statement of Work hereunder.
40. Each of us represents to the other that each person signing this Agreement or any Statement of Work hereunder on its behalf is expressly authorized to execute it and to bind such party to its terms.
41. You agree that we and the other EY Firms may, subject to professional obligations, act for other clients. However, EYIA will only advise you with respect to the specific transaction contemplated by the applicable Statement of Work.
42. Neither of us may assign any of our rights, obligations or claims arising out of or related to this Agreement or any Services.
43. If any provision of this Agreement (in whole or part) is held to be illegal, invalid or otherwise unenforceable, the other provisions shall remain in full force and effect.
44. If there is any inconsistency between provisions in different parts of this Agreement, those parts shall have precedence as follows (unless expressly agreed otherwise): (a) the Cover Letter, (b) the applicable Statement of Work and any attachments thereto, (c) these General Terms and Conditions, and (d) other attachments to this Agreement.
45. Neither of us may use or reference the other's name, logo or trademarks publically without the other's prior written consent, although we may publically identify you as a client in connection with specific Services or generally.

Appendix 1

Dispute resolution procedures

Mediation

The parties agree to attempt to resolve any disputes by mediation but nothing prevents the parties from litigating any disputes.