

JOINT RESOLUTION BETWEEN THE TOWN OF OAKPORT
AND THE CITY OF MOORHEAD DESIGNATING AN AREA
FOR ORDERLY ANNEXATION PURSUANT TO MINNESOTA
STATUTE SECTION 414.0325

(TRACT 2/3)

STATE OF MINNESOTA }
COUNTY OF CLAY. } ss.

I hereby certify that the within instrument was
filed in this office for record on the 27th
day of March A.D. 19 90 at 2:55
o'clock P M., and was duly Recorded on
Micro Card # 429561

Wilma R. ...
County Recorder
Bonnie Rehder Deputy.
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BE IT RESOLVED by "Oakport," by and through its Board of Supervisors, and by "Moorhead," by and through its City Council, that Oakport and Moorhead do jointly agree to the following:

1. Definitions

For the purposes of this Joint Resolution the following definitions mean:

a. Bikeway. Will mean a shared vehicular right-of-way designated as such by signs placed on vertical posts or stenciled on pavement

b. Bike/Pedestrian Path. Will mean a hard surface trail or path not to exceed ten (10) feet in width constructed and maintained by Moorhead within the bike/pedestrian easement.

c. Bike/Pedestrian Easement. Will mean the fifty (50) foot easement for the development of a bike/pedestrian path and for maintenance of the river bank.

d. County. Will mean the County of Clay, Minnesota, a body corporate and politic duly organized and existing under the laws of the State of Minnesota.

e. Dual Services. Will mean water or wastewater services to main system where two or more single-family residential homes connect together to form a single service prior to connecting to the main. Dual services will not be

allowed unless specifically approved by Moorhead on a case-by-case basis.

f. Effective Date of Annexation. Will mean the date the Minnesota Municipal Board issues its order approving the annexation contemplated in the Initiating Resolution.

g. Effective Date of This Joint Resolution. Will mean the date the Minnesota Municipal Board accepts this Joint Resolution for filing.

h. Hook-up. Will mean any connection to the water distribution system or to the wastewater collection system for use by a single-family residence.

i. Hook-up Permit. Will mean the permit issued by the Oakport Joint Powers Board to property owners authorizing hook up to the water distribution system or the wastewater collection system as the case may be.

j. Initiating Resolution. Will mean an Initiating Resolution adopted by Moorhead and filed with the Minnesota Municipal Board.

k. Joint Resolution. Will mean this Joint Resolution between Oakport and Moorhead designating an area for orderly annexation pursuant to Minnesota Statute Section 414.0325.

l. Minnesota Municipal Board. Will mean the Minnesota Municipal Board, which is created by Minnesota Statute Section 414.01.

m. Moorhead. Will mean the City of Moorhead, Minnesota, a municipal corporation duly organized and existing under the laws of the State of Minnesota, except

whenever in the provisions of this document reference is made to water or electrical services, then and in that case, "Moorhead" will include within its meaning both the City of Moorhead and the Moorhead Public Service Commission, a board to which the control, management and operation of all City water and electrical systems have been committed by Section 12.02 of the Moorhead City Charter.

n. Oakport. Will mean the Town of Oakport, a town duly organized and existing under the laws of the State of Minnesota.

o. Oakport Joint Powers Agreement. Will mean an agreement among Oakport, Moorhead and Clay County providing for a definition of relationship among the parties and providing for the exercise of joint powers within the boundaries of Tract 2 and Tract 3, including the creation of the Oakport Joint Powers Board.

p. Oakport Joint Powers Board. Will mean Oakport, Moorhead and Clay County, jointly exercising the powers granted under the Oakport Joint Powers Agreement.

q. Orderly Annexation Area. Will mean Tract 2 and Tract 3.

r. Parcel. Will mean a part or portion of land recorded as property in the office of the Clay County Recorder.

s. Point of Water Distribution System Connection. The point to which Oakport will construct water main through Tract 1 to attach to the Moorhead water system. Oakport

will finance and construct water main to the point of connection as shown in Exhibit A or another point in Tract 1 as mutually agreed upon if water mains of sufficient capacity have already been extended into Tract 1. Moorhead will own water mains installed by Oakport from Point of connection in Moorhead (through and including main in Tract 1) to Tract 2.

