
**MINNESOTA LAND ACQUISITION
JOINT POWERS AGREEMENT**

BY AND BETWEEN

CITY OF MOORHEAD, MINNESOTA

AND

CLAY COUNTY, MINNESOTA

Dated as of July 1, 2019

Approved by City of Moorhead on June 24, 2019.

Approved by Clay County on June 25, 2019.

Relating to:

An Agreement establishing the respective roles and responsibilities for the acquisition of real property interests for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

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MINNESOTA LAND ACQUISITION JOINT POWERS AGREEMENT

THIS MINNESOTA LAND ACQUISITION JOINT POWERS AGREEMENT (the “Agreement”) is made effective as of July 1, 2019 (the “Effective Date”), between the City of Moorhead, Minnesota, a Minnesota Home Rule City and political subdivision of the State of Minnesota (the “City”), and Clay County, Minnesota, a political subdivision of the State of Minnesota (the “County”).

WHEREAS, the City of Moorhead, the City of Fargo, Clay County, Cass County, and the Cass County Joint Water Resource District participated in the Fargo-Moorhead Metropolitan Area Flood Risk Management Study conducted by the Army Corps of Engineers (“USACE”) and requested a Locally Preferred Plan developed by USACE; and

WHEREAS, the USACE Chief of Engineers provided the Chief’s report to Congress dated December 19, 2011, recommending a Locally Preferred Plan to Congress; and

WHEREAS, construction of the Locally Preferred Plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Project”) at the Fargo-Moorhead Metropolitan Area was authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-121; and

WHEREAS, the City of Moorhead, the City of Fargo, Clay County, Cass County, and the Cass County Joint Water Resource District entered into a Joint Powers Agreement on June 1, 2016, forming the Metro Flood Diversion Authority (the “Diversion Authority”), to provide the Fargo-Moorhead Metropolitan Area with permanent and comprehensive flood protection; and

WHEREAS, the Non-Federal Sponsors of the Project, consisting of the Diversion Authority, the City of Moorhead, and the City of Fargo, entered into a Project Partnership Agreement (“PPA”) with USACE on July 11, 2016, as amended by Amendment No. 1 to the PPA, dated March 19, 2019, for the facilitation of the Project; and

WHEREAS, the governors of Minnesota and North Dakota formed the Governors’ Task Force in the fall of 2017 to recommend changes to the Project, including increasing the flow of water through the cities of Fargo and Moorhead, changes to the hydrology of record, and the location of the Southern Embankment and Associated Infrastructure (“SEAI”) (collectively “Plan B”); and

WHEREAS, the Diversion Authority submitted the Plan B changes to the Project as part of its Dam Safety Permit application to Minnesota Department of Natural Resources (“MDNR”); and

WHEREAS, on December 27, 2018, the MDNR granted the Diversion Authority a Dam Safety Permit; and

WHEREAS, in order to proceed with the Project, it is necessary to acquire needed lands, easements, and flowage easements in Minnesota; and

WHEREAS, it is necessary to perform mitigation activities arising out of the Project in Minnesota; and

WHEREAS, pursuant to the Joint Powers Agreement, the Diversion Authority has the power to delegate tasks necessary for the Project to its DA Member Entities; and

WHEREAS, pursuant to Section 22.01 of the Joint Powers Agreement, the Diversion Authority has authorized Clay County and the City of Moorhead to enter into this Agreement in order to acquire real property for the Project; and

WHEREAS, it is the intent of the Diversion Authority that real property interests located in Minnesota that are necessary for the Project will be acquired and owned by the DA Member Entities from Minnesota, namely the City of Moorhead and Clay County; and

WHEREAS, pursuant to Section 16.04 of the Joint Powers Agreement, the acquisition and ownership by the City of Moorhead and Clay County may be accomplished by a joint powers entity formed between the two entities; and

WHEREAS, to facilitate collaboration and efficiency, the City of Moorhead and Clay County desire to enter into this Agreement to form a joint powers entity to accomplish the task of acquiring real property interests for the Project at the direction of the Diversion Authority.

NOW THEREFORE, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, the City and the County agree as follows:

ARTICLE I. DEFINITIONS AND INTERPRETATION

Section 1.01 DEFINITIONS. All capitalized terms, and not otherwise defined herein, shall have the meanings given to them in this Agreement and as defined in this Section unless a different meaning clearly applies from the context.

“Acquisition” means a completed purchase of Project Property, consisting of easements, flowage easements, or fee simple interests in real property.

“Acquisition Fund” means the Acquisition Fund created by Section 7.02 of this Agreement.

“Additional Funds” means funds in excess of Budgeted Funds which are necessary to cover Allowable Costs.

“Agreement” means this Joint Powers Agreement by and between the City of Moorhead and Clay County.

“Allowable Costs” means those costs outlined in Section 16.08 of the Joint Powers Agreement that may be reimbursed to a DA Member Entity for Project Property, including, but

not limited to, the purchase price of the Project Property, appraisal costs, negotiation costs, title preparation and examination costs, relocation and re-establishment costs, legal fees associated with the acquisition, court costs, closing costs arising from and related to the acquisition of Project Property, environmental remediation, cultural mitigation, and any other costs required by the Uniform Act or Minnesota law.

“Annual Meeting” means a properly noticed meeting of the MCC Joint Powers Board held on the first Tuesday following the second Thursday at 8:30 a.m. each and every January that this Agreement is in effect or held at some other time as may be determined by the Moorhead-Clay County Joint Powers Authority.

“Appraiser” means an appraiser, licensed to perform appraisals within the State of Minnesota, hired by the Moorhead-Clay County Joint Powers Authority to appraise Project Property.

“Best Efforts” means that a Party and its Governing Body will act in Good Faith and use reasonable due diligence to undertake action contemplated by this Agreement, in accordance with applicable federal and state laws, regulations, and rules; however, the obligation to use Best Efforts does not mean a duty to take action that would be in violation of applicable federal or state law.

“BRRWD” means the Buffalo-Red River Watershed District, a political subdivision of the State of Minnesota.

“BRRWD Board of Managers” means the BRRWD Board of Managers, the Governing Body of BRRWD.

“BRRWD Member” means the one (1) individual member of the BRRWD Board of Managers representing BRRWD on the MCC Joint Powers Board.

“Budgeted Funds” means the estimated lump sum budgeted amount set forth by the Diversion Authority in a Land Acquisition Directive.

“CCJWRD” means the Cass County Joint Water Resource District, a political subdivision of the State of North Dakota.

“Cass County” means Cass County, North Dakota, a North Dakota Home Rule County and political subdivision of the State of North Dakota.

“Chair” means a voting member of the MCC Joint Powers Board who presides over meetings pursuant to Section 4.06 of this Agreement.

“City” means the City of Moorhead, Minnesota, a Minnesota Home Rule City and political subdivision of the State of Minnesota.

“City Member” means any of the three (3) individual members of the Moorhead City Council representing the City on the MCC Joint Powers Board, consisting of two (2) individuals appointed by the Moorhead City Council and the Mayor of the City of Moorhead.

