

RESOLUTION NO. 2014-10

Commissioner \_\_\_\_\_ introduced the following resolution and moved its adoption:

RESOLUTION AUTHORIZING INTERGOVERNMENTAL AGREEMENT

WHEREAS, pursuant to approval by the voters of Cass County, North Dakota, the Cass County Commission enacted Ordinance No. 2010-2, providing for the imposition of a one-half percent (1/2%) sales and use tax; and

WHEREAS, pursuant to Ordinance No. 2010-2, the proceeds of the one-half percent (1/2%) sales and use tax may be used 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, pursuant to approval by the voters of the City of Fargo, North Dakota, the Fargo City Commission enacted Article 3-21 of the Fargo Municipal Code providing for the imposition of a one-half percent (1/2%) sales and use tax ; and

WHEREAS, pursuant to Section 3-2110 of the Fargo Municipal Code, the City of Fargo has dedicated the proceeds of the one-half of one percent (1/2%) sales and use tax on all gross receipts of retailers from all retail sales, including the leasing or renting of tangible personal property, within the corporate limits of Fargo, to provide funding to reduce the risk to the City of Fargo of a 500 year flood event; and

WHEREAS, the City of Fargo and Cass County have determined that by cooperating in the issuance of debt for the FM Diversion, the two entities can increase efficiencies with respect to the financing of the Project.

NOW, THEREFORE, BE IT RESOLVED by the governing body of Cass County, North Dakota, as follows:

1. The Cass County Commission hereby approves the Intergovernmental Agreement by and between Cass County, North Dakota, and the City of Fargo, North Dakota, and authorizes the Chairman of the Cass County Commission and County Auditor to execute said Intergovernmental Agreement.

Dated this 21<sup>st</sup> day of July, 2014.

**CASS COUNTY, NORTH DAKOTA,**

By: \_\_\_\_\_  
Chad Peterson, Vice Chair

**ATTEST:**

\_\_\_\_\_  
Michael Montplaisir, 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: \_\_\_\_\_. \_\_\_\_\_ of the commissioners having voted aye, the resolution was declared duly passed and adopted.

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**INTERGOVERNMENTAL AGREEMENT**

Dated as of July 1, 2014

by and between

**CASS COUNTY, NORTH DAKOTA**  
as County

and

**CITY OF FARGO, NORTH DAKOTA**  
as City

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## **INTERGOVERNMENTAL AGREEMENT**

**THIS AGREEMENT**, dated as of July 1, 2014 (the “Effective Date”) 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”).

### **RECITALS**

**WHEREAS**, the County enacted Ordinance No. #2010-2 establishing and regulating a County Sales Tax Under the Home Rule Charter of the County of Cass (the “County 2010-2 Sales Tax”); and

**WHEREAS**, the County 2010-2 Sales Tax imposes a one-half of one percent ( $\frac{1}{2}\%$ ) 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 Cass County Commission; and

**WHEREAS**, the City has enacted Article 3-21 of the City of Fargo Municipal Code establishing and regulating a City Sales Tax for Flood Risk Mitigation and Reduction Improvements (the “City 3-21 Sales Tax,” collectively with the County 2010-2 Sales Tax, the “Pledged Sales Taxes”); and

**WHEREAS**, the proceeds of the City 3-21 Sale 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 amortize bonds or other debt instruments which may be sold to finance such costs; and

**WHEREAS**, the City and County desire to cooperatively pledge their respective sales and use taxes as security for and payment of interest, principal and required payments as defined in the Loan Agreement on temporary or long term financing for Project costs related to the Project (as herein defined); and

**WHEREAS**, the County and the City desire to finance the costs of flood control measures (the “Project”) payable from proceeds of the Pledged Sales Taxes during the construction period thereof in anticipation of permanent financing from the proceeds of a loan from U.S. Bank National Association (the “Bank”) in the maximum aggregate principal amount of \$50,000,000 (the “2014 Bank Loan”); and

**WHEREAS**, the County and the City agree with each other to each pay one-half (1/2) of the principal of and interest on the 2014 Bank Loan together with one-half (1/2) of all costs of issuance fees, charges, and other amounts due pursuant to or in connection with the 2014 Bank Loan (the "Loan Obligations"); and

**WHEREAS**, the County has determined that it will pledge ninety-one percent (91%) of its Pledged Sales Tax, and the City has determined that it will pledge one-hundred percent (100%) of its respective Pledged Sales Tax to secure amounts due with respect to the 2014 Bank Loan in order to obtain the best financing terms, and will also each pledge their respective Pledged Sales Taxes to the other, on a subordinated basis to the 2014 Bank Loan, to secure their own reimbursement obligation to the other as set forth herein; and

**WHEREAS**, the County and the City have determined that the County will be the borrower with respect to the 2014 Bank Loan, and that the City's obligation to pay one-half of the Loan Obligations and the City's pledge of the City 3-21 Sales Tax will be set forth in this Agreement for the Bank, as lender; and

**WHEREAS**, the County will enter into a Loan Agreement, dated as of July 1, 2014 (the "Loan Agreement"), by and between the County and the Bank; and

**WHEREAS**, the County and the City do not intend to create a joint venture pursuant to this Agreement, this Agreement 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 as set forth herein.

**NOW THEREFORE**, in consideration of the promises and other good and valuable consideration, including the covenants, terms and conditions hereinafter contained County and City agree as follows:

## **ARTICLE 1**

### **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.

*"Additional Loan"* means a loan in the maximum aggregate principal amount of \$50,000,000 to either the City or County, that is in addition to the 2014 Bank Loan and for which County 2010-2 Sales Tax and City 3-21 Sales Tax is pledged.

*"Additional Loan Note"* means a promissory note evidencing the Additional Loan indebtedness.

“*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 (b) the City.

“*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.

“*2014 Bank Loan*” means a loan from U.S. Bank National Association to Cass County in the maximum aggregate amount of \$50,000,000, pursuant to the terms and conditions of the Loan Agreement.

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

“*Borrowing Entity*” means 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 either the County or the Lender is located are 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. For purposes of this definition, the Lender's principal office shall be its office in the City of Minneapolis, Minnesota, and the County's designated office shall be its office in the City of Fargo, North Dakota.

*"City"* means the City of Fargo, North Dakota, and its successors or assigns.

*"City Sales and Use Tax Ordinance"* means Article 3-21 of the City of Fargo City Code.

*"City 3-21 Sales Tax"* means the sales and use tax of the City, as defined in Article 3-21 of the City of Fargo City Code, that is pledged by the City to repayment of the Loan Obligations set forth herein, and as security for the same and on a subordinate basis for its reimbursement obligations to the County pursuant to Resolution Authorizing the Execution and Delivery of an Intergovernmental Agreement with Cass County, North Dakota and Related Documents and Authorizing Action Related Thereto enacted on July 21, 2014, by the Commission.

*"City 3-21 Sales Tax Sunset Date"* means December 31, 2029.

*"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 assignees.

*"County Sales and Use Tax Ordinance"* means Cass County Ordinance No. 2010-2.

*"County 2010-2 Sales Tax"* means the sales and use tax of the County, as defined in Cass County Ordinance No. 2010-2, that is pledged by the County to repayment of Loan Obligations set forth herein, and as security for the same and on a subordinate basis for its reimbursement obligations to the City as set forth in Resolution No. \_\_\_, enacted on July 21, 2014, by the Cass County Commission.