t. Point of Wastewater Collection System Connection. Will mean the point to which Oakport will construct the main sewer line through Tract 1 to attach to the Moorhead wastewater collection system. Oakport will finance and construct the main sewer line to the point of connection as shown in Exhibit B. Moorhead will own the main sewer line installed by Oakport from point of connection in Moorhead through and including the main sewer line in Tract 1 to Tract 2.

u. Property Owner. Will mean the owner of a parcel(s) of property within the Orderly Annexation Area.

v. Service Area. Will mean exclusively, that portion of the Orderly Annexation Area referred to as Tract 2.

w. Single-Family Dwelling. Will have the meaning set forth in the Moorhead City Code.

x. Single-Family Residential Lot. Will mean a parcel (which is part of a subdivision, the map of which has been recorded in the office of the Clay County Recorder, or a parcel described by metes and bounds or otherwise described separately from adjacent real estate, the deed to which has been recorded in the office of the Clay County Recorder prior to January 1, 1989,) the purpose of which will be the

construction of a single-family dwelling and accessory buildings and which will either be an:

(i) Assigned Lot. Which will mean those parcels (all of which are listed on Exhibit F) which are eligible for hook-up and to whose owners a hook-up permit will be issued by Oakport upon compliance with such requirements as may be established by the Oakport Joint Powers Board; or an

(ii) Unassigned Lot. Which will mean those parcels (all of which are listed on Exhibit G) which are eligible for hook-up and to whose owners a hook-up permit may be issued by the Oakport Joint Powers Board upon a determination by the Oakport Joint Powers Board that the parcel and the proposed development of the parcel will comply with the zoning regulations, land use regulations, building regulations and subdivision regulations then applicable to the Service Area.

y. Tract 2. Will mean that area of Oakport legally described in Exhibit C, depicted in Exhibit E, and generally described as follows:

Generally, that portion of the developed area of Oakport lying south of the centerline of Clay County Road 93 and between Tract 1 and Tract 3 and the Red River, which includes the Moorhead Rod and Gun Club, and including the residential real estate owned by Palmer Nymark lying south and west of M.B. Johnson Park.

In the event of conflict between the legal description in Exhibit C and the above general description, the legal description in Exhibit C will control.

z. Tract 3. Will mean that area of Oakport legally described in Exhibit D, depicted in Exhibit E, and generally described as follows:

A corridor extending 1/4 mile to the east of the centerline of U.S. Highway 75; from the proposed boundary of Tract 1 on the south to the centerline of Clay County Road 93 on the north; together with the agricultural area lying between the U.S. Highway 75 corridor on the east and Tract 2 on the west.

In the event of conflict between the legal description in Exhibit D and the above general description, the legal description in Exhibit D will control.

aa. Water Distribution System. Will mean a water distribution system including, but not limited to, the following: water mains, valves, hydrants, valve boxes, water storage facilities, telemetry system, and in addition, all appurtenances normal to a full water distribution system for domestic water use and fire protection.

bb. Water Services. Will mean the pipe and fittings and devices needed to convey water from the water main to the point of entry in a premises and in addition to the above stated items consist of the following: corporation, tapping sleeves and valves, curb stop, curb boxes, gate valve boxes and meter stop valves.

cc. Wastewater Collection System. Will mean a wastewater sewer collection system including, but not limited to the following: manholes, main sewer lines -- both gravity and force mains; wastewater lift stations including structure, pumps, motors, alarm systems, telemetry systems for monitoring, emergency generator electrical connections, and in addition to the above stated items all other applicable appurtenances normal to a wastewater sewer collection system.

dd. Wastewater Services. Will mean the sewer pipes and fittings, devices, and structures and appurtenances thereto needed to collect wastewater from the point of entry in a parcel to the main sewer line.

2. Reasons for Annexation

It is specifically found that:

a. Certain Properties Urban or Suburban. Certain properties within Oakport abutting upon Moorhead are presently urban or suburban in nature.

b. Compliance with State Law. Clay County has required compliance with County ordinances and State law regarding certification of septic systems.

c. Oakport Request for Services. Oakport has requested wastewater collection services for the Orderly Annexation Area.

d. Annexation Mandated by Moorhead. Moorhead has made orderly annexation pursuant to this Joint Resolution a condition precedent to providing wastewater collection services to the Orderly Annexation Area.

e. Moorhead Capable of Providing Services. Moorhead has provided or is capable of providing wastewater collection services to such properties and is capable of providing additional services to this property to adequately protect the public health, safety, and welfare of the properties.

