



Fargo-Moorhead Metropolitan Council of Governments

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CASS COUNTY COMMISSION

TO: Metro COG Member Jurisdictions
FR: William A. Christian
RE: Submit for approval the Metro COG Articles of Association and Fiscal Agreement

Metro COG requests time on your governing body's agenda be scheduled to review and approve the final draft of the Metro Articles of Association Amendment and the associated Fiscal Agreement. Draft copies of both documents were presented earlier this year to the governing bodies of the voting member jurisdictions for review. Copies of the final drafts of both documents are attached.

Metro COG requests action by the respective member jurisdictions to approve the documents and complete the relevant resolution for each document. If approved, Metro COG requests return of two signed copies of each of the documents; one will be signed by the Policy Board and returned to each jurisdiction and one will be retained by Metro COG. Although not required, Metro COG is seeking concurrence from local government units representing 70% of the region's population, as well as the largest city (City of Fargo). The Metro COG Policy Board will take action early in 2016 to approved the amended Articles of Association and execute the Fiscal Agreement.

Staff is not requesting a presentation before the jurisdictions' governing body, only consideration and approval of the two documents. Staff will be in attendance at your scheduled meeting to answer any questions on the documents.

Please contact me if you have any questions or concerns on this request.

SUGGESTED MOTION:

Approve the amended Articles of Association for the Fargo-Moorhead Metropolitan Area Council of Governments (MetroCOG) and authorize the chair to sign the fiscal agreement for the operation of the Fargo-Moorhead Area MetroCOG.

Articles of Association

Fargo-Moorhead Metropolitan Area
Council of Governments

As amended, January 2016



FINAL DRAFT

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Amendment History

- Revised:*
- April, 1995*
- March, 2000*
- July, 2001*
- May, 2005*
- December, 2006*
- September, 2007*
- August, 2011*
- September, 2014*
- January, 2016 (pending)**

**FARGO-MOORHEAD METROPOLITAN COUNCIL OF GOVERNMENTS
ARTICLES OF ASSOCIATION**

ARTICLE I. ORGANIZATION

- 1.01. **Name of Organization.** The name of the organization formed by these Articles of Association, hereinafter referred to as the “Articles”, is the Fargo-Moorhead Metropolitan Council of Governments, hereinafter referred to as the “Council”.
- 1.02. **Statutory Authority.** The undersigned general and special purpose units of local governments, boards, agencies, commissions and authorities enter into this agreement under and by virtue of the power to do so. The Articles shall regulate and govern the affairs of that unincorporated association organized pursuant to the North Dakota Century Code 54-40, and Minnesota Statutes 471.59.
- 1.03. **Purpose.** The Council shall conduct and coordinate technical assistance activities, planning studies and special projects to address transportation and non-transportation problems and issues which are of metropolitan significance or where member jurisdictions request assistance subject to Council approval and availability of financial resources; shall disseminate information regarding comprehensive transportation planning and proposals for improvement of the Metropolitan Planning Area; and shall promote general public support for such plans and programs as the Council may endorse.
- 1.04. **Designated Metropolitan Planning Organization.** The Council shall perform area-wide transportation planning, as required in Federal Legislation, in the urban study boundary as the designated Metropolitan Planning Organization (“MPO”) for the greater Fargo-Moorhead Metropolitan area. The MPO is responsible for Continuing, Cooperative and Comprehensive (“3C”) transportation planning within the Metropolitan Planning Area Boundary (“MPAB”), as approved by the Council and the Governors of North Dakota and Minnesota, with concurrence of the Federal Highway Administration (“FHWA”) and Federal Transit Administration (“FTA”).
- 1.05. **Legal Entity.** The Council is hereby established as a separate legal entity by the member jurisdictions, with the power to sue or be sued, to enter into contracts, to hold title to real and personal property, and to do all other acts necessary to carry out required regional and transportation planning processes, subject to its approved Unified Planning Work Program (“UPWP”), budget and available funding.
- 1.06. **Geographic Limits.** The geographic limits within which the Council will perform its normal functions under these Articles shall be those geographic areas of Cass County, North Dakota and Clay County, Minnesota as approved by the Council that comprise the Metropolitan Planning Area (“Area”).
- 1.07. **Expansion or Contraction of Geographical Limits.** Upon recommendation of the Council, the geographic limits of the Area may be expanded or contracted upon an

affirmative vote of sixty-six percent (66%) of the total voting membership of the Council.

- 1.08. **Expansion of the MPAB.** Expansion or contraction of the MPAB will require a vote of sixty-six percent (66%) of the total voting membership of the Council, approval of the North Dakota and Minnesota Departments of Transportation and concurrence of the FHWA and FTA.
- 1.09. **Temporary Expansion of Geographic Limits.** The geographic limits of the Area may be expanded temporarily by a special interlocal cooperation agreement upon an affirmative vote of sixty-six (66%) percent of the total membership of the Council.