*"County 2010-2 Sunset Date"* means March 31, 2031.

*"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.

*"Diversion Authority"* means an entity, or its successors and assigns, created pursuant to the Act for the purpose of constructing, operating and managing, or any combination thereof, the Project.

*"Dollars"* or *"\$"* refers to lawful money of the United States of America.

*"Draw"* means a fully executed Draw Notice in substantially the same form as Attachment 1 Form of Draw Notice to the Loan Agreement

“*Fiscal Year*” means the fiscal year of the City and County commencing January 1 and 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.

“*Governmental Approvals*” means an authorization, consent, approval, permit, license or exemptions of, registration or filing with, or report to, any Governmental Authority.

“*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*” means this Agreement dated as of the Effective Date, by and between the County and the City, as amended from time to time to the extent permitted hereunder.

“*Loan Agreement*” means the Loan Agreement, dated as of July 1, 2014, by and between Cass County, North Dakota and U.S. Bank National Association, as amended from time to time.

“*Loan Obligations*” means all payments of principal, interest and Required Payments on the 2014 Bank Loan or an Additional Loan.

“*Loan Proceeds*” means any proceeds from the 2014 Bank Loan or an Additional Loan.

“*Note*” means the promissory note executed by the County in substantially the same form as Exhibit A to the Loan Agreement entitled United States of America, Cass County, North Dakota, Promissory Note.

“*Parties*” shall mean the City of Fargo and Cass County.

“*Payment Obligations*” means all payments of principal, interest and Required Payments on the 2014 Bank Loan or an Additional Loan.

“*Person*” means any natural or legal person, county, city, municipality, public benefit corporation, 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 the Bank to enter into the Loan Agreement and promise to use revenues from the Pledged Sales Tax for the repayment of principal, interest and Required Payments of the obligations set forth in the Loan Agreement.

*“Pledged Sales Taxes”* means the County’s pledge of ninety-one percent (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 the 2014 Bank Loan.

*“Project”* means flood control measures financed from Pledged Sales Taxes, which includes portions of a flood control project undertaken by the Diversion Authority, including the ring levees around the communities of Oxbow, Hickson and Bakkee, North Dakota, in addition to a 20,000 cubic feet per second, 36-mile long, 1,500 foot wide diversion channel on the North Dakota side of the Red River, with 32,500 acres of upstream staging located in both Cass and Clay Counties.

*“Required Payments”* means all other amounts, charges, costs, fees (including reasonable attorneys’ fees), expenses and sums due to U.S. Bank under the Loan Agreement and Note, and any other related documents, whether in the form of a direct reimbursement, or indemnity, payment obligation, and including all payment obligations of the County to U.S. Bank arising hereunder or under any other Related Document or otherwise with respect to the Loan Agreement, 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.

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

*“State”* means the State of North Dakota.

*“U.S. Bank”* means U.S. Bank National Association.

**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 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, 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.

## ARTICLE 2

### PURPOSE

**Section 2.01. Purpose.** This Intergovernmental Agreement 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 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 for the repayment of principal, interest and Required Payments of, and as security for the 2014 Bank Loan and an Additional Loan for the purpose of providing funds to reimburse the County and City for expenses incurred in connection with the Project.

**Section 2.02. Not a Separate Political Subdivision.** This Intergovernmental Agreement 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 3

### TERM

**Section 3.01 Term.** This Intergovernmental Agreement shall be in full force and effect on the Effective Date and shall terminate upon repayment in full of the 2014 Bank Loan or an Additional Loan, whichever occurs last.

## ARTICLE 4

### THIRD PARTY BENEFICIARY

**Section 4.01. Third Party Beneficiary.** County and City expressly agree and acknowledge that this Intergovernmental Agreement is made for the benefit of U.S. Bank. At

any time during which 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, U.S. Bank may enforce the terms and conditions of this Agreement including, without limitation, by seeking a court order directing that Pledged Sales Taxes be paid directly to U.S. Bank until all Payment Obligations are satisfied in full. In addition to the foregoing, U.S. Bank 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 U.S. Bank.

## ARTICLE 5

### AUTHORIZATION FOR 2014 BANK LOAN

**Section 5.01. Authorization of 2014 Bank Loan.** The County is hereby authorized to enter into the Loan Agreement, which is hereby consented to by the City, and any extensions thereof consented to by the City pursuant to Section 5.02 of this Intergovernmental Agreement.

**Section 5.02. Consent.** Prior to entering into the 2014 Bank Loan, City has consented to the terms and conditions of the 2014 Bank Loan as evidenced by Resolution Authorizing the Execution and Delivery of an Intergovernmental Agreement with Cass County, North Dakota, and Related Documents and Authorizing Action Related Thereto, enacted by the Fargo City Commission on July 21, 2014. County shall not approve an Additional Loan or any extension or modification of the Loan Agreement without receiving the prior consent of the City. City shall not approve an Additional Loan without receiving the prior consent of the County.

**Section 5.03. Form of Consent.** City and/or County consent to an Additional Loan, and any modifications or extensions thereto shall be in the form of a resolution consenting to the extension or modification.

## ARTICLE 6

### LIMITED OBLIGATIONS

**Section 6.01. Limited Obligation.** The 2014 Bank Loan and any Additional Loan authorized by this Intergovernmental Agreement are special obligations of the County and City payable solely from ninety-one percent (91%) of the one-half of one percent 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 City except for such sales taxes pledged for the payment thereof. The holder of the Note and any Additional Loan Note, or a participation therein, shall not ever have the right to compel any exercise of the general taxing authority of the County or City to pay the principal of, or interest on, the Note and any Additional Loan Note or to pay any other obligations payable pursuant to the Note or Additional Loan Note. The Note and any Additional Loan Note are not general obligations of the County or 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 City shall have the right to spend sales tax revenues not necessary for the payment of

amounts then due and payable pursuant to the Note and any Additional Note on any permitted purpose provided by the ordinances levying such pledged sales taxes.

## ARTICLE 7

### 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, the 2014 Bank Loan and any Additional Loan, and any bonds issued to refund the 2014 Bank Loan and any Additional Loan ninety-one percent (91%) of the 2010-2 County Sales Tax proceeds. The proceeds of the 2010-2 County Sales Tax may be used by the County for any lawful purpose if no default exists in the payment of the 2014 Bank Loan or any Additional Loan due and payable. Such tax levy and dedication shall be irrevocable so long as any principal of or interest on the 2014 Bank Loan and any Additional Loan (including amounts owed to the Insurer as hereinafter defined), or any bonds issued to refund the 2014 Bank Loan and any Additional Loan 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 pledge shall constitute a first and prior lien on ninety-one percent (91%) of the 2010-2 County 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, the 2014 Bank Loan and any Additional Loan, and any bonds issued to refund the 2014 Bank Loan and any Additional Loan one-hundred percent of City 3-21 Sales Tax proceeds. 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 2014 Bank Loan and any Additional Loan are due and payable. Such tax levy and dedication shall be irrevocable so long as any principal of or interest on the 2014 Bank Loan and any Additional Loan (including amounts owed to the Insurer as hereinafter defined), or any bonds issued to refund the 2014 Bank Loan and any Additional Loan 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 of Fargo 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 the City 3-21 Sales Tax proceeds (determined after administrative fees charged for the collection of the tax).