“City of Fargo” means the City of Fargo, North Dakota, a North Dakota Home Rule City and political subdivision of the State of North Dakota.

“Clay County Commission” means the Clay County Commission, the Governing Body of the County.

“County” means Clay County, Minnesota, a political subdivision of the State of Minnesota.

“County Member” means either of the two (2) individuals of the Clay County Commission representing the County on the MCC Joint Powers Board.

“Congress” means the Congress of the United States of America.

“DA Member Entity” means the City, the County, the City of Fargo, Cass County, or the CCJWRD, and its respective legal representatives, successors, and permitted assigns.

“Diversion Authority” means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota, created by a Joint Powers Agreement dated June 11, 2016.

“Diversion Authority Board” means the Governing Body of the Diversion Authority.

“Diversion Authority Board Member” means those members of the Governing Body of a Diversion Authority Member Entity appointed to serve on the Diversion Authority Board.

“Diversion Authority Board Member Alternate” means an individual appointed by the Governing Body of a DA Member Entity to serve as an alternate if a Diversion Authority Board Member is unable to attend a meeting of the Diversion Authority Board.

“Effective Date” means July 1, 2019.

“Fargo-Moorhead Metropolitan Area” means the City of Fargo, the County, and surrounding communities; it is further defined by the United States Census Bureau as comprising all of Cass County and the County, which includes the cities of Dilworth, Minnesota, West Fargo, North Dakota, and numerous other towns and developments from which commuters travel daily for work, education, and regular activities.

“Fargo-Moorhead Metropolitan Area Flood Risk Management Project” has the same meaning as Project in this Agreement and is the name given to the Project by USACE.

“Fiscal Agent” means a third party private financial entity or the Bank of North Dakota or a Member Entity appointed by the Diversion Authority Board pursuant to Sections 5.09 and 10.03 of the Joint Powers Agreement to act as Fiscal Agent.

“GAAP” means accounting principles generally accepted in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board, the American Institute of Certified Public Accountants, and the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession as in effect on the date hereof.

“Good Faith” means observance of reasonable commercial standards of fair dealing in a given trade or business.

“Governing Body” means the body which performs the legislative and governmental functions of a political subdivision, including, but not limited to, a board, council, or commission.

“Initial Special Meeting” means a special meeting scheduled by the Secretary upon the receipt of a Land Acquisition Directive.

“Joint Powers Agreement” means the Joint Powers Agreement dated as of June 1, 2016, by and between the DA Member Entities, as amended from time to time to the extent permitted thereunder.

“Land Acquisition Directive” means a written request, approved by the Diversion Authority Board, in which the Diversion Authority Board requests that a DA Member Entity perform the acquisition of Project Property, pursuant to Section 21.03 of the Joint Powers Agreement.

“LPP Flood Risk Management Features” means construction of a diversion channel through North Dakota that conveys approximately 20,000 cubic feet per second at the one percent (1%) chance or 100 year event and is approximately 30 miles long, tie-back embankments, a staging area, a diversion inlet structure, a 6-mile connecting channel, a control structure on each of the Red and Wild Rice Rivers, an aqueduct hydraulic structure on each of the Maple and Sheyenne Rivers, a drop structure on each of the Rush and Lower Rush Rivers, 4 railroad bridges, in-town levees, community ring levees, and environmental mitigation, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013, and as amended by the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering Documentation Report, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, ND and MN, Modifications Through February 2019.

“MCC Joint Powers Board” means the Governing Body of the Moorhead-Clay County Joint Powers Authority.

“MCC Joint Powers Board Member” means a City Member, a County Member, or the BRRWD Member as the context requires.

“MCC Joint Powers Board Member Alternate” means an individual appointed by the Governing Body of a Party to serve as an alternate of an MCC Joint Powers Board Member if the MCC Joint Powers Board Member is unable to attend a meeting of the MCC Joint Powers Board.

“Member Entity” means the City or the County, and their legal representatives, successors, and permitted assigns.

“Metro Flood Diversion Authority” means a permanent joint powers entity and political subdivision created by the Joint Powers Agreement to provide the Fargo-Moorhead Metropolitan Area with permanent and comprehensive flood protection.

“Moorhead City Council” means the Moorhead City Council, the Governing Body of the City.

“Moorhead-Clay County Joint Powers Authority” means the joint powers entity and political subdivision formed through this Agreement.

“Negotiation Team” means a team established by the Moorhead-Clay County Joint Powers Authority to negotiate the acquisition of Project Property pursuant to a Land Acquisition Directive which may include, but is not limited to, a land agent an engineer, and/or their designees.

“Non-Federal Sponsors” means the City, the City of Fargo, and the Metro Flood Diversion Authority.

“Party” means the City or the County.

“Person” means any natural or legal person, county, city, municipality, political subdivision, public benefit corporation, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority, or other entity.

“Program Management Consultant” means an individual or firm hired by the Diversion Authority that is responsible for planning and implementing the Project.

“Project” or **“Locally Preferred Plan”** means the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013 and as amended by the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering

Documentation Report, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, ND and MN, Modifications Through February 2019.

“Project Partnership Agreement” or **“PPA”** means the agreement between the USACE and the Non-Federal Sponsors for the construction of the Project, dated July 11, 2016, as amended by Amendment No. 1 to the PPA, dated March 19, 2019, which includes a description of the Project and the responsibilities of USACE and the Non-Federal Sponsors in the cost sharing and execution of work.

“Project Property” means real property acquired for the Project, including, but not limited to, land, fee simple rights-of-way, easements, flowage easements, licenses, leases, and right-of-entry.

“Purchase Agreement” means an agreement by and between the Moorhead-Clay County Joint Powers Authority and an owner of Project Property for the purchase of Project Property by the Moorhead-Clay County Joint Powers Authority.

“Purchase Price” means the negotiated purchase price of Project Property.

“Recreation Features” means construction of multipurpose trails, restrooms, potable water, picnic facilities, parking areas, landscaping, and tree plantings as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013, and as amended by the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering Documentation Report, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, ND and MN, Modifications Through February 2019.

“Red River Control Structure” means the water-flow control structure located south of the City and the City of Fargo, which will be used to control the flow of the Red River through the City and the City of Fargo during flood events.

“Secretary” means a position of the Moorhead-Clay County Joint Powers Authority created by Section 4.08 of this Agreement.

“Southern Embankment and Retention Area” means the tie-back levee on both the east and west side of the Red River and south of the City and the City of Fargo, which will be used to retain flood waters during flood events.

“Unsuccessful Negotiation” means an impasse in negotiation reached by the Negotiation Team and an owner of Project Property in which continued negotiation for a voluntary acquisition will likely be ineffective and will likely not result in a voluntary Purchase Agreement.

“USACE” means the United States Army Corps of Engineers.

“Uniform Act” means Sections 210 and 305 the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. §§ 4630 and 4655) and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24.

