

AGREEMENT TO ACQUIRE LANDS
BETWEEN

THE DEPARTMENT OF THE ARMY
ROCK ISLAND DISTRICT, CORPS OF ENGINEERS

AND

THE CITY OF *City, State*

FOR
CONDEMNATION ON BEHALF OF THE *SPONSOR*
BY THE CORPS OF ENGINEERS
FOR THE _____ SECTION 205 FLOOD CONTROL PROJECT

This Agreement is entered into this _____ day of _____, 19____, by and between the DEPARTMENT OF THE ARMY, ROCK ISLAND DISTRICT, CORPS OF ENGINEERS (hereinafter the "Corps"), acting by and through the U.S. Army Engineer for the Rock Island District (hereinafter the "District Engineer") and the CITY OF *Sponsor*, a municipal corporation organized and existing pursuant to the laws of the State of Minnesota (hereinafter the "City"), acting by and through its Mayor.

WITNESSETH, THAT:

WHEREAS, construction of the _____ Section 205 Flood Control Project (hereinafter called the "Project") along the _____ River in _____ County, *State*, was authorized by _____; and

WHEREAS, the Corps and the City have entered into a Project Cooperation Agreement for the construction of said Project, dated _____ (hereinafter the "PCA"); and

WHEREAS, Article II.d. of the PCA provides that the City shall "provide all lands, easements, rights-of-way, including suitable borrow and dredged material disposal areas, . . . determined by the Government to be necessary for construction of the Project"; and

WHEREAS, Engineering Regulation 405-1-12, Chapter 12, Section VI, allows the Corps to acquire lands, easements, and rights-of-way on behalf of a Sponsor; and

WHEREAS, it is the intent of the parties to this Agreement that the Corps, upon request by the City and in accordance with Federal law, statutes, regulations, practices and procedures, acquire by Declaration of Taking necessary lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas as required by the City; and

WHEREAS, the City Council of *City, State*, has authorized the Mayor to enter into this agreement on behalf of the City;

NOW, THEREFORE, the City and the Corps agree as follows:

1. The City may request that the Corps, by Declaration of Taking, acquire immediate title to and possession of certain lands, easements, or rights-of-way, including those necessary for suitable borrow and dredged material disposal, on behalf of the City, in the name of the United States.

2. The City will submit a condemnation assembly with its request that a tract or tracts be condemned. Each condemnation assembly shall include the following items, subject to Corps Approval:

a. A Negotiator's Report on Engineer Form 3423 (Parts I and II) which conforms to the requirements of ER 405-1-12, Chapter 5, Section IV, and future amendments.

b. A legal description of the property to be condemned which conforms to the Corps' Cadastral regulations and the laws and requirements of the State of _____ and _____ County for recording.

c. Ten copies of a map showing the individual tracts to be condemned outlined in red.

d. Four copies of the approved tract appraisal. The appraisal must be on a current basis; the review certificates should indicate that the review has been made within 120 days prior to submission of the assembly to the Corps. The Department of Justice (DOJ) shall have the right to order a second appraisal at its sole discretion for trial purposes.

e. Four copies of a commitment for title insurance to insure the United States for the tracts acquired by the United States on behalf of the City. The title insurance shall comply with the Standards for the Preparation of Title Evidence in Land Acquisitions by the United States published by the United States DOJ and the United States Army Corps of Engineers' real estate regulations found in ER 405-1-12, Chapter 5.

f. A list containing the names and addresses of the owners and parties with an interest therein including any parties in possession.

g. A disclaimer of interest for any parties who are not to be named in the action.

3. The City shall also submit, with its request that a tract or tracts be condemned, certification that the City has conducted any required investigations for hazardous substances in accordance with Article XIX of the PCA and documentation of the results of any such investigations.

4. Appendix A, the Scope of Work, is hereby incorporated into this Agreement. The Corps shall substantially comply with the Scope of Work in prosecuting work under this Agreement.

