

**Agreement for Cost Participation
City of Minot Floodway Property Acquisition**

1. **PARTIES.** This agreement is between the State of North Dakota (State), by and through the State Water Commission (Commission), and the city of Minot, North Dakota (City). **This agreement replaces and supersedes all previous floodway property acquisition agreements between the parties.**

2. **COMMISSION'S RESPONSIBILITY AND INTENT.** Commission shall provide City with funds, not to exceed \$17,750,000, to reimburse 75% of the costs incurred in City's Floodway Property Acquisition (Acquisition) to provide long-term flood mitigation benefits that compliment, but do not duplicate, federal funding of flood mitigation Acquisitions. The funds are contingent on availability of funds and conditions of this agreement. Commission's intent in providing this funding to City is merely to help City financially afford Acquisition. City retains sole and absolute discretion in the manner and means of carrying out Acquisition, except to the extent specified in this agreement.

3. **CITY'S RESPONSIBILITIES.** City shall:

- a. Adopt an acquisition plan that includes: a description and map of properties to be acquired; the estimated cost of property acquisitions, including contract costs and removal of structures; a statement regarding the benefit of acquiring the properties; and information regarding the ineligibility for federal Hazard Mitigation Grant Program (HMGP) funding. This plan must also include a description of how the applicant will ensure there is not a duplication of benefits.
- b. Provide justification acceptable to Commission describing the property's ineligibility to receive federal HMGP funding and other federal funding. Disaster Community Development Block Grant funding may be used for local cost share and will not be considered as federal funds. If inability to receive federal funding is not shown to the satisfaction of Commission, following Commission's consultation with the North Dakota Department of Emergency Services, the requests for costs share will be returned to City for submittal for federal funding prior to use of Commission funds.
- c. Acquire properties as described in the plan.
- d. Within six months of closing date, remove existing structures on property acquired. Commission may extend deadline upon good cause shown by City.
- e. Submit full documentation of acquisition costs to Commission.

- f. If any structures, or materials from the structures, acquired under this program are re-sold, City shall reimburse Commission 75% of the sale price of any structure, or materials from the structure, within 60 days of the re-sale closing date.
- g. Ensure all applicable permits (federal, state, and local) are obtained.
- h. Submit a perpetual restrictive covenant similar to the restrictions required by the federal HMGP funding, with the additional exceptions being that the property may be utilized for flood control structures and related infrastructure, paved surfaces, and bridges. These covenants must be recorded either in the deed or in a restrictive covenant that would apply to multiple deeds.
- i. Comply with all North Dakota laws governing procurement requirements for competitive bids, advertising, and awarding of contracts for the Acquisition.
- j. Submit requests for payment according to the requirements of this agreement and document locally funded cost share.
- k. Fund the local cost share amount.

4. ELIGIBLE COSTS. Commission shall have sole discretion to determine eligible costs and availability of Commission funds. In addition, Commission shall have sole discretion to determine whether City has appropriately fulfilled its local match requirements. Funds reimbursed for cost sharing to City for eligible land acquisition costs incurred are not limited to any aggregate amount other than the total amount provided by this agreement (\$17,750,000). Purchase and removal of structures are eligible acquisition costs. All contracted costs directly associated with the acquisition will be considered eligible for cost share. Contracted costs may include: appraisals, legal fees (title and abstract search/update, property survey, closing costs, etc.), hazardous materials abatement needs (asbestos, lead paint, etc.), and site restoration. Salary and administrative costs incurred by the local sponsor shall not be cost shared.

5. PAYMENT. City shall submit to Commission written requests for payment that shall include an itemization of actual costs and a certification, signed by an appropriate City official, or designated agent, that all submitted itemized costs are within the eligible cost categories provided for in this agreement.

6. INSURANCE. State and City each shall secure and keep in force during the term of this agreement, from an insurance company, government self-insurance pool, or government self-retention fund authorized to do business in North Dakota, commercial general liability with minimum limits of liability of \$250,000 per person and \$500,000 per occurrence.

In addition, City shall require all subcontractors, other than state employed subcontractors, before commencement of an agreement between City and the subcontractor, to secure and keep in force during the term of their contract, from insurance companies authorized to do business in North Dakota, the following insurance coverages:

- a. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
- b. Automobile liability, including Owned (if any), Hired, and Non-owned automobiles, with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
- c. Workers compensation coverage meeting all statutory requirements.

The insurance coverages listed above must meet the following additional requirements:

- d. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of City. The amount of any deductible or self-retention is subject to approval by State.
- e. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form, and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by State. The policies shall be in form and terms approved by State.
- f. The insurance required in this agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty days' prior written notice to Commission.
- g. City shall furnish a certificate of insurance to Commission prior to commencement of this agreement.
- h. Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.

7. **BREACH.** Violation of any provision of this agreement by City constitutes breach of this agreement. A breach obligates City to reimburse Commission for all funds related to each property acquisition impacted by the breach and relieves Commission of all obligations under this agreement.

8. **AGREEMENT BECOMES VOID.** This agreement is void if not signed and returned by City within 60 days of Commission's signature.

9. TERMINATION.

- a. Commission may terminate this agreement effective upon delivery of written notice to City, or a later date as may be stated in the notice, under any of the following conditions:
 - (1) If Commission determines an emergency exists.
 - (2) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to provide the funds necessary to comply with this agreement. The parties may modify this agreement to accommodate a reduction in funds.
 - (3) If federal or state laws or rules are modified or interpreted in a way that any part of this program is no longer allowable or appropriate for acquisition under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
 - (4) If any license, permit, or certificate required by law, rule, or this agreement is denied, revoked, suspended, or not renewed.
 - (5) If Commission determines that continuing the agreement is no longer necessary or would not produce beneficial results commensurate with the further expenditure of public funds.
- b. Any termination of this agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to termination.
- c. The rights and remedies of any party provided in this agreement are not exclusive.

10. APPLICABLE LAW AND VENUE. This agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this agreement must be brought in the District Court of Burleigh County, North Dakota.

11. SEVERABILITY. If any term of this agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms must not be affected, and if possible, the rights and obligations of the parties are to be construed and enforced as if the agreement did not contain that term.

12. SPOLIATION – NOTICE OF POTENTIAL CLAIMS. City agrees to promptly notify Commission of all potential claims that arise or result from this agreement. City shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Commission the opportunity to review and inspect the evidence, including the scene of an accident.

13. **MERGER.** This agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this agreement. This agreement may not be modified, supplemented, or amended in any manner except by written agreement signed by both parties.

**NORTH DAKOTA STATE WATER
COMMISSION**

By:



TODD SANDO, P.E.
Chief Engineer and Secretary

Date: 6/5/12

**CITY OF MINOT,
NORTH DAKOTA**

By:



CURT ZIMBELMAN
Mayor

Date: 6/14/12