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GAINING AGREEMENT ON THE CHARTER
OF AN ENERGY DEVELOPMENT BOARD IN
MERCER COUNTY, NORTH DAKOTA
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AT03-76CS71030

RPA Ref. No.: RA-77-2319

Prepared for:
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
Office of the Assistant Administrator for Conservation
Division of Buildings and Community Systems
Washington, D.C. 20545

Prepared by:
RESOURCE PLANNING ASSOCIATES, INC.
1750 K Street, N.W.
Suite 1250
Washington, D.C. 20006

September 30, 1977

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BACKGROUND AND SUMMARY OF ACTIVITIES

In July 1976, the Division of Buildings and Community Systems of the Energy Research and Development Administration (ERDA) contracted with Resource Planning Associates, Inc. (RPA), to develop a general organizational approach for managing energy-related community development and to test that approach in a specific site. RPA developed a general approach by combining elements of United States and French development mechanisms. ERDA then selected Mercer County, North Dakota, from a list of 100 incipient boomtowns as the "prototype community" for adapting and testing RPA's general approach. Mercer County, a relatively isolated agricultural area, is the setting for the construction of two 2-unit coal-fired power plants and two or more coal-gasification plants, as well as related coal mining.

In adapting its general approach to Mercer County, RPA recommended the creation of a countywide organization to take the lead in directing energy-related community development. Several local governments in Mercer County responded favorably to the RPA recommendation and subsequently wrote letters soliciting ERDA's assistance. ERDA officials responded by traveling to Mercer County to assess the situation firsthand. The ERDA officials were impressed with the local interest in forming a countywide organization and convinced of the value to Mercer County of having such an entity coordinate community development.

ERDA subsequently asked RPA to assist Mercer County's local governments in overcoming the legal and political obstacles to forming a joint-powers board. On August 2, 1977, the local political jurisdictions of Mercer County signed an agreement to form the Energy Development Board (EDB) of Mercer County. The EDB's primary function will be to develop a growth management plan and preliminary plans for energy-conservation projects that could become the basis for a rural energy-conservation laboratory. ✓

During the 3-month period of intensive negotiations to form the EDB, RPA was assisted by its legal counsel, William Nicoson, North Dakota legal counsel, Patrick Conmy, and the former state senator for Mercer County, Robert Stroup. The RPA team made four trips to Mercer County during formulation of the final agreement. Throughout the negotiations, the Governor's Energy Management Office, other state agencies, and the energy industries were kept informed of progress.

The negotiations to reach an agreement began with a summary of proposed terms for a Mercer County Development Agreement (see Appendix A). After a series of negotiations in Mercer County, RPA drew up a full-scale agreement that incorporated the views of the electoral bodies to the extent possible. Through subsequent negotiations, the agreement gradually evolved (see Appendixes B and C) to its final form with amendments (see Appendix D). The final agreement (see Appendix E) was signed on August 2, 1977.

APPENDIX A: SUMMARY OF PROPOSED TERMS FOR A MERCER COUNTY
ENERGY DEVELOPMENT AGREEMENT

June 9, 1977

SUMMARY OF PROPOSED TERMS
FOR A MERCER COUNTY ENERGY
DEVELOPMENT AGREEMENT

1. Parties to the Agreement:

The agreement would be open to Mercer County and to all cities and school districts within Mercer County. The adherence of all cities and schools would not be required, however, for the agreement to take effect.

2. Creation of the Energy Development Board:

The agreement would create an Energy Development Board to plan, coordinate and assist the community development induced by energy development within Mercer County, and to promote energy conservation and the efficient use of energy resources.

3. Members of the Board:

The Board would consist of eleven members: Five representatives of the cities, three representatives of the county, and three representatives of the school districts.

The representatives of the cities would be the mayors of Beulah, Golden Valley, Hazen, Stanton and Zap, unless any city council or commission chooses another of its members. The representative of Stanton would also represent the interests of Pick City.

The representatives of the county would be the three county commissioners.

The representatives of the school districts would be chosen by the school boards of Beulah, Golden Valley, Hazen, Stanton and Zap from among their members.

The suggested allocation of representation among parties to the agreement is designed to provide broad representation, to reflect roughly the extent to which parties must deal with the impacts of energy development, and to avoid a large and cumbersome Board.

All members would serve during the term of their office.

4. Compensation:

Members of the Board would receive no compensation, but would be reimbursed expenses incurred in attending meetings.

5. Meetings:

Regular meetings of the board would be held monthly. Special meetings of the Board could be called by any member on one week's notice to all other members. Meetings would be scheduled, to the extent possible, after regular business hours.

Any member could appoint another elected official as his proxy to attend and vote at any meeting.

With the written consent of all members, action could be taken by the board without a meeting, to adopt any resolution contained in the written consent.

6. Quorum and Voting:

A majority of the Board would constitute a quorum for the transaction of business.

Adoption of measures of critical importance, such as approval and amendment of the bylaws or the comprehensive plans, assessments, and the selection of an executive director for the Board, would require the vote of two-thirds of the members attending. Adoption of other measures would require the vote of a majority of the members attending.

7. Advisory Council:

The Board would appoint as an advisory council, representatives of the Mercer County Task Force, energy industries, unions, merchants, farm groups, environmental groups, and other interests in Mercer County.

8. Planning Powers:

The planning powers, but not the zoning powers, of the

county and cities would be exercised jointly through the Board.

The executive director and his staff would be available to assist all parties to the agreement with planning, drafting of ordinances, and other services; and with funding applications to granting agencies of the State or Federal government. The Board would have no power to pass upon the funding applications of political subdivisions.

9. Regulatory Powers:

Comprehensive plans and major amendments adopted by the Board would require review by zoning authorities within the county. A period of ninety days would be available for this review, after which the plans would be deemed approved if no changes had been requested. If changes are requested and rejected, however, the Board will have no power to override local zoning. After approval of the plans, zoning powers would be exercised consistent with the plans. Any zoning authority could, however, request at any time an amendment to approved plans to permit a zoning variance, and the request would be acted upon by the board at the next regular meeting.

10. Development Powers:

At the discretion of the Board, a statute would be proposed authorizing the Board, as an independent entity, to enter into contracts, hold property, issue debt free of the limitations of its members, insulate its members from liabilities, and undertake development activities within the county in accordance with approved plans. No development activities would be undertaken without approval of the city where the development is located, or if located outside city limits, approval of the county. None of these powers would be available to the Board during the initial term of the agreement.

11. Executive Director and Staff:

The Board would be served by an executive director selected

by the Board and a staff approved by the Board. The Board would have full power of delegation to the executive director.

12. Budget and Funding:

It is anticipated that ERDA would fund the activities of the Board during the initial term of the agreement, through June 30, 1980. The Board could at any time, however, assess its members for additional funds. Assessments would be allocated in accordance with the bylaws of the Board.

A bank account for Board activities would be established and owned jointly by parties represented on the Board, with power of signature delegated to the executive director and an auditor.

13. Withdrawal of Parties:

Any party to the agreement could withdraw at any time upon notice of thirty days to all other parties. A withdrawing party would be excused from all obligations under the agreement, would renounce all rights under the agreement, and would forfeit ownership of any joint funds.

14. Duration of the Agreement:

The agreement would expire on June 30, 1980, but would be renewed for succeeding two year terms unless a majority of the Board voted against renewal more than sixty days prior to the end of any term.

APPENDIX B: DRAFT OF MERCER COUNTY ENERGY DEVELOPMENT AGREEMENT

JUNE 23, 1977

Draft of June 23, 1977

MERCER COUNTRY ENERGY
DEVELOPMENT AGREEMENT

AGREEMENT, dated as of August 1, 1977, among MERCER COUNTY (herein called "the County"), the cities of BEULAH, GOLDEN VALLEY, HAZEN, PICK CITY, STANTON AND ZAP (herein collectively called "the Cities") and BEULAH SCHOOL DISTRICT, GOLDEN VALLEY SCHOOL DISTRICT, HAZEN SCHOOL DISTRICT, STANTON SCHOOL DISTRICT AND ZAP SCHOOL DISTRICT (herein collectively called "the Districts"), the County, Cities and Districts all being located within the state of North Dakota.

WHEREAS, the parties hereto desire to improve the quality of community development induced by anticipated development of energy resources and facilities in the County and to promote energy conservation and the efficient use of energy resources; and

WHEREAS, the parties recognize that, in achieving these objectives, their planning and development functions should in many instances be carried out jointly and in concert; and

WHEREAS, Chapter 54-40 of the North Dakota Century Code authorizes political subdivisions in North Dakota to carry out any of their functions or duties jointly by agreement;

NOW, THEREFORE, the parties, pursuant to such authority, hereby agree as follows:

ARTICLE ONE:

THE ENERGY DEVELOPMENT BOARD

1.1 Creation of the Board. There is hereby established, for the purposes herein set forth, the Energy Development Board of Mercer County (herein called "the Board").