“Vice Chair” means the member of the MCC Joint Powers Board who was elected to the Vice Chair position pursuant to Section 4.07 of this Agreement.

Section 1.02 TERMS GENERALLY. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s permitted successors and assigns, (c) the words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits, and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

Section 1.03 ACCOUNTING TERMS; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time.

ARTICLE II.

DIVERSION AUTHORITY DELEGATION OF LAND ACQUISITION IN MINNESOTA

Section 2.01 JOINT POWERS AGREEMENT. Pursuant to Section 7.01(u) of the Joint Powers Agreement, the Diversion Authority has the power to delegate tasks to one or more of the DA Member Entities, unless prohibited by statute or otherwise. This grant of power to the Diversion Authority, according to Section 16.07 of the Joint Powers Agreement, includes issuing a written request to Diversion Authority Member Entities to acquire Project Property.

Section 2.02 MINNESOTA PROJECT PROPERTY. The Joint Powers Agreement sets forth ownership of Project Property located in Minnesota. According to Section 16.04 of the Joint Powers Agreement, the following Project Property may be titled in the name of the City, the County, or a sub-joint powers entity created by the City and the County:

- (a) Southern Embankment and Retention Area Located in Minnesota

Section 16.05 of the Joint Powers Agreement provides that variances in ownership may occur based upon the scale of the Project, and DA Member Entities, including the City and the County, may be asked to acquire, and own, additional Project Property.

Section 2.03 LAND ACQUISITION DIRECTIVE. To facilitate the acquisition of Project Property, pursuant to Section 16.07 of the Joint Powers Agreement, the Diversion Authority will issue a Land Acquisition Directive and provide Budgeted Funds for the requested land acquisition to a DA Member Entity. The DA Member Entity will thereafter utilize its Best Efforts to acquire the Project Property.

Section 2.04 FAILURE TO FOLLOW DIRECTIVE. If a Land Acquisition Directive is issued by the Diversion Authority and the Moorhead-Clay County Joint Powers Authority is unable to comply with said directive, then the MCC Joint Powers Board shall comply with and follow the dispute resolution process outlined in the Joint Powers Agreement when providing a written report back to the Diversion Authority, stating the reasons for not undertaking and completing the requested action.

ARTICLE III. PURPOSE

Section 3.01 GENERAL PURPOSE. This Agreement is made pursuant to Minn. Stat. Ann. § 471.59, which authorizes the joint and cooperate exercise of power common to the contracting parties. The purpose of this Agreement is to authorize the Member Entities to work collaboratively to maximize efficiencies with respect to the acquisition of Project Property in Minnesota and to foster cooperation between the Member Entities' employees, engineers, attorneys, and professional consultants. The Member Entities desire to establish and continue a joint powers structure to acquire Project Property in Minnesota consistent with the terms of this Agreement and Minn. Stat. Ann. § 471.59.

Section 3.02 INTENT. The City, through its home rule charter, may acquire by purchase, gift, eminent domain or otherwise property within or without its boundaries needed by the City for a public purpose. The County, pursuant to Minn. Stat. Ann. §§ 373.01, subd. 1(2) and 375.18, subd. 12, may acquire and hold real and personal property for County use, and may acquire said property by purchase, gift, eminent domain, within the County. Nonetheless, the Member Entities recognize there is mutual benefit to the Member Entities working in a cooperative manner with respect to the Project. The intent of this Agreement is to increase efficiencies with respect to negotiation for and the acquisition of Project Property in Minnesota.

Section 3.03 SEPARATE POLITICAL SUBDIVISION. This Agreement is expressly intended to confirm the existence and operation of a separate political subdivision named the Moorhead-Clay County Joint Powers Authority. The Member Entities recognize that pursuant to and in conformance with Minn. Stat. Ann. § 471.59, the Moorhead-Clay County Joint Powers Authority may not exercise a power unless that power is expressly granted by this Agreement. As a result, the Moorhead-Clay County Joint Powers Authority may from time to time request that one of its Member Entities use its Best Efforts to exercise its respective powers in furtherance of the Project.

Section 3.04 STAFF AND CONSULTANTS AUTHORIZED TO WORK COLLABORATIVELY. The City and County authorize their staff, respective staff, consultants, appraisers, attorneys, and Diversion Authority staff, consultants, appraisers, and attorneys to work together to accomplish the purpose, powers and objectives provided in, and land acquisitions contemplated by this Agreement.

**ARTICLE IV.
MOORHEAD-CLAY COUNTY JOINT POWERS AUTHORITY**

Section 4.01 COMPOSITION OF BOARD. There is hereby established a joint powers board to be known as the "MCC Joint Powers Board." The MCC Joint Powers Board is the Governing Body of the Moorhead-Clay County Joint Powers Authority and shall consist of:

- (a) The two (2) members of the Clay County Commission appointed by the Clay County Commission to serve as Diversion Authority Board Members under the terms of the Joint Powers Agreement;
- (b) The three (3) persons appointed by the City to serve as Diversion Authority Board Members under the terms of the Joint Powers Agreement; and
- (c) One (1) member of the BRRWD Board of Managers appointed by the BRRWD Board of Managers.

If a DA Member Entity designates a Diversion Authority Board Member Alternate under the terms of the Joint Powers Agreement to sit in place of an appointed Diversion Authority Board Member when the appointed Diversion Authority Board Member is unable to attend a meeting of the Diversion Authority Board, that designated Diversion Authority Board Member Alternate will also be an MCC Joint Powers Board Member Alternate to sit in place of an appointed MCC Joint Powers Board Member when the MCC Joint Powers Board Member is unable to attend a meeting of the MCC Joint Powers Board.

Section 4.02 MCC JOINT POWERS BOARD MEMBERSHIP REQUIREMENTS.

- (a) City Members and County Members. For an individual to be a MCC Joint Powers Board Member, the City Member or County Member must be a member of the Party's Governing Body and must be appointed by the Party as a Diversion Authority Board Member.
- (b) BRRWD Member. For an individual to be a MCC Joint Powers Board Member, the BRRWD Member must be a member of the BRRWD Board of Managers and must be appointed by the same to serve on the MCC Joint Powers Board.

Section 4.03 NOT EMPLOYEES. MCC Joint Powers Board Members shall not be deemed employees of the Moorhead-Clay County Joint Powers Authority. The Member Entities acknowledge that it is their sole responsibility to provide all compensation and fringe benefits to their respective employees, elected, or appointed officials. MCC Joint Powers Board Members

shall not be allowed to be a party to any contract with the Moorhead-Clay County Joint Powers Authority.

Section 4.04 INCOMPATIBLE OFFICES. MCC Joint Powers Board Members may not be appointed to any paid office at the Moorhead-Clay County Joint Powers Authority nor shall they be employed by the Moorhead-Clay County Joint Powers Authority.

Section 4.05 TERMS OF MCC JOINT POWERS BOARD MEMBERS.

(a) City Members and County Members. Individuals may serve as MCC Joint Powers Board Members for so long as they serve as Diversion Authority Board Members as provided in the Joint Powers Agreement.

