

# JOINT POWERS AGREEMENT (JPA) SUMMARY

## WHAT IS IT?

- An amendment to the existing Limited Joint Powers Agreement
- A permanent agreement between “Member Entities”
- Establishes duties, responsibilities, obligations regarding the Flood Diversion Project

## WHY DO WE NEED IT?

- Limited Joint Powers Agreement (LJPA) – 2011  
*Article XIII*

*“It is the intent of the members that this agreement will terminate on or before the execution of the PPA.”*

## ARTICLE I – AMENDMENT

- JPA repeals and replaces the LJPA in entirety
- If a Member Entity fails to approve JPA
  - *Deemed a non-party to JPA*
  - *No longer Member Entity of Flood Diversion Board of Authority (DA), becomes “Former Member Entity”*
  - *Former Member Entity’s positions on Board redistributed to Member Entities in same state*

## ARTICLE II – DEFINITIONS & INTERPRETATION

- Contains definitions of terms used throughout the JPA

## ARTICLE III – PURPOSE

- To allow Member Entities to work together, avoid duplication, maximize efficiencies
  - *Per N.D.C.C. § 54-40-1 & Minn. Stat. §471.59*
- Section 3.03
  - *Creates separate political subdivision “Flood Diversion Board of Authority” (Diversion Authority or DA)*
  - *DA may not exercise a power unless expressly granted by the JPA*

## ARTICLE IV – DIVERSION AUTHORITY BOARD

- Composition of Board (Section 4.01)
- *12 Members from 6 Member Entities & Upstream Group*
- *Increases # of MN Members, ND has majority of Members*
- Chair: voting member, no veto power, 1-year terms rotate between Fargo Mayor, Moorhead Mayor, & a Cass County Commissioner, Current Chair remains until 12/31/16
- Vice Chair: must be from different state as Chair
- Board Members not paid or employed by DA
- No set terms, at discretion of appointing Gov. Body
- Voting (Section 4.08)
  - *Each Board Member gets 1 vote*
  - *Simple majority of those present, no proxy votes*
- Meetings (Section 4.09)
  - *Regular Meeting, 2<sup>nd</sup> Thursday every month 3:30 p.m.*
  - *Annual Meeting, 2<sup>nd</sup> Thursday of January 3:30 p.m.*
  - *Special Meetings can be called*
  - *Location, Fargo City Hall*
- Quorum (Section 4.13)
  - *6 Board Members*
  - *At least 6 Board Members needed to conduct business*

## ARTICLE V – COMMITTEES

- Land Management Committee (Section 5.02)
  - *Acquisition, financing, management of Project Property*
- Finance Committee (Section 5.06)
  - *Budgets, expenses, funds, finance matters of Project*

- Members of these committees make recommendations to the DA Board
- DA Board may establish other boards or committees to advise, investigate, or perform quasi-judicial functions (Section 5.01)

#### **ARTICLE VI – DIVERSION AUTHORITY POWERS**

- Receipt of Funds – Hire/fire Executive Director – Purchasing, Expenses, Sales – Sue & Be Sued – Public Information Meetings – Appoint & Terminate Project Consultants – Hire Employees – Manage, Finance, Maintain Project – Budget – Insurance – Land Acquisition – Amend & Enforce JPA – Hire engineers, contractors, consultants, accountants – Contract with Public Entities – Enter into PPA – Hire/fire Lobbyist – P3 Agreements
- If unclear on power to act, refrain from acting until written authority received from a majority of Member Entities

#### **ARTICLE VII – FINANCE/BUDGET**

- The DA Board is responsible for financial affairs of Diversion Authority
- Finance Committee recommends, with assistance of Executive Director, the annual budget, approved no later than 1<sup>st</sup> regular meeting of the DA Board in November
- Executive Director prepares & enforces the budget

#### **ARTICLE VIII – SOURCES OF REVENUE**

- Project financed from sales & use taxes, special assessments, grants, donations, and any other funds from Member Entities (“Pledged Revenues”)
- Section 8.02 – lists Member Entities and details of Pledged Revenues
- Debt Obligations, Milestone Payments & Availability Payments: paid from Pledged Revenues
- If Pledged Revenues insufficient: propose sales and use tax increase to voters (Fargo/Cass County); and/or special assessments (Cass County)
- Sunsets on Pledged Revenues (Section 8.09)