3. Annexation Date/Taxes

a. Tract 2. All parcels within Tract 2 will be annexed to Moorhead effective January 1, 2015. Moorhead will file an Initiating Resolution with the Minnesota Municipal Board and comply with such requirements as may be necessary to provide for the effective date of annexation of Tract 2 on January 1, 2015. The tax rate of Moorhead will apply to Tract 2 upon the effective date of annexation. Prior to the effective date of annexation of Tract 2 the Oakport tax rate will apply.

b. Tract 3. No parcel within Tract 3 will be annexed to Moorhead under the terms of this Joint Resolution. A parcel within Tract 3 may be annexed in the future by mutual agreement of Moorhead, Oakport and Clay County pursuant to the Oakport Joint Powers Agreement and subject to approval by the Minnesota Municipal Board.

4. Zoning/Subdivision/Land Use Control Regulations

a. Tract 2. Upon the effective date of this Joint Resolution Moorhead's zoning, subdivision and land use control regulations will be extended to Tract 2. Said regulations will be enacted, administered, enforced, and modified pursuant to the Oakport Joint Powers Agreement.

b. Tract 3. Upon the effective date of this Joint Resolution Moorhead's zoning, subdivision and land use control regulations will be extended to Tract 3. Said regulations will be enacted, administered, enforced, and modified pursuant to the Oakport Joint Powers Agreement.

5. Residential Growth

a. Tract 2.

(i) Designation of 540 Single-Family Residential Lots.

Upon compliance with such regulations as may be established by the Oakport Joint Powers Board, 540 single-family residential lots will be allowed to hook-up to the wastewater collection system and the water distribution system within Tract 2 at any time on or before December 31, 2014. The owners of Assigned Lots (designated on Exhibit F) will receive hook-up permits upon application to the Oakport Joint Powers Board, upon payment of such fees as may be established by the Oakport Joint Powers Board, and upon compliance with such requirements as may be established by the Oakport Joint Powers Board. The Unassigned Lots (designated on Exhibit G) represent the remaining portion of the Service Area that is eligible for hook-up. The Unassigned Lots are currently undeveloped and as configured will not be allowed to hook-up due to non-compliance with the building, zoning, subdivision and land use control regulations applicable to the Service Area. Issuance of hook-up permits to owners of Unassigned Lots will be in the discretion of the Oakport Joint Powers Board upon a case by case determination that the proposed development of the Unassigned Lot(s) in question will comply with the building, zoning, subdivision and land use control regulations applicable to the Service Area and upon payment of such fees as may be established by the Oakport Joint Powers Board. In

no event shall the aggregate number of hook-up permits issued pursuant to this Section 5.a.(i) exceed 540. After December 31, 2014, all hook-ups to the wastewater collection system and the water distribution system, including any of the 540 single-family residential lots not previously hooked up, will be pursuant to the then existing policies of Moorhead.

(ii) No Additional Hook-Ups During the Period Ending December 31, 1999. No wastewater collection system hook-ups or water distribution system hook-ups in addition to the aforementioned 540 single-family residential lots will be allowed within Tract 2 during the period ending December 31, 1999.

(iii) Additional Hook-Ups Allowed Beginning January 1, 2000. Beginning January 1, 2000, Oakport will be allowed nine (9) wastewater collection system and water distribution system hook-ups per year in addition to the aforementioned 540 single-family residential lots within Tract 2. In the event that any of the nine (9) wastewater collection system and water distribution system hookups per year are not used, said wastewater collection system and water distribution system hook-ups are forfeited and will not be allowed to accrue or be carried forward into future years.

b. Tract 3. Any residential growth within Tract 3 will be in accordance with the Oakport Joint Powers Agreement.

6. Commercial Growth

a. Tract 2. Any commercial growth within Tract 2 will be in accordance with the Oakport Joint Powers Agreement.

b. Tract 3. Any commercial growth within Tract 3 will be in accordance with the Oakport Joint Powers Agreement.