1.2 Membership of the Board. The initial authorized number of members of the Board shall be eleven, three of whom shall represent the County, five of whom shall represent the Cities, and three of whom shall represent the Districts. The members of the Board representing the County shall be the three commissioners of the County. The members of the Board representing BEULAH, GOLDEN VALLEY, HAZEN, STANTON AND ZAP shall be the respective mayors of such Cities; provided that the city council or commission in any of such Cities may choose at any time another elected official to serve as its representative on the Board. The representative of STANTON on the Board shall also represent the interests of PICK CITY. The members of the Board representing the BEULAH SCHOOL DISTRICT and the HAZEN SCHOOL DISTRICT shall be the respective chairmen of the school boards within such Districts; and the member of the Board representing the GOLDEN VALLEY SCHOOL DISTRICT, the STANTON SCHOOL DISTRICT and the ZAP SCHOOL DISTRICT shall be the chairman of the school board of one of such Districts serving a 12-month term on the Board in rotation with the chairmen of the school boards of the other two such Districts, beginning in the first term with the chairman of the school board of the GOLDEN VALLEY SCHOOL DISTRICT, in the second term with

the chairman of the school board of the STANTON SCHOOL DISTRICT and in the third term with the chairman of the school board of the ZAP SCHOOL DISTRICT, and repeating such order of rotation throughout the duration of this Agreement; provided that, at any time, the school board of any District then entitled to membership on the Board may choose another of their members to serve on the Board. In the event of withdrawal from this Agreement by the County, the authorized number of members of the Board shall be reduced by three. In the event of withdrawal from this Agreement by any City (other than PICK CITY), or by the BEULAH SCHOOL DISTRICT or the HAZEN SCHOOL DISTRICT, the authorized number of members of the Board shall be reduced by one. In the event of withdrawal from this Agreement by all three other Districts, the authorized number of members of the Board shall be reduced by one; in the event of such withdrawal by two of such three Districts, the other such District shall assume full representation on the Board; and in the event of such withdrawal by one of such three Districts, the other two such Districts shall rotate such representation annually between them.

1.3. Vacancies. Whenever any vacancy shall occur on the Board by reason of death, resignation or otherwise, the Board shall have no power to fill such vacancy; but such vacancy may be filled only by action of the commissioners of the County in the case of a vacancy among representatives of the County, by action of the respective city council or commission in the case of a vacancy among representatives of any City entitled to membership on the Board, and by action of the respective school board in the case of a vacancy among representatives of any

District then entitled to membership on the Board.

1.4 Compensation of Board Members. Members of the Board shall receive no compensation for serving on the Board but shall be entitled to reimbursement of travel and other expenses incurred by reason of service on the Board. Such reimbursement shall be made from a joint account established in accordance with Section 4.2 hereof.

1.5 Meetings. Regular meetings of the Board shall be held monthly as provided by the bylaws of the Board. Special meetings of the Board may be called by any member of the Board upon seven days' notice to all other members. To the extent possible, meetings will be held after regular business hours. Any member of the Board may appoint in writing another elected official in his stead to attend and vote at any meeting of the Board with full power of substitution.

1.6 Quorum and Voting. At any meeting of the Board the presence of a majority of the then authorized number of members of the Board shall be necessary to constitute a quorum for the transaction of business. The affirmative vote of a majority of the members attending any meeting of the Board shall be necessary for the taking of any action whatsoever, provided that, for the taking of action of critical importance, the affirmative vote of two-thirds of the members attending any meeting of the Board shall be necessary. For purposes of this Agreement, "action of critical importance" shall mean the adoption and amendment of the bylaws of the Board, the adoption and amendment of a comprehensive plan for any jurisdiction which is a party hereto, the approval of any assessment upon any of the parties hereto, and the selection of the Board's Executive Director.

1.7. Action Without Meeting. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if prior to such action a written consent thereto is signed by all members of the Board and filed with the minutes of the Board.

1.8. Advisory Council. The Board shall create an advisory council to assist it in the performance of its functions. Such advisory council may include representatives of the Mercer County Task Force, energy industries, labor unions, merchants, farm groups, environmental groups, and other interests in the County.

ARTICLE TWO:

FUNCTIONS OF THE BOARD

2.1 Planning. The County and the Cities agree that their respective comprehensive planning functions and other land use planning functions shall be carried out jointly through the Board and its staff. The Districts agree to provide all necessary assistance to the Board and its staff in the exercise of such planning functions and agree to be guided in the planning of new schools and related facilities by plans approved by the Board. Subject to priorities established by the Board, its staff and consultants shall be available to assist any party hereto with the preparation of plans, ordinances and related documents and with applications by any such party to agencies of the state or federal government for financial or technical assistance. The Board, however, shall have no power to pass upon applications for such assistance by any party hereto.

2.2 Land Use Regulation. The County and the Cities retain their respective powers over zoning, subdivision regulation and other land use controls, and may carry out such functions severally and not jointly, subject only to the provisions of this Section. Comprehensive plans and major amendments thereto adopted by the Board shall be submitted to all affected governmental bodies in the County with authority over zoning, subdivision regulation or other land use controls for review during a period of ninety days. Any such body which fails to

request within such period that a submitted plan or major amendment be revised shall be deemed to have approved such plan or major amendment. The County and each City agree that their respective ordinances, official maps and regulations shall be revised to conform to any such plan or amendment approved by the County or such City, as the case may be, and shall be administered in a manner consistent with any such plan or amendment. The County or any City may at any time request the Board to amend any approved plan in order to permit a zoning variance, ordinance revision or other regulatory modification, and the Board shall use its best efforts to act upon such request at its next regular meeting. The Board shall determine what constitutes a "major amendment" for purposes of this Agreement.

2.3 Additional Statutory Authorization. The Board shall study and, at its discretion, may propose a statute which would authorize the Board, as an independent legal entity, to enter into contracts, to hold property, to issue debt free of the limitations upon the debt of parties hereto, to insulate the parties hereto from liabilities incurred by the Board, to undertake specific development activities within the County in accordance with plans approved by the Board, or to perform any combination of the foregoing or related functions. No development activities shall be undertaken by the Board, however, without approval of the City where such development is located, or, if located outside the limits of all Cities, approval of the County.

ARTICLE THREE:
STAFF AND CONSULTANTS

3.1 Composition of Staff. To assist the Board in carrying out its functions hereunder, a full-time staff shall be employed, consisting of an Executive Director and such other staff members as the Board shall determine.

3.2 Executive Director. The Executive Director shall be selected by the Board and shall be empowered to perform all such duties, incidental to the functions of the Board herein prescribed, as the Board may determine. The Executive Director shall be directly responsible to the Board for work performed by the staff and shall be charged with the responsibility of supervising all such work. Pending additional statutory authority conferring independent legal status upon the Board, the Executive Director shall exercise contractual authority to bind jointly the parties hereto on matters falling within the functions of the Board herein set forth.

3.3 Other Employees. The Board shall determine the duties to be performed as a function of each staff position. The Executive Director shall propose, and the Board shall approve or reject, candidates for all other staff positions.

3.4 Consultants. All consultants to be compensated from any joint account established pursuant to Section 4.2 hereof shall perform work only under one or more contracts approved by the Board.

3.5 Technical Assistance. The Board will be receptive to assistance rendered by the staff or consultants of regional, state or federal agencies, but may exercise its right to terminate such assistance should it find professional competence lacking.

3.6 Offices. Staff offices shall be established within the County as directed by the Board.

ARTICLE FOUR:

FUNDING, BUDGET AND REPORTS

4.1 Funding. The parties contemplate that the activities of the Board and its staff will be funded through June 30, 1980 under an agreement with the Energy Research and Development Administration or a successor agency of the federal government (hereinafter called "ERDA"). Contributions by other agencies of federal or state government or by private foundations may also be received to finance activities hereunder. The Board may at any time, however, assess the parties hereto for additional funds either for general or special use. Any such assessment shall be allocated among the parties hereto in accordance with provisions of the bylaws adopted by the Board.

4.2 Joint Account. The County shall establish one or more bank accounts in the name of the County, as agent for the parties hereto, for the purpose of financing the activities of the Board and its staff hereunder. The power of signature to draw funds upon any such account is hereby conferred upon the Executive Director and the auditor of the County, acting jointly. The Board shall maintain accurate records of all receipts and expenditures for purposes of financing its activities hereunder.

