

METRO FLOOD DIVERSION
SHORT-TERM FINANCING RESOLUTIONS

SUGGESTED MOTION:

Move to adopt Resolution #2016-18, Authorizing the Execution and Delivery of the Intergovernmental Agreement (Series 2016); Authorizing Loan from Wells Fargo Bank, N.A. to Cass County, North Dakota; and Consenting to Loan Agreements between Wells Fargo Bank, N.A. and the City of Fargo, North Dakota.

SUGGESTED MOTION:

Move to adopt Resolution #2016-19, Authorizing the Issuance of \$50,000,000 Temporary Sales Tax Revenue Note of 2016 of Cass County, North Dakota.

Commissioner _____ introduced the following resolution and moved its adoption:

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF THE
INTERGOVERNMENTAL AGREEMENT (SERIES 2016); AUTHORIZING LOAN FROM
WELLS FARGO BANK, N.A., TO CASS COUNTY, NORTH DAKOTA; AND
CONSENTING TO LOAN AGREEMENTS BETWEEN WELLS FARGO BANK, N.A. AND
THE CITY OF FARGO, NORTH DAKOTA**

RECITATIONS

WHEREAS, the City of Fargo, North Dakota (the “City”) and Cass County, North Dakota (the “County”) are Member Entities to the Metro Flood Diversion Authority (the “Diversion Authority”) and are authorized by Article XI of the Joint Powers Agreement¹ (“JPA”) to cooperate in the issuance of Debt Obligations² for the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013 (the “Project”); and

WHEREAS, the City and the County previously determined it necessary to cooperate with each other with respect to obtaining interim financing (the “Series A Interim Debt Obligation”)³ for planning, design and the construction of the Project; and

WHEREAS; the City and the County entered into an Intergovernmental Agreement, dated as of July 1, 2014 (the “Original Intergovernmental Agreement”), and a Supplemental Intergovernmental Agreement, dated as of May 1, 2015, (the “Supplemental Intergovernmental Agreement,” together with the Original Intergovernmental Agreement, the “Intergovernmental Agreement”), relating to Series A Interim Debt Obligation, the pledge by the County of ninety-one percent (91%) of the proceeds generated by the one-half percent (1/2%) sales and use tax imposed by Ordinance No. 2010-2 of the County, (the “County 2010-2 Sales Tax”) to the repayment of the Series A Interim Debt Obligation, and the pledge of the City of one hundred percent (100%) of the proceeds generated by the one-half percent (1/2%) sales and use tax imposed by Article 3-21 of the Fargo Municipal Code (the “City 3-21 Sales Tax”) to the repayment of the Series A Interim Debt Obligation; and

¹ The Agreement effective as of June 1, 2016, between the City of Moorhead, a political subdivision of the State of Minnesota; the City of Fargo, a political subdivision of the State of North Dakota; Clay County, a political subdivision of the State of Minnesota; Cass County, a political subdivision of the State of North Dakota; and Cass County Joint Water Resource District, a political subdivision of the State of North Dakota, to establish the duties, responsibilities and obligations of each party regarding the Project.

² Any loan, note, bond, or other security instrument issued by one or more of the Member Entities to provide either temporary or permanent financing of the Project.

³ The Series A Interim Debt Obligation consists of the original U.S. Bank County Loan and the original U.S. Bank City Loan, collectively, in the principal amount of one hundred million dollars (\$100,000,000).

WHEREAS, in 2014, the Diversion Authority and the City requested proposals for tax-exempt direct funded loans or draw-down lines of credit from multiple institutions, including U.S. Bank, National Association (“U.S. Bank”); and

WHEREAS, the Diversion Authority, the County, and the City determined that the proposal of U.S. Bank was the lowest cost alternative; and

WHEREAS, the County entered into a Loan Agreement, dated as of July 1, 2014 (the “U.S. Bank County Loan Agreement”) for an initial loan from U.S. Bank in the maximum principal amount of \$50,000,000 (the “U.S. Bank County Loan”) as part of the Series A Interim Debt Obligation; and

WHEREAS, the City entered into a Loan Agreement, dated as of May 1, 2015 (the “U.S. Bank City Loan Agreement”), for an additional loan from U.S. Bank in the maximum principal amount of \$50,000,000 (the “U.S. Bank City Loan”), as part of Series A Interim Debt Obligation secured by the City 3-21 Sales Tax and the County 2010-2 Sales Tax; and

WHEREAS, the County and the City desire to prepay the U.S. Bank County Loan and the U.S. Bank City Loan by borrowing up to \$100,000,000 from Wells Fargo Bank, National Association (“Wells Fargo”) secured by the City 3-21 Sales Tax and the County 2010-2 Sales Tax, as applicable; and

WHEREAS, the County and the City have determined that the County will be the borrower of up to \$50,000,000 from Wells Fargo to prepay the U.S. Bank County Loan (the “County Refund Loan”) and that the City will be the borrower of up to \$50,000,000 from Wells Fargo to prepay the U.S. Bank City Loan (the “City Refund Loan”); and

WHEREAS, the City Refund Loan and the County Refund Loan will be authorized by separate resolution; and

WHEREAS, the County and the City have determined that the County will be the borrower of up to an additional \$50,000,000 from Wells Fargo, which loan (the “County Additional Loan”) constitutes a part of the Series B Interim Debt Obligation secured by a subordinate pledge of the City 3-21 Sales Tax and a first lien on the County 2010-2 Sales Tax; and

WHEREAS, the County and the City have determined that the City will be the borrower of up to an additional \$50,000,000 from Wells Fargo, which loan (the “City Additional Loan”)⁴ constitutes a part of the Series B Interim Debt Obligation secured by a subordinate pledge of the City 3-21 Sales Tax and a first lien on the County 2010-2 Sales Tax; and

⁴ The County Refund Loan, City Refund Loan, County Additional Loan, and City Additional Loan are collectively referred to as the Series B Interim Debt Obligation.

WHEREAS, the County and the City have received proposals and terms from Wells Fargo for the County Refund Loan, the County Additional Loan, the City Refund Loan, and the City Additional Loan; and

WHEREAS, the County and the City desire to amend and reenact the Intergovernmental Agreement with the adoption of the Intergovernmental Agreement (Series 2016) dated as of August 1, 2016 (the “Intergovernmental Agreement (Series 2016)”), to specifically set forth agreements with respect to the County Refund Loan, the County Additional Loan, the City Refund Loan, and the City Additional Loan, and to prepay the U.S. Bank County Loan and the U.S. Bank City Loan; and

WHEREAS, the County desires to enter into the Temporary Sales Tax Note Purchase Agreement with Wells Fargo for the County Refund Loan (the “County Refund Loan Agreement”) and to issue its \$50,000,000 Temporary Sales Tax Revenue Note, Series 2016 for the County Refund Loan (the “County Refund Note”) to Wells Fargo in the principal amount of up to \$50,000,000 and bearing interest at the rate and containing such other terms as set forth in the forms thereof presented to the Board of Commissioners of the County at their meeting on the date hereof; and

WHEREAS, the County desires to enter into a loan agreement with Wells Fargo for the County Additional Loan (the “County Additional Loan Agreement”) and to issue a promissory note for the County Additional Loan (the “County Additional Note”) to Wells Fargo, in the principal amount of up to \$50,000,000 and bearing interest at the rate and containing such other terms as set forth in the forms thereof presented to the Board of Commissioners of the County at their meeting on the date hereof; and

WHEREAS, the County has performed all other acts required by the constitution and laws of the State of North Dakota and the County’s home rule charter and ordinances prerequisite to entering into the County Refund Loan Agreement and the County Additional Loan Agreement, the County Refund Note and the County Additional Note, the Intergovernmental Agreement (Series 2016), and such other documents necessary to effect the loan for the purpose of providing temporary financing to pay the costs of the Project and prepay the U.S. Bank County Loan and U.S. Bank City Loan; and

WHEREAS, Article V of the Intergovernmental Agreement requires the non-issuing entity to consent to the issuance of debt by the issuing entity; and

WHEREAS, Section 11.03 of the JPA⁵ requires the Metro Flood Diversion Authority to approve and consent to the terms of any Debt Obligation, and the Diversion Authority Board has given its approval and consent to the Loan Agreement with Wells Fargo; and

⁵ JPA Section 11.03. PROCEDURE TO ISSUE DEBT OBLIGATIONS. The Member Entities agree and acknowledge that the precise terms and conditions of the Debt Obligations are unknown as of the Effective Date. The specific terms of the Debt Obligations will be set forth by written resolution adopted by the Metro Flood Diversion Authority and the Member Entity, and/or Member Entities, issuing the Debt Obligation.

WHEREAS, the County has reviewed the Temporary Sales Tax Revenue Note Purchase Agreement by and between the City of Fargo, North Dakota, and Wells Fargo, dated as of July 1, 2016, for the City Refund Loan and approves of the terms and conditions contained within the City Refund Loan Agreement; and

WHEREAS, the City has reviewed the Loan Agreement by and between the City of Fargo, North Dakota, and Wells Fargo, dated as of July 1, 2016, for the City Additional Loan and approves of the terms and conditions contained within the City Additional Loan Agreement.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the governing body of the County:

Section 1. Ratification and Confirmation. All acts performed, resolutions, motions, or ordinances adopted or passed, and all publications incidental to the construction and financing of the Project, the Original Intergovernmental Agreement, the Supplemental Intergovernmental Agreement, the Intergovernmental Agreement (Series 2016), the U.S. Bank County Loan Agreement and documents relating thereto, the U.S. Bank City Loan Agreement and documents relating thereto, the resolution of the County pledging the County 2010-2 Sales Tax and the resolution of the City pledging the City 3-21 Sales Tax, whether or not reflected in the official minutes and records of the County, are hereby ratified and confirmed, and all resolutions and other acts or proceedings of the County which are in any way inconsistent with this Resolution, are hereby amended to the extent necessary to give full force and effect to this Resolution.

Section 2. Refund Loan. The County Refund Loan Agreement and County Refund Note will be approved by separate resolution.

Section 3. Authorization of Additional Loan. It is hereby found and determined to be necessary for the County to borrow up to \$50,000,000 in principal from Wells Fargo, subject to the terms and conditions set forth in the County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016). The County is hereby authorized to borrow up to \$50,000,000 from Wells Fargo, to enter into the County Additional Loan Agreement, the Intergovernmental Agreement (Series 2016) and related documents, to issue the County Additional Note, and to pledge the County 2010-2 Sales Tax to the payment of, and as security for, the County Additional Loan and the County Refund Loan, which are on parity. The County is hereby authorized to pledge the County 2010-2 Sales Tax on a subordinate basis and in accordance with the Intergovernmental Agreement (Series 2016) to the payment of and as a subordinate security for the City Refund Loan and the City Additional Loan for the purpose of providing financing for the costs of the Project.

Section 4. Approval and Consent of Wells Fargo Loans. The County hereby consents and approves of the City borrowing up to \$50,000,000 from Wells Fargo for the City Additional Loan secured by and payable solely from ninety-one percent (91%) of the pledged County 2010-2 Sales Tax and the City 3-21 Sales Tax, with interest payable at that variable rate set forth in the form of the City Additional Loan Agreement. The County hereby approves the City entering the City Additional Loan Agreement with Wells Fargo and issuing the City

Additional Note relating thereto substantially in the forms presented to the County Commission at this meeting, with such changes, additions, or deletions as may be approved by the officers of the City signing such document, the Chairman or Vice Chairman of the Cass County Commission and the Cass County Auditor.

Section 5. Acceptance of Wells Fargo Proposals. The governing body of the County has received proposals from Wells Fargo for the City Additional Loan Agreement and the County Additional Loan Agreement which are hereby found and determined to be reasonable and advantageous and are hereby accepted by the County.

Section 6. Payment of Interest and Fees. The governing body of the County hereby authorizes the payment of any fees and interest associated with the U.S. Bank County Loan and/or County Additional Loan to be made from any funds on hand in the County 2010-26 Sales Tax fund.

Section 7. Authorization of Documents. The execution and delivery of the County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016) are hereby approved and authorized to be executed and delivered in substantially the same form presented to the County at this meeting on behalf of its Chair of the Cass County Commission and the Cass County Auditor (the "Authorized Officers"), with such modification as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016), and to deliver them to Wells Fargo, which execution and delivery will be conclusive evidence of the approval of any modifications with respect to the County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016).

The Chair of the Cass County Commission and the Cass County Auditor and other officers of the County, are hereby authorized and directed to execute and deliver such other necessary or appropriate agreements, certifications, and other documents in connection with the County Additional Loan, the County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016).

In the event of the absence or unavailability of the Chair of the Cass County Commission, the County Auditor, or other appropriate officer of the County, the documents authorized for execution and delivery pursuant to this section may be executed and delivered by the individual or individuals authorized generally by the County to act on behalf of such officer in such circumstances, including, without limitation, the Vice Chair of the Cass County Commission and the Deputy Cass County Auditor, as the case may be.

In case any officer signing documents authorized to be executed and delivered by this Resolution shall cease to be such officer before or after the delivery of any such documents, such signature, nevertheless, shall be valid and remain sufficient for all purposes as if such officer had remained in office until such delivery or later applicable time.

Section 8. Payment of Principal and Interest. Interest will be payable on the first Business Day of every calendar month and in accordance with the County Additional Loan Agreement. Principal of the County Additional Loan will be payable in full no later than the Maturity Date (as defined in the County Additional Loan Agreement).

Section 9. Use of Loan Proceeds. The proceeds of the County Additional Loan are irrevocably appropriated to pay expenses necessarily incurred in connection with the Project and to pay costs associated with the issuance of the County Additional Loan. Draws on the County Additional Loan will be submitted by the County to Wells Fargo from time to time in accordance with procedures established and set forth in the County Additional Loan Agreement.

Section 10. Deposit Account. The City will establish an account with Wells Fargo into which the proceeds of each Draw will be deposited for use in accordance with the Intergovernmental Agreement (Series 2016).

Section 11. Incorporated Terms and Conditions. The terms and conditions of the County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016), as amended, including the pledge of Sales and Use Tax Proceeds, are hereby incorporated by reference into this Resolution.

Section 12. Limited Obligation. The County Additional Loan Agreement, the County Additional Note, and the Intergovernmental Agreement (Series 2016), as amended, will not constitute a charge, lien, or encumbrance upon any property of the County, and the payment of principal and interest and other amounts due under the County Additional Loan Agreement, the County Additional Note, or the Intergovernmental Agreement (Series 2016) will not be a general obligation of the County, but are payable solely from the proceeds of the City 3-21 Sales Tax and the County 2010-2 Sales Tax as set forth in the Intergovernmental Agreement, as amended.

Section 13. Pledge of County 2010-2 Sales Tax. The County hereby pledges, on a subordinate basis, the proceeds generated by the County 2010-2 Sales Tax to the repayment of the City Additional Loan, including without limitation amounts due on the City Additional Note, the City Refund Loan, and the City Refund Note, including without limitation the amounts due on the County Additional Note, in each case in accordance with the Intergovernmental Agreement (Series 2016), as amended. The pledge of the proceeds generated by the County 2010-2 Sales Tax to the repayment of the City Additional Loan, the City Additional Note, the City Refund Loan, and the City Refund Note, is subordinate to the pledge of proceeds generated by the County 2010-2 Sales Tax to the repayment of the County Additional Loan, the County Additional Note, the County Refund Loan, and the County Refund Note.

The pledges of the County 2010-2 Sales Tax set forth in the “Resolution Dedicating Cass County Sales and Use Tax,” adopted by the Board of Commissioners of the County of July 31, 2014, and in the Intergovernmental Agreement (Series 2016), are hereby ratified and confirmed and remain in full force and effect until all amounts secured by such pledges have been paid in full.

Section 14. North Dakota Law Applies. This Resolution and any transactions contemplated herein will be controlled by the laws of the State of North Dakota.

Section 15. This Resolution shall take effect immediately upon adoption.

Adopted August 1, 2016.

CASS COUNTY, NORTH DAKOTA

By: _____
Mary Scherling, Chairwoman

ATTEST

Michael Montplaisir, County Auditor

Date Approved: _____

The motion for adoption of the foregoing resolution was duly seconded by Commissioner _____, and upon roll call vote, the following voted in favor thereof: _____ . The following were absent and not voting: _____. The following voted against the same: _____. _____ of the Commissioners having voted aye, the resolution was declared duly passed and adopted.

Commissioner _____ introduced the following resolution and moved its adoption:

**RESOLUTION AUTHORIZING THE ISSUANCE OF
\$50,000,000 TEMPORARY SALES TAX
REVENUE NOTE OF 2016
OF CASS COUNTY, NORTH DAKOTA**

WHEREAS, Cass County, North Dakota (the “County”), has adopted a Home Rule Charter in accordance with Chapter 11-09.1 of the North Dakota Century Code; and

WHEREAS, on November 2, 2010, the majority of the Electorate authorized Cass County to enact a one-half percent (1/2%) sales and use tax to be used for flood control projects; and

WHEREAS, pursuant to the Cass County Home Rule Charter and the authorization of the electorate of Cass County, the Cass County Board of County Commissioners adopted Ordinance #2010-2, (the “County Sales Tax Ordinance”) imposing a sales, use and gross tax of one-half percent (1/2%) that expires March 31, 2031 (the “County 2010-2 Sales Tax”, with the proceeds of this sales tax referred to as “County 2010-2 Sales Tax Revenue”); and

WHEREAS, the County Sales Tax Ordinance specifically provides that the County 2010-2 Sales Tax is dedicated for the engineering, land purchase, construction, and maintenance of a Red River Diversion and other flood control measures, or the payment of special assessments or debt incurred for a Red River Diversion, and other flood control measures as authorized by the Cass County Commission; and

WHEREAS, the City of Fargo, North Dakota (the “City”) and the County are Member Entities to the Metro Flood Diversion Authority (the “Diversion Authority”) and are authorized by Article XI of the Joint Powers Agreement¹ (“JPA”) to cooperate in the issuance of Debt Obligations² for the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013 (the “Project”); and

¹ The Agreement effective as of June 1, 2016, between the City of Moorhead, a political subdivision of the State of Minnesota; the City of Fargo, a political subdivision of the State of North Dakota; Clay County, a political subdivision of the State of Minnesota; Cass County, a political subdivision of the State of North Dakota; and Cass County Joint Water Resource District, a political subdivision of the State of North Dakota, to establish the duties, responsibilities and obligations of each party regarding the Project.

² Any loan, note, bond, or other security instrument issued by one or more of the Member Entities to provide either temporary or permanent financing of the Project.

WHEREAS, the City and the County previously determined it necessary to cooperate with each other with respect to obtaining interim financing (the “Series A Interim Debt Obligation”)³ for planning, design and the construction of the Project; and

WHEREAS; the City and the County entered into an Intergovernmental Agreement, dated as of July 1, 2014 (the “Original Intergovernmental Agreement”), and a Supplemental Intergovernmental Agreement, dated as of May 1, 2015 (the “Supplemental Intergovernmental Agreement,” together with the Original Intergovernmental Agreement, the “Intergovernmental Agreement”), relating to Series A Interim Debt Obligation, the pledge by the County of ninety-one percent (91%) of the proceeds generated by the County 2010-2 Sales Tax to the repayment of the Series A Interim Debt Obligation, and the pledge of the City of one hundred percent (100%) of the proceeds generated by the one-half percent (1/2%) sales and use tax imposed by Article 3-21 of the Fargo Municipal Code (the “City 3-21 Sales Tax”, with the proceeds of this sales tax referred to as “City 3-21 Sales Tax Revenue”) to the repayment of the Series A Interim Debt Obligation; and

WHEREAS, the County and the City desire to prepay the U.S. Bank County Loan and the U.S. Bank City Loan by borrowing up to \$100,000,000 from Wells Fargo Bank, National Association (“Wells Fargo”) secured by and payable from a pledge of and lien on the City 3-21 Sales Tax and the County 2010-2 Sales Tax, as applicable; and

WHEREAS, the County and the City have amended and reenacted the Intergovernmental Agreement by entering into the Intergovernmental Agreement (Series 2016) dated as of August 1, 2016 (as amended, modified, supplemented or restated, the “Intergovernmental Agreement (Series 2016)”) to specifically set forth agreements with respect to the County Refund Loan, the County Additional Loan, the City Refund Loan, and the City Additional Loan, and to prepay the U.S. Bank County Loan and the U.S. Bank City Loan⁴; and

WHEREAS, the Intergovernmental Agreement and the Intergovernmental Agreement (Series 2016) provide that the County 2010-2 Sales Tax may be pledged to amortize bonds or other debt instruments which may be sold or otherwise permitted by the Cass County Board of Commissioners (the “Governing Body”); and

WHEREAS, the Governing Body of Cass County desires to issue the \$50,000,000 Temporary Sales Tax Revenue Note of 2016 for the purposes of providing funds for the Project and other flood control measures as authorized by the Cass County Commission and pledging the County 2010-2 Sales Tax Revenue (“County Pledged Revenue”) for the payment of the \$50,000,000 Temporary Sales Tax Revenue Note of 2016 (the “2016 Revenue Note”).

NOW, THEREFORE, BE IT RESOLVED by the governing body of Cass County, North Dakota (the “Issuer”), as follows:

³ The Series A Interim Debt Obligation consists of the U.S. Bank County Loan and the U.S. Bank City Loan (both defined in Section 1 herein), collectively, in the aggregate principal amount of one hundred million dollars (\$100,000,000).

⁴ The County Refund Loan, City Refund Loan, County Additional Loan, and City Additional Loan are collectively referred to as the Series B Interim Debt Obligation.

Section 1. Definitions.

“**2016 Revenue Note**” means the \$50,000,000 Temporary Sales Tax Revenue Note of 2016 issued by Cass County, North Dakota.

“**Additional Notes**” means notes payable from the County 2010-2 Sales Tax Revenue issued by the Issuer in compliance with Section 9 of the Resolution that are issued on a parity to the 2016 Revenue Note, subject to the terms and conditions set forth in the Note Purchase Agreement and upon the written consent of Wells Fargo.

“**Affiliate**” means, with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

“**Applicable Law**” means, collectively, the Constitutions of the United States and the State, all common law and principles of equity, and all federal, state and local laws including, without limitation, all environmental laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation or administration thereof, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations and permits of, and agreements with, any governmental authority, and, with respect to any person, the articles of incorporation, bylaws or other organizational or governing documents of such person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to (a) the County or the City, or (b) the Project.

“**Authorized County Representative**” means the President of the Board of County Commissioners and any other officer, member or employee of the County authorized by a certificate of the County Auditor to perform the act or sign the document in question, and if there is no such authorization, means the President of the Board of County Commissioners. Any document delivered hereunder that is signed by an Authorized County Representative shall be conclusively presumed to have been authorized by all necessary action on the part of the Governing Body and shall be conclusively presumed to have acted on behalf of the County.

“**Business Day**” means any day other than (a) a Saturday, Sunday or other day on which banks located in the cities in which the principal (or designated) office of the County is required or authorized by law to close, (b) a day on which the New York Stock Exchange is closed, or (c) a day on which the payment system of the Federal Reserve System is not operational.

“**City**” means the City of Fargo, North Dakota.

“**City 3-21 Sales Tax**” means the one-half percent (1/2%) sales, use and gross tax upon all retail sales imposed by Article 3-21 of the Fargo Municipal Code.

“**City Auditor**” means the duly appointed City Auditor of the City of Fargo, North Dakota, or his designee.

“County” means Cass County, North Dakota.

“County 2010-2 Sales Tax” means the one-half percent (1/2%) sales, use and gross tax upon all retail sales imposed by the County Sales Tax Ordinance.

“County Auditor” means the duly appointed County Auditor of the County of Cass, North Dakota, or his designee.

“County Pledged Revenue” means the pledge of the County 2010-2 Sales Tax Revenue and the subordinate pledge of the City 3-21 Sales Tax as set forth in Section 6 of this Resolution.

“County Sales Tax Ordinance” means Ordinance No. 2010-2 of the Board of County Commissioners of Cass County, North Dakota, which imposes the County 2010-2 Sales Tax upon the gross receipts of retailers from all retail sales as defined by the North Dakota Century Code.

“Governing Body” means the Board of County Commissioners of Cass County, North Dakota.

“Intergovernmental Agreement” shall mean the agreement by and between Cass County and the City of Fargo for disbursement of the Cass County Sales/Use Tax Proceeds, dated July 1, 2014, as amended.

“Intergovernmental Agreement (Series 2016)” shall mean the Intergovernmental Agreement (Series 2016) dated as of August 1, 2016, by and between Cass County and the City of Fargo for disbursement of the Cass County Sales/Use Tax Proceeds, as the same may be amended, modified, supplemented or restated in accordance with the terms thereof and the Note Purchase Agreement.

“Issuer” means the County.

“Joint Powers Agreement” means the agreement effective as of June 1, 2016, between the City of Moorhead, a political subdivision of the State of Minnesota; the City of Fargo, a political subdivision of the State of North Dakota; Clay County, a political subdivision of the State of Minnesota; Cass County, a political subdivision of the State of North Dakota; and Cass County Joint Water Resource District, a political subdivision of the State of North Dakota, to establish the duties, responsibilities and obligations of each party regarding the Project.

“Member Entity” shall mean the City of Moorhead, the City of Fargo, Clay County, Cass County, or Cass County Joint Water Resource District, which are parties to the Joint Powers Agreement. The term Member Entity does not include the City of West Fargo, North Dakota, Richland County, North Dakota, or Wilkin County, Minnesota.

“Note Purchase Agreement” means the Temporary Sales Tax Revenue Note Purchase Agreement dated as of August 1, 2016, by and between Cass County, North Dakota, as issuer, and Wells Fargo Bank, National Association, as the same may be amended, modified, supplemented or restated in accordance with the terms thereof.

“Note Year” means August 16, 2016 through July 31, 2017, of the next year.

“Paying Agent” means the City of Fargo, North Dakota, acting as Fiscal Agent, its successors and assigns.

“Project” has the same meaning as provided and set forth above in the introductory whereas clauses of this Resolution.

“Required Payments” means (a) all Payments, and (b) all other amounts, charges, costs, fees (including reasonable attorneys’ fees), expenses and sums due the Purchaser under the Note Purchase Agreement and the other Related Documents, whether in the form of a direct reimbursement, or indemnity, payment obligation, and including all payment obligations of the County to the Purchaser arising hereunder or under any other Related Document or otherwise with respect to the Note, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the County of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or similar proceeding, regardless of whether allowed or allowable in such proceeding), regardless of whether such interest and fees are allowed claims in such proceeding.

“Resolution” means this resolution by the Governing Body of Cass County, North Dakota, dated August 1, 2016, which authorizes the issuance of the \$50,000,000 Temporary Sales Tax Revenue Note of 2016 of Cass County, North Dakota.

“State” means the State of North Dakota.

“U.S. Bank City Loan” means a loan from U.S. Bank, N.A. to the City in the maximum aggregate amount of \$50,000,000, to be made pursuant to the terms and conditions of the Loan Agreement.

“U.S. Bank City Loan Agreement” means that certain Loan Agreement, dated May 1, 2015, by and between the City and the U.S. Bank, as amended from time to time.

“U.S. Bank County Loan” means a loan from U.S. Bank, N.A. to the County in the maximum aggregate amount of \$50,000,000, made pursuant to the terms and conditions of the U.S. Bank County Loan Agreement.

“U.S. Bank County Loan Agreement” means that certain Loan Agreement, dated as of July 1, 2014, by and between the County and the U.S. Bank, as amended from time to time.

“Wells Fargo” means Wells Fargo Bank, National Association.

The Issuer hereby incorporates by reference the definitions contained in the Note Purchase Agreement.

Section 2. Authorization and Sale.

2.01. There is hereby authorized to be issued one note designated the Issuer's \$50,000,000 Temporary Sales Tax Revenue Note of 2016 (the "2016 Revenue Note"). The total amount of the 2016 Revenue Note shall not exceed \$50,000,000. The Chair of the Board of County Commissioners and County Auditor shall have the authority to determine the final dollar amount and the amortization schedule for the 2016 Revenue Note *without further action of the Governing Body of the County*.

2.02. It is hereby found and determined to be necessary for the County to accept a bid from Wells Fargo to purchase the 2016 Revenue Note upon the terms and conditions set forth in the Note Purchase Agreement. The County is hereby authorized to enter into the Note Purchase Agreement and related documents and using the proceeds thereof to prepay the U.S. Bank County Loan.

Section 3. Consent to City Refund Loan.

3.01. The County hereby consents and approves of the City entering into a Temporary Sales Tax Note Purchase Agreement with Wells Fargo, and the issuance by the City of its \$50,000,000 Temporary Sales Tax Revenue Note of 2016.

Section 4. Term of 2016 Revenue Note.

4.01. The 2016 Revenue Note shall initially be dated the date of its issuance. The 2016 Revenue Note shall be issued in fully registered form in denominations of \$250,000, and any integral multiple of 5,000 in excess thereof, of single maturities. The 2016 Revenue Note shall be numbered in consecutive numerical order from R-1 upwards as issued and shall mature on July 31, 2017, in the amounts and shall bear interest at the rates set forth in the Schedule of Maturities attached hereto as Attachment 1.

4.02. Interest on the 2016 Revenue Note and, upon presentation and surrender thereof, the principal thereof shall be payable in lawful money of the United States of America by check, draft or electronic transfer by the Paying Agent, or its successor. Interest shall be payable in accordance with the Note Purchase Agreement, to the holder of record on the close of the last Business Day of the immediately preceding month. Interest on the 2016 Revenue Note shall cease at maturity or on a date prior thereto on which they have been duly called for redemption unless the holder thereof shall present the same for payment and payment is refused.

4.03. The 2016 Revenue Note matures on July 31, 2017, and it may be redeemed at any time on the terms and conditions set forth in the Note Purchase Agreement.

Section 5. Execution and Delivery.

5.01. The 2016 Revenue Note shall be printed under the supervision and at the direction of the County Auditor, executed by the manual signature of the Chair of the Board of County Commissioners, and attested to by the manual signature of the County Auditor and delivered to the holder at closing upon receipt of the purchase price plus any accrued interest. The 2016 Revenue Note shall not be valid or become obligatory for any purpose or be entitled to any

security or benefit under this Resolution until the Certificate of Authentication thereon shall have been executed by the Bond Registrar by manual signature of one of its authorized representatives. The 2016 Revenue Note shall be reproduced in substantially the form attached to this Resolution as Attachment 2.

Section 6. Funds.

6.01. Revenue Fund. There is hereby established a Revenue Fund. All of the County Pledged Revenue shall be deposited by the Issuer into the Revenue Fund in accordance with this Resolution. The Metro Flood Diversion Authority Fiscal Agent (the “City of Fargo”) shall, withdraw the County Pledged Revenue from the Revenue Fund on or before the ____ day of each month, or on the next Business Day if the ____ is not a Business Day, any amounts of the County 2010-6 Sales Tax Revenue received in the prior thirty (30) days and distribute the County Pledged Revenue to the various funds as set forth in this resolution.

6.02. FM Diversion Project Fund. There shall be an FM Diversion Project Fund that shall be established and maintained as a separate fund and used only to pay costs and expenses, which under accepted accounting practices constitute capital costs necessarily incurred to construct the Project, including, but not limited to, land, easements, buildings, structures, machinery and equipment, and the cost of all architectural, engineering, legal and other professional services, printing and publication and other costs reasonable, necessary and incidental thereto, including issuance costs. To this fund shall be credited all proceeds of the 2016 Revenue Note. Only costs and expenses of the Project shall be paid from time to time as incurred and allowed under the Project Fund, and the monies in the Project Fund should be used for no other purposes. If upon the completion of the Project there shall remain any unexpended balance in the Project Fund, such balance shall be transferred to the 2016 Revenue Note Fund.

6.03. 2016 Revenue Note Fund. As long as the 2016 Revenue Note is outstanding, the Issuer shall maintain a Temporary Sales Tax Revenue Note of 2016 Fund, (the “2016 Revenue Note Fund”) as a separate and special bookkeeping account on the official books and records of the Issuer, to be used for no other purpose than the payment of the principal of and interest on the 2016 Revenue Note. Commencing on August 16, 2016, each Note Year (August 16, 2016 through July 31, 2017) the Issuer shall deposit all of the County Pledged Revenue into the 2016 Revenue Note Fund until the total deposits in any Note Year equal the amount of the Required Payments. Provided, that while the 2016 Revenue Note is Outstanding, and after the Issuer has deposited the Required Payments in any Note Year, then the Issuer is not required to deposit any of the County 2010-2 Sales Tax Revenue into the 2016 Revenue Note Fund and is permitted to use the County Pledged Revenues for any legal purpose.

6.04. Reserve Fund. The Issuer is not required to establish a reserve fund.

Section 7. Dedication of County 2010-2 Sales Tax Revenue.

7.01. Pledge of County 2010-2 Sales Tax Revenue. The Issuer hereby dedicates and pledges for payment of the principal of and interest on the 2016 Revenue Note, and any notes issued to refund the 2016 Revenue Note, the County 2010-2 Sales Tax Revenue and any sums it receives pursuant to the Intergovernmental Agreement (Series 2016). Such dedication shall be

irrepealable so long as any principal of or interest on the 2016 Revenue Note, or any notes issued to refund the 2016 Revenue Note, remains outstanding and unpaid.

7.02. Not General Obligations. The 2016 Revenue Note is not a general obligation of the County. The 2016 Revenue Note is a special limited obligation of the County payable solely from the County Pledged Revenue. The 2016 Revenue Note will never constitute an indebtedness, a general or moral obligation, or a charge against the general credit or taxing powers of the County or any property of the County (other than those interests assigned pursuant to this Resolution), and no holder of the 2016 Revenue Note shall have the right to compel the exercise of the taxing power or the appropriation of any other funds or revenues of the County to the payment of the principal of, or premium, or interest on the 2016 Revenue Note.

Section 8. Covenants.

8.01. Until the 2016 Revenue Note, including any additional parity notes, have been discharged as herein provided, the Issuer does hereby covenant and agree with the purchaser and holders thereof from time to time that the Issuer will fully and properly perform each and all of the covenants contained and referred to in this Resolution and in the form of the 2016 Revenue Note attached to this Resolution, and each and all of the duties prescribed in the Intergovernmental Agreement.

8.02. The Issuer covenants and agrees with the holders from time to time of the 2016 Revenue Note that it will not take or permit to be taken by any of its officers, employees, or agents, any action which would cause the 2016 Revenue Note to become private activity bonds or would otherwise cause the interest on the 2016 Revenue Note to become subject to taxation under the Internal Revenue Code of 1986 (the "Code"), and regulations, amended regulations, and proposed regulations issued thereunder, as now existing or as hereinafter amended or proposed and in effect at the time of such action. The Issuer further covenants to make any necessary rebate payments required under the Code and regulations.

Section 9. Additional Notes.

9.01. The Issuer reserves the right of issuing Additional Notes payable from the County Pledged Revenue in accordance with the Note Purchase Agreement.

9.02. Except as authorized in Section 9.01 hereof, the Issuer will issue no Additional Notes or other obligations of any kind payable from or constituting a lien upon the County Pledged Revenue dedicated and pledged to the payment of the 2016 Revenue Note unless the lien thereof is expressly made junior and subordinate to the lien on the then outstanding 2016 Revenue Note, and such additional notes or obligations shall not be payable from the 2016 Revenue Note Fund herein created. Provided, the issuer shall issue no Additional Notes or other obligations of any kind payable from or constituting a lien upon the County Pledged Revenue on parity with the 2016 Revenue Note without written consent of Wells Fargo, and such consent will not be unreasonably withheld.