**Section 7.03. Subordinate Pledge of City 3-21 Sales Tax to County.** The City hereby dedicates and pledges for the payment of one-half the amounts paid by the County to U.S. Bank in accordance with the terms and conditions set forth in the 2014 Bank Loan and any Additional Loan 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 2014 Bank Loan or any Additional Loan are due and payable. Such tax levy and dedication shall be irrevocable so long as any principal of or interest on the 2014 Bank Loan and any Additional Loan (including amounts owed to the Insurer as hereinafter defined), or any bonds issued to refund the Bank Loan and any Additional Loan 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 of Fargo 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 7.03 of this Intergovernmental Agreement.

**Section 7.04. Subordinate Pledge of Sales Tax for Cross Reimbursement.**

(a) **County Pledge.** The County hereby dedicates and pledges for payment of the reimbursement obligation set forth in Section 8.04 of this Intergovernmental Agreement ninety-one percent (91%) of the 2010-2 County Sales Tax proceeds. The proceeds of the 2010-2 County Sales Tax may be used by the County for any lawful purpose if no default exists in the payment of the Loan Obligations due and payable. Such tax levy and dedication shall be irrevocable so long as any principal of or interest on the Bank Loan and any Additional Loan (including amounts owed to the Insurer as hereinafter defined), or any bonds issued to refund the Bank Loan and any Additional Loan 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 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 be subordinate to the first and prior lien set forth in Section 7.01 of this Intergovernmental Agreement.

(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 and the reimbursement obligation set forth in Section 8.04 of this Intergovernmental Agreement, 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 Loan Obligations due and payable. Such tax levy and dedication shall be irrevocable so long as any principal of or interest on the Bank Loan and any Additional Loan (including amounts owed to the Insurer as hereinafter defined), or any bonds issued to refund the Bank Loan and any Additional Loan 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 of Fargo 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 7.03 of this Intergovernmental Agreement.

**ARTICLE 8**

**AGREEMENT TO PAY DEBT SERVICE**

**Section 8.01. Acknowledgement of Obligation.** The City hereby acknowledges that it is obligated and indebted to the County to pay one-half of the principal, interest, and other financial obligations set forth in the 2014 Bank Loan Agreement, and any duly authorized Additional Loan as of the Effective Date.

**Section 8.02. Promise of Repayment.** The City hereby promises and agrees to pay to the County one half of the principal, interest, and other financial obligations set forth in the 2014 Bank Loan, and any duly authorized Additional Loan.

**Section 8.03. Repayment Proceeds.** The City shall maintain a separate and distinct fund to track all Diversion Authority revenues and expenses as more fully described Section 9.03 of this Intergovernmental Agreement. From this fund, City shall pay when due the debt service of the 2014 Bank Loan and any Additional Loan. City shall then track the County's share of the debt service and provide County with an accounting of the payments on the 2014 Bank Loan and any Additional Loan.

**Section 8.04. Reimbursement of Overpayment.** In the event that either City or County ever pays more than one-half of the Loan Obligations, 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 lien set forth in Sections 7.01 and 7.03 of this Intergovernmental Agreement.

## ARTICLE 9

### OVERSIGHT

**Section 9.01. Diversion Authority Approval.** Prior to using Loan Proceeds to pay costs necessarily incurred in connection with the Project, the City and County shall obtain a recommendation for payment from the Diversion Authority Finance Committee and final approval of the payment from the Diversion Authority Board prior to the payment of expenses. The City and County, in cooperation with the Diversion Authority Finance Committee, shall develop procedures for determining eligible project costs and for the tracking of loan proceeds.

**Section 9.02. Draws.** The City and County shall coordinate with the Diversion Finance Committee and determine when to make Draws on the 2014 Bank Loan or any Additional Loan. Prior to making any Draw, the City and County shall obtain approval from the Diversion Finance Committee. Proceeds from said Draws shall be deposited in a U.S. Bank Account and paid out in accordance with Section 9.01 of this Intergovernmental Agreement.

**Section 9.03. Diversion Fund.** The City of Fargo has established the Diversion Fund from which expenses incurred by City and 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, 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 County are hereby authorized to establish written procedures to provide for payment of debt service on Project Debt that may be incurred from time to time. These written procedures shall be on file with the Cass County Auditor and the City of Fargo Auditor and available for public

inspection. The finance officials shall also cooperate with respect to tax and arbitrage compliance rules and regulations.

## ARTICLE 10

### ADDITIONAL LOAN

**10.01. Additional Loan.** The City and County reserve the right of issuing an Additional Loan, in accordance with the Loan Agreement, payable from the County 2010-2 Sales Tax and City 3-21 Sales Tax proceeds on a parity as to both principal and interest with the 2014 Bank Loan .

**10.02. Subordinate Lien.** Except as authorized in Section 10.01, the City or County will issue no additional Loans or other obligations of any kind payable from or constituting a lien upon the County 2010-2 Sales Tax and City 3-21 Sales Tax proceeds dedicated and pledged to the payment of the 2014 Bank loan unless the lien thereof is expressly made junior and subordinate to the lien on the then outstanding 2014 Bank Loan.

## ARTICLE 11

### 2014 BANK LOAN COVENANTS

**Section 11.01. Compliance with 2014 Bank Loan Covenants.** City and County agree to comply with any and all covenants contained in the Loan Agreement. The City and County do hereby covenant and agree that they will fully and properly perform each and all covenants contained and referred to in the Loan Agreement or extension thereof.

**Section 11.02. Ownership of Property Acquired with Loan Proceeds.** City and County agree and acknowledge that, pursuant to the Act, they have entered into a Limited Joint Powers Agreement, which established the Diversion Authority. Pursuant to the Limited Joint Powers Agreement, the Diversion Authority has entered into a Memorandum of Understanding with the City of Oxbow, North Dakota, to construct a ring levee around the City of Oxbow North Dakota (the "OHB Levee"). Once completed, the OHB Levee will serve a dual purpose of providing flood protection to the City of Oxbow, and serve as a component of the Project. Loan Proceeds shall be used for authorized governmental purposes, including the acquisition of land, design and engineering costs, construction costs and administrative costs associated with the OHB Levee. The acquisition and construction of the OHB Levee will be undertaken by Cass County Joint Water Resource District, a political subdivision of the State of North Dakota and governmental unit under the Code. Upon completion of the Construction the OHB Levee, ownership of the OHB Levee shall be transferred to Cass County or remain with the Cass County Joint Water Resource District or to a North Dakota political subdivision created by a Joint Powers Agreement.

**Section 11.03. Issuance of Debt for Project Permitted.** The City and 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 in the 2014 Bank Loan or an Additional Loan 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 11.04. Covenants to Levy and Collect Sales Tax.** Until the 2014 Bank Loan and any Additional Loan have been discharged as provided in the Loan Agreement, the City and County hereby covenant and agree that they will fully and properly perform each and all of the covenants contained and referred to in this Intergovernmental Agreement and in the Loan Agreement, and each and all of the duties prescribed in the County 2010-2 Sale Tax Ordinance and the City 3-21 Sales Tax Ordinance. The City and County also covenant that they shall levy and collect the County 2010-2 Sales Tax and City 3-21 Sales Tax herein appropriated for the payment of the Note and any extension thereof.

**Section 11.05. 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 Note or any extension thereof, to become a private activity bond, or would cause the Interest of said Note to become subject to taxation under the Code, as not 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.

**Section 11.06. 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 Note or any extension thereof, to become a private activity bond or would cause the Interest of said Note to become subject to taxation under the Code, as not 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.

