

BYLAWS OF DIVERSION AUTHORITY BOARD METRO FLOOD PROJECT

ARTICLE 1. CREATION OF THE DIVERSION AUTHORITY AND THE DIVERSOIN AUTHORITY BOARD OF AUTHORITY

Section 1.01. Creation of the Diversion Authority. The Metro Flood Project Diversion Authority (the “Diversion Authority”) was created pursuant to a Limited Joint Powers Agreement (the “Limited JPA”) entered into by six political subdivisions, namely, the County of Cass, North Dakota; the County of Clay, Minnesota; the city of Fargo, North Dakota, the city of Moorhead, Minnesota; the Cass County Joint Water Resource District, in North Dakota; and the Buffalo-Red River Watershed District, in Minnesota. Said six political subdivisions shall be referred to herein individually as a “Member-entity” and cumulatively as the “Member-entities”. The Limited JPA was approved and executed by the Member-entities in July and August, 2011.

Section 1.02. Creation of the Diversion Authority Board. The Limited JPA established a joint board to be known as the Diversion Authority Board which, for purposes of these bylaws, shall be referred to as the “Diversion Board of Authority” or the “Diversion Authority Board”.

Section 1.03. Conflict with the Limited JPA. In the event of a conflict between these Bylaws and the Limited JPA, the Limited JPA shall control.

ARTICLE 2. MEMBERSHIP OF THE DIVERSION AUTHORITY BOARD

Section 2.01. Membership Generally. The Limited JPA sets forth the membership in the Diversion Authority Board. For purposes of these bylaws, an individual who has been appointed to the Diversion Authority Board by a Member-entity shall be referred to as an “Authority Board Member”. The term “Authority Board Member” shall also include the alternate appointees during such times when the alternate is sitting in place of an appointed voting member of the Diversion Authority Board who is unable to attend a meeting, as set forth in the Limited JPA. Although the Limited JPA authorizes the Diversion Authority Board to appoint non-voting ex-officio members to the Diversion Authority Board, the term “Authority Board Member” shall not include any such non-voting ex-officio members unless specifically provided herein. See: Article V, Limited JPA.

Section 2.02. Alternate Authority Board Members. Whenever the Authority Board Member is in attendance at a board meeting, the alternate appointee for said Authority Board Member shall not participate in the meeting, except that said alternate appointee may participate in the same manner as a member of the general audience. Alternate Authority Board Members only have

authority as an Authority Board Member during a meeting in which the appointed Authority Board Member is absent. An Alternate Authority Board Member may not participate in calling a meeting of the Diversion Authority Board.

ARTICLE 3. COMPOSITION AND POWERS OF DIVERSION AUTHORITY BOARD

Section 3.01. Composition of the Board. The composition of the Diversion Authority Board is set forth in the Limited JPA. See: Article V, Limited JPA.

Section 3.02. Powers of the Board. The Diversion Authority Board shall have such powers as are set forth in the Limited JPA. See generally: Article VI, Limited JPA.

Section 3.03. Vacancies. Vacancies on the Board resulting from the death, resignation or removal of an Authority Board Member or any alternate appointee shall be filled by the appropriate Member-entity. In the event of such a vacancy, until such time as a replacement Authority Board Member is appointed by the applicable Member-entity the vacant member's alternate appointee shall be seated at the Diversion Authority Board. Vacancies of non-voting ex-officio members shall be filled by the Diversion Authority Board.

Section 3.04. Term. An Authority Board Member shall serve for such term as identified by the appointing Member-entity for that Authority Board Member. In the event the appointing Member-entity has not identified a term of appointment, it will be presumed that the appointment extends until the appointing Member-entity removes the appointee or designates a replacement. The term of an Authority Board Member who is also an elected or appointed member of the Member-entity that appointed him or her to the Diversion Authority Board shall terminate automatically whenever said Authority Board Member no longer serves as an elected or appointed member of said Member-entity unless said Member-entity re-affirms the appointment of said Authority Board Member.

ARTICLE 4. DIVERSION AUTHORITY BOARD MEETINGS

Section 4.01. Regular Meetings. The Diversion Authority Board may set a schedule for regular meetings or may, during a regular or special meeting, set the place, date and time of the next regular or special meeting. If no such meeting has been scheduled, the Chair may call a regular or special meeting, designating the place, date and time of such meeting. The Diversion Authority Board may cancel or postpone any regularly scheduled meeting.