ARTICLE II. DECLARATION OF POLICY

- 2.01. The Council finds and declares that the people within the Area, have a fundamental interest in the orderly development of the Area.
- 2.02. The Council further finds and declares:
 - a) That the members have a positive interest in the preparation and maintenance of a long term comprehensive plan for the development of the Area to serve as a guide to the political subdivisions within the Area;
 - b) The continuing growth of the Area presents problems that are not confined to the boundaries of any single County or City;
 - c) That the Area, by reason of its governmental jurisdictions, presents special problems of development that can be dealt with best by a Metropolitan Council of Governments;
 - d) That the Area is well adapted to unified consideration; and
 - e) That in order to assure, insofar as possible, the orderly and harmonious development of the Area to provide for the needs of further generations, it is necessary for the people of the Area to perform metropolitan planning and for the Council to serve as a coordinating agency to harmonize the activities of federal, state, and local agencies, and to render assistance and create public interest and participation in the development of the Area.

ARTICLE III. MEMBERSHIP

- 3.01. The MPO voting membership, as reflected in these Articles, must consist of no less than six members with a maximum of 15 members apportioned based on action of the Fargo Moorhead Metropolitan Council of Governments Policy Board, the exact number for each jurisdiction to be determined on an equitable geographic basis based on agreement among the affected units of general purpose local governments as required by federal rules and regulations. In determining the composition of the Policy Board:
 - a) The maximum number of Policy Board members shall not be extended without due consideration of the affected units of general government as required by

federal rules and regulations and approval by the Governors, or their designees, of the States of North Dakota and Minnesota;

- b) Representatives from each county shall compose not less than one member each for Cass County, North Dakota and Clay County, Minnesota.
- c) Representatives from each charter city, the cities of Dilworth, MN; Fargo, ND, Moorhead, MN and West Fargo, ND shall compose not less than one member each;
- d) No one jurisdiction may maintain more than 50% of the total Policy Board Votes;
- e) Any authority or agency created by law to perform transportation functions that is not under the jurisdiction of local government representatives on the Policy Board shall be provided voting membership on the Policy Board;
- f) The governing body of a governing entity and signatory to Articles of Association, and subsequent amendments of the Articles of Association, as the appointing authority and designated for membership on the Policy Board, shall select a member(s) to represent them and serve on the Policy Board;
- g) Each unit of local government at a minimum shall be represented by its mayor or elected official(s), be it City Commissioner(s) in North Dakota or City Council Member(s) in Minnesota;
- h) Members assigned to the Policy Board by the appointing authority who are not elected officials shall be permitted within the maximum number of Policy Board composition as stated, and in numbers agreed to by the units of general government and;
- i) The membership of the Policy Board shall be constant with the Articles of Association that creates the Metro COG.

- 3.02. The above noted representatives shall be appointed annually by their respective governing bodies.
- 3.03. Each governing body shall annually approve a list of alternate members. Such alternates shall have full voting rights in the absence of designated members.
- 3.04. No jurisdictions' dues will exceed fifty percent (50%) of total annual dues. This provision shall be reviewed in conjunction with the United State Census Bureau ("Census Bureau") decennial census, or upon an affirmative vote of sixty-six percent (66%) of the total voting membership of the Council to accept inter-census population estimates from the Census Bureau, American Communities Survey (ACS) or similarly credible source.
- 3.05. Municipalities that are within the Council's Metropolitan Planning Area with a population of 600 or more shall be eligible for Associate Membership on the Council. Associate Members will be granted ex-officio non-voting status on the Council and Transportation Technical Committee.

- 3.06. Associate Members will not pay dues to the Council. They shall have access to the Council's Federal planning funds through the development of the Unified Planning Work Program ("UPWP"). Associate Members shall be responsible for the non-Federal share of projects it requests which are included in the UPWP. Associate Members are also required to pay all indirect costs associated with projects it requests which are included in the UPWP.
- 3.07. The Council may from time to time extend full membership to an Associate Member. Full membership for Associate Members would be granted on a case by case basis as determined necessary by the Council. An action to authorize full membership requires a resolution of intent from the municipality and final approval by the Council.
- 3.08. **Term of Office.** Members of the Council serve at the discretion of their respective governing bodies.
- 3.09. **Vacancies.** Any vacancy shall be filled as soon as possible, and approval of such appointment shall be by the affected governing body.
- 3.10. **Certification.** Each member and alternate for the upcoming year shall be certified by means of a letter which shall become part of the records of the Council. This letter should be submitted to the Council prior to its January meeting or first meeting of each calendar year. In the event of unanticipated vacancies or membership changes, the local governing body shall certify its appointments to the Council by letter at an official Council meeting.
- 3.11. **Officers.** The Officers shall consist of a Chair, Vice Chair, and Council Secretary.
- a) *Chair* - The Chair shall preside at all meetings of the Council.
 - b) *Vice Chair* - The Vice Chair shall exercise the functions of the Chair in his or her absence or incapacity.
 - c) *Council Secretary* - The Metro COG Executive Director shall function as Council Secretary and exercise the functions of the authorized recording officer of the Council and shall be empowered to execute official instruments of the Council as authorized by the Council or Executive Committee.
- 3.12. **Member Privileges.** All members of the Council, both voting and Associate members, shall have the privilege to attend all meetings of the Council, Executive Committee or advisory committees or boards to which their membership extends as prescribed in these Articles, have access to federal transportation funds attributable to the Council and to avail their respective organizations of the technical and advisory services provided by the Council.
- 3.13. **Members in Good Standing.** Voting members of the Council shall be members in good standing when the respective member jurisdiction has fulfilled their financial obligations to the Council as prescribed in a separate fiscal agreement. Members in

good standing are afforded all privileges identified in 3.12 of this document and any additional privileges approved by the Council.

