

## AGREEMENT TO ACQUIRE A FLOWAGE EASEMENT

THIS AGREEMENT is made this [REDACTED] day of [REDACTED], 202[REDACTED], by «Current Owner», [REDACTED] MARITAL STATUS], whose post office address is «Owner Mailing Address» «Owner City», «Owner State» «Owner Zip». (“Grantor”); and the Moorhead-Clay County Joint Powers Authority, a Minnesota political subdivision, whose post office address is 3510 12<sup>th</sup> Avenue South, Moorhead, Minnesota 56560 (“Grantee”).

### RECITALS

A. The United States Army Corps of Engineers (the “Corps”) and the Metro Flood Diversion Authority entered into a Project Partnership Agreement on July 11, 2016, and amended on March 19, 2019, for construction of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, commonly referred to as the Fargo-Moorhead Area Diversion Project (the “Diversion Project”).

B. Grantee is authorized to acquire the real property in Minnesota necessary for purposes of constructing, operating, and maintaining the Diversion Project.

C. Grantor owns certain real property interests necessary for the Diversion Project that Grantee must acquire.

D. Grantor agrees to convey a flowage easement to periodically inundate Grantor’s property as well as granting certain access, survey, and exploration rights, as more specifically described below to Grantee in, on, under, over, and across Grantor’s property all subject to the terms and conditions contained in this Agreement.

In consideration of the purchase price described in this Agreement, 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:

### AGREEMENT

1. **The Easement Property.** Grantor agrees to grant and convey to Grantee a permanent Flowage Easement in, on, over, though, and across the following real property in [REDACTED] County, Minnesota:

See legal description in the Flowage Easement attached hereto as **Exhibit “1”**

The property described above is the “Easement Property.” Such Flowage Easement shall be in substantially the same form as the Flowage Easement attached hereto as **Exhibit “1.”**

2. **Warranty of Title.** Grantor warrants that Grantor is the fee simple owner of the Easement Property; that Grantor has the right to enter into this Agreement and to make the promises, covenants, and representations contained in this Agreement; that this Agreement does not violate any mortgage or other interest held by any third party regarding the Easement Property, or any portion of the Easement Property; that there are no outstanding unpaid bills incurred for labor, materials, or services regarding the Easement Property, or any portion of the Easement

Property; and that, as of closing, there will be no recorded or unrecorded liens, security interests, or any outstanding, pending, or threatened suits, judgments, executions, bankruptcies, or other proceedings pending or of record that would in any manner impact title to the Easement Property, or any portion of the Easement Property. Grantor will release, hold harmless, defend, and indemnify Grantee and its officers, agents, representatives, employees, and contractors from and against any and all claims, damages, injuries, or costs arising out of or in any way related to any title defects or related damages arising from title defects regarding the Easement Property. Grantor will not grant, sell, convey, or in any way encumber the Easement Property prior to the parties' closing.

**USE FOR LAND W/ RESIDENTIAL STRUCTURES**

3. **Fixtures, Structures and Personal Property.** Unless otherwise agreed by the parties and as identified in the Flowage Easement attached hereto as **Exhibit "1"**, any buildings, structures, fixtures, personal property, or other items left on the Easement Property on the date of closing will automatically become Grantee's property, without the need for any bill of sale or any other written instrument or agreement. Furthermore, the parties specifically agree all carpeting, drapes, window hangings, the range, the refrigerator, all other appliances and fixtures (except [REDACTED] which are expressly excluded from this transaction) located in the home or residence, and any outbuildings situated on the Easement Property are included in this transaction and Grantor is conveying ownership of those items to Grantee. Grantor shall not remove any property considered a portion of the real estate (fixtures, materials, or improvements), nor salvage any materials from the Easement Property. Any such improper removal of property may change the value of the structure, and in the event of such removal by Grantor, Grantee shall be entitled to unilaterally determine the value of such property for purposes of adjusting the purchase price and/or calculating a repayment.

Notwithstanding the above provisions of this section, Grantor shall remove from the Easement Property, at Grantor's own expense and prior to closing, all vehicles, wood, construction materials, household chemicals, unused paint, debris, and other personal property.

**USE FOR BARE LAND**

4. **Fixtures, Structures, and Personal Property.** Unless otherwise agreed by the parties, any buildings, structures, fixtures, personal property, or other items left on the Easement Property on the date of closing will automatically become Grantee's property, without the need for any bill of sale or any other written instrument or agreement.