4.3 Budget. The Board shall approve an annual budget for each 12-month (or shorter initial) period ending June 30 throughout the duration of this Agreement. Each such budget

shall set forth in reasonable detail the estimated expenditures for the period in question and include for comparison the estimated expenditures, if any, of the first next prior period and the actual expenditures, if any, of the second next prior period.

4.4 Reports. The Board shall submit an annual report to the parties hereto and to ERDA, including a narrative description of its activities during the reported period and a statement of receipts and expenditures during such period certified by the auditor of the County. A report hereunder shall cover the 12-month (or shorter initial) period ending June 30 of each year throughout the duration of this Agreement and shall be submitted no later than the first of September following the period reported on.

4.5 Audits. All financial records of the Board shall be available at its offices for inspection by the parties hereto or by ERDA upon reasonable notice to the Executive Director. Financial transactions involving federal monies may be audited by the General Accounting Office under such rules and regulations as may be lawfully prescribed by the Comptroller General of the United States. Representatives of such Office shall have access to all books, accounts, records, reports, files and other papers, things or property pertaining to such transactions as may be necessary to facilitate any such audit.

ARTICLE FIVE:

DURATION AND WITHDRAWAL

5.1 Duration of Agreement. This Agreement shall become effective as of August 1, 1977 and shall remain in effect for an initial period expiring June 30, 1980. Thereafter, this Agreement shall be renewed for consecutive periods of 24 months' duration unless a majority of the Board has voted against renewal at least 60 days prior to the expiration of any initial or subsequent period, whereupon this Agreement shall terminate upon the expiration of such period. Upon termination of this Agreement, any funds remaining in joint accounts established under Section 4.2 hereof shall be applied first to meet any outstanding obligations incurred in the course of carrying out functions of the Board hereunder, and the remainder shall be distributed as follows: funds remaining unspent which have been received from ERDA, from any other contributing agency of state or federal government or from any private foundation and have been segregated for an express purpose shall be distributed in accordance with instructions from ERDA, such other agency or such foundation, as the case may be; all other funds shall be divided among the parties hereto in accordance with bylaws approved by the Board.

5.2 Withdrawal from Agreement. Any party hereto may withdraw from this Agreement at any time by written notice to all other parties at least 30 days prior to the effective date

of such withdrawal. On such date a withdrawing party relinquishes all rights hereunder, forfeits ownership of any funds held in joint accounts under Section 4.2 hereof, and is excused from all obligations hereunder other than obligations arising under Section 2.2 hereof and other than any joint liabilities which may have been incurred prior to such date of withdrawal.

ARTICLE SIX:

MISCELLANEOUS PROVISIONS

6.1 Notices. All notices hereunder shall be in writing and shall be sufficiently given if mailed by registered mail or delivered to the party entitled thereto at the current official address of such party filed with the Executive Director.

6.2 Separability. In case any provision in this Agreement shall be invalid or unenforceable, the validity and enforceability of all remaining provisions shall not in any way be affected or impaired thereby.

6.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

6.4 Benefit of Agreement. This Agreement is for the benefit of the parties hereto, excluding parties who have withdrawn herefrom, for the benefit of residents within the jurisdiction of the initial parties, and for the benefit of any agency of state or federal government or private foundation contributing funds to finance activities of the Board hereunder.

6.5 Counterparts. This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed originals and shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have
 executed and delivered this Agreement as of the day and
 year first above written, each party acting by its
 representative duly authorized thereunto by resolution
 of its governing body.

MERCER COUNTY

By _____

CITY OF BEULAH

By _____

CITY OF GOLDEN VALLEY

By _____

CITY OF HAZEN

By _____

PICK CITY

By _____

CITY OF STANTON

By _____

CITY OF ZAP

By _____

BEULAH SCHOOL DISTRICT

By _____

GOLDEN VALLEY SCHOOL DISTRICT

By _____

HAZEN SCHOOL DISTRICT

By _____

STANTON SCHOOL DISTRICT

By _____

ZAP SCHOOL DISTRICT

By _____

APPENDIX C: DRAFT OF MERCER COUNTY ENERGY DEVELOPMENT AGREEMENT

JUNE 24, 1977

Draft of June 24, 1977

MERCER COUNTY ENERGY
DEVELOPMENT AGREEMENT

AGREEMENT, dated as of August 1, 1977, among MERCER COUNTY (herein called "the County"), the cities of BEULAH, GOLDEN VALLEY, HAZEN, PICK CITY, STANTON and ZAP (herein collectively called "the Cities") and BEULAH SCHOOL DISTRICT, GOLDEN VALLEY SCHOOL DISTRICT, HAZEN SCHOOL DISTRICT, STANTON SCHOOL DISTRICT and ZAP SCHOOL DISTRICT (herein collectively called "the Districts"), the County, Cities and Districts all being located within the state of North Dakota.

WHEREAS, the parties hereto desire to improve the quality of community development induced by anticipated development of energy resources and facilities in the County and to promote energy conservation and the efficient use of energy resources; and

WHEREAS, the parties recognize that, in achieving these objectives, their planning and development functions should in many instances be carried out jointly and in concert; and

WHEREAS, Chapter 54-40 of the North Dakota Century Code authorizes political subdivisions in North Dakota to carry out any of their functions or duties jointly by agreement;

NOW, THEREFORE, the parties, pursuant to such authority, hereby agree as follows:

ARTICLE ONE:

THE ENERGY DEVELOPMENT BOARD

1.1 Creation of the Board. There is hereby established, for the purposes herein set forth, the Energy Development Board of Mercer County (herein called "the Board").

1.2 Membership of the Board. The initial authorized number of members of the Board shall be eleven, three of whom shall represent the County, five of whom shall represent the Cities, and three of whom shall represent the Districts. The members of the Board representing the County shall be the three commissioners of the County. The members of the Board representing BEULAH, GOLDEN VALLEY, HAZEN, STANTON AND ZAP shall be the respective mayors of such Cities; provided that the city council or commission in any of such Cities may choose at any time another elected official to serve as its representative on the Board. The representative of STANTON on the Board shall also represent the interests of PICK CITY. The members of the Board representing the BEULAH SCHOOL DISTRICT and the HAZEN SCHOOL DISTRICT shall be the respective chairmen of the school boards within such Districts; and the member of the Board representing the GOLDEN VALLEY SCHOOL DISTRICT, the STANTON SCHOOL DISTRICT and the ZAP SCHOOL DISTRICT shall be the chairman of the school board of one of such Districts serving a 12-month term on the Board in rotation with the chairmen of the school boards of the other two such Districts, beginning in the first term with the chairman of the school board of the GOLDEN VALLEY SCHOOL DISTRICT, in the second term with

the chairman of the school board of the STANTON SCHOOL DISTRICT and in the third term with the chairman of the school board of the ZAP SCHOOL DISTRICT, and repeating such order of rotation throughout the duration of this Agreement; provided that, at any time, the school board of any District then entitled to membership on the Board may choose another of their members to serve on the Board. In the event of withdrawal from this Agreement by the County, the authorized number of members of the Board shall be reduced by three. In the event of withdrawal from this Agreement by any City (other than PICK CITY), or by the BEULAH SCHOOL DISTRICT or the HAZEN SCHOOL DISTRICT, the authorized number of members of the Board shall be reduced by one. In the event of withdrawal from this Agreement by STANTON, PICK CITY may choose another member of the Board to represent its interests. In the event of withdrawal from this Agreement by all three other Districts, the authorized number of members of the Board shall be reduced by one; in the event of such withdrawal by two of such three Districts, the other such District shall assume full representation on the Board; and in the event of such withdrawal by one of such three Districts, the other two such Districts shall rotate such representation annually between them.

1.3 Vacancies. Whenever any vacancy shall occur on the Board by reason of death, resignation or otherwise, the Board shall have no power to fill such vacancy; but such vacancy may be filled only by action of the commissioners of the County in the case of a vacancy among representatives of the County, by action of the respective city council or commission in the case of a vacancy among representatives of any City entitled to membership on the Board, and by action of the respective school board in the case of a vacancy among representatives of any

District then entitled to membership on the Board.

1.4 Compensation of Board Members. Members of the Board shall receive no compensation for serving on the Board but shall be entitled to reimbursement of travel and other expenses incurred by reason of service on the Board. Such reimbursement shall be made from a joint account established in accordance with Section 4.2 hereof.