Section 4.02. Special Meetings. Special meetings of the Diversion Authority Board may be called by the Chair and must be called by the Chair upon the request of a majority of the Authority Board Members. The Chair shall designate the place, date and time of each special meeting.

Section 4.03. Location of Meeting. Unless otherwise specified in the applicable meeting notice, all meetings of the Diversion Authority Board shall be held at Fargo City Hall.

Section 4.04. Notice of Meetings.

- (a) Regular Meetings. Notice of any regular meeting shall be given at least seven (7) days previously thereto by written notice delivered personally, emailed or

mailed to each Authority Board Member and each alternate appointee at his or her business address, or by e-mail. The notice shall include an agenda generally describing the subject matter to be considered at the meeting. The failure to give notice to any Authority Board Member or alternate appointee of a regular meeting shall not affect the validity of the notice or prevent the holding of the regular meeting or the transaction of business thereat.

(b) Special Meetings. Notice of any special meeting shall be given at least one (1) day previously thereto by written notice delivered personally, emailed or mailed to each Authority Board Member and each alternate appointee at his or her business address, or by e-mail. The notice shall identify the business to be conducted at the special meeting. The failure to give notice to any Authority Board Member or alternate appointee of a special meeting shall not affect the validity of the notice or prevent the holding of the special meeting or the transaction of business thereat.

Section 4.05. Authority Board Member's Waiver of Notice. The attendance of a Authority Board Member at a meeting (regular or special) shall constitute a waiver of notice of such meeting, except where a Authority Board Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Whenever any notice is required to be given to any Authority Board Member under the provisions of these Bylaws or the Limited JPA, a waiver thereof in writing signed by Authority Board Member entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 4.06. Miscellaneous Notice Provisions. If mailed, a notice shall be deemed to be delivered when deposited in the United States mail addressed as provided in Section 4.04, with postage thereon prepaid. If notice is given by e-mail, such notice shall be deemed to be delivered when the e-mail is delivered to the recipient. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

Section 4.07. Organization of Meetings. The Chair, or in the absence of the Chair, the Vice-Chair, shall preside over all meetings of the Board. If neither the Chair nor the Vice-Chair is present, the Authority Board Members present shall designate an Authority Board Member to preside over the meeting.

Section 4.08. Remote Communications. Meetings of the Board may be conducted by any means of remote communication (e.g., videoconference or teleconference) through which all of the directors may simultaneously participate with each other during the meeting. Participation in a meeting by remote communications constitutes presence in person at the meeting.

Section 4.09. Public Meetings. All Board meetings shall be open to the public to the extent required by North Dakota open meeting laws, Minnesota open meeting laws, or both as applicable, including any applicable notice requirements.

ARTICLE 5. QUORUM AND VOTING

Section 5.01. Quorum.

- (a) A quorum to transact business at any meeting of the Diversion Authority Board requires attendance by a majority of the voting Authority Board Members.
- (b) If a quorum is not present at any regular or special meeting of the Diversion Authority Board, the Authority Board Members that are present may not take action upon any matter other than to continue the meeting to a future date, time and place.

Section 5.02. Action by the Diversion Authority Board. The number of votes required to approve a matter before the Diversion Authority Board is governed by the Limited Joint Powers Agreement.

ARTICLE 6. OFFICERS

Section 6.01. Elections of Officer. The officers of the Diversion Authority Board shall consist of a chair (the "Chair") and a vice-chair (the "Vice-Chair"). The Diversion Authority Board may also establish an office of the secretary (the "Secretary") and a treasurer (the "Treasurer"). At the first regular meeting of the Diversion Authority Board and at the first meeting of the Diversion Authority Board held each calendar year, the Diversion Authority Board shall elect such officers. Each officer shall serve until his or her successor is elected and qualified, unless sooner removed pursuant to these Bylaws. The Chair and the Vice-Chair must be Diversion Authority Members. Neither the Secretary nor the Treasurer must be members of the Diversion Authority Board. The office of Secretary and Treasurer may be held by the same individual.