7. Industrial Growth

a. Tract 2. Any industrial growth within Tract 2 will be in accordance with the Oakport Joint Powers Agreement.

b. Tract 3. Any industrial growth within Tract 3 will be in accordance with the Oakport Joint Powers Agreement.

8. Building Regulations

a. Tract 2. Upon the effective date of this Joint Resolution, Moorhead's building regulations including permitting and fee requirements, and compliance with applicable engineering standards, will be extended to Tract 2. Said regulations shall be enacted, administered, enforced and modified pursuant to the Oakport Joint Powers Agreement.

b. Tract 3. Upon the effective date of this Joint Resolution, Moorhead's building regulations including permitting and fee requirements, and compliance with applicable engineering standards, will be extended to Tract 3. Said regulations will be enacted, administered, enforced and modified pursuant to the Oakport Joint Powers Agreement.

9. Wastewater Collection System/Wastewater Treatment Service

Moorhead and Oakport mutually agree that wastewater treatment services will be provided in accordance with the following:

a. Tract 2.

(i) Moorhead Sole Provider. Moorhead will be the sole provider of wastewater treatment services within Tract 2. Upon installation of the wastewater collection system:

(a) All property owners served by the system will hook up within 30 days of system availability; and

(b) Property owners will remove their existing septic tanks or have the septic tanks pumped and crushed and/or filled with approved aggregate material.

Included within the sewer connection charge as referenced in Section 9.a.(xi) will be inspection of septic tank disposition.

(ii) Oakport to Finance, Construct and Own. Oakport will finance, construct and own the wastewater collection system within Tract 2 to the point of delivery to Moorhead. Upon the effective date of annexation, the wastewater collection system will automatically become the property of Moorhead at no cost to Moorhead free of any and all liens, encumbrances or continuing financial obligations arising out of the initial financing and construction of the wastewater collection system. Moorhead will not be responsible for and Oakport will hold Moorhead harmless on any and all liens, encumbrances, or continuing financial obligations incurred by Oakport for the wastewater collection system arising

subsequent to its initial financing and construction unless the action out of which the lien, encumbrance, or continuing obligation arises has been approved by Moorhead.

(iii) Compliance With Moorhead Specifications. The wastewater collection system will be designed and installed to current Moorhead specifications for underground improvements, be certified by a professional engineer as meeting Moorhead specifications, and be approved by Moorhead's City Engineer. Dual services will be allowed in limited instances.

(iv) Moorhead's Right to Verify/Inspect. During the installation of the wastewater collection system, Moorhead has the right to verify compliance with Moorhead specifications. To ensure same, Moorhead will, at its expense through its Public Works Department or designee, inspect the wastewater collection system or any portion thereof throughout its installation.

(v) Moorhead's Final Acceptance/"As Built" Plans. Moorhead's final acceptance of the wastewater collection system or any portion thereof from Oakport is conditional upon receipt from Oakport's consulting engineer of a certificate of compliance with Moorhead's specifications satisfactory to Moorhead. Prior to final acceptance of the system or any portion thereof by Moorhead, a complete set of reproduceable "as built" plans for Oakport's wastewater collection system or any portion thereof must be provided Moorhead with the cost of the plans to be paid by Oakport.

(vi) Moorhead to Operate, Maintain and Repair. Moorhead will operate the wastewater collection system within Tract 2, and will maintain and repair the system in accordance with rules, procedures and standards established by Moorhead. Moorhead will provide billing and accounts receivable collection.

(vii) Oakport to Provide Accessibility to Maintain System. Oakport will secure and guarantee to Moorhead all weather accessibility to the wastewater collection system by easement, right-of-way, or other means, for the purpose of operation, maintenance and repair thereof.

(viii) Moorhead to Assume No Liability Resulting From the Implementation of Flood Control Measures. In accordance with Section 15 of this agreement, Moorhead, in agreeing to operate, maintain and repair the wastewater collection system, assumes no liability or responsibility for any adverse impact to property should any occur as a result of the implementation by Moorhead of flood control measures.