1.5 Meetings. Regular meetings of the Board shall be held monthly as provided by the bylaws of the Board. Special meetings of the Board may be called by any member of the Board upon seven days' notice to all other members. To the extent possible, meetings will be held after regular business hours. Any member of the Board may appoint in writing another elected official in his stead to attend and vote at any meeting of the Board with full power of substitution.

1.6 Quorum and Voting. At any meeting of the Board the presence of a majority of the then authorized number of members of the Board shall be necessary to constitute a quorum for the transaction of business. The affirmative vote of a majority of the members attending any meeting of the Board shall be necessary for the taking of any action whatsoever, provided that, for the taking of action of critical importance, the affirmative vote of two-thirds of the members attending any meeting of the Board shall be necessary. For purposes of this Agreement, "action of critical importance" shall mean the adoption and amendment of the bylaws of the Board, the adoption and amendment of a comprehensive plan for any jurisdiction which is a party hereto, the approval of any assessment upon any of the parties hereto, and the selection of the Board's Executive Director.

1.7. Action Without Meeting. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if prior to such action a written consent thereto is signed by all members of the Board and filed with the minutes of the Board.

1.8. Advisory Council. The Board shall create an advisory council to assist it in the performance of its functions. Such advisory council may include representatives of the Mercer County Task Force, energy industries, labor unions, merchants, farm groups, environmental groups, and other interests in the County.

ARTICLE TWO:
FUNCTIONS OF THE BOARD

2.1 Planning. The County and the Cities agree that their respective comprehensive planning functions and other land use planning functions shall be carried out jointly through the Board and its staff. The Districts agree to provide all necessary assistance to the Board and its staff in the exercise of such planning functions, and agree to be guided in the planning of new schools and related facilities by plans approved by the Board. Subject to priorities established by the Board, its staff and consultants shall be available to assist any party hereto with the preparation of plans, ordinances and related documents and with applications by any such party to agencies of the state or federal government for financial or technical assistance. The Board, however, shall have no power to pass upon applications for such assistance by any party hereto.

2.2 Land Use Regulation. The County and the Cities retain their respective powers over zoning, subdivision regulation and other land use controls, and may carry out such functions severally and not jointly, subject only to the provisions of this Section. Comprehensive plans and major amendments thereto adopted by the Board shall be submitted to all affected governmental bodies in the County with authority over zoning, subdivision regulation or other land use controls for review during a period of ninety days. Any such body which fails to

request within such period that a submitted plan or major amendment be revised shall be deemed to have approved such plan or major amendment. The County and each City agree that their respective ordinances, official maps and regulations shall be revised to conform to any such plan or amendment approved by the County or such City, as the case may be, and shall be administered in a manner consistent with any such plan or amendment. The County or any City may at any time request the Board to amend any approved plan in order to permit a zoning variance, ordinance revision or other regulatory modification, and the Board shall use its best efforts to act upon such request at its next regular meeting. The Board shall determine what constitutes a "major amendment" for purposes of this Agreement.

2.3 Additional Statutory Authorization. The Board shall study and, at its discretion, may propose a statute which would authorize the Board, as an independent legal entity, to enter into contracts, to hold property, to issue debt free of the limitations upon the debt of parties hereto, to insulate the parties hereto from liabilities incurred by the Board, to undertake specific development activities within the County in accordance with plans approved by the Board, or to perform any combination of the foregoing or related functions. No development activities shall be undertaken by the Board, however, without approval of the City where such development is located, or, if located outside the limits of all Cities, approval of the County.

ARTICLE THREE:
STAFF AND CONSULTANTS

3.1 Composition of Staff. To assist the Board in carrying out its functions hereunder, a full-time staff shall be employed, consisting of an Executive Director and such other staff members as the Board shall determine.

3.2 Executive Director. The Executive Director shall be selected by the Board and shall be empowered to perform all such duties, incidental to the functions of the Board herein prescribed, as the Board may determine. The Executive Director shall be directly responsible to the Board for work performed by the staff and shall be charged with the responsibility of supervising all such work. Pending additional statutory authority conferring independent legal status upon the Board, the Executive Director shall exercise contractual authority to bind jointly the parties hereto on matters falling within the functions of the Board herein set forth.

3.3 Other Employees. The Board shall determine the duties to be performed as a function of each staff position. The Executive Director shall propose, and the Board shall approve or reject, candidates for all other staff positions.

3.4 Consultants. All consultants to be compensated from any joint account established pursuant to Section 4.2 hereof shall perform work only under one or more contracts approved by the Board.

3.5 Technical Assistance. The Board will be receptive to assistance rendered by the staff or consultants of regional, state or federal agencies, but may exercise its right to terminate such assistance should it find professional competence lacking.

3.6 Offices. Staff offices shall be established within the County as directed by the Board.

ARTICLE FOUR:

FUNDING, BUDGET AND REPORTS

4.1 Funding. The parties contemplate that the activities of the Board and its staff will be funded through June 30, 1980 under an agreement with the Energy Research and Development Administration or a successor agency of the federal government (hereinafter called "ERDA"). Contributions by other agencies of federal or state government or by private foundations may also be received to finance activities hereunder. The Board may at any time, however, assess the parties hereto for additional funds either for general or special use. Any such assessment shall be allocated among the parties hereto in accordance with provisions of the bylaws adopted by the Board.

4.2 Joint Account. The County shall establish one or more bank accounts in the name of the County, as agent for the parties hereto, for the purpose of financing the activities of the Board and its staff hereunder. In the event that additional statutory authority confers independent legal status upon the Board, any such bank account shall be transferred to the name of the Board. The power of signature to draw funds upon any such account is hereby conferred upon the Executive Director and an auditor designated by the Board. The Board shall maintain accurate records of all receipts and expenditures for purposes of financing its activities hereunder.

4.3 Budget. The Board shall approve an annual budget for each 12-month (or shorter initial) period ending June 30 throughout the duration of this Agreement. Each such budget

shall set forth in reasonable detail the estimated expenditures for the period in question and include for comparison the estimated expenditures, if any, of the first next prior period and the actual expenditures, if any, of the second next prior period. The County shall include each such budget in its own annual budget.

4.4 Reports. The Board shall submit an annual report to the parties hereto, including a narrative description of its activities during the reported period and a statement of receipts and expenditures during such period certified by the auditor designated by the Board. A report hereunder shall cover the 12-month (or shorter initial) period ending June 30 of each year throughout the duration of this Agreement and shall be submitted no later than the first of September following the period reported on.

4.5 Audits. All financial records of the Board shall be available at its offices for inspection by the parties hereto upon reasonable notice to the Executive Director.

ARTICLE FIVE:

DURATION AND WITHDRAWAL

5.1 Duration of Agreement. This Agreement shall become effective as of August 1, 1977 and shall remain in effect for an initial period expiring June 30, 1980. Thereafter, this Agreement shall be renewed for consecutive periods of 24 months' duration unless a majority of the Board has voted against renewal at least 60 days prior to the expiration of any initial or subsequent period, whereupon this Agreement shall terminate upon the expiration of such period. Upon termination of this Agreement, any funds remaining in joint accounts established under Section 4.2 hereof shall be applied first to meet any outstanding obligations incurred in the course of carrying out functions of the Board hereunder, and the remainder shall be distributed as follows: funds remaining unspent which have been received from ERDA, from any other contributing agency of state or federal government or from any private foundation and have been segregated for an express purpose shall be distributed in accordance with instructions from ERDA, such other agency or such foundation, as the case may be; all other funds shall be divided among the parties hereto in accordance with bylaws approved by the Board.

5.2 Withdrawal from Agreement. Any party hereto may withdraw from this Agreement at any time by written notice to all other parties at least 30 days prior to the effective date

of such withdrawal. On such date a withdrawing party relinquishes all rights hereunder, forfeits ownership of any funds held in joint accounts under Section 4.2 hereof, and is excused from all obligations hereunder other than obligations arising under Section 2.2 hereof and other than any joint liabilities which may have been incurred prior to such date of withdrawal.

ARTICLE SIX:
MISCELLANEOUS PROVISIONS

6.1 Notices. All notices hereunder shall be in writing and shall be sufficiently given if mailed by registered mail or delivered to the party entitled thereto at the current official address of such party filed with the Executive Director.

6.2 Separability. In case any provision in this Agreement shall be invalid or unenforceable, the validity and enforceability of all remaining provisions shall not in any way be affected or impaired thereby.

6.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

6.4 Benefit of Agreement. This Agreement is for the benefit of the parties hereto, excluding parties who have withdrawn herefrom, for the benefit of residents within the jurisdiction of the initial parties, and for the benefit of any agency of state or federal government or private foundation contributing funds to finance activities of the Board hereunder.