Notwithstanding the above provisions of this section, Grantor shall remove from the Easement Property, at Grantor's own expense and prior to closing, all vehicles, wood, construction materials, household chemicals, unused paint, debris, and other personal property.

5. **Purchase Price.** The purchase price for the above-described easement rights in and to the Easement Property is \$ [REDACTED] (the "Purchase Price"). Grantee will pay the Purchase Price less any amounts required to satisfy and release any mortgages, liens or

encumbrances affecting the Easement Property by check at closing. Grantor specifically acknowledges the Purchase Price represents full and final payment to Grantor as compensation or damages regarding the Easement Property; any and all severance damages or other damages to any residual lands of Grantor; any buildings, structures, fixtures, personal property, or other items left on the Easement Property; or the Diversion Project. Grantor is not entitled to any further payments, tax reductions, or damages under any state or federal statute, constitutional provision, rule, regulation, or other legal authority.

6. **Inspections and Environmental.** Following Grantor's execution of this Agreement, Grantee shall be entitled to conduct inspections of the Easement Property at its own expense. If Grantee determines a Phase I environmental site assessment or other assessment or investigation is necessary, then Grantee may conduct such studies prior to closing.

Grantee is not responsible for pre-existing environmental contamination or liabilities. With respect to any property with past or present commercial or industrial use, or which is adjacent to the Easement Property, or which is suspected of having underground tanks or hazardous contaminants, Grantor shall provide by separate writing information identifying what, if any, underground tanks and/or hazardous materials other than incidental demolition or household wastes have been deposited or stored on the Easement Property. If Grantor fails to provide such separate writing, or if Grantee's studies show the existence of such materials under this Agreement, Grantee shall have no obligation to acquire the Easement Property. Grantor shall remove any such hazardous materials and any containers at Grantor's own expense and provide certification from the appropriate agency that the Easement Property has been cleared of such contaminants prior to closing.

7. **Closing and Possession.** Closing will occur on or before [REDACTED], 202 [REDACTED], unless extended for purposes of correcting title or unless otherwise agreed by the parties. At closing, Grantor will execute and deliver to Grantee a Flowage Easement in substantially the same form as the Flowage Easement attached hereto as **Exhibit "1"**, free and clear of all mortgages, liens, or any other encumbrances. The parties agree to promptly execute and deliver any other instruments or documents necessary to carry out the purposes of this Agreement before, at, or following closing.

**WITH RELOCATION LANGUAGE – For Land with Residential Structures**

8. **Tenants.** Grantor will promptly notify any of Grantor's Tenants of this Agreement, of the Diversion Project, of Grantee's rights under this Agreement, and of the potential for disruption of any Tenant's rights regarding the Easement Property prior to closing. Additionally, Grantor will promptly provide Grantee with any Tenant's contact information. Grantee will not be liable or otherwise responsible to any of Grantor's Tenants for interference with any of Tenant's rights regarding the Easement Property, with the exception of any relocation benefits Tenants may be eligible for under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601, et seq.), and under Minn. Stat. § 117.52 et seq. In the event Tenants are eligible for relocation benefits, Tenants and Grantee shall agree upon any relocation benefits by a separate written agreement.

**WITHOUT RELOCATION LANGUAGE**

9. **Tenants.** Grantor will promptly notify any of Grantor's Tenants of this Agreement, of the Diversion Project, of Grantee's rights under this Agreement, and of the potential for disruption of any Tenant's rights regarding the Easement Property prior to closing. Additionally, Grantor will promptly provide Grantee with any Tenant's contact information. Grantee will not be liable or otherwise responsible to any of Grantor's Tenants for interference with any of Tenant's rights regarding the Easement Property.

10. **Title Examination.** Within 14 days of Grantor's execution of this Agreement, Grantor will furnish Grantee with a duly certified Abstract of Title to the Easement Property continued to a recent date. If the title to the Easement Property, or any portion thereof, is unmarketable, Grantor will cooperate with Grantee to clear any title defects and to render title marketable.