(ix) User Rates/Oakport Guarantee Payment. Users of the wastewater collection system within Tract 2 will pay one and one-half (1-1/2) times the rate charged to similar classed users in Moorhead until the effective date of annexation, at which point the rates will be identical. Oakport will guarantee payment to Moorhead of any billing for wastewater treatment services provided by Moorhead to a customer(s) in Oakport.

(x) Plumbing Fees. Moorhead will charge and receive the same plumbing permit fee(s) as is charged to similar classed property in Moorhead for any single-family residential lot permitted to hook up within Tract 2.

(xi) Sewer Connection Charge. An \$80.00 sewer connection charge will be included in Oakport's original financing of the wastewater collection system and paid at the time of said financing to Moorhead based upon the following:

(a) An \$80.00 sewer connection charge applied to not less than 370 single-family residential lots; or

(b) An \$80.00 sewer connection charge applied to each and every lot against which the cost of the wastewater collection system will be spread at the time of the original financing if greater than 370 single-family residential lots.

(c) In the event that fewer than 370 single-family residential lots hook-up to the wastewater collection system at the time of initial construction, the sewer connection charge payment, pursuant to Section 9.a.(xi)(a), will be deemed to have been paid for the first 370 lots to actually hook-up to the wastewater collection system with no further sewer connection charge to be collected by Moorhead at the actual time of hook-up for said 370 lots. No additional minimum number of hookups will be imposed.

(d) Any sewer connection charges for extension of the wastewater collection system beyond the initial 370

hook-ups will not exceed the sewer connection charges paid by similarly classed customers within the City of Moorhead.

(xii) Special Assessment Procedures. All benefitting property owners will be subject to special assessments in accordance with Minnesota Statutes Chapter 429 and Oakport's assessment procedures for a wastewater collection system, and connection charges relating thereto. In no event will a property owner be allowed to defer for any period any payment or portion thereof of any special assessment imposed upon the property owner as a result of the construction of the wastewater collection system within Tract 2.

(xiii) Oakport to Enact Sanitary Sewer Ordinance. Oakport will enact a sanitary sewer ordinance that is acceptable to Moorhead.

(xiv) Oakport Agrees to Limit Service Area. Oakport will agree to limit the service area of its wastewater collection system exclusively to Tract 2 unless otherwise mutually agreed to by Moorhead and Oakport pursuant to the Oakport Joint Powers Agreement.

b. Tract 3. Any extension of wastewater treatment services within Tract 3 will be in accordance with the Oakport Joint Powers Agreement.

10. Water Distribution System/Water Service

Moorhead and Oakport mutually agree that water services will be provided in accordance with the following:

a. Tract 2.

(i) Moorhead Sole Provider. Moorhead will be the sole provider of water in Tract 2 from any source outside of Tract 2. Water will be provided by Moorhead at such time as a water distribution system is constructed by Oakport in Tract 2.

(ii) Oakport to Finance, Construct and Own. Oakport will finance, construct and own the water distribution system within Tract 2. Upon the effective date of annexation, the water distribution system will automatically become the property of Moorhead at no cost to Moorhead free of any and all liens, encumbrances or continuing financial obligations arising out of the initial financing and construction of the water distribution system. Moorhead will not be responsible for and Oakport will hold Moorhead harmless on any and all liens, encumbrances, or continuing financial obligations incurred by Oakport for the water distribution system arising subsequent to its initial financing and construction unless the action out of which the lien, encumbrance, or continuing obligation arises has been approved by Moorhead.

(iii) Compliance with Moorhead Specifications. The water distribution system will be designed and installed to current Moorhead Public Service Department specifications

for a water distribution system, be certified by a professional engineer as meeting Moorhead specifications, and be approved by the Moorhead Public Service Department and Minnesota State Health Department.

(iv) Moorhead's Right to Verify/Inspect. During the installation of the water distribution system, Moorhead has the right to verify compliance with Moorhead specifications. To ensure same, Moorhead will, at its expense through its Public Service Department or designee, inspect the water distribution system or any portion thereof throughout its installation.

(v) Moorhead's Final Acceptance/"As Built" Plans. Moorhead's final acceptance of the water distribution system or any portion thereof from Oakport is conditional upon receipt from Oakport's consulting engineer of a certificate of compliance with Moorhead's specifications satisfactory to Moorhead. Prior to final acceptance of the water distribution system or any portion thereof by Moorhead, a complete set of reproduceable "as built" plans for Oakport's water distribution system or any portion thereof must be provided Moorhead with the cost of the plans to be paid by Oakport.