## ARTICLE 12

### MISCELLANEOUS

**Section 12.01 Terms Supplemental to Loan Agreement.** The terms of this Agreement are supplemental to the terms and conditions set forth in the Loan Agreement and, to the extent that they conflict with the Loan Agreement, the terms of the Loan Agreement 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 Agreement. During any period in which the 2014 Bank Loan, or any extension thereof, remains unpaid, the Parties shall obtain written consent to amend or modify this Intergovernmental Agreement from U.S.





**Section 12.08 Agreement Binding on Successors.** This Agreement 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 Agreement will be controlled by the laws of the State of North Dakota.

**Section 12.10 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 12.11 Execution in Counterparts.** This Agreement may be executed in counterparts with both County and City having a fully-executed counterpart.

**CITY OF FARGO**

**CASS COUNTY**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

RESOLUTION NO. 2014-11

Commissioner \_\_\_\_\_ introduced the following resolution and moved its adoption:

CASS COUNTY, STATE OF NORTH DAKOTA

RESOLUTION AUTHORIZING LOAN AGREEMENT BY AND BETWEEN  
CASS COUNTY, NORTH DAKOTA AND  
U.S. BANK NATIONAL ASSOCIATION

RECITATIONS

CASS COUNTY, North Dakota (the "County"), hereby recites that by resolution of its governing body the County has:

1. Found and determined that it is necessary to cooperate with the City of Fargo (the "City") with respect to obtaining a temporary loan to assist in the short term financing of the F-M Diversion (the "Project").
2. Approved an Intergovernmental Agreement by and between Cass County, North Dakota and the City of Fargo, North Dakota, which authorizes the County, with the consent of the City, to enter into a Loan Agreement with U.S. Bank National Association to finance costs associated with the Project, and to pledge City and County sales and use tax proceeds for repayment of said loan.
3. In conjunction with the Diversion Authority and the City of Fargo, requested proposals for Tax-Exempt Direct-Funded Loans or Draw-down Lines of Credit, from multiple financial institutions, including U.S. National Bank Association ("U.S. Bank").
4. Determined that the offer of U.S. Bank was the lowest cost alternative.
5. Performed all other acts required by the Constitution and laws of North Dakota prerequisite to entering into a Loan Agreement dated July 1, 2014, by and between Cass County, North Dakota and U.S. Bank National Association (hereinafter the "Loan Agreement") for the purpose of providing temporary financing to pay for the cost of the Project in the manner required of the County by law, with full power and authority conferred on it as a political subdivision and county of North Dakota.

RESOLUTION

BE IT RESOLVED by the governing body of the County:

Section 1. All acts performed, resolutions, motions or ordinances adopted or passed, and all publications incidental to the construction and financing of the Project, 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. It is hereby found and determined to be necessary for the County to borrow up to \$50,000,000 in principal (the "Loan") from U.S. Bank, subject to the terms and conditions set forth in the Loan Agreement.

Section 3. The governing body of the County, in response to the above-described requests for proposals regarding short term financing for the Project, has received an offer from U.S. Bank, which offer is more fully set out in the Loan Agreement. It is hereby found and determined that the offer of U.S. Bank is reasonable and advantageous to the County and is hereby accepted, and the Loan Agreement and Promissory Note, in substantially the form presented to the County at this meeting, is hereby accepted and authorized to be executed on behalf of the County by its Chairman and County Auditor (the "Authorized Officers"), with such modifications as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the Loan Agreement and the Promissory Note attached thereto and to deliver them to U.S. Bank, which execution and delivery will be conclusive evidence of the approval of any modifications with respect to the Loan Agreement and Promissory Note.

Section 4. Interest will be payable semiannually and in accordance with the Loan Agreement.

Section 5. The proceeds of the Loan are irrevocably appropriated to pay expenses necessarily incurred in connection with the Project and to pay costs associated with the issuance of the Loan. Draws on the Loan will be submitted by the County to U.S. Bank from time to time in accordance with procedures established and set forth in the Loan Agreement.

Section 6. The County will establish an account with U.S. Bank into which the proceeds of each Draw will be deposited for use by the County in accordance with the Intergovernmental Agreement.

Section 7. The terms and conditions of the Loan Agreement and Intergovernmental Agreement, including the pledge of Sales and Use Tax Proceeds, are hereby incorporated by reference into this Resolution.

Section 8. The County reserves the further right of entering into additional temporary loans payable from Sales and Use Tax Proceeds on a parity as to both principal and interest with the Loan, provided that such issuance is in conformance with the covenants set forth in the Loan Agreement.

Section 9. The Promissory Note issued pursuant to the Loan Agreement will not constitute a charge, lien or encumbrance upon any property of the County, and the principal and interest of the Promissory Note will not be a general obligation of the County, but is payable solely from the net revenues of the City and County Sales Tax Revenues as set forth in this Resolution.

Section 10. This Resolution shall take effect immediately upon adoption.

Adopted July 21, 2014.

**CASS COUNTY, NORTH DAKOTA**

By: \_\_\_\_\_  
Chad Peterson, Vice Chair

**ATTEST:**

\_\_\_\_\_  
Michael Montplaisir, 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: \_\_\_\_\_. \_\_\_\_\_ of the commissioners having voted aye, the resolution was declared duly passed and adopted.

RESOLUTION NO. 2014-12

Commissioner \_\_\_\_\_ introduced the following resolution and moved its adoption:

RESOLUTION DEDICATING  
CASS COUNTY SALES AND USE TAX

WHEREAS, the electorate of Cass County, North Dakota, has adopted a Home Rule Charter in accordance with Chapter 11-09.1 of the North Dakota Century Code and authorized Cass County to enact a sales and use tax; and

WHEREAS, the governing body of Cass County has enacted Ordinance No. 2010-2 establishing a one-half percent (1/2%) sales and use tax which provides that the proceeds of said tax may be dedicated for 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 and Cass County are planning to cooperate in the issuance of temporary and long term debt to provide funds for the planning, design and construction of the FM Diversion and related project elements (hereinafter the "Project Debt"); and

WHEREAS, the City of Fargo and Cass County have entered into an Intergovernmental Agreement by and between Cass County, North Dakota, and the City of Fargo, North Dakota, dated July 1, 2014 (hereinafter the "Intergovernmental Agreement") which sets forth the procedures by which the two entities will issue Project Debt; and

WHEREAS, Cass County, pursuant to the Intergovernmental Agreement and in conformance with Ordinance No. 2010-2, desires to pledge the proceeds of the one-half percent (1/2%) sales and use tax to the repayment of Project Debt.

NOW, THEREFORE, BE IT RESOLVED by the governing body of Cass County, North Dakota, as follows:

1. Cass County does hereby authorize the pledging 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 to the repayment of Project Debt, in accordance with the Intergovernmental Agreement.
2. This resolution may not be rescinded, modified or terminated, without the consent of the City of Fargo during any period in which the Intergovernmental Agreement is in effect.
3. Cass County may use the remaining nine percent (9%) of the proceeds generated by the one-half percent (1/2%) sales and use tax imposed by Ordinance No. 2010-2 to pay Project Debt if the Cass County Commission determines it is necessary.
4. The sales and use tax dedication set forth in this resolution will not constitute a charge, lien or encumbrance upon any property of Cass County, and no holder or holders of any Project Debt will ever have the right to compel any exercise of the taxing authority of the

City of Fargo or Cass County to pay the principal or interest on the Project Debt, other than compelling the collection of the sales and use tax dedicated for such debt pursuant to this resolution.

