

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT, is made this ____ day of _____, 2017, by and between the Cass County Joint Water Resource District, a North Dakota political subdivision (the "District"); and the undersigned owner of certain real property in Richland County, North Dakota (the "Landowner").

RECITALS

A. The United States Army Corps of Engineers (the "Corps") and a joint powers entity called The Diversion Authority are currently in the process of designing and analyzing a permanent flood control and protection project that includes a diversion channel to reduce flood damages and risks for the region. To complete the design, the Corps, The Diversion Authority, and their contractors must have opportunities to enter upon certain parcels of real property to determine which parcels are suited for the construction of various features and components of the flood control project.

B. The District is the North Dakota entity responsible for seeking and obtaining access to parcels in North Dakota necessary for various project features and components.

C. Landowner agrees to grant the District, its officers, employees, contractors, consultants, representatives, and agents, including, but not limited to, employees of the Corps, access to and entry upon certain real property owned by Landowner, subject to the terms of this Agreement.

In consideration of the parties' mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **Access.** Landowner grants to the District, and its officers, employees, consultants, contractors, agents, and representatives - including employees, contractors, agents, and designees of the Corps - access and right-of-way in, on, over, through, and across real property located in North Dakota, identified as Richland County Parcel Number **** REDACTED **** (the "Property"). Attached as **Exhibit A** is a map showing the boundaries of the Property. The District's temporary rights under this Agreement include the right to enter upon and occupy the Property to conduct surveys and examinations for environmental, geotechnical, geomorphological, and mapping purposes.

Cass County Joint Water Resource District
Right of Entry Agreement
**** REDACTED ****

*Cass County Joint Water Resource District
Right of Entry Agreement*

Page 2

2. **Term.** The rights and privileges granted under this Agreement will begin immediately and will continue until the District completes the tasks identified in Section 1 above, but no later than December 31, 2018.

3. **Condition of the Property.** The District will return the Property as nearly as practicable to its original condition. The District will pay Landowner, or Landowner's tenant, a reasonable amount for any damage to growing crops caused by access conducted pursuant to this Agreement. The District agrees to indemnify and hold Landowner harmless from any and all claims, damages, or losses to the Property caused by the District's negligence on the Property.

4. **Governing Law.** This Agreement will be governed and enforced in accordance with North Dakota law. The parties agree the venue for any litigation arising out of this Agreement will be in State District Court within the State of North Dakota, and the parties waive any objection to personal jurisdiction. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable.

5. **Entire Agreement.** This Agreement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this Agreement supersedes any previous oral or written agreements between the parties. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

6. **Representation.** The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other parties.

IN WITNESS WHEREOF, the parties executed this Agreement on the date written above.

CASS COUNTY JOINT WATER
RESOURCE DISTRICT

By: _____
Carol Harbeke Lewis
Secretary-Treasurer

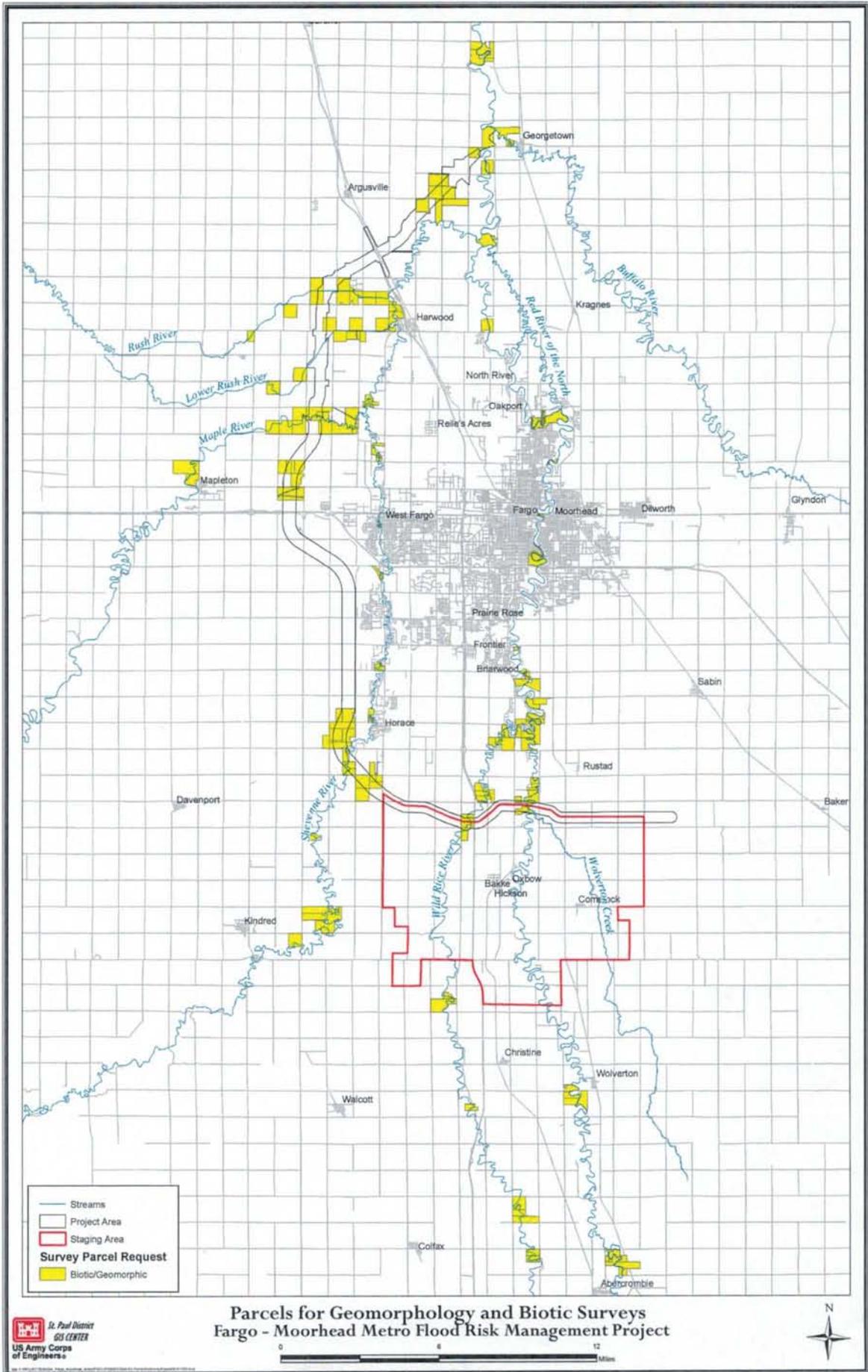
Cass County Joint Water Resource District
Right of Entry Agreement
** REDACTED **