(b) BRRWD Member. An individual may serve as a MCC Joint Powers Board Member for so long as he or she remains appointed by the BRRWD Board of Managers.

Section 4.06 CHAIR. The Chair is a member of the MCC Joint Powers Board for purposes of presiding at its meetings. The Chair may vote on all matters before the MCC Joint Powers Board, but he or she may not cast an additional vote in the event of a tie before the MCC Joint Powers Board. The Chair does not have the authority to veto decisions of the MCC Joint Powers Board. The Chair is the head of the MCC Joint Powers Board for ceremonial purposes and for the purpose of service of civil process. The Chair may execute all contracts and other instruments on behalf of the Moorhead-Clay County Joint Powers Authority. No contract or other instrument executed by the Chair, or Vice Chair acting as Chair pursuant to Section 4.07 of this Agreement, shall become valid and binding upon the Moorhead-Clay County Joint Powers Authority until countersigned by the Secretary.

The Chair must be elected at the organizational meeting or Annual Meeting of the MCC Joint Powers Board by a majority vote of all members of the MCC Joint Powers Board. The Chair must be a member of either the Governing Body of the City or the County. The Chair shall serve a one (1) year term beginning the first Tuesday following the second Thursday in January and ending the prior day to the first Tuesday following the second Thursday in January of the following year, or until a successor is elected. There are no limits to the number of terms a Chair may serve

Section 4.07 VICE CHAIR. A Vice Chair must be elected at the organizational meeting or Annual Meeting of the MCC Joint Powers Board by a majority vote of all members of the MCC Joint Powers Board. The Vice Chair is a member of the MCC Joint Powers Board and is elected for purposes of presiding over meetings in the absence or disability of the Chair or when a vacancy in the office of Chair exists. When presiding over a meeting in the absence of the Chair, the Vice Chair may vote on all matters before the MCC Joint Powers Board, but he or she may not cast an additional vote in the event of a tie vote of the MCC Joint Powers Board. Each Vice Chair shall serve a one (1) year term beginning the first Tuesday following the second Thursday in January and ending the day prior to the first Tuesday following the second Thursday in January of the following year, or until a successor Vice Chair is elected. There are no limits to the number of terms a Vice Chair may serve.

Section 4.08 SECRETARY. A Secretary must be appointed at the organizational meeting or Annual Meeting of the MCC Joint Powers Board. An employee of one of the Member Entities, an individual, or contractor, may be appointed as the Secretary for the Moorhead-Clay County Joint Powers Authority. The Secretary shall be responsible for ensuring that minutes are prepared for all Moorhead-Clay County Joint Powers Authority meetings. The Secretary shall also keep all books and records of the Moorhead-Clay County Joint Powers Authority and shall give all notices required by law, and may have other duties assigned from time to time by the Moorhead-Clay County Joint Powers Authority. The Secretary shall also be responsible for compliance with Minnesota's Open Records Law requirements.

Section 4.09 VOTING BY THE BOARD. Each MCC Joint Powers Board Member shall have one (1) vote on matters before the Moorhead-Clay County Joint Powers Authority. Each MCC Joint Powers Board Member shall cast a vote on all matters before the Moorhead-Clay County Joint Powers Authority unless the MCC Joint Powers Board Member has a conflict prohibiting him or her from casting a vote. All decisions before the Moorhead-Clay County Joint Powers Authority shall be determined by a simple majority vote of the MCC Joint Powers Board Members present except as set forth in this Section. MCC Joint Powers Board Members are not permitted to vote by proxy. A MCC Joint Powers Member Alternate will be seated as a MCC Joint Powers Board Member when the Member Entity's MCC Joint Powers Board Member is absent from a MCC Joint Powers Board meeting. When seated pursuant to this Section, MCC Joint Powers Board Member Alternates will have the same voting rights as regular MCC Joint Powers Board Members. The following decisions require that at least one (1) affirmative vote must be cast by a City Member and at least one (1) affirmative vote must be cast by a County Member:

- (a) Engagement of a Negotiation Team or an Appraiser.
- (b) Termination of a Negotiation Team or an Appraiser.
- (c) Resolutions setting forth the procedures, protocols, and standard operating procedures for a Land Acquisition Directive.
- (d) A Finding of Unsuccessful Negotiation.
- (e) Approval of a Purchase Agreement.
- (f) Disapproval of a Purchase Agreement.

Section 4.10 MCC JOINT POWERS BOARD MEMBER DISCLOSURE OF CONFLICTS OF INTEREST. Before taking any action or casting a vote regarding a matter before the MCC Joint Powers Board, which would constitute a conflict of interest under Minnesota law or as set forth in this Agreement, MCC Joint Powers Board Member(s) must disclose such conflict(s) and abstain from voting on the matter involving the conflict of interest and from participating in MCC Joint Powers Board discussions and deliberations on the matter involving the conflict of interest or potential conflict of interest. For purposes of this Agreement, conflicts of interest include, but are not limited to, all conflicts under Minnesota law and/or membership on a Governing Body and/or status as a controlling officer, member of a board of directors, mayor,

president, or chief executive of a political subdivision, a public entity, and/or private entity engaged in a legal or administrative action, pending litigation and/or active litigation in which the Moorhead-Clay County Joint Powers Authority is an adverse party. Any MCC Joint Powers Board Member with a conflict of interest shall not be entitled to participate in a closed meeting of the MCC Joint Powers Board held pursuant to Section 4.11. In the event that an MCC Joint Powers Board Member has a potential conflict of interest, the MCC Joint Powers Board shall determine if the potential conflict of interest would prevent the MCC Joint Powers Board Member from participating in a closed executive session or a vote.

Section 4.11 MEETINGS OF THE BOARD. The Moorhead-Clay County Joint Powers Authority shall hold meetings as follows:

- (a) Organizational Meeting. An organizational meeting shall be held within thirty (30) calendar days of the Effective Date of this Agreement and shall be called at a time to be determined by the Mayor of the City. The Mayor of the City shall ensure that proper notice of the meeting is given.
- (b) Annual Meeting. The MCC Joint Powers Board shall hold its Annual Meeting at 8:30 a.m. local time on the first Tuesday following the second Thursday of January.
- (c) Regular Meetings. Following the receipt of a Land Acquisition Directive, the MCC Joint Powers Authority, as provided in Section 4.11(d), shall establish a regular meeting schedule as necessary in its discretion to pursue the Land Acquisition Directive.
- (d) Special Meetings. Following the receipt of a Land Acquisition Directive, the Secretary of the Moorhead-Clay County Joint Powers Agreement shall schedule an Initial Special Meeting and provide notice to all MCC Joint Powers Board Members. At this Initial Special Meeting, the MCC Joint Powers Board Members shall decide upon a regular meeting schedule as necessary in its discretion to pursue the Land Acquisition Directive. Except as otherwise provided for an Initial Special Meeting, special meetings of the MCC Joint Powers Board may be called by the Chair and must be called by the Chair upon written request of three (3) MCC Joint Powers Board Members, who must identify the business matters to be discussed at such special meeting. Business at a special meeting is limited to matters contained in the notice of the special meeting. A special meeting may also be called at the request of the Governing Body of a Member Entity, who must identify the business matters to be discussed at such special meeting.
- (e) Emergency Meetings. In accordance with applicable law, an emergency meeting may be called by the MCC Joint Powers Board due to circumstances that in the judgment of the Chair and/or Vice Chair require immediate MCC Joint Powers Board consideration. Prior to calling an emergency meeting, the MCC Joint Powers Board shall contact appropriate media.