5. The City shall be responsible, and agrees to make payment in accordance with the provisions of this paragraph, for the full amount of any award, including interest, that may be made in any such condemnation proceeding, including any awards and interest made pursuant to the Equal Access to Justice Act (EAJA), court costs, plus the legal and administrative costs and expenses of the Corps and the DOJ incident to filing and prosecuting the proceedings. Said awards, costs and expenses include any deficiency and interest beyond the deposit furnished, as well as additional costs that may be required. The proceedings will include any incidental proceeding such as a request for a writ of assistance as well as any appeal by the Government or any other party to the action.

a. The Rock Island District Chief of Real Estate shall estimate the costs and expenses for the requested condemnation and provide that estimate to the City. That estimate shall include the amount of an appraisal approved by the Corps or the amount of an accepted offer, whichever shall be greater, plus an additional 30 percent of the deposit for contingencies and 15 percent of the deposit for costs.

b. The City shall provide the Corps with the estimated costs by delivering a check payable to "FAO, USAED, Rock Island" to the Rock Island District Chief of Real Estate. The Corps shall not proceed with filing the Declaration of Taking until the City has provided the required funds.

c. The Corps will draw on all funds provided by the City in such sums deemed necessary to cover all costs as they are incurred. (All costs include, but are not limited to, administrative costs, judgments and interest.)

d. If the actual cost to the Corps or the DOJ for any action is forecast to exceed the amount of funds available, the Corps shall immediately notify the City of the additional payment the City will be required to make to meet the City's share of the revised estimate. Within 60 days thereafter, the City will provide the Corps the full amount of the additional required contribution by delivering to the St. Paul District Chief of Real Estate a check payable to "FAO, USAED, Rock Island." The Corps acknowledges that administratively the Houston City Council must authorize and appropriate the expenditure of any additional funds beyond the advance payment of the estimate of costs and expenses; however, failure of the City to make payments prior to the work being performed does not relieve the City of its obligation to pay for the work. The Corps shall not pay any judgment or deficiency until the City has provided the funds required to make that payment.

e. The Corps shall conduct a final accounting after completion of all the work to be conducted pursuant to this Agreement to determine the actual costs of work provided pursuant to this Agreement. Subject to the availability of funds, the Corps shall

return any funds advanced by the City in excess of the actual costs incurred.

6. The Corps will notify the City when the Declaration of Taking is filed. The City will record or file for recordation the Declaration of Taking and the Judgment on Declaration of Taking in the _____ County land records. The City will cause to be provided a final policy of title insurance which complies with the standards for title evidence established by the United States DOJ and the U.S. Army Corps of Engineers as described in paragraph 2.e. above. The City will cause this endorsement to be provided within 90 days from written notice from the Corps that the Complaint in Condemnation and Declaration of Taking have been filed in the United States District Court.

7. The Corps will inform the City by letter when an order granting the United States possession has been entered. The City will assume operations and maintenance responsibility upon notification that an order of possession has been entered.

8. Upon request from the Corps, the City will inspect the condemned tracts and return to the Corps a completed "Report on Vacation of Property," Engineer Form 1567, and "Certificate of Inspection and Possession", Engineer Form 708.

9. As the condemning authority, the Corps is legally responsible for providing relocation assistance. As between the City and the Corps, it is agreed that the City shall perform all relocation assistance as required by Public Law 91-646 for all tracts acquired by the United States through its power of eminent domain pursuant to this Agreement. However, should the Corps be required to provide relocation assistance, for whatever reason, the City agrees to reimburse the Corps for any relocation assistance the Corps provides to the occupants and/or owners of said tracts.

10. Final settlement authority for all cases submitted to the Corps for acquisition shall rest with the Corps. This includes the right to revest property, revise estates, and issue permits or consents as part of a settlement.

11. Authority to recommend an appeal to the DOJ shall rest with the Corps and the U.S. Attorney for the District of State.

12. The City will accept, upon delivery, a quitclaim deed from the United States for title to each tract of land acquired pursuant to this Agreement. Neither the termination of this Agreement nor the presence of any contamination, whether or not CERCLA regulated, shall be grounds for refusing to accept, upon delivery, a quitclaim deed from the United States.

13. If lands, including any improvements, contaminated by CERCLA regulated material are acquired pursuant to this Agreement, regardless of when the contamination was discovered or whether the parties knew or should have known of the contamination, the

relationship of the parties shall be covered by Article XIX of the PCA.