LANDOWNER

**** REDACTED ****

Phone Number

E-mail address



**Parcels for Geomorphology and Biotic Surveys
Fargo - Moorhead Metro Flood Risk Management Project**



**Exhibit A
Map of Property**



FARGO-MOORHEAD AREA DIVERSION PROJECT

BIOTIC AND GEOMORPHIC MONITORING PROGRAM

December 2016

The U.S. Army Corps of Engineers, St. Paul District, is completing biotic/biological and geomorphic surveys in the Fargo, N.D./Moorhead, Minn., region as part of the Fargo/Moorhead Metropolitan Area Flood Damage Reduction Project. These surveys of the physical environment will provide the Corps with baseline information of the biological and geological environment before construction of the project. The Corps is committed to minimizing environmental impacts to the land and intends to have full and open communication with landowners in regards to these survey activities. All people on-site will be instructed to minimize any disturbance to property. See page 2 for a map showing all of the biotic and geomorphology survey sites.

BIOTIC SURVEYS

The purpose of the biotic surveys is to characterize the general ecological conditions of the rivers and streams affected by the project. Work will include monitoring the physical habitat and collecting and identifying fish and invertebrates [i.e., bugs, clams]. Electrofishing techniques will be used to stun fish, collect them, observe them and return them to the river. Invertebrates will be collected from the bottom of the river and sent to a lab for analysis. Work is planned to begin in 2017 and will include approximately three half-day events per site. Initial site visits are planned for early-summer but could be scheduled to a later date based on flow conditions. Actual sampling will likely occur later in July or August. Additional surveys may occur in later years prior to construction and will occur again following project construction and operation. The results of these surveys will help biologists confirm impacts as a result of the project and the effectiveness of mitigation. Work will be done by a crew of two to three people in the water with approximately one to five people watching from the shore.



Biotic survey, 2011 Rush River

GEOMORPHOLOGY SURVEYS

The purpose of the geomorphology surveys is to collect data at regularly spaced intervals before and after completing the project, as well as after flooding. The results of these surveys will be used to evaluate potential interactions between near and in-channel land-surface processes and the flood risk management project. Surveys will include measurement of width, depth, velocity and discharge of stream flow. Surveyors will collect stream bank and instream sediments and water samples and document vegetation types and sediment cores to establish deposit properties and depths. The anticipated timing for the regular sampling is every other year for up to three sampling cycles in a 5-year period both before and after project construction completion. Additional surveys will more than likely be performed in subsequent years and after flooding to identify any geomorphic changes. As outlined in the 2011 Final Feasibility Study and Environmental Impact Statement, no significant adverse impacts from the project are anticipated.



Geomorphology survey, 2011 Rush River

CONTACT INFORMATION

For questions or comments regarding the biotic and geomorphic monitoring surveys, please contact **Kimberly Warshaw, Corps of Engineers, at 651-290-5327.**

For questions or comments regarding land acquisition, please contact **Joe Herbst, Diversion Authority, at 701-364-9111.**