

## GUARANTY AGREEMENT

This **GUARANTY AGREEMENT** (this “**Guaranty**”) is made as of the \_\_\_ day of \_\_\_\_\_ 2012, by [ \_\_\_\_\_ ] (“**Guarantor**”), for the benefit of the Diversion Authority (“**Owner**”). Guarantor and Owner are individually referred to herein as a “Party” and collectively as the “**Parties**.”

### RECITALS

**WHEREAS**, [Insert Name], a \_\_\_\_\_ corporation (“**Contractor**”) is a [state relationship] of Guarantor;

**WHEREAS**, Owner and Contractor have entered into an Engineering dated [the date] for Engineering Design Services for the Fargo-Moorhead Area Diversion (the “**Contract**”);

**WHEREAS**, pursuant to Section \_\_\_ of the Contract, Contractor is obligated to provide Owner with this Guaranty; and

**WHEREAS**, Guarantor as the [ultimate] parent company of Contractor, is willing to enter into this Guaranty in consideration of and to satisfy the terms of the Contract.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. In consideration of the award of the Contract by Owner to Contractor, Guarantor hereby guarantees to and for the benefit of Owner the full and timely performance of the obligations of the Contractor under the Contract when and if such obligations becomes due according to the terms of the Contract (“**Obligations**”). [Guarantor shall not be required to cause such Obligations to be performed unless and until it receives Owner’s written demand for performance hereunder following the occurrence of an [Event of Default,] as such term is defined in the Contract. Guarantor shall have ten (10) days after notice of an Event of Default to commence its performance of such Obligations.] Guarantor shall be entitled to assert any and all rights, remedies and defenses which would otherwise be available to Contractor [under the Contract].

2. Any modification or amendment of any of the Obligations in accordance with the terms of the Contract shall not affect the liability of Guarantor hereunder.

3. Notwithstanding anything to the contrary herein, Guarantor’s liability under this Guaranty shall not exceed Contractor’s liability under the Contract.

4. This Guaranty shall continue in full force and effect until all of the Obligations have been discharged.

5. This Guaranty shall be governed by the law of the jurisdiction governing the Contract, and any dispute under this Guaranty shall be finally settled under the dispute resolution provisions of the Contract.

6. There are no third-party beneficiaries of this Guaranty.

7. This Guaranty may not be assigned by Owner without Guarantor's prior written consent.

8. This Guaranty represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. This Guaranty may not be modified, amended or waived, except in writing signed by the Parties.

9. All notices, requests, demands, and other communications under this Guaranty shall be deemed to have been duly given (i) to Guarantor, if delivered in accordance with the requirements set forth in Section \_\_\_ of the Contract to the address below and (ii) to Owner, if delivered in accordance with the requirements set forth in Section \_\_\_ of the Contract to the address set forth therein.

To Guarantor:

[name]

[address]

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Attn:

\* \* \* Signature Page Follows \* \* \*

This Guaranty Agreement has been duly executed by authorized representatives of each of the Parties as follows:

**GUARANTOR:**

[NAME]

By: \_\_\_\_\_

Title: \_\_\_\_\_

**OWNER:**

Diversion Authority

By: \_\_\_\_\_

Title: \_\_\_\_\_