Section 10. Defeasance.

10.01. When the 2016 Revenue Note has been discharged as provided in this paragraph, all pledges, covenants, and other rights granted by this Resolution shall cease as to the holders of such 2016 Revenue Note. Any and all of the 2016 Revenue Note due on any date may be discharged by depositing with the paying agent, on or before the date, a sum sufficient for the payment of all amounts due under the Note Purchase Agreement, with interest, in full; and if the Note should not be paid when due, the same may nevertheless be discharged by depositing with the paying agent a sum sufficient for the payment of all amounts due under the Note Purchase Agreement in full, with interest accrued from the due date to the date of such deposit. The County may discharge any or all of the 2016 Revenue Note at any time, when authorized by law, by irrevocably depositing in escrow with a suitable banking institution, for the purpose of paying all principal and interest due on such 2016 Revenue Note at maturity, a sum of cash sufficient for this purpose, or securities in such aggregate face amount bearing interest at such rates and maturing or callable at the option of the holder on such dates as shall be required, with any additional cash deposited, to provide funds sufficient for this purpose. The securities to be so deposited shall be limited to cash or direct obligations of (including obligations issued or held in book entry form on the books of the Department of the Treasury) the United States or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

Section 11. Paying Agent and Bond Registrar.

11.01. The Issuer hereby designates the City of Fargo as Paying Agent and Bond Registrar for the 2016 Revenue Note.

Section 12. Limited Obligations.

12.01. The 2016 Revenue Note issued hereunder shall not constitute a charge, lien or encumbrance upon any property of the Issuer, and no holder or holders thereof shall ever have the right to compel any exercise of the taxing power of the County to pay the principal or interest on the 2016 Revenue Note, other than the County Pledged Revenue herein dedicated for the payment of the 2016 Revenue Note. The principal and interest of the 2016 Revenue Note shall not be a general obligation of the Issuer, but are payable solely from the County Pledged Revenue authorized and dedicated to the payments of the 2016 Revenue Note and the funds in the 2016 Revenue Note Fund and the Reserve Fund.

Section 13. Certificate of Proceedings.

13.01. The officers of the Issuer are hereby authorized and directed to prepare and furnish to said purchaser, and to the attorneys approving the legality of said 2016 Revenue Note, certified copies of such proceedings, ordinances, resolutions and records, and all such certificates and affidavits and other instruments as may be required to evidence the legality and marketability of said 2016 Revenue Note, and all certified copies, certificates, affidavits and other instruments so furnished, including any heretofore furnished, shall constitute representations of the Issuer as to the correctness of all facts stated or recited therein.

Section 14. Book Entry System.

14.01. The Bonds shall be initially issued and, so long as they remain in book entry form only (the "Book Entry Only Period"), shall at all times be in the form of a separate single fully registered Bond for each maturity of the Bonds. The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York or any of its successors or successors to its functions hereunder (the "Depository") will act as securities depository for the Bonds.

14.02. Upon initial issuance, ownership of the Bonds shall be registered in a bond register maintained by the Bond Registrar in the name of CEDE & CO., as the nominee (it or any nominee of the existing or a successor Depository, the "Nominee").

14.03. With respect to the Bonds, neither the Issuer nor the Bond Registrar shall have any responsibility or obligation to any broker, dealer, bank, or any other financial institution for which the Depository holds Bonds as securities depository (the "Participant") or the person for which a Participant holds an interest in the Bonds shown on the books and records of the Participant (the "Beneficial Owner"). Without limiting the immediately preceding sentence, neither the Issuer, nor the Bond Registrar, shall have any such responsibility or obligation with respect to (A) the accuracy of the records of the Depository, the Nominee or any Participant with respect to any ownership interest in the Bonds, or (B) the delivery to any Participant, any Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any notice of redemption, or (C) the payment to any Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the principal of or premium, if any, or interest on the Bonds, or (D) the consent given or other action taken by the Depository as the Registered Holder of any Bonds (the "Holder"). For purposes of securing the vote or consent of any Holder under this Resolution, the Issuer may, however, rely upon an omnibus proxy under which the Depository assigns its consenting or voting rights to certain Participants to whose accounts the Bonds are credited on the record date identified in a listing attached to the omnibus proxy.

14.04. The Issuer and the Bond Registrar may treat as and deem the Depository to be the absolute owner of the Bonds for the purpose of payment of the principal of and premium, if any, and interest on the Bonds, for the purpose of giving notices of redemption and other matters with respect to the Bonds, for the purpose of obtaining any consent or other action to be taken by Holders for the purpose of registering transfers with respect to such Bonds, and for all purpose whatsoever. The Bond Registrar, as paying agent hereunder, shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the Holder or the Holders of the Bonds as shown on the bond register, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid.

14.05. Upon delivery by the Depository to the Bond Registrar of written notice to the effect that the Depository has determined to substitute a new Nominee in place of the existing Nominee, and subject to the transfer provisions in Section 17 (with respect to registration, transfer, exchange) hereof, references to the Nominee hereunder shall refer to such new Nominee.

14.06. So long as any Bond is registered in the name of a Nominee, all payments with respect to the principal of and premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, by the Bond Registrar or Issuer, as the case may be, to the Depository as provided in the Letter of Representations, to the Depository required by the Depository as a condition to its acting as book-entry Depository for the Bonds (said Letter of Representations, together with any replacement thereof or amendment or substitute thereto, including any standard procedures or policies referenced therein or applicable thereto respecting the procedures and other matters relating to the Depository's role as book-entry Depository for the Bonds, collectively hereinafter referred to as the "Letter of Representations").

14.07. All transfers of beneficial ownership interests in each Bond issued in book-entry form shall be limited in principal amount to Authorized Denominations and shall be effected by procedures by the Depository with the Participants for recording and transferring the ownership of beneficial interests in such Bonds.

14.08. In connection with any notice or other communication to be provided to the Holders pursuant to this Resolution by the Issuer or Bond Registrar with respect to any consent or other action to be taken by Holders, the Depository shall consider the date of receipt of notice requesting such consent or other action as the record date for such consent or other action; provided, that the Issuer or the Bond Registrar may establish a special record date for such consent or other action. The Issuer or the Bond Registrar shall, to the extent possible, give the Depository notice of such special record date not less than 15 calendar days in advance of such special record date to the extent possible.

14.09. Any successor Bond Registrar in its written acceptance of its duties under this Resolution and any paying agency registrar agreement shall agree to take any actions necessary from time to time to comply with the requirements of the Letter of Representations.

14.10. In the case of a partial prepayment of a Bond, the Holder may, in lieu of surrendering the Bonds for a Bond of a lesser denomination as provided in Section 17 hereof, make a notation of the reduction in principal amount on the panel provided on the Bond stating the amount so redeemed.

Section 15. Termination of Book-Entry Only System.

15.01. The Depository may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Issuer and discharging its responsibilities with respect thereto under applicable law. The Issuer may terminate the services of the Depository with respect to the Bond if it determines that the Depository is no longer able to carry out its functions as securities depository or the continuation of the system of book-entry transfers through the Depository is not in the best interests of the Issuer or the Beneficial Owners.

15.02. Upon termination of the services of the Depository as provided in the preceding paragraph, and if no substitute securities depository is willing to undertake the functions of the Depository hereunder can be found which, in the opinion of the Issuer, is willing and able to assume such functions upon reasonable or customary terms, or if the Issuer determines that it is in the best interests of the Issuer or the Beneficial Owners of the Bond that the Beneficial

Owners be able to obtain certificates for the Bonds, the Bonds shall no longer be registered as being registered in the bond register in the name of the Nominee, but may be registered in whatever name or names the Holder of the Bonds shall designate at that time, in accordance with Section 17 hereof. To the extent that the Beneficial Owners are designated as the transferee by the Holders, in accordance with Section 17 (with respect to registration, transfer, exchange) hereof, the Bonds will be delivered to the Beneficial Owners.

15.03. Nothing in this section shall limit or restrict the provisions of Section 17 (with respect to registration, transfer, exchange) hereof.

Section 16. Letter of Representations.

16.01. *Reserved for future use.*

Section 17. Transfer.

17.01. Except as provided above, the 2016 Revenue Note is transferable upon the books of the Issuer at the principal office of the Bond Registrar, Fargo, North Dakota, by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Series Notes of other authorized denominations. Upon such transfer or exchange the Issuer will cause new Notes to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of the 2016 Revenue Note shall be required to be made during the 15 (fifteen) days next preceding an interest payment date, nor during the forty-five (45) days next preceding the date fixed for redemption of such 2016 Revenue Note.

The 2016 Revenue Note may be transferred without limitation to any Affiliate of Wells Fargo or to a trust or custodial arrangement established by the Purchaser or an Affiliate of Wells Fargo, each of the beneficial owners of which are “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended and subject to the limitations, if any, set forth in the Note Purchase Agreement. The 2016 Revenue Note may be transferred to another purchaser (other than an Affiliate of Wells Fargo or a trust or custodial arrangement as described in the preceding sentence) if (i) written notice of such transfer, together with addresses and related information with respect to such purchaser, is delivered to the County by such transferor and (ii) such purchaser shall have delivered to the County and the transferor an Investor Letter in the form attached hereto as *Exhibit []* executed by a duly authorized officer of such purchaser; *provided* that each such purchaser shall constitute (1) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, and (2) a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and, in any such case, having a combined capital and surplus, determined as of the date of any transfer pursuant to this Section, of not less than \$5,000,000,000.

17.02. The Issuer and the Bond Registrar may deem and treat the person in whose name any 2016 Revenue Note is registered as the absolute owner thereof, whether the 2016 Revenue Note is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the Issuer nor the Bond Registrar shall be affected by any notice to the contrary.

Section 18. Repealer.

18.01. All prior resolutions and other acts or proceedings of this governing body which are in any way inconsistent with the terms of this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

Nothing herein contained shall be deemed to modify, amend, violate, repudiate or repeal any provision or covenant contained in any 2016 Revenue Note, or any resolution pursuant to which any 2016 Revenue Note has been issued and is outstanding, to the extent that a modification, amendment, violation, repudiation or repealer would impair the obligation or contract owed to any holders of such 2016 Revenue Note or would otherwise be invalid or ineffective.

Section 19. Note Insurance.

19.01. *Reserved for future use.*

Section 20. 2016 Revenue Note Not Subject to Acceleration.

20.01. The 2016 Revenue Note is not subject to acceleration in the event of default.

Section 21. General Covenants.

21.01. The County hereby covenants and agrees with the Holders of all outstanding 2016 Revenue Note as follows:

- (a) That it will, to the extent the County Pledged Revenues are sufficient, promptly cause the principal and interest on the 2016 Revenue Note to be paid as they become due.
- (b) That it will maintain complete books and records in accordance with the Note Purchase Agreement.
- (c) That it will not issue Notes or other obligations having a claim superior to the claim of the 2016 Revenue Note upon the County Pledged Revenues.
- (d) That it will promptly deposit into the 2016 Revenue Note Fund all sums required to be so deposited.

Section 22. Amendment of Resolution.

22.01. This Resolution may be amended without the consent of any Holders for any one or more of the following purposes:

- (a) To add to the covenants and agreements of the County in this Resolution and any other covenants and agreements thereafter to be observed by the County, or to surrender any right or power herein reserved to or conferred upon the County.
- (b) To cure any ambiguity or formal defect contained in this Resolution, that cure does not, in the judgment of the County, adversely affect the interests of the Note owners.
- (c) To issue parity notes in accordance with Section 9 hereof.

22.02. This Resolution may be amended for any other purpose only upon the consent of not less than 50% an aggregate principal amount of the 2016 Revenue Note outstanding; provided, however, that no amendment shall be valid which:

- (a) Extends the maturity of any 2016 Revenue Note, reduces the rate of interest upon any 2016 Revenue Note, extends the time of payment of interest on the 2016 Revenue Note, reduces the amount of principal payable on any 2016 Revenue Note, or reduces any premium payable on any 2016 Revenue Note, without the consent of the affected Holder; or
- (b) Reduces the percent of Holders required to approve the mandatory resolutions.

Section 23. No Credit Enhancement.

23.01. There is no credit enhancement facility securing the 2016 Revenue Note, nor is there any provision for a credit enhancement facility to be provided to secure the 2016 Revenue Note.

Section 24. Temporary Sales Tax Revenue Note Purchase Agreement.

24.01. The Temporary Sales Tax Revenue Note Purchase Agreement, substantially in the form presented at this meeting, is hereby approved. The Temporary Sales Tax Revenue Note Purchase Agreement is authorized to be executed in the name of the County by the Chair of the Board of County Commissioners and County Auditor, at such time, if any, as they deem appropriate, or executed or attested to by other officers of the County, in substantially the form on file, but with all such changes therein, not inconsistent with the Act or other law, as may be approved by the officers executing the same, which approval shall be conclusively evidenced by execution thereof.

Section 25. Records and Certificates.

25.01. The officers of the County are hereby authorized and directed to prepare and furnish to the Purchaser, and to the attorneys approving the legality of the issuance of the 2016

Revenue Note, certified copies of all proceedings and records of the County relating to the 2016 Revenue Note and to the financial condition and affairs of the County, and such other affidavits, certificates and information as are required to show the facts relating to the legality and marketability of the 2016 Revenue Note as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall be deemed representations of the County as to the facts recited therein.

Section 26. Intergovernmental Agreement.

26.01. The terms and conditions of the Intergovernmental Agreement Series 2016, as amended, are hereby incorporated into this Resolution by reference.

Section 27. Severability.

27.01. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

Section 28. Headings.

28.01. Headings in this Resolution are included for convenience of reference only and are not a part hereof, and shall not limit or define the meaning of any provision hereof.

Section 29. North Dakota Law Applies.

29.01. This Resolution and any transactions contemplated herein will be controlled by the laws of the State of North Dakota.

Section 30. Effective Date.

30.01. This Resolution shall be effective upon the adoption of this Resolution by the Governing Body of the Cass County, North Dakota.

Chair of the Board of County
Commissioners

Attest:

County Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____, and upon roll call vote, the following voted in favor thereof: _____ . The following were absent and not voting: _____. The following voted against the same: _____. The majority having voted aye, the resolution was declared duly passed and adopted.

CASS COUNTY
STATE OF NORTH DAKOTA
\$50,000,000
TEMPORARY SALES TAX REVENUE NOTE OF 2016

Maturity Dates and Schedule of the 2016 Revenue Note

<u>Principal</u> <u>Maturity Date</u>	<u>Interest</u> <u>Amount</u>	<u>Rate</u>
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**THE TRANSFER OF THIS NOTE IS RESTRICTED
AS SET FORTH IN THE RESOLUTION**

**UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA**

CASS COUNTY

TEMPORARY SALES TAX REVENUE NOTE OF 2016

Registered
Number

Registered
Dollars

INTEREST RATE

MATURITY

DATE OF ORIGINAL
ISSUE

CUSIP

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT:

DOLLARS

KNOW ALL MEN BY THESE PRESENTS that Cass County, North Dakota, (the “Issuer”) acknowledges itself to be specially indebted and for value received promises to pay to the registered owner specified above or registered assigns, the principal amount specified above, but only from its \$50,000,000 Temporary Sales Tax Revenue Note of 2016 Fund (the “2016 Revenue Note Fund”) on the maturity date specified above, with interest thereon from the date hereof at the annual rate specified above, payable on the first Business Day of each month, commencing September 1, 2016, to the holder of record on the close of the last business day of the immediately preceding month, all subject to the provisions referred to herein with respect to the redemption of the principal of this \$50,000,000 Temporary Sales Tax Revenue Note of 2016 (the “2016 Revenue Note”) before maturity. The interest hereon and, upon presentation and surrender hereof, the principal hereof are payable in lawful money of the United States of America by check, draft or electronic transfer by the City of Fargo as Paying Agent, or its successor.

This 2016 Revenue Note is in the principal amount of \$50,000,000, issued pursuant to the Resolution adopted August 1, 2016, by the Governing Body of the Issuer (the “Resolution”) for the purpose of providing funds for the Metro Flood Diversion Project of the Issuer and paying the cost of issuance (the “Project”), all pursuant to and in full conformity with the Constitution and the laws of the State of North Dakota, the Issuer’s Home Rule Charter and the Intergovernmental Agreement, Series 2016. The 2016 Revenue Note of this issue, including interest thereon, is payable solely from the County Pledged Revenue as set out in the Resolution adopted by the Issuer and defined below. The 2016 Revenue Note Fund is funded solely from County Pledged Revenue, as defined and more fully set forth in the Resolution.

This 2016 Revenue Note maturing on July 31, 2017, and thereafter is subject to redemption and prepayment at the option of the Issuer in accordance with the Temporary Sales Tax Revenue Note Purchase Agreement dated as of July 1, 2016 (as amended, modified, supplemented or restated, the "Note Purchase Agreement"), between Cass County and Wells Fargo Bank, National Association.

As provided in the Resolution and subject to certain limitations set forth therein, this 2016 Revenue Note is transferable upon the books of the Issuer at the principal office of the Bond Registrar, by the registered owner hereof in person or by its attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or attorney; and may also be surrendered in exchange for notes of other authorized denominations. Upon such transfer or exchange the Issuer will cause a new note to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. The Issuer and the Bond Registrar may deem and treat the person in whose name this 2016 Revenue Note is registered as the absolute owner hereof, whether this 2016 Revenue Note is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the Issuer nor the Bond Registrar shall be affected by any notice to the contrary.

County Pledged Revenue is defined in the Resolution as follows:

the pledge of all revenue generated by the County 2010-2 Sales Tax and the subordinate pledge by the City of Fargo of all revenues generated by the City 3-21 Sales Tax available after the payment of interest on the City Additional Loan, the City Additional Note and the \$50,000,000 Temporary Sales Tax Revenue Note of 2016. In addition, any proceeds derived from bonds issued by the County to refund the \$50,000,000 Temporary Sales Tax Revenue Note of 2016.

The 2016 Revenue Note is not a general obligation of the County. The 2016 Revenue Note is a special limited obligation of the County payable solely from the County Pledged Revenue. The 2016 Revenue Note will never constitute an indebtedness, a general or moral obligation or a charge against the general credit or taxing powers of the County or any property of the County (other than those interests assigned pursuant to this Resolution), and no holder of the 2016 Revenue Note shall have the right to compel the exercise of the taxing power or the appropriation of any other funds or revenues of the County to the payment of the principal of, or premium or interest on the 2016 Revenue Note.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota, the Issuer's Home Rule Charter, and ordinances of the Issuer, to be done, to exist, to happen and to be performed precedent to and in the valid issuance of this 2016 Revenue Note have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; that the Issuer has previously established the 2016 Revenue Note Fund as a separate fund of the Issuer. Commencing on August 16, 2016, each Note Year (August 16, 2016 through July 31, 2017 of the next year) the Issuer shall deposit all of the County Pledged Revenue into

the 2016 Revenue Note Fund until the total deposits in any Note Year equals Required Payments as defined in the Resolution and the Note Purchase Agreement. The Issuer agrees that no additional obligations may be issued and made payable from the County Pledged Revenue except upon conditions stated in the Resolution and the Note Purchase Agreement; that in and by the Resolution the Issuer makes further covenants and agreements with the holders from time to time of the 2016 Revenue Note, which covenants and agreements will be fully and properly complied with by the Issuer and each and all of its officers and agents; and that the issuance of this 2016 Revenue Note does not cause the indebtedness of the Issuer to exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, Cass County, North Dakota, by its Governing Body, has caused this 2016 Revenue Note to be executed in its behalf by the manual signature of the Chair of the Board of County Commissioners and the County Auditor, and has caused the certificate appearing on the following page to be executed by the manual signatures of said officers.

Dated:

Bond Registrar's
CERTIFICATE OF AUTHENTICATION

CASS COUNTY

This is one of the Notes
delivered pursuant to the
Resolution mentioned within.

Chair of the Board of County
Commissioners

FARGO CITY AUDITOR
200 North Third Street
Fargo, ND 58102

BY: _____
Authorized Representative

County Auditor

CERTIFICATE AS TO LEGAL OPINION

We certify that attached is the legal opinion rendered by Bond Counsel on the issue of Bonds which includes the within 2016 Revenue Note, dated as of the date of delivery of and payment for the 2016 Revenue Note.

County Auditor

Chair of the Board of County
Commissioners

The following abbreviations, when used in the inscription on the face of this 2016 Revenue Note, shall be construed as though they were written in full according to applicable laws or regulations:

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with right of survivorship and not as tenants in common

UTMA-ACT _____ Custodian _____
(Cust) (Minor)
under Uniform Transfer to Minors Act _____
(State)

Additional abbreviations may also be used.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

_____ the within 2016 Revenue Note and all rights
thereunder, and hereby irrevocably constitutes and appoints
_____ attorney to transfer the within 2016 Revenue Note
on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

Please insert social security or other
identifying number of Assignee.

NOTICE: The signature to this Assignment
must correspond to the name as it appears
upon the face of the within 2016 Revenue
Note in every particular, without alteration,
enlargement or any change whatsoever.

Signature Guaranteed: NOTICE:
Signature(s) must be guaranteed by a
member of the Medallion Signature
Program.

**INTERGOVERNMENTAL
AGREEMENT**
(Series 2016)

BY AND BETWEEN

CASS COUNTY, NORTH DAKOTA
as County

AND

CITY OF FARGO, NORTH DAKOTA
as City

Dated as of August 1, 2016

This instrument was drafted by:
Ohnstad Twichell, P.C.
John T. Shockley
P.O. Box 458
West Fargo, North Dakota 58078

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**INTERGOVERNMENTAL AGREEMENT
(Series 2016)**

This INTERGOVERNMENTAL AGREEMENT (the “Intergovernmental Agreement (Series 2016)”), dated as of August 1, 2016, by and between **CASS COUNTY, NORTH DAKOTA**, a political subdivision of the State of North Dakota (hereinafter “County”), and the **CITY OF FARGO, NORTH DAKOTA**, a political subdivision of the State of North Dakota (hereinafter “City”) amends and replaces the Intergovernmental Agreement, dated as of July 1, 2014 (the “Original Intergovernmental Agreement”), and the Supplemental Intergovernmental Agreement, dated as of May 1, 2015 (the “Supplemental Intergovernmental Agreement,” together with the Original Intergovernmental Agreement, the “Intergovernmental Agreement”), by and between the City and the County.

RECITALS

WHEREAS, the County enacted Ordinance No. 2010-2 establishing and regulating the County 2010-2 Sales Tax (as hereinafter defined); and

WHEREAS, the County 2010-2 Sales Tax imposes a one-half of one percent (1/2%) sales and use tax upon the gross receipts of retailers from all sales at retail, including the leasing or rental of tangible personal property, within the corporate limits of the County of Cass, North Dakota; and

WHEREAS, the proceeds of the County 2010-2 Sales Tax are dedicated for payment of expenses incurred for the engineering, land purchase, construction, and maintenance of a Red River Diversion and other flood control measures or the payment of special assessments or debt incurred for a Red River Diversion and other flood control measures as authorized by the Board of Cass County Commissioners; and

WHEREAS, the City has enacted Article 3-21 of the City of Fargo Municipal Code establishing and regulating the City 3-21 Sales Tax (as hereinafter defined); and

WHEREAS, the proceeds of the City 3-21 Sales Tax are dedicated for acquiring property, making, installing, constructing, or building improvements, and to engage in projects that are necessary for the goal of achieving protection from a five hundred (500) year flood event, and such proceeds may be pledged to support repayment of bonds or other debt instruments that may be sold or incurred to finance such costs; and

WHEREAS, the City and County desire to cooperatively pledge their respective sales and use taxes as security for the Required Payments (as herein defined) on temporary or long term financing for Project costs related to the Project (as herein defined); and

WHEREAS, the City and the County entered into the Original Intergovernmental Agreement, attached as Exhibit 1, in connection with a loan to the County in the maximum principal amount of \$50,000,000 (the “U.S. Bank County Loan”) pursuant to that certain Loan Agreement, dated as of July 1, 2014 (as amended, the “U.S. Bank County Loan Agreement”), by

and between the County and U.S. Bank National Association (“U.S. Bank”) and that certain promissory note of the County dated July 31, 2014 (the “U.S. Bank County Note”); and

WHEREAS, the U.S. Bank County Loan financed the costs of the Project¹ during the construction period thereof in anticipation of permanent financing and was secured by and payable from a lien on and pledge of the Pledged Sales Taxes; and

WHEREAS, pursuant to the Original Intergovernmental Agreement, the City and the County agreed with each other to pay one-half of the interest on the U.S. Bank County Loan, together with one-half of all costs of issuance fees, charges, and other amounts due pursuant to or in connection with the U.S. Bank County Loan (the “U.S. Bank County Loan Obligations”); and

WHEREAS, pursuant to the Original Intergovernmental Agreement, the County pledged ninety-one percent (91%) of the 2010-2 County Sales Tax, and the City pledged one-hundred percent (100%) of the City 3-21 Sales Tax, to the payment of the principal of and interest on, and as security for, the U.S. Bank County Loan and any Additional Loan (as defined in the Original Intergovernmental Agreement), and any bonds issued to refund the U.S. Bank County Loan and any Additional Loan; and

WHEREAS, pursuant to the Original Intergovernmental Agreement, the City pledged the proceeds of the City 3-21 Sales Tax for the payment of one-half (1/2) of the amounts paid by the County to U.S. Bank in accordance with the terms and conditions set forth in the U.S. Bank County Loan and any Additional Loan, such pledge being subordinate to the first and prior lien for the payment of the U.S. Bank County Loan and any Additional Loan; and

WHEREAS, the County pledged ninety-one (91%) of the County 2010-2 Sales Tax proceeds to reimburse the City for any payments by the City in excess of the City’s obligation to pay one-half (1/2) of the Loan Obligations (as defined in the Original Intergovernmental Agreement), such pledge being subordinate to the first and prior lien for the payment of the U.S. Bank County Loan and any Additional Loan; and

WHEREAS, the City pledged one-hundred percent (100%) of the City 3-21 Sales Tax proceeds to reimburse the County for any payments by the County in excess of the County’s obligation to pay one-half (1/2) of the Loan Obligations, such pledge being subordinate to the first and prior lien for the payment of the U.S. Bank County Loan and any Additional Loan; and

WHEREAS, the City and the County entered into the Supplemental Intergovernmental Agreement, attached as Exhibit 2, in connection with a loan to the City in the maximum principal amount of \$50,000,000 (the “U.S. Bank City Loan”) pursuant to that certain Loan Agreement, dated as of May 1, 2015 (as amended, the “U.S. Bank City Loan Agreement”), by and between

¹ The Project means the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013 (hereinafter, the “Project”).

the City and U.S. Bank and that certain promissory note of the City dated May 29, 2015 (the “U.S. Bank City Note”); and

WHEREAS, the U.S. Bank City Loan financed the costs of the Project during the construction period thereof in anticipation of permanent financing and was secured by and payable from a lien on and pledge of the Pledged Sales Taxes; and

WHEREAS, pursuant to the Supplemental Intergovernmental Agreement, the City and the County agreed with each other to pay one-half of the principal of and interest on the U.S. Bank City Loan, together with one-half of all costs of issuance fees, charges, and other amounts due pursuant to or in connection with the U.S. Bank City Loan (the “U.S. Bank City Loan Obligations,” collectively with the U.S. Bank County Loan Obligations, the “U.S. Bank Loan Obligations”); and

WHEREAS, pursuant to the Supplemental Intergovernmental Agreement, the County pledged ninety-one percent (91%) of the County 2010-2 Sales Tax, and the City pledged one-hundred percent (100%) of the City 3-21 Sales Tax to secure amounts due with respect to the U.S. Bank City Loan in order to obtain the best financing terms; and

WHEREAS, pursuant to the Original Intergovernmental Agreement, the County and the City each pledged their respective Pledged Sales Taxes to the other, on a subordinated basis to the U.S. Bank City Loan, and to secure their own reimbursement obligation to the other; and

WHEREAS, the City and the County wish to enter into this Intergovernmental Agreement (Series 2016) to: (i) obtain financing to refund the U.S. Bank County Loan and the U.S. Bank City Loan by issuing new debt for the Project, (ii) obtain new money for the Project, and, (iii) pay the costs of issuance associated with debt issued for the Project; and

WHEREAS, the City and the County have determined they each will continue to pledge their Pledged Sales Tax toward repayment of future loans to finance construction costs of the Project during the construction period thereof in anticipation of permanent financing; and

WHEREAS, Section 22.01 of the Joint Powers Agreement requires that the Metro Flood Diversion Authority (the “Metro Flood Diversion Authority”) authorize Member Entities of the Metro Flood Diversion Authority to enter into sub-agreements for the purpose of fulfilling their obligations under the Joint Powers Agreement; and

WHEREAS, the County and the City have submitted this Intergovernmental Agreement (Series 2016) to the Metro Flood Diversion Authority for its review and comments prior to approval; and

WHEREAS, the Diversion Authority Board has consented to and approved this Intergovernmental Agreement (Series 2016); and

WHEREAS, pursuant to N.D.C.C. § 54-40-1, the County and the City do not intend to create a joint venture pursuant to this Intergovernmental Agreement (Series 2016), and this Intergovernmental Agreement (Series 2016) constitutes a contract between two political

subdivisions setting forth their specific rights and obligations with respect to the financing of the costs of the components of the Project and to refund the U.S. Bank County Loan and the U.S. Bank City Loan as set forth herein, as well as provide security for repayment of the Wells Fargo Loan.

NOW THEREFORE, IT IS HEREBY AGREED, that the Intergovernmental Agreement is amended and replaced in its entirety to read as follows:

ARTICLE I. DEFINITIONS

Section 1.01 DEFINED TERMS. As used in this Agreement, the following terms have the meanings specified below:

“Act” means Chapter 54-40 of the North Dakota Century Code, as amended from time to time.

“Authorized County Representative” means the Chairman of the Cass County Board of Commissioners and any other officer, member or employee of the County authorized by a certificate of the Cass County Auditor to perform the act or sign the document in question, and if there is no such authorization, means the Chairman of the Board. Any document delivered hereunder that is signed by an Authorized County Representative shall be conclusively presumed to have been authorized by all necessary action on the part of the Board and shall be conclusively presumed to have acted on behalf of the County.

“Authorized City Representative” means the Mayor and any other officer, member or employee of the City authorized by a certificate of the City Auditor to perform the act or sign the document in question, and if there is no such authorization, means the Mayor. Any document delivered hereunder that is signed by an Authorized City Representative shall be conclusively presumed to have been authorized by all necessary action on the part of the Commission and shall be conclusively presumed to have acted on behalf of the City.

“Board” means the Board of County Commissioners, the governing body of the County, and any successor thereto.

“City” means the City of Fargo, North Dakota, and its successors or assigns.

“City 3-21 Sales Tax” means the sales and use tax of the City, as defined in Article 3-21 of the City Code, that is pledged by the City to repayment of the City Loan Obligations, **Future Loan Obligations** and as security for such payments in the Intergovernmental Agreement and Intergovernmental Agreement (Series 2016) on a subordinate basis for repayment of the County Loan Obligations and reimbursement obligations to the County pursuant to the City’s Resolution Authorizing The Issuance Of \$50,000,000 Temporary Sales Tax Revenue Note Of 2016 Of The City Of Fargo, North Dakota, enacted on July __, 2016.

“City 3-21 Sales Tax Sunset Date” means December 31, 2029.

“City Additional Loan” means a loan, in addition to the City Refund Loan, of up to an additional \$50,000,000 from Wells Fargo to the City, which loan constitutes a part of the Series B Interim Debt Obligation secured by a subordinate pledge of the City 3-21 Sales Tax and a first lien on the County 2010-2 Sales Tax.

“City Additional Loan Agreement” means the Loan Agreement between Wells Fargo and the City, which contains the terms of the City Additional Loan, in which the City is the borrower of up to \$50,000,000 from Wells Fargo.

“City Additional Note” means a promissory note issued to Wells Fargo pursuant to the City Additional Loan.

“City Refund Loan” means a loan of up to \$50,000,000 from Wells Fargo to the City to prepay the U.S. Bank City Loan.

“City Refund Loan Agreement” means the Temporary Sales Tax Note Purchase Agreement between Wells Fargo and the City, which contains the terms of the City Refund Loan in which the City is the borrower of up to \$50,000,000 from Wells Fargo.

“City Refund Note” means the \$50,000,000 Temporary Sales Tax Revenue Note issued for the City Refund Loan.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and all rules and regulations from time to time promulgated thereunder.

“Commission” means the Fargo City Commission.

“County” means Cass County, North Dakota, its successors and assigns.

“County 2010-2 Sales Tax” means the sales and use tax of the County, as defined in Cass County Ordinance No. 2010-2, which is dedicated in Resolution No. 2014-12 of the County and is pledged by the County to repayment of County Loan Obligations, Future Loan Obligations, and as security for such payments in the Intergovernmental Agreement and this Intergovernmental Agreement (Series 2016) on a subordinate basis for repayment of the City Loan Obligations and reimbursement obligations to the City pursuant to the County’s Resolution Authorizing The Issuance Of \$50,000,000 Temporary Sales Tax Revenue Note Of 2016 Of Cass County, North Dakota, enacted on ____, 2016.

“County 2010-2 Sunset Date” means March 31, 2031.

“County Additional Loan” means a loan, in addition to the County Refund Loan, of up to an additional \$50,000,000 from Wells Fargo to the County, which loan constitutes a part of the Series B Interim Debt Obligation secured by a subordinate pledge of the City 3-21 Sales Tax and a first lien on the County 2010-2 Sales Tax.

“County Additional Loan Agreement” means the Loan Agreement between Wells Fargo and the County, which contains the terms of the County Additional Loan, in which the County is the borrower of up to \$50,000,000 from Wells Fargo.

“County Additional Note” means a promissory note issued to Wells Fargo pursuant to the County Additional Loan Agreement.

“County Refund Loan” means a loan of up to \$50,000,000 from Wells Fargo to the County to prepay the U.S. Bank County Loan.

“County Refund Loan Agreement” means the Temporary Sales Tax Note Purchase Agreement between Wells Fargo and the City, which contains the terms of the City Refund Loan, in which the City is the borrower of up to \$50,000,000 from Wells Fargo.

“County Refund Note” means the \$50,000,000 Temporary Sales Tax Revenue Note, Series 2016, issued for the County Refund Loan.

“Default” means the occurrence of any event or the existence of any condition which, with the giving of notice, the passage of time, or both, would constitute an event of default.

“Draw” means a fully executed draw notice as described in the City Loan Agreement or County Loan Agreement, as applicable.

“Effective Date” means August 16, 2016.

“Future City Loans” means loans from Lenders to the City, either for temporary or permanent debt, to finance additional costs of the Project payable from proceeds of the Pledged Sales Taxes.

“Future County Loans” means loans from Lenders to the County, either for temporary or permanent debt, to finance additional costs of the Project payable from proceeds of the Pledged Sales Taxes.

“Future Loan Agreements” means loan agreements executed in connection with Future Loans.

“Future Loan Obligations” means all payments of principal, interest and Future Required Payments on any Future Loans.

“Future Loan Proceeds” means any proceeds from Future Loans.

“Future Loans” means Future County Loans and Future City Loans, collectively.

“Future Notes” means promissory notes executed in connection with Future Loans.

“Future Payment Obligations” means all payments of principal, interest, and Future Required Payments on Future Loans.