5. This resolution shall take effect immediately upon adoption.

Dated this 21<sup>st</sup> day of July 2014.

**CASS COUNTY, NORTH DAKOTA,**

By: \_\_\_\_\_  
Chad Peterson, Vice Chair

**ATTEST:**

\_\_\_\_\_  
Michael Montplaisir, 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: \_\_\_\_\_. \_\_\_\_\_ of the commissioners having voted aye, the resolution was declared duly passed and adopted.

**LOAN AGREEMENT**

dated as of July 1, 2014

by and between

**CASS COUNTY, NORTH DAKOTA,**  
as County,

and

**U.S. BANK NATIONAL ASSOCIATION,**  
as Lender

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## LOAN AGREEMENT

**LOAN AGREEMENT**, dated as of July 1, 2014, by and between **CASS COUNTY, NORTH DAKOTA** (including its successors and assigns, the “*County*”) and **U.S. BANK NATIONAL ASSOCIATION** (including its successors and assigns, the “*Lender*”), a banking association organized and existing under the laws of the United States of America.

### 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 initial 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 Sales Tax Revenues (as defined herein) of the County and the City.

**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 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.

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

“*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 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.

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

*“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 either of the County or the Lender is located are 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. For purposes of this definition, the Lender’s principal office shall be its office in the City of Minneapolis, Minnesota and the County’s designated office shall be its office in the City of Fargo, North Dakota.

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

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

*“City Resolution”* means, collectively, the “Resolution Authorizing Intergovernmental Agreement” and the “Resolution Relating to Dedication of City of Fargo Sales and Use Tax,” both adopted by the governing body of the City on [\_\_\_\_\_, 2014], 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 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.

“*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.

“*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 U.S. Bank National Association” and “Resolution Relating to Dedication of Cass County Sales and Use Tax”, both adopted by the governing body of the County, 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.

“*Date of Taxability*” means the date as of which, pursuant to a Determination of Taxability, the interest on the County Loan is deemed to first be includible in the gross income of the Lender, as reasonably determined by the Lender and set forth in a written notice to the County.

“*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 the LIBOR Rate *plus* five percent per annum (5.00%).

“*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 a determination that the interest payable on the County Loan does not qualify as Exempt Interest for any reason, which determination shall be deemed to have been made upon the first to occur of any of the following:

(a) the date on which (i) the Internal Revenue Service issues a proposed or final determination of taxability, a Notice of Proposed Issue (IRS Form 5701-TEB), a notice of deficiency or similar notice, or any other notice, determination or decision, in each case, to the effect that the interest payable on the County Loan or any portion thereof does not qualify as Exempt Interest, or (ii) a court of competent jurisdiction has rendered any final ruling or decision to the effect that the interest payable on the County Loan or any portion thereof does not qualify as Exempt Interest;

(b) the date when the County files any statement, supplemental statement, or other tax schedule, return or document, which is in any respect inconsistent with interest payable on the County Loan or any portion thereof continuing to qualify as Exempt Interest;

(c) the date of any sale, lease or other deliberate action within the meaning of Treas. Reg. § 1.141-2(d), if prior to such action the County and the Lender have not received an unqualified opinion of Determination Counsel to the effect that such action will not cause interest on the County Loan to become includable in the gross income of the recipient for federal income tax purposes; or

(d) (i) the date that circumstances relating to the County or the Project or any portion thereof have occurred or changed, or any federal tax law or regulation, or any public or private final ruling, technical advice memorandum or any other written communication by the Internal Revenue Service is adopted or issued, or any final ruling or decision of a court of competent jurisdiction is rendered or any other set of circumstances has occurred, in any such case, which may adversely affect the excludability of the Exempt Interest from the gross income of the recipient for federal income tax purposes; and thereafter (ii) Determination Counsel is notified by the Lender in writing, with a copy to the County, or by the County, with a copy to the Lender, that Determination Counsel is requested to deliver an updated approving tax-exempt opinion in form and substance acceptable to the Lender in its sole discretion (“*Approving Opinion*”) during the 45-day period after receipt of the request and is assured as to the payment of its fees and expenses for such services; and (iii) within 45 days after such notice has been received by Determination Counsel, either (A) the Lender and the County

have received written communication from Determination Counsel to the effect that, based upon an analysis of the facts and applicable law, it is unable to render an updated Approving Opinion, or (B) Determination Counsel has not delivered an Approving Opinion.

“*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 advance funds hereunder.

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

“*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.

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

*“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.

*“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.

*“Governmental Approvals”* means an authorization, consent, approval, permit, license or exemptions of, registration or filing with, or report to, any Governmental Authority.

*“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.

*“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 any rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap, credit default swap or any other similar transaction (including any option with respect to any of these transactions) and any other agreement or option involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided, however*, that any reference in this Agreement to a Hedge Agreement shall be limited to only those Hedge Agreements that are payable from, or secured by, Sales Tax Revenues.

*“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.



*“Intergovernmental Agreement”* means the Intergovernmental Agreement, dated as of July 1, 2014, 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 each November 1 and May 1, commencing November 1, 2014, and the first to occur of the date the County Loan is prepaid and the Maturity Date.

*“Interest Rate”* means and shall be the per annum rate of interest equal to (a) with respect to the Undrawn Amount, thirty-eight (38) basis points (0.38%), (b) except as provided in clause (a), (c) or (d) of this definition, the LIBOR Rate, (c) from and after the occurrence of a Determination of Taxability, the Taxable Rate, and (d) from and after the earlier of (i) the date amounts are owed hereunder but are not paid when due and (ii) after the occurrence and during the continuance of an Event of Default, the Default Rate; *provided*, that, if at any time more than one of the foregoing specified interest rates would by their terms apply, *“Interest Rate”* shall mean and be equal to the highest such rate.

*“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.

*“LIBOR Index”* means the one-month LIBOR rate quoted by the Lender from Reuters Screen LIBOR01 Page or any successor thereto, which shall be that one-month LIBOR rate in effect two New York Banking Days prior to the LIBOR Rate Reset Date, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation, such rate rounded up to the nearest one-sixteenth percent and such rate to be reset monthly on each LIBOR Rate Reset Date. The Lender’s internal records of applicable interest rates shall be determinative in the absence of manifest error.

*“LIBOR Rate”* means a per annum rate of interest equal to (a) 0.50% per annum *plus* (b) the product of the LIBOR Index multiplied by 0.75%.

*“LIBOR Rate Reset Date”* means the first calendar day of each month; *provided, however*, that with respect to determining the LIBOR Rate for purposes of the Closing Date, the LIBOR Rate shall be the LIBOR Rate in effect two New York Banking Days prior to the Closing Date.

*“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.

*“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, (iv) the rights of or benefits available to 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 or (v) the exclusion of interest on the County Loan from gross income for purposes of Federal income taxation or the exemption of such interest from State personal income taxes,

*“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, (iv) the rights of or benefits available to 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 or (v) the exclusion of interest on the County Loan from gross income for purposes of Federal income taxation or the exemption of such interest from State personal income taxes.

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

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

*“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 [ ], 2017, as such date may be extended in accordance with the provisions hereof.

*“Maximum Interest Rate”* means the lesser of (a) 25% per annum and (b) the Maximum Lawful Rate.

*“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.

“*New York Banking Day*” means any day (other than a Saturday or Sunday) on which commercial banks are open for business in New York, New York.

