

**CASS COUNTY/FARGO/
CASS COUNTY JOINT WATER RESOURCE DISTRICT
FLOOD PROTECTION COOPERATION
AGREEMENT**

THIS AGREEMENT is made and entered into as of the 1st day of July, 2010 by and between the COUNTY OF CASS, STATE OF NORTH DAKOTA (hereinafter "Cass County"), the CITY OF FARGO, NORTH DAKOTA (hereinafter "Fargo"), and the Cass County Joint Water Resource District (hereinafter, the "Joint Board")

RECITALS

A. The United States Army Corps of Engineers (the "Corps") is currently engaged in a study known as the Fargo-Moorhead Metro Flood Control Project Study (the "Study") in which Fargo and Moorhead, Minnesota are formally recognized as the co-sponsors of the Study.

B. Cass County, Fargo, and the Joint Board have been participating in the Study through their membership on a committee, known as the Metro Flood Joint Board, which consists of elected and appointed members of the governing bodies and boards of Moorhead, Minnesota; Clay County, Minnesota; Buffalo-Red River Watershed District; Cass County, North Dakota; Fargo, North Dakota; and the Joint Board.

C. The Study is evolving into a project the parties anticipate the Corps will ultimately approve and construct. As part of this process, the Corps requires the local co-sponsors to execute a certification regarding financial capabilities to continue the Study and to continue development of a proposed flood control project on or before July 15, 2010 (the "Financial Certification").

D. Currently, the members of the Metro Flood Joint Board, acting through a subcommittee known as the "Metro Flood Work Group," are contemplating a possible Joint Powers Agreement. However, in advance of execution of a Joint Powers Agreement between the members of the "Metro Flood Work Group," Fargo, Cass County, and the Joint Board wish to determine which of the entities will execute the Financial Certification as the North Dakota local co-sponsor.

In consideration of the 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:

1. **Financial Certification.** Fargo, Cass County, and the Joint Board agree Fargo will execute the Financial Certification on or before July 15, 2010 as the North Dakota local co-sponsor, presumably along with the City of Moorhead, Minnesota as the Minnesota local co-sponsor.

2. **Sponsorship Limitations.** The parties agree that there will be limitations on Fargo's power and authority as sponsor. Further, the parties agree that decisions relating to the flood diversion project currently being studied by the Corps will be made collaboratively and with approval and input from the political entities that are party to this agreement.

2.1 **Design Limitations.** The parties recognize and agree that decisions affecting diversion channel alignment, rights of entry and other technical matters will be addressed by Fargo, Cass County, the Joint Board, the Corps, and other appropriate governmental entities. To assist with the resolution of these issues the parties agree to support and work to implement the concept of a "Technical Team" composed of engineers and other professionals which would work in conjunction with the Corps. This Technical Team would meet to advise the Metro Flood Joint Board, the Metro Flood Work Group, potential joint power entities and others about technical and scientific matters relative to the flood diversion project. The precise composition of the Technical Team will be established in subsequent agreements.

2.2 **Financial Limitations.** The parties agree to seek guidance from the Technical Team to establish a framework under which financial decisions regarding the flood diversion project would be made. In this regard the parties envision a graduated system whereby less significant monetary decisions would be made by agreement of employees of the parties and more significant decisions would require approval from the governing boards of the parties.

2.3 **Communication Limitations.** The parties agree that the sponsor does not have authority to speak on behalf of the parties to this agreement, on behalf of other political entities formed in subsequent agreements, or on behalf of parties to subsequent agreements unless otherwise agreed to by subsequent agreement of the parties. The sponsor does have a duty to communicate matters relative to the flood diversion project, which may come up between itself and the Corps, to the other parties.

3. **Cass County Sales Tax.** The parties agree a sales tax is an appropriate means to generate revenue to cover a portion of local project costs; a

Cass-County-wide sales tax is appropriate for that purpose; the Cass County Commission should initiate a resolution to place a county-wide sales tax ordinance on the ballot for the Cass County voters to approve in the November 2010 election; and Fargo will not place a city-wide sales tax on the ballot for consideration in November 2010. Cass County agrees to approve an appropriate resolution to place a county-wide sales tax ordinance on the ballot for a November 2010 county-wide vote. Fargo supports a county-wide sales tax, and the Board of City Commissioners of the City of Fargo will refrain from approving a resolution for a similar flood-protection sales tax vote in November 2010.