#### **ARTICLE IX – FINANCIAL OVERSIGHT/FISCAL AGENT**

- Under oversight of DA and Finance Committee:
  - *City of Fargo will act as Fiscal Agent*
  - *Cass County Auditor, City of Fargo Finance Director, City of Moorhead Finance Director, & CCJWRD Secretary-Treasurer*
    - will develop written administrative procedures & establish funds for the management of Project funds, payments, payment requests, tax & arbitrage compliance, handling financial records
- Fiscal Agent = City of Fargo (or other Member Entity appointed under Section 9.07)
- Fiscal Agent provides reports & recommendations re: management of financial matters to Finance Committee
- Finance Committee makes recommendations to DA from Fiscal Agent’s reports

#### **ARTICLE X – ISSUANCE OF DEBT FOR THE PROJECT**

- Project requires issuance of Debt Obligations by 1 or more Member Entities to:
  - *Pay direct costs of Project, fund Non-Federal Project Costs, refund prior temporary debt, or make Availability and/or Milestone Payments*
- Allowed by ND and MN statutes
- Specific terms of Debt Obligations will be set by resolution of DA & Member Entity issuing Debt Obligation
- Member Entities agree to maintain tax exempt status

#### **ARTICLE XI – PROJECT PROCEDURES & COST SHARE**

- Governs the bidding, contracting, and payment procedures for the Project
- Cost Share for Total Project Costs (Section 11.09)
- DA is expressly assuming risk that Minnesota may not fully fund or provide appropriations for the Minnesota Member Entities’ share of Total Project Costs

#### **ARTICLE XII – OPERATIONS AND MAINTENANCE**

- DA will oversee long-term management, operations & maintenance of Project

#### **ARTICLE XIII – EXECUTIVE DIRECTOR**

- The chief administrative officer of DA

- The chief purchasing agent of DA
- Appointed by DA
- Deputy Executive Director
  - *Cass County Administrator or Fargo’s City Administrator*

**ARTICLE XIV – INSURANCE & LIABILITY**

- For liability purposes:
  - *Member Entities actions under JPA construed as “cooperative activity”*
  - *Member Entities shall be deemed “single governmental unit”*
- DA shall maintain liability coverage with ND Insurance Trust Fund
- Or, may obtain equivalent private liability coverage
- DA may procure coverage for P3 Developer

**ARTICLE XV – OWNERSHIP OF PROPERTY ACQUIRED FOR THE PROJECT**

- Acquisition of easements, rights of way, and land for the Project is for public need and purpose
- Diversion Channel & Associated Infrastructure (DCAI): held in name of CCJWRD, during & after construction
- In-Town Levees in Fargo: during construction held by CCJWRD, City of Fargo after construction
- In-Town Levee in Moorhead: held in name of City of Moorhead
- Wild Rice Inlet & Control Structure: held in name of CCJWRD
- Red River Control Structure: held in name of BRRWD
- Southern Embankment & Retention Area in ND: held in name of CCJWRD
- Oxbow-Hickson-Bakke Levee: held in name of CCJWRD
- Southern Embankment & Retention Area in MN: held in the name of BRRWD
- Mitigation Projects: in name of DA, another political subdivision or Member Entity per an agreement

**ARTICLE XVI – THIRD PARTY BENEFICIARIES**

- P3 Developer may enforce terms of JPA if 1 or more Member Entities are in breach or default
- Debt Obligation Holders may enforce terms of JPA if 1 or more Member Entities are in breach or default

**ARTICLE XVII – ASSIGNMENT & CONTINUANCE OF OBLIGATIONS**

- Political subdivision created by JPA is the successor to the Limited Joint Powers Entity

**ARTICLE XVIII – TERM & TERMINATION OF THE AGREEMENT**

- Term is indefinite, shall continue until terminated or rescinded
- May only be terminated by mutual consent of all Member Entities

**ARTICLE XIX – DISPUTE RESOLUTION**

- Member Entities use best efforts to ensure various provisions of JPA are fulfilled & act in good faith to resolve disputes in equitable & timely manner
- If unable to resolve disputes, Member Entities agree to mediate first
- If not resolved 30 days after end of mediation proceedings, then litigation

**ARTICLE XX – RIGHTS UPON REFUSAL & WITHDRAWAL**

- DA may make Requested Project Actions to Member Entities
- A Member Entity could be removed from DA & JPA for not having “Rational Basis” for a non-action
- Provision for Voluntary Withdrawal
- Membership of DA upon removal or withdrawal of a Member Entity, positions redistributed

**ARTICLE XXI – MISCELLANEOUS COVENANTS**

- Member Entities may enter into sub-agreements, sub-joint powers agreements
- JPA has no effect on the City Loan, County Loan, or related Intergovernmental Agreements, Supplemental Intergovernmental Agreements, Loan Agreements or Promissory Notes, or Sub-Agreements entered into by the 3 ND Entities

**ARTICLE XXII – GENERAL PROVISIONS**

- Standard clauses