ARTICLE IV. FUNCTIONS

- 4.01. The Council shall prepare and adopt a plan and recommend policies for the development of the Area. The plan shall be based on existing conditions and probable future growth and shall be made with the general purpose of guiding coordinated and harmonious development that will promote the health, safety, and general welfare of the inhabitants. The plan shall also seek to promote efficiency and economy in the process of land development and population distribution so as to reduce the waste of resources; and it shall promote an efficient and economic utilization and conservation of the means of production of food and water, of drainage course, of sanitary and other facilities, and of natural resources.
- 4.02. The Council shall be the official review agency as promulgated by OMB Circular A-95 and for all local plans and projects that have area-wide implications.
- 4.03. The Council shall act as the official area-wide planning agency for the Metropolitan Area and shall be designated as a consortium of governments for federal legislation dealing with transportation and land use and as the official Area Planning Organization as required by the Department of Housing and Urban Development and Department of Transportation.

ARTICLE V. POLICY BOARD MEETINGS

- 5.01. The Council shall meet at least nine (9) times per year, and shall fix a time and place for the meetings. Special meetings may be called at the discretion of the Council, Policy Board Chair, Council Secretary or Executive Committee.
- 5.02. All meetings will be governed by procedures established under Chapter 44-04 Duties, Records and Meetings of the North Dakota Century Code.
- 5.03. The Council shall keep records of all its meetings. The Council records shall be public records available for inspection by any interested parties at reasonable times during regular office hours.
- 5.04. All Council meetings shall be open to the public and in facilities consistent with the Americans With Disabilities Act ("ADA").
- 5.05. **Quorum.** A quorum for the transaction of the Council business shall consist of a majority of the voting members of the Council, except that In the event that fewer than a majority of voting members is present at a regularly scheduled meeting, the Chair of the Policy Board may declare six members in attendance to be a quorum for the purpose of paying bills only.
- 5.06. **Bylaws.** Procedures and responsibilities of the Council shall be established and maintained through the *Metro COG Policy Board Bylaws* ("Bylaws"). The Bylaws shall

at a minimum include Council voting representatives, Council appointments, Council terms of office, voting procedures, roles and responsibilities of Council officers, meeting time and day, and accommodations for special Council meetings. In the case of any conflict between these Articles and the Bylaws, these Articles shall control.

- 5.07. **Rules of Order.** Except as otherwise required by these Articles, the Rules of Order shall be in accordance with the latest edition of *Robert's Rules of Order Revised*.

ARTICLE VI. EXECUTIVE COMMITTEE

- 6.01. The executive business of the Council shall be managed by an Executive Committee consisting of six Policy Board members; one from each of the voting member local jurisdictions.
- 6.02. The Executive Committee shall have the power to authorize the expenditure of funds, to enter into contracts, and to execute official instruments after being authorized by the Council. Further powers as delegated by the Council include those enumerated in the *Metro COG Operations Manual* or similar approved document.
- 6.03. The Executive Committee will meet as required to perform the duties assigned.
- 6.04. A meeting of the Executive Committee may be called by the Policy Board Chair, Vice Chair, Council Secretary or any member of the Executive Committee.
- 6.05. The Council Secretary will record the proceedings of the meetings and will provide a summary of those proceedings to the Executive Committee members at the next meeting.

ARTICLE VII. POWERS AND DUTIES

- 7.01. **Comprehensive Metropolitan Plan.** The Council shall prepare, maintain, and regularly review and revise a Plan for the Metropolitan Area. In the preparation of the Plan, the Council shall seek to harmonize the general plans of Cities and Counties within the Area, and the plans and planning activities of federal, state, and other public and private agencies, organizations and instrumentalities within the Area. Before adoption of the Plan or any revision thereto, it shall be referred to each City and County Planning Commission for review, and the Council shall allow a reasonable time for response. The Council shall seek the cooperation and advice of Cities and Counties, state and federal agencies, and organizations and others interested in the functions of the Council.
- 7.02. **Adoption.** After public input meetings and local governing bodies' approval, the Council shall adopt the Plan or portions thereof by majority vote. Any such portion shall correspond generally to one or more of the functional subdivisions of the subject matter which may be included in the Plan.