“*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).

“*Payments*” means all payments of principal and interest at the Interest Rate on the County Loan, 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 natural or legal person, county, city, municipality, public benefit corporation, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“*Project*” has the meaning assigned to such term in the County Resolution.

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

“*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.

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

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

“*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.

“*Sales Tax Law*” means [STATUTORY CITATION TO BE PROVIDED], 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 Loan will not be includible in the gross income of the holders thereof for federal and State income tax purposes, (b) tax compliance agreement, arbitrage certificate or IRS Form 8038-G and (c) a transcript of proceedings relating to the County Loan and the execution and delivery of this Agreement.

“*Taxable Period*” means the period in which interest on the County Note is includable in the gross income of the Lender or a Participant beginning from and including the date when a Determination of Taxability first occurs through and including the first to occur of (a) the date when said Determination of Taxability has been cured (to the reasonable satisfaction of the Lender) and (b) the County Loan and all Required Payments have been paid in full.

“*Taxable Rate*” means, from and after the occurrence of a Determination of Taxability, a an interest rate per annum at all times equal to the product of the LIBOR Rate multiplied 1.54.

“*Taxes*” has the meaning assigned to such term in Section 2.08(b).

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

“*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.

*“Undrawn Amount”* has the meaning assigned to such term in Section 2.01(b).

**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 Loan 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 Loan 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) 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. The difference between the Loan Amount and the amounts drawn down from time to time by the County is the “*Undrawn Amount*.” 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 Loan, as and when drawn, solely to finance the Project and the costs of closing of the County Loan.

**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 Loan at the Interest Rate 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 Loan on the first to occur of (i) the Maturity Date and (ii) the date that the proceeds of bonds issued to repay the County Loan 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 Loan and all Required Payments hereunder will become due and payable immediately.

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.** (a) The principal amount of the County Loan (including the Undrawn Amount) shall bear interest at the Interest Rate from time to time in effect. Interest on the County Loan (including the Undrawn Amount) shall be computed on the basis of a year of 360 days and twelve 30-day months.

(b) Notwithstanding the foregoing provisions of this Section 2.04, if any principal of or interest on the County Loan or any fee or other amount payable by the County hereunder or under the County Loan is not paid when due, whether at stated maturity, upon required prepayment, acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to the Default Rate.

(c) The Taxable Rate determined on the date when a Determination of Taxability has been made will be effective (and interest shall accrue for such period) from and including the first day of each calendar month through and including the last day of such month regardless of whether any such day is a Business Day; *provided*, that the initial Taxable Rate shall be effective from the beginning of the Taxable Period (and interest shall accrue for such

period) to and including the last day of that month. Interest at the Taxable Rate shall be computed on the basis set forth in Section 2.04(a) hereof.

(d) 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.

(e) With respect to the Taxable Rate, the applicable LIBOR Rate shall be determined by the Lender, and such determination shall be conclusive and binding absent manifest error. In addition to the foregoing, in the event of the occurrence of a Determination of Taxability, the County shall pay to the Lender a tax gross-up within thirty (30) days after such occurrence by paying the amount to the Lender, calculated based on the outstanding amount of the County Loan for such period, by which (x) the Taxable Rate multiplied by the principal amount of the County Loan exceeds (y) the Interest Rate actually paid on the County Loan multiplied by the principal amount of the County Loan, for the period from the Date of Taxability until the date the County begins paying current interest on the County Loan at the Taxable Rate.

(f) No later than the second Business Day immediately [*preceding each Interest Payment Date*][**NB – USBANK OPERATIONS DEPARTMENT IS REVIEWING THE BRACKETED LANGUAGE**], 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) *Termination.* If the County Loan is terminated by the County in its entirety prior to the first anniversary of the Closing Date (the date of termination being referred to herein as the “*Termination Date*”), the County agrees to pay, or cause to be paid, on or prior to the Termination Date, to the Lender all Payments and other Required Payments that would have been payable hereunder through and including the first anniversary of the Closing Date, calculated on the basis of the Loan Amount in effect on the Closing Date, less all Payments and other Required Payments made to, but not including, the Termination Date. From and after the first anniversary of the Closing Date, the County may terminate the County Loan without penalty.

(b) *Reduction.* If the County Loan is reduced by the County prior to the first anniversary of the Closing Date (each date of reduction being referred to herein as the “*Reduction Date*”), the County agrees to pay, or cause to be paid, on or prior to the Reduction Date, to the Lender the accrued but unpaid Payments and other Required Payments due with respect to that portion of the Loan Amount being reduced on the Reduction Date that would have been payable hereunder through and including the first anniversary of the Closing Date, calculated on the basis of the Loan Amount in effect on the Closing Date, less all Payments and other Required Payments attributable to the portion of the Loan Amount being reduced that have

been made to, but not including, the Reduction Date. From and after the first anniversary of the Closing Date, the County may reduce the County Loan without penalty.

(c) *Notice of Termination or Reduction.* The County shall notify the Lender in writing of any prepayment of the County Loan 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 Loan or portion thereof to be prepaid. On such Termination Date or Reduction Date, 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.** 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 Loan 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: **[USB TO PROVIDE WIRING INSTRUCTIONS FOR PAYMENTS UNDER THIS AGREEMENT]**, Attn: **[USB TO PROVIDE CONTACT NAME]**; 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 \$30,000. 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 ten (10) 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 Yield Protection.**

(a) If any Lender or any Participant shall have determined that the adoption or implementation of, or any change in, any law, rule, treaty, regulation, policy, guideline, supervisory standard or directive of, or any change in the interpretation, implementation, or administration thereof by, any Governmental Authority (in each case, whether or not having the force of law), or compliance by any Lender or any Participant with any request by or directive of any Governmental Authority (in each case, whether or not having the force of law) including but not limited to, any such law, rule, regulation, policy, guideline, standard, directive, interpretation or application implementing, invoking or in any way related to any provision (as now or hereafter amended) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (or any other statute referred to therein or amended thereby) or any rules, guidelines, standards, policies, regulations, or directives promulgated by the Basel Committee on Banking Supervision or the Bank for International Settlements (BIS) (or any successor or similar organizations), shall (i) change the basis of taxation of payments to the Lender or such Participant of any amounts payable hereunder (except for taxes on the overall net income of the Lender or such Participant), (ii) impose, modify or deem applicable any reserve, liquidity, special deposit, insurance premium, fee, financial charge, monetary burden or similar requirement against funding or maintaining the County Loan, or complying with any term of this Agreement, or against assets held by, or deposits with or for the account of, the Lender or such Participant or (iii) impose on the Lender or such Participant any other condition, expense or cost regarding this Agreement or the County Loan, and the result of any event referred to in clause (i), (ii) or (iii) above shall be to

increase the cost to the Lender or such Participant of funding or maintaining the County Loan or complying with any term of this Agreement or to reduce the amount of any sum received or receivable by the Lender or such Participant hereunder, then, upon demand by the Lender, the County shall pay to the Lender for its own account, or for the account of such Participant, as applicable, such additional amount or amounts as will compensate the Lender or such Participant for such increased costs or reductions in amount.