6.5 Counterparts. This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed originals and shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have
executed and delivered this Agreement as of the day and
year first above written, each party acting by its
representative duly authorized thereunto by resolution
of its governing body.

MERCER COUNTY

By _____

CITY OF BEULAH

By _____

CITY OF GOLDEN VALLEY

By _____

CITY OF HAZEN

By _____

PICK CITY

By _____

CITY OF STANTON

By _____

CITY OF ZAP

By _____

BEULAH SCHOOL DISTRICT

By _____

GOLDEN VALLEY SCHOOL DISTRICT

By _____

HAZEN SCHOOL DISTRICT

By _____

STANTON SCHOOL DISTRICT

By _____

ZAP SCHOOL DISTRICT

By _____

APPENDIX D: MERCER COUNTY ENERGY DEVELOPMENT AGREEMENT WITH AMENDMENTS

MERCER COUNTY ENERGY
DEVELOPMENT AGREEMENT

AGREEMENT, dated as of August 1, 1977, among MERCER COUNTY (herein called "the County"), the cities of BEULAH, GOLDEN VALLEY, HAZEN, PICK CITY, STANTON and ZAP (herein collectively called "the Cities") and BEULAH SCHOOL DISTRICT, GOLDEN VALLEY SCHOOL DISTRICT, HAZEN SCHOOL DISTRICT, STANTON SCHOOL DISTRICT and ZAP SCHOOL DISTRICT (herein collectively called "the School Districts"), the County, Cities and School Districts all being located within the state of North Dakota.

WHEREAS, the parties hereto desire to improve the quality of community development induced by anticipated development of energy resources and facilities in the County and to promote energy conservation and the efficient use of energy resources; and

WHEREAS, the parties recognize that, in achieving these objectives, their planning and development functions should in many instances be carried out jointly and in concert; and

WHEREAS, Chapter 54-40 of the North Dakota Century Code authorizes political subdivisions in North Dakota to carry out any of their functions or duties jointly by agreement;

NOW, THEREFORE, the parties, pursuant to such authority, hereby agree as follows:

ARTICLE ONE:

THE ENERGY DEVELOPMENT BOARD

1.1 Creation of the Board. There is hereby established, for the purposes herein set forth, the Energy Development Board of Mercer County (herein called "the Board").

1.2 Membership of the Board. Subject to Section 5.1 hereof, the initial authorized number of members of the Board shall be eleven, three of whom shall represent the County, five of whom shall represent the Cities, and three of whom shall represent the School Districts. The members of the Board representing the County shall be the three commissioners of the County. The members of the Board representing BEULAH, GOLDEN VALLEY, HAZEN, STANTON and ZAP shall be the respective mayors of such Cities; provided that the city council or commission in any of such Cities may choose at any time another elected official to serve as its representative on the Board. The representative of STANTON on the Board shall also represent the interests of PICK CITY. The members of the Board representing the BEULAH SCHOOL DISTRICT and the HAZEN SCHOOL DISTRICT shall be the respective presidents of the school boards within such School Districts; and the member of the Board representing the GOLDEN VALLEY SCHOOL DISTRICT, the STANTON SCHOOL DISTRICT and the ZAP SCHOOL DISTRICT shall be the president of the school board of one of such School Districts serving a 12-month term on the Board in rotation with the chairmen of the school boards of the other two such School Districts, beginning in the first term with the president of the school board of the GOLDEN VALLEY SCHOOL DISTRICT, in the second term with the president of the school board of the

STANTON SCHOOL DISTRICT and the third term with the president of the school board of the ZAP SCHOOL DISTRICT, and repeating such order of rotation throughout the duration of this Agreement; provided that, at any time, the school board of any School District then entitled to membership on the Board may choose another of its members to serve on the Board. In the event of withdrawal from this Agreement by the County, the authorized number of members of the Board shall be reduced by three. In the event of withdrawal from this Agreement by any City (other than PICK CITY or STANTON), or by the BEULAH SCHOOL DISTRICT or the HAZEN SCHOOL DISTRICT, the authorized number of members of the Board shall be reduced by one. In the event of withdrawal from this Agreement by STANTON, the member of the Board representing PICK CITY shall be the mayor of PICK CITY; provided that the city council of PICK CITY may choose at any time thereafter, another elected official to serve as its representative on the Board. In the event of withdrawal from this Agreement by both PICK CITY and STANTON, the authorized number of members of the Board shall be reduced by one. In the event of withdrawal from this Agreement by the GOLDEN VALLEY SCHOOL DISTRICT, the STANTON SCHOOL DISTRICT and the ZAP SCHOOL DISTRICT, the authorized number of members of the Board shall be reduced by one; in the event of such withdrawal by two of such School Districts, the other such School District shall assume full representation on the Board; and in the event of such withdrawal by one of such three School Districts, the other two such School Districts shall rotate such representation annually between them.

1.3 Vacancies. Whenever any vacancy shall occur on the Board by reason of death, resignation or otherwise, the Board

shall have no power to fill such vacancy; but such vacancy may be filled only by action of the commissioners of the County in the case of a vacancy among representatives of the County, by action of the respective city council or commission in the case of a vacancy among representatives of any City entitled to membership on the Board, and by action of the respective school board in the case of a vacancy among representatives of any School District then entitled to membership on the Board.

1.4 Compensation of Board Members. Each member of the Board shall receive a fee of \$15.00 for each meeting of the Board attended by such member and shall be entitled to reimbursement of travel and other expenses incurred by reason of service on the Board. Such fees and reimbursement shall be paid from a joint account established in accordance with Section 4.2 hereof.

1.5 Meetings. Regular meetings of the Board shall be held monthly as provided by the bylaws of the Board. The first regular meeting of the Board shall be called by the County to be held no later than 15 days following the effective date of this Agreement. Special meetings of the Board may be called by the chairman of the Board at the request of any member of the Board upon seven days' notice to all other members. To the extent possible, meetings will be held after regular business hours. Any member of the Board may appoint in writing another elected official in his stead to attend and vote at any meeting of the Board with full power of substitution.

1.6 Quorum and Voting. At any meeting of the Board the presence of a majority of the then authorized number of members of the Board shall be necessary to constitute a quorum for the transaction of business. The affirmative vote of a majority

of the members attending any meeting of the Board shall be necessary for the taking of any action whatsoever, provided that, for the taking of action of critical importance, the affirmative vote of two-thirds of the members attending any meeting of the Board shall be necessary. No vote on any matter of critical importance shall be taken at any meeting of the Board unless notice in accordance with the bylaws of the Board shall have been given to all parties hereto that such matter of critical importance is to be considered at such meeting. For purposes of this Agreement, "action of critical importance" shall mean the adoption and amendment of the bylaws of the Board, the adoption and amendment of a comprehensive plan for any jurisdiction which is a party hereto, the approval of any assessment upon any of the parties hereto, and the selection of the Board's Executive Director.

1.7 Action Without Meeting. In its bylaws, the Board may, at its discretion, provide that any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if prior to such action a written consent thereto is signed by all members of the Board and filed with the minutes of the Board.

1.8 Advisory Council. The Board shall create an advisory council to assist it in the performance of its functions. Such advisory council may include representatives of the Mercer County Task Force, energy industries, labor unions, merchants, farm groups, environmental groups, and other interests in the County.

1.9 Bylaws. The Board shall adopt at its first or second regular meeting bylaws governing the selection of a chairman, the giving of notice of meeting, the time and place of meetings

and such other matters as the Board may determine or as may be contemplated herein. All such bylaws shall be consistent with the provisions of this Agreement.

ARTICLE TWO:

FUNCTIONS OF THE BOARD

2.1 Planning. The County and the Cities agree that their respective comprehensive planning functions and other land use planning functions shall be carried out jointly through the Board and its staff. The School Districts agree to provide all necessary assistance to the Board and its staff in the exercise of such planning functions and agree, in the planning of new schools and related facilities to take account of the comprehensive plans approved by the Board. Subject to priorities established by the Board, its staff and consultants shall be available to assist any party hereto with the preparation of plans, ordinances and related documents and with applications by any such party to agencies of the state or federal government for financial or technical assistance. The Board, however, shall have no power to approve, disapprove or otherwise pass upon applications for such assistance by any party hereto.