- 7.03. **Certification of Plan.** The Council shall certify copies of the adopted Plan or portions thereof, to the legislative bodies and planning commissions within the Metropolitan Area, to all public utilities affected by the Plan, and to any state or federal department or agency concerned with or affected by the Plan.
- 7.04. **Review of Local Plans, Proposals and Projects.** Whenever a plan, a portion thereof, amendment, or addition to a plan, has been adopted; or a project proposed by the local governing bodies or their respective planning commissions; the Council may provide comments, either at the request of the member governing body or by its own initiative, on any such plan or project which has a bearing on the Council's Metropolitan Transportation Plan, or other shared interests. The Council will provide its comments in a timely fashion. Such comments shall be considered advisory in nature, and will not constitute a formal approval or disapproval of the issue. Additionally, the Council shall review and comment on all matters referred to it in accordance with Federal or state law.
- 7.05. **Establishment of Committees, Subcommittees, Advisory Committees and Working Groups.** The Council shall have the authority to establish and monitor committees, subcommittee and working groups doing business for, or on behalf of, the Council.
- 7.06. **Transportation Technical Committee.** The Transportation Technical Committee (TTC) is hereby established. The Committee shall be composed of technical experts or their representatives as identified in the *Transportation Technical Committee Bylaws*. The purpose of the Committee is to discuss and coordinate technical transportation matters that are under consideration by the Council. Such matters may include highway, transit, auto/rail, bikeway and pedestrian planning activities. The TTC will act in an advisory capacity to the Council and its respective jurisdictions concerning transportation activities. The Council, by official action, may establish temporary subcommittees of the TTC and add appropriate subcommittee membership to analyze special transportation issues of interest to the Council.
- 7.07. **Other Committees.** Other committees shall be formed as deemed necessary by the Council. The Council shall approve all members of technical committees.
- 7.08. **Other Powers and Duties.** Other powers and duties of the Council shall be:
- a) To conduct studies and research pertaining to planning and development and to make recommendations based on these studies.
 - b) To provide, when possible, technical services to the member units of government.
 - c) Establish work programs and budgets for its operation in compliance with Federal, state and local law.
 - d) To receive and dispense grants and funds from federal, state or local governments or from individuals and foundations within the budget established or amended by the Council.

- e) To enter into agreements or contracts for any service necessary or convenient for carrying out the purposes of the Council.
- f) To recruit, hire and maintain staff personnel to assist the Council and official bodies of the Council.
- g) Provide for appropriate insurance, compensation and bonding coverage for protection of personal property, funds and records of the Council or other governmental or non-governmental agencies or organizations entrusted to the Council.
- h) To acquire, hold, improve, maintain, own, manage, or lease personal or real property, equipment or other facilities and receive and expend funds for providing services and to implement plans.
- i) To provide general administration policy as noted in the *Metro COG Personnel Policies* and the *Metro COG Administrative Policies and Procedures*.
- j) Establish and adopt operating Bylaws for the Council and its committees.
- k) Appoint advisory committee and boards to assist the Council and its members.
- l) Establish policies, goals and objectives to guide the operations of the Council and Metro COG staff.
- m) Establish fees, dues and other financial instruments to be paid by jurisdictions to fund its operations.
- n) Hire, supervise and dismiss the position of Executive Director.
- o) Designate both voting and non-voting members to the Transportation Technical Committee and other Council subcommittees as set forth through these Articles, a separate fiscal agreement and the Bylaws.
- p) To designate both voting and non-voting members to the official bodies of the Council.
- q) To solicit and receive funds from governmental and non-governmental agencies and organizations.
- r) To provide for a fiscal accounting and record system to provide for an annual audit thereof.
- s) The ability to invest idle funds.
- t) To designate an official depository and official depositories for the receipt, deposit and disbursement of Council, state, federal and other funds entrusted to the Council.
- u) To review and amend these Articles.

7.09. **Other Authority.** The Council shall exercise other powers consistent with the purposes of Metro COG as prescribed in these Articles, Federal and states rules,

regulations and guidance, or other powers provided that such powers may also be legally and independently exercised by each general purpose unit of government.

- 7.10. **Constraints on Authority.** The Council does not have the authority, except under contract with such jurisdictions, to exercise administrative authority over any member jurisdiction, other than to conduct planning studies for or within any general purpose units of government, boards, agencies, commissions, councils and authorities.
- 7.11. **Tax Levy.** The Council does not have the authority to levy taxes for the support of Metro COG operations or to implement programs or projects recommended by adopted studies, plans or reports.