“Future Required Payments” means all other amounts, charges, costs, fees (including reasonable attorneys’ fees), expenses and sums due to Lenders under Future Loan Agreements and notes, and any other related documents, whether in the form of a direct reimbursement, or indemnity, payment obligation, and including all payment obligations of the City or the County to Lenders arising under any loan agreement or any other document related thereto, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising, and including interest and fees that accrue after the commencement by or against the County or City of any proceeding under any debtor relief laws naming such Person as the debtor in such proceeding (including interest accruing during the pendency of any bankruptcy, insolvency, receivership, or similar proceeding, regardless of whether allowed or allowable in such proceeding), regardless of whether such interest and fees are allowed claims in such proceeding.

“GAAP” means accounting principles generally accepted in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board, the American Institute of Certified Public Accountants, and the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession as in effect on the date hereof.

“Governmental Authority” means any national, supra-national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, board, agency, department, county, bureau, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary, or administrative powers or functions of or pertaining to government, or any arbitrator, mediator, or other person with authority to bind a party at law.

“Intergovernmental Agreement” has the meaning set forth in the introductory paragraph hereof.

“Intergovernmental Agreement (Series 2016)” means this Agreement.

“Intergovernmental Agreement (Series 2016) Effective Date” means August 16, 2016.

“Joint Powers Agreement” means the agreement effective as of June 1, 2016, between the City of Moorhead, a political subdivision of the State of Minnesota; the City of Fargo, a political subdivision of the State of North Dakota; Clay County, a political subdivision of the State of Minnesota; Cass County, a political subdivision of the State of North Dakota; and Cass County Joint Water Resource District, a political subdivision of the State of North Dakota, to establish the duties, responsibilities and obligations of each party regarding the Project.

“Lenders” means those institutions with which the County or the City execute Future Loans and/or purchasers of Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt.

“Loan Obligations” means all payments of principal, interest, and Required Payments to the Wells Fargo Loan Agreements.

“Loan Proceeds” means any proceeds from the Wells Fargo Loan Agreements.

“Member Entities” shall mean the City of Moorhead, the City of Fargo, Clay County, Cass County, and Cass County Joint Water Resource District, which are parties to the Joint Powers Agreement. The term Member Entity does not include the City of West Fargo, North Dakota, Richland County, North Dakota, or Wilkin County, Minnesota.

“Metro Flood Diversion Authority” means the political subdivision created by the Joint Powers Agreement, pursuant to the Act, for the purpose of constructing, operating, and managing, or any combination thereof, the Project.

“Original Intergovernmental Agreement” has the meaning set forth in the introductory paragraph hereof.

“Party” or “Parties” means the City and/or the County, as applicable.

“Payment Obligations” means all payments of principal, interest, and Required Payments on the Wells Fargo Loan Agreements.

“Person” means any natural or legal person, county, city, municipality, public benefit corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority, or other entity.

“Pledge” means a grant of a security interest in the proceeds of the Pledged Sales Taxes as security and inducement for Lenders to enter into Future Loan Agreements and promise to use revenues from the Pledged Sales Taxes for the repayment of principal, interest, Required Payments, and Future Required Payments.

“Pledged Sales Taxes” means the County’s pledge of ninety-one (91%) of its Pledged Sales Tax and the City’s pledge of one-hundred percent (100%) of its respective Pledged Sales Tax to secure interest and principal due with respect to Wells Fargo to enter into the Loan Agreements or for any Future Loan.

“Project” means the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013.

“Project Agreement” means a Public-Private Partnership Agreement as authorized by Chapter 48-02.1 of the North Dakota Century Code, by and between the Metro Flood Diversion Authority, or one or more Member Entities authorized by the Diversion Authority Board, and a

P3 Developer for design, construction, financing, operation and maintenance of the DCAI, the channel outlet, the Rush and Lower Rush River hydraulic structures, the Maple River aqueduct, the Sheyenne River aqueduct, the inflow design flood levee, associated railroad bridges, mitigation incorporated into the diversion channel and associated structures, and recreation structures/features associated with the diversion channel and located entirely within North Dakota.

“Required Payments” means (a) all Payments, and (b) all other amounts, charges, costs, fees (including reasonable attorneys’ fees), expenses and sums due the Purchaser under the City Additional Loan Agreement, the City Refund Loan Agreement, the County Additional Loan Agreement, the County Refund Loan Agreement, and the other Related Documents, whether in the form of a direct reimbursement, or indemnity, payment obligation, and including all payment obligations of the County or City, as applicable, to the Purchaser arising thereunder or under any other Related Document or otherwise with respect to the Note, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the County or City, as applicable, of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or similar proceeding, regardless of whether allowed or allowable in such proceeding), regardless of whether such interest and fees are allowed claims in such proceeding.

“Sales Tax Bonds” means temporary or permanent sales tax bonds that are secured by a pledge of either or both the County 2010-2 Sales Tax and/or the City 3-21 Sales Tax.

“Sales Tax Revenues” means, collectively, the City 3-21 City Sales Tax and the County’s 2010-2 Sales Tax.

“Sales Tax Revenue Bonds” means temporary or permanent sales tax revenue bonds that are secured by a pledge of either or both the County 2010-2 Sales Tax and/or the City 3-21 Sales Tax.

“State” means the State of North Dakota.

“Supplemental Intergovernmental Agreement” has the meaning set forth in the introductory paragraph hereof.

“U.S. Bank” has the meaning set forth in the recitals hereto.

“U.S. Bank City Loan” has the meaning set forth in the recitals hereto.

“U.S. Bank City Loan Agreement” has the meaning set forth in the recitals hereto.

“U.S. Bank City Note” has the meaning set forth in the recitals hereto.

“U.S. Bank County Loan” has the meaning set forth in the recitals hereto.

“U.S. Bank County Loan Agreement” has the meaning set forth in the recitals hereto.

“U.S. Bank County Note” has the meaning set forth in the recitals hereto.

“Wells Fargo” means Wells Fargo Bank, National Association.

“Wells Fargo Loan Agreements” includes all of the following agreements: (1) the Loan Agreement dated as of August 1, 2016, between the County and Wells Fargo (the County Additional Loan Agreement), (2) the Loan Agreement dated as of August 1, 2016, between the City and Wells Fargo (the City Additional Loan Agreement), (3) the Temporary Sales Tax Revenue Note Purchase Agreement dated as of August 1, 2016, between the County and Wells Fargo (the County Refund Loan Agreement), and (4) Temporary Sales Tax Revenue Note Purchase Agreement dated as of August 1, 2016, between the City and Wells Fargo (the City Refund Loan Agreement).

Section 1.02 TERMS GENERALLY. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s permitted successors and assigns, (c) the words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to this Intergovernmental Agreement (Series 2016) in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits, and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules, to this Intergovernmental Agreement (Series 2016), and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

Section 1.03 ACCOUNTING TERMS; GAAP. Except as otherwise expressly provided here, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time.

ARTICLE II. PURPOSE

Section 2.01 PURPOSE. This Intergovernmental Agreement (Series 2016) is made pursuant to N.D.C.C. § 54-40-1, which authorizes the joint and cooperative exercise of power common to the contracting Parties. The intent of this Intergovernmental Agreement (Series 2016) is to increase efficiencies with respect to financing the Project by allowing the Parties to cross-pledge the County 2010-2 Sales Tax and City 3-21 Sales Tax, as applicable, for the repayment of all Required Payments owed to Wells Fargo of, and security for, Future Loans,

Temporary Sales Tax Revenue Bonds and/or Sales Tax Revenue Bonds for the purpose of providing funds to reimburse the County and the City for expenses incurred in connection with the Project. The intent of this Intergovernmental Agreement (Series 2016) is to amend the terms of the Intergovernmental Agreement to authorize financing the proceeds of which will in part refund the U.S. Bank County Loan and the U.S. Bank City Loan and provide the authority to enter into the Wells Fargo Loan Agreements.

Section 2.02 NOT A SEPARATE POLITICAL SUBDIVISION. This Intergovernmental Agreement (Series 2016) does not create a joint venture, partnership, or a separate political subdivision. The Parties intend to exercise their common powers through action of their governing bodies.

ARTICLE III. TERM

Section 3.01 INTERGOVERNMENTAL AGREEMENT (SERIES 2016) EFFECTIVE DATE. This Intergovernmental Agreement (Series 2016) will be effective upon a release by U.S. Bank of its lien and security interest on the Pledged Sales Taxes or the date upon the closing date of the Wells Fargo Loan Agreements, whichever occurs first (the “Intergovernmental Agreement (Series 2016) Effective Date”).

Section 3.02 TERM. This Intergovernmental Agreement (Series 2016) shall be in full force and effect on the Intergovernmental Agreement (Series 2016) Effective Date, and the Intergovernmental Agreement (Series 2016) shall be for an indefinite term and shall continue until terminated or rescinded in accordance with the terms and conditions of this Intergovernmental Agreement (Series 2016) and the Wells Fargo Loan Agreements.

Section 3.03 TERMINATION. This Intergovernmental Agreement (Series 2016) may only be terminated by the mutual consent of the County, the City, and Wells Fargo evidenced by identical resolutions adopted by the applicable governing body. Provided, this Intergovernmental Agreement (Series 2016) may not be terminated prior to the retirement of any Wells Fargo Loan Agreements. Any termination will be without prejudice to any obligations or liabilities of any Parties already accrued prior to termination.

ARTICLE IV. THIRD PARTY BENEFICIARIES

Section 4.01 THIRD PARTY BENEFICIARIES. The County and the City expressly agree and acknowledged that this Intergovernmental Agreement (Series 2016) is made for the benefit of Wells Fargo. At any time during which Future Payment Obligations for which County 2010-2 Sales Tax or City 3-21 Sales Tax is pledged remain unsatisfied, or at any time County or City is otherwise in breach or default of its respective obligations hereunder. Lenders, including but not limited to Wells Fargo, can enforce pledge any time. Lenders, including but not limited to Wells Fargo, may enforce the terms and conditions of this Intergovernmental Agreement (Series 2016) including, without limitation, seeking a court order directing that Pledged Sales Taxes be paid directly to Lenders until all Future Payment Obligations are satisfied in full. In addition to the foregoing, Lenders shall have all other rights available to it at law or in equity, and all of the

rights and remedies provided hereunder are deemed cumulative and not exclusive of any rights or remedies provided by law or otherwise available to Lenders.

ARTICLE V. AUTHORIZATION FOR FUTURE LOANS

Section 5.01 AUTHORIZATION. The County and the City are hereby authorized to enter into Future Loan Agreements and/or issue Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, and any extensions thereof, subject to Section 5.02 of this Intergovernmental Agreement (Series 2016) and the conditions of the Wells Fargo Agreement.

Section 5.02 CONSENT. Neither the County nor the City will execute and deliver, or extend or modify, any Future Loans and/or issue Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, without receiving the prior consent of the other Party and Wells Fargo.

Section 5.03 FORM OF CONSENT. County and/or City consent to a Future Loan or the issuance of Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt by the City and/or County, and any modifications or extensions thereto, shall be in the form of a resolution. Such consent shall not be unreasonably withheld.

ARTICLE VI. LIMITED OBLIGATIONS

Section 6.01 LIMITED OBLIGATIONS. The Wells Fargo Loan Agreements, Future Loans, and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, authorized by this Intergovernmental Agreement (Series 2016) are special obligations of the County and the City payable solely from ninety-one percent (91%) of the one-half of one percent of the sales tax authorized by County's 2010-2 Sales Tax and one-half of one percent sales tax authorized by City 3-21 Sales Tax, and do not constitute a charge, lien, or encumbrance upon any property of the County or the City except for such sales taxes pledged for the payment thereof. The holder of the Future Notes, and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, or a participation therein, shall not ever have the right to compel any exercise of the general taxing authority of the County or the City to pay the principal of, or interest on, Future Notes and/or the Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, or to pay any other obligations payable pursuant to the Future Notes and/or issue Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt. The Future Note and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, are not general obligations of the County or the City and are not payable from the general fund or other moneys of the County or City, except Pledged Sales Taxes, and to the extent available therefrom. The County and the City shall have the right to spend sales tax revenues not necessary for the payment of amounts then due and payable pursuant to Future Notes and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, on any permitted purpose provided by the ordinances levying such pledged sales taxes.

ARTICLE VII. PLEDGE OF REVENUES

Section 7.01 DEDICATION AND PLEDGE OF COUNTY 2010-2 SALES TAX. The County hereby dedicates and pledges for payment of the principal and interest on, and as security for, Required Payments, Future County Loans, and/or issue Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, and any bonds issued to refund Future Loans, ninety-one percent (91%) of the County 2010-2 Sales Tax and the proceeds thereof. The proceeds of the County 2010-2 Sales Tax may be used by the County for any lawful purpose if no Event of Default has occurred under any of the Wells Fargo Loan Agreements and no default exists in the payment of Future Loans when due and payable. Such tax levy and dedication shall be irrevocable so long as any principal of and interest on Future Loans, and/or issue Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, or any bonds issued to refund Future Loans executed by, remain outstanding and unpaid. Provided, the County 2010-2 Sales Tax shall terminate on the County 2010-2 Sales Tax Sunset Date, unless prior to that date the electors of Cass County vote by a simple majority of those voting to extend the tax indefinitely or to a time certain. This dedication and pledge shall constitute a first and prior lien on ninety-one percent (91%) of the County 2010-2 Sales Tax proceeds (determined after administrative fees charged for the collection of the tax).

Section 7.02 DEDICATION AND PLEDGE OF CITY 3-21 SALES TAX. The City hereby dedicates and pledges for payment of the principal and interest on, and as security for, Required Payments, Future City Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, and any bonds issued to refund Future Loans, one-hundred percent (100%) of the City 3-21 Sales Tax and the proceeds thereof. The proceeds of the City 3-21 Sales Tax may be used by the City for any lawful purpose if no Event of Default has occurred under any of the Wells Fargo Loan Agreements and no default exists in the payment of Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, when due and payable. Such tax levy and dedication shall be irrevocable so long as any principal of or interest on Future Loans, and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, or any bonds issued to refund Future Loans, remain outstanding and unpaid. Provided, the City 3-21 Sales Tax shall terminate on the City 3-21 Sales Tax Sunset Date, unless prior to that date the electors of the City vote by a super majority of sixty percent (60%) of those voting to extend the tax indefinitely or to a time certain. This dedication and pledge shall constitute a first and prior lien on the City 3-21 Sales Tax proceeds (determined after administrative fees charged for the collection of the tax).

Section 7.03 SUBORDINATE PLEDGE OF COUNTY 2010-2 SALES TAX. The County hereby dedicates and pledges on a subordinate basis, the proceeds generated by the County 2010-2 Sales Tax to the repayment of the City Additional Loan, the City Additional Note, and the City Refund Note, in accordance with the terms and conditions of the Wells Fargo Loan Agreements. The proceeds of the County 2010-2 Sales Tax may be used by the County for any lawful purpose if no Event of Default has occurred under any of the Wells Fargo Loan Agreements and no default exists in the payment of Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, when due and payable. Such tax

levy and dedication shall be irrevocable so long as any principal of or interest on the City Additional Loan, the City Additional Note, and/or the City Refund Note, Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, or any bonds issued to refund Future Loans, remains outstanding and unpaid. Provided, the County 2010-2 Sales Tax shall terminate on the County 2010-2 Sales Tax Sunset Date, unless prior to that date the electors of the County vote by simple majority of those voting to extend the tax indefinitely or to a time certain. This dedication and pledge shall be subordinate to the first and prior lien set forth in Section 7.01 of this Intergovernmental Agreement (Series 2016).

Section 7.04 SUBORDINATE PLEDGE OF CITY 3-21 SALES TAX. The City hereby dedicates and pledges on a subordinate basis, the proceeds generated by the City 3-21 Sales Tax to the repayment of the County Additional Loan, the County Additional Note, and the County Refund Note, in accordance with the terms and conditions of the Wells Fargo Loan Agreements. The proceeds of the City 3-21 Sales Tax may be used by the City for any lawful purpose if no Event of Default has occurred under any of the Wells Fargo Loan Agreements and no default exists in the payment of Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, when due and payable. Such tax levy and dedication shall be irrevocable so long as any principal of or interest on the County Additional Loan, the County Additional Note, and/or the County Refund Note, Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, or any bonds issued to refund Future Loans, remains outstanding and unpaid. Provided, the City 3-21 Sales Tax shall terminate on the City 3-21 Sales Tax Sunset Date, unless prior to that date the electors of the City vote by a super majority of sixty percent (60%) of those voting to extend the tax indefinitely or to a time certain. This dedication and pledge shall be subordinate to the first and prior lien set forth in Section 7.02 of this Intergovernmental Agreement (Series 2016).

Section 7.05 SUBORDINATE PLEDGE OF SALES TAX FOR CROSS REIMBURSEMENT.

- (a) **County Pledge.** The County hereby dedicates and pledges for payment of the loan repayment obligation set forth in Section 8.02 of this Intergovernmental Agreement (Series 2016) and the reimbursement obligation set forth in Section 8.04 of this Intergovernmental Agreement (Series 2016) ninety-one percent (91%) of the County 2010-2 Sales Tax proceeds. The proceeds of the County 2010-2 Sales Tax may be used by the County for any lawful purpose if no default exists in the payment of the City Additional Loan, the City Additional Note, and/or the City Refund Note, Future Loan Obligations and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, due and payable. Such tax levy and dedication shall be irrevocable so long as any principal and interest on the Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, or any bonds issued to refund the Future Loans, remains outstanding and unpaid. Provided, the County 2010-2 Sales Tax shall terminate on the County 2010-2 Sales Tax Sunset Date, unless prior to that date, the electors of the County vote by a simple majority of those voting to extend the tax indefinitely or to a time certain. This dedication and pledge shall be subordinate to the first and prior lien set forth in Section 7.01 of this Intergovernmental Agreement (Series 2016).

- (b) **City Pledge.** The City hereby dedicates and pledges for payment of the loan repayment obligation set forth in Section 8.02 of this Intergovernmental Agreement (Series 2016) and the reimbursement obligation set forth in Section 8.04 of this Intergovernmental Agreement (Series 2016) one-hundred percent (100%) of the proceeds of the City 3-21 Sales Tax. The proceeds of the City 3-21 Sales Tax may be used by the City for any lawful purpose if no default exists in the payment of the County Additional Loan, the County Additional Note, and/or the County Refund Note, Future Loan Obligations due and payable. Such tax levy and dedication shall be irrevocable so long as any principal and interest on the Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, or any bonds issued to refund the Future Loans, remains outstanding and unpaid. Provided, the City 3-21 Sales Tax shall terminate on the City 3-21 Sales Tax Sunset Date, unless prior to that date, the electors of the City vote by a super majority of sixty percent (60%) of those voting to extend the tax indefinitely or to a time certain. This dedication and pledge shall be subordinate to the first and prior lien set forth in Section 7.02 of this Intergovernmental Agreement (Series 2016).

ARTICLE VIII. AGREEMENT TO PAY DEBT SERVICE

Section 8.01 ACKNOWLEDGEMENT OF OBLIGATION. The City and the County hereby acknowledge that they are obligated and indebted to each other to pay one-half of the principal, interest, and other Future Required Payments set forth in Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, as of the Intergovernmental Agreement (Series 2016) Effective Date.

Section 8.02 PROMISE OF REPAYMENT. The County and the City hereby promise and agree to pay to each other one-half of the principal, interest, and other Future Required Payments set forth in Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt.

Section 8.03 REPAYMENT PROCEEDS. The City shall maintain a separate and distinct fund to track all Metro Flood Diversion Authority revenues and expenses as more fully described in Section 9.03 of this Intergovernmental Agreement (Series 2016). From this fund, the City shall pay when due the principal, interest, and other Future Required Payments set forth in Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt. The City shall then track the County's share of the payments made in connection Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt and provide the County with an accounting of the payments on Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt.

Section 8.04 REIMBURSEMENT OF OVERPAYMENT. In the event that either the City or the County ever pays more than one-half of Future Loan Obligations, and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, the entity

incurring the overpayment obligation shall be reimbursed by the other Party. This obligation shall be subordinate and a junior lien to the first and prior liens set forth in Sections 7.01 and 7.02 of this Intergovernmental Agreement (Series 2016).

ARTICLE IX. OVERSIGHT

Section 9.01 METRO FLOOD DIVERSION AUTHORITY APPROVAL. Prior to using Future Loan and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, Proceeds to pay costs necessarily incurred in connection with the Project or to refund the U.S. Bank City Loan and the U.S. Bank County Loan, the City and the County shall obtain recommendation for payment from the Metro Flood Diversion Authority Finance Committee and final approval of the payment from the Metro Flood Diversion Authority Board prior to the payment of expenses or refunding. The City and the County, in cooperation with the Metro Flood Diversion Authority Finance Committee, shall develop procedures for determining eligible project costs and for the tracking of Future Loan and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt Proceeds.

Section 9.02 DRAWS. The City and the County shall coordinate with the Diversion Finance Committee and determine when to make Draws on Future Loans. Prior to making any Draw, the City and the County shall obtain approval from the Metro Flood Diversion Authority Finance Committee. Proceeds from said Draws shall be deposited in an account and paid out in accordance with Section 9.01 of this Intergovernmental Agreement (Series 2016).

Section 9.03 DIVERSION FUND. Pursuant to and in accordance with Section 10.04 of the Joint Powers Agreement, the City will establish the FM Diversion Project Fund from which expenses incurred by the City and the County in connection with the Project expenses will be paid.

Section 9.04 FUNDS OPEN TO INSPECTION. At all times during the term of this Intergovernmental Agreement (Series 2016), both Parties shall make available their financial records with respect to the above-described funds. The Parties agree that GAAP procedures shall govern.

Section 9.05 ADMINISTRATIVE STAFF AUTHORIZATION. The finance officials of the City and the County are hereby authorized to establish written procedures to provide for payment of debt service on debt that may be incurred for the Project from time to time. These written procedures shall be on file with the Cass County Auditor and the City Auditor and available for public inspection. The finance officials shall also cooperate with respect to tax and arbitrage compliance rules and regulations.

ARTICLE X. COVENANTS

Section 10.01 COMPLIANCE WITH COVENANTS. The City and the County agree to comply with any and all covenants contained in Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt. The City and the

County do hereby covenant and agree that they will fully and properly perform each and all covenants contained and referred to in the Future Loans, or extension thereof and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt.

Section 10.02 OWNERSHIP OF PROPERTY ACQUIRED WITH LOAN PROCEEDS. The City and the County agree and acknowledge that, pursuant to the Act, they have entered into a Joint Powers Agreement, which established the Metro Flood Diversion Authority. Pursuant to the Joint Powers Agreement, the Metro Flood Diversion Authority will use the proceeds of the U.S. Bank City Loan, City Refund Loan, U.S. Bank County Loan, County Refund Loan, any Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, issued pursuant to this Intergovernmental Agreement (Series 2016) for an authorized governmental purpose, including but not limited to, land acquisition, design costs, engineering costs, and administrative costs associated with the Project. The land acquisition and construction of the Project will be undertaken by the Member Entities, under the direction of the Metro Flood Diversion Authority pursuant to and in accordance with the Joint Powers Agreement.

Section 10.03 ISSUANCE OF DEBT FOR PROJECT PERMITTED. The City and the County agree and acknowledge that the Act allows two or more North Dakota political subdivisions, having in common any portion of their territory, may cooperatively exercise their respective powers to enter into Future Loans for the purpose of constructing and acquiring the Project that will be owned or operated jointly or cooperatively by and through a joint powers agreement.

Section 10.04 COVENANTS TO LEVY AND COLLECT SALES TAX. Until Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, have been discharged as provided in Future Loan Agreements, or bond documents the City and the County hereby covenant and agree that they will fully and properly perform each and all of the covenants contained and referred to in the Intergovernmental Agreement, this Intergovernmental Agreement (Series 2016), and Future Loan Agreements, and each and all of the duties prescribed in the County 2010-2 Sales Tax Ordinance and the City 3-21 Sales Tax Ordinance. The City and the County also covenant that they shall levy and collect the County 2010-2 Sales Tax and the City 3-21 Sales Tax herein as necessary for the payment of all Future Loan Obligations and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt.

Section 10.05 COUNTY TO MAINTAIN TAX EXEMPT STATUS. The County covenants and agrees that it will not take or permit any of its officers, employees, or agents to take any action which would cause the interest payable in connection with the Future Loan Obligations and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt to become private activity bonds, or would cause the interest payable in connection with Future Loan Obligations and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt to become subject to taxation under the Code, as now existing or as hereinafter amended or proposed or in effect at the time of such action. The County agrees to monitor and take any action necessary to make rebate payments that may be required under the Code and regulations. Nothing herein will be construed as prohibiting the County from issuing taxable bonds or other taxable debt obligations.

Section 10.06 CITY TO MAINTAIN TAX EXEMPT STATUS. The City covenants and agrees that it will not take or permit any of its officers, employees, or agents to take any action which would cause the interest payable in connection with Future Loan Obligations and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt to become private activity bonds, or would cause the interest payable in connection with Future Loan Obligations and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt to become subject to taxation under the Code, as now existing or as hereinafter amended or proposed or in effect at the time of such action. The City agrees to monitor and take any action necessary to make rebate payments that may be required under the Code and regulations. Nothing herein will be construed as prohibiting the City from issuing taxable bonds or other taxable debt obligations.

ARTICLE XI. REFUNDING OF COUNTY AND U.S. BANK CITY LOANS

Section 11.01 AUTHORIZATION FOR REFUNDING. The County and the City are hereby authorized to prepay the U.S. Bank County Loan, U.S. Bank City Loan, and City Refund Loan by issuing Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt.

Section 11.02 RELEASE OF LIEN AND SECURITY INTEREST. Refunding of the U.S. Bank County Loan and the U.S. Bank City Loan are contingent upon U.S. bank releasing its lien and security interest in the Pledged Sales Taxes.

ARTICLE XII. MISCELLANEOUS

Section 12.01 TERMS SUPPLEMENTAL TO FUTURE LOAN AGREEMENTS. The terms of this Intergovernmental Agreement (Series 2016) are supplemental to the terms and conditions set forth in Future Loan Agreements and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt and, to the extent that they conflict with Future Loan Agreements and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, the terms of the Future Loan Agreements and/or Temporary Sales Tax Revenue Bonds and Sales Tax Revenue Bond shall prevail.

Section 12.02 WRITTEN AMENDMENT REQUIRED. No amendment, modification, or waiver of any condition, provision, or term will be valid or of any effect unless made in writing signed by the Party or Parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any Party of any default of another Party will not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the Parties thereto under and pursuant to this Intergovernmental Agreement (Series 2016). During any period in which Future Loans and/or Sales Tax Revenue Bonds, Sales Tax Bonds, Project Agreement payment obligations, or other debt, or any extension thereof, remain unpaid, the Parties shall obtain written consent to amend or modify this Intergovernmental Agreement (Series 2016) from Lenders. The failure to obtain Lenders' written

consent to an amendment or modification, when required, shall result in the invalidation of any such amendment or modification.

Section 12.03 GRAMMATICAL CONSTRUCTION. Whenever the singular member is used herein, the same includes the plural where appropriate, and the words of any gender include any other genders where appropriate.

Section 12.04 DEFAULT. Upon the occurrence of any non-performance of either Party's obligations under this Intergovernmental Agreement (Series 2016) which has not been cured within thirty (30) Days after notice to the breaching Party, the non-breaching Party may take any one or more of the following remedial steps: (a) terminate this Intergovernmental Agreement (Series 2016); (b) suspend the non-breaching Party's performance under this Intergovernmental Agreement (Series 2016) until it receives assurances from the breaching Party satisfactory to the non-breaching Party that the breaching Party will cure such event of default and perform its obligations under this Intergovernmental Agreement (Series 2016); and/or (c) commence legal or administrative proceedings for the collection of any amounts due hereunder or the enforcement of any covenant, agreement, or obligation of the breaching Party; provided, however, that the provisions of this Section 12.04 shall, in all respects, be subject to the rights of Lenders as set forth in 4.01 hereof.

Section 12.05 SEVERABILITY CLAUSE. Each provision, section, sentence, clause, phrase, and word of this Intergovernmental Agreement (Series 2016) is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Intergovernmental Agreement (Series 2016).

Section 12.06 FORCE MAJEURE. Neither Party will be liable to the other Party during any period in which its performance is delayed or prevented, in whole or in part, by circumstance beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike, or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Party of the same.

Section 12.07 NOTICE. All notices, certificates, or other communications required under this Intergovernmental Agreement (Series 2016) will be deemed sufficiently given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows:

If to City:

City Auditor
City of Fargo
200 North 3rd Street
Fargo, ND 58102

If to County: County Auditor
Cass County
P.O. Box 2806
Fargo, ND 58108-2806

If to Lenders: At the addresses set forth in Future Loan
Agreements

Section 12.08 AGREEMENT BINDING ON SUCCESSORS. This Intergovernmental Agreement (Series 2016) will be binding upon and inure to the benefit of the Parties hereto and their respective personal representatives, successors, and assigns.

Section 12.09 NORTH DAKOTA LAW APPLIES. This Intergovernmental Agreement (Series 2016) will be controlled by the laws of the State of North Dakota.

Section 12.10 RELATIONSHIP TO THE JOINT POWERS AGREEMENT. This Intergovernmental Agreement (Series 2016) is expressly authorized by the Joint Powers Agreement. Nothing in this Intergovernmental Agreement (Series 2016) is intended to amend, modify, or repeal any section or power of the Joint Powers Agreement. This Intergovernmental Agreement (Series 2016) is to be treated as an independent agreement and the third party beneficiaries to this Intergovernmental Agreement (Series 2016) are not entitled to assert any rights under the Joint Powers Agreement.

Section 12.11 WAIVER OF VENUE/SELECTION. The Parties stipulate and agree that the District Court of Cass County, North Dakota, will be the sole and exclusive venue for any lawsuit pertaining to this contract, and both Parties consent to the personal jurisdiction in said court in the event of any such lawsuit.

Section 12.12 EXECUTION IN COUNTERPARTS. This Intergovernmental Agreement (Series 2016) may be executed in counterparts with both the County and the City having a fully-executed counterpart.

CITY:

COUNTY:

CITY OF FARGO, NORTH DAKOTA

CASS COUNTY, NORTH DAKOTA

BY: _____
Timothy J. Mahoney, Mayor

BY: _____
Mary Scherling, Chair
Board of County Commissioners

BY: _____
Steven Sprague, City Auditor

BY: _____
Michael Montplaisir, County Auditor

LOAN AGREEMENT

dated as of August 1, 2016

by and between

CASS COUNTY, NORTH DAKOTA,
as County,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Lender

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LOAN AGREEMENT

LOAN AGREEMENT, dated as of August 1, 2016, by and between CASS COUNTY, NORTH DAKOTA (including its successors and assigns, the “*County*”) and WELLS FARGO BANK, NATIONAL ASSOCIATION (including its successors and assigns, the “*Lender*”), a national banking association.

RECITALS

WHEREAS, the County and the City of Fargo, North Dakota (the “*City*”) have agreed to finance the acquisition, equipping and construction of a Project (as defined herein) with the proceeds of bonds to be issued by the County and the City in the future; and

WHEREAS, pending the issuance of the bonds to finance the Project on a permanent basis, the County proposes to borrow funds from a financial institution on an interim basis in order to finance the costs associated with the Project; and

WHEREAS, the County, following the solicitation of numerous financial institutions from which to borrow the funds necessary to finance its portion of the Project on an interim basis, selected the Lender as the financial institution from which to borrow an amount not to exceed \$50,000,000; and

WHEREAS, the Lender has agreed to lend funds in the maximum principal amount of \$50,000,000 to the County *provided* that, among other things, the repayment of the funds advanced hereunder is secured by a pledge of, and valid first lien on, the County STR (as defined herein) and a subordinate lien of the City STR.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, including the covenants, terms and conditions hereinafter contained, and to induce the Lender to advance the funds hereunder, the County and the Lender agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“*Affiliate*” means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“*Agreement*” means this Loan Agreement, including such amendments, modifications or supplements permitted pursuant to the terms hereof.

“*Applicable Factor*” means 70%.

“*Applicable Law*” means, collectively, the Constitutions of the United States and the State, all common law and principles of equity and all federal, state and local laws including, without limitation, all Environmental Laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, all Governmental Approvals and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations and permits of, and agreements with, any Governmental Authority, and, with respect to any Person, the articles of incorporation, bylaws or other organizational or governing documents of such Person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to (a) the County or the City, (b) the Project or (c) the Transactions.

“*Applicable Spread*” means a rate per annum associated with the Level corresponding to the lowest General Obligation Debt Rating of the County or the City (each, a “*Rating*”), as specified below:

LEVEL	MOODY’S RATING	S&P RATING	FITCH RATING	APPLICABLE SPREAD
Level 1	Aa2 or above	AA or above	AA or above	0.60%
Level 2	Aa3	AA-	AA-	0.675%
Level 3	A1	A+	A+	0.825%
Level 4	A2	A	A	0.975%
Level 5	A3	A-	A-	1.125%
Level 6	Baa1 or below	BBB+ or below	BBB+	1.275%

In the event of split Ratings (*i.e.*, one of the Rating Agencies’ Rating is at a different level than the Rating of another Rating Agency), the Applicable Spread shall be based upon the Level in which the lowest Rating(s) appears. Any change in the Applicable Spread resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to Ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system, the ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system that most closely approximates the applicable rating category as currently in effect. The County acknowledges that as of the Closing Date the Applicable Spread is that specified above for Level 1.

“*Applicable Usury Laws*” means the usury laws that are applicable to the payment obligations of the County under this Agreement and the County Note, either pursuant to the choice of laws provision in this Agreement or under the laws of any other jurisdiction whose

usury laws are mandatorily applicable notwithstanding the choice of laws provision in this Agreement, each as from time to time in effect and applicable to such obligations.

“Article 3-21” means, collectively, Article 3-21 of the City of Fargo Municipal Code and Section 3-2110 of the City of Fargo Municipal Code, as amended and supplemented from time to time.

“Authorized County Representative” means the Chairman of the Cass County Commission and any other officer, member or employee of the County authorized by a certificate of the Cass County Auditor to perform the act or sign the document in question, and if there is no such authorization, means the Chairman of the Board. Any document delivered hereunder that is signed by an Authorized County Representative shall be conclusively presumed to have been authorized by all necessary action on the part of the Board and shall be conclusively presumed to have acted on behalf of the County.

“Available Commitment” means, on any date, an initial amount equal to \$50,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to any County Loan made to the County under the Commitment; (b) downward in an amount equal to any reduction thereof effected pursuant to Section 2.05 hereof; and (c) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof; *provided, that*, after giving effect to any of the foregoing adjustments the Available Commitment shall never exceed \$50,000,000 at any one time.

“Base Rate” means, for any day, a fluctuating rate of interest per annum equal to the greatest of (i) the Prime Rate in effect at such time *plus* one percent (1.0%), (ii) the Federal Funds Rate in effect at such time *plus* two percent (2.0%), and (iii) seven percent (7.0%).

“Board” means the Board of Commissioners, the governing body of the County, and any successor thereto.

“Business Day” means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in Fargo, North Dakota or New York, New York or the states where the principal corporate office of the County is located are authorized by law to close, (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed or (c) a day on which the principal offices of the Lender is closed.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation, Risk-Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, ruling, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or

similar authority) or the United States of America or foreign regulatory authorities shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“*Charges*” has the meaning assigned to such term in Section 8.13 hereof.

“*City*” has the meaning set forth in the recitals hereto.