Section 6.02. Removal of Officers. Officers may be removed by a 2/3 vote of the Diversion Authority Board at any time, with or without cause.

Section 6.03. Vacancies. A vacancy in an office because of death, resignation, removal, disqualification, or other cause may be filled for the unexpired portion of the term in the manner determined by the Diversion Authority Board.

Section 6.04. Officer Responsibilities.

- (a) Chair. The Chair shall be the principal executive officer of the Diversion Authority. The Chair shall preside at all meetings of the Diversion Authority Board of Directors, shall appoint all committee members as needed, shall sign and execute all authorized contracts, notes or other obligations in the name of the Diversion Authority, unless otherwise authorized by the Diversion Authority Board, shall call special meetings of the Diversion Authority Board when the Chair deems it necessary, and shall do and perform, in addition to the usual duties pertaining to the office, such other duties as from time to time may be assigned by the Diversion Authority Board.

(b) Vice-Chair. The Vice-Chair shall preside at meetings of the Diversion Authority Board in the absence of the Chair and will perform such other duties as from time to time may be assigned by the Diversion Authority Board.

(c) Secretary. The Secretary shall attend all meetings of the Diversion Authority Board, and when required, all meetings of standing committees, record all proceedings of the meetings in a book to be kept for that purpose, give or cause to be given notice of all meetings of the Diversion Authority Board, record all votes of the Diversion Authority Board, prepare and distribute minutes of all meetings, and perform other duties prescribed by the Diversion Authority Board or the Chair.

(d) Treasurer. The Treasurer shall keep accurate financial records for the Diversion Authority, deposit all money, drafts, and checks in the name of and to the credit of the Diversion Authority in the banks and depositories designated by the Diversion Authority Board, perform all recording and fiscal duties relating to the billing and collection of amounts owed the Diversion Authority, prepare all checks, drafts, or orders for payment of money issued in the name of the Diversion Authority for signature by the Chair, prepare annual budgets for the Diversion Authority, and perform other duties prescribed by the Diversion Authority Board or the Chair. The Diversion Authority may delegate treasury management functions to one of its member entities or to some third party in addition to, or in lieu of, the appointment of a Treasurer and, in such case, the responsibilities of the provider of such services may be contained in a separate agreement with such entity or third party.

Section 6.05. Delegation. Notwithstanding the duties, responsibilities and authorities of the officers, herein before provided in this Article, the Diversion Authority Board, may, except as otherwise limited by law, delegate, wholly or in part, the responsibility and authority for, and in the regular or routine administration of one or more of the duties of a specified officer to one or more agents, or employees of the Diversion Authority who are not directors. To the extent that the Diversion Authority Board does so delegate duties, responsibilities, or authorities of a specified officer, that officer as such, shall be released from such duties, responsibilities and authorities.

ARTICLE 7. COMPENSATION

Officers and Authority Board Members shall receive no compensation for their service on behalf of the Diversion Authority, but shall be entitled to reimbursement for mileage and expenses as provided by law and as determined by a protocol established by the Diversion Authority Board. See generally: N.D.C.C. § 44-08-03 *et seq.*

ARTICLE 8. STAFF

Subject to the terms of the Limited Joint Powers Agreement, the Diversion Authority Board has the authority to appoint and fix the compensation and reimbursement of expenses of such employees as the Diversion Authority Board deems necessary to conduct the business and affairs of the Diversion Authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the Diversion Authority in its proceedings.

ARTICLE 9. FINANCIAL RECORDS REVIEW

The financial records of the Diversion Authority shall be reviewed by an independent certified public accountant selected by the Diversion Authority Board at such times as may be required by law or as established by the Diversion Authority Board.

ARTICLE 10. AMENDMENT TO BYLAWS

These Bylaws may be amended by the Diversion Authority Board. In addition to the requirements set forth in Section 5.01, a quorum for purposes of a meeting at which any amendment or modification of these bylaws is to be considered requires the presence of 2/3 of the Diversion Authority Members. Unless waived by all Diversion Authority Members, written notice of all proposed Bylaw changes must be submitted to each Diversion Authority Member not less than thirty (30) days prior to the date of the meeting at which such changes are to be considered.

Effective Date: 11-10-2011



Darrell Vanyo, Chair