

Engineers (“U.S.A.C.E.”) as a result of the relationship, contractual or otherwise, between the U.S.A.C.E. and the Non-Federal Sponsors; said indemnity and hold-harmless obligation applying to any act or failure to act on the part of one or more of the Non-Federal Sponsors occurring prior to or after the effective date of this agreement. Should a party to this Agreement be prohibited by law from indemnifying another party to this Agreement the party so prohibited agrees to pay to the Diversion Authority the party’s proportionate share, as determined by separate agreement between the parties, of any monetary amount paid to any person who successfully makes or asserts a claim against the Non-Federal Sponsors, or either of them.

ARTICLE VIII. BUDGET

The authority of the Diversion Authority is limited to the budgeted funds that have been approved by the members to this Agreement. The members hereby agree to a budget for the current federal fiscal year 2011, and the federal fiscal year 2012 which ends September 30, 2012, of \$15,000,000 for the planning, design and development of the Project as set forth in Article II(a), above, and the sum of \$1,500,000 for the purposes set forth in Article II(b) through (d), including the hiring of a Project Manager and a Lobbyist. With respect to the said \$15,000,000 budgeted herein, it is intended that such funds will be utilized to match the federal dollars in accordance with the obligations of the Non-Federal Sponsors.

The Diversion Authority shall develop an initial proposed budget for the planning, design and development of the Project and for the Lobbyist and Project

Manager which shall not exceed the amounts set forth in the preceding paragraph.

The proposed initial budget shall include all fees and expenses relating to the planning, design and development of the Project prior to the Project's authorization, including fees associated with employing a Project Manager and Lobbyist. When the amounts initially approved by all members in above paragraph are expended, the Diversion Authority shall propose a new budget, which must be approved by all of the members through a vote of their governing bodies.

ARTICLE IX. PROJECT PLANNING, DESIGN AND DEVELOPMENT COSTS

The planning, design and development of the Project will be partially funded with Federal monies and partially funded with local monies. The local cost share will be that portion of the total cost of the Project through execution of the PPA not provided by the Federal Government (hereinafter the "Non-Federal Design Cost"). The Minnesota share of the total Non-Federal Design Cost shall be ten (10%) percent. The North Dakota share of the total Non-Federal Design Cost shall be ninety (90%) percent. The Minnesota members to this Agreement have determined, or will determine, by separate agreement the share of the Minnesota cost each will bear. The North Dakota members to this Agreement have determined, or will determine, by separate agreement the share of the North Dakota cost each will bear.

With respect to the 10% Minnesota share of the Non-Federal Design Cost, it is understood and agreed that that North Dakota members will initially pay all