“*City Resolution*” means, the Resolution Authorizing the Execution and Delivery of an Intergovernmental Agreement with Cass County, North Dakota and Related Documents and Authorizing Action Related Thereto adopted by the governing body of the City on August 1, 2016, as said City Resolution may be amended and supplemented from time to time to the extent permitted by this Agreement.

“*City STR*” means the “City Sales Tax for Flood Risk Mitigation and Reduction Improvements” authorized by the City Resolution and Article 3.21 and pledged on a subordinated basis to repayment of the Required Payments pursuant hereto and pursuant to the Intergovernmental Agreement.

“*Closing Date*” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 8.02).

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, and all rules and regulations from time to time promulgated thereunder.

“*Commitment*” means \$50,000,000.

“*Computation Date*” means the second London Banking Day immediately preceding each Index Reset Date.

“*Contract*” means any indenture, contract, guaranty, note or agreement (other than this Agreement), other contractual restriction, lease, instrument, certificate of incorporation, charter or by-law.

“*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“*Controlled Group*” means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the County, are treated as a single employer under Section 414 of the Code.

“*County*” has the meaning assigned to such term in the introductory paragraph hereof.

“*County Loan*” means the loan made by the Lender to the County pursuant to this Agreement.

“County Note” means the promissory note from the County to the Lender, dated the Closing Date, substantially in the form of Exhibit A to this Agreement.

“County Resolution” means, collectively, “Resolution Authorizing Loan Agreement by and between Cass County, North Dakota and Wells Fargo Bank, National Association” and “Resolution Relating to Dedication of Cass County Sales and Use Tax”, both adopted by the governing body of the County on August 1, 2016, as said County Resolution may be amended and supplemented from time to time to the extent permitted by this Agreement.

“County STR” means the County’s sales and use tax that are authorized pursuant to the County Resolution and the Ordinance and pledged to repayment of the Required Payments pursuant hereto and pursuant to the Intergovernmental Agreement.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws and regulations of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means the occurrence of any event or the existence of any condition which with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“Default Rate” means, for any day, a rate of interest per annum equal to the sum of the Base Rate in effect on such day plus two percent (2.0%).

“Determination Counsel” means a firm of attorneys of nationally-recognized standing in matters pertaining to the validity of and tax-exempt nature of interest on bonds and other debt instruments issued by states and their political subdivisions, designated by the County and acceptable to the Lender in its sole and absolute discretion.

“Determination of Taxability” means and shall be deemed to have occurred on the first to occur of the following:

- (i) on the date when the County files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

- (ii) on the date when the Lender notifies the County that it has received a written opinion by a nationally recognized firm of attorneys of substantial expertise on the subject of tax-exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within one hundred eighty (180) days after receipt by the County of such notification from the Lender, the County shall deliver to the Lender a ruling or determination letter issued to or on behalf of the County by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time) to the

effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the County shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time, including an employee subordinate to one of these officers who has been authorized to provide such advice) that, based upon filings of the County, or upon any review or audit of the County or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(iv) on the date when the County shall receive notice from the Lender that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of the Lender the interest on the County Loans or the County Note due to the occurrence of an Event of Taxability;

provided, however, no Determination of Taxability shall occur under subparagraph (iii) or (iv) hereunder unless the County has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; *provided further, however*, that upon demand from the Lender, the County shall promptly reimburse the Lender for any payments, including any taxes, interest, penalties or other charges the Lender shall be obligated to make as a result of the Determination of Taxability.

“Dollars” or “\$” refers to lawful money of the United States of America.

“Draw Notice” means the form of notice, substantially in the form of Attachment 1 hereto, from the County to the Lender requesting that the Lender make a County Loan hereunder.

“EMMA” has the meaning assigned to such term in Section 5.03 hereof.

“Environmental Laws” means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (a) protection of the environment, (b) personal injury or property damage relating to the release or discharge of Hazardous Materials, (c) emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment, including, without limitation, ambient air, surface water, ground water, or land, or (d) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean up or other remediation thereof.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and all rules and regulations from time to time promulgated thereunder, or any successor statute.

“*Event of Default*,” in relation to this Agreement, has the meaning assigned to such term in Article 7 and, in relation to any Related Document, has the meaning set forth therein.

“*Event of Insolvency*” means, with respect to any Person, the occurrence of one or more of the following events:

(a) the issuance, under the laws of any state or under the laws of the United States of America, of an order of rehabilitation, liquidation or dissolution of such Person;

(b) the commencement by or against such Person of a case or other proceeding (and in the case of the commencement against such Person, there occurs the entry of an order for relief or the appointment of a trustee, receiver, liquidator, custodian or other official for such Person, or such case or proceeding is not dismissed within sixty (60) days of such commencement) under any Debtor Relief Law or otherwise seeking liquidation, reorganization or other relief with respect to the such Person or its debts under any bankruptcy, insolvency or other similar state or federal law now or hereafter in effect including, without limitation, the appointment of a trustee, receiver, liquidator, custodian or other similar official for such Person or any substantial part of its property or there shall be appointed or designated with respect to it, an entity such as an organization, board, authority, agency or body to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress with respect to it or there shall be declared or introduced or proposed for consideration by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it;

(c) the making of an assignment for the benefit of creditors by such Person;

(d) the failure of such Person to generally pay its debts as they become due;

(e) a debt moratorium, debt adjustment, debt restructuring or comparable restriction with respect to the payment of any Indebtedness of such Person is declared or imposed by such Person or by any Governmental Authority having jurisdiction over such Person;

(f) such Person shall admit in writing its inability to pay its debts when due or shall become insolvent within the meaning of Section 101(32) of the United States Bankruptcy Code (or any equivalent provision of any successor act or code);

(g) a case, proceeding or other action is commenced against such Person seeking issuance of a warrant or writ of attachment, execution, restraint or similar process against all or any substantial part of its assets, which results in the entry of an order for

any such relief which is not vacated or discharged, or stayed or bonded pending appeal, within sixty (60) days from the entry thereof; or

(h) the initiation of any actions to authorize, consent or acquiesce to any of the foregoing by or on behalf of such Person.

“Event of Taxability” means a (i) change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the County, or the failure to take any action by the County, or the making by the County of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of the County Loans) which has the effect of causing interest paid or payable on the County Loans or the County Note, as applicable, to become includable, in whole or in part, in the gross income of the Lender or any Participant for federal income tax purposes or (ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or payable on the County Loans or the County Note, as applicable, to become includable, in whole or in part, in the gross income of the Lender or any Participant for federal income tax purposes with respect to the County Loans or the County Note, as applicable.

“Excess Interest Amount” has the meaning assigned to such term in Section 8.13 hereof.

“Excluded Taxes” means, with respect to the Lender or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Lender or such Participant is organized or in which its principal office is located, and (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Lender is located.

“Exempt Interest” means interest which is not included in gross income of the recipient thereof for federal income tax purposes under Section 103 of the Code.

“Exposure” means, for any date with respect to a Person and any Hedge Agreement, the amount of any Settlement Amount that would be payable by such Person if such Hedge Agreement were terminated as of such date. Exposure shall be determined in accordance with the standard methods of calculating such Exposure under similar arrangements as prescribed from time to time by the Lender, taking into account the methodology for calculating amounts due upon early termination as set forth in the related Hedge Agreement and the notional principal amount, term and other relevant provisions thereof.

“Favored Covenants” has the meaning assigned to such term in Section 5.11 hereof.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal

Reserve Bank of New York on the Business Day next succeeding such day; *provided* that: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one-hundredth of one percent) charged to the Lender on such day on such transactions as determined by the Lender. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%).

“Fiscal Year” means the fiscal year of the County ending on December 31 of each calendar year.

“GAAP” means accounting principles generally accepted in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board, the American Institute of Certified Public Accountants and the Financial Accounting Standards Board or in such other statements by such other entity as may be in general use by significant segments of the accounting profession as in effect on the date hereof.

“General Obligation Debt Rating” means the long-term unenhanced rating assigned by any of S&P, Moody’s or Fitch to the general obligation indebtedness of the City or the County, as applicable.

“Governmental Approval” means an authorization, consent, approval, permit, license, certificate of occupancy or an exemption of, a registration or filing with, or a report to any Governmental Authority.

“Governmental Authority” means the government of the United States of America or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or European Central Bank), or any arbitrator, mediator or other Person with authority to bind a party at law.

“Hazardous Materials” means any explosive or radioactive substances or wastes, any hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and any other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hedge Agreement” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index

transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Indebtedness*” means, with respect to any Person, all items that would be classified as a liability in accordance with GAAP including, without limitation, (a) indebtedness or liability for borrowed money, or for the deferred purchase price of property or services (including trade obligations); (b) obligations as lessee under leases which should have been, or should be, recorded as capital leases in accordance with GAAP; (c) current liabilities in respect of unfunded benefits under employee benefit, retirement or pension plans; (d) current liabilities in respect of unfunded vested benefits under plans covered by NDPERS; (e) obligations issued for the account of any other Person; (f) all obligations arising under acceptance facilities; (g) all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to any other Person or otherwise to assure a creditor against loss; (h) obligations secured by any mortgage, lien, pledge, security interest or other charge or encumbrance on property, whether or not the obligations have been assumed; and (i) obligations of the County under Hedge Agreements.

“*Indemnified Taxes*” means Taxes other than Excluded Taxes.

“*Index Reset Date*” means the first Business Day of each calendar month.

“*Intergovernmental Agreement*” means the Intergovernmental Agreement (Series 2016), dated as of August 1, 2016, by and between the County and the City, as amended and supplemented from time to time to the extent permitted by this Agreement.

“*Interest Payment Date*” means the first Business Day of each calendar month, and the first to occur of the date the County Loan is prepaid and the Maturity Date.

“*Law*” means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

“*Lender*” has the meaning assigned to such term in the introductory paragraph hereof.

“*Liabilities*” has the meaning assigned to such term in Section 8.03 hereof.

“LIBOR Index” means the rate of interest per annum determined by the Lender based on the rate for United States dollar deposits for delivery on the Index Reset Date for a period equal to one month as reported on Reuters Screen LIBOR01 page (or any successor page) at approximately 11:00 a.m., London time, on each Computation Date (or if not so reported, then as determined by the Lender from another recognized source of interbank quotation). Notwithstanding anything in this Agreement to the contrary, if the LIBOR Index determined as provided above would be less than zero percent (0.00%), then the LIBOR Index shall be deemed to be zero percent (0.00%).

“LIBOR Index Rate” means a per annum rate of interest established on each Computation Date equal to the product of (a) the sum of (i) the Applicable Spread plus (ii) the product of (x) the LIBOR Index multiplied by (y) the Applicable Factor and (b) the Margin Rate Factor.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loan Amount” has the meaning assigned to such term in Section 2.01 hereof.

“London Business Day” means any day that is a day for trading by and between banks in Dollar deposits in the London interbank market.

“Margin Rate Factor” means the greater of (i) 1.0 and (ii) the product of (A) one minus the Maximum Federal Corporate Tax Rate multiplied by (B) 1.53846. The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate resulting in such change.

“Margin Stock” has the meaning assigned to that term in Regulation U promulgated by the Board of Directors of the Federal Reserve System, as now and hereafter from time to time in effect.

“Material Adverse Change” means the occurrence of any event or change which, in the sole discretion of the Lender, (a) materially reduces or terminates the Sales Tax Revenues necessary to make the Payments and the other Required Payments or (b) materially and adversely affects (i) the enforceability of this Agreement or any of the other Related Documents, (ii) the ability of the County to perform its obligations hereunder or thereunder, (iii) the ability of the City to perform its obligations under the Related Documents to which it is a party or (iv) the rights, interests, security or remedies of the Lender under this Agreement or such other Related Document including, without limitation, the validity or priority of the pledge of, and security interest of the Lender in and to, the Sales Tax Revenues.

“Material Adverse Effect” means (a) a material reduction or termination of the Sales Tax Revenues necessary to make the Payments and the other Required Payments, and (b) with respect to this Agreement or any of the other Related Documents, a material adverse effect on (i) the enforceability of this Agreement or any of the other Related Documents, (ii) the ability of the County to perform its obligations hereunder or thereunder, (iii) the ability of the City to perform its obligations under the Related Documents to which it is a party or (iv) the rights, interests, security or remedies of the Lender under this Agreement or such other Related Document including, without limitation, the validity or priority of the pledge of, and security interest of the Lender in and to, the Sales Tax Revenues.

“Material Litigation” has the meaning assigned to such term in Section 3.01(e) hereof.

“Material Proceeding” has the meaning assigned to such term in Section 5.04(b) hereof.

“Material Provision” means any provision of this Agreement or any other Related Document relating to (a) the ability or the obligation of the County to pay, when due, the Payments and other Required Payments or (b) the pledge and valid first Lien in favor of the Lender in the Sales Tax Revenues securing the Required Payments.

“Maturity Date” means July 31, 2018, as such date may be extended in accordance with the provisions hereof.

“Maximum Interest Rate” means the lesser of (a) 8% per annum and (b) the Maximum Lawful Rate.

“Maximum Federal Corporate Tax Rate” means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect from time to time (or, if as a result of a change in the Code, the rate of income taxation imposed on corporations generally shall not be applicable to the Lender, the maximum statutory rate of federal income taxation which could apply to the Lender).

“Maximum Lawful Rate” means the respective maximum, non-usurious, lawful rate of interest that may be contracted for, charged or received on the Indebtedness hereunder, under Applicable Usury Laws.

“NDPERS” means the North Dakota Public Employees Retirement System, as authorized in Chapter 54-52 of the North Dakota Century Code and implementing rules and regulations enacted by the State of North Dakota.

“Ordinance” means Ordinance No. 2010-2 of the County establishing and regulating a County Sales Tax Under the Home Rule Charter of the County of Cass, as the same may be amended and supplemented from time to time.

“Other Taxes” means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made

hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement.

“Parity Obligation” means Indebtedness incurred by or on behalf of the County or the City and secured by a pledge of and valid first Lien on the County STR, the City STR or both, as applicable, on a parity with, or senior to, the Lien on the Sales Tax Revenues with respect to the Required Payments.

“Participant(s)” means any bank(s) or other financial institution(s) or other Person(s) which may purchase a participation interest from the Lender in the County Loan, this Agreement and the other Related Documents pursuant to a participation agreement between such Lender and the Participant(s).

“Participated Obligations” has the meaning assigned to such term in Section 8.04(c) hereof.

“Payments” means all payments of principal and interest at the Interest Rate on the County Loans, but excluding administrative fees, indemnifications and reimbursements payable to the Lender hereunder, payable by the County pursuant to the provisions of this Agreement.

“Person” means any individual, corporation, not for profit corporation, partnership, limited liability company, joint venture, association, professional association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

“Plan” means, with respect to the County at any time, an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained, or has within the preceding five plan years been maintained, by a member of the Controlled Group for employees of a member of the Controlled Group of which the County is a part, (ii) is maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which a member of the Controlled Group of which the County is a part is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions.

“Pledged Sales Tax” has the meaning set forth in the Intergovernmental Agreement.

“Prime Rate” means on any day, the rate of interest per annum then most recently established by the Lender as its “prime rate.” Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Lender to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that the Lender may make various business or other loans at rates of interest having no relationship to such rate. If the Lender ceases to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the

average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported. Notwithstanding anything herein to the contrary, if the Prime Rate determined as provided above would be less than zero percent (0.0%), then the Prime Rate shall be deemed to be zero percent (0.0%).

“Project” means the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“Rating Agency” means any of S&P, Moody’s and Fitch, as applicable.

“Reduction Date” has the meaning assigned to such term in Section 2.05(b) hereof.

“Related Documents” means this Agreement, Article 3-21, the City Resolution, the Ordinance, the County Resolution, the County Note, the Intergovernmental Agreement and the Tax Compliance Documents and any exhibits, schedules, instruments or agreements relating thereto, as the same may be amended, modified or supplemented in accordance with the terms thereof and hereof.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“Releasee” has the meaning assigned to such term in Section 8.03 hereof.

“Relevant Agreement” has the meaning assigned to such term in Section 5.11 hereof.

“Required Payments” means (a) all Payments, and (b) all other amounts, charges, costs, fees (including reasonable attorneys’ fees), expenses and sums due the Lender under this Agreement, the County Note and the other Related Documents, whether in the form of a direct reimbursement, or indemnity, payment obligation, and including all payment obligations of the County to the Lender arising hereunder or under any other Related Document or otherwise with respect to the County Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the County of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or similar

proceeding, regardless of whether allowed or allowable in such proceeding), regardless of whether such interest and fees are allowed claims in such proceeding.

“Risk-Based Capital Guidelines” means (a) the risk-based capital guidelines in effect in the United States of America, including transition rules, and (b) the corresponding capital regulations promulgated by regulatory authorities outside the United States of America including transition rules, and any amendment to such regulations.

“Sales Tax Law” means the authority granted to North Dakota Cities, as defined in and pursuant to N.D.C.C. § 40-05.1-06, to impose a sales and use tax and to North Dakota Counties, as defined in and pursuant to N.D.C.C. § 11-09.1-05 to impose a sales and use tax, as supplemented and amended from time to time.

“Sales Tax Revenues” means, collectively, the City STR and the County STR.

“Settlement Amount” means, with respect to a Person and any Hedge Agreement, any amount payable by such Person under the terms of such Hedge Agreement in respect of, or intended to compensate the other party for, the value of such Hedge Agreement upon early termination thereof.

“State” means the State of North Dakota.

“Tax Compliance Documents” means (a) an opinion of bond counsel to the County, addressed to the Lender, that interest on the County Loans will not be includible in the gross income of the holders thereof for federal and State income tax purposes, (b) tax compliance certificate, arbitrage certificate or IRS Form 8038-G and (c) a transcript of proceedings relating to the County Loans and the execution and delivery of this Agreement.

“Taxable Date” means the date on which interest on the County Loans or the County Note, as applicable, is first includable in gross income of the Lender thereof as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

“Taxable Rate” means an interest rate per annum at all times equal to the product of the LIBOR Index Rate or the Default Rate, as applicable, then in effect multiplied by the Taxable Rate Factor.

“Taxable Rate Factor” means 1.54.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

“Termination Date” has the meaning assigned to such term in Section 2.05(a) hereof.

“Transactions” means the execution, delivery and performance by the County and the City of the Related Documents to which each is a party including, without limitation, the use and application of the proceeds of the County Loan available hereunder, the Required Payments to be made by the County hereunder and under the County Note, the pledge by the City of the City STR and the pledge by the County of the County STR, both as security for the County Loan, the agreement of the County to issue bonds to pay the County Loan and the other transactions contemplated hereby and thereby.

Section 1.02. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s permitted successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.03. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided*, that, if the County notifies the Lender and requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

ARTICLE 2

THE LOAN

Section 2.01. The Loan to the County. (a) The Lender hereby agrees, subject to the terms and conditions of this Agreement (including without limitation the provisions of this Article 2) and upon satisfaction of the applicable conditions set forth in Article 4, to make available the County Loans in a principal amount of up to fifty million dollars (\$50,000,000) (the “*Loan Amount*”) to the County from and after the Closing Date.

(b) From and after the Closing Date, the County may from time to time draw down portions of the County Loans in increments of no less than one million dollars (\$1,000,000); *provided*, that (i) the County shall give the Lender at least three (3) Business Days' notice of the amount of the draw substantially in the form set forth as Attachment 1 hereto, (ii) the total amount of draws hereunder may not exceed in the aggregate the Loan Amount and (iii) on the Closing Date, the County may draw down less than one million dollars (\$1,000,000) in order to arrange for the payment of costs and expenses incurred by the County on or prior to the Closing Date, and (iv) if the Loan Amount is less than one million dollars (\$1,000,000), the County may make a final draw for the remaining balance of the Loan Amount notwithstanding the foregoing provisions of this Section 2.01(a). If, after consultation with bond counsel, the County concludes that, as a result of a change in law, interest on future draws will not be excluded from gross income for federal income tax purposes, no future draws may be made. All amounts drawn against the County Loan will be evidenced by the County Note, which County Note will be maintained by the Lender.

(c) Subject to its earlier prepayment or acceleration in accordance with the provisions hereof, on the Maturity Date, the County Loan, including interest accrued thereon at the Interest Rate to, but not including, the Maturity Date, shall be paid in full.

Section 2.02. Use of Proceeds by the County. The County irrevocably agrees, on the terms and conditions of this Agreement, to apply the proceeds of the County Loans, as and when drawn, solely to finance the Project and the costs of closing of the Transactions.

Section 2.03. Repayment of Loan and other Payments. The County agrees to pay principal and interest on the County Loan as follows:

(a) The County shall pay interest on the County Loans at the LIBOR Index Rate, Taxable Rate or Default Rate, as applicable, from time to time in effect on each Interest Payment Date as set forth in Section 2.04; and

(b) The County shall pay the principal amount of the County Loans on the first to occur of (i) the Maturity Date and (ii) the date that the proceeds of bonds issued to repay the County Loans are available for such purpose; *provided, however*, that upon the occurrence of an Event of Default described in Section 7.01 hereof and the exercise by the Lender of the right to accelerate the County Loan as provided in Section 7.02 hereof, the County Loans and all Required Payments hereunder will become immediately due and payable.

The County may prepay the County Loan, but only as permitted hereunder and subject to Section 2.05, and such prepayment shall be applied first to interest accrued thereon and next to the principal portion of the County Loan.

Section 2.04. Interest Rate. The principal amount of the County Loans shall bear interest at the LIBOR Index Rate, Taxable Rate or Default Rate, as applicable, from time to time in effect. Interest on the County Loans shall be computed on the basis of a year of 360 days and the actual number of days elapsed. Notwithstanding the foregoing provisions of this Section 2.04,

upon the occurrence and during the continuation of an Event of Default, the interest rate for County Loans shall be established at a rate at all times equal to the greater of (a) the Default Rate and (b) the interest rate that otherwise would be applicable to the County Loans but for the provisions of this paragraph, payable on demand to the Lender.

(b) From and after any Taxable Date, the interest rate on County Loans shall be established at a rate at all times equal to the Taxable Rate.

(c) Accrued interest on the County Loan shall be payable in arrears on each Interest Payment Date; *provided however*, that (i) interest accrued pursuant to paragraph (a) or (c) of this Section that is unpaid when due shall be payable on demand, and (ii) in the event of any prepayment of the County Loan, accrued interest on the principal amount prepaid shall be payable on the date of such prepayment.

(d) (i) In the event a Determination of Taxability occurs, to the extent not payable to the Lender under the terms of this Agreement, the County hereby agrees to pay to the Lender on demand therefor (1) an amount equal to the difference between (A) the amount of interest that would have been paid to the Lender on the County Loans during the period for which interest on the County Loans is included in the gross income of the Lender if the County Loans had borne interest at the Taxable Rate, beginning on the Taxable Date (the "*Taxable Period*"), and (B) the amount of interest actually paid to the Lender during the Taxable Period, and (2) an amount equal to any interest, penalties or charges owed by the Lender as a result of interest on the County Loans becoming included in the gross income of the Lender, together with any and all attorneys' fees, court costs, or other out-of-pocket costs incurred by the Lender in connection therewith;

(ii) Subject to the provisions of clause (iii) below, the Lender shall afford the County the opportunity, at the County's sole cost and expense, to contest (1) the validity of any amendment to the Code which causes the interest on the County Loans to be included in the gross income of the Lender or (2) any challenge to the validity of the tax exemption with respect to the interest on the County Loans, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals); *provided* that, in no event shall the Lender be required to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the County or any other Person; and

(iii) As a condition precedent to the exercise by the County of its right to contest set forth in clause (ii) above, the County shall, on demand, immediately reimburse the Lender for any and all expenses (including attorneys' fees for services that may be required or desirable, as determined by the Lender in its sole discretion) that may be incurred by the Lender in connection with any such contest, and shall, on demand, immediately reimburse the Lender for any and all penalties or other charges payable by the Lender for failure to include such interest in its gross income.

(e) No later than the second Business Day immediately preceding each Interest Payment Date, the Lender shall notify the County in writing of the total amount of interest payable on the County Loan on such Interest Payment Date; *provided*, that the failure of the

Lender to so notify the County shall not affect the accrual of or obligation of the County to pay the interest due on such Interest Payment Date.

Section 2.05. Termination and Reduction of County Loan.

(a) *Notice of Termination or Reduction.* The County shall notify the Lender in writing of any prepayment of the County Loans hereunder not less than thirty (30) days before the date of prepayment. Each such notice shall be irrevocable, shall be in writing and shall specify the prepayment date, the source of funds for such prepayment and the principal amount of the County Loans or portion thereof to be prepaid. On such Termination Date or Reduction Date, as applicable, the County shall remit to the Lender, the amount specified in such notice including any penalty that may be required in accordance with Section 2.05(a) or 2.05(b) hereof.

Section 2.06. Payments Unconditional. Subject to Section 2.14 of this Agreement, the obligations of the County to make the Payments required under this Agreement and all other Required Payments hereunder and under the other Related Documents are absolute and unconditional in all events notwithstanding any other provision of this Agreement (other than Section 2.13 hereof) or any other Related Document. Until the principal of and interest on the County Loans and all other Required Payments shall have been indefeasibly paid in full to the Lender and all obligations of the County hereunder and under the Related Documents shall have been performed and discharged, the County covenants that it:

(a) will pay all amounts required hereunder without abatement, diminution, deduction, counterclaim or defense for any reason, including (without limitation) any failure of any portion of the Project to be delivered, constructed or completed, any defects, malfunctions, breakdowns or infirmities in the Project, any accident, condemnation, destruction or unforeseen circumstances, or any damage, destruction or condemnation of the Project or any part thereof;

(b) notwithstanding any dispute between the County, the City, the Lender or any other Person, the County shall make all Payments and the other Required Payments when due and shall not withhold any Payments or other Required Payments pending final resolution of such dispute, nor shall the County assert any right of setoff or recoupment against its obligation to make such payments required under this Agreement;

(c) will not suspend or discontinue any Payments or Required Payments for any reason whatsoever including, without limitation, any right of setoff, recoupment or counterclaim arising under or in connection with any other Indebtedness or Related Document whatsoever including, without limitation, any litigation or other proceeding between the County and the City under any Related Document;

(d) will perform and observe all its other agreements, obligations and covenants contained in this Agreement and the other Related Documents to which it is a party; and

(e) will not terminate this Agreement or any of the other Related Documents for any cause including, without limiting the generality of the foregoing, damage, destruction or condemnation of the Project or any part thereof, any acts or circumstances that may constitute failure of consideration or commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State, or any political subdivision of either thereof or any failure of the County to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement or the other Related Documents.

Section 2.07. Payments Generally. (a) All Payments shall be made to the Lender at the Lender's account as follows: _____; ABA: _____; Acct Name: _____ Banking Wires-In-Process; Acct Number: _____; Reference: Cass County; and all other Required Payments, including payments pursuant to Sections 2.09, 2.10 and 2.11 shall be made directly to the Persons entitled thereto. The County shall make each Payment and Required Payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement, or of amounts payable under Sections 2.09, 2.10 or 2.11, or otherwise) on or prior to the date on which such payment is due, in order that the Lender is in receipt of such payment, in immediately available funds and without set off or counterclaim, by not later than 3:00 p.m., New York City time, on the date such payment is due. Any amounts received by the Lender after such time on any date shall be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day. All payments hereunder shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Lender to pay fully all Payments and other Required Payments then due hereunder, such funds shall be applied first, to payment of that portion of the Payments constituting accrued and unpaid interest on the County Loan, second, to payment of that portion of the Payments constituting unpaid principal of the County Loan and third, to payment of that portion of the Required Payments constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Lender and amounts payable under Section 2.08) payable to the Lender.

Section 2.08. Costs, Expenses and Taxes. (a) The County agrees to pay on demand all costs and expenses incurred by the Lender and its Affiliates in connection with the preparation, negotiation, execution, and delivery of this Agreement, the other Related Documents and any other documents which may be delivered in connection with this Agreement and the other Related Documents including, without limitation, the fees, expenses and disbursements of counsel for the Lender in the amount not to exceed \$_____. In addition, the County shall pay or cause to be paid on demand, upon not less than ten (10) days prior written notice to the County, the necessary and reasonable out-of-pocket expenses and disbursements of the Lender and the necessary and reasonable fees, expenses and disbursements of counsel to the Lender in connection with (i) the administration of this Agreement, including any waiver, supplement, consent or other action required of the Lender under this Agreement or any other Related Document or other document delivered in connection with the Transactions or any amendment or requested amendment hereof or thereof (whether or not the transactions contemplated thereby shall be consummated) or any Default or alleged Default hereunder, (ii) the preparation,

execution, delivery, administration and enforcement or preservation of rights in connection with a workout, restructuring or waiver with respect to this Agreement or any of the other Related Documents and (iii) the occurrence of an Event of Default and collection and other enforcement proceedings resulting therefrom.

(b) Any and all payments to the Lender by or on behalf of the County hereunder shall be made free and clear of, and without deduction for, any and all taxes, levies, imposts, deductions, charges or withholdings imposed, including but not limited to as a result of a change in, law, rule, treaty or regulation, or any policy, guideline, or directive of, or any change in the interpretation, implementation, or administration thereof by, any Governmental Authority, and all liabilities with respect thereto, excluding taxes imposed on or measured by the net income or capital of the Lender by any jurisdiction or any political subdivision or taxing authority thereof or therein solely as a result of a connection between the Lender and such jurisdiction or political subdivision, other than a connection resulting solely from executing, delivering or performing its obligations or receiving a payment under, or enforcing, this Agreement (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as “Taxes”).

(c) In addition, the County shall pay or cause to be paid on demand, upon not less than thirty (30) days prior written notice to the County, any present or future stamp, recording, or Other Taxes and fees payable or determined to be payable under Applicable Law in connection with the execution, delivery, filing and recording of this Agreement, the other Related Documents and such other documents and agrees to save the Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such Other Taxes and fees.

Section 2.09. Increased Costs.

(a) *Yield Protection.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Lender or any Participant;

(ii) subject the Lender or any Participant to any Taxes of any kind whatsoever with respect to this Agreement or the County Note, or change the basis of taxation of payments to the Lender or any Participant in respect thereof (except for Indemnified Taxes covered by Section 2.10 hereof and the imposition of, or any change in the rate of any Excluded Tax payable by the Lender or any Participant); or

(iii) impose on the Lender or any Participant any other condition, cost or expense affecting this Agreement, the County Loans or the County Note;

and the result of any of the foregoing shall be to increase the cost to the Lender or any Participant of owning the County Loans (or of maintaining its obligation to advance the County

Loans), or to reduce the amount of any sum received or receivable by the Lender or any Participant hereunder or under the County Note (whether of principal, interest or any other amount) then, upon written request of the Lender or any Participant as set forth in subsection (c) below, the County shall promptly pay to the Lender or any Participant, as the case may be, such additional amount or amounts as will compensate the Lender or any Participant, as the case may be, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Lender or any Participant determines that any Change in Law affecting the Lender or any Participant or the Lender's or the Participant's parent or holding company, if any, regarding capital requirements, has or would have the effect of reducing the rate of return on the Lender's or the Participant's capital or the capital of the Lender's or the Participant's parent or holding company holding, if any, as a consequence of this Agreement, or ownership of the County Note, to a level below that which the Lender or any Participant or the Lender's or the Participant's parent or holding company could have achieved but for such Change in Law (taking into consideration the Lender's or the Participant's policies and the policies of the Lender's or the Participant's parent or holding company with respect to capital adequacy), then from time to time upon written request of the Lender or any Participant as set forth in subsection (c) below, the County shall promptly pay to the Lender or any Participant, as the case may be, such additional amount or amounts as will compensate the Lender or any Participant or the Lender's or the Participant's parent or holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of the Lender or any Participant setting forth the amount or amounts necessary to compensate the Lender or any Participant or the Lender's or the Participant's parent or holding company, as the case may be, as specified in subsection (a) or (b) above and delivered to the County, shall be conclusive absent manifest error. The County shall pay the Lender or any Participant, as the case may be, the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of the Lender or any Participant to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's or any Participant's right to demand such compensation.

(e) *Survival.* Without prejudice to the survival of any other agreement of the County hereunder, the agreements and obligations of the County contained in this Section shall survive the termination of this Agreement and the payment in full of the County Loans and the obligations of the County thereunder and hereunder.

Section 2.10. Net of Taxes, Etc.. (a) Any and all payments to the Lender or any Participant by the County hereunder or with respect to the County Loans or the County Note shall be made free and clear of and without deduction or withholding for any and all Indemnified Taxes. If the County shall be required by law to deduct or withhold any Indemnified Taxes imposed by the United States of America or any political subdivision thereof from or in respect of any sum payable hereunder or with respect to the County Loans, then (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Lender or any Participant receives an amount equal to the sum it would have received had no such deductions been made, (ii) the County shall make such deductions and (iii) the County shall timely pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. If the County shall make any payment under this Section to or for the benefit of the Lender or any Participant with respect to Indemnified Taxes and if the Lender or any Participant shall claim any credit or deduction for such Indemnified Taxes against any other taxes payable by the Lender or any Participant to any taxing jurisdiction in the United States of America then the Lender or any Participant shall pay to the County an amount equal to the amount by which such other taxes are actually reduced; *provided*, that the aggregate amount payable by the Lender or any Participant pursuant to this sentence shall not exceed the aggregate amount previously paid by the County with respect to such Indemnified Taxes. In addition, the County agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies that arise under the laws of the United States of America or any state of the United States from any payment made hereunder or under the County Loans or the County Note or from the execution or delivery of this Agreement or the County Loans or the County Note, or otherwise with respect to this Agreement or the County Loans or the County Note (hereinafter referred to as “*Other Taxes*”). The Lender or any Participant shall provide to the County within a reasonable time a copy of any written notification it receives with respect to Indemnified Taxes or Other Taxes owing by the County to the Lender or any Participant hereunder; *provided*, that the Lender or any Participant’s failure to send such notice shall not relieve the County of its obligation to pay such amounts hereunder.

(b) The County shall, to the fullest extent permitted by law and subject to the provisions hereof, pay the Lender or any Participant for the full amount of Indemnified Taxes and Other Taxes including any Indemnified Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section paid by the Lender or any Participant or any liability (including penalties, interest and reasonable expenses) arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted; *provided*, that the County shall not be obligated to pay the Lender or any Participant for any penalties, interest or expenses relating to Indemnified Taxes or Other Taxes arising from the Lender or any Participant’s gross negligence or willful misconduct. The Lender or any Participant agrees to give notice to the County of the assertion of any claim against the Lender or any Participant relating to such Indemnified Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; *provided*, that the Lender or any Participant’s failure to notify the County promptly of such assertion shall not relieve the County of its obligation under this Section. Payments by the County pursuant to this Section shall be made within thirty (30) days from the date the Lender or any Participant makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. The Lender or

any Participant agrees to repay to the County any refund (including that portion of any interest that was included as part of such refund) with respect to Indemnified Taxes or Other Taxes paid by the County pursuant to this Section received by the Lender or any Participant for Indemnified Taxes or Other Taxes that were paid by the County pursuant to this Section and to contest, with the cooperation and at the expense of the County, any such Indemnified Taxes or Other Taxes which the Lender or any Participant or the County reasonably believes not to have been properly assessed.

(c) Within thirty (30) days after the date of any payment of Indemnified Taxes by the County, the County shall furnish to the Lender or any Participant, as applicable, the original or a certified copy of a receipt evidencing payment thereof.