2.2 Land Use Regulation. The County and the Cities retain their respective powers over zoning, subdivision regulation and other land use controls, and may carry out such functions severally and not jointly, subject only to the provisions of this Section. Comprehensive plans and major amendments thereto adopted by the Board shall be submitted to all affected governmental bodies in the County with authority over zoning, subdivision regulation or other land use controls for review during a period of ninety days. Any such body which fails to

request within such period that a submitted plan or major amendment be revised shall be deemed to have approved such plan or major amendment. The County and each City agree that their respective ordinances, official maps and regulations shall be revised to conform to any such plan or amendment approved by the County or such City, as the case may be, and shall be administered in a manner consistent with any such plan or amendment. The County or any City may at any time request the Board to amend any approved plan in order to permit a zoning variance, ordinance revision or other regulatory modification, and the Board shall use its best efforts to act upon such request at its next regular meeting. The Board shall determine what constitutes a "major amendment" for purposes of this Agreement.

2.3 Additional Statutory Authorization. The Board shall study and, at its discretion, may propose a statute which would authorize the Board, as an independent legal entity, to enter into contracts, to hold property, to issue debt free of the limitations upon the debt of parties hereto, to insulate the parties hereto from liabilities incurred by the Board to undertake specific development activities within the County in accordance with plans approved by the Board, or to perform any combination of the foregoing or related functions. No development activities shall be undertaken by the Board, however, without approval of the City where such development is located, or, if located outside the limits of all Cities, approval of the County.

ARTICLE THREE:
STAFF AND CONSULTANTS

3.1 Composition of Staff. To assist the Board in carrying out its functions hereunder, a full-time staff shall be employed, consisting of an Executive Director and such other staff members as the Board shall determine.

3.2 Executive Director. The Executive Director shall be selected by the Board and shall be empowered to perform all such duties, incidental to the functions of the Board herein prescribed, as the Board may determine. The Executive Director shall be directly responsible to the Board for work performed by the staff and shall be charged with the responsibility of supervising all such work. Pending additional statutory authority conferring independent legal status upon the Board, the Executive Director shall exercise contractual authority to bind jointly the parties hereto on matters falling within the functions of the Board herein set forth.

3.3 Other Employees. The Board shall determine the duties to be performed as a function of each staff position. The Executive Director shall propose, and the Board shall approve or reject, candidates for all other staff positions.

3.4 Consultants. All consultants to be compensated from any joint account established pursuant to Section 4.2 hereof shall perform work only under one or more contracts approved by the Board.

3.5 Technical Assistance. The Board will be receptive to assistance rendered by the staff or consultants of regional, state or federal agencies, but may exercise its right to terminate such assistance should it find professional competence lacking.

3.6 Offices. Staff offices shall be established within the County as directed by the Board.

ARTICLE FOUR:

FUNDING, BUDGET AND REPORTS

4.1 Funding. The parties contemplate that the activities of the Board and its staff will be funded through June 30, 1980 under an agreement with the Energy Research and Development Administration or a successor agency of the federal government (herein called "ERDA"). Contributions by other agencies of federal or state government or by private foundations may also be received to finance activities hereunder. The Board may at any time, however, assess the parties hereto for additional funds either for general or special use. Any such assessment shall be allocated among the parties hereto in accordance with provisions of the bylaws adopted by the Board.

4.2 Joint Account. The County shall establish one or more bank accounts in the name of the County, as agent for the parties hereto, for the purpose of financing the activities of the Board and its staff hereunder. In the event that additional statutory authority confers independent legal status upon the Board, any such bank account shall be transferred to the name of the Board. The power of signature to draw funds upon any such account is hereby conferred upon the Executive Director and an auditor designated by the Board. The Board shall maintain accurate records of all receipts and expenditures for purposes of financing its activities hereunder.

4.3 Budget. The Board shall approve an annual budget for each 12-month (or shorter initial) period ending June 30 throughout the duration of this Agreement. Each such budget

shall set forth in reasonable detail the estimated expenditures for the period in question and include for comparison the estimated expenditures, if any, of the first next prior period and the actual expenditures, if any, of the second next prior period. The County shall include each such budget in its own annual budget.

4.4 Reports. The Board shall submit an annual report to the parties hereto, including a narrative description of its activities during the reported period and a statement of receipts and expenditures during such period certified by the auditor designated by the Board. A report hereunder shall cover the 12-month (or shorter initial) period ending June 30 of each year throughout the duration of this Agreement and shall be submitted no later than the first of September following the period reported on.

4.5 Audits. All financial records of the Board shall be available at its offices for inspection by the parties hereto upon reasonable notice to the Executive Director.

ARTICLE FIVE:

DURATION, WITHDRAWAL AND AMENDMENT

5.1 Duration of Agreement. This Agreement shall become effective as of August 1, 1977, if on or before such date the County, at least four Cities and at least three School Districts shall have executed this Agreement. Any party who has failed to execute this Agreement on or before such date shall be treated for all purposes of this Agreement as if such party had withdrawn herefrom; and the subsequent adherence to this Agreement by any such party may be accomplished only by amendment hereof. This Agreement shall remain in effect for an initial period expiring June 30, 1980. Thereafter, this Agreement shall be renewed for consecutive periods of 24 months' duration unless a majority of the Board has voted against renewal at least 60 days prior to the expiration of any initial or subsequent period, whereupon this Agreement shall terminate upon the expiration of such period. Upon termination of this Agreement, any funds remaining in joint accounts established under Section 4.2 hereof shall be applied first to meet any outstanding obligations incurred in the course of carrying out functions of the Board hereunder, and the remainder shall be distributed as follows: funds remaining unspent which have been received by ERDA, from any other contributing agency of state or federal government or from any private foundation and have been segregated for an express purpose shall be distributed in accordance with instructions from ERDA, such other agency or such foundation, as the case may be; all other funds shall be divided among the parties hereto in accordance with bylaws approved by the Board.

5.2 Withdrawal from Agreement. Any party hereto may withdraw from this Agreement at any time by written notice to all other parties at least 30 days prior to the effective date of such withdrawal. On such date a withdrawing party relinquishes all rights hereunder, forfeits ownership of any funds held in joint accounts under Section 4.2 hereof, and is excused from all obligations hereunder other than obligations arising under Section 2.2 hereof and other than any joint liabilities which may have been incurred prior to such date of withdrawal.

5.3 Amendment of Agreement. This Agreement or any provision hereof may be amended at any time with the unanimous written assent of all the parties hereto, excluding parties who have withdrawn herefrom; provided that the GOLDEN VALLEY SCHOOL DISTRICT, the STANTON SCHOOL DISTRICT and the ZAP SCHOOL DISTRICT, or if one of such School Districts has withdrawn from this Agreement, then the two other such School Districts, may, by written agreement among them, amend the provisions of Section 1.2 hereof pursuant to which the member of the Board representing such School Districts is selected; and provided further that PICK CITY and STANTON may, by written agreement between them, amend the provision of Section 1.2 hereof pursuant to which the member of the Board representing such Cities is selected.

ARTICLE SIX:
MISCELLANEOUS PROVISIONS

6.1 Notices. All notices hereunder shall be in writing and shall be sufficiently given if mailed by registered mail or delivered to the party entitled thereto at the current official address of such party filed with the Executive Director.

6.2 Separability. In case any provision in this Agreement shall be invalid or unenforceable, the validity and enforceability of all remaining provisions shall not in any way be affected or impaired thereby.

6.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

6.4 Benefit of Agreement. This Agreement is for the benefit of the parties hereto, excluding parties who have withdrawn herefrom, for the benefit of residents within the jurisdiction of the initial parties, and for the benefit of any agency of state or federal government or private foundation contributing funds to finance activities of the Board hereunder.

6.5 Counterparts. This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed originals and shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written, each party acting by its representative duly authorized thereunto by resolution of its governing body.

MERCER COUNTY

By _____

CITY OF BEULAH

By _____

CITY OF GOLDEN VALLEY

By _____

CITY OF HAZEN

By _____

PICK CITY

By _____

CITY OF STANTON

By _____

CITY OF ZAP

By _____

BEULAH SCHOOL DISTRICT

By _____

GOLDEN VALLEY SCHOOL DISTRICT

By _____

HAZEN SCHOOL DISTRICT

By _____

STANTON SCHOOL DISTRICT

By _____

ZAP SCHOOL DISTRICT

By _____

ADDENDUM #1

AMENDMENTS TO MERCER COUNTY
DEVELOPMENT AGREEMENT

1. Page 5, Paragraph 1.6 "Quorum & Voting"

Delete language, "The approval of any assessment upon any of the parties hereto)

2. Page 5, Paragraph 1.8 "Advisory Council"

Substitute "may" for "shall" in the first sentence, so that sentence reads, "The Board may create an Advisory Council . . ."