(b) If the Lender or any Participant shall have determined that the adoption or implementation of, or any change in, any law, rule, treaty, regulation, policy, guideline, supervisory standard or directive of, or any change in the interpretation, implementation, or administration thereof by, any Governmental Authority (in each case, whether or not having the force of law), or compliance by the Lender or any Participant with any request by or directive of any Governmental Authority (in each case, whether or not having the force of law) including, but not limited to, any such law, rule, regulation, policy, guideline, standard, directive, interpretation or application implementing, invoking or in any way related to any provision (as now or hereafter amended) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (or any other statute referred to therein or amended thereby) or any rules, guidelines, standards, or directives promulgated by the Basel Committee on Banking Supervision or the BIS (or any successor or similar organization), shall impose, modify or deem applicable any capital (including, but not limited to, contingent capital) adequacy, reserve, insurance, liquidity or similar requirement (including, without limitation, a request or requirement that affects the manner in which the Lender or any Participant allocates capital resources or reserves to its commitments) that either (i) affects or would affect the amount of capital or reserves to be maintained by such Lender or such Participant or (ii) reduces or would reduce the rate of return on the Lender's or such Participant's capital or reserves to a level below that which the Lender or such Participant could have achieved but for such circumstances (taking into consideration the policies of the Lender or such Participant with respect to capital adequacy or the maintenance of reserves) then, upon demand by the Lender, the County shall pay to the Lender for its own account, or for the account of such Participant, as applicable, such additional amount or amounts as will compensate the Lender or such Participant for such event.

All payments of amounts referred to in clauses (a) and (b) above shall be paid by the County to the Lender within five (5) Business Days of such demand. A certificate as to such increased cost, increased capital or reduction in return incurred by the Lender or any Participant as a result of any event mentioned in clause (a) or (b) of this subsection setting forth, in reasonable detail, the basis for calculation and the amount of such calculation shall be submitted by the Lender to the County simultaneously with such demand for payment and shall be conclusive as to the amount thereof absent manifest error. In making the determinations contemplated by the above-referenced certificate, the Lender or Participant may make such reasonable estimates, assumptions, allocations and the like that the Lender or Participant in good faith determines to be appropriate.

The obligations of the County under this Section shall survive the termination of this Agreement and repayment of the Required Payments.

**Section 2.10 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 2.11 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 2.12 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 LIBOR Rate 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 2.13 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.

### 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 and the other Related Documents to which the County is a party each constitute a valid, binding and enforceable obligation of the County, subject to applicable laws affecting creditors' rights generally.

(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 with respect to the County's business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects.

(e) Except as disclosed in writing to the Lender, 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 materially adversely affect the County's or the City's business, assets, liabilities,

condition (financial or otherwise), results of operations or business prospects, or (ii) that could reasonably be expected to have a Material Adverse Effect (any such action, suit or proceeding being referred to herein as "*Material Litigation*").

(f) The County does not enjoy any defense on the grounds of immunity (sovereign or otherwise) with respect to its obligations under this Agreement or the other Related Documents to which it is a party.

(g) As of the Closing Date, 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 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 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. Except as otherwise described in Attachment 2 hereto, the County has not pledged or granted a Lien, security interest or other encumbrance of any kind on the County STR. **[COUNTY – PLEASE CONFIRM ATTACHMENT 2 INFORMATION.]**

(l) The balance sheet of the County as of December 31, 2013, 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, 2013, 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, 2013, 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 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 Federal government or the State.

## ARTICLE 4

### CONDITIONS

**Section 4.01 Conditions Precedent to Closing Date.** The obligation of the Lender to make the County Loan in the Loan Amount to the County 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 Loan 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 in and Lien upon 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 [Mr. Shockley], 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 Loan 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 [Mr. Johnson, Mr. Tietz or some combination of the foregoing], 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 first 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 [ ] 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 agreement, 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](http://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 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 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 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 Loan is 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 Loan, 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.

## 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 in the aggregate in excess of \$100,000,000 which is secured on parity with, or senior to, the Lien on 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, unless such Indebtedness is issued to repay the County Loan.

**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.



## 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 (i) any interest, when due, on the County Loan, (ii) the principal amount of the County Loan on the Maturity Date or (iii) the principal of, or interest on, any Parity Obligation when and as the same shall become due and payable;

(b) the County shall fail to pay any Required Payments (other than an amount referred to in clause (a) of this Section) payable under this Agreement or the County Loan when and as the same shall become due and payable;

(c) any representation or warranty made by the County in this Agreement, in any other Related Document or in any certificate, financial or other statement furnished by or on behalf of the County pursuant to this Agreement or any of the other Related Documents is inaccurate or incomplete in any material respect when made or deemed to have been made;

(d) the County shall fail to observe or perform any covenant, condition or agreement contained in any of Sections 5.08, 5.09, 5.12, 6.01, 6.02, 6.05, 6.06, 6.07 and 6.09 hereof;

(e) the County shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Section 7.01), and such failure shall continue unremedied for a period of ten (10) Business Days after notice thereof from the Lender to the County;

(f) the County and the City, whether acting individually or jointly, (i) incur Indebtedness that is secured on parity with, or senior to, the Lien on Sales Tax Revenues provided to the Lender hereunder and under the other Related Documents, (ii) issue Parity Obligations or (iii) incur such Indebtedness and issue Parity Obligations that, in the aggregate, exceeds \$100,000,000 in principal amount on or prior to the date when the Required Payments hereunder are paid in full without the written consent of the Lender, which consent shall not be required if the incurrence of such Indebtedness, issuance of such Parity Obligations or both, in excess of \$100,000,000 is done to repay the Required Payments in full;

(g) the occurrence and continuation of an event of default under (and as defined in) any of the Related Documents other than this Agreement;

(h) the occurrence of an Event of Insolvency with respect to the County or the City;

(i) one or more final, non-appealable judgments or orders for the payment of money in excess of \$1,000,000 in the aggregate, payable, whether in whole or in part, from Sales Tax Revenues shall be rendered against the County, the City or both and (i) such judgment or order shall continue unsatisfied, unbonded and unstayed for a period of thirty (30) days, (ii) in the reasonable judgment of the Lender, neither adequate cash reserves have been established nor sufficient proceeds from an existing policy of insurance are available and (iii) the Lender has concluded that such judgment or order could reasonably be expected to have a Material Adverse Effect;

(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) this Agreement, any other Related Document or any Material Provision of the foregoing shall cease to be valid and binding on the County or the City, or a Governmental Authority with jurisdiction to rule on the validity of this Agreement or any other Related Document shall so find, announce or rule, or the County or the City, or any Person on its or on their behalf, shall (i) contest any Material Provision, (ii) deny that it has any further liability under any Material Provision or (iii) seek an adjudication that (y) this Agreement or (z) any provision of any other Related Document relating to, or the absence or invalidity of which could adversely affect, any Material Provision or the Payments or the Required Payments hereunder, the County's ability to pay the County Loan and the Payments or the Required Payments or perform its obligations hereunder or the rights and remedies of the Lender, is not valid and binding on the County or the City, as applicable;

(l) (i) failure by the County or the City to make any payment (whether of principal, purchase price, interest or other amount) due in respect of (x) any Indebtedness owed to the Lender or any of its Affiliates or (y) any other Indebtedness which has an aggregate outstanding principal amount in excess of \$1,000,000 (measured in the case of any Hedge Agreement, by the County's or the City's Exposure thereunder), in any such case, as and when the same shall become due, subject to any applicable notice or grace period; or (ii) the occurrence or existence of a default or event of default (other than a payment default) or other similar condition by or on the part of the County or the City under any Contract evidencing, issuing, securing or relating to any such Indebtedness and continuance of such default or event of default or similar condition beyond the period of grace, if any, allowed with respect thereto, which results in such Indebtedness becoming, or being capable of becoming, due and payable prior to its scheduled maturity and regardless of whether any such right is exercised (or, with respect to any Hedge Agreement, an event which results in such Hedge Agreement being terminated early or being capable of being terminated early, other than in the case of an optional termination exercised by the County or the City and without liability for payment by the County or the City of any Settlement Amount);