- (f) Meeting Location. MCC Joint Powers Board meetings will be held at Clay County Courthouse, unless the MCC Joint Powers Board, or the Chair, determines that a meeting should be held at an alternative location.
- (g) Parliamentary Rules. All meetings of the MCC Joint Powers Board shall comply with parliamentary rules and procedures outlined in the most recent edition of ROBERT'S RULES OF ORDER for small boards, except to the extent those rules are inconsistent with any rules adopted by the MCC Joint Powers Board or are inconsistent with the provisions of this Agreement or applicable Minnesota law.
- (h) Notice of Meetings to Alternate Board Members. Each MCC Joint Powers Board Member Alternate, whether or not a voting member, shall be entitled to receive notices of and attend all meetings of the MCC Joint Powers Board, to receive all reports, and to participate in MCC Joint Powers Board discussions in the same manner as the MCC Joint Powers Board Members. Provided, however, that an MCC Joint Powers Board Member Alternate will not be seated unless the Member Entity's appointed MCC Joint Powers Board Member is unable to attend the meeting and, during closed sessions of the MCC Joint Powers Board, the meeting shall be attended only by the Chair and MCC Joint Powers Board Members or seated MCC Joint Powers Board Member Alternates.
- (i) Closed Meetings. The MCC Joint Powers Board may hold a closed meeting to consider or discuss confidential records or other matters, including but not limited to, providing negotiations guidance regarding real property acquisitions and attorney-client communications as authorized by and in accordance with Chapter 13D of the Minnesota Statutes Annotated. MCC Joint Powers Board Members may be excluded from a closed meeting in the event that the MCC Joint Powers Board Member has disclosed a conflict of interest pursuant to Section 4.10 of this Agreement that is relevant to or related to the subject of the closed meeting.

Section 4.12 OPEN MEETINGS LAW. All meetings of the Moorhead-Clay County Joint Powers Authority shall be held in compliance with Chapter 13D of the Minnesota Statutes Annotated.

Section 4.13 RECORDS RETENTION POLICY. The Moorhead-Clay County Joint Powers Authority shall adopt a records retention policy establishing minimum retention periods for its records in compliance with the Minnesota Government Data Practices Act.

Section 4.14 DATA PRACTICES ACT. The Moorhead-Clay County Joint Powers Authority shall maintain all data collected, created, received, maintained, or disseminated in conformance with the Minnesota Government Data Practices Act.

Section 4.15 QUORUM. A quorum of the Moorhead-Clay County Joint Powers Authority necessary for the transaction of any business shall consist of three (3) MCC Joint Powers Board Members who may transact business. If vacancies cause the membership of the Moorhead-Clay County Joint Powers Authority to be fewer than three (3) members, the Moorhead-Clay County Joint Powers Authority may not conduct any business until such time

that there are at least three (3) MCC Joint Powers Board Members; provided, however, that if a quorum of MCC Joint Powers Board Members is not present, the MCC Joint Powers Board Members who are present shall be authorized to adjourn the meeting to such date, time, and place as they shall determine and announce at the time of adjournment. The failure of the MCC Joint Powers Board to meet due to a lack of quorum shall not be construed so as to invalidate the authority of the Chair to implement all previously approved contracts or resolutions of the Moorhead-Clay County Joint Powers Authority.

Section 4.16 BYLAWS. The MCC Joint Powers Board may adopt bylaws governing its operations that are not inconsistent with this Agreement and may amend said bylaws as necessary. The bylaws may provide for sub-committees of the MCC Joint Powers Board as necessary. Any bylaw or modification thereof shall not be effective until approved by an affirmative vote of a majority of the MCC Joint Powers Board. Bylaws shall be reviewed and updated annually by the MCC Joint Powers Board.

Section 4.17 OFFICIAL NEWSPAPER. Pursuant to the requirements of Minnesota law, the MCC Joint Powers Board may designate one or more legal newspapers of general circulation in the City and the County as its official newspaper for whatever purposes as may be required by statute to be published in an official newspaper.

ARTICLE V. POWERS

Section 5.01 POWERS. This Agreement shall in no way limit or restrict the powers and duties of each Member Entity, except as provided herein. The Moorhead-Clay County Joint Powers Authority shall have the following duties and powers:

- (a) Receipt of Funds or Project Property. To accept donations, bequests, contributions, and reimbursements of real or personal property from the Member Entities, the Diversion Authority, or others.
- (b) Enter into Contracts. To enter into contracts related to Project Property and to perform all of its obligations pursuant to the terms and conditions of those contracts.
- (c) Ownership of Real Property. To own real property consisting of fee simple interests, right-of-way, easements, flowage easements, licenses, and any and all other real property ownership interests. Title to real property shall be in the name of the Moorhead-Clay County Joint Powers Authority.
- (d) Acquisition of Real Property. To acquire real property or personal property by gift, purchase, conveyance, or transfer of any type as permitted by Minnesota law.
- (e) Negotiation Teams and Appraisers. To hire and terminate Negotiation Teams and Appraisers.

- (f) Purchasing. To purchase Project Property and to purchase any land or access deemed necessary by the MCC Joint Powers Board for the Project. This power includes real property purchases as replacement property for land acquired for Project features.
- (g) Expenses. To incur any and all expenses necessary and incidental to effectuation of its purposes and consistent with its powers.
- (h) Hiring of Staff, Consultants and/or Attorneys. To hire any staff, consultants, and/or attorneys necessary to carry out the acquisition of Project Property.
- (i) Sales. To convey, sell, dispose of, or lease any excess Project Property as determined by the Diversion Authority.
- (j) Sue and Be Sued. To commence litigation as deemed necessary and to defend against any and all claims brought against the Moorhead-Clay County Joint Powers Authority. All litigation matters will be commenced or defended in the name of the Moorhead-Clay County Joint Powers Authority.
- (k) Conduct or Arrange for Public Information Meetings. To conduct and arrange for public information meetings.
- (l) Appoint Ex-Officio Board Members. To appoint ex-officio MCC Joint Powers Board Members who may attend MCC Joint Powers Board meetings but may not vote unless they are seated as a member of the MCC Joint Powers Board.
- (m) Employees. To employ personnel to carry out the purposes of this Agreement.
- (n) Budget. To establish a budget for Budgeted Funds.
- (o) Insurance. To enter into contracts for the purposes of securing insurance coverage regarding acquisition of Project Property or the operation of the Moorhead-Clay County Joint Powers Authority, including general liability, automobiles, property, and workers' compensation coverage.
- (p) Amendments. To recommend amendments to this Agreement to the City or County.
- (q) Enforce this Agreement. To enforce the terms of this Agreement, including requiring the City or County to fulfill its obligations as defined herein.
- (r) Delegate Tasks. To delegate tasks to the City or County, unless prohibited by statute or otherwise.
- (s) Provide for Professional Services. To procure the services of engineers, attorneys, contractors, consultants, and other persons or entities for the acquisition of Project Property.