11. **Inspections and Environmental.** As a material inducement to the cause Grantee to enter into this Agreement, Grantor warrants and represents to Grantee with respect to the Easement Property as follows (Grantor's warranties and representations are true and correct in all material aspects on the date of the Agreement and will be true and correct in all material respects on the closing date and will survive the closing of the transaction contemplated hereby):

- a) Grantor knows of no environmental condition, situation or incident that could in any manner give rise to any action or liability under any environmental law, and Grantor is not subject to and is not currently operating under any compliance or consent order, schedule, decree, or agreement issued or enter into under any environmental law.
- b) No building or other improvement encroaches on the Easement Property, nor does any improvement which is part of the Easement Property encroach on lands of others or on any public or private road or right of way.
- c) Grantor is not a foreign person within the meaning of § 1445 of the Internal Revenue Code of 1986, as amended. Grantor will complete an appropriate Certificate of Non-Foreign Status at closing confirming the accuracy of this representation.
- d) Each individual executing this Agreement on behalf of Grantor is duly authorized to execute and deliver the same on behalf of Grantor.
- e) Grantor is familiar with the property described herein and certifies that the status and number of wells on the Easement Property has not changed since the last previously filed well disclosure certificate filed with the Minnesota Department of Health as required within the meaning of Minn. Stat. Chapter 103I. This representation is intended to satisfy the requirements of that chapter.

- f) Grantor does not know of any “Wells” on the Easement Property within the meaning of Minn. Stat. Chapter 103I. This representation is intended to satisfy the requirements of that chapter.
- g) Grantor knows of no “subsurface sewage treatment system” (within the meaning of Minn. Stat. § 115.55) on or serving the Easement Property.
- h) Grantor does not have knowledge that methamphetamine production has occurred on the Easement Property.
- i) Grantor does not know of any underground storage tank(s) on the Easement Property.

Notwithstanding any provision herein to the contrary, if closing occurs hereunder, Grantor shall indemnify Grantee, its successors and assigns, against, and shall hold Grantee, its successors and assigns, harmless from, any loss, cost, expense or damage, including reasonable attorneys’ fees, directly arising out of or resulting from the breach of any of the representations and warranties in this Section, whether such loss, cost, expense or damage arises prior to or after closing.

12. **Taxes.** With regard to the Easement Property, Grantor is solely responsible for paying all taxes and special assessments or assessments for special improvements due, levied, or assessed for all taxes and assessments; Grantee will not be responsible for payment of any taxes or assessments regarding the Easement Property at any time.

13. **Risk of Loss.** Grantor shall remain responsible for all taxes, mortgage payments, insurance premiums and bear the risk of loss up to and through the date of closing with respect to general liability, liability for personal injury, and any damage or casualty loss with respect to the Easement Property, resulting from the use, occupancy, and maintenance of the Easement Property.

14. **Closing Costs.** Grantee will be responsible for the costs of updating Abstracts, title examination fees, preparation of the Flowage Easement, preparation of this Agreement, preparation and expenses of any survey, and all costs related to title examination. Grantor will be responsible for the costs of preparation of and recording expenses of all releases, satisfactions, and title corrective documents, and all costs associated with correcting title defects.

15. **Forbearance or Waiver.** The failure or delay of Grantee to insist on the timely performance of any of the terms of this Agreement, or the waiver of any particular breach of any of the terms of this Agreement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

16. **Survival.** The terms of this Agreement will survive the closing on the Easement Property.

17. **Assignment.** Grantor will not transfer or assign this Agreement or any rights or obligations under this Agreement without the express written consent of Grantee.

18. **Governing Law.** This Agreement will be construed and enforced in accordance with Minnesota law. The parties agree any litigation arising out of this Agreement will be venued in State District Court in [COUNTY] County, Minnesota, and the parties waive any objection to venue or personal jurisdiction.

19. **Severability.** 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.

20. **Entire Agreement.** This Agreement, together with the relevant closing documents, as well as the Flowage Easement, and including any amendments to those documents, 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.

21. **Modifications.** Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

22. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the parties' successors and assigns.

23. **Cooperation.** The parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and to accomplish the purposes of this Agreement.

24. **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.

25. **Headings.** Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

26. **Counterparts.** This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

*(Signatures appear on the following pages.)*

***Moorhead-Clay County Joint Powers Authority  
Upstream Mitigation Area  
Agreement to Acquire a Flowage Easement – «Current Owner»  
OIN No.«OIN\_Number» – Parcel No. [REDACTED]***

**Page 7**

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

MOORHEAD-CLAY COUNTY JOINT  
POWERS AUTHORITY

By: \_\_\_\_\_  
Kevin Campbell, Chair

ATTEST:

\_\_\_\_\_  
Stephen Larson  
Secretary

GRANTOR:

\_\_\_\_\_  
«Current\_Owner»

\_\_\_\_\_  
[LANDOWNER NAME]

Delete if only one Landowner  
Copy if need more

INSERT PATH IN HIGHLIGHTED SECTION BELOW  
[PATH]



EXHIBIT 1  
(Flowage Easement)