(m) any legislation is enacted, repealed, reenacted, amended or otherwise modified, and such repeal, enactment, reenactment, amendment or modification, in the

opinion of the Lender, has, or could in the reasonable judgment of the Lender have, a Material Adverse Effect;

(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) the City grants to or permits the holder of Indebtedness secured by the City STR the remedy of acceleration with respect to such Indebtedness that is not available to the Lender hereunder;

(p) the occurrence of a Determination of Taxability; or

(q) any event occurs (other than the exercise of an optional call or optional tender right by the holder thereof in the absence of a default or event of default) or condition exists that results in any Parity Obligation becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time, or both) the exercise by any holder, or any trustee or agent on its or their behalf, of any right to accelerate any Parity Obligation or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity.

**Section 7.02 Remedies.** If an Event of Default occurs and is continuing, the Lender may, in its sole discretion:

(a) at any time thereafter during the continuance of such Event of Default (subject however to Section 2.13 hereof), by notice to the County, declare the County Loan to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the County Loan so declared to be due and payable, together with accrued interest thereon and all Required Payments of the County accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the County; and

(b) exercise any and all rights and remedies granted at law or in equity including, without limitation, the right to (i) cure any default, event of default or event of nonperformance under this Agreement or under any of the other Related Documents (in which event, the County shall reimburse the Lender therefor pursuant to Section 2.10 hereof), (ii) proceed to protect the rights of the Lender by suit in equity, action at law or other appropriate proceedings, whether for specific performance of any covenant or agreement of the County herein contained or in the exercise of any power or remedy

granted to the Lender under any of the other Related Documents, or (iii) exercise any other rights or remedies available to it under any Related Document, any other agreement or instrument or at law or in equity.

**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; if to the County, at:

**[ADDRESS TO BE PROVIDED]**  
Attention: **[TO BE PROVIDED]**  
Telephone: **[TO BE PROVIDED]**  
Facsimile: **[TO BE PROVIDED]**

or if to the Lender, addressed to it at:

For Administrative Matters:

U.S. Bank National Association  
St. Paul, Minnesota  
Attention: Sue Moses, VP Debt Finance Manager  
Telephone: (651) 466-8601  
Facsimile: **[TO BE PROVIDED]**

For Credit Matters:

U.S. Bank National Association  
777 E Wisconsin Ave

Mail Code: MK-WI-T5GB

Milwaukee, WI 53202

Attention: Joshua Christiansen, VP Debt Finance Manager  
Telephone: (414) 765-6439  
Facsimile: (414) 765-6020

(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 to 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.

**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: Ken Pawluk  
Title: Chairman

ATTEST:

By: \_\_\_\_\_  
Name: Michael Montplaisir  
Title: County Auditor

[Signatures continued on following page]

[Signature page to Loan Agreement]

**U.S. BANK NATIONAL ASSOCIATION,**  
as Lender

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

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

MATURITY DATE

July [ ], 2017

DATED DATE

July [ ], 2014

Cass County, North Dakota (including its successors and assigns, the "County"), for value received, hereby promises to pay to the order of U.S. Bank National Association (including its successors and assigns, the "Lender"), or registered assigns, the aggregate unpaid amount of principal of and interest on draws made by the Lender from time to time pursuant to that certain Loan Agreement, dated as of July 1, 2014, by and between the County and the Lender (as amended and supplemented from time to time, the "Agreement") on the final maturity date shown above (the "Maturity Date") and to pay interest on the unpaid amount of such draws on the dates and at the rates specified in the Agreement. Principal of this County Note shall be paid by the County on the Maturity Date, except as otherwise provided in the Agreement. All payments of principal and interest on this County Note shall be made in lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts, in immediately available funds to the Lender to the credit of the account specified in the Agreement or such other account as the Lender may from time to time designate in writing.

This County Note evidences the obligation of the County to repay draws made by the Lender pursuant to the Agreement in an aggregate maturing amount, not exceeding the Loan Amount (as such term is defined in the Agreement), as at any one time outstanding, together with interest thereon, under and pursuant to and in full compliance with the Constitution and laws of the State of North Dakota including, particularly, the Act, and pursuant to the County Resolution, (as such term is defined in the Agreement). This County Note is issued for the purpose of financing a portion of the costs of the Project. Capitalized terms used herein and not otherwise defined have the meaning given to such terms in the Agreement.

The County hereby authorizes the Lender to make appropriate notations on the Schedule 1 attached hereto of all draws evidenced hereby and all principal payments and prepayments made hereunder and of the date to which interest hereon has been paid; *provided, however*, that the Lender's failure to make any such notation shall not affect the obligations of the County to pay the full amount of the principal of and interest on all draws.

Notwithstanding any provision of this Note to the contrary, all obligations of the County hereunder 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 this Note shall not 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 under the Agreement. 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 and under the Agreement. This Note shall not constitute a general obligation of the County and is not 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 on such other sales taxes. Nothing herein shall constitute a pledge of the County of any taxes or other moneys, other than the County STR, to the payment of any amounts coming due hereunder.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this County Note is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this County Note to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the County or to have happened precedent to or in the execution and delivery of the Agreement have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the County has caused this County Note to be duly executed in its name by the manual or facsimile signature of its [\_\_\_\_\_] and attested by the manual or facsimile signature of its [\_\_\_\_\_] and its seal affixed hereto or imprinted hereon, all as of the Dated Date above.

(SEAL)

**CASS COUNTY, NORTH DAKOTA**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 1**

<u>Date</u>	<u>Amount of Draw Made</u>	<u>Amount of Principal Paid</u>	<u>Date to Which Interest Paid</u>
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**ATTACHMENT 1**  
**FORM OF DRAW NOTICE**

[Letterhead of Cass County, North Dakota]

[Date]

U.S. Bank National Association  
**[ADDRESS TO BE PROVIDED]**  
Attention: **[TO BE PROVIDED]**

Dear Sir/Madam:

Re: Request for Draw under Loan Agreement, dated as of July 1, 2014, by and between Cass County, North Dakota and U.S. Bank National Association - Request

The undersigned, on behalf of the 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 \$[\_\_\_\_\_]): \_\_\_\_\_  
**[TBD – THE MINIMUM AMOUNT OF ANY DRAW.]**

Date of Draw (not less than 5 Business Days from date hereof: \_\_\_\_\_  
**[TBD – A LIMITATION ON FREQUENCY OF DRAW REQUESTS DURING A CALENDAR WEEK/CALENDAR MONTH.]**

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 agreement, 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 following account:

**[CASS COUNTY TO PROVIDE NAME OF BANK, ETC.]**

ABA/Routing #: **[TEXT TO COME]**

Swift code: **[TEXT TO COME]**

Credit to the account of the Cass County, North Dakota

Account number: **[TEXT TO COME]**

Attn: **[TEXT TO COME]**

Phone: **[TEXT TO COME]**

Email: **[TEXT TO COME]**

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**

**[COUNTY TO CONFIRM THERE ARE NONE]**