3. Page 8, Paragraph 2.3 "Additional Statutory Authorization"

Delete in its entirety.

4. Page 11, Paragraph 4.1 "Funding"

Delete last two sentences, thereby removing any potential assessment power over members.

5. Page 13, Paragraph 5.1 "Duration of Agreement"

Substitute "August 2, 1977" for "August 1, 1977."

6. Page 13, Paragraph 5.1 "Duration of Agreement"

Amend as follows:

Thereafter, this agreement shall be renewed for consecutive periods of 24 months duration (((unless a majority of))) if the board has voted (((against))) for renewal at least 60 days prior to the expiration of any initial or subsequent period (((, whereupon this agreement shall terminate upon the expiration of such period.))).

7. Page 7, Paragraph 2.1 "Planning"

Delete words "and other land use planning functions"

8. Page 13, Paragraph 5.1 "Duration of Agreement"

Add language "but in all cases funds contributed by members shall be divided and re-distributed to members in proportion to their contribution."

9. Page 14, Paragraph 5.2 "Withdrawal from Agreement"

Delete: "forfeits ownership of any funds held in joint accounts under Section 4.2 hereof,"

Delete: "other than obligations arising under Section 2.2 hereof and other than any joint liabilities which may have been incurred prior to such date of withdrawal."

10. Page 8, Paragraph 2.2 "Land Use Regulation"

Add: After "as the case may be" the following "if such zoning change or amendment may be accomplished according to State law."

Delete: "In order to permit a zoning variance, ordinance provision or other regulatory modification, and" and start new sentence with the following work "The."

11. Page 14, Paragraph 5.2 "Withdrawal from Agreement"

Add to paragraph as amended above the following language "but in case of withdrawal by a member who has contributed funds, the unspent portion of such funds shall be distributed to such withdrawing member in proportion of its contribution."

APPENDIX E: FINAL MERCER COUNTY ENERGY DEVELOPMENT AGREEMENT

MERCER COUNTY ENERGY DEVELOPMENT AGREEMENT

AGREEMENT, dated as of August 1, 1977, among MERCER COUNTY (herein called "the County"), the cities of BEULAH, GOLDEN VALLEY, HAZEN, PICK CITY, STANTON and ZAP (herein collectively called "the Cities"), and BEULAH SCHOOL DISTRICT, GOLDEN VALLEY SCHOOL DISTRICT, HAZEN SCHOOL DISTRICT, STANTON SCHOOL DISTRICT and ZAP SCHOOL DISTRICT (herein collectively called "the School Districts"), the County, Cities and School Districts all being located within the State of North Dakota;

WHEREAS, the parties hereto desire to improve the quality of community development induced by anticipated development of energy resources and facilities in the county, and to promote energy conservation, and the efficient use of energy resources; and

WHEREAS, the parties recognize that in achieving these objectives, their planning and development functions should in many instances be carried out jointly and in concert; and

WHEREAS, Chapter 54-40 of the North Dakota Century Code authorizes political subdivisions in North Dakota to carry out any of their functions or duties jointly by agreement;

NOW, THEREFORE, the parties, pursuant to such authority, hereby agree as follows:

ARTICLE ONE

THE ENERGY DEVELOPMENT BOARD

1.1 Creation of the Board. There is hereby established for the purposes herein set forth, the ENERGY DEVELOPMENT BOARD OF MERCER COUNTY (herein called "the Board").

1.2 Membership of the Board. Subject to Section 5.1 hereof, the initial authorized number of members of the Board shall be eleven, three of whom shall represent the County, five of whom shall represent the Cities, and three of whom shall represent the School Districts. The members of the Board representing BEULAH, GOLDEN VALLEY, HAZEN, STANTON and ZAP shall be the respective mayors of such Cities, provided that the city council or commission in any of such Cities may choose at any time another elected official to serve as its representative on the Board. The representative of STANTON on the Board shall also represent the interests of PICK CITY. The members of the Board representing the BEULAH SCHOOL DISTRICT and the HAZEN SCHOOL DISTRICT shall be the respective presidents of the school boards within such School Districts; and the member of the Board representing the GOLDEN VALLEY SCHOOL DISTRICT, the STANTON SCHOOL DISTRICT and the ZAP SCHOOL DISTRICT shall be the president of the school board of one of such School Districts serving a twelve month term on the Board in rotation with the chairmen of the school boards of the other two such School Districts, beginning in the first term with the president of the school board of the GOLDEN VALLEY SCHOOL DISTRICT, in the second term with the president of the school board of the STANTON SCHOOL DISTRICT, and the third term with the president of the school board of the ZAP SCHOOL DISTRICT, and repeating such order of rotation throughout the duration of this Agreement; provided that, at any time, the school board of any School District then entitled to membership on the Board may choose another of its members to serve on the Board. In the event of withdrawal from this Agreement by the County, the authorized number of members of the Board shall be reduced by three. In the

event of withdrawal from this Agreement by any City (other than PICK CITY or STANTON), or by the BEULAH SCHOOL DISTRICT or the HAZEN SCHOOL DISTRICT, the authorized number of members of the Board shall be reduced by one. In the event of withdrawal from this Agreement by STANTON, the member of the Board representing PICK CITY shall be the mayor of PICK CITY, provided that the city council of PICK CITY may choose at any time thereafter another elected official to serve as its representative on the Board. In the event of withdrawal from this Agreement by both PICK CITY and STANTON, the authorized number of members of the Board shall be reduced by one. In the event of withdrawal from this Agreement by the GOLDEN VALLEY SCHOOL DISTRICT, the STANTON SCHOOL DISTRICT, and the ZAP SCHOOL DISTRICT, the authorized number of members of the Board shall be reduced by one; in the event of such withdrawal by two of such School Districts, the other such School District shall assume full representation on the Board; and in the event of such withdrawal by one of such three School Districts, the other two such School Districts shall rotate such representation annually between them.

1.3 Vacancies. Whenever any vacancy shall occur on the Board by reason of death, resignation or otherwise, the Board shall have no power to fill such vacancy; but such vacancy may be filled only by action of the commissioners of the County in the case of a vacancy among representatives of the County, by Action of the respective city council or commission, in the case of a vacancy among representatives of any City entitled to membership on the Board, and by action of the respective school board in the case of a vacancy among representatives of any School District then entitled to membership on the Board.

1.4. Compensation of Board Members. Each member of the Board shall receive a fee of \$15.00 for each meeting of the Board attended by such member, and shall be entitled to reimbursement of travel and other expenses incurred by reason of service on the Board. Such fees and reimbursement shall be paid from a joint account established in accordance with Section 4.2 hereof.

1.5 Meetings. Regular meetings of the Board shall be held monthly as provided by the bylaws of the Board. The first regular meeting of the Board shall be called by the County to be held no later than fifteen days following the effective date of this Agreement. Special meetings of the Board may be called by the chairman of the board at the request of any member of the Board upon seven days notice to all other members. To the extent possible, meetings will be held after regular business hours. Any member of the Board may appoint, in writing, another elected official in his stead to attend and vote at any meeting of the Board with full power of substitution.

1.6 Quorum and Voting. At any meeting of the Board the presence of a majority of the then authorized number of members of the Board shall be necessary to constitute a quorum for the transaction of business. The affirmative vote of a majority of the members attending any meeting of the Board shall be necessary for the taking of any action whatsoever, provided that, for the taking of action of critical importance, the affirmative vote of two-thirds of the members attending any meeting of the Board shall be necessary. No vote on any matter of critical importance shall be taken at any meeting of the Board, unless notice in accordance with the bylaws of the Board shall have been given to all parties hereto, that such matter of critical importance is to be considered at such meeting. For purposes of this Agreement, an "action of critical importance" shall mean the adoption and amendment of the bylaws of the Board, the adoption and amendment

of a comprehensive plan for any jurisdiction which is a party hereto, and the selection of the Executive Director of the Board.

1.7 Action without Meeting. In its bylaws, the Board may, at its discretion, provide that any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, if prior to such action a written consent thereto is signed by all members of the Board, and filed with the minutes of the Board.

1.8 Advisory Council. The Board may create an advisory council to assist it in the performance of its functions. Such advisory council may include representatives of the Mercer County Task Force, energy industries, labor unions, merchants, farm groups, environmental groups, and other interests in the County.

1.9 Bylaws. The Board shall adopt at its first or second regular meeting bylaws governing the selection of a chairman, the giving of notice of meeting, the time and place of meetings, and such other matters as the Board may determine, or as may be contemplated herein. All such bylaws shall be consistent with the provisions of this Agreement.