- (t) Hire Accountants. Procure the services of a public accountant to make an annual audit of the accounts and records of the Moorhead-Clay County Joint Powers Authority.
- (u) Indemnification. To indemnify and hold harmless the City and/or County for actions arising out of performance of this Agreement.
- (v) Implicit Powers. In addition to the above specified powers, the Moorhead-Clay County Joint Powers Authority shall have those powers implicitly necessary to carry out its duties.
- (w) Cost Share Agreement. To enter into any cost share agreement with the State of Minnesota and/or the United States government or any of its agencies or instrumentalities for reimbursement of costs associated with the acquisition of Project Property and related expenses within the State of Minnesota. Further, this power includes the power to carry out all of the obligations under such cost share agreement.

ARTICLE VI. ACQUISITION OF PROJECT PROPERTY

Section 6.01 LAND ACQUISITION DIRECTIVE. Upon the receipt of a Land acquisition Directive from the Diversion Authority, the Secretary of the Moorhead-Clay County Joint Powers Authority will schedule an Initial Special Meeting as set forth Section 4.11(d). The MCC Joint Powers Board may consider the Land Acquisition Directive during the Initial Special Meeting or it may wait to consider the Land Acquisition Directive until the next scheduled regular meeting.

Section 6.02 BUDGETED FUNDS. Upon the receipt of Budgeted Funds from the Diversion Authority and any funds received from the State of Minnesota, the Moorhead-Clay County Joint Powers Authority will deposit the Budgeted Funds into the Acquisition Fund established pursuant to Section 7.02 hereof.

Section 6.03 NEGOTIATION TEAM AND APPRAISER. After the Moorhead-Clay County Joint Powers Authority has received and reviewed a Land Acquisition Directive, it will assign the Land Acquisition Directive to a Negotiation Team and an Appraiser for the Negotiation Team to pursue voluntary acquisition of the Project Property. The Moorhead-Clay County Joint Powers Authority will establish in its discretion the parameters and length of negotiations to be conducted by the Negotiation Team. The Negotiation Team(s) will provide updates on the negotiations to the MCC Joint Powers Board throughout the negotiation process during regular meetings.

Section 6.04 VOLUNTARY PURCHASE. When the Negotiation Team and a landowner of Project Property agree upon the terms of a voluntary purchase, the Negotiation Team will work with legal counsel to prepare a Purchase Agreement. The Negotiation Team will present the Purchase Agreement to the Moorhead-Clay County Joint Powers Authority upon completion

for approval. Approval of a Purchase Agreement shall include a consideration of Budgeted Funds remaining for the Land Acquisition Directive. If Budgeted Funds are insufficient, the MCC Joint Powers Board shall make a request to the Diversion Authority in accordance with Section 6.05 of this Agreement for Additional Funds. The MCC Joint Powers Board shall not approve a Purchase Agreement requiring Additional Funds until authorization for the Additional Funds is received under the terms of Section 6.05.

If Additional Funds pursuant to Section 6.05 are not authorized or the MCC Joint Powers Board disapproves of the Purchase Agreement, the MCC Joint Powers Board will decide, upon input from the Negotiation Team, whether negotiations with the landowner should continue. If it is determined that negotiations should not continue, the negotiation will be considered an Unsuccessful Negotiation pursuant to Section 6.06 of this Agreement. If the MCC Joint Powers Board approves of the Purchase Agreement and Acquisition occurs, the MCC Joint Powers Board will notify the Diversion Authority of the Acquisition and provide a copy of the executed Purchase Agreement to the Diversion Authority.

Section 6.05 ADDITIONAL FUNDS. In the event that remaining Budgeted Funds are insufficient to cover the Purchase Price set forth in a proposed Purchase Agreement or other Allowable Costs, the Moorhead-Clay County Joint Powers Authority shall seek Additional Funds from the Diversion Authority by submitting a request to the Program Management Consultant's program manager and the Fiscal Agent. Such request shall include such information as required by the Program Management Consultant's program manager and the Fiscal Agent.

Section 6.06 UNSUCCESSFUL NEGOTIATION. The Moorhead-Clay County Joint Powers Authority has the discretion to determine when a negotiation will be deemed an Unsuccessful Negotiation. Once a negotiation is considered an Unsuccessful Negotiation, the MCC Joint Powers Board will notify the Diversion Authority of such, and the responsibility for acquiring that Project Property will revert to the City if the Project Property is located within City limits or connected to an existing City flood control structure or the County if the Project Property is located outside of City limits.

Section 6.07 OWNERSHIP. Any Project Property acquired pursuant to this Agreement shall be titled in the name of the Moorhead-Clay County Joint Powers Authority.

Section 6.08 USACE ACCESS TO PROJECT PROPERTY. The Moorhead-Clay County Joint Powers Authority agrees to provide USACE a right to enter, at reasonable times, upon reasonable notice, and in a reasonable manner, upon Project Property owned by the Moorhead-Clay County Joint Powers Authority in accordance with Section 16.03 of the Joint Powers Agreement.

Section 6.09 ALLOWABLE COSTS REVIEW. Following the completion of Acquisitions and Unsuccessful Negotiation determinations pursuant to a Land Acquisition Directive, the Moorhead-Clay County Joint Powers Authority will submit a statement to the Fiscal Agent outlining all costs and expenses for which Budgeted Funds were expended to determine whether those costs and expenses constituted Allowable Costs.

Section 6.10 RETURN OF EXCESS BUDGETED FUNDS. If Budgeted Funds remain in the Acquisition Fund following the completion of Acquisitions and Unsuccessful Negotiation determinations pursuant to a Land Acquisition Directive, the Moorhead-Clay County Joint Powers Authority shall return those excess Budgeted Funds to the Diversion Authority within thirty (30) calendar days following a determination by the MCC Joint Powers Board that excess Budgeted Funds remain.

ARTICLE VII. FINANCE

Section 7.01 MCC JOINT POWERS BOARD TO CONTROL FINANCES. The MCC Joint Powers Board is responsible for the financial affairs of the Moorhead-Clay County Joint Powers Authority. The MCC Joint Powers Board must provide for the collection of revenues, the safekeeping of assets, the auditing and settlement of accounts, and the safekeeping and disbursements of public monies. The County shall maintain the accounts and manage the disbursements from said accounts on behalf of the MCC Joint Powers Board. The County will coordinate reimbursements with the Diversion Authority's Fiscal Agent.