ARTICLE VIII. EXECUTIVE DIRECTOR

- 8.01. The Council shall hire an Executive Director, hereinafter referred to as the "Director," who shall serve at the pleasure of the Council.
- 8.02. The Director shall be the chief administrative officer, authorized recording officer and technical advisor of the Council; direct and administer the preparation, maintenance, review, and revision of the Plan; and administer and execute all other functions and duties determined by the Council, including but not limited, to the following:
- a) Appoint, compensate and establish the numbers and duties of the staff. Compensation shall conform to salary schedules of the member units of government. Appointments and removals must be approved by the Council.
 - b) Serve, or designate personnel to serve, as the Secretary of the Council.
 - c) Serve, or designate personnel to serve, as chair to the Transportation Technical Committee by providing reasonable services to the organization preparing and issuing notices of meetings, distributing reports and performing other activities that the Technical Committee and Council may wish to undertake in the furtherance of their function.
 - d) Complete the specific responsibilities as described in COG's Operations Manual or similar approved document.
 - e) Recruit, hire and maintain staff personnel in support of the Council.

ARTICLE IX. FINANCIAL PROVISIONS

- 9.01. Prior to January 1 of each year, the Council shall adopt by majority vote a final UPWP and Budget required for the operation of the Council.
- 9.02. **Fiscal Agreement.** Local funds required for the Council's operations, local match for federal transportation funds and projects specific to one or multiple jurisdictions is provided for by a separate Fiscal Agreement. The Fiscal Agreement will be updated annually with the dues structure and related costs for each jurisdiction. In case of any conflict between the Fiscal Agreement and these Articles, these Articles shall control.

- 9.03. **Default on Fiscal Agreement.** In the event that one or more member jurisdiction defaults in their requested dues for the support of the Metro COG annual budget or requested special assessments, the member jurisdiction or jurisdictions are in default and Council members representing those jurisdictions surrender membership in good standing and surrender all voting and other privileges. Members not in good standing may have their membership reinstated upon satisfactory correction of default in requested dues or special assessments. All defaulted dues and special assessments shall be requested of each member jurisdiction remaining in good standing and shall be based on the ratio of the respective remaining jurisdictions' population to the total population of all remaining member jurisdictions according to the latest official census.
- 9.04. **Official Depository.** The Council will designate an official depository for the receipt, deposit and disbursement of its own funds and state, federal and other money entrusted to the Council; to solicit and receive funds from governmental and non-governmental agencies and organizations and to contract with a separate accounting service to provide fiscal accounting and record system to provide for an annual audit thereof, and to invest idle funds.
- 9.05. **Audit and Records.** Books, records, and accounts shall be kept as prescribed by State and Federal law. The Director shall sign all checks and vouchers and have the checks countersigned by the Chair or Vice Chair.

ARTICLE X. CODE OF ETHICS

- 10.01. A standard of conduct shall govern the performance of the Council's officers, board members, employees or agents engaged in the award and administration of contracts. No officer, board member, employee or agent of the Council may participate in the selection, award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the Parties set forth below has a financial or other interest in the firm selected for award:
- a) The officer, board member, employee or agent;
 - b) Any member of his or her immediate family;
 - c) His or her partner; or
 - d) An organization that employs, or is about to employ, any of the above.
- 10.02. Furthermore, officers, board members, employees or agents may neither solicit nor accept personal gratuities, favors or anything of monetary value from present or potential contractors or sub-recipients. The only exceptions to the policy include the following unsolicited gifts:
- a) A gift whose value does not exceed twenty-five dollars (\$25.00); or
 - b) The gift or receipt of awards, and memorial plaques or trophies, having nominal intrinsic value; or
 - c) The gift of breakfast, lunch, or dinner; or

- d) A project-related benefit that has been approved by the Executive Committee or Council.

10.03. Violation of these standards renders the sale, lease, or contract voidable by the Council or by a court of competent jurisdiction. Any monies paid as a result of such violation may be recovered by a joint and separate action from the Parties to the sale, lease, or contract and the Council official employee or its agent interested in the same. Any officer, employee, board member or agent of the Council proven to have violated these standards shall be subject to disciplinary action and the proven violations shall constitute just cause for the following actions:

- a) Reprimand;
- b) Suspension; or
- c) Discharge or forfeiture of office.

10.04. Reprimand or suspension shall constitute disciplinary action as authorized by the Executive Director for employees or agents. Discharge or forfeiture of office will be at the discretion of the Council after due and proper hearing for officers and board members. It is expressly understood that members of the Council are representatives of municipal bodies comprising the Fargo-Moorhead Metropolitan Council of Governments and the disciplinary proceedings set forth herein shall be additional to any proceedings undertaken by the individual municipal appointing authorities with respect to each appointed member(s) of the Council.

ARTICLE XI. FILING REPORTS

11.01. To facilitate planning and development of the Area, all governing bodies, planning agencies and others within the Area are requested to file with the Council all public plans, maps, reports, regulations and other documents as well as amendments and revisions thereto that are related to the activities of the Council.

ARTICLE XII. WITHDRAWAL OR DISSOLUTION

12.01. In the event of the withdrawal of any member jurisdictions from the Council such member jurisdiction shall forfeit all claims to property and operating capital as reflected in the Metro COG equity record.

12.02. In the event of the withdrawal of any member jurisdiction from the Council such member jurisdiction shall forfeit its good standing status and shall not be afforded voting membership on the Council, nor will that jurisdiction receive consideration for federal transportation funds attributable to the Council or Metro COG planning services.