(vi) Moorhead to Operate, Maintain and Repair. Moorhead will operate the water distribution system within Tract 2, and will maintain and repair the system. Moorhead will provide billing and accounts receivable collection. Oakport customers will pay for water services at rates set by Moorhead in accordance with Section 10.a.(vii) Oakport

will guarantee payment to Moorhead of any billing for water services provided by Moorhead to a customer(s) in Oakport.

(vii) Customer Rates. Customers in Tract 2 will pay 1-1/2 times the rate charged to similar-classed customers in Moorhead. Oakport will pay for hydrant charges as set by Moorhead Public Service Commission but in no event at a greater rate than charged to similarly-classed customers located outside of Moorhead.

(viii) Water Connection Surcharge. A \$500.00 water connection surcharge will be included in Oakport's original financing of the water distribution system and paid at the time of said financing to Moorhead based upon the following:

(a) A \$500.00 water connection surcharge per single-family residential lot for not less than 370 single-family residential lots; or

(b) A \$500.00 water connection surcharge per single-family residential lot against which the cost of the water distribution system will be spread at the time of the original financing if greater than 370 single-family residential lots.

(c) In the event that fewer than 370 single-family residential lots hook-up to the water distribution system at the time of initial construction, the water connection surcharge payment, pursuant to Section 10.a.(viii)(a), will be deemed to have been paid for the first 370 lots to actually hook-up to the water distribution system with no further water connection

surcharge payment to be collected by Moorhead at the actual time of hook-up for said 370 lots. No additional minimum number of hookups will be imposed.

(d) Any water connection charges for extension of the water distribution system beyond the initial 370 hook-ups will be \$500 per single-family residential lot and be payable to Moorhead as a condition precedent to hook-up.

(e) The above requirement of not less than 370 single-family residential lots may be reduced by mutual consent of Oakport and the Moorhead Public Service Commission through resolution of each party.

(ix) Special Assessment Procedures. All benefitting property owners will be subject to special assessments in accordance with Minnesota Statutes Chapter 429 and Oakport's assessment procedures for a water distribution system, and connection charges relating thereto. In no event will a property owner be allowed to defer for any period any payment or portion thereof of any special assessment imposed upon the property owner as a result of the water distribution system within Tract 2.

(x) Water Tap Permit/Plumbing Fees. Prior to hook-up, the holder of a hook-up permit issued by the Oakport Joint Powers Board in accordance with Section 5.a.(i) must obtain a water tap permit from Moorhead and pay at the time of application any and all required permit and inspection fees. Moorhead will charge the same plumbing permit fee(s) as is

charged to other similar classed property in Moorhead. Notification and a copy of the water tap permit will be provided by Moorhead to the Oakport Town Clerk and to the Oakport Joint Powers Board.

(xi) Payment for Improvements to Moorhead Water Plant. Customers in Tract 2 will pay for any improvements to the Moorhead water plant and water distribution system on the same basis and at the same level as similarly-classed customers in Moorhead except as provided in Section 10.a.(vii).

(xii) Oakport to Comply with Moorhead Public Service Commission Rules. Oakport will comply with Moorhead Public Service Commission rules and regulations governing water use, particularly as they relate to water conservation.

(xiii) Oakport Agrees to Limit Service Area. Oakport will agree to limit the service area of its water distribution system exclusively to Tract 2 unless otherwise mutually agreed to by Moorhead and Oakport pursuant to the Oakport Joint Powers Agreement, including a provision within the Agreement requiring the approval of the Moorhead Public Service Commission.

b. Tract 3. Any extension of water services within Tract 3 will be in accordance with the Oakport Joint Powers Agreement.

11. Municipal Services

a. Tract 2. Upon the effective date of annexation of Tract 2, Moorhead will provide municipal services, including but not limited to, fire and police protection.

b. Tract 3. Any municipal services within Tract 3 will be in accordance with the Oakport Joint Powers Agreement.

12. Bike/Pedestrian Path

a. Tract 2.