ARTICLE TWO

FUNCTIONS OF THE BOARD

2.1 Planning. The County and the Cities agree that their respective comprehensive planning functions shall be carried out jointly through the Board and its staff. The School Districts agree to provide all necessary assistance to the Board and its staff in the exercise of such planning functions; and agree in the planning of new schools and related facilities, to take account of the comprehensive plans approved by the Board. Subject to priorities established by the Board, its staff and consultants shall be available to assist any party hereto with the preparation of plans, ordinances and related documents, and with applications by any such party to agencies of the state or federal government for financial or technical assistance. The Board, however, shall have no power to approve, disapprove, or otherwise pass upon applications for such assistance by any party hereto.

2.2 Land Use Regulation. The County and the Cities retain their respective powers over zoning, subdivision regulation, and other land use controls; and may carry out such functions severally and not jointly, subject only to the provisions of this Section. Comprehensive plans and major amendments thereto adopted by the Board shall be submitted to all affected governmental bodies in the County with authority over zoning, subdivision regulation, or other land use controls for review during a period of ninety days. Any such body which fails to request within such period, that a submitted plan or major amendment be revised shall be deemed to have approved such plan or major amendment. The County and each City agree that their respective ordinances, official maps, and regulations shall be revised to conform to any such plan or amendment approved by the County or such City, as the case may be, if such zoning change or amendment may be accomplished according to State law; and shall be administered in a manner consistent with any such plan or amendment. The County or any City may at any time request the Board to amend any approved plan. The Board shall use its best efforts to act upon such request at its next regular meeting. The Board shall determine what constitutes a "major amendment" for purposes of this Agreement.

ARTICLE THREE

STAFF AND CONSULTANTS

3.1 Composition of Staff. To assist the Board in carrying out its functions hereunder, a full time staff shall be employed, consisting of an Executive Director and such other staff members as the Board shall determine.

3.2 Executive Director. The Executive Director shall be selected by the Board, and shall be empowered to perform all such duties incidental to the functions of the Board herein prescribed as the Board may determine. The Executive Director shall be directly responsible to the Board for work performed by the staff, and shall be charged with the responsibility of supervising all such work. Pending additional statutory authority conferring independent legal status upon the Board, the Executive Director shall exercise contractual authority to bind jointly the parties hereto on matters falling within the functions of the Board herein set forth.

3.3 Other Employees. The Board shall determine the duties to be performed as a function of each staff position. The Executive Director shall propose, and the Board shall approve or reject, candidates for all other staff positions.

3.4. Consultants. All consultants to be compensated from any joint account established pursuant to Section 4.2 hereof shall perform work only under one or more contracts approved by the Board.

3.5 Technical Assistance. The Board will be receptive to assistance rendered by the staff or consultants of regional, state or federal agencies, but may exercise its right to terminate such assistance should it find professional competence lacking.

3.6 Offices. Staff offices shall be established within the County as directed by the Board.

ARTICLE FOUR

FUNDING, BUDGET AND REPORTS

4.1 Funding. The parties contemplate that the activities of the Board and its staff will be funded through June 30, 1980, under an agreement with the ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION or a successor agency of the federal government (herein called "ERDA"). Contributions by other agencies of federal or state government or by private foundations may also be received to finance activities hereunder.

4.2 Joint Account. The County shall establish one or more bank accounts in the name of the County, as agent for the parties hereto, for the purpose of financing the activities of the Board and its staff hereunder. In the event that additional statutory authority confers independent legal status upon the Board, any such bank account shall be transferred to the name of the Board. The power of signature to draw funds upon any such account is hereby conferred upon the Executive Director and an auditor designated by the Board. The Board shall maintain accurate records of all receipts and expenditures for purposes of financing its activities hereunder.

4.3 Budget. The Board shall approve an annual budget for each twelve month (or shorter initial) period ending June 30 throughout the duration of this Agreement. Each such budget shall set forth

in reasonable detail, the estimated expenditures for the period in question, and include for comparison the estimated expenditures, if any, of the first next prior period and the actual expenditures, if any, of the second next prior period. The County shall include each such budget in its own annual budget.

4.4 Reports. The Board shall submit an annual report to the parties hereto, including a narrative description of its activities during the reported period, and a statement of receipts and expenditures during such period certified by the auditor designated by the Board. A report hereunder shall cover the twelve month (or shorter initial) period ending June 30 of each year through the duration of this agreement, and shall be submitted no later than the first of September following the period reported on.

4.5 Audits. All financial records of the Board shall be available at its offices for inspection by the parties hereto upon reasonable notice to the Executive Director.

ARTICLE FIVE

DURATION, WITHDRAWAL AND AMENDMENT

5.1 Duration of Agreement. This Agreement shall become effective as of August 2, 1977, if on or before such date the County, at least four Cities, and at least three School Districts shall have executed this Agreement. Any party who has failed to execute this Agreement on or before such date shall be treated for all purposes of this Agreement as if such party had withdrawn herefrom; and the subsequent adherence to this Agreement by any such party may be accomplished only by amendment hereof. This Agreement shall remain in effect for an initial period expiring June 30, 1980. Thereafter, this Agreement shall be renewed for consecutive periods of twenty-four months duration, if the Board has voted for renewal at least sixty days prior to the expiration of any initial or subsequent period. Upon termination of this Agreement, any funds remaining in joint accounts established under Section 4.2 hereof shall be applied first to meet any outstanding obligations incurred in the course of carrying out functions of the Board hereunder; and the remainder shall be distributed as follows: Funds remaining unspent which have been received by ERDA, from any other contributing agency of state or federal government, or from any private foundation, and have been segregated for an express purpose, shall be distributed in accordance with instructions from ERDA, such other agency or such foundation, as the case may be; all other funds shall be divided among the parties hereto in accordance with bylaws approved by the Board, but in all cases funds contributed by members shall be divided and re-distributed to members in proportion to their contribution.

5.2 Withdrawal from Agreement. Any party hereto may withdraw from this Agreement at any time by written notice to all other parties at least thirty days prior to the effective date of such withdrawal. On such date a withdrawing party relinquishes all rights hereunder, and is excused from all obligations hereunder, but in case of withdrawal by a member who has contributed funds, the unspent portion of such funds shall be distributed to such withdrawing member in proportion to its contribution.

5.3 Amendment of Agreement. This agreement or any provision hereof may be amended at any time with the unanimous written assent of all the parties hereto, excluding parties who have withdrawn herefrom, provided that the GOLDEN VALLEY SCHOOL DISTRICT,

the STANTON SCHOOL DISTRICT, and the ZAP SCHOOL DISTRICT, or if one of such School Districts has withdrawn from this Agreement, then the two other such School Districts, may, by written agreement among them, amend the provisions of Section 1.2 hereof, pursuant to which the member of the Board representing such School Districts is selected, and provided further that PICK CITY and STANTON may, by written agreement between them, amend the provision of Section 1.2 hereof, pursuant to which the member of the Board representing such Cities is selected.

ARTICLE SIX

MISCELLANEOUS PROVISIONS

6.1 Notices. All notices hereunder shall be in writing, and shall be sufficiently given if mailed by registered mail, or delivered to the party entitled thereto at the current official address of such party filed with the Executive Director.

6.2 Separability. In case any provision in this Agreement shall be invalid or unenforceable, the validity and enforceability of all remaining provisions shall not in any way be affected or impaired thereby.

6.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

6.4. Benefit of Agreement. This Agreement is for the benefit of the parties hereto, excluding parties who have withdrawn herefrom, for the benefit of residents within the jurisdiction of the initial parties, and for the benefit of any agency of state or federal government or private foundation contributing funds to finance activities of the Board hereunder.

6.5 Counterparts. This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed originals, and shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written, each party acting by its representative duly authorized thereunto by resolution of its governing body.

PICK CITY

MERCER COUNTY

By _____

By _____

CITY OF STANTON

CITY OF BEULAH

By _____

By _____

CITY OF ZAP

CITY OF GOLDEN VALLEY

By _____

By _____

BEULAH SCHOOL DISTRICT

CITY OF HAZEN

By _____

By _____

GOLDEN VALLEY SCHOOL
DISTRICT

HAZEN SCHOOL DISTRICT

By _____

By _____

STANTON SCHOOL DISTRICT

ZAP SCHOOL DISTRICT

By _____

By _____

RESOURCE PLANNING ASSOCIATES, INC.

SUITE 1250 • 1750 K STREET N.W., WASHINGTON, D.C. 20006 • TELEPHONE (202) 452-9770
CAMBRIDGE • PARIS