12.03. In the event of the complete dissolution of the F-M Metropolitan Council of Governments, except as otherwise required by Federal or state laws, all Metro COG property, which was not acquired with federal funds, will be sold and the proceeds for such sale will be combined with the current Metro COG assets to determine total cash

assets of Metro COG. Any reimbursements due to the federal or state governments as per Federal and State regulations will be subtracted from the available cash assets. All remaining cash assets of Metro COG shall be distributed to those member Jurisdictions paying dues to the Council. The share of total cash assets to be distributed to each Jurisdiction shall be according to the ratio of the current equity record of each respective member jurisdiction to the total equity of all the Jurisdictions. Any Metro COG property on hand acquired with federal funds will be transferred to the successor MPO.

ARTICLE XIII. ADOPTION AND AMENDMENT

- 13.01. These Articles shall become effective upon their adoption by the Council and by the governing bodies of the participating units of government.
- 13.02. These Articles may be amended at any regular meeting of the Council by an affirmative vote of sixty-six percent (66%) of the members present, provided that at least one week's notice in writing is given to all members setting forth such amendment.

ARTICLE XIV. AUTHORITY TO EXECUTE/COUNTERPARTS

- 14.01. Each of the Parties to these Articles represents and warrants it has authority to execute these Articles. These Articles may be executed at different times and in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement.
- 14.02. These Articles and all contracts and agreements entered into under the provisions of these Articles shall be binding upon the Jurisdictions of the undersigned signatories.
- 14.03. **Duration.** Upon the effective date, these Articles shall remain in effect as long the Council of Governments remain sustainable and funded in amounts required to maintain the activities as defined in these Articles.
- 14.04. **Continuation.** The Council shall serve as the Council of Governments and designated MPO under these Articles until such time as a new COG is established or the MPO is formally re-designated in accordance with the method described in 23 C.F.R. 450.310 or as otherwise provided by law.

IN WITNESS WHEREOF, the undersigned parties have reviewed and caused these revised Articles of Association to be signed by their duly authorized officers. As such the undersigned parties agree on behalf of his or her respective jurisdiction the content, original and amended, of these Articles.

APPROVED this ____ day of _____, 20__ by the Board of County Commissioners of Cass County, North Dakota.

ATTEST:

Commission Chair

IN WITNESS WHEREOF, the undersigned parties have reviewed and caused these revised Articles of Association to be signed by their duly authorized officers. As such the undersigned parties agree on behalf of his or her respective jurisdiction the content, original and amended, of these Articles.

APPROVED this ____ day of _____, 20__ by the Board of County Commissioners of Clay County, Minnesota.

ATTEST:

Commission Chair

IN WITNESS WHEREOF, the undersigned parties have reviewed and caused these revised Articles of Association to be signed by their duly authorized officers. As such the undersigned parties agree on behalf of his or her respective jurisdiction the content, original and amended, of these Articles.

APPROVED this ____ day of _____, 20__ by the City Council of Dilworth, Minnesota.

ATTEST:

Mayor

IN WITNESS WHEREOF, the undersigned parties have reviewed and caused these revised Articles of Association to be signed by their duly authorized officers. As such the undersigned parties agree on behalf of his or her respective jurisdiction the content, original and amended, of these Articles.

APPROVED this _____ day of _____, 20__ by the City Commissioners of Fargo, North Dakota.

ATTEST:

Mayor

IN WITNESS WHEREOF, the undersigned parties have reviewed and caused these revised Articles of Association to be signed by their duly authorized officers. As such the undersigned parties agree on behalf of his or her respective jurisdiction the content, original and amended, of these Articles.

APPROVED this ____ day of _____, 20__ by the City Council of Moorhead, Minnesota.

ATTEST:

Mayor

IN WITNESS WHEREOF, the undersigned parties have reviewed and caused these revised Articles of Association to be signed by their duly authorized officers. As such the undersigned parties agree on behalf of his or her respective jurisdiction the content, original and amended, of these Articles.

APPROVED this ____ day of _____, 20__ by the City Commissioners of West Fargo, North Dakota.

ATTEST:

Mayor

**FISCAL AGREEMENT FOR THE OPERATION OF THE FARGO-MOORHEAD METROPOLITAN
COUNCIL OF GOVERNMENTS**

BY AND AMONG

**THE FARGO-MOORHEAD METROPOLITAN COUNCIL OF GOVERNMENTS AND ITS MEMBER
JURISDICTIONS**

This is the Fiscal Agreement (“Fiscal Agreement”) for the Operation of the Fargo-Moorhead Metropolitan Council of Governments (“Council”), by and among the Council and by member jurisdictions (“Jurisdictions”) (jointly called the “Parties”).