(d) Without prejudice to the survival of any other agreement of the County hereunder, the agreements and obligations of the County contained in this Section shall survive the termination of this Agreement and the payment in full of the County Loans and the obligations of the County thereunder and hereunder.

Section 2.11. Cure. The County agrees to pay to the Lender, on demand, any amounts advanced by or on behalf of the Lender to the extent deemed necessary by the Lender to cure any Default or Event of Default under this Agreement or any Related Document. The Lender shall give the County reasonably prompt notice of any such advances. The Lender shall have the right, but not the obligation, to cure any such Default or Event of Default.

Section 2.12. Extension of County Loan. Not earlier than one hundred eighty (180) days prior to, and not less than ninety (90) days prior to, the Maturity Date (as such date may be extended in accordance with the terms of this Section 2.11), the County may, by written notice to the Lender, request that the Lender provide indicative terms upon which the Lender would be willing to extend the County Loan from and after such Maturity Date. The Lender shall, within sixty (60) days following receipt of such request, provide to the County written notice of whether the Lender is willing to extend the County Loan and the proposed terms therefor; *provided*, that in the event the Lender shall fail to provide the County with any such notice, the Lender shall be deemed to have determined not to extend the County Loan and the County Loan shall continue to be subject to payment in full on the Maturity Date. Any determination of the Lender to extend the County Loan, or to not extend the County Loan, under this Section 2.11 shall be in its sole and absolute discretion.

Section 2.13. Funding Indemnity. In the event the Lender shall incur any loss, cost, or expense (including, without limitation, any loss, cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the County pursuant to this Agreement or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Lender) as a result of any prepayment of the County Note on a date other than a Index Reset Date, whether before or after default, and whether or not such payment is required by any provision of this Agreement or other Related Document, then upon the demand of the Lender, the County shall pay to the Lender a prepayment premium in such amount as will reimburse the Lender for such loss, cost or expense. If the Lender requests such prepayment premium, it shall provide to the County a certificate setting forth the

computation of the loss, cost or expense giving rise to the request for such prepayment premium in reasonable detail and such certificate shall be conclusive if reasonably determined.

Section 2.14. Limited Liability of the County and the City. Notwithstanding any provision of this Agreement to the contrary, this Agreement, the County Note and all obligations hereunder and thereunder of the County are special limited obligations of the County, payable solely from the County STR authorized and pledged pursuant to the Intergovernmental Agreement, the Ordinance and the County Resolution and neither this Agreement nor the County Note constitute a charge, lien or encumbrance upon any property of the County, except for such County STR pledged to make the Payments and other Required Payments hereunder and thereunder. Neither the Lender nor any Participant shall have the right to compel any exercise of the taxing power of the County to make any Payment or other Required Payment hereunder or thereunder. Neither this Agreement nor the County Note constitutes a general obligation of the County and neither this Agreement nor the County Note are payable from the general fund or other moneys of the County, except the County STR and, to the extent available, the proceeds thereof.

In addition to the foregoing, the County has levied and is collecting, and may in the future levy and collect, sales taxes (other than the County STR) and, with respect to such other sales taxes, the County retains and will retain the right to spend such other sales taxes for any lawful purposes of the County provided by the authorizing ordinance of the County and neither the Lender nor any Participant shall have any charge, lien or encumbrance upon such other sales taxes.

Except as otherwise provided in Section 3 T of the City's home rule charter, the Intergovernmental Agreement, the City Resolution and Article 3-21, the City has no liability with respect to the Payments and the other Required Payments under this Agreement and the County Note.

Section 2.15. Commitment Fee. The County shall pay to the Lender a commitment fee equal to the product of (i) 0.30% and (ii) the Available Commitment. The commitment fee shall accrue and shall be due and payable quarterly in arrears on the first Business Day of each January, April, July and October, commencing with the first such date to occur after the Closing Date and the Termination Date. The commitment fee shall be calculated on the basis of a 360-day year and the actual number of days elapsed.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF COUNTY

Section 3.01. Representations and Warranties of County. The County represents and warrants to and with the Lender as follows:

- (a) The County is a political subdivision of the State, duly organized and created and validly existing under the laws of the State, with full right and power to

execute, deliver and perform its obligations under this Agreement and each other Related Document to which it is a party and to enter into the Transactions.

(b) The execution and, delivery by the County of this Agreement and the other Related Documents to which it is a party, the execution and delivery of the County Note and the performance of the County's obligations under the foregoing documents are within the powers of the County, have been duly authorized by all necessary action, require no action by or in respect of, or filing (other than any blue-sky filing) with, any Governmental Authority and do not violate or contravene, or constitute a default under, any provision of Applicable Law (including, without limitation, the Sales Tax Law), or of any material agreement, judgment, injunction, order, decree or material instrument binding upon the County or result in the creation or imposition of any Lien or encumbrance on any asset of the County (other than the County STR as contemplated herein).

(c) This Agreement has been duly executed and delivered by one or more duly authorized officers of the County, and each of the Related Documents to which the County is a party, when executed and delivered by the County will be, a legal, valid and binding obligation of the County enforceable in accordance with its terms, except as such enforceability may be limited by (a) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(d) The County is in compliance with all Applicable Law, including all Environmental Laws, NDPERS and Governmental Approvals, except for noncompliance that, singly or in the aggregate, has not had and is not reasonably expected to have a Material Adverse Effect or Material Adverse Change.

(e) Except as disclosed in writing to the Lender prior to the Closing Date, there is no action, suit or proceeding pending against or, to the knowledge of the County, threatened against or affecting, the County or the City before any court or arbitrator or any Governmental Authority (i) in which there is a reasonable possibility of an adverse decision which could reasonably be expected to result in a Material Adverse Effect (any such action, suit or proceeding being referred to herein as "*Material Litigation*").

(f) Under existing law, the County is not entitled to raise the defense of sovereign immunity in connection with any legal proceeding to enforce or collect upon this Agreement, the other Related Documents or the transactions contemplated hereby or thereby, including the payment of the principal of and interest on the County Loans or the payment of the other obligations to the Lender hereunder.

(g) The County hereby makes to the Lender the same representations and warranties made by the County as are set forth in the Related Documents to which the County is a party (other than this Agreement), which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference

with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to the applicable Related Document shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the prior written consent of the Lender.

(h) There is no amendment or, to the knowledge of the County, proposed amendment to the Constitution of the State or any State law or any administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect.

(i) No representation, warranty or other statement made by the County with respect to the Sales Tax Revenues in or pursuant to this Agreement or any other Related Document to which it is a party, or any other document or financial statement provided by the County to the Lender in connection with this Agreement or any other Related Document to which it is a party, contains any untrue statement of a material fact or omits (as of the date made or furnished) any material fact necessary to make the statements herein or therein not misleading in light of the circumstances under which they are made. There is no fact known to the County which the County has not disclosed to the Lender in writing which the County currently knows or, so far as the County can now reasonably foresee, could reasonably be expected to have a Material Adverse Effect.

(j) All information, reports and other papers and data with respect to the Sales Tax Revenues furnished to the Lender were, at the time the same were so furnished, accurate in all material respects or were replaced with accurate information. Any financial statements and cash flows furnished to the Lender with respect to the Sales Tax Revenues were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of conditions existing at the time of the delivery of such financial statements and cash flows.

(k) The County Resolution authorizes the pledge in favor of the Lender in the County STR and, as of the Closing Date, all necessary actions on the part of the County have been taken as required to pledge the County STR to secure the Required Payments. Pursuant to Intergovernmental Agreement, the County Resolution and the Ordinance, the County has pledged the County STR, on a first Lien basis, to the payment of Required Payments. Except as described in this Section 3.01(k) and the Intergovernmental Agreement, the County has not pledged or granted a Lien, security interest or other encumbrance of any kind on the County STR.

(l) The balance sheet of the County as of December 31, 2015, and the related statement of revenues and expenses and changes in financial position for the Fiscal Year then ended and the auditors' reports with respect thereto and the balance sheet of the County as of December 31, 2015, and the related statement of revenues and expenses and changes in financial position for the Fiscal Year then ended, copies of which have

heretofore been furnished to the Lender, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the Lender at such dates and for such periods, and were prepared in accordance with GAAP. Since December 31, 2015, there has been no material adverse change with respect to the County's business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects.

(m) No authorization, consent, order or other approval of, or registration or filing with, or taking of any other action in respect of or by, any Governmental Authority is required for the valid execution, delivery or performance by the County of this Agreement or any other Related Document to which it is a party, except such as shall have been duly obtained, given or accomplished prior to the execution and delivery hereof or thereof.

(n) The County is obligated under the County Resolution to make the Payments and other Required Payments to the Lender at the times and in the amounts set forth herein and in the County Note. The obligation of the County to make Payments and other Required Payments hereunder and under the County Note are special obligations of the County that are secured by a first Lien on, and a pledge of, Sales Tax Revenues, free and clear of all Liens or claims of any other Person.

(o) None of this Agreement or the other Related Documents provide for any payments that would violate any Applicable Usury Laws.

(p) No part of the proceeds of the County Loan will be used for the purpose, whether immediate, incidental or ultimate, to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock.

(q) The County has not taken any action or omitted to take any action, and has no actual knowledge of any action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the County Loans from gross income for federal income tax purposes or the exemption of interest on the County Loans from State personal income taxes.

(r) The County is not in violation of any Laws relating to terrorism or money laundering ("*Anti-Terrorism Laws*"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "*Executive Order*"), and the Patriot Act;

(A) The County is not any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which the Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(v) a Person that is named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control (“OFAC”) or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list;

(B) The County does not (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in subsection (a)(ii) above, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or (iii) engage in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(s) The County has no funding liability or obligation currently due and payable with respect to any employee benefit plan which could reasonably be expected to result in a Material Adverse Effect. The County and each employee benefit plan is in compliance in all material respects with the terms of any such plan and applicable law related thereto. Neither the County nor a member of the Controlled Group is subject to ERISA or maintains a Plan.

(t) No default by the County has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any Parity Obligation. No bankruptcy, insolvency or other similar proceedings pertaining to the County or any agency or instrumentality of the County are pending or presently contemplated. No Default or Event of Default has occurred and is continuing hereunder. No “default” or “event of default” under, and as defined in, any of the other Related Documents has occurred and is continuing. The County is not presently in default under any material agreement to which it is a party which could reasonably be expected to have a Material Adverse Effect.

(u) The County currently maintains insurance coverage with insurance companies believed by the County to be capable of performing their obligations under the respective insurance policies issued by such insurance companies to the County (as determined in its reasonable discretion) and in full compliance with Section 5.14 hereof.

(v) The County is not an “*investment company*” or a company “*controlled*” by an “*investment company*,” as such terms are defined in the Investment Company Act of 1940, as amended.

ARTICLE 4

CONDITIONS

Section 4.01. Conditions Precedent to Closing Date. The obligation of the Lender to make the County Loans shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 8.02) as determined by the Lender in its sole and absolute discretion:

(a) The Related Documents, in form and substance satisfactory to the Lender, shall have been duly executed and delivered by each of the respective parties thereto and shall not have been modified, amended or rescinded, shall be in full force and effect on and as of the Closing Date and executed originals of this Agreement and each of the other Related Documents delivered on the Closing Date shall have been delivered to the Lender.

(b) The Lender shall have received a certified copy of each of (i) the County Resolution and all proceedings taken by the County, and (ii) the City Resolution and all proceedings taken by the City, in each case, authorizing the execution, delivery and performance, as appropriate, of this Agreement, the County Note, the County Loans and the other Related Documents to which each is a party, and the Transactions hereunder and thereunder, together with certifications as to such other matters of fact as shall reasonably be requested by the Lender (including certification that all such resolutions are in full force and effect on the Closing Date).

(c) The Lender shall have received a copy, certified as true and correct as of the Closing Date, of the Sales Tax Law, together with confirmation, in form and substance acceptable to the Lender, that the County and the City are authorized to grant a pledge of and Lien on the Sales Tax Revenues to secure the obligations to make the Payments and other Required Payments to the Lender hereunder by a Lien on the Sales Tax Revenues pursuant to, in the case of the City, Article 3-21, the City Resolution and the Intergovernmental Agreement, and in the case of the County, the Ordinance and the County Resolution and the Intergovernmental Agreement.

(d) A certificate of an Authorized County Representative certifying the names and true signatures of the respective officers thereof authorized to sign this Agreement and the other Related Documents on behalf of the County.

(e) A certificate of an authorized representative of the City certifying the names and true signatures of the respective officers thereof authorized to sign the Intergovernmental Agreement and other Related Documents to which the City is a party.

(f) The Lender shall have received originals (or copies certified to be true copies by the County) of all Governmental Approvals, if any, necessary for the County and the City to execute, deliver and perform their respective obligations under the

Related Documents to which each is a party and the Transactions, together with a list of any required approvals still to be received, if any.

(g) The Lender shall be satisfied that the following statements are true and correct on and as of the Closing Date and the Lender shall have received a certificate signed by an Authorized County Representative, dated the Closing Date and stating that, on and as of the Closing Date: (i) each representation and warranty on the part of the County contained herein and in any Related Document is true and correct in all material respects as though made on and as of such date, (ii) no Default or Event of Default has occurred and is continuing or would result from the execution, delivery and performance by the County of this Agreement or any of the other Related Documents; and (iii) covering such other matters of fact as may be reasonably requested by the Lender.

(h) The Lender shall have received an opinion addressed to the Lender and dated the Closing Date of bond counsel to the County, in form and substance reasonably satisfactory to the Lender and its counsel, to the effect that (i) the County is duly organized and validly existing under the laws of the State, (ii) the execution, delivery and performance by the County of this Agreement, the County Note and the other Related Documents to which the County is a party are within the County's powers, have been duly authorized by all necessary action, and require no action by or in respect of, or filing with, any governmental body, agency or official that has not been accomplished, (iii) this Agreement, the County Note and the other Related Documents to which the County is a party are valid, binding and enforceable against the County, (iv) interest on the County Loans will be excluded from gross income for Federal and State income tax purposes of the Lender, (v) the pledge of the County STR to secure the Required Payments creates a valid first Lien in said County STR, and (vi) such other matters as the Lender may reasonably request.

(i) The Lender shall have received an opinion addressed to the Lender and dated the Closing Date from counsel to the City, in form and substance reasonably satisfactory to the Lender and its counsel, to the effect that (i) the City is duly organized and validly existing under the laws of the State, (ii) the execution, delivery and performance by the City of the Related Documents to which the City is a party are within the City's powers, have been duly authorized by all necessary action, and require no action by or in respect of, or filing with, any governmental body, agency or official that has not been accomplished, (iii) the Related Documents to which the City is a party have been duly authorized, executed and delivered and are valid, binding and enforceable against the City, (iv) the pledge of the City STR creates a valid second Lien in said City STR, and (v) such other matters as the Lender may reasonably request.

(j) The Lender shall have received the Tax Compliance Documents, dated the Closing Date, confirming that the interest to be paid on the County Loan is tax-exempt from Federal and State income taxes.

(k) The Lender shall have received such documents and certificates, as the Lender or its counsel may reasonably request relating to the organization, existence and

good standing of the County and the City, the authorization of the Transactions and any other legal matters relating to the County and the City, this Agreement, the other Related Documents or the Transactions, all in form and substance satisfactory to the Lender and its counsel.

(l) All necessary action on the part of the County and the City shall have been taken as required to grant to the Lender a valid first pledge of, and security interest in and to, the Sales Tax Revenues as described in Section 3.01(k) hereof.

(m) The Lender shall have received all fees and other amounts due and payable on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all out of pocket expenses required to be reimbursed or paid by the County hereunder.

In addition, the Lender shall have made a reasonable determination that, as of the Closing Date, no law, regulation, ruling or other action of the United States or the State or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the County, the City or the Lender from fulfilling their respective obligations under this Agreement and the other Related Documents. The execution and delivery of this Agreement by the Lender shall be deemed satisfaction of all conditions specified in this Section 4.01 or waiver thereof by the Lender.

Section 4.02. Conditions Precedent to Each Draw. The obligation of the Lender to advance funds hereunder on any date is subject to the conditions precedent that on the date of the requested draw:

(a) The Lender shall have received a duly completed Draw Notice, signed by an Authorized County Representative, as required by Section 2.01(b) hereof;

(b) All representations and warranties of the County as set forth in Article 5 hereof shall be true and correct as though made on the date of such Draw Notice and on the date of the proposed advance (other than those representations and warranties which, with the passage of time, are no longer true or correct) and no Default or Event of Default shall have occurred and be continuing;

(c) The Lender shall have received satisfactory evidence that all representations and certifications of the County that the Lender deems necessary to maintain the tax-exempt status of interest on the County Loan have been delivered and are true and correct;

(d) No material adverse change with respect to the County's business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects shall have occurred and no Material Adverse Change shall have occurred and be continuing;

(e) The Lender shall be satisfied that the opinion of Bond Counsel delivered pursuant to Section 4.01(h)(iv) hereof remains in full force and effect; and

(f) The County shall prepare and deliver a tax compliance certificate, an arbitrage certificate or IRS Form 8038-G.

The County Loan and the obligation of the Lender to advance funds hereunder shall not have terminated pursuant to Section 2.05 hereof or pursuant to Section 7.02 hereof. Unless the County shall have otherwise previously advised the Lender in writing, delivery to the Lender of a Draw Notice shall be deemed to constitute a representation and warranty by the County that, on the date of such Draw Notice and on the date of the proposed advance, each of the foregoing conditions has been satisfied and that all representations and warranties of the County as set forth in Article 5 hereof are true and correct as though made on the date of the Draw Notice and on the date of the proposed advance and no Default or Event of Default shall have occurred and be continuing on the date of such Draw Notice or on the date of the proposed advance.

ARTICLE 5

AFFIRMATIVE COVENANTS

The County covenants and agrees that until all Payments and other Required Payments payable hereunder have been paid in full:

Section 5.01. Compliance with Applicable Law. The County shall comply with all Applicable Law (including Environmental Laws and NDPERS), and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject the noncompliance of which could reasonably be expected to result in (a) a material adverse change with respect to the County's business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects or (b) a Material Adverse Change; *provided however*, that the County may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the County's power and authority to execute this Agreement, to perform its obligations and pay all amounts payable by it hereunder and under the County Note, or to perform its obligations under the other Related Documents.

Section 5.02. Related Obligations. The County shall promptly pay, or cause to be paid, all amounts payable by it under this Agreement, the County Note and the other Related Documents according to the terms hereof and thereof and shall duly perform, or cause to be performed, each of its obligations under this Agreement, the County Loan and the other Related Documents to which it is a party.

Section 5.03. Reporting Requirements. The County shall keep proper books of record and account in which full, true and correct entries will be made of all dealings and transactions of or in relation to affairs, operations, transactions and activities of the County in accordance with GAAP consistently applied. The County shall furnish to the Lender two (2) copies of each of the following; *provided that*, except with respect to the requirements of subsections (b), (d) and (h)

below, the County may satisfy its obligation to provide to the Lender copies of any items identified in this Section by giving written notice of the County having posted an electronic copy of such item on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System, www.emma.msrb.org ("*EMMA*") within the timeframe for delivery identified below:

(a) *Annual Financial Statements.* As promptly as available and, in any event, within one hundred eighty (180) days after the end of the Fiscal Year of the County, the Comprehensive Annual Financial Report of the County, certified and prepared by an independent certified public accountant in accordance with GAAP, consistently applied.

(b) *Certificate of Compliance.* Simultaneously with the delivery of each set of financial statements referred to in (a) above, a certificate signed by the Authorized County Representative stating (i) that to the best of his/her knowledge, the County is not in default in the performance or observance of any of the terms, covenants, provisions or conditions of this Agreement or any of the other Related Documents or, if the County shall be in default hereunder or thereunder, such certificate shall specify each such Default or Event of Default, the nature and status thereof and any remedial steps taken or proposed to correct each such Default or Event of Default and (ii) whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.01(l) and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate.

(c) *Sales Tax Revenues.* As and to the extent that the information described in this Section 5.03(c) is not available on the State's website or other electronic platform generally available to the public, the County shall furnish to the Bank: (i) as soon as practicable and, in any event, within thirty (30) days after the end of each fiscal quarter of the County, an unaudited report, certified by an Authorized County Representative, setting forth the Sales Tax Revenues collected (from the State) through the end of such quarter and for the period from the beginning of such Fiscal Year to the end of such quarter and (ii) with reasonable promptness, such other information and data with respect to the Sales Tax Revenues as from time to time may be reasonably requested by the Lender. In addition to the foregoing, the County shall furnish the Lender, as soon as practicable and, in any event, within one hundred eighty (180) days after the end of each Fiscal Year of the County, a certificate, signed by an Authorized County Representative, confirming that, for such Fiscal Year, the Sales Tax Revenues collected (from the State) and available to pay interest on the County Loan equaled or exceeded 200% of said interest.

(d) *Auditors.* Concurrently with any delivery of financial statements under clause (a) above, a copy of any management letter or audit report provided by such auditors.

(e) *Budget.* As soon as available, but not later than sixty (60) days after adoption by the County, the County's budget and a copy of the capital budget, and any material amendments to the foregoing promptly following the adoption thereof.

(f) *Amendments.* Promptly after the adoption thereof, copies of any amendments of or supplements to any of the other Related Documents.

(g) *Material Event Notices.* In connection with any Indebtedness, immediately following any dissemination, distribution or provision thereof to any Person, a copy of any “material event notice” disseminated, distributed or provided in satisfaction of or as may be required by the provisions of Rule 15c2-12 promulgated pursuant to the Securities Exchange Act of 1934, as amended (17 C.F.R. Sec. 240-15c2-12), or any successor or similar legal requirement.

(h) *Other Information.* Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the County as the Lender may from time to time reasonably request.

Section 5.04. Notices.

(a) *Notice of Default.* The County shall provide to the Lender as soon as possible and, in any event, within five (5) days after the occurrence of each Default or Event of Default continuing on the date of such statement, a statement of an Authorized County Representative setting forth the details of such Default or Event of Default and the action which is being taken or proposed to be taken with respect thereto, as well as any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

(b) *Litigation and other Notices.* The County shall provide to the Lender in writing, promptly upon learning thereof, notice of any Material Litigation and any other action, suit, proceeding, inquiry or investigation (collectively, a “*Material Proceeding*”) that is commenced or threatened against the County or the City that, singly or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(c) *Notices under the Related Documents.* The County shall furnish to the Lender a copy of any notice, certification, demand or other writing or communication given by, or received by, the County under or in connection with any of the other Related Documents, in each case, promptly after the giving or receipt of same.

(d) *Miscellaneous Notices.* The County shall provide such further financial and other information with respect to the Sales Tax Revenues and the Transactions as the Lender may reasonably request from time to time.

Section 5.05. Right of Entry; Communication with Accountant. The County will permit, during normal business hours and from time to time, upon reasonable prior notice, the Lender or any of its agents or representatives to examine and make copies of and abstracts from the records and books of account of the County (except records and books of accounts the examination of which by the Lender is prohibited by law), and to discuss the affairs, finances and accounts of the County, and the collection and disbursement of Sales Tax Revenues, with any representative or any other appropriate officer of the County or a representative of the County’s independent certified public accountant.

Section 5.06. Incorporation of Covenants. The County will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Related Documents to which it is a party, which provisions, as well as related defined terms contained herein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety for the benefit of the Lender and shall be enforceable by the Lender against the County. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such provision shall be complied with only if it is waived or consented to by the Lender and such document, opinion or other instrument shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Lender. No amendment to such covenants (or the defined terms relating thereto) made pursuant to the Related Documents or cessation of the effectiveness of any such covenants shall be effective to amend or terminate the effectiveness of such incorporated covenants without the written consent of the Lender. Notwithstanding the termination or expiration of any Related Document, the County shall, unless such Related Document has terminated or expired in accordance with its terms and has been replaced by a new Related Document, continue to observe the covenants therein contained for the benefit of the Lender until the termination of this Agreement.

Section 5.07. Further Assurances. The County shall at all times maintain in effect, renew and comply with all the terms and conditions of all consents, licenses, approvals and authorizations as may be necessary or appropriate under any Applicable Law or regulation for its execution, delivery and performance of this Agreement and the other Related Documents to which it is a party. The County will at any and all times, insofar as it may be authorized so to do by law, authorize, make, do, execute, acknowledge and deliver every and all such further resolutions, acts, deeds, conveyances, assignments, recordings, filings, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights of the Lender hereunder or payment of the obligations of the County arising under or pursuant to the County Loan, the County Note, this Agreement and the other Related Documents.

Section 5.08. Issuance of Bonds. Unless the County Loans are paid by other funds, the County will use its best efforts to issue bonds in an amount sufficient to pay, in full on or prior to the Maturity Date, the County Loans, together with interest thereon, and all Payments and other Required Payments due through the date said bonds are issued by the County.

Section 5.09. Amendments to the Sales Tax Law or Proposed Legislation. The County shall furnish to the Lender a copy of any amendments or modifications to the Ordinance, the Sales Tax Law or any other law or any other legislation, initiative or referendum of which the County is aware which could (i) annul, amend, modify, replace or otherwise adversely impact the collection and disbursement of the Sales Tax Revenues or the validity or priority of the pledge and the Lien thereon in favor of the Lender to secure the Required Payments, or (ii) lead to the diminution or reallocation of the Sales Tax Revenues or any portion thereof.

Section 5.10. Disclosure to Participants. The County agrees to permit the Lender to disclose any information received by the Lender in connection herewith including, without

limitation, the financial information described in Section 5.03, to any Participant without notice to or further consent from the County.

Section 5.11. Most Favored Covenant. In the event that the County has previously entered into or hereafter shall enter into or otherwise consent to any agreement or instrument (or any amendment, supplement or modification thereto) that involves a pledge of, or security interest in and to, the County STR, whether on parity with, or senior to, to the Lien in the County STR granted in favor of the Lender (each a “*Relevant Agreement*”) under which any Person undertakes to make loans or extend credit or liquidity to the County or pursuant to which the County and a Person agree to any Hedge Agreement or other similar arrangement, which Relevant Agreement provides such Person with a covenant, event of default or agreement which is more restrictive or which gives greater, additional or materially different rights and remedies, whether as to timing of payment or priority of payment or rights or remedies upon default or otherwise (the “*Favored Covenants*”) than are provided to the Lender, then such Favored Covenants shall automatically be deemed to be incorporated into this Agreement for the duration of this Agreement and the Lender shall have (a) the benefits of such Favored Covenants as if specifically set forth in this Agreement and (b) the right to independent review and approval of any modifications of, amendments or supplements to, or waivers of compliance with, such Favored Covenants as a condition to incorporation or application of such modification, amendment, supplement or waiver into this Agreement, notwithstanding that the Person or Persons party to the Relevant Agreement in which a Favored Covenant was provided may have approved or taken some other action with respect to such Favored Covenant for purposes of the Relevant Agreement. If necessary, the County shall promptly enter into an amendment to this Agreement to include the Favored Covenants (*provided* that the Lender shall maintain the benefit of such Favored Covenants even if the County fails to provide such amendment).

Section 5.12. Sovereign Immunity. To the extent that the County has or hereafter may acquire under Applicable Law any right to immunity from set off or legal proceedings on the grounds of sovereignty or otherwise with respect to the Transactions, the County hereby irrevocably waives, to the extent permitted by law, such rights to immunity for itself and agrees not to invoke any defense of immunity in respect of its obligations arising under or related to this Agreement and any of the other Related Documents to which it is a party.

Section 5.13. Underlying Rating. The County shall at all times maintain a General Obligation Debt Rating from at least one Rating Agency. The County covenants and agrees that it shall not at any time withdraw any General Obligation Debt Rating if the effect of such withdrawal would be to cure a Default or an Event of Default under this Agreement or reduce the Applicable Spread.

Section 5.14. Insurance. The County shall maintain insurance with reputable insurance companies or associations believed by the County at the time of purchase of such insurance to be financially sound and in such amounts and covering such risks as are usually carried by organizations engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibles from coverage. The County shall upon request of the Lender furnish a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Section 5.14.

Section 5.15. Maintenance of Tax-Exempt Status of County Loans. The County shall not take any action or omit to take any action which, if taken or omitted, would adversely affect the tax-exempt status of the County Loans.

ARTICLE 6

NEGATIVE COVENANTS

The County covenants and agrees that until all Payments and other Required Payments payable hereunder have been paid in full:

Section 6.01. Amendments. The County shall not (a) consent or agree to or permit any rescission of or amendment to the Ordinance, the County Resolution, the Intergovernmental Agreement or the Sales Tax Law which would reduce the amount of the Sales Tax Revenues or which would in any manner materially impair or materially adversely affect the rights of, or the validity or priority of the pledge of, and security interest in favor of the Lender in and to, the Sales Tax Revenues and (b) amend, modify or supplement, nor agree to any amendment or modification of, or supplement to, any of the Related Documents or consent to, or permit or suffer to occur any action, course of dealing or omission which results in, or is equivalent to, an amendment, supplementation, termination or modification of any of the Related Documents, without the prior written consent of the Lender and any such amendment, supplementation, termination or modification made or entered into in violation of this subsection shall be deemed a nullity and of no force and effect.

Section 6.02. Preservation of Existence, Ownership, Etc. The County shall not directly or indirectly liquidate, wind up, terminate, reorganize, dissolve, merge or consolidate (or suffer any liquidation, winding up, termination, reorganization or dissolution), except as consented to in writing by the Lender in its sole discretion.

Section 6.03. Accounting Methods; Fiscal Year; Entity Classification. The County will not adopt, permit or consent to any change in accounting practices other than as required by GAAP and will not adopt, permit or consent to any change in its Fiscal Year or take (or permit to be taken) any action that results in (a) a change to its entity classification for Federal or State income tax purposes or (b) a change to the method of accounting applicable to the Sales Tax Revenues, or the times of commencement or termination of Fiscal Years or other accounting periods relating to Sales Tax Revenues without first disclosing in writing such change to the Lender.

Section 6.04. ERISA. To the extent that ERISA may become applicable to the County, the County will not violate ERISA in any way that could reasonably be expected to have (a) a material adverse effect on the County's business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects or (b) a Material Adverse Effect.

Section 6.05. Hedge Agreements. The County will not enter into any Hedge Agreement hedging or otherwise relating to the County Loan or this Agreement without the prior written consent of the Lender.

Section 6.06. Exempt Status. The County shall not take any action or omit to take any action that, if taken or omitted, would adversely affect the excludability of interest payable on the County Note from the gross income of the holders thereof for purposes of Federal income taxation under the Code and State income taxation.

Section 6.07. Limitation on Indebtedness. The County will not create or incur, nor purport to create or incur, any Indebtedness beginning on the Closing Date and ending on the date of payment of the County Loan which is payable from or secured on parity with, or senior to, the Lien on and pledge of the Sales Tax Revenues provided to the Lender hereunder and under the other Related Documents without the prior written consent of the Lender, which consent shall not be unreasonably withheld; *provided, however*, that the foregoing shall not prevent issuance by the County of that certain Temporary Sales Tax Revenue Note of 2016 dated the Closing Date.

Section 6.08. Regulation U. The County will not use the proceeds of the County Loan so as to violate Regulation U as it may be amended or interpreted from time to time by the Board of Governors of the Federal Reserve System.

Section 6.09. Acceleration. The County will not grant to or permit the holder of Indebtedness secured by the County STR the remedy of acceleration with respect to such Indebtedness that is not available to the Lender hereunder without first obtaining the prior written consent of the Lender.

Section 6.10. Certain Information. The County shall not include in any offering document for Indebtedness any information concerning the Lender that is not supplied in writing by the Lender expressly for inclusion therein.

Section 6.11. Liens. The County shall not, directly or indirectly, incur, create or permit to exist any Lien on all or any part of the security, other than (i) Liens created under and in accordance with the terms of the Related Documents; (ii) the Liens created to secure the County's Temporary Sales Tax Revenue Note of 2016; and (iii) Liens which could not reasonably be expected to materially adversely affect the interests, rights, remedies or security of the Lender under this Agreement and the other Related Documents.

ARTICLE 7

EVENTS OF DEFAULT

Section 7.01. Events of Default. The occurrence of any of the following events shall constitute an "Event of Default," unless waived by the Lender, in writing:

- (a) the County shall fail to pay the principal of or interest on any County Loan when due;

(b) the County shall fail to pay any other Required Payment (other than the obligation to pay the principal of or interest on the County Loans) and such failure shall continue for ten (10) Business Days;

(c) any representation or warranty made by or on behalf of the County in this Agreement or in any other Related Document or in any certificate or statement delivered hereunder or thereunder shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(d) the County shall default in the due performance or observance of any of the covenants set forth in Section 5.03, 5.04, 5.05, 5.13 or Article VI hereof;

(e) the County shall default in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Related Document and such default shall remain unremedied for a period of thirty (30) days after the occurrence thereof;

(f) the County shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) become insolvent or shall not pay, or be unable to pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any corporate action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 7.01(g) of this Agreement;

(g) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the County or any substantial part of its Property, or a proceeding described in Section 7.01(f)(v) shall be instituted against the County and such proceeding continues undischarged or any such proceeding continues undismissed or unstayed for a period of thirty (30) or more days;

(h) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Debt of the County by the County or any Governmental Authority with appropriate jurisdiction;

(i) (i) any provision of this Agreement or any other Related Document related to (A) payment of principal of or interest on the County Loans or any Parity Obligation or

(B) the validity or enforceability of the pledge of the Pledged Sales Tax shall at any time for any reason cease to be valid and binding on the County as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction, or shall be declared, in a final nonappealable judgment by any court of competent jurisdiction, to be null and void, invalid or unenforceable;

(ii) the validity or enforceability of any material provision of this Agreement or any Related Document related to (A) payment of principal of or interest on the County Loans or any Parity Obligation, or (B) the validity or enforceability of the pledge of the Pledged Sales Tax shall be publicly contested by the County; or

(iii) any other material provision of this Agreement or any other Related Document, other than a provision described in clause (i) above, shall at any time for any reason cease to be valid and binding on the County as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or shall be declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid, or unenforceable, or the validity or enforceability thereof shall be publicly contested by the County;

(j) any event (separately or in the aggregate with other events) occurs which, in the judgment of the Lender, constitutes or could reasonably be expected to result in a Material Adverse Change;

(k) the County shall (i) default on the payment of the principal of or interest on any Parity Obligation, beyond the period of grace, if any, provided in the instrument or agreement under which such Parity Obligation was created or incurred; or (ii) default in the observance or performance of any agreement or condition relating to any Parity Obligation or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event shall occur or condition exist, the effect of which default, event of default or similar event or condition is to cause (determined without regard to whether any notice is required) any such Parity Obligation to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Parity Obligation;

(l) the County shall (i) default on the payment of the principal of or interest on any Indebtedness (other than Parity Obligation) aggregating in excess of \$1,000,000, beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness (other than Parity Obligation) was created or incurred; or (ii) default in the observance or performance of any agreement or condition relating to any Indebtedness (other than Parity Obligation) aggregating in excess of \$1,000,000, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event shall occur or condition exist, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such Indebtedness to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Indebtedness;

(m) any final, unappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, which are not covered in full by insurance, with written acknowledgement of such coverage having been provided by the provider of such insurance coverage to the Lender, in an aggregate amount not less than \$1,000,000 shall be entered or filed against the County or against any of its Property and remain unpaid, unvacated, unbonded or unstayed for a period of thirty (30) days;

(n) the City (i) consents or agrees to or permits any rescission of or amendment to the Article 3-21, the City Resolution, the Intergovernmental Agreement or the Sales Tax Law which would reduce the amount of the Sales Tax Revenues or which would in any manner materially impair or materially adversely affect the rights of, or the validity or priority of the pledge of, and security interest of the Lender in and to, the Sales Tax Revenues and (ii) amends, modifies or supplements, or agrees to any amendment or modification of, or supplement to, any of the Related Documents to which it is a party or consents to, or permits or suffers to occur any action, course of dealing or omission which results in, or is equivalent to, an amendment, supplementation, termination or modification of any of the Related Documents to which it is a party;

(o) any “event of default” under any Related Document (as defined respectively therein) shall have occurred; or

(p) (i) S&P shall have downgraded its General Obligation Debt Rating below “BBB-” (or its equivalent), or suspended or withdrawn its rating of the same; or (ii) any of Fitch, Moody’s and S&P shall have downgraded its General Obligation Debt Rating below “A-” (or its equivalent), “A3” (or its equivalent), or “A-” (or its equivalent) respectively, or suspended or withdrawn its rating of the same.