Section 7.02 STATE OF MINNESOTA FUNDS. Any funds received from the State of Minnesota for the purchase of Project Property shall be used to provide funds for all eligible purchases or reimbursements of prior purchases in accordance with the terms of any cost share agreements with the State of Minnesota. In the event of reimbursement for the purchase of Project Property, reimbursement shall be credited back to the Diversion Authority for any costs advanced for the purchase of Project Property in Minnesota. The MCC Joint Powers Board shall have the authority to execute any bond financed property restrictions required by applicable Minnesota cost share agreements.

Section 7.03 ACQUISITION FUND. The MCC Joint Powers Board shall establish an Acquisition Fund as a separate and special bookkeeping account on the official books and records of the Moorhead-Clay County Joint Powers Authority to be used for no purpose other than the payment of Allowable Costs. Upon receipt of Budgeted Funds from the Diversion Authority and/or the State of Minnesota, the MCC Joint Powers Board shall deposit such funds into the Acquisition Fund. Funds may be withdrawn from the Acquisition Fund for only those expenses related to the acquisition of Project Property. The Secretary of the Moorhead-Clay County Joint Powers Authority is responsible for monitoring the use of the Acquisition Fund and of Budgeted Funds.

Section 7.04 FISCAL YEAR. The fiscal year of the Moorhead-Clay County Joint Powers Authority is the calendar year.

Section 7.05 FINANCIAL MANAGEMENT POLICY. The MCC Joint Powers Board may adopt a financial management policy, which includes an annual audit process.

Section 7.06 FINANCIAL REPORTS. In June and December each and every year of this Agreement, the MCC Joint Powers Board shall report to the Diversion Authority, in writing, the amount of money in the Acquisition Fund, if any, in the preceding period and the amount and items of expenditure during that period.

ARTICLE VIII. SOURCES OF REVENUE

Section 8.01 BUDGETED FUNDS. The Parties agree and acknowledge that they will rely upon Budgeted Funds to fund their actions and operations outlined in this Agreement.

Section 8.02 CITY AND COUNTY CONTRIBUTIONS. The City and County will use their best efforts to not exceed budgeted amounts set by the Diversion Authority. In the event that the City and County anticipate that they will exceed the amount budgeted for land acquisitions, they will request a budget adjustment from the Diversion Authority. In the event that the County and City approve expenditures outside of Budgeted Funds and the Diversion Authority has not approved the increased budget, the City and County will each pay fifty percent (50%) of the additional cost that was not approved and that was in excess of the Budgeted Funds. If funds are currently available, the Parties will remit payment for the cost or expense to the Fiscal Agent within thirty (30) calendar days of notice from the Fiscal Agent that a cost or expense was not an Allowable Cost. If funds are not currently available, the Parties will use their Best Efforts to remit payment to the Fiscal Agent within a reasonable amount of time. If the Parties ever question whether a cost or expense will qualify as an Allowable Cost, the MCC Joint Powers Board may request an opinion from the Fiscal Agent as to the qualification of that cost or expense as an Allowable Cost.

Section 8.03 INSPECTION. The books and records of the MCC Joint Powers Authority shall be open to inspection by the MCC Joint Powers Board Members, the BRRWD, the Diversion Authority, and the Parties at all reasonable times.

ARTICLE IX. INSURANCE AND LIABILITY

Section 9.01 LIABILITY COVERAGE. To the fullest extent permitted by law, actions by the Parties pursuant to this Agreement are intended to be and shall be construed as a “cooperative activity” and it is the intent of the Parties that they shall be deemed a “single governmental unit” for the purpose of liability. The Moorhead-Clay County Joint Powers Board shall maintain liability coverage with the Minnesota League of Cities with the minimum limit equal to the maximum liability limit in Minn. Stat. Ann. § 466.04, subdivision 1. Alternatively, the Moorhead-Clay County Joint Powers Authority may maintain equivalent private liability coverage. Such policy may be provided through a commercial general liability (“CGL”) policy. Such private liability policies must comply with the following requirements:

- (a) Minimum Limits. Each policy shall have a limit at least equal to the maximum municipal liability limits in Minn. Stat. Ann. § 466.04, subdivision 1. If the policy contains a general aggregate limit, the general aggregate limit shall not be less than two million dollars (\$2,000,000).
- (b) Type of Coverage. The CGL insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and advertising industry, and contractually-assumed liability.

- (c) Additional Covered Parties. Each Party, and each Party's officers, employees, and volunteers, shall be named as additional covered parties on each policy for all claims arising from activities or operations arising from this Agreement.

Section 9.02 AUTO LIABILITY AND PROPERTY DAMAGE. The Moorhead-Clay County Joint Powers Authority may in its discretion procure coverage for auto liability and damage or loss for property. Each party shall be responsible for damages to or loss of its own equipment that is used for Moorhead-Clay County Joint Powers Authority activities. Each Party waives the right to, and agrees that it will not, bring any claim or suit against the Moorhead-Clay County Joint Powers Authority or any other Party for damages to or loss of its equipment arising out of participation in or assistance with the Moorhead-Clay County Joint Powers Authority operations or activities, even if the damages or losses were caused wholly or partially by the negligence of the other Party or its officers, employees, or volunteers.

Section 9.03 WORKERS' COMPENSATION COVERAGE. In the event that the Moorhead-Clay County Joint Powers Authority hires employees, it shall maintain workers' compensation coverage of its employees. Each Party shall be responsible for injuries or death of its own personnel. Each Party will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel if they participate in or assist Moorhead-Clay County Joint Powers Authority operations or activities. Each Party waives the right to, and agrees that it will not, bring any claim or suit against the Moorhead-Clay County Joint Powers Authority or any other Party for any workers' compensation benefits paid to its own employees or dependents that arise out of participation in or assistance with Moorhead Clay-County Joint Powers Authority operations or activities, even if the injuries were caused wholly or partially by the negligence of any other Party or its officers, employees, or volunteers.

Section 9.04 DEFENSE AND INDEMNIFICATION. The Moorhead-Clay County Joint Powers Authority agrees to defend and indemnify each Party and the individual MCC Joint Powers Board Members for any liability claims arising from the Moorhead-Clay County Joint Powers Authority activities or operations, decisions of the Moorhead-Clay County Joint Powers Authority, or arising out of or regarding a Land Acquisition Directive. Nothing in this Agreement shall constitute a waiver of the statutory limits of liability set forth in Minn. Stat. Ann. § 466.04 or a waiver of any available immunities or defenses. Nothing herein shall be construed to provide insurance coverage or indemnification to any officer, employee, or volunteer of any Party for any act or omission for which the officer, employee, or volunteer is guilty of malfeasance in office, willful neglect of duty, or bad faith.