WHEREAS, the Council, by approval of the Articles of Association (“Articles”), is the designated Council of Governments (“COG”) for the greater Fargo-Moorhead metropolitan area and is responsible for coordinating local efforts in those areas of regional concern; and

WHEREAS, the Council is the designated Metropolitan Planning Organization (“MPO”) for the greater Fargo-Moorhead metropolitan area and is responsible for the continuing, cooperative, and comprehensive transportation planning process mandated by federal law and state regulations; and

WHEREAS, the Council is synonymous with the MPO and the COG and is a legally independent government entity distinct from any of its Jurisdictions and is governed by the Council; and

WHEREAS, the Council is comprised of Jurisdictions representing at a minimum the units of general purpose local government that together represent at least 75 percent of the existing Metropolitan Planning Area Boundary (“MPAB”) population (including the City of Fargo which is the largest incorporated city); and

WHEREAS, the Minnesota Department of Transportation (“MnDOT”) and the North Dakota Department of Transportation (“NDDOT”) provide operating assistance through federal transportation planning funds and by mutual agreement designate NDDOT as the lead agency for the administration and distribution of these funds, and

WHEREAS, the Council receives operating assistance through federal transportation planning funds identified biannually in a Consolidated Planning Grant Agreement (“CPG”) between the Council and the NDDOT and NDDOT will reimburse the Council the eligible federal share of authorized Unified Planning Work Program (“UPWP”) expenditures, with the balance (the non-federal participation) to be provided by the Council; and

WHEREAS, the Council wishes to obtain certain financial support from Jurisdictions to support the operations of the COG and MPO, and to provide the required local match to access federal funds; and

WHEREAS, the Articles provide for a separate Fiscal Agreement between the Council and Jurisdictions to collect local, non-federal funds for Council operations; and

WHEREAS, the Jurisdictions wishing to participate in this Fiscal Agreement agree to provide local, non-federal funding to support Council operations and to meet the local match requirement for federal transportation planning funds identified in the UPWP Agreement and, as may be needed from time to time, supplement deficiencies in the annual operating expenses experienced by the Council; and

WHEREAS, the participating Jurisdictions have the authority to enter into this agreement and to provide the financial support to the Council hereinafter described; and

NOW, THEREFORE, be it declared that the purpose of this Agreement is to define the financial contributions provided to the Council by the participating Jurisdictions and to act as the Fiscal Agreement identified in the Articles of Association, as amended.

Section 1. FINANCIAL CONTRIBUTIONS

- 1.01. Financial contributions to the Council will be provided by Jurisdictions who have and maintain voting privileges on the Council; or jurisdictions, agencies or organizations who seek support from the Council to perform services and studies, develop projects, administer grants, or activities separate from normal Council operations and responsibilities.
- 1.02. Financial contributions requested from Jurisdictions identified in the Articles with voting privileges on the Council will consist of annual dues, special project costs and, under emergency circumstances, special assessments.
- 1.03. Financial contributions requested from Jurisdictions identified in the Articles as Associate Members will be those costs related to Unified Planning Work Program elements in which that Jurisdiction is a party.
- 1.04. The amount of dues paid by each jurisdiction will be based on a schedule approved annually by the Council. No one Jurisdiction will be responsible for more than fifty percent (50%) of the total dues requested.
- 1.05. The funds requested from each member unit shall be apportioned on a per capita basis and if approved by member units, the amount shall be due and payable no

later than February 1 of each year, unless special arrangements are made between the Council and a specific Jurisdiction.

- 1.06. The Council will provide annually to each Jurisdiction an estimated dues and special project cost schedule required to maintain Council operations and the required local match for funds identified in the UPWP agreement between the Council and NDDOT. Once approved, the new dues schedule will become part of this Fiscal Agreement and the annual operating budget and will be recorded annually in the Council budget and in Appendix A of this Fiscal Agreement.
- 1.07. Dues will be collected annually. Full and on-time payment of the dues will present the Jurisdiction in “Good Standing” with the Council, and will entitle the Jurisdiction to the full benefits and privileges of that standing, as stated in the *Metro COG Articles of Association*. Non-payment of dues will result in that Jurisdiction being declared “Not in Good Standing” and they shall forfeit all benefits and privileges of being in “Good Standing”. All current and past unpaid dues, special project costs and special assessments must be paid in full prior to the Jurisdiction being in “Good Standing” with the Council.

Section 2. Special Assessments

- 2.01. Special assessments may be issued by the Council in response to an emergency or unforeseen event. Special assessments shall be governed by procedures identified in this Fiscal Agreement. A two-thirds (2/3) majority of the voting members of the Council is required to issue a special assessment.
- 2.02. Special assessments approved by the Council shall be due and payable to the Council within three (3) months of the date of the requisition. The amount due from each Jurisdiction will be based on percentages identified in the annual dues fee schedule approved annually by the Council.

Section 3. Default on Dues Payment

- 3.01. The Council may withhold voting and other privileges of a Jurisdiction if that Jurisdiction defaults on its dues and special project costs for support of the Council annual budget or support of requisitioned special assessments. The Jurisdiction shall be in default and shall surrender its status as Jurisdiction in “Good Standing”. Jurisdictions not in good standing may have their membership reinstated by the Council upon satisfactory payment of outstanding dues or assessment balances.