Section 7.02. Consequences of an Event of Default. If an Event of Default specified in Section 7.01 hereof shall occur and be continuing, the Lender may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(a) (i) declare the Commitment of the Lender to make County Loans to be terminated, whereupon such Available Commitment and obligation shall be terminated; *provided, however* that upon the occurrence of an actual or deemed entry of an order for relief with respect to the County under the Bankruptcy Code of the United States the obligation of the Lender to make County Loans shall automatically terminate;

(ii) deliver a written notice to the County that an Event of Default has occurred and is continuing and direct an acceleration of the Required Payments or take such other remedial action;

(iii) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the

Related Documents or to enforce performance or observance of any obligation, agreement or covenant of the County under the Related Documents, whether for specific performance of any agreement or covenant of the County or in aid of the execution of any power granted to the Purchaser in the Related Documents;

(iv) cure any Default, Event of Default or event of nonperformance hereunder or under any Related Document; *provided, however*, that the Purchaser shall have no obligation to effect such a cure; and

(v) exercise, or cause to be exercised, any and all remedies as it may have under the Related Documents (other than as provided for in clause (iii) of this Section 7.02(a)) and as otherwise available at law and at equity.

(b) Notwithstanding the provisions of Section 7.02(a)(ii) or 7.02(a)(iii), (x) the Lender shall not cause an acceleration of the Required Payments as described in Section 7.02(a)(ii) or 7.02(a)(iii) until seven (7) days after the occurrence of an Event of Default specified in Section 7.01(a), 7.01(f), 7.01(g), 7.01(h), 7.01(i), 7.01(i)(ii), 7.01(j), 7.01(k) or 7.01(p) the Purchaser shall notify the County of an acceleration at least one hundred eighty (180) days prior thereto in the case of any Event of Default not specified in the immediately preceding clause (x). Notwithstanding the foregoing sentence of this Section 7.02(b), if any other holder or credit enhancer of Indebtedness or any counterparty under any Hedge Agreement related thereto (i) has the right to cause such Indebtedness to be immediately due and payable (whether by repurchase, mandatory tender, mandatory redemption, acceleration or otherwise) on a date earlier than, or pursuant to a notice period which is shorter than what is set forth in the first sentence of this section 7.02(b) in connection with a default related to such Indebtedness, then the Lender shall automatically have such right or shorter notice period, as applicable, or (ii) causes any such Indebtedness or other obligations of the County to become immediately due and payable (whether by repurchase, mandatory tender, mandatory redemption, acceleration or otherwise), then the Purchaser may immediately, without notice, avail itself of the remedies set forth in Section 7.02(a)(ii) or 7.02(a)(iii) hereof and/or declare or cause to be declared the unpaid principal amount of all outstanding Required Payments, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder to be immediately due and payable.

Section 7.03. No Waiver; Remedies. No failure on the part of the Lender to exercise, and no delay in exercising, any right, power or privilege under this Agreement shall operate as a waiver of such right, power or privilege; nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or which the Lender would otherwise have.

ARTICLE 8

MISCELLANEOUS

Section 8.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows;

The County: Cass County
 P.O. Box 2806
 Fargo, North Dakota 58108
 Attention: Michael Montplaisir, Cass County
 Auditor
 Facsimile: (____) ____-____
 Telephone: (701) 241-5600

The Lender: Wells Fargo Bank, National Association
 100 E. Wisconsin Ave., 14th Floor

 Attention: Thomas Harkless, Senior Vice
 President
 Facsimile: (414) 224-7434
 Telephone: (____) ____-____

(b) Any party hereto may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address, telephone number or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 8.02. Waivers; Amendments. (a) No waiver of any provision of this Agreement or consent to any departure by the County therefrom shall in any event be effective unless the same shall be memorialized as set forth in paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of the County Loan by the Lender to the County shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Lender or the County may have had notice or knowledge of such Default or Event of Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing signed by an Authorized County Representative and by a duly authorized officer of the Lender.

Section 8.03. Liability of the Lender. The County hereby unconditionally and irrevocably releases and discharges the Lender and each of its Affiliates and the officers, directors, employees or agents thereof (each, a “*Releasee*”) from all liability or responsibility for any losses, liabilities, damages, claims, costs or expenses (including reasonable attorneys’ fees), judgments or causes of action (collectively, “*Liabilities*”) arising out of or in connection with any of the following: (a) any use that may be made of the County Loan proceeds or for any acts or omissions of the County or any other Person in connection with the County Loan or the use of its proceeds; (b) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; or (c) any other circumstances whatsoever in connection with the extension and making of the County Loan by the Lender to the County or the administration of the County Loan by the Lender or the enforcement of this Agreement or the exercise of any rights or remedies hereunder, under any other Related Document or under law or in equity. The County hereby further unconditionally and irrevocably releases and discharges the Releasees from all Liabilities for or constituting lost profits and from all Liabilities for or constituting consequential, special, indirect or punitive (or exemplary) damages (the right to recover or receive lost profits, consequential, special, indirect or punitive damages (or exemplary) damages being hereby waived), suffered or incurred by the County arising out of or in connection with any of the matters or circumstances described under (a), (b) and (c) of this Section 8.03. In furtherance and not in limitation of the foregoing, the Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary

Section 8.04. Successors and Assigns; Participations. (a) This Agreement shall be binding upon and inure to the benefit of the County, the Lender and their respective successors, endorsees and assigns (but no other person shall have any benefit, right or interest under or because of this Agreement), except that the County may not assign or transfer its rights or obligations hereunder without the prior written consent of the Lender and any transfer by the County not made in compliance with this Section 8.04 shall be null and void. This Agreement is a continuing obligation and shall survive the Maturity Date. The Lender may grant interests in its rights hereunder and in the County Note as provided in Section 8.04(c).

(b) Notwithstanding any other provision of this Agreement or the other Related Documents, the Lender may at any time pledge or grant a security interest in all or any portion of its rights hereunder and thereunder (including, without limitation, rights to payment under this Agreement) to secure obligations of the Lender to a Federal Reserve Bank, without notice or consent of the County; *provided* that no such pledge or grant of a security interest shall release the Lender from any of its obligations hereunder or substitute any such pledge or grantee for the Lender as a party hereto.

(c) The County acknowledges and agrees that the Lender may, without the consent of the County, participate portions of the obligations of the County under the County Loan, this

Agreement and any other Related Document (collectively, the "*Participated Obligations*") to affiliates, other financial institutions or third persons (each, a "*Participant*") and waives any notice of such participations. The County further acknowledges and agrees that, upon any such participation, each Participant will become an owners of a pro rata portion of the Participated Obligations and the County waives any right of setoff it may at any time have against the Lender or any Participant with regard to the Participated Obligations. The Lender may disclose to any assignee or Participant and to any prospective assignee or Participant any and all financial information in the Lender's possession concerning the County, the City or the Transactions that has been delivered to the Lender by or on behalf of the County pursuant to this Agreement or any other Related Document or that has been delivered to the Lender by or on behalf of the County in connection with the Lender's credit evaluation of the County and the City prior to entering into this Agreement or the other Related Documents.

(d) The County shall indemnify the Lender or any Related Party (each such Person being called an "*Indemnatee*") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnatee) incurred by any Indemnatee or asserted against any Indemnatee by any Person (including the County) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Related Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Related Documents, (ii) any County Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the County, or any Environmental Liability related in any way to the County, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the County's creditors, and regardless of whether any Indemnatee is a party thereto; *provided* that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee or (y) result from a claim brought by the County against an Indemnatee for breach in bad faith of such Indemnatee's obligations hereunder or under any other Related Document, if the County has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(e) To the fullest extent permitted by applicable Law, the County shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnatee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Related Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any County Loan or the use of the proceeds thereof. No Indemnatee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnatee through telecommunications, electronic or other

information transmission systems in connection with this Agreement or the other Related Documents or the transactions contemplated hereby or thereby.

(f) All amounts due under this Section shall be payable not later than thirty (30) Business Days after demand therefor by submission of a written invoice.

(g) The agreements in this Section and the indemnity provisions shall survive the termination of the Commitment and the repayment, satisfaction or discharge of all the other Required Payments, and shall terminate six (6) years after all of the required payments have been satisfied.

Section 8.05. Payments Set Aside. To the extent that any payment by or on behalf of the County is made to the Lender, and such payment or the proceeds or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made.

Section 8.06. Survival. All covenants, agreements, representations and warranties made by the County herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement, the making of the County Loan and the delivery of the County Loan, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Lender or any other Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the County Loan or any Payment or Required Payments remain outstanding and unpaid. The provisions of Article 2 and Sections 8.03 and 8.05 shall survive and remain in full force and effect regardless of the consummation of the Transactions, the repayment of the Required Payments, or the expiration or termination of this Agreement or any provision hereof.

Section 8.07. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed and delivered by the County and the Lender, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 8.08. Severability. Each of the parties to this Agreement intend that each provision in this Agreement comport with all applicable requirements of law. However, if all or any portion of any provision or provisions in this Agreement is or are found by a court of competent jurisdiction to be in violation of any applicable statute, regulation, administrative or judicial decision or public policy, and if such court should declare such portion, provision or provisions of this Agreement to be invalid, unlawful, void or unenforceable as written, then it is the express intent of each of the parties hereto that the obligations, rights and interests of the respective parties under the remainder of this Agreement shall continue in full force and effect and such portion, provision or provisions which is held or determined to be invalid, unlawful, void or unenforceable as written shall, nonetheless, be enforced and binding to the fullest extent permitted by law as though such portion, provision or provisions had been written in such a manner and to such an extent as to be valid, lawful and enforceable under the circumstances.

Section 8.09. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE; *PROVIDED* THAT THE OBLIGATIONS OF THE LENDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 8.10. Venue. THE COUNTY HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN CASS COUNTY, NORTH DAKOTA IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT AND THE COUNTY HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE LENDER TO BRING PROCEEDINGS AGAINST THE COUNTY IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY THE COUNTY AGAINST THE LENDER OR ANY AFFILIATE OF THE LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN CASS COUNTY, NORTH DAKOTA. The County and the Lender also irrevocably consent to the service of any and all process in any such action or proceeding by the mailing of copies of such process to the respective address set forth for such party in Section 8.01. The County and the Lender agree that a final judgment in any suit, action or proceeding shall be conclusive and may be enforced in appropriate jurisdictions by suit on the judgment or in any other manner provided by law. All mailings under this Section 8.10 shall be by certified mail, return receipt requested.

Nothing in this Section 8.10 shall affect the right of the Lender to serve legal process in any other manner permitted by law or affect the right of the Lender to bring any suit, action or proceeding against the County in the courts of any other jurisdiction.

Section 8.11. WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE COUNTY AND THE LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (WHETHER AS A CLAIM, COUNTER CLAIM, AFFIRMATIVE DEFENSE OR OTHERWISE)

BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OF THE OTHER RELATED DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE COUNTY OR THE LENDER. THE COUNTY ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND RECOGNIZES AND AGREES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER ENTERING INTO THIS AGREEMENT AND MAKING THE LOAN. THE COUNTY REPRESENTS AND ACKNOWLEDGES THAT IT HAS REVIEWED THIS PROVISION WITH ITS LEGAL COUNSEL AND THAT IT HAS KNOWINGLY AND VOLUNTARILY WAIVED ANY JURY TRIAL RIGHTS IT MAY HAVE FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL.

Section 8.12. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 8.13. Interest Rate Limitation. (a) Notwithstanding anything herein to the contrary, if at any time the amount of interest required to be paid on any Interest Payment Date calculated in accordance with the terms of this Agreement (together with any fees, charges and other amounts which are treated as interest on the County Loan under Applicable Usury Laws (collectively the “Charges”)), exceeds the amount of interest that would have been payable for the applicable period had interest for such period been calculated at the Maximum Interest Rate, then the rate of interest payable in respect of the County Loan hereunder for such period (together with any Charges payable in respect thereof) shall be limited to the Maximum Interest Rate. Any interest (and Charges) that would have been due and payable under any provision hereof but for the operation of the preceding sentence, shall accrue and be payable as provided in subsections (b) and (c) and shall constitute, less interest actually paid to the Lender on such Interest Payment Date, the “Excess Interest Amount.”

(b) If there is any accrued and unpaid Excess Interest Amount as of any Interest Payment Date, then, on the current and each subsequent Interest Payment Date, interest shall be paid at the Maximum Interest Rate rather than the otherwise applicable rate until the earliest of (i) payment to the Lender of the entire accrued Excess Interest Amount or (ii) the date on which no principal amount hereunder remains unpaid.

(c) Notwithstanding the foregoing, all unpaid Excess Interest Amount shall be, to the fullest extent permitted by Applicable Law, due and payable by the County as a fee on the date on which no principal amount hereunder remains unpaid.

Section 8.14. Electronic Signature; Electronically Signed Document. For purposes hereof, “electronic signature” means a manually-signed original signature that is then transmitted by electronic means; “transmitted by electronic means” means sent in the form of a facsimile or sent via the Internet as a pdf (portable document format) or other replicating image attached to an e-mail message; and, “electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature. The parties agree that the electronic signature of a party to this Agreement (or any amendment or supplement of this Agreement) shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document

(including this Agreement) shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or “printouts”, if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

Section 8.15. No Advisory or Fiduciary Responsibility. In connection with all aspects of the Transactions contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Related Document), the County acknowledges and agrees that: (i) (A) the services, if any, regarding this Agreement provided by the Lender and any of its Affiliates are arm’s-length commercial transactions between the County and the Lender, on the one hand, and the County and the Lender’s Affiliates, on the other hand, (B) the County has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the County is capable of evaluating, and understands and accepts, the terms, risks and conditions of the Transactions contemplated hereby and by the other Related Documents; (ii) (A) the Lender and its Affiliates are and have been acting solely as a principal and have not been, are not, and will not be acting as an advisor, agent or fiduciary for the County, the City or any other Person and (B) neither the Lender nor any of its Affiliates has any obligation to the County with respect to the Transactions, except those obligations expressly set forth herein; and (iii) the Lender and each of its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the County and the City, and neither the Lender nor any of its Affiliates has any obligation to disclose any of such interests to the County or the City. To the fullest extent permitted by Applicable Law, the County hereby waives and releases any claims that it may have against the Lender and each of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 8.16. USA Patriot Act. The Lender hereby notifies the County that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the County, which information includes the name and address of the County and other information that will allow it to identify the County in accordance with the Patriot Act.

Section 8.17. Document Conflicts. In the event of a conflict between the County Loan or any other Related Document and this Agreement, the provisions of this Agreement shall prevail.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

CASS COUNTY, NORTH DAKOTA

By: _____
Name: Mary Scherling
Title: Chair, Board of County
Commissioners

ATTEST:

By: _____
Name: Michael Montplaisir
Title: County Auditor

[Signatures continued on following page]

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Lender

By: _____
Name: Thomas Harkless
Title: Senior Vice President

EXHIBIT A

**UNITED STATES OF AMERICA
CASS COUNTY, NORTH DAKOTA
PROMISSORY NOTE**

[Final form to be inserted]

ATTACHMENT 1

FORM OF DRAW NOTICE

[Letterhead of Cass County, North Dakota]

[Date]

Attention: _____

Dear Sirs:

Re: Request for Draw under Loan Agreement, dated as of August 1, 2016,
by and between Cass County, North Dakota and Wells Fargo Bank,
National Association – Request No. _____

The undersigned, on behalf of Cass County, North Dakota (the “County”), hereby requests a draw under Section 2.01(b) of the above-referenced Loan Agreement as follows:

Amount of Draw (not less than \$1,000,000) except as set forth in Section 2.01(b):
\$ _____

Date of Draw (not less than 5 Business Days from date hereof: _____, 2014.

The undersigned, on behalf of the County, hereby certifies that, as of the date hereof:

No Event of Default has occurred and is continuing under the above-referenced Loan Agreement and no Material Adverse Change shall have occurred on or before the date hereof.

All representations and warranties made in the above-referenced Loan Agreement are true and correct (except such representations and warranties which, with the passage of time, are no longer true and/or correct).

The amount of the draw requested hereby, together with the principal amount of all previous draws hereunder, will not, in the aggregate, exceed the Loan Amount (as defined in the above-referenced Loan Agreement).

The County has not taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other person or entity, which action, if taken or

omitted, would cause interest on the County Loan to be subject to personal income taxes levied by the State or the Federal government and attached hereto is a tax compliance certificate, an arbitrage certificate or an IRS Form 8038-G.

The undersigned, on behalf of the County, hereby requests that the proceeds of the draw be wire transferred to the County's account at the Bank unless otherwise specified hereinbelow.

The undersigned is an Authorized County Representative as defined in the above-referenced Loan Agreement.

Very truly yours,

ATTACHMENT 2

ADDITIONAL LIENS ON COUNTY STR

NONE

TEMPORARY SALES TAX REVENUE NOTE PURCHASE AGREEMENT

dated as of August 1, 2016,

between

CASS COUNTY, NORTH DAKOTA

and

WELLS FARGO BANK, NATIONAL ASSOCIATION

relating to

\$50,000,000

TEMPORARY SALES TAX REVENUE NOTE OF 2016
(CASS COUNTY, NORTH DAKOTA)

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EXHIBITS

EXHIBIT A — FORM OF COMPLIANCE CERTIFICATE

CONTINUING COVENANT AGREEMENT

This TEMPORARY SALES TAX REVENUE NOTE PURCHASE AGREEMENT, dated as of August 1, 2016 (as amended, modified or restated from time to time, this “*Agreement*”), between Cass County, North Dakota, a political subdivision organized under the laws of North Dakota, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association.

RECITALS

WHEREAS, Cass County, North Dakota (the “*County*”) has issued its \$50,000,000 Temporary Sales Tax Revenue Note of 2016 (Cass County, North Dakota) (the “*Note*”) pursuant to a Resolution adopted on August 1, 2016, (as the same may be amended, modified or restated in accordance with the terms thereof and hereof, the “*Resolution*”; and

WHEREAS, the Note is a special limited obligation of the County payable solely from Sales Tax Revenues, as defined herein; and

WHEREAS, the Purchaser has agreed to purchase the Note and as a condition to such purchase, the Purchaser has required the County to enter into this Agreement.

NOW, THEREFORE, to induce the Purchaser to purchase the Note, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the County and the Purchaser hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Certain Defined Terms. In addition to the terms defined in the recitals and elsewhere in this Agreement and the Resolution, the following terms shall have the following meanings:

“*1933 Act*” means the Securities Act of 1933, as amended.

“*Affiliate*” means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Anti-Terrorism Laws*” has the meaning set forth in Section 5.01(r) hereof.

“Applicable Factor” means seventy percent (70%).

“Applicable Law” means, collectively, the Constitutions of the United States and the State, all common law and principles of equity and all federal, state and local laws including, without limitation, all Environmental Laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, all Governmental Approvals and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations and permits of, and agreements with, any Governmental Authority, and, with respect to any Person, the articles of incorporation, bylaws or other organizational or governing documents of such Person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to (a) the County or the City, (b) the Project or (c) the Transactions.

“Applicable Spread” means a rate per annum associated with the Level corresponding to the General Obligation Debt Rating of the County or the City (each, a *“Rating”*), as specified below:

LEVEL	MOODY’S RATING	S&P RATING	FITCH RATING	APPLICABLE SPREAD
Level 1	Aa2 or above	AA or above	AA or above	0.50%
Level 2	Aa3	AA-	AA-	0.575%
Level 3	A1	A+	A+	0.725%
Level 4	A2	A	A	0.875%
Level 5	A3	A-	A-	1.025%
Level 6	Baa1 or below	BBB+ or below	BBB+ or below	1.175%

In the event of split Ratings (*i.e.*, one of the Rating Agencies’ Rating is at a different level than the Rating of another Rating Agency), the Applicable Spread shall be based upon the Level in which the lowest Rating(s) appears. Any change in the Applicable Spread resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to Ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system, the ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system that most closely approximates the applicable rating category as currently in effect. The County acknowledges that as of the Effective Date the Applicable Spread is that specified above for Level 1.

“Applicable Usury Laws” means the usury laws that are applicable to the payment obligations of the County under this Agreement, either pursuant to the choice of laws provision in this Agreement or under the laws of any other jurisdiction whose usury laws are mandatorily applicable notwithstanding the choice of laws provision in this Agreement, each as from time to time in effect and applicable to such obligations.

“Article 3-21” means, collectively, Article 3-21 of the City of Fargo Municipal Code and Section 3-2110 of the City of Fargo Municipal Code, as amended and supplemented from time to time.

“Authorized County Representative” means the Chairman of the Cass County Commission and any other officer, member or employee of the County authorized by a certificate of the Cass County Auditor to perform the act or sign the document in question, and if there is no such authorization, means the Chairman of the Board. Any document delivered hereunder that is signed by an Authorized County Representative shall be conclusively presumed to have been authorized by all necessary action on the part of the Board and shall be conclusively presumed to have acted on behalf of the County.

“Base Rate” means, for any day, a fluctuating rate of interest per annum equal to the lesser of (i) the Prime Rate in effect at such time *plus* one percent (1.0%), (ii) the Federal Funds Rate in effect at such time *plus* two percent (2.0%), and (iii) seven percent (7.0%).

“Board” means the Board of Commissioners, the governing body of the County, and any successor thereto.

“Bond Counsel” means Ohnstad Twichell, P.C., or any other firm of attorneys nationally recognized on the subject of tax-exempt municipal finance selected by the County.

“Bondholder” means the Purchaser and each Purchaser Transferee or Non-Purchaser Transferee pursuant to Section 10.14 hereof so long as such Purchaser Transferee or Non-Purchaser Transferee is an owner of Bonds.

“Business Day” means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in Fargo, North Dakota or New York, New York or the states where the principal corporate office of the County or the principal corporate trust office of the Trustee is located are authorized by law to close, (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed or (c) a day on which the principal offices of the Calculation Agent or the principal office of the Purchaser is closed.

“Change in Law” means the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation, Risk-Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, ruling, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“*City*” means the City of Fargo, North Dakota.

“*City Resolution*” means, the Resolution Authorizing the Execution and Delivery of an Intergovernmental Agreement with Cass County, North Dakota and Related Documents and Authorizing Action Related Thereto adopted by the governing body of the City on August 1, 2016, as said City Resolution may be amended and supplemented from time to time to the extent permitted by this Agreement.

“*City STR*” means the revenue generated by the “City Sales Tax for Flood Risk Mitigation and Reduction Improvements” authorized by the City Resolution and Article 3.21 and pledged on a subordinated basis to repayment of the Required Payments pursuant hereto and pursuant to the Intergovernmental Agreement.

“*Code*” means the Internal Revenue Code of 1986, as amended, and, where appropriate any statutory predecessor or any successor thereto.

“*Compliance Certificate*” means a certificate substantially in form of Exhibit A hereto.

“*Contract*” means any indenture, contract, guaranty, note or agreement (other than this Agreement), other contractual restriction, lease, instrument, certificate of incorporation, charter or by-law.

“*Controlled Group*” means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the County, are treated as a single employer under Section 414 of the Code.

“*County*” has the meaning set forth in the introductory paragraph hereof.

“*County Resolution*” means, collectively, “Resolution Authorizing Loan Agreement by and between Cass County, North Dakota and Wells Fargo Bank, National Association” and “Resolution Relating to Dedication of Cass County Sales and Use Tax”, both adopted by the governing body of the County on August 1, 2016, as said County Resolution may be amended and supplemented from time to time to the extent permitted by this Agreement.

“*County STR*” means the revenue generated by the County’s sales and use tax that are authorized pursuant to the County Resolution and the Ordinance and pledged to repayment of the Required Payments pursuant hereto and pursuant to the Intergovernmental Agreement.

“*Debtor Relief Laws*” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws and regulations of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“*Default*” means any event or condition which, with notice, the passage of time or any combination of the foregoing, would constitute an Event of Default.

“*Default Rate*” means, for any day, a rate of interest per annum equal to the sum of the Base Rate in effect on such day plus three percent (3.0%).

“*Determination of Taxability*” means and shall be deemed to have occurred on the first to occur of the following:

(i) on the date when the County files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(ii) on the date when the Bondholder or any former Bondholder notifies the County that it has received a written opinion by a nationally recognized firm of attorneys of substantial expertise on the subject of tax-exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within one hundred eighty (180) days after receipt by the County of such notification from the Bondholder or any former Bondholder, the County shall deliver to the Bondholder and any former Bondholder a ruling or determination letter issued to or on behalf of the County by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the County shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time, including an employee subordinate to one of these officers who has been authorized to provide such advice) that, based upon filings of the County, or upon any review or audit of the County or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(iv) on the date when the County shall receive notice from the Bondholder or any former Bondholder that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Bondholder or such former Bondholder the interest on the Note due to the occurrence of an Event of Taxability;

provided, however, no Determination of Taxability shall occur under subparagraph (iii) or (iv) hereunder unless the County has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; *provided further, however*, that upon demand from the Bondholder or former Bondholder, the County shall promptly reimburse such Bondholder or former Bondholder for any payments, including any taxes, interest, penalties or other charges,

such Bondholder (or former Bondholder) shall be obligated to make as a result of the Determination of Taxability.

“*DTC*” means The Depository Trust Company.

“*Effective Date*” means August 16, 2016, subject to the satisfaction or waiver by the Purchaser of the conditions precedent set forth in Article IV hereof.

“*EMMA*” means Electronic Municipal Market Access as provided by the Municipal Securities Rulemaking Board.

“*Environmental Laws*” means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (a) protection of the environment, (b) personal injury or property damage relating to the release or discharge of Hazardous Materials, (c) emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment, including, without limitation, ambient air, surface water, ground water, or land, or (d) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean up or other remediation thereof.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time. References to Sections of ERISA shall be construed also to refer to any successor Sections.

“*Event of Default*” with respect to this Agreement has the meaning set forth in Section 8.01 of this Agreement and, with respect to any Related Document, has the meaning assigned therein.

“*Event of Insolvency*” means, with respect to any Person, the occurrence of one or more of the following events:

(a) the issuance, under the laws of any state or under the laws of the United States of America, of an order of rehabilitation, liquidation or dissolution of such Person;

(b) the commencement by or against such Person of a case or other proceeding (and in the case of the commencement against such Person, there occurs the entry of an order for relief or the appointment of a trustee, receiver, liquidator, custodian or other official for such Person, or such case or proceeding is not dismissed within sixty (60) days of such commencement) under any Debtor Relief Law or otherwise seeking liquidation, reorganization or other relief with respect to the such Person or its debts under any bankruptcy, insolvency or other similar state or federal law now or hereafter in effect including, without limitation, the appointment of a trustee, receiver, liquidator,

custodian or other similar official for such Person or any substantial part of its property or there shall be appointed or designated with respect to it, an entity such as an organization, board, authority, agency or body to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress with respect to it or there shall be declared or introduced or proposed for consideration by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it;

(c) the making of an assignment for the benefit of creditors by such Person;

(d) the failure of such Person to generally pay its debts as they become due;

(e) a debt moratorium, debt adjustment, debt restructuring or comparable restriction with respect to the payment of any Indebtedness of such Person is declared or imposed by such Person or by any Governmental Authority having jurisdiction over such Person;

(f) such Person shall admit in writing its inability to pay its debts when due or shall become insolvent within the meaning of Section 101(32) of the United States Bankruptcy Code (or any equivalent provision of any successor act or code);

(g) a case, proceeding or other action is commenced against such Person seeking issuance of a warrant or writ of attachment, execution, restraint or similar process against all or any substantial part of its assets, which results in the entry of an order for any such relief which is not vacated or discharged, or stayed or bonded pending appeal, within sixty (60) days from the entry thereof; or

(h) the initiation of any actions to authorize, consent or acquiesce to any of the foregoing by or on behalf of such Person.

“Event of Taxability” means a (i) change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the County, or the failure to take any action by the County, or the making by the County of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of the Note) which has the effect of causing interest paid or payable on the Note to become includable, in whole or in part, in the gross income of the Bondholder or any former Bondholder for federal income tax purposes or (ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or payable on the Note to become includable, in whole or in part, in the gross income of the Bondholder or any former Bondholder for federal income tax purposes with respect to the Note.

“Excluded Taxes” means, with respect to the Purchaser or any Bondholder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes

imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Purchaser or such Bondholder is organized or in which its principal office is located, and (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Purchaser is located.

“Executive Order” has the meaning set forth in Section 5.01(r) hereof.

“Exposure” means, for any date with respect to a Person and any Hedge Agreement, the amount of any Settlement Amount that would be payable by such Person if such Hedge Agreement were terminated as of such date. Exposure shall be determined in accordance with the standard methods of calculating such Exposure under similar arrangements as prescribed from time to time by the Purchaser, taking into account the methodology for calculating amounts due upon early termination as set forth in the related Hedge Agreement and the notional principal amount, term and other relevant provisions thereof.

“Favored Covenants” has the meaning assigned to such term in Section 6.11 hereof.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that*: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one-hundredth of one percent) charged to the Purchaser on such day on such transactions as determined by the Purchaser. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%).

“Fiscal Year” means the fiscal year of the County ending on December 31 of each calendar year.

“Fitch” means Fitch, Inc., and any successor rating agency.

“FRB” means the Board of Governors of the Federal Reserve System of the United States, together with any successors thereof.

“General Obligation Debt Rating” (also known as the *“Underlying Rating”*) means the long-term unenhanced rating or the general obligation indebtedness of the City or County, as applicable.

“Generally Accepted Accounting Principles” or *“GAAP”* means generally accepted accounting principles in effect from time to time in the United States and applicable to entities such as the County.

“Governmental Approval” means an authorization, consent, approval, permit, license, certificate of occupancy or an exemption of, a registration or filing with, or a report to any Governmental Authority.

“Governmental Authority” means the government of the United States of America or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or European Central Bank), or any arbitrator, mediator or other Person with authority to bind a party at law.

“Hedge Agreement” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a *“Master Agreement”*), including any such obligations or liabilities under any Master Agreement.

“Indebtedness” means, with respect to any Person, all items that would be classified as a liability in accordance with GAAP including, without limitation, (a) indebtedness or liability for borrowed money, or for the deferred purchase price of property or services (including trade obligations); (b) obligations as lessee under leases which should have been, or should be, recorded as capital leases in accordance with GAAP; (c) current liabilities in respect of unfunded benefits under employee benefit, retirement or pension plans; (d) current liabilities in respect of unfunded vested benefits under plans covered by NDPERS; (e) obligations issued for the account of any other Person; (f) all obligations arising under acceptance facilities; (g) all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to any other Person or otherwise to assure a creditor against loss; (h) obligations secured by any mortgage, lien, pledge, security interest or other charge or encumbrance on property, whether or not the obligations have been assumed; and (i) obligations of the County under Hedge Agreements.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnatee” has the meaning set forth in Section 9.01 hereof.

“Indenture” has the meaning set forth in the recitals hereof.

“Index Interest Rate” has the meaning set forth in the Resolution.

“Index Interest Rate Period” has the meaning set forth in the Resolution.

“Index Reset Date” means the first Business Day of each calendar month.

“Intergovernmental Agreement” means the Intergovernmental Agreement (Series 2016), dated as of August 1, 2016, by and between the County and the City, as amended and supplemented from time to time to the extent permitted by this Agreement.

“Investment Policy” means the investment policy of the County delivered to the Purchaser, pursuant to Section 4.01(a)(iv) hereof.

“Investor Letter” has the meaning set forth in Section 10.14(c) hereof.

“Law” means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

“Liabilities” has the meaning set forth in Section 9.01 hereof.

“LIBOR Index Rate” means a per annum rate of interest established on each Computation Date equal to the product of (a) the sum of (i) the Applicable Spread plus (ii) the product of (x) the LIBOR Index multiplied by (y) the Applicable Factor and (b) the Margin Rate Factor.

“LIBOR Index Reset Date” has the meaning set forth in the Resolution.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loan Agreement” means the Loan Agreement dated as of July 1, 2016, by and between Cass County, North Dakota, as County and Wells Fargo Bank, National Association, as Lender.

“Majority Bondholder” means the Bondholders with a majority of the aggregate principal amount of Bonds from time to time. As of the Effective Date, Wells Fargo Bank, National Association shall be the Majority Bondholder.

“Margin Stock” has the meaning ascribed to such term in Regulation U promulgated by the FRB, as now and hereafter from time to time in effect.

“Material Adverse Change” means the occurrence of any event or change which, in the sole discretion of the Purchaser, (a) materially reduces or terminates the Sales Tax Revenues necessary to make the Payments and the other Required Payments or (b) materially and adversely affects (i) the enforceability of this Agreement or any of the other Related Documents, (ii) the ability of the County to perform its obligations hereunder or thereunder, (iii) the ability of the City to perform its obligations under the Related Documents to which it is a party or (iv) the rights, interests, security or remedies of the Purchaser under this Agreement or such other Related Document including, without limitation, the validity or priority of the pledge of, and security interest of the Purchaser in and to, the Sales Tax Revenues.

“Material Adverse Effect” means (a) a material reduction or termination of the Sales Tax Revenues necessary to make the Payments and the other Required Payments, and (b) with respect to this Agreement or any of the other Related Documents, a material adverse effect on (i) the enforceability of this Agreement or any of the other Related Documents, (ii) the ability of the County to perform its obligations hereunder or thereunder, (iii) the ability of the City to perform its obligations under the Related Documents to which it is a party or (iv) the rights, interests, security or remedies of the Purchaser under this Agreement or such other Related Document including, without limitation, the validity or priority of the pledge of, and security interest of the Purchaser in and to, the Sales Tax Revenues.

“Material Litigation” has the meaning assigned to such term in Section 5.01(e) hereof.

“Material Proceeding” has the meaning assigned to such term in Section 6.04(b) hereof.

“Material Provision” means any provision of this Agreement or any other Related Document relating to (a) the ability or the obligation of the County to pay, when due, the Payments and other Required Payments or (b) the pledge and valid first Lien in favor of the Purchaser in the Sales Tax Revenues securing the Required Payments.

“Maturity Date” means July 1, 2017.

“Maximum Lawful Rate” means the respective maximum, non-usurious, lawful rate of interest that may be contracted for, charged or received on the Indebtedness hereunder, under Applicable Usury Laws.

“Moody’s” means Moody’s Investors Service, Inc. and any successor rating agency.

“NDPERS” means the North Dakota Public Employees Retirement System, as authorized in Chapter 54-52 of the North Dakota Century Code and implementing rules and regulations enacted by the State of North Dakota.