14. If land is acquired with non-CERCLA regulated contamination, any Federal, State, or local requirement necessitating special action including remediation, treatment, handling, or disposal will be included in the design and cost estimate as part of the project cost. The City shall be responsible, as between the Corps and the City, for any liability that may arise as a result of the non-CERCLA regulated contamination.

15. In the event lands which the City requests the Corps to condemn are discovered to be contaminated before the Declaration of Taking is filed, the Corps shall have the right to decline to perform condemnation services under this contract and declination of said work shall not constitute a breach of this contract. All of the work performed by the Corps until the declination shall be treated as part of the total project costs and are the responsibility of the City under this Agreement.

16. It is acknowledged by the City that there are risks inherent in acquiring lands which include, but are not limited to, the following:

a. The City may incur hazardous, toxic, and radioactive waste (HTRW) liability and expense by virtue of its ownership of contaminated lands, or interests therein, whether such liability should arise out of local, State or Federal laws or regulations, including liability arising out of the Comprehensive Environmental Responses, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601-9675;

b. The Court may enter a verdict in excess of the amount the City deposited with the Corps to cover a possible deficiency;

c. Approximately 120 days is usually required from the time a condemnation assembly is received by the Corps until the Declaration of Taking is filed.

17. The Corps shall furnish all services and work under this Agreement in accordance with applicable United States laws and regulations. Unless otherwise required by law, all contract work undertaken by the Corps shall be performed in accordance with the Department of the Army procurement and claims policies and procedures. All real estate work shall be performed in accordance with the Department of the Army's real estate regulation as well as other applicable law.

18. The procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement shall be those developed and used in accordance with Article X of the PCA.

19. Either the Corps or the City may terminate this Agreement by providing 60 calendar days' written notice. In the event of

termination, the Corps and the City shall consult with each other concerning all claims for termination costs; however, the City shall continue to be responsible for all costs incurred by the United States under this Agreement and for costs of closing out or transferring any ongoing contracts and litigating all civil actions arising pursuant to this Agreement to their final resolution.

20. As provided in the PCA, Article VII - Disputes, before any party of this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding resolution mutually acceptable to the parties.

21. The principal personnel and points of contact for matters relating to this Agreement are listed below:

Corps Representative: Ralph Werthmann, Real Estate Division, Rock Island District, Corps of Engineers, PO Box 2004, Rock Island, Illinois 61240, telephone (309) 794-5234.

City Representative:

22. The provisions of this Agreement shall not be interpreted in any manner inconsistent with the provisions of the PCA; and

23. This Agreement is effective upon the date of the last signature by the parties. This Agreement may be modified or amended only by written agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF

ROCKISLANDDISTRICT
CORPS OF ENGINEERS

By: _____

By: _____

Mayor

Colonel
District Commander

By: _____

City Administrator

DATE: _____

DATE: _____

APPROVED AS TO FORM:

By: _____

City Attorney

DATE: _____

APPENDIX A

Error! Bookmark not defined. **SCOPE OF WORK**

1. At the request of the City, the Corps will acquire by Federal power of eminent domain in the name of the United States the real estate interests necessary for the Project in certain tracts of land. The Corps will then convey those interests to the City by quitclaim deed.

2. The work to be accomplished and procedures followed are generally described and consist of the following:

a. The Corps (Rock Island District) will review the City's assembly, prepare the Declaration of Taking, and forward it with the appropriate supporting documents to higher authority (Declaration of Taking assembly).

b. The Declaration of Taking assembly will be reviewed by the Corps' North Central Division and forwarded to Headquarters, United States Army Corps of Engineers (HQUSACE).

c. HQUSACE will review the assembly, the Declaration of Taking will be signed by the Secretary of the Army, and the Declaration of Taking assembly will be forwarded to the DOJ (Environment and Natural Resources Division).

d. The DOJ will review the Declaration of Taking assembly and forward it to the United States Attorney for the District of Minnesota who will file the action.

e. After the Secretary of the Army signs the Declaration of Taking, the Rock Island District will prepare a quitclaim deed for the signature of the Secretary of the Army.

f. After the Declaration of Taking has been filed and possession granted to the United States, the Corps will quitclaim the lands and estates acquired to the City by the aforementioned quitclaim deed.

g. The Corps and DOJ will litigate the condemnation to the final disposition (including appeals) of all the interests acquired by the Declaration of Taking.