- 3.02. **Exceptions to the Annual Dues.** The Federal Highway Administration (“FHWA”), Federal Transit Administration (“FTA”), NDDOT, MnDOT and the Fargo/Moorhead public transit provider (“MATBUS”) are exempt from the required annual dues and special assessments of local funds.
- 3.03. **Dues and Assessment Appeals.** The Council shall address any and all appeals related to the dues, special project costs and special assessments requested from each Jurisdiction. Jurisdictions will have thirty (30) days to appeal the requested dues, special project or special assessment request. The thirty-day (30) appeal window shall start the day after payments are due. The Council will have thirty (30) days to respond to the Jurisdiction’s request for appeal. The Jurisdiction’s status of “Good Standing” will be retained until such time that the Council renders a decision on the appeal.

Section 4. PAYMENTS

- 4.01. The Council will function as an official depository for the receipt, deposit, and disbursement of Council, federal, state, local, and other funds entrusted to the Council; to solicit and receive funds from Jurisdictions as per this agreement; and to provide for a fiscal accounting and record system.
- 4.02. Payments will be made payable to the Council for deposit to a dedicated account attributable and accountable to only the Council and will be administered by the Council.
- 4.03. **Payment Due Date.** Jurisdiction dues, special projects costs and special assessments are to be paid to the Council by the date as stated in Section 1 of this Agreement.
- 4.04. **Late Payment Penalty.** The Council may, at their discretion, assess a penalty for late payment of a Jurisdiction’s payment responsibilities.
- 4.05. **Surplus Funds.** The Council by benefit of being the official depository and depository will retain any surplus funds collected from the dues, special projects, special assessments or late penalties, as well as any interest earned and accrued on the balances of the dedicated Council account. The Council shall have total discretion as to the disposition of such funds.

Section 5. AMENDING THIS FISCAL AGREEMENT

- 5.01. The Council or a participating Jurisdiction, upon initiation of either party(s), may amend this Agreement to cure any ambiguity, defect, or omissions contained herein, or for cause as determined by the Council. A motion to address changes to this Fiscal

Agreement and a valid second by voting members of the Council will be required to initiate any proposal. The provisions of this Fiscal Agreement may be amended for cause through a two-thirds (2/3) majority vote of the Council.

- 5.02. All amendments to this Fiscal Agreement shall be presented to the Council for its consideration at least twice before final action is taken.

Section 6. DURATION AND TERMINATION

- 6.01. The provisions of this Fiscal Agreement shall remain in effect until such time as it is revised or superseded by a new Fiscal Agreement or in the event that the Council no longer serves in the capacity of COG or MPO for the greater Fargo-Moorhead metropolitan area.
- 6.02. This Fiscal Agreement will renew from year to year unless the governing body of one of the Parties rescinds or terminates this Agreement prior to October 1 of any year for which this Agreement renews. The parties may rescind or terminate this Fiscal Agreement by:
 - a. Obtaining approval from the governing body of the party wishing to terminate or rescind this Agreement; and
 - b. Providing ninety (90) days' written notice to the other parties to this Fiscal Agreement.

Section 7. SEVERABILITY

- 7.01. Should any section, paragraph, sentence, or clause of this Fiscal Agreement be deemed unlawful by a Court of competent jurisdiction, no other provision hereof shall be affected and all other provisions of this agreement shall continue in full force and effect.

Section 8. EFFECTIVE DATE

- 8.01. This Agreement shall be effective and applicable to all Council Jurisdictions upon approval by the Council.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be signed by their duly authorized officers.

Approved this ____ day of _____, 20 ____ by the Fargo-Moorhead Metropolitan Council of Governments.

ATTEST:

Policy Board Chair

Policy Board Secretary

(SEAL)

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IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be signed by their duly authorized officers.

Approved this ____ day of _____, 20____ by the Council of the City of Dilworth, Minnesota.

ATTEST:

Mayor

City Clerk

(SEAL)

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IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be signed by their duly authorized officers.

Approved this ____ day of _____, 20____ by the Commission of the City of Fargo, North Dakota.

ATTEST:

Mayor

City Clerk

(SEAL)

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IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be signed by their duly authorized officers.

Approved this ____ day of _____, 20____ by the Council of the City of Moorhead, Minnesota.

ATTEST:

Mayor

City Clerk

(SEAL)

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IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be signed by their duly authorized officers.

Approved this ____ day of _____, 20____ by the Commission of the City of West Fargo, North Dakota.

ATTEST:

Mayor

City Clerk

(SEAL)

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IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be signed by their duly authorized officers.

Approved this ____ day of _____, 20____ by the Board of County Commissioners of Cass County, North Dakota.

ATTEST:

Commission Chair

County Clerk

(SEAL)

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IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be signed by their duly authorized officers.

Approved this ____ day of _____, 20____ by the Board of County Commissioners of Clay County, Minnesota.

ATTEST:

Commission Chair

County Clerk

(SEAL)

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