“Non-Purchaser Transferee” has the meaning set forth in Section 9.14(c) hereof.

“OFAC” has the meaning set forth in Section 5.01(r) hereof.

“Ordinance” means Ordinance No. 2010-26 of the County establishing and regulating a County Sales Tax Under the Home Rule Charter of the County of Cass, as the same may be amended and supplemented from time to time.

“Other Agreement” means any credit agreement, direct purchase agreement, bond purchase agreement, continuing covenant agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to make or provide funds to purchase bonds or notes of the County.

“Other Taxes” means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement.

“Parity Obligation” means Indebtedness incurred by or on behalf of the County or the City and secured by a pledge of and valid first Lien on the County STR, the City STR or both, as applicable, on a parity with, or senior to, the Lien on the Sales Tax Revenues with respect to the Required Payments.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107-56 (signed into law October 26, 2001).

“Payments” means all payments of principal and interest at the Interest Rate on the Note, but excluding administrative fees, indemnifications and reimbursements payable to the Purchaser hereunder, payable by the County pursuant to the provisions of this Agreement.

“Person” means any individual, corporation, not for profit corporation, partnership, limited liability company, joint venture, association, professional association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

“Plan” means, with respect to the County at any time, an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained, or has within the preceding five plan years been maintained, by a member of the Controlled Group for employees of a member of the Controlled Group of which the County is a part, (ii) is maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which a member of the Controlled Group of which the County is a part is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions.

“Pledged Sales Tax” has the meaning set forth in the Intergovernmental Agreement.

“Prime Rate” means on any day, the rate of interest per annum then most recently established by the Purchaser as its “prime rate.” Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Purchaser to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that the Purchaser may make various business or other loans at rates of interest having no relationship to such rate. If the Purchaser ceases to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported. Notwithstanding anything herein to the contrary, if the Prime Rate determined as provided above would be less than zero percent (0.0%), then the Prime Rate shall be deemed to be zero percent (0.0%).

“Project” means the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013. **[Please send the referenced documents for our review.]**

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“Purchase Price” has the meaning set forth in Section 2.01(a) hereof.

“Purchaser” means, initially, Wells Fargo Bank, National Association, a national banking association, and its successors and assigns, and upon the receipt from time to time by the Trustee and the County of a notice described in Section 9.14(a) from time to time means the Person designated in such notice as the Purchaser, as more fully provided in Section 9.14(a) hereof.

“Purchaser Affiliate” means the Purchaser and any Affiliate of the Purchaser, and includes, without limitation, Wells Fargo Municipal Capital Strategies, LLC and Wells Fargo Securities (a trade name).

“Purchaser Transferee” has the meaning set forth in Section 10.14(b) hereof.

“Rating Agency” means any of S&P, Moody’s and Fitch, as applicable.

“Related Documents” means this Agreement, the Resolution, the Note, Article 3-21, the City Resolution, the Ordinance, the County Resolution, the Intergovernmental Agreement and the Tax Compliance Documents and any exhibits, schedules, instruments or agreements relating

thereto, as the same may be amended, modified or supplemented in accordance with the terms thereof and hereof.

“Relevant Agreement” has the meaning assigned to such term in Section 6.11 hereof.

“Required Payments” means (a) all Payments, and (b) all other amounts, charges, costs, fees (including reasonable attorneys’ fees), expenses and sums due the Purchaser under this Agreement and the other Related Documents, whether in the form of a direct reimbursement, or indemnity, payment obligation, and including all payment obligations of the County to the Purchaser arising hereunder or under any other Related Document or otherwise with respect to the Note, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the County of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or similar proceeding, regardless of whether allowed or allowable in such proceeding), regardless of whether such interest and fees are allowed claims in such proceeding.

“Risk-Based Capital Guidelines” means (a) the risk-based capital guidelines in effect in the United States of America, including transition rules, and (b) the corresponding capital regulations promulgated by regulatory authorities outside the United States of America including transition rules, and any amendment to such regulations.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and any successor rating agency.

“Sales Tax Law” means the authority granted to North Dakota Cities, as defined in and pursuant to N.D.C.C. § 40-05.1-06, to impose a sales and use tax and to North Dakota Counties, as defined in and pursuant to N.D.C.C. § 11-09.1-05 to impose a sales and use tax, as supplemented and amended from time to time.

“Sales Tax Revenues” means, collectively, the City STR and the County STR.

“Settlement Amount” means, with respect to a Person and any Hedge Agreement, any amount payable by such Person under the terms of such Hedge Agreement in respect of, or intended to compensate the other party for, the value of such Hedge Agreement upon early termination thereof.

“State” means the State of North Dakota.

“Tax Compliance Documents” means (a) an opinion of bond counsel to the County, addressed to the Purchaser, that interest on the Note will not be includible in the gross income of the holders thereof for federal and State income tax purposes, (b) tax compliance certificate, arbitrage certificate or IRS Form 8038-G and (c) a transcript of proceedings relating to the Note and the execution and delivery of this Agreement.

“*Taxable Date*” means the date on which interest on the Note is first includable in gross income of the Bondholder (including, without limitation, any previous Bondholder) thereof as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

“*Taxable Period*” has the meaning set forth in Section 3.03 hereof.

“*Taxable Rate*” means, with respect to a Taxable Period, the product of (i) the interest rate on the Note during such period and (ii) 1.54.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

“*Transactions*” means the execution, delivery and performance by the County and the City of the Related Documents to which each is a party including, without limitation, the use and application of the proceeds of the Note available hereunder, the Required Payments to be made by the County hereunder, the pledge by the City of the City STR and the pledge by the County of the County STR, both as security for the Note, the agreement of the County to issue bonds to pay the Note and the other transactions contemplated hereby and thereby.

“*Welfare Plan*” means a “*welfare plan*,” as such term is defined in Section 3(1) of ERISA.

Section 1.02. Computation of Time Periods. In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.”

Section 1.03. Construction. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. The word “including” shall be deemed to mean “including but not limited to,” and “or” has the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The Section headings contained in this Agreement and the table of contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection and exhibit references are to this Agreement unless otherwise specified.

Section 1.04. Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP. If, after the Effective Date, there shall occur any change in GAAP from those used in the preparation of the financial statements referred to in Section 6.03 hereof and such change shall result in a change in the method of calculation of any financial covenant,

standard or term found in this Agreement including, without limitation, a recharacterization of operating leases to the effect that certain operating leases are to be treated as capital leases, either the County or the Purchaser may by notice to the other party hereto, require that the Purchaser and the County negotiate in good faith to amend such covenants, standards, and terms so as equitably to reflect such change in accounting principles, with the desired result being that the criteria for evaluating the financial condition of the County shall be the same as if such change had not been made. No delay by the County or the Purchaser in requiring such negotiation shall limit their right to so require such a negotiation at any time after such a change in accounting principles. Until any such covenant, standard, or term is amended in accordance with this Section 1.04, financial covenants shall be computed and determined in accordance with GAAP in effect prior to such change in accounting principles.

Section 1.05. Relation to Other Documents; Acknowledgment of Different Provisions of Related Documents; Incorporation by Reference. (a) Nothing in this Agreement shall be deemed to amend, or relieve the County of its obligations under, any Related Document to which it is a party. Conversely, to the extent that the provisions of any Related Document allow the County to take certain actions, or not to take certain actions, with regard for example to permitted liens, transfers of assets, maintenance of financial ratios and similar matters, the County nevertheless shall be fully bound by the provisions of this Agreement.

(b) Except as provided in subsection (c) of this Section 1.05, all references to other documents shall be deemed to include all amendments, modifications and supplements thereto to the extent such amendment, modification or supplement is made in accordance with the provisions of such document and this Agreement.

(c) All provisions of this Agreement making reference to specific Sections of any Related Document shall be deemed to incorporate such Sections into this Agreement by reference as though specifically set forth herein (with such changes and modifications as may be herein provided) and shall continue in full force and effect with respect to this Agreement notwithstanding payment of all amounts due under or secured by the Related Documents, the termination or defeasance thereof or any amendment thereto or any waiver given in connection therewith, so long as this Agreement is in effect and until all Obligations are paid in full. No amendment, modification, consent, waiver or termination with respect to any of such Sections shall be effective as to this Agreement until specifically agreed to in writing by the parties hereto with specific reference to this Agreement.

ARTICLE II

PURCHASE OF NOTES

Section 2.01. Purchase of Notes.

(a) *Purchase Price.* Upon the conditions set forth in Article IV hereof and based on the representations, warranties and covenants of the County set forth herein, the Purchaser hereby agrees to purchase from the County and the County hereby agrees sell to the Purchaser, all, but

not less than all, of the Notes at par in an aggregate principal amount equal to \$50,000,000 (the “Purchase Price”).

(b) *Closing.* On the Effective Date, the County shall deliver to the Purchaser the documents described in Article IV hereof. Upon delivery of such documents and the satisfaction or waiver by the Purchaser of the conditions precedent set forth in Article IV hereof, the Purchaser will pay the full Purchase Price for the Notes in immediately available federal funds payable to the County. One fully registered Note, in the aggregate principal amount equal to the Purchase Price, shall be issued to and registered in the name of Cede & Co., nominee for DTC, as securities depository, and the beneficial interests in the Notes so registered will be credited to such accounts with DTC as the Purchaser shall designate. The Notes shall be so issued and registered to and held by DTC or its nominee, and beneficial interests therein shall be transferable in accordance with the book entry system.

ARTICLE III

THE COUNTY’S OBLIGATIONS

Section 3.01. Payment Obligations. (a) The County hereby unconditionally, irrevocably and absolutely agrees to make prompt and full payment of all payment obligations owed to the Purchaser under the Related Documents and to pay any other Obligations owing to the Purchaser whether now existing or hereafter arising, with interest thereon at the rate or rates provided in such Related Documents and under such Obligations; *provided* that, the payment obligations set forth herein are not a general obligation of the County, but are payable solely from the proceeds of the County 2010-2 Sales Tax and City 3-21 Sales Tax as set forth in the Intergovernmental Agreement (Series 2016).

(b) The County shall pay or cause to be paid to the Purchaser the Required Payments due and owing on the Maturity Date.

(c) The County shall pay within thirty (30) days after demand:

(i) if an Event of Default shall have occurred, all costs and expenses of the Purchaser in connection with the enforcement (whether by means of legal proceedings or otherwise) of any of its rights under this Agreement, the other Related Documents and such other documents which may be delivered in connection therewith;

(iii) the reasonable fees and out-of-pocket expenses for counsel or other reasonably required consultants to the Purchaser in connection with advising the Purchaser as to its rights and responsibilities under this Agreement and the other Related Documents or in connection with responding to requests from the County for approvals, consents and waivers; and

(iv) any amounts advanced by or on behalf of the Purchaser to the extent required to cure any Default, Event of Default or event of nonperformance hereunder or any Related Document, together with interest at the Default Rate.

In addition, if at any time any Governmental Authority shall require revenue or other documentary stamps or any other tax in connection with the execution or delivery of this Agreement or other Related Documents, then, if the County lawfully may pay for such stamps, taxes or fees, the County shall pay, when due and payable, for all such stamps, taxes and fees, including interest and penalties thereon, and the County agrees to save the Purchaser harmless from and against any and all liabilities with respect to or resulting from any delay of the County in paying, or omission of the County to pay, such stamps, taxes and fees hereunder.

Section 3.02. Default Rate. Upon the occurrence and during the continuance of an Event of Default, the Obligations of the County hereunder shall bear interest at the Default Rate, which shall be payable by the County to each Bondholder (or, if applicable, the Purchaser) upon demand therefor and be calculated on the basis of a 360-day year and actual days elapsed.

Section 3.03. Determination of Taxability. (i) In the event a Determination of Taxability occurs, to the extent not payable to each Bondholder (or to the Purchaser for the period that it was the Bondholder of any of the Notes) under the terms of the Resolution and the Notes, the County hereby agrees to pay to each Bondholder (or, if applicable, the Purchaser) on demand therefor (1) an amount equal to the difference between (A) the amount of interest that would have been paid to such Bondholder (or, if applicable, the Purchaser) on the Note during the period for which interest on the Notes are included in the gross income of such Bondholder (or, if applicable, the Purchaser) if the Notes had borne interest at the Taxable Rate, beginning on the Taxable Date (the "*Taxable Period*"), and (B) the amount of interest actually paid to the Bondholder (or, if applicable, the Purchaser) during the Taxable Period, and (2) an amount equal to any interest, penalties or charges owed by such Bondholder (or, if applicable, the Purchaser) as a result of interest on the Note becoming included in the gross income of such Bondholder (or, if applicable, the Purchaser), together with any and all attorneys' fees, court costs, or other out-of-pocket costs incurred by such Bondholder (or, if applicable, the Purchaser) in connection therewith;

(ii) Subject to the provisions of clause (iii) below, such Bondholder (or, if applicable, the Purchaser) shall afford the County the opportunity, at the County's sole cost and expense, to contest (1) the validity of any amendment to the Code which causes the interest on the Note to be included in the gross income of such Bondholder (or, if applicable, the Purchaser) or (2) any challenge to the validity of the tax exemption with respect to the interest on the Note, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals); *provided* that, in no event shall a Bondholder be required to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the County or any other Person; and

(iii) As a condition precedent to the exercise by the County of its right to contest set forth in clause (ii) above, the County shall, on demand, immediately reimburse such Bondholder (or, if applicable, the Purchaser) for any and all expenses (including attorneys' fees for services

that may be required or desirable, as determined by such Bondholder (or, if applicable, the Purchaser) in its sole discretion) that may be incurred by the Bondholder (or, if applicable, the Purchaser) in connection with any such contest, and shall, on demand, immediately reimburse the Bondholder (or, if applicable, the Purchaser) for any and all penalties or other charges payable by such Bondholder (or, if applicable, the Purchaser) for failure to include such interest in its gross income.

Section 3.04. Maximum Lawful Rate. (i) If the amount of interest payable for any period in accordance with the terms hereof or the Note exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Lawful Rate, then interest for such period shall be payable in an amount calculated at the Maximum Lawful Rate.

(iii) Notwithstanding the foregoing, on the date on which no principal amount with respect to the Note remains unpaid, the County shall pay to each Bondholder a fee equal to any accrued and unpaid Excess Interest Amount.

Section 3.05. Increased Costs.

(a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Purchaser or any Bondholder;

(ii) subject the Purchaser or any Bondholder to any Taxes of any kind whatsoever with respect to this Agreement or the Bond, or change the basis of taxation of payments to the Purchaser or such Bondholder in respect thereof (except for Indemnified Taxes covered by Section 3.06 hereof and the imposition of, or any change in the rate of any Excluded Tax payable by the Purchaser or such Bondholder); or

(iii) impose on the Purchaser or any Bondholder any other condition, cost or expense affecting this Agreement or the Note;

and the result of any of the foregoing shall be to increase the cost to the Purchaser or such Bondholder of owning the Note, or to reduce the amount of any sum received or receivable by the Purchaser or such Bondholder hereunder or under the Note (whether of principal, interest or any other amount) then, upon written request of the Purchaser or such Bondholder as set forth in subsection (c) below, the County shall promptly pay to the Purchaser or such Bondholder, as the case may be, such additional amount or amounts as will compensate the Purchaser or such Bondholder, as the case may be, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Purchaser or any Bondholder determines that any Change in Law affecting the Purchaser or such Bondholder or the Purchaser's or such Bondholder's parent or holding company, if any, regarding capital requirements, has or would have the effect of reducing the rate of return on the Purchaser's or such Bondholder's capital or the capital of the Purchaser's or such Bondholder's parent or holding company holding, if any, as a consequence of this Agreement, or ownership of the Note, to a level below that which the Purchaser or such Bondholder or the Purchaser's or such Bondholder's parent or holding company could have achieved but for such Change in Law (taking into consideration the Purchaser's or such Bondholder's policies and the policies of the Purchaser's or such Bondholder's parent or holding company with respect to capital adequacy), then from time to time upon written request of the Purchaser or such Bondholder as set forth in subsection (c) below, the County shall promptly pay to the Purchaser or such Bondholder, as the case may be, such additional amount or amounts as will compensate the Purchaser or such Bondholder or the Purchaser's or such Bondholder's parent or holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of the Purchaser or any Bondholder setting forth the amount or amounts necessary to compensate the Purchaser or any such Bondholder or the Purchaser's or any such Bondholder's parent or holding company, as the case may be, as specified in subsection (a) or (b) above and delivered to the County, shall be conclusive absent manifest error. The County shall pay the Purchaser or any such Bondholder, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of the Purchaser or any such Bondholder to demand compensation pursuant to this Section shall not constitute a waiver of the Purchaser's or any such Bondholder's right to demand such compensation; *provided* that the County shall not be required to compensate the Purchaser or any such Bondholder pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that the Purchaser or any such Bondholder, as the case may be, notifies the County of the Change in Law giving rise to such increased costs or reductions, and of the Purchaser's or any such Bondholder's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) *Survival.* Without prejudice to the survival of any other agreement of the County hereunder, the agreements and obligations of the County contained in this Section shall survive the termination of this Agreement and the payment in full of the Note and the obligations of the County thereunder and hereunder.

Section 3.06. Net of Taxes, Etc.. (a) Any and all payments to the Purchaser or any Bondholder by the County hereunder or with respect to the Note shall be made free and clear of and without deduction or withholding for any and all Indemnified Taxes. If the County shall be required by law to deduct or withhold any Indemnified Taxes imposed by the United States of America or any political subdivision thereof from or in respect of any sum payable hereunder or with respect to the Note, then (i) the sum payable shall be increased as may be necessary so that

after making all required deductions (including deductions applicable to additional sums payable under this Section) the Purchaser or such Bondholder receives an amount equal to the sum it would have received had no such deductions been made, (ii) the County shall make such deductions and (iii) the County shall timely pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. If the County shall make any payment under this Section to or for the benefit of the Purchaser or such Bondholder with respect to Indemnified Taxes and if the Purchaser or such Bondholder shall claim any credit or deduction for such Indemnified Taxes against any other taxes payable by the Purchaser or such Bondholder to any taxing jurisdiction in the United States of America then the Purchaser or such Bondholder shall pay to the County an amount equal to the amount by which such other taxes are actually reduced; *provided*, that the aggregate amount payable by the Purchaser or such Bondholder pursuant to this sentence shall not exceed the aggregate amount previously paid by the County with respect to such Indemnified Taxes. In addition, the County agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies that arise under the laws of the United States of America or any state of the United States from any payment made hereunder or under the Note or from the execution or delivery of this Agreement or the Note, or otherwise with respect to this Agreement or the Note (hereinafter referred to as "*Other Taxes*"). The Purchaser or such Bondholder shall provide to the County within a reasonable time a copy of any written notification it receives with respect to Indemnified Taxes or Other Taxes owing by the County to the Purchaser or such Bondholder hereunder; *provided*, that the Purchaser or such Bondholder's failure to send such notice shall not relieve the County of its obligation to pay such amounts hereunder.

(b) The County shall, to the fullest extent permitted by law and subject to the provisions hereof, pay the Purchaser or such Bondholder for the full amount of Indemnified Taxes and Other Taxes including any Indemnified Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section paid by the Purchaser or such Bondholder or any liability (including penalties, interest and reasonable expenses) arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted; *provided*, that the County shall not be obligated to pay the Purchaser or such Bondholder for any penalties, interest or expenses relating to Indemnified Taxes or Other Taxes arising from the Purchaser or such Bondholder's gross negligence or willful misconduct. The Purchaser or such Bondholder agrees to give notice to the County of the assertion of any claim against the Purchaser or such Bondholder relating to such Indemnified Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; *provided*, that the Purchaser or such Bondholder's failure to notify the County promptly of such assertion shall not relieve the County of its obligation under this Section. Payments by the County pursuant to this Section shall be made within thirty (30) days from the date the Purchaser or such Bondholder makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. The Purchaser or such Bondholder agrees to repay to the County any refund (including that portion of any interest that was included as part of such refund) with respect to Indemnified Taxes or Other Taxes paid by the County pursuant to this Section received by the Purchaser or such Bondholder for Indemnified Taxes or Other Taxes that were paid by the County pursuant to this Section and to contest, with the cooperation and at the expense of the County, any such Indemnified Taxes or Other Taxes which the Purchaser or such Bondholder or the County reasonably believes not to have been properly assessed.

(c) Within thirty (30) days after the date of any payment of Indemnified Taxes by the County, the County shall furnish to the Purchaser or such Bondholder, as applicable, the original or a certified copy of a receipt evidencing payment thereof.

(d) Without prejudice to the survival of any other agreement of the County hereunder, the agreements and obligations of the County contained in this Section shall survive the termination of this Agreement and the payment in full of the Note and the obligations of the County thereunder and hereunder.

Section 3.07. Obligations Absolute. The payment obligations of the County under this Agreement shall be irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following:

(a) any lack of validity or enforceability of this Agreement, the Note or any of the other Related Documents;

(b) any amendment or waiver of or any consent to departure from all or any of the Related Documents;

(c) the existence of any claim, set-off, defense or other right which the County may have at any time against the Purchaser, any other Bondholder or any other person or entity, whether in connection with this Agreement, the other Related Documents, the transactions contemplated herein or therein or any unrelated transaction; or

(d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Notwithstanding this Section, the Purchaser acknowledges the County may have the right to bring a collateral action with respect to one or more of the foregoing circumstances. The County's payment obligations shall remain in full force and effect pending the final disposition of any such action. All fees payable pursuant to this Agreement shall be deemed to be fully earned when due and non-refundable when paid; *provided* that, the payment obligations set forth herein are not a general obligation of the County, but are payable solely from the proceeds of the County 2010-2 Sales Tax and City 3-21 Sales Tax as set forth in the Intergovernmental Agreement (Series 2016).

Section 3.08. Funding Indemnity. In the event the Purchaser shall incur any loss, cost, or expense (including, without limitation, any loss, cost, or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the Purchaser to purchase or hold the Note or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Purchaser) as a result of any redemption or conversion of the Note on a date other than an LIBOR Index Reset Date for any reason, whether before or after default, and whether or not such payment is required by any provision of this Agreement or the Resolution, then upon the demand of the Purchaser, the County shall pay to the Purchaser a redemption or conversion premium, as applicable in such amount as will reimburse the Purchaser for such loss, cost, or expense. If the Purchaser requests such redemption or

conversion premium, as applicable it shall provide to the County a certificate setting forth the computation of the loss, cost, or expense giving rise to the request for such redemption or conversion premium, as applicable in reasonable detail and such certificate shall be conclusive if reasonably determined. Without prejudice to the survival of any other agreement of the County hereunder, the agreements and obligations of the County contained in this Section shall survive the termination of this Agreement and the payment in full of the Note and the obligations of the County thereunder and hereunder.

ARTICLE IV

CONDITIONS PRECEDENT TO PURCHASE OF BONDS

Section 4.01. Documentary Requirements. The obligation of the Purchaser to purchase the Note is subject to the conditions precedent that the Purchaser shall have received, on or before the Effective Date, the items listed below in this Section, each dated and in form and substance as is satisfactory to the Purchaser.

(a) The following County organizational documents:

(i) copies of the resolutions of the governing body of the County approving the execution and delivery of the Related Documents to which the County is a party, approving the form of the Related Documents to which it is not a party and the other matters contemplated hereby, certified by an Authorized County Representative as being true and complete and in full force and effect on the Effective Date;

(ii) the organizational documents of the County, certified to be in full force and effect as of a date not more than thirty (30) days preceding the Effective Date by an appropriate official of the State and certified by an Authorized County Representative to be in full force and effect on the Effective Date;

(iii) the audited annual financial statements of the County for the Fiscal Year ended December 31, 2015, together with internally prepared financial statements of the County for each fiscal quarter ended since the end of such Fiscal Year;

(iv) a copy of the County's Investment Policy in effect as of the Effective Date;

(v) a certificate dated the Effective Date and executed by an Authorized County Representative certifying the names and signatures of the persons authorized to sign, on behalf of the County, the Related Documents to which it is a party and the other documents to be delivered by it hereunder or thereunder; and

(b) The following financing documents:

(i) an executed original or certified copy, as applicable, of each of the Related Documents;

(ii) a specimen copy of the Note; and

(c) The following opinions, dated the Effective Date and addressed to the Purchaser or on which the Purchaser is otherwise expressly authorized to rely:

(i) from external counsel to the County, opinions as to the due authorization, execution, delivery and enforceability of the Related Documents to which the County is a party, and such other customary matters as the Purchaser may reasonably request;

(ii) from counsel to the County, opinions as to the due authorization, execution, delivery and enforceability of the Related Documents to which the County is a party, and such other customary matters as the Purchaser may reasonably request; and

(iii) from Bond Counsel, opinions to the effect that the interest on the Note is excludable from gross income for federal income tax purposes and such other customary matters as the Purchaser may reasonable request.

(d) The following documents and other information:

(i) a certificate dated the Effective Date and executed by an Authorized County Representative certifying (A) that there has been no event or circumstance since December 31, 2015, that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (B) that the representations and warranties contained in Article V hereof and the other Related Documents are true and correct in all material respects on the Effective Date and (C) no event has occurred and is continuing, or would result from entry into this Agreement, which would constitute a Default or Event of Default;

(ii) true and correct copies of all Governmental Approvals, if any, necessary for the County to execute, deliver and perform the Related Documents to which it is a party;

(iii) recent evidence that the unenhanced long-term debt rating assigned by Moody's to any General Obligation Debt is at least "Aa2"; and

(iv) evidence satisfactory to the Purchaser of the payment in full of all obligations outstanding to U.S. Bank National Association pursuant to the terms of that certain Loan Agreement dated as of July 1, 2014, by and between the County and U.S. Bank National Association;

Section 4.02. Litigation. The Purchaser shall have received a written description of all actions, suits or proceedings pending or threatened against the County or any of its Affiliates in

any court or before any arbitrator of any kind or before or by any governmental or non-governmental body which could reasonably be expected to result in a Material Adverse Effect, if any, and such other statements, certificates, agreements, documents and information with respect thereto as the Purchaser may reasonably request.

Section 4.03. Other Matters. All other legal matters pertaining to the execution and delivery of this Agreement and the Related Documents shall be satisfactory to the Purchaser and its counsel, and the Purchaser shall have received such other statements, certificates, agreements, documents and information with respect to the County and the other parties to the Related Documents and matters contemplated by this Agreement as the Purchaser may reasonably request.

Section 4.04. Payment of Fees and Expenses. On or prior to the Effective Date, (i) the Purchaser shall have received reimbursement of the Purchaser's fees and expenses and any other fees incurred in connection with the transaction contemplated by the Related Documents and (ii) Chapman and Cutler LLP, as counsel to the Purchaser, shall have received payment of its legal fees and expenses incurred in connection with the preparation, review, negotiation, execution and delivery of the Related Documents.

Section 4.05. No Bond Rating; DTC; Offering Document. The Notes shall not be (i) issued pursuant to any type of official statement, private placement memorandum or other offering document or (ii) placed or offered by a broker-dealer in the capacity of an underwriter or a placement agent.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The County makes the following representations and warranties to each Bondholder:

Section 5.01. Representations and Warranties of County. The County represents and warrants to and with the Purchaser as follows:

(a) The County is a political subdivision of the State, duly organized and created and validly existing under the laws of the State, with full right and power to execute, deliver and perform its obligations under this Agreement and each other Related Document to which it is a party and to enter into the Transactions.

(b) The execution and, delivery by the County of this Agreement and the other Related Documents to which it is a party, the execution and delivery of the Note and the performance of the County's obligations under the foregoing documents are within the powers of the County, have been duly authorized by all necessary action, require no action by or in respect of, or filing (other than any blue-sky filing) with, any Governmental Authority and do not violate or contravene, or constitute a default under, any provision of Applicable Law (including, without limitation, the Sales Tax Law), or of any material agreement, judgment, injunction, order, decree or material instrument

binding upon the County or result in the creation or imposition of any Lien or encumbrance on any asset of the County (other than the County STR as contemplated herein).

(c) This Agreement has been duly executed and delivered by one or more duly authorized officers of the County, and each of the Related Documents to which the County is a party, when executed and delivered by the County will be, a legal, valid and binding obligation of the County enforceable in accordance with its terms, except as such enforceability may be limited by (a) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(d) The County is in compliance with all Applicable Law, including all Environmental Laws, NDPERS and Governmental Approvals, except for noncompliance that, singly or in the aggregate, has not had and is not reasonably expected to have a Material Adverse Effect or Material Adverse Change.

(e) Except as disclosed in writing to the Purchaser prior to the Effective Date, there is no action, suit or proceeding pending against or, to the knowledge of the County, threatened against or affecting, the County or the City before any court or arbitrator or any Governmental Authority (i) in which there is a reasonable possibility of an adverse decision which could reasonably be expected to result in a Material Adverse Effect (any such action, suit or proceeding being referred to herein as "*Material Litigation*").

(f) Under existing law, the County is not entitled to raise the defense of sovereign immunity in connection with any legal proceeding to enforce or collect upon this Agreement, the other Related Documents or the transactions contemplated hereby or thereby, including the payment of the principal of and interest on the Note or the payment of the other obligations to the Purchaser hereunder.

(g) The County hereby makes to the Purchaser the same representations and warranties made by the County as are set forth in the Related Documents to which the County is a party (other than this Agreement), which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to the applicable Related Document shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the prior written consent of the Purchaser.

(h) There is no amendment or, to the knowledge of the County, proposed amendment to the Constitution of the State or any State law or any administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting

any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect.

(i) No representation, warranty or other statement made by the County with respect to the Sales Tax Revenues in or pursuant to this Agreement or any other Related Document to which it is a party, or any other document or financial statement provided by the County to the Purchaser in connection with this Agreement or any other Related Document to which it is a party, contains any untrue statement of a material fact or omits (as of the date made or furnished) any material fact necessary to make the statements herein or therein not misleading in light of the circumstances under which they are made. There is no fact known to the County which the County has not disclosed to the Purchaser in writing which the County currently knows or, so far as the County can now reasonably foresee, could reasonably be expected to have a Material Adverse Effect.

(j) All information, reports and other papers and data with respect to the Sales Tax Revenues furnished to the Purchaser were, at the time the same were so furnished, accurate in all material respects or were replaced with accurate information. Any financial statements and cash flows furnished to the Purchaser with respect to the Sales Tax Revenues were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of conditions existing at the time of the delivery of such financial statements and cash flows.

(k) The County Resolution authorizes the pledge in favor of the Purchaser in the County STR and, as of the Effective Date, all necessary actions on the part of the County have been taken as required to pledge the County STR to the to secure the Required Payments. Pursuant to Intergovernmental Agreement, the County Resolution and the Ordinance, the County has pledged the County STR, on a first Lien basis, to the payment of Required Payments. The County has not pledged or granted a superior Lien, security interest or other encumbrance of any kind on the County STR, but has granted a lien and security interest on parity with the Required Payments to the Purchaser pursuant to the Loan Agreement.

(l) The balance sheet of the County as of December 31, 2015, and the related statement of revenues and expenses and changes in financial position for the Fiscal Year then ended and the auditors' reports with respect thereto and the balance sheet of the County as of December 31, 2015, and the related statement of revenues and expenses and changes in financial position for the Fiscal Year then ended, copies of which have heretofore been furnished to the Purchaser, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the Purchaser at such dates and for such periods, and were prepared in accordance with GAAP. Since December 31, 2015, there has been no material adverse change with respect to the County's business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects.

(m) No authorization, consent, order or other approval of, or registration or filing with, or taking of any other action in respect of or by, any Governmental Authority

is required for the valid execution, delivery or performance by the County of this Agreement or any other Related Document to which it is a party, except such as shall have been duly obtained, given or accomplished prior to the execution and delivery hereof or thereof.

(n) The County is obligated under the County Resolution to make the Payments and other Required Payments to the Purchaser at the times and in the amounts set forth herein. The obligation of the County to make Payments and other Required Payments hereunder are special limited obligations of the County that are secured by a first Lien on, and a pledge of, Sales Tax Revenues, free and clear of all Liens or claims of any other Person, except as set forth in the Loan Agreement.

(o) None of this Agreement or the other Related Documents provide for any payments that would violate any Applicable Usury Laws.

(p) No part of the proceeds of the Note will be used for the purpose, whether immediate, incidental or ultimate, to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock.

(q) The County has not taken any action or omitted to take any action, and has no actual knowledge of any action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Note from gross income for federal income tax purposes or the exemption of interest on the Note from State personal income taxes.

(r) The County is not in violation of any Laws relating to terrorism or money laundering (*"Anti-Terrorism Laws"*), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the *"Executive Order"*), and the Patriot Act;

(A) The County is not any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which the Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a Person that is named as a "specially designated national and blocked person" on the most current list published by the Office of Foreign

Asset Control (“OFAC”) or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list;

(B) The County does not (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in subsection (a)(ii) above, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or (iii) engage in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(s) The County has no funding liability or obligation currently due and payable with respect to any employee benefit plan which could reasonably be expected to result in a Material Adverse Effect. The County and each employee benefit plan is in compliance in all material respects with the terms of any such plan and applicable law related thereto. Neither the County nor a member of the Controlled Group is subject to ERISA or maintains a Plan.

(t) No default by the County has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any Parity Obligation. No bankruptcy, insolvency or other similar proceedings pertaining to the County or any agency or instrumentality of the County are pending or presently contemplated. No Default or Event of Default has occurred and is continuing hereunder. No “default” or “event of default” under, and as defined in, any of the other Related Documents has occurred and is continuing. The County is not presently in default under any material agreement to which it is a party which could reasonably be expected to have a Material Adverse Effect.

(u) The County currently maintains insurance coverage with insurance companies believed by the County to be capable of performing their obligations under the respective insurance policies issued by such insurance companies to the County (as determined in its reasonable discretion) and in full compliance with Section 6.14 hereof.

(v) The County is not an “*investment company*” or a company “*controlled*” by an “*investment company*,” as such terms are defined in the Investment Company Act of 1940, as amended.

ARTICLE VI

AFFIRMATIVE COVENANTS OF THE COUNTY

The County covenants and agrees, until the full and final payment and satisfaction of all of the Obligations, except in any instance in which the Purchaser specially agrees in writing to any performance or noncompliance, that:

Section 6.01. Compliance with Applicable Law. The County shall comply with all Applicable Law (including Environmental Laws and NDPERS), and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject the noncompliance of which could reasonably be expected to result in a Material Adverse Change; *provided however*, that the County may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the County's power and authority to execute this Agreement, to perform its obligations and pay all amounts payable by it hereunder, or to perform its obligations under the other Related Documents.

Section 6.02. Related Obligations. The County shall promptly pay, or cause to be paid, all amounts payable by it under this Agreement and the other Related Documents according to the terms hereof and thereof and shall duly perform, or cause to be performed, each of its obligations under this Agreement, the Note and the other Related Documents to which it is a party.

Section 6.03. Reporting Requirements. The County shall keep proper books of record and account in which full, true and correct entries will be made of all dealings and transactions of or in relation to affairs, operations, transactions and activities of the County in accordance with GAAP consistently applied. The County shall furnish to the Purchaser two (2) copies of each of the following; *provided that*, except with respect to the requirements of subsections (b), (d) and (h) below, the County may satisfy its obligation to provide to the Purchaser copies of any items identified in this Section by giving written notice of the County having posted an electronic copy of such item on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System, www.emma.msrb.org ("*EMMA*") within the timeframe for delivery identified below:

(a) *Annual Financial Statements.* As promptly as available and, in any event, within one hundred eighty (180) days after the end of the Fiscal Year of the Commonwealth, the Comprehensive Annual Financial Report of the County, certified and prepared by an independent certified public accountant in accordance with GAAP, consistently applied.