(i) Moorhead to Accept Deeds of Dedication. Moorhead will accept deeds of dedication at no cost to Moorhead from property owners along the Red River of a fifty (50) foot easement for the development of a bike/pedestrian path and for maintenance of the river bank.

(ii) Property Owners Not Required to Dedicate Bike/Pedestrian Easement Prior to Hook-Up. Property owners will not be required to dedicate a bike/pedestrian easement prior to hook-up to water and sewer services.

(iii) Moorhead May Acquire Easements. Upon the effective date of annexation of Tract 2, Moorhead, at its discretion, will acquire, for just compensation, those bike/pedestrian easements which have not been previously dedicated.

(iv) Conditions Affecting Installation of Bike/Pedestrian Path. The transfer of a bike/pedestrian easement from the property owners to Moorhead will be a transaction between Moorhead and property owners which will in no way involve Oakport. When and if installed, said bike/pedestrian path will be installed as close to the Red River as is feasible. Construction and maintenance of the bike/pedestrian path will be the responsibility of Moorhead. Maintenance of the fifty (50) foot easement, excluding the bike/pedestrian path, will continue as the responsibility of the property owners. A notice of intent to install the

bike/pedestrian path will be sent to all property owners a minimum of sixty (60) days prior to the start of construction. Moorhead will enact an ordinance defining and controlling the use of the bike/pedestrian easement which will specifically prohibit loitering on the bike/pedestrian easement, trespassing on adjacent properties, and any act which could be deemed to be a public nuisance or a private nuisance. Moorhead agrees to indemnify, except for the intentional acts of property owners, and hold harmless any property owners against, and in respect of any and all liabilities property owners may incur as a result of claims by third parties as a result of the use of the bike/pedestrian easement by said third parties, or as the result of any trespassing by said third parties on property adjacent to the bike/pedestrian easement. For the purposes of this paragraph, "claims" will mean all claims, demands, third party actions, accounts, causes of action and judgments, known and unknown, developed and undeveloped, discovered and undiscovered, and "liability" will mean all losses, expenses, obligations, costs, (including defense costs) whether or not reduced to judgment.

b. Tract 3. Any bike/pedestrian path within Tract 3 will be in accordance with the Oakport Joint Powers Agreement.

13. Sidewalks

a. Tract 2. Moorhead agrees not to require the construction of sidewalks upon any single-family residential lot in existence on the effective date of this Joint Resolution. The construction of sidewalks as may be petitioned for by a property owner or as may be required pursuant to zoning, subdivision and land use control regulations, will be in accordance with the Oakport Joint Powers Agreement.

b. Tract 3. Any sidewalks within Tract 3 will be in accordance with the Oakport Joint Powers Agreement.

14. Platting

Moorhead agrees not to require the platting or replatting of any single-family residential lot in existence on the effective date of this Joint Resolution. Future platting or replatting as may be required pursuant to zoning, subdivision and land use control regulations, will be in accordance with the Oakport Joint Powers Agreement.

15. Flood Protection

Certain property located within the Orderly Annexation Area is subject to periodic flooding. Moorhead will assume no obligation for unique or extraordinary flood protection in these areas. Oakport acknowledges that flood control measures will be implemented at Moorhead's sole discretion consistent with flood control measures implemented in other areas of Moorhead. Oakport further acknowledges that certain flood control measures implemented by Moorhead may in limited instances adversely impact property located within the Orderly Annexation Area.

16. Street Right-of-Way/Design Standards/Clay County Roads and Bridges

a. Tract 2.

(i) Oakport Roads to Remain "As Is". All existing Oakport roads and cartways, together with their related ditch and culvert type storm sewer drainage, will remain "as is."

(ii) Existing Roads May Be Improved Yet Retain Present Design. Any existing Oakport road or cartway within Tract 2 may be hard surfaced and retain its present design.

(iii) Construction of Roads to be in Accordance with Oakport Joint Powers Agreement. Any future construction of Oakport roads or cartways within Tract 2 will be developed in accordance with the zoning, subdivision, and land use regulations pursuant to the Oakport Joint Powers Agreement.

(iv) Street Design and Storm Drainage to be in Accordance with Oakport Joint Powers Agreement. Street design and storm drainage system standards will be developed in accordance with the Oakport Joint Powers Agreement.