Section 9.05 INDEMNIFICATION. In the event that a claim is made against a Party arising out of or related to a Land Acquisition Directive, and the Party seeks defense and indemnification from the Moorhead-Clay County Joint Powers Authority pursuant to Section 9.04 of this Agreement, the Moorhead-Clay County Joint Powers Authority shall first apply any and all available and/or applicable insurance proceeds against said claim. In the event that such insurance proceeds are insufficient to satisfy the costs associated with such claim, and only after the application of insurance proceeds, said costs shall then be paid by funds made available to the Moorhead-Clay County Joint Powers Authority by the Parties. The Parties will allocate such costs equally.

Section 9.06 UNINSURED LIABILITY. Any excess or uninsured liability shall be equally borne by the Parties; however, this does not include the liability of any individual officer, employee, or volunteer which arises from his or her own malfeasance, willful neglect of duty, or bad faith.

Section 9.07 CERTIFICATE OF INSURANCE. All insurance policies and certificates required under this Agreement shall be open to inspection by any Party and copies of the policies or certificates shall be submitted to a Party upon written request.

ARTICLE X. TERM AND TERMINATION

Section 10.01 TERM. This Agreement shall be for an indefinite term and shall continue until terminated or rescinded in accordance with the terms and conditions of this Agreement.

Section 10.02 TERMINATION. This Agreement may only be terminated by the mutual consent of all the Parties, evidenced by identical resolutions adopted by the Governing Bodies of each Party. Any termination will be without prejudice to any obligations or liabilities of any parties already accrued prior to termination.

Section 10.03 DISTRIBUTION OF FUNDS AND PROPERTY. Upon the termination of this Agreement, the Moorhead-Clay County Joint Powers Authority shall provide for the distribution of all Moorhead-Clay County Joint Powers Authority assets in the following manner: (a) Project Property acquired during the term of the Moorhead-Clay County Joint Powers Authority shall be transferred to and titled in the name of the City if the City remains a DA Party or transferred to and titled in the name of the Diversion Authority if the City is no longer a DA Party; (b) any remaining Project Property which is deemed by the Diversion Authority to be unnecessary for the Project may be sold or liquidated prior to distribution; (c) remaining Budgeted Funds in the Acquisition Fund shall be returned to the Diversion Authority; and (d) any remaining assets shall be divided equally between the County and the City. If the Parties do not agree on the fair market value of a non-liquid asset, the Moorhead-Clay County Joint Powers Authority may submit the item to a professional appraiser, whose written opinion of the fair market value shall be conclusive. All monies generated, less reasonable administrative expenses incurred by the Parties from the sale, conveyance, or lease of excess Project Property, shall be remitted to the Diversion Authority.

ARTICLE XI. DISPUTE RESOLUTION

Section 11.01 INTENT AND PROCEDURE. The Parties shall cooperate and use their Best Efforts to ensure that the various provisions of this Agreement are fulfilled. The Parties agree to act in Good Faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this Agreement. If disputes cannot be resolved informally by the Parties, the following procedure shall be used.

Section 11.02 MEDIATION. If there is a failure between the Parties to resolve a dispute on their own, the Parties shall first attempt to mediate the dispute. The Parties shall agree upon a single mediator and each share fifty percent (50%) of the cost of the mediator.

Section 11.03 LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within forty-five (45) calendar days after the end of mediation proceedings, the Parties may litigate the matter.

Section 11.04 WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS AGREEMENT AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS BY OR ON BEHALF OF THE PARTIES FOR PROJECT PROPERTY ACQUISITION.

ARTICLE XII. GENERAL PROVISIONS

Section 12.01 COMPLETE AGREEMENT. This Agreement contains all negotiations and agreements between the Parties. No other understanding regarding this Agreement, whether written or oral, may be used to bind any Party.

Section 12.02 WRITTEN AMENDMENT REQUIRED. No amendment, modification, or waiver of any condition, provision, or term will be valid or of any effect unless made in writing signed by the Party or Parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any Party of any default of another Party will not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the Parties thereto under and pursuant to this Agreement.

Section 12.03 INTERPRETATION. This Agreement will be construed as if it had been prepared by all Parties.

Section 12.04 GRAMMATICAL CONSTRUCTION. Whenever the singular noun is used herein, the same includes the plural where appropriate, and the words of any gender include any other gender where appropriate.

Section 12.05 ASSIGNMENT. No Party may transfer or assign this Agreement or any of its rights or obligations under this Agreement without express written consent of the other Party and the Diversion Authority.

Section 12.06 SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Agreement. Deadlines for certain meetings and other actions, such as the Annual Meeting, as set forth in this Agreement are intended to establish a schedule for routine governance of the Moorhead-Clay County Joint Powers Authority; however, the failure of the Moorhead-Clay County Joint Powers Authority, its appointed officers, or the MCC Joint Powers Board Members to strictly adhere to such deadlines shall not be construed so as to invalidate the subsequent legal authority of the Moorhead-Clay County Joint Powers Authority, or its appointed officers, the MCC Joint Powers Board, or the MCC Joint Powers Board Members, nor shall the same support any claims that actions taken by the same are *ultra vires* or invalid in any way, so long as such actions are otherwise authorized. Further, the Moorhead-Clay County Joint Powers Authority is authorized, by motion or resolution, to vary from such deadlines or schedule may be necessary or appropriate.

Section 12.07 FORCE MAJEURE. No Party will be liable to another Party during any period in which its performance is delayed or prevented, in whole or in part, by circumstances beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule, or regulation of a governmental entity. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Party of the same.

Section 12.08 RELATIONSHIP TO THE JOINT POWERS AGREEMENT. Nothing in this Agreement is intended to amend, modify, or repeal any section or power of the Joint Powers Agreement. The Parties agree and acknowledge that the Joint Powers Agreement that created the Diversion Authority shall control in the event of a conflict between this Agreement and the Joint Powers Agreement.

Section 12.09 NOTICE. All notices, certificates, or other communications required under this Agreement will be deemed sufficiently given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows:

If to County: County Administrator
 Clay County
 807 11th Street North
 Moorhead, Minnesota 56560

If to City: City Manager
 City of Moorhead
 P.O. Box 779
 Moorhead, Minnesota 56561-0779

Section 12.10 AGREEMENT BINDING ON SUCCESSORS. This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective personal representatives, successors, and assigns.

Section 12.11 MINNESOTA LAW APPLIES. This Agreement will be controlled and interpreted by the laws of the State of Minnesota.

Section 12.12 WAIVER OF VENUE/SELECTION. The Parties stipulate and agree that the District Court of Clay County, Minnesota, will be the sole and exclusive venue for any lawsuit pertaining to this Agreement, and the Parties consent to the personal jurisdiction in said court in the event of any such lawsuit. This choice of law section applies exclusively to lawsuits pertinent to the terms and conditions of this Agreement.

Section 12.13 EXECUTION IN COUNTERPARTS. This Agreement will be executed in two (2) counterparts, each of which shall be an original, all which shall constitute but one and the same instrument. Each Party shall receive a fully-executed counterpart.

IN WITNESS WHEREOF, the Parties, by action of their Governing Bodies, caused this Agreement to be executed in accordance with the authority granted in Minn. Stat. Ann. § 471.59.

(Remainder of page intentionally left blank.)