(b) *Certificate of Compliance.* Simultaneously with the delivery of each set of financial statements referred to in (a) above, a certificate signed by the Authorized County Representative stating (i) that to the best of his/her knowledge, the County is not in default in the performance or observance of any of the terms, covenants, provisions or conditions of this Agreement or any of the other Related Documents or, if the County shall be in default hereunder or thereunder, such certificate shall specify each such Default or Event of Default, the nature and status thereof and any remedial steps taken or proposed to correct each such Default or Event of Default and (ii) whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 5.01(l) and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate.

(c) *Sales Tax Revenues.* As and to the extent that the information described in this Section 6.03(c) is not available on the State's website or other electronic platform generally available to the public, the County shall furnish to the Bank: (i) as soon as practicable and, in any event, within ninety (90) days after the end of each fiscal quarter of the County, an unaudited report, certified by an Authorized County Representative, setting forth the Sales Tax Revenues collected (from the State) through the end of such quarter and for the period from the beginning of such Fiscal Year to the end of such quarter and (ii) with reasonable promptness, such other information and data with respect to the Sales Tax Revenues as from time to time may be reasonably requested by the Purchaser. In addition to the foregoing, the County shall furnish the Purchaser, as soon as practicable and, in any event, within one hundred eighty (180) days after the end of each Fiscal Year of the County, a certificate, signed by an Authorized County Representative, confirming that, for such Fiscal Year, the Sales Tax Revenues collected (from the State) and available to pay interest on the Note equaled or exceeded 200% of said interest.

(g) *Material Event Notices.* In connection with any Indebtedness, immediately following any dissemination, distribution or provision thereof to any Person, a copy of any "material event notice" disseminated, distributed or provided in satisfaction of or as may be required by the provisions of Rule 15c2-12 promulgated pursuant to the Securities Exchange Act of 1934, as amended (17 C.F.R. Sec. 240-15c2-12), or any successor or similar legal requirement.

(h) *Other Information.* Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the County as the Purchaser may from time to time reasonably request.

Section 6.04. Notices.

(a) *Notice of Default.* The County shall provide to the Purchaser as soon as possible and, in any event, within five (5) days after the occurrence of each Default or Event of Default continuing on the date of such statement, a statement of an Authorized County Representative setting forth the details of such Default or Event of Default and the action which is being taken or proposed to be taken with respect thereto, as well as any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

(b) *Litigation and other Notices.* The County shall provide to the Purchaser in writing, promptly upon learning thereof, notice of any Material Litigation and any other action, suit, proceeding, inquiry or investigation (collectively, a "*Material Proceeding*") that is commenced or threatened against the County or the City that, singly or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(c) *Notices under the Related Documents.* The County shall furnish to the Purchaser a copy of any notice, certification, demand or other writing or communication given by, or

received by, the County under or in connection with any of the other Related Documents, in each case, promptly after the giving or receipt of same.

(d) *Miscellaneous Notices.* The County shall provide such further financial and other information with respect to the Sales Tax Revenues and the Transactions as the Purchaser may reasonably request from time to time.

Section 6.05. Right of Entry; Communication with Accountant. The County will permit, during normal business hours and from time to time, upon reasonable prior notice, the Purchaser or any of its agents or representatives to examine the collection and disbursement of Sales Tax Revenues, with any representative or any other appropriate officer of the County or a representative of the County's independent certified public accountant.

Section 6.06. Incorporation of Covenants. The County will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Related Documents to which it is a party, which provisions, as well as related defined terms contained herein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety for the benefit of the Purchaser and shall be enforceable by the Purchaser against the County. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such provision shall be complied with only if it is waived or consented to by the Purchaser and such document, opinion or other instrument shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Purchaser. No amendment to such covenants (or the defined terms relating thereto) made pursuant to the Related Documents or cessation of the effectiveness of any such covenants shall be effective to amend or terminate the effectiveness of such incorporated covenants without the written consent of the Purchaser. Notwithstanding the termination or expiration of any Related Document, the County shall, unless such Related Document has terminated or expired in accordance with its terms and has been replaced by a new Related Document, continue to observe the covenants therein contained for the benefit of the Purchaser until the termination of this Agreement.

Section 6.07. Further Assurances. The County will not create or incur, nor purport to create or incur, any Indebtedness beginning on the Closing Date and ending on the date of payment or defeasance of the Note which is senior to or on parity with the Lien securing the Required Payments and pledge of the Sales Tax Revenues provided to the Lender hereunder and under the other Related Documents without the prior written consent of the Lender, which consent shall not be unreasonably withheld; *provided, however*, that the foregoing shall not prevent issuance by the County of that certain Temporary Sales Tax Revenue Note of 2016 dated the Closing Date.

Section 6.08. Issuance of Bonds. Unless the Note are paid by other funds, the County will use its best efforts to issue bonds in an amount sufficient to pay, in full on or prior to the Maturity Date, the Note, together with interest thereon, and all Payments and other Required Payments due through the date said bonds are issued by the County.

Section 6.09. Amendments to the Sales Tax Law or Proposed Legislation. The County shall furnish to the Purchaser a copy of any amendments or modifications to the Ordinance, the Sales Tax Law or any other law or any other legislation, initiative or referendum of which the County is aware which could (i) annul, amend, modify, replace or otherwise adversely impact the collection and disbursement of the Sales Tax Revenues or the validity or priority of the pledge and the Lien thereon in favor of the Purchaser to secure the Required Payments, or (ii) lead to the diminution or reallocation of the Sales Tax Revenues or any portion thereof.

Section 6.10. Disclosure to Participants. The County agrees to permit the Purchaser to disclose any information received by the Purchaser in connection herewith including, without limitation, the financial information described in Section 6.03, to any Participant without notice to or further consent from the County.

Section 6.11. Most Favored Covenant. In the event that the County shall hereafter enter into or otherwise consent to any agreement or instrument (or any amendment, supplement or modification thereto) that involves a pledge of, or security interest in and to, the County STR, whether on parity with, or senior to, to the Lien in the County STR granted in favor of the Purchaser (each a “*Relevant Agreement*”) under which any Person undertakes to make loans or extend credit or liquidity to the County or pursuant to which the County and a Person agree to any Hedge Agreement or other similar arrangement, which Relevant Agreement provides such Person with a covenant, event of default or agreement which is more restrictive or which gives greater, additional or materially different rights and remedies, whether as to timing of payment or priority of payment or rights or remedies upon default or otherwise (the “*Favored Covenants*”) than are provided to the Purchaser, then such Favored Covenants shall automatically be deemed to be incorporated into this Agreement for the duration of this Agreement and the Purchaser shall have (a) the benefits of such Favored Covenants as if specifically set forth in this Agreement and (b) the right to independent review and approval of any modifications of, amendments or supplements to, or waivers of compliance with, such Favored Covenants as a condition to incorporation or application of such modification, amendment, supplement or waiver into this Agreement, notwithstanding that the Person or Persons party to the Relevant Agreement in which a Favored Covenant was provided may have approved or taken some other action with respect to such Favored Covenant for purposes of the Relevant Agreement. If necessary, the County shall promptly enter into an amendment to this Agreement to include the Favored Covenants (*provided* that the Purchaser shall maintain the benefit of such Favored Covenants even if the County fails to provide such amendment).

Section 6.12. Sovereign Immunity. To the extent that the County has or hereafter may acquire under Applicable Law any right to immunity from set off or legal proceedings on the grounds of sovereignty or otherwise with respect to the Transactions, the County hereby irrevocably waives, to the extent permitted by law, such rights to immunity for itself and agrees not to invoke any defense of immunity in respect of its obligations arising under or related to this Agreement and any of the other Related Documents to which it is a party.

Section 6.13. Underlying Rating. The County shall at all times maintain a General Obligation Debt Rating from at least one Rating Agency. The County covenants and agrees that it shall not at any time withdraw a General Obligation Debt Rating any long-term unenhanced

rating on its Parity Obligation from any of Fitch, Moody's or S&P if the effect of such withdrawal would be to cure a Default or an Event of Default under this Agreement or reduce the Applicable Spread.

Section 6.14. Insurance. The County shall maintain insurance with reputable insurance companies or associations believed by the County at the time of purchase of such insurance to be financially sound and in such amounts and covering such risks as are usually carried by organizations engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibles from coverage. The County shall upon request of the Purchaser furnish a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Section 6.14.

Section 6.15. Maintenance of Tax-Exempt Status of Bonds. The County shall not take any action or omit to take any action which, if taken or omitted, would adversely affect the tax-exempt status of the Note.

ARTICLE VII

NEGATIVE COVENANTS

The County covenants and agrees that until all Payments and other Required Payments payable hereunder have been paid in full:

Section 7.01. Amendments. The County shall not (a) consent or agree to or permit any rescission of or amendment to the Ordinance, the County Resolution, the Intergovernmental Agreement or the Sales Tax Law which would reduce the amount of the Sales Tax Revenues or which would in any manner materially impair or materially adversely affect the rights of, or the validity or priority of the pledge of, and security interest in favor of the Purchaser in and to, the Sales Tax Revenues and (b) amend, modify or supplement, nor agree to any amendment or modification of, or supplement to, any of the Related Documents or consent to, or permit or suffer to occur any action, course of dealing or omission which results in, or is equivalent to, an amendment, supplementation, termination or modification of any of the Related Documents, without the prior written consent of the Purchaser and any such amendment, supplementation, termination or modification made or entered into in violation of this subsection shall be deemed a nullity and of no force and effect.

Section 7.02. Preservation of Existence, Ownership, Etc. The County shall not directly or indirectly liquidate, wind up, terminate, reorganize, dissolve, merge or consolidate (or suffer any liquidation, winding up, termination, reorganization or dissolution that could have an adverse impact on the repayment of the Note), except as consented to in writing by the Purchaser in its sole discretion.

Section 7.03. Accounting Methods; Fiscal Year; Entity Classification. The County will not adopt, permit or consent to any change in accounting practices other than as required by GAAP and will not adopt, permit or consent to any change in its Fiscal Year or take (or permit to be taken) any action that results in (a) a change to its entity classification for Federal or State

income tax purposes or (b) a change to the method of accounting applicable to the Sales Tax Revenues, or the times of commencement or termination of Fiscal Years or other accounting periods relating to Sales Tax Revenues without first disclosing in writing such change to the Purchaser.

Section 7.04. ERISA. To the extent that ERISA may become applicable to the County, the County will not violate ERISA in any way that could reasonably be expected to have (a) a material adverse effect on the County's business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects or (b) a Material Adverse Effect.

Section 7.05. Hedge Agreements. The County will not enter into any Hedge Agreement hedging or otherwise relating to the Note or this Agreement without the prior written consent of the Purchaser.

Section 7.06. Exempt Status. The County shall not take any action or omit to take any action that, if taken or omitted, would adversely affect the excludability of interest payable on the Note from the gross income of the holders thereof for purposes of Federal income taxation under the Code and State income taxation.

Section 7.07. Limitation on Indebtedness. Except as set forth in the Loan Agreement, the County will not create or incur, nor purport to create or incur, any Indebtedness beginning on the Effective Date and ending on the date of payment of the Note which is secured on parity with, or senior to, the Lien on Sales Tax Revenues provided to the Purchaser hereunder and under the other Related Documents without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld. Provided, that after each payment of the Required Payments, the County can use the Sales Tax Revenues for any legal purpose, including the payment of ongoing Project expenses.

Section 7.08. Regulation U. The County will not use the proceeds of the Note so as to violate Regulation U as it may be amended or interpreted from time to time by the Board of Governors of the Federal Reserve System.

Section 7.09. Acceleration. The County will not grant to or permit the holder of Indebtedness secured by the County STR the remedy of acceleration with respect to such Indebtedness that is not available to the Purchaser hereunder without first obtaining the prior written consent of the Purchaser.

Section 7.10. Certain Information. The County shall not include in any offering document for Indebtedness any information concerning the Purchaser that is not supplied in writing by the Purchaser expressly for inclusion therein.

Section 7.11. Liens. The County shall not, directly or indirectly, incur, create or permit to exist any Lien on all or any part of the security that is senior to or on a parity with the Lien securing the Required Payments, other than (i) Liens created under and in accordance with the terms of the Related Documents; (ii) Liens created under and in accordance with the Loan Agreement; (iii) the Liens created for the benefit of the Related Documents and other Parity

Obligations that has heretofore or may hereafter be issued; and (iv) Liens which could not reasonably be expected to materially adversely affect the interests, rights, remedies or security of the Purchaser under this Agreement and the other Related Documents.

ARTICLE VIII

EVENTS OF DEFAULT

Section 8.01. Events of Default. The occurrence of any of the following events shall constitute an “Event of Default,” unless waived by the Purchaser, in writing:

(a) the County shall fail to pay the principal of or interest on the Note when due;

(b) the County shall fail to pay any other Required Payment (other than the obligation to pay the principal of or interest on the Note) and such failure shall continue for three (3) Business Days;

(c) any representation or warranty made by or on behalf of the County in this Agreement or in any other Related Document or in any certificate or statement delivered hereunder or thereunder shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(d) the County shall default in the due performance or observance of any of the covenants set forth in Section 6.03, 6.04, 6.05, 6.13 or Article VI hereof;

(e) the County shall default in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Related Document and such default shall remain unremedied for a period of thirty (30) days after the occurrence thereof;

(f) the County shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) become insolvent or shall not pay, or be unable to pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any corporate action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 7.01(g) of this Agreement;

(g) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the County or any substantial part of its Property, or a proceeding described in Section 7.01(f)(v) shall be instituted against the County and such proceeding continues undischarged or any such proceeding continues undismissed or unstayed for a period of thirty (30) or more days;

(h) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Debt of the County by the County or any Governmental Authority with appropriate jurisdiction;

(i) (i) any provision of this Agreement or any other Related Document related to (A) payment of principal of or interest on the Note or any Parity Obligation or (B) the validity or enforceability of the pledge of the Pledged Sales Tax shall at any time for any reason cease to be valid and binding on the County as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction, or shall be declared, in a final nonappealable judgment by any court of competent jurisdiction, to be null and void, invalid or unenforceable;

(ii) the validity or enforceability of any material provision of this Agreement or any Related Document related to (A) payment of principal of or interest on the Note or any Parity Obligation, or (B) the validity or enforceability of the pledge of the Pledged Sales Tax shall be publicly contested by the County; or

(iii) any other material provision of this Agreement or any other Related Document, other than a provision described in clause (i) above, shall at any time for any reason cease to be valid and binding on the County as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or shall be declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid, or unenforceable, or the validity or enforceability thereof shall be publicly contested by the County;

(j) any event (separately or in the aggregate with other events) occurs which, in the judgment of the Purchaser, constitutes or could reasonably be expected to result in a Material Adverse Change;

(k) the County shall (i) default on the payment of the principal of or interest on any Parity Obligation, beyond the period of grace, if any, provided in the instrument or agreement under which such Parity Obligation was created or incurred; or (ii) default in the observance or performance of any agreement or condition relating to any Parity Obligation or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event shall occur or condition exist, the effect of which default, event of default or similar event or condition is to cause (determined without regard to whether any notice is required) any such Parity Obligation to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Parity Obligation;

(l) the County shall (i) default on the payment of the principal of or interest on any Indebtedness (other than Parity Obligation) aggregating in excess of \$1,000,000, beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness (other than Parity Obligation) was created or incurred; or (ii) default in the observance or performance of any agreement or condition relating to any Indebtedness (other than Parity Obligation) aggregating in excess of \$1,000,000, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event shall occur or condition exist, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such Indebtedness to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Indebtedness;

(m) any final, unappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, which are not covered in full by insurance, with written acknowledgement of such coverage having been provided by the provider of such insurance coverage to the Lender, in an aggregate amount not less than \$1,000,000 shall be entered or filed against the County or against any of its Property and remain unpaid, unvacated, unbonded or unstayed for a period of thirty (30) days;

(n) the City (i) consents or agrees to or permits any rescission of or amendment to the Article 3-21, the City Resolution, the Intergovernmental Agreement or the Sales Tax Law which would reduce the amount of the Sales Tax Revenues or which would in any manner materially impair or materially adversely affect the rights of, or the validity or priority of the pledge of, and security interest of the Purchaser in and to, the Sales Tax Revenues and (ii) amends, modifies or supplements, or agrees to any amendment or modification of, or supplement to, any of the Related Documents to which it is a party or consents to, or permits or suffers to occur any action, course of dealing or omission which results in, or is equivalent to, an amendment, supplementation, termination or modification of any of the Related Documents to which it is a party;

(o) any “event of default” under any Related Document (as defined respectively therein) shall have occurred; or

(p) (i) S&P shall have downgraded its General Obligation Debt Rating below “BBB-” (or its equivalent), or suspended or withdrawn its rating of the same; or (ii) any of Fitch, Moody’s and S&P shall have downgraded its General Obligation Debt Rating below “A-” (or its equivalent), “A3” (or its equivalent), or “A-” (or its equivalent) respectively, or suspended or withdrawn its rating of the same.

Section 8.02. Consequences of an Event of Default. If an Event of Default specified in Section 8.01 hereof shall occur and be continuing, the Purchaser may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(a) (i) by written notice to the County, declare the outstanding amount of the Obligations under this Agreement to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue;

(ii) deliver a written notice to the County that an Event of Default has occurred and is continuing and direct an acceleration of the Note or take such other remedial action;

(iii) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Related Documents or to enforce performance or observance of any obligation, agreement or covenant of the County under the Related Documents, whether for specific performance of any agreement or covenant of the County or in aid of the execution of any power granted to the Purchaser in the Related Documents;

(iv) cure any Default, Event of Default or event of nonperformance hereunder or under any Related Document; *provided, however*, that the Purchaser shall have no obligation to effect such a cure; and

(v) exercise, or cause to be exercised, any and all remedies as it may have under the Related Documents (other than as provided for in clause (iii) of this Section 8.02(a)) and as otherwise available at law and at equity.

(b) Notwithstanding the provisions of Section 8.02(a)(ii) or 8.02(a)(iii), (x) the Purchaser shall not cause an acceleration of the Note as described in Section 8.02(a)(ii) or 8.02(a)(iii) until seven (7) days after the occurrence of an Event of Default specified in Section 8.01(a), 8.01(f), 8.01(g), 8.01(h), 8.01(i)(i), 8.01(i)(ii), 8.01(j), 8.01(k) or 8.01(p)(i) and (y) the Purchaser shall notify the County of an acceleration at least one hundred eighty (180) days prior thereto in the case of any Event of Default not specified in the immediately preceding clause (x). Notwithstanding the foregoing sentence of this Section 8.02(b), if any other holder or credit enhancer of Indebtedness or any counterparty under any Hedge Agreement related thereto (i) has the right to cause such Indebtedness to be immediately due and payable (whether by repurchase, mandatory tender, mandatory redemption, acceleration or otherwise) on a date earlier than, or pursuant to a notice period which is shorter than what is set forth in the first sentence of this section 8.02(b) in connection with a default related to such Indebtedness, then the Purchaser shall automatically have such right or shorter notice period, as applicable, or (ii) causes any such Indebtedness or other obligations of the County to become

immediately due and payable (whether by repurchase, mandatory tender, mandatory redemption, acceleration or otherwise), then the Purchaser may immediately, without notice, avail itself of the remedies set forth in Section 8.02(a)(ii) or 8.02(a)(iii) hereof and/or declare or cause to be declared the unpaid principal amount of all outstanding Required Payments, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder to be immediately due and payable.

Section 8.03. Remedies Cumulative; Solely for the Benefit of Purchaser. To the extent permitted by, and subject to the mandatory requirements of, applicable Law, each and every right, power and remedy herein specifically given to the Purchaser in the Related Documents shall be cumulative, concurrent and nonexclusive and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy (whether specifically herein given or otherwise existing) may be exercised from time to time and as often and in such order as may be deemed expedient by the Purchaser, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy.

The rights and remedies of the Purchaser specified herein are for the sole and exclusive benefit, use and protection of the Purchaser, and the Purchaser is entitled, but shall have no duty or obligation to the County, the Trustee or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Purchaser hereunder or under any of the other Related Documents.

Section 8.04. Waivers or Omissions. No delay or omission by the Purchaser in the exercise of any right, remedy or power or in the pursuit of any remedy shall impair any such right remedy or power or be construed to be a waiver of any default on the part of the Purchaser or to be acquiescence therein. No express or implied waiver by the Purchaser of any Event of Default shall in any way be a waiver of any future or subsequent Event of Default.

Section 8.05. Discontinuance of Proceedings. In case the Purchaser shall proceed to invoke any right, remedy or recourse permitted hereunder or under the Related Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Purchaser shall have the unqualified right so to do and, in such event, the County and the Purchaser shall be restored to their former positions with respect to the Obligations, the Related Documents and otherwise, and the rights, remedies, recourse and powers of the Purchaser hereunder shall continue as if the same had never been invoked.

ARTICLE IX

INDEMNIFICATION

Section 9.01. Indemnification. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, the County hereby agrees (to the extent permitted by law) to indemnify and hold harmless each Bondholder or Credit Protection Provider and its officers, directors and agents (each, an

“Indemnatee”) from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever (including reasonable attorneys’ fees) which may incur or which may be claimed against an Indemnatee by any Person or entity whatsoever (collectively, the “Liabilities”) by reason of or in connection with (a) the execution and delivery or transfer of, or payment or failure to pay under, any Related Document; (b) the issuance and sale of the Note; and (c) the use of the proceeds of the Note; *provided* that the County shall not be required to indemnify an Indemnatee for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of such Indemnatee. Nothing under this Section 9.01 is intended to limit the County’s payment of the Obligations; *provided* further that nothing herein shall be deemed a waiver by County of its right to assert the limitations on liability set forth in chapter 32-12.1 of the North Dakota, as amended from time to time, with respect to any third party claims for which an Indemnatee requests indemnification.

Section 9.02. Survival. The obligations of the County under this Article VIII shall survive the payment of the Note and the termination of this Agreement and shall terminate six (6) years after the payment of the Note.

ARTICLE IX

MISCELLANEOUS

Section 10.01. Patriot Act Notice. The Purchaser hereby notifies the County that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the County, which information includes the name and address of the County and other information that will allow the Purchaser to identify the County in accordance with the Patriot Act. The County hereby agrees that it shall promptly provide such information upon request by the Purchaser.

Section 10.02. Further Assurances. From time to time upon the request of either party hereto, the other shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as the requesting party may in its reasonable discretion deem necessary or desirable to confirm this Agreement, and the other Related Documents, to carry out the purpose and intent hereof and thereof or to enable the requesting party to enforce any of its rights hereunder or thereunder. At any time, and from time to time, upon request by the Purchaser, the County will, at the County’s expense, correct any defect, error or omission which may be discovered in the form or content of any of the Related Documents. Upon any failure by the County to do so, the Purchaser may make, execute and record any and all such instruments, certificates and other documents for and in the name of the County, all at the sole expense of the County, and the County hereby appoints the Purchaser the agent and attorney-in-fact of the County to do so, this appointment being coupled with an interest and being irrevocable. In addition, at any time, and from time to time, upon request by the Purchaser or the Trustee, the County will, at the County’s expense, provide any and all further instruments, certificates and other documents as may, in the opinion of the Purchaser or the Trustee, be necessary or desirable in order to verify the County’s identity and background in a manner satisfactory to the Purchaser or the Trustee, as the case may be.

Section 10.03. Amendments and Waivers; Enforcement. The Purchaser and the County may from time to time enter into agreements amending, modifying or supplementing this Agreement or the other Related Documents or changing the rights of the Purchaser or the County hereunder or thereunder, and the Purchaser may from time to time grant waivers or consents to a departure from the due performance of the obligations of the County hereunder or thereunder. Any such agreement, waiver or consent must be in writing and shall be effective only to the extent specifically set forth in such writing. In the case of any such waiver or consent relating to any provision hereof, any Default or Event of Default so waived or consented to shall be deemed to be cured and not continuing, but no such waiver or consent shall extend to any other or subsequent Default or Event of Default or impair any right consequent thereto.

Section 10.04. No Implied Waiver; Cumulative Remedies. No course of dealing and no delay or failure of the Purchaser in exercising any right, power or privilege under this Agreement or the other Related Documents shall affect any other or future exercise thereof or exercise of any right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies of the Purchaser under this Agreement are cumulative and not exclusive of any rights or remedies which the Purchaser would otherwise have under any Related Document, at law or in equity.

Section 10.05. Notices. All notices, requests, demands, directions and other communications (collectively “*notices*”) under the provisions of this Agreement shall be in writing (including facsimile communication), unless otherwise expressly permitted hereunder, and shall be sent by first-class mail or overnight delivery and shall be deemed received as follows: (i) if by first class mail, five (5) days after mailing; (ii) if by overnight delivery, on the next Business Day; (iii) if by telephone, when given to a person who confirms such receipt; and (iv) if by facsimile, when confirmation of receipt is obtained. All notices shall be sent to the applicable party at the following address or in accordance with the last unrevoked written direction from such party to the other parties hereto:

The County:	Cass County
	P.O. Box 2806
	Fargo, North Dakota 58108
Attention:	Michael Montplaisir, Cass County Auditor
Facsimile:	() -
Telephone:	(701) 241-5600
Email:	MontplaisirM@casscountynd.gov

The Purchaser:

Wells Fargo Bank, National Association

Attention: Thomas Harkless

Facsimile: () ____ - ____

Telephone: () ____ - ____

Email: Thomas.M.Harkless@wellsfargo.com

The Purchaser may rely on any notice (including telephone communication) purportedly made by or on behalf of the other, and shall have no duty to verify the identity or authority of the Person giving such notice, unless such actions or omissions would amount to gross negligence or intentional misconduct.

Section 10.06. No Third-Party Rights. Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto and the Bondholders any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

Section 10.07. Severability. The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

Section 10.08. Governing Law; Consent to Jurisdiction and Venue; Waiver of Jury Trial.
(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE; *PROVIDED* THAT THE OBLIGATIONS OF THE PURCHASER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (OTHER THAN NEW YORK GENERAL OBLIGATIONS LAWS 5-1401 AND 5-1402).

(b) EACH PARTY HERETO CONSENTS TO AND SUBMITS TO IN PERSONAM JURISDICTION AND VENUE IN THE STATE OF NEW YORK AND IN THE FEDERAL DISTRICT COURTS WHICH ARE LOCATED IN THE BOROUGH OF MANHATTAN IN THE STATE OF NEW YORK. EACH PARTY ASSERTS THAT IT HAS PURPOSEFULLY AVAILED ITSELF OF THE BENEFITS OF THE LAWS OF THE STATE OF NEW YORK AND WAIVES ANY OBJECTION TO IN PERSONAM JURISDICTION ON THE GROUNDS OF MINIMUM CONTACTS, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY PLEA OF FORUM NON CONVENIENS. THIS CONSENT TO AND SUBMISSION TO JURISDICTION IS WITH REGARD TO ANY ACTION RELATED TO THIS AGREEMENT. REGARDLESS OF WHETHER THE PARTY'S ACTIONS TOOK PLACE IN THE STATE OF NEW YORK OR ELSEWHERE IN THE UNITED STATES, THIS SUBMISSION TO JURISDICTION IS NONEXCLUSIVE, AND DOES NOT PRECLUDE EITHER PARTY FROM OBTAINING JURISDICTION OVER THE OTHER IN ANY COURT OTHERWISE HAVING JURISDICTION.

(c) TO THE EXTENT PERMITTED BY APPLICABLE LAWS, EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR

ARISING OUT OF THIS AGREEMENT, THE RELATED DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

(d) The covenants and waivers made pursuant to this Section 10.08 shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 10.09. Prior Understandings. This Agreement and the other Related Documents supersede all other prior understandings and agreements, whether written or oral, among the parties hereto relating to the transactions provided for herein and therein.

Section 10.10. Duration. All representations and warranties of the County contained herein or made in connection herewith shall survive the making of and shall not be waived by the execution and delivery of this Agreement or the other Related Documents. All covenants and agreements of the County contained herein shall continue in full force and effect from and after the date hereof until the Obligations have been fully discharged.

Section 10.11. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

Section 10.12. Successors and Assigns.

(a) *Successors and Assigns Generally.* This Agreement is a continuing obligation and shall be binding upon the County, its successors, transferees and assigns and shall inure to the benefit of the Bondholders and their respective permitted successors, transferees and assigns. The County may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Purchaser. Each Bondholder may, in its sole discretion and in accordance with applicable Law, from time to time assign, sell or transfer in whole or in part, this Agreement, its interest in the Note and the Related Documents in accordance with the provisions of paragraph (b) or (c) of this Section. Each Bondholder may at any time and from time to time enter into participation agreements in accordance with the provisions of paragraph (d) of this Section. Each Bondholder may at any time pledge or assign a security interest subject to the restrictions of paragraph (e) of this Section. Wells Fargo Bank, National Association shall be the Purchaser hereunder until such time as the Majority Bondholder designates an alternate Person to serve as the Purchaser hereunder by delivery of written notice to the County and such Person accepts and agrees to act as the Purchaser hereunder and under the Related Documents. The Majority Bondholder may so designate an alternate Person to act as the Purchaser from time to time. Upon acceptance and notification thereof to the County, the successor to the Purchaser for such purposes shall thereupon succeed to and become vested with all of the rights, powers, privileges and responsibilities of the Purchaser, and Wells Fargo Bank, National Association or any other Person being replaced as the Purchaser shall be discharged from its duties and obligations as the Purchaser hereunder.

(b) *Sales and Transfers by Bondholder to a Purchaser Transferee.* Without limitation of the foregoing generality, a Bondholder may at any time sell or otherwise transfer to one or more transferees all or a portion of the Note to a Person that is (i) a Purchaser Affiliate or (ii) a trust or other custodial arrangement established by the Purchaser or a Purchaser Affiliate, the owners of any beneficial interest in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the 1933 Act (each, a “*Purchaser Transferee*”). From and after the date of such sale or transfer, Wells Fargo Bank, National Association (and its successors) shall continue to have all of the rights of the Purchaser hereunder and under the other Related Documents as if no such transfer or sale had occurred; *provided, however*, that (A) no such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall in any way affect the obligations of the Purchaser hereunder, (B) the County shall be required to deal only with the Purchaser with respect to any matters under this Agreement and (C) in the case of a sale or transfer referred to in clause (b)(i) or (b)(ii) hereof, only the Purchaser shall be entitled to enforce the provisions of this Agreement against the County.

(c) *Sales and Transfers by Bondholder to a Non-Purchaser Transferee.* Without limitation of the foregoing generality, a Bondholder may at any time sell or otherwise transfer to one or more transferees which are not Purchaser Transferees but each of which constitutes (i) a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act and (ii) a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and, in any such case, having a combined capital and surplus, determined as of the date of any transfer pursuant to this clause (c), of not less than \$5,000,000,000 (each a “*Non-Purchaser Transferee*”) all or a portion of the Note if (A) written notice of such sale or transfer, including that such sale or transfer is to a Non-Purchaser Transferee, together with addresses and related information with respect to the Non-Purchaser Transferee, shall have been given to the County, and the Purchaser (if different than the Bondholder) by such selling Bondholder and Non-Purchaser Transferee, and (B) the Non-Purchaser Transferee shall have delivered to the County, the Trustee and the selling Bondholder, an investment letter in substantially the form attached as **[Exhibit A]** to the Resolution (the “*Investor Letter*”).

From and after the date the County, and the selling Bondholder have received written notice and an executed Investor Letter, (A) the Non-Purchaser Transferee thereunder shall be a party hereto and shall have the rights and obligations of a Bondholder hereunder and under the other Related Documents, and this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Non-Purchaser Transferee, and any reference to the assigning Bondholder hereunder and under the other Related Documents shall thereafter refer to such transferring Bondholder and to the Non-Purchaser Transferee to the extent of their respective interests, and (B) if the transferring Bondholder no longer owns any Bonds, then it shall relinquish its rights and be released from its obligations hereunder and under the Related Documents.

(d) *Participations.* The Purchaser shall have the right to grant participations in all or a portion of the Purchaser’s interest in the Note, this Agreement and the other Related Documents to one or more other banking institutions; *provided, however*, that (i) no such participation by

any such participant shall in any way affect the obligations of the Purchaser hereunder and (ii) the County shall be required to deal only with the Purchaser, with respect to any matters under this Agreement, the Note and the other Related Documents and no such participant shall be entitled to enforce any provision hereunder against the County.

(e) *Certain Pledges.* The Purchaser may at any time pledge or grant a security interest in all or any portion of its rights under the Note, this Agreement and the Related Documents to secure obligations of the Purchaser, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release the Purchaser from any of its obligations hereunder or substitute any such pledgee or assignee for the Purchaser as a party hereto.

Section 10.13. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.14. Acknowledge and Appointment as the Calculation Agent. The Purchaser hereby acknowledges and accepts its appointment as Calculation Agent during this Index Interest Rate Period pursuant to the Resolution and acknowledges, accepts and agrees to all the duties and obligations of the Calculation Agent set forth in the Resolution.

Section 10.15. Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or “printouts,” if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, “electronic signature” means a manually-signed original signature that is then transmitted by electronic means; “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a “pdf” (portable document format) or other replicating image attached to an e-mail message; and, “electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the Effective Date.

WELLS FARGO BANK, NATIONAL ASSOCIATION

By _____
Name: _____
Title: _____

CASS COUNTY, NORTH DAKOTA

By _____
Mary Scherling, Chair
Board of County Commissioners

ATTEST:

Michael Montplaisir, County Auditor

EXHIBIT A

FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate (this “*Certificate*”) is furnished to Wells Fargo Bank, National Association (the “*Purchaser*”) pursuant to that certain Continuing Covenant Agreement dated as of _____, 20__ (the “*Agreement*”), between Cass County, North Dakota (the “*County*”) and Purchaser. Unless otherwise defined herein, the terms used in this Certificate shall have the meanings assigned thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the duly elected [chief financial officer of the County];
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the County during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; **[and]**
4. The financial statements required by Section 6.03 of the Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the County in accordance with GAAP (subject to year end adjustments) as of the dates and for the periods covered thereby[.]; **and]**
- [5. Attached are true and accurate calculations demonstrating compliance with the financial covenant[s] set forth in Section ____ of the Agreement for the periods specified in such attachment; and]**

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the County has taken, is taking, or proposes to take with respect to each such condition or event:

The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this _____ day of _____, 20__.

CASS COUNTY, NORTH DAKOTA

By _____
Name: _____
Title: _____

[ATTACHMENT TO COMPLIANCE CERTIFICATE

**COMPLIANCE CALCULATIONS FOR CONTINUING COVENANT AGREEMENT DATED AS OF
_____, 20__**

Calculations as of _____, 20__]

- A. _____ (Section ____)
- | | | |
|----|--|------------|
| 1. | | \$ _____ |
| 2. | | \$ _____ |
| 3. | Ratio of Line A1 to Line A2 | _____ |
| 4. | Line A3 must not be [less][greater] than | _____:1.00 |
| 5. | The County is in compliance (circle one) | Yes/No |

The foregoing certifications, together with the computations set forth in the Attachment hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this ____ day of _____, 20__.

CASS COUNTY, NORTH DAKOTA

By: _____

Name: _____

Title: _____