(v) Clay County Continuing Responsibility. All roads and bridges within Tract 2 which are presently under the jurisdiction of Clay County will continue to be the responsibility of Clay County for the purpose of maintenance, repair and replacement.

b. Tract 3. Any actions with respect to roads/bridges, cartways and storm drainage within Tract 3 will be in accordance with the Oakport Joint Powers Agreement.

17. Electric Service

Moorhead Public Service Department will provide electric service, including street lighting, in accordance with the following:

a. Tract 2. At the time of the effective date of annexation of Tract 2, Moorhead will:

(i) Option to Allow Electric Provider Other Than Moorhead Public Service Department. Take such action as may be necessary to allow Red River Valley Coop Power Association, Northern States Power Company, or other electrical service provider to continue to provide electrical service within Tract 2; and/or

(ii) Moorhead Public Service Department to Provide Electric Service. Provide electrical services to Tract 2. This may include purchasing the rights or the facilities of Red River Valley Coop Power Association, Northern States Power Company, or other electrical service provider with all costs of purchase paid by the Moorhead Public Service Department.

b. Moorhead Public Service Department to Provide Electric Service. Should Moorhead elect to provide electric service within Tract 2 pursuant to Section 17.a.(ii) above:

(i) Customer to Pay Rates Equivalent to Those of Similar Classed Customers in Moorhead. The electric customers within Tract 2 will pay the rates of similar-classed electric users in Moorhead.

(ii) Customer Required to Pay Surcharge for Rights or Facilities Purchased by Moorhead. If the Moorhead rate for a similar-classed customer is less than the rate charged by the previous electrical supplier, the Tract 2 customer will pay 1/2 the difference in rates to help Moorhead pay for the rights or facilities purchased to provide service. The customer will continue to pay this fee as adjusted from time to time pursuant to Section 17.b.(iv) until such time that the investment is paid off.

(iii) Customer Not Required to Pay Surcharge for Rights or Facilities Purchased by Moorhead. If the Moorhead rate for a similar-classed customer is greater than the rate charged by the previous electrical supplier, Moorhead will not require the customer to pay for any rights or facilities purchased by Moorhead to provide Tract 2 customers with electrical service.

(iv) Surcharge Adjusted From Time to Time. Any surcharge described in Section 17.b.(ii) will be adjusted from time to time as changes occur in the rates charged by the respective electrical service providers involved.

c. Tract 3. Any electric service within Tract 3 will be in accordance with the Oakport Joint Powers Agreement.

18. Recordation/Run With Land

Moorhead and Oakport agree that by recording this Joint Resolution in the Clay County Recorder's Office it is intended that the agreements contained in this Joint Resolution run with the land.

19. Modifying/Amending Joint Resolution

The parties to this Joint Resolution agree that this agreement will not be modified or amended, nor will the stated boundaries be altered unless mutually agreed to through resolution of each party and approved by the Minnesota Municipal Board.

20. With Respect to Interpretation of this Joint Resolution

a. Event of Conflict. In the event of conflict, both parties agree to negotiate in good faith to resolve any differences between them.

b. Impasse/Binding Arbitration. If either party declares that an impasse has been reached, then both parties agree to submit the matter to binding arbitration.

21. Ordering in of Annexation

Upon receipt of an Initiating Resolution under this Joint Resolution, the Minnesota Municipal Board may review and comment, but will, within thirty (30) days, order the annexation in accordance with the terms of this Joint Resolution.

22. Oakport/Moorhead Cooperation

Oakport and Moorhead resolve to fully cooperate with the Minnesota Municipal Board in connection with this Joint Resolution and agreements therein.

PASSED AND ADOPTED by the Town Board of Moorhead, Minnesota, this 12 day of February 1990.

APPROVED BY:

Albert E. Sipe
Albert E. Sipe, Town Board Chair

ATTEST:

Carol M. Kuehl
Carol M. Kuehl, Town Clerk

~~SEAL~~

PASSED by the City Council of the City of Moorhead this 25 day of January 1990.

APPROVED BY:

Morris L. Lanning
MORRIS L. LANNING, Mayor

ATTEST:

Kaye E. Buchholz
KAYE E. BUCHHOLZ, City Clerk

(SEAL)