4. **North Dakota Cost-Share.** Cass County and Fargo agree to share **equally** in the non-federal, non-state (North Dakota and Minnesota), non-Moorhead, non-Clay County costs of the Fargo-Moorhead Metro Flood Study Project, with Cass County matching, dollar for dollar, the money expended toward the Project from Fargo's one-half percent sales tax (approved June 2009). Said obligation is contingent upon the Cass County Sales Tax vote, referenced in the above paragraph, resulting in approval by the voters. In the event said County Sales Tax vote is not successful then Cass County and Fargo will discuss and negotiate, in good faith, the appropriate sharing of such costs and the method for such. Further, regardless of the outcome of the Cass County Sales Tax vote, following the vote, Fargo, Cass County, and the Joint Board will discuss and negotiate, in good faith, the potential creation of a special assessment district by the Joint Board to finance a portion of the non-federal, non-state, non-Moorhead, non-Clay costs of the Fargo-Moorhead Metro Flood Study Project, and to finance maintenance of the Project.

With respect to such costs, the parties will confer, discuss and agree as to the actual costs incurred to date by Fargo and Cass County that are to be attributed to this project so that appropriate arrangements can be made to equalize such cost-sharing between Fargo and Cass County.

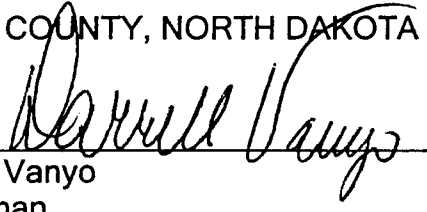
In the event the County-wide sales tax vote in November 2010 is unsuccessful and thereafter if Cass County and Fargo are unable to arrive at such agreement for the appropriate sharing of such costs and the method for such by March 15, 2011, then this agreement shall terminate immediately and be of no further force or effect.

5. **Modification/Amendment of Terms.** The parties recognize the terms of this agreement may be amended or modified by subsequent agreements entered into between Fargo, Cass County, and the Joint Board, and perhaps other political subdivisions or entities.

(Signatures appear on the following page.)

CASS COUNTY, NORTH DAKOTA

Dated: _____

By: 
Darrel Vanyo
Its: Chairman

ATTEST:


Michael Montplaisir, Auditor

CITY OF FARGO, NORTH DAKOTA

Dated: _____

By: _____
Dennis R. Walaker
Its: Mayor

ATTEST:

Steven Sprague, City Auditor

CASS COUNTY JOINT WATER
RESOURCE DISTRICT

Dated: _____

By: _____
Thomas L. Fischer
Its: Chair

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer

CASS COUNTY, NORTH DAKOTA

Dated: _____

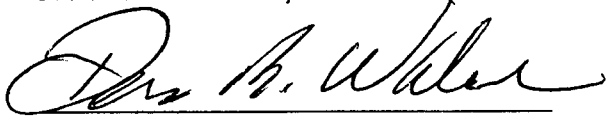
By: _____
Darrel Vanyo
Its: Chairman

ATTEST:


Michael Montplaisir, Auditor

CITY OF FARGO, NORTH DAKOTA

Dated: _____

By: 
Dennis R. Walaker
Its: Mayor

ATTEST:


Steven Sprague, City Auditor

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RESOURCE DISTRICT

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CITY OF FARGO, NORTH DAKOTA

Dated: _____

By: _____

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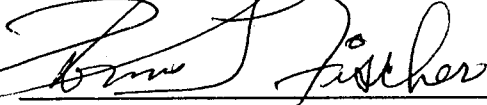
Its: Mayor

ATTEST:

Steven Sprague, City Auditor

CASS COUNTY JOINT WATER
RESOURCE DISTRICT


Dated: August 13, 2010

By: 

Thomas L. Fischer

Its: Chair

ATTEST:


Carol Harbeke Lewis
Secretary-Treasurer