AGREEMENT BETWEEN THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES, THE FARGO-MOORHEAD FLOOD DIVERSION BOARD OF AUTHORITY, THE CITY OF MOORHEAD, AND THE CITY OF FARGO

WHEREAS, on October, 3, 2016, the Minnesota Department of Natural Resources (DNR) issued Findings of Fact, Conclusions and Order denying Dam Safety and Public Waters Work Permit Application 2016-0386 for the Fargo-Moorhead Flood Risk Management Project (Order);

WHEREAS, on October 28, 2016, the Fargo-Moorhead Flood Diversion Board of Authority (Diversion Authority) submitted a written demand for a contested case hearing on Permit Application 2016-0386 under Minn. Stat. § 103G.311, subd. 5;

WHEREAS, on January 13, 2017 the DNR was granted interventiion in the matter *Richland/Wilkin Joint Powers Authority v. U.S. Army Corps of Engineers et al* (Civ. No. 13-2262) currently pending in the Minnesota Federal District Court challenging ongoing activities related to the construction of the Fargo-Moorhead Flood Risk Management Project (the Project);

WHEREAS, City of Moorhead, Minnesota (Moorhead), and the City of Fargo, North Dakota (Fargo), are members of the Diversion Authority and are interested in the Fargo-Moorhead Flood Risk Management Project and in the resolution of the contested case hearing;

WHEREAS, Minnesota Rule of Evidence 408 as adopted by the Minnesota Supreme Court recognizes that it is in the public interest to encourage consensual resolution of disputes and thus provides protection to offers and demands made during settlement discussions as well as to conduct or statements made during the course of settlement negotiations;

WHEREAS, Federal Rule of Evidence 408 recognizes that it is in the public interest to encourage consensual resolution of disputes and thus provides protection to offers and demands made during settlement discussions as well as to conduct or statements made during the course of settlement negotiations;

WHEREAS, the parties to this agreement wish to avoid unnecessary litigation and promote frank and productive settlement discussions;

WHEREAS, meaningful settlement discussions require the disclosure of documents and other information by and among the parties;

WHEREAS, the parties wish to provide appropriate protection for information disclosed to each other during settlement discussions;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. This agreement applies to "settlement information," which means any statement, conduct, document, or other information made or disclosed during communications between or among representatives of the DNR, the Diversion Authority, Moorhead, and Fargo (Parties) or any subsequent signatories to this agreement in order to develop and evaluate potential revisions

to Permit Application 2016-0386 and the Project that might resolve the reasons for DNR's permit denial and the federal litigation;;

2. The Parties agree that they shall not inquire in any fashion about settlement information during the discovery phase of any legal or administrative proceedings. The Parties agree that they shall not disclose settlement information or use any settlement information at any point during the course of any federal or Minnesota state legal or administrative proceedings.

3. Notwithstanding the requirements of Paragraph 2, the Parties understand, however, that each may obtain independent access through discovery or other proceedings to the same facts or information that may also be disclosed during the discussions referenced in Paragraph 1 above, and that the mere fact that the facts or information are also disclosed during the discussions will not limit either party's ability to use or refer to such facts or information independently obtained. This provision does not, however, permit a party to use settlement information that is made accessible solely because it was disclosed by a party to a third party including the media, in the course of any federal or Minnesota state legal or administrative proceeding.

4. Any Party may terminate its participation in this agreement with five businessdays prior written notice to all other Parties. However, the provisions of this agreement shall continue to apply to all settlement information exchanged during the pendency of this agreement.

5. Unless this agreement has been otherwise terminated pursuant to paragraph 5 of this agreement, this agreement shall automatically expire on by written mutual agreement of the parties.

6. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this agreement and to legally bind such Party to all terms and conditions of this document.

7. This agreement may be amended to add additional parties by written consent of all Parties through execution of a signature page identifying that additional Party.

SIGNATURE

The Department of Natural Resources consents to the terms and conditions of this agreement by its duly authorized representative on this _____ day of January 2017.

By: _____
Barb Naramore, Assistant Commissioner
Minnesota Department of Natural Resources

SIGNATURE

The Fargo-Moorhead Flood Diversion Board of Authority consents to the terms and conditions of this agreement by its duly authorized representative of this ____ day of January 2017.

By: _____

Fargo-Moorhead Flood Diversion Board of Authority

SIGNATURE

The City of Moorhead, Minnesota consents to the terms and conditions of this agreement by its duly authorized representative on this ____ day of January 2017.

By: _____

City of Moorhead, Minnesota

SIGNATURE

The City of Fargo, North Dakota consents to the terms and conditions of this agreement by its duly authorized representative on this _____ day of January 2017.

By: _____

City of Fargo, North Dakota