



Auditor

Michael Montplaisir, CPA
701-241-5600
montplaisirm@casscountynynd.gov

M E M O

TO: Cass County Commission
FROM: Michael Montplaisir
DATE: July 10, 2017
RE: Resolution on Diversion Financing

The City of Fargo and Cass County each have two \$50M loans through Wells Fargo. A \$50M loan for each are due on July 31, 2017 and the other \$50M loan for each are due July 31, 2018. We pay interest on these loans monthly based on a variable rate established by the London Interbank Offered Rate (LIBOR). Our current arrangement for the loans due in 2017 are 70% of the LIBOR plus 50 basis points (.50%) adjusted monthly and for the loans due in 2018 70% of the LIBOR plus 60 basis points.

The county has drawn down both of the \$50M loans fully, and the city still has \$49.75M available to draw down on the loan due in 2018. The city pays an undrawn fee, which is basically a fee to have the loan available to draw with a short notice. The fee is 30 basis points on the undrawn balance.

Our recommended proposal is to refinance all four loans so that both the county and city have one loan each for \$100M and to extend the term on the loans to July 31, 2019. We looked at both fixed and variable options for the extension and are recommending that we continue with a variable rate for the next two years on these short-term loans. The proposal we are working with right now continues with 70% of the LIBOR rate with the add-on rate being down to 45 basis points and the undrawn fee down to 15 basis points. We are, of course, concerned about interest rate risk, while the variable rate protects us should rates go down, it does not protect us if interest rates rise unexpectedly. We will consider issuing some longer term fixed rate debt later this year should we need additional funds. This debt would probably be backed by special assessments and would lock in these historically low rates for a longer term.

Both the Finance Committee and the Governing Board of the Diversion Authority will consider a resolution approving the refinancing of these loans this week. The actual debt is issued by the city and the county but, of course, the interest payments will come from the Diversion Authority through the city and county sales taxes.

SUGGESTED MOTION:

Move to adopt Resolution #2017-8, Authorizing Loan from Wells Fargo Bank, N.A., to Cass County, North Dakota; and Consenting to Loan Agreement Between Wells Fargo Bank, N.A., and the City of Fargo, North Dakota.

SUGGESTED MOTION:

Move to approve and authorize the chairman to sign the updated Intergovernmental Agreement between the City of Fargo and Cass County regarding financing for the Metro Flood Diversion project.

PO Box 2806
211 Ninth Street South
Fargo, North Dakota 58108

www.casscountynynd.gov

RESOLUTION #2017-8

Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION AUTHORIZING LOAN FROM WELLS FARGO BANK, N.A., TO CASS COUNTY, NORTH DAKOTA; AND CONSENTING TO LOAN AGREEMENT BETWEEN WELLS FARGO BANK, N.A., AND THE CITY OF FARGO, NORTH DAKOTA

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

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

WHEREAS; the City and the County entered into an Intergovernmental Agreement, dated as of July 1, 2014 (the “Original Intergovernmental Agreement”), a Supplemental Intergovernmental Agreement, dated as of May 1, 2015, (the “Supplemental Intergovernmental Agreement”), a Intergovernmental Agreement (Series 2016), dated as of September 1, 2016 (the “Intergovernmental Agreement Series 2016,”) and an Intergovernmental Agreement (Series 2017), dated as of July 1, 2017 (the “Intergovernmental Agreement Series 2017,”) together with the Original Intergovernmental Agreement and the Supplemental Intergovernmental Agreement, the “Intergovernmental Agreement”), relating to Series B Interim Debt Obligation, the pledge by the County of ninety-one percent (91%) of the proceeds generated by the one-half percent (1/2%) sales and use tax imposed by Ordinance No. 2010-2 of the County, (the “County 2010-2 Sales Tax”) to the repayment of the Series B Interim Debt Obligation, and the pledge of the City of one hundred percent (100%) of the proceeds generated by the one-half percent (1/2%) sales and use

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

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

³ The Series B Interim Debt Obligation consists of the County 2016 Additional Loan, City 2016 Additional Loan, County 2016 Refund Loan, and City 2016 Refund Loan, collectively from Wells Fargo and in the principal amount of two hundred million dollars (\$200,000,000).

tax imposed by Article 3-21 of the Fargo Municipal Code (the “City 3-21 Sales Tax”) to the repayment of the Series B Interim Debt Obligation; and

WHEREAS, in 2016, the Diversion Authority, the County, and the City requested proposals for tax-exempt direct funded loans or draw-down lines of credit from multiple institutions, including Wells Fargo Bank, National Association (“Wells Fargo”); and

WHEREAS, the Diversion Authority, the County, and the City determined that the proposal of Wells Fargo was the lowest cost alternative; and

WHEREAS, the County entered into a Loan Agreement, dated as of September 1, 2016 (the “County 2016 Additional Loan Agreement”) for an initial loan from Wells Fargo in the maximum principal amount of \$50,000,000 (the “County 2016 Additional Loan”) as part of the Series B Interim Debt Obligation; and

WHEREAS, the County additionally entered into a Temporary Sales Tax Revenue Note Purchase Agreement with Wells Fargo (the “County 2016 Refund Loan Agreement”) and issued a Temporary Sales Tax Revenue Note of 2016 (the “County 2016 Refund Loan”) to Wells Fargo, in the principal amount of \$50,000,000, as part of the Series B Interim Debt Obligation; and

WHEREAS, the City entered into a Loan Agreement, dated as of September 1, 2016 (the “City 2016 Additional Loan Agreement”), for an initial loan from Wells Fargo in the maximum principal amount of \$50,000,000 (the “City 2016 Additional Loan”), as part of Series B Interim Debt Obligation; and

WHEREAS, the City additionally entered into a Temporary Sales Tax Revenue Note Purchase Agreement with Wells Fargo (the “City 2016 Refund Loan Agreement”) and issued a Temporary Sales Tax Revenue Note of 2016 (the “City 2016 Refund Loan”) to Wells Fargo, in the principal amount of \$50,000,000, as part of the Series B Interim Debt Obligation; and

WHEREAS, the County and the City desire to prepay the County 2016 Additional Loan, the City 2016 Additional Loan, the County 2016 Refund Loan, and the City 2017 Refund Loan by borrowing \$200,000,000 from Wells Fargo, secured by the City 3-21 Sales Tax and the County 2010-2 Sales Tax, as applicable; and

WHEREAS, the County and the City have determined that the County will be the borrower of \$100,000,000 from Wells Fargo to prepay the County 2016 Additional Loan and the County 2016 Refund Loan, which loan (the “County 2017 Loan”) constitutes a part of the Series C Interim Debt Obligation secured by a first lien on the County 2010-2 Sales Tax and a subordinate lien on the City 3-21 Sales Tax; and

WHEREAS, the County and the City have determined that the City will be the borrower of \$100,000,000 from Wells Fargo to prepay the City 2016 Additional Loan and the City 2016 Refund Loan, which loan (the “City 2017 Loan”) constitutes a part of the Series C Interim Debt Obligation secured by a first lien on the City 3-21 Sales Tax and a subordinate lien on the County 2010-2 Sales Tax⁴; and

⁴ The County 2017 Loan and the City 2017 Loan are collectively referred to as the Series C Interim Debt Obligation.

WHEREAS, the County and the City have received proposals and terms from Wells Fargo for the County 2017 Loan and the City 2017 Loan; and

WHEREAS, the County desires to enter into a loan agreement with Wells Fargo for the County 2017 Loan (the “County 2017 Loan Agreement”) and to issue a promissory note (the “County 2017 Note”) to Wells Fargo, in the principal amount of \$100,000,000 and bearing interest at the rate and containing such other terms substantially as set forth in the forms thereof presented to the Board of Commissioners of the County at their meeting on the date hereof; and

WHEREAS, the County has performed all other acts required by the constitution and laws of the State of North Dakota and the County’s home rule charter and ordinances prerequisite to entering into the County 2017 Loan Agreement, and such other documents necessary to effect the loan for the purpose of providing temporary financing to pay the costs of the Project and prepay the County 2016 Additional Loan and the County 2016 Refund Loan; and

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

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

WHEREAS, the County has reviewed the Loan Agreement by and between the City of Fargo, North Dakota, and Wells Fargo, dated as of July 1, 2017, for the City 2017 Loan and approves of the terms and conditions contained within the City 2017 Loan Agreement.

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

Section 1. Ratification and Confirmation. All acts performed, resolutions, motions, or ordinances adopted or passed, and all publications incidental to the construction and financing of the Project, the Original Intergovernmental Agreement, the Supplemental Intergovernmental Agreement, the Intergovernmental Agreement (Series 2017), the County 2016 Additional Loan Agreement and documents relating thereto, the County 2016 Refund Loan Agreement and documents relating thereto, the City 2016 Additional Loan Agreement and documents relating thereto, the City 2016 Refund Loan Agreement and documents relating thereto, the resolution of the County pledging the County 2010-2 Sales Tax and the resolution of the City pledging the City 3-21 Sales Tax, whether or not reflected in the official minutes and records of the County, are hereby ratified and confirmed, and all resolutions and other acts or proceedings of the County which are in any way inconsistent with this Resolution, are hereby amended to the extent necessary to give full force and effect to this Resolution.

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

Section 3. Authorization of 2017 Loan. It is hereby found and determined to be necessary for the County to borrow \$100,000,000 in principal from Wells Fargo, subject to the terms and conditions set forth in the County 2017 Loan Agreement, the County 2017 Note, and the Intergovernmental Agreement (Series 2017). The County is hereby authorized to borrow \$100,000,000 from Wells Fargo, to enter into the County 2017 Loan Agreement, to issue the County 2017 Note, and to pledge the County 2010-2 Sales Tax to the payment of, and as security for, the County 2017 Loan. The County is hereby authorized to pledge the County 2010-2 Sales Tax on a subordinate basis and in accordance with the Intergovernmental Agreement (Series 2017) to the payment of and as a subordinate security for the City 2017 Loan for the purpose of providing financing for the costs of the Project. The County is further authorized to pledge the County 2010-2 Sales Tax on a subordinate basis in accordance with the Intergovernmental Agreement (Series 2016) to the cross-reimbursement obligation of the County as set forth in Section 7.05, subsection (b) of the Intergovernmental Agreement (Series 2016). The pledge of the County 2010-2 Sales Tax to the cross-reimbursement obligation of the County shall be subordinate to the pledge and subordinate pledge of County 2010-2 Sales Tax for the County 2017 Loan and the City 2017 Loan.

Section 4. Approval and Consent of Wells Fargo Loan. The County hereby consents and approves of the City borrowing \$100,000,000 from Wells Fargo for the City 2017 Loan secured by and payable solely from ninety-one percent (91%) of the pledged County 2010-2 Sales Tax and one hundred percent (100%) of the City 3-21 Sales Tax, with interest payable at that variable rate set forth in the form of the City 2017 Loan Agreement. The County hereby approves the City entering the City 2017 Loan Agreement with Wells Fargo and issuing the City 2017 Note relating thereto substantially in the forms presented to the County Commission at this meeting, with such changes, additions, or deletions as may be approved by the officers of the County signing such document, the Chairman or Vice Chairman of the Cass County Commission and the Cass County Auditor.

Section 5. Acceptance of Wells Fargo Proposals. The governing body of the County has received proposals from Wells Fargo for the County 2017 Loan Agreement and the City 2017 Loan Agreement, which are hereby found and determined to be reasonable and advantageous and are hereby accepted by the County.

Section 6. Payment of Interest and Fees. The governing body of the County hereby authorizes the payment of any fees and interest associated with the County 2016 Additional Loan, County 2016 Refund Loan and/or County 2017 Loan to be made from any funds on hand in the County 2010-26 Sales Tax fund.

Section 7. Authorization of Documents. The execution and delivery of the County 2017 Loan Agreement, the Intergovernmental Agreement (Series 2017) and the County 2017 Note are hereby approved and authorized to be executed and delivered in substantially the same form presented to the County at this meeting on behalf of its Chair of the Cass County Commission and the Cass County Auditor (the "Authorized Officers"), with such modification as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the County 2017 Loan Agreement and the County 2017 Note and to deliver them to Wells Fargo, which execution and delivery will be conclusive evidence of the approval of any modifications with respect to the County 2017 Loan Agreement and the County 2017 Note.

The Chair of the Cass County Commission and the Cass County Auditor and other officers of the County, are hereby authorized and directed to execute and deliver such other necessary or appropriate agreements, certifications, and other documents in connection with the County 2017 Loan Agreement and the County 2017 Note.

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

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

Section 8. Payment of Principal and Interest. Interest will be payable on the first Business Day of every calendar month and in accordance with the County 2017 Loan Agreement. Principal of the County 2017 Loan will be payable in full no later than the Maturity Date (as defined in the County 2017 Loan Agreement).

Section 9. Use of Loan Proceeds. The proceeds of the County 2017 Loan are irrevocably appropriated to prepay and refund the County 2016 Additional Loan and the County 2016 Refund Loan.

Section 10. Incorporated Terms and Conditions. The terms and conditions of the County 2017 Loan Agreement, the County 2017 Note, and the Intergovernmental Agreement (Series 2016), as amended, including the pledge of Sales and Use Tax Proceeds, are hereby incorporated by reference into this Resolution.

Section 11. Limited Obligation. The County 2017 Loan Agreement, the County 2017 Note, and the Intergovernmental Agreement (Series 2017), as amended, will not constitute a charge, lien, or encumbrance upon any property of the County, and the payment of principal and interest and other amounts due under the County 2017 Loan Agreement, the County 2017 Note, or the Intergovernmental Agreement (Series 2017) will not be a general obligation of the County, but are payable solely from the proceeds of the City 3-21 Sales Tax and the County 2010-2 Sales Tax as set forth in the Intergovernmental Agreement (2017), as amended.

Section 12. Pledge of County 2010-2 Sales Tax. The County hereby pledges, on a subordinate basis, the proceeds generated by the County 2010-2 Sales Tax to the repayment of the City 2017 Loan, including without limitation amounts due on the City 2017 Note, in each case in accordance with the Intergovernmental Agreement (Series 2017), as amended. The pledge of the proceeds generated by the County 2010-2 Sales Tax to the repayment of the City 2017 Loan and the City 2017 Note is subordinate to the pledge of proceeds generated by the County 2010-2 Sales Tax to the repayment of the County 2017 Loan Agreement and the County 2017 Note.

The pledges of the County 2010-2 Sales Tax set forth in the “Resolution Dedicating Cass County Sales and Use Tax,” adopted by the Board of Commissioners of the County of July 31, 2014, and in the Intergovernmental Agreement (Series 2017), are hereby ratified and confirmed and remain in full force and effect until all amounts secured by such pledges have been paid in full. The subordinate pledge of the County 2010-2 Sales Tax set forth in this Section will not constitute a charge, lien, or encumbrance upon the property of the County, and the payment of principal and interest and other amounts due pursuant to this subordinate pledge will not be a general obligation of the County, but are payable solely from the proceeds of the City 3-21 Sales Tax and the County 2010-2 Sales Tax as set forth in the Intergovernmental Agreement (2017), as amended.

Section 13. North Dakota Law Applies. This Resolution and any transactions contemplated herein will be controlled by the laws of the State of North Dakota.

Section 14. This Resolution shall take effect immediately upon adoption.

(Remainder of page intentionally left blank.)

Adopted July 17, 2017.

CASS COUNTY, NORTH DAKOTA

By: _____
Chad M. Peterson, Chair
Board of County Commissioners

ATTEST

Michael Montplaisir, County Auditor

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

**INTERGOVERNMENTAL
AGREEMENT**

(Series 2017)

BY AND BETWEEN

**CASS COUNTY, NORTH DAKOTA
as County**

AND

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

Dated as of July 1, 2017

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

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**INTERGOVERNMENTAL AGREEMENT
(Series 2017)**

This INTERGOVERNMENTAL AGREEMENT (the “Intergovernmental Agreement (Series 2017)”), dated as of July 1, 2017, is made and entered into 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”) and replaces the Intergovernmental Agreement, dated as of September 1, 2016 (the “Intergovernmental Agreement Series 2016”), the Intergovernmental Agreement, dated as of July 1, 2014 (the “Original Intergovernmental Agreement”), and the Supplemental Intergovernmental Agreement, dated as of May 1, 2015 (the “Supplemental Intergovernmental Agreement,” together with the Original Intergovernmental Agreement, the “Prior Intergovernmental Agreement”), by and between the City and the County.

RECITALS

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

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

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

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

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

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

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

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

WHEREAS, the City and the County entered into the Supplemental Intergovernmental Agreement in connection with a loan to the City in the outstanding principal amount of \$50,000,000 (the “U.S. Bank City Loan”) pursuant to that certain Loan Agreement, dated as of May 1, 2015 (as amended, the “U.S. Bank City Loan Agreement”), by and between the City and U.S. Bank and that certain promissory note of the City dated May 29, 2015 (the “U.S. Bank City Note”); and

WHEREAS, the U.S. Bank County Loan and the U.S. Bank City Loan financed a portion of the costs of the Project during the construction period thereof in anticipation of permanent financing and were payable solely from and secured by liens on and pledges of the Pledged Sales Taxes; and

WHEREAS, the City and the County entered into the Intergovernmental Agreement Series 2016 to: (i) obtain financing to refund the U.S. Bank County Loan and the U.S. Bank City Loan by issuing new debt for the Project, (ii) pay a portion of the costs of the Project (as herein defined), and, (iii) pay the costs of issuance associated with such financing; and

WHEREAS, the City and County now wish to enter into this Intergovernmental Agreement (Series 2017) to (i) refund the County Refund Loan, County Additional Loan, City Refund Loan, and part of the City Additional Loan, (ii) pay a portion of the costs of the project, and (iii) pay the costs of issuance associated with such financing; and

WHEREAS, the City and the County have determined to obtain such financing from Wells Fargo Bank, National Association (“Wells Fargo”) by entering into the Wells Fargo Loan Agreements (as herein defined); and

WHEREAS, the City and the County have determined they each will pledge their Pledged Sales Tax toward repayment of the Wells Fargo Loan Agreements and Future Loans (as herein defined) to finance construction costs of the Project during the construction period thereof in anticipation of permanent financing; and

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

WHEREAS, the County and the City have submitted this Intergovernmental Agreement (Series 2017) to the Metro Flood Diversion Authority for its review and comments prior to approval; and

WHEREAS, the Diversion Authority Board has consented to and approved this Intergovernmental Agreement (Series 2017); and

WHEREAS, pursuant to N.D.C.C. § 54-40-1, the County and the City do not intend to create a joint venture pursuant to this Intergovernmental Agreement (Series 2017), and this Intergovernmental Agreement (Series 2017) constitutes a contract between two political subdivisions setting forth their specific rights and obligations with respect to the financing of the costs of the components of the Project and to prepay the U.S. Bank County Loan and the U.S. Bank City Loan as set forth herein, as well as provide security for repayment of the Wells Fargo Loans.

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

ARTICLE I. DEFINITIONS

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

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

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

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

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

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

“City 2017 Loan Agreement” means the loan agreement dated July 1, 2017, by and between Wells Fargo and the City.

“City 2017 Note” means a promissory note dated July 28, 2017, and issued to Wells Fargo pursuant to the City 2017 Loan Agreement.

“City 3-21 Sales Tax” means one hundred percent (100%) of its one-half of one percent (0.5%) sales and use tax of the City, as defined in Article 3-21 of the City Code, that is pledged by the City to repayment of the Payment Obligations and Future Payment Obligations and as security therefor.

“City 3-21 Sales Tax Sunset Date” means December 31, 2084.

“City Additional Loan” means the loan, in addition to the City Refund Loan, of up to an additional \$50,000,000 from Wells Fargo to the City, made pursuant to the City Additional Loan Agreement secured by a first pledge of the City 3-21 Sales Tax and a subordinate pledge of on the County 2010-2 Sales Tax.

“City Additional Loan Agreement” means the Loan Agreement, dated as of September 1, 2016, by and between Wells Fargo and the City, in the principal amount of up to \$50,000,000.

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

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

“City Refund Loan Agreement” means the Temporary Sales Tax Note Purchase Agreement, dated as of September 1, 2016, by and between Wells Fargo and the City, in the principal amount of up to \$50,000,000 from Wells Fargo.

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

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

“Commission” means the Fargo City Commission.

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

“County 2010-2 Sales Tax” means ninety-one percent (91%) of its one-half of one percent (0.5%) sales and use tax of the County, as defined in Cass County Ordinance No. 2010-2, which is pledged by the County to repayment of the Payment Obligations and Future Payment Obligations, and as security therefor.

“County 2010-2 Sunset Date” means December 31, 2084.

“County 2017 Loan Agreement” means the loan agreement dated July 1, 2017, by and between Wells Fargo and the County.

“County 2017 Note” means a promissory note dated July 28, 2017, and issued to Wells Fargo pursuant to the County 2017 Loan Agreement.

“County Additional Loan” means the loan, in addition to the County Refund Loan, of up to an additional \$50,000,000 from Wells Fargo to the County, made pursuant to the County Additional Loan Agreement and secured by a subordinate pledge of the City 3-21 Sales Tax and a first lien on the County 2010-2 Sales Tax.

“County Additional Loan Agreement” means the Loan Agreement, dated as of September 1, 2016, by and between Wells Fargo and the County in the principal amount of up to \$50,000,000.

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

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

“County Refund Loan Agreement” means the Temporary Sales Tax Note Purchase Agreement, dated as of September 1, 2016, by and between Wells Fargo and the City in the principal amount of up to \$50,000,000 from Wells Fargo.

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

“Default” means the occurrence of any non-performance of either Party for which notice has been given and which has not been cured within thirty (30) days (unless waived or the cure period has been extended) as set forth in Section 11.04 hereof.

“Event of Default” has the meaning set forth in the Wells Fargo Loan Agreements.

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

“Effective Date” means July 1, 2017.

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

“Future City Bonds” means bonds issued by the City, whether temporary or long term, to fund or refund costs of the Project payable from proceeds of the Pledged Sales Taxes.

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

“Future County Bonds” means bonds issued by the County, whether temporary or long term, to fund or refund costs of the Project payable from proceeds of the pledged Sales Taxes.

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

“Future Loan Agreements” means loan agreements, note purchase agreements or similar agreements executed in connection with Future Loans.

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

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

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

“Future Notes” means promissory notes or Sales Tax Revenue Notes executed in connection with Future Loans.

“Future Payment Obligations” means all Future Loan Obligations and Future Required Payments on Future Loans.

“Future Required Payments” means all other amounts, charges, costs, fees (including reasonable attorneys’ fees), expenses and sums due to Lenders under Future Loan Agreements and notes, and any other related documents, whether in the form of a direct reimbursement, or indemnity, payment obligation, and including all payment obligations of the City or the County to Lenders arising under any loan agreement or any other document related thereto, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising, and including interest and fees that accrue after the commencement by or against the County or City of any proceeding under any debtor relief laws naming such Person as the debtor in such proceeding (including interest accruing during the pendency of any bankruptcy, insolvency, receivership, or similar proceeding, regardless of whether allowed or allowable in such proceeding), regardless of whether such interest and fees are allowed claims in such proceeding. Future Required Payments does not include Future Loan Obligations.

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

“Governmental Authority” means any national, supra-national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, board, agency, department, county, bureau, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary, or administrative powers or

functions of or pertaining to government, or any arbitrator, mediator, or other person with authority to bind a party at law.

“Intergovernmental Agreement Series 2016” means the Intergovernmental Agreement entered into by and between Cass County and the City of Fargo on September 9, 2016.

“Intergovernmental Agreement (Series 2017)” means this Agreement.

“Intergovernmental Agreement (Series 2017) Effective Date” means July 1, 2017.

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

“Lenders” means Wells Fargo with respect to the Wells Fargo Loans and those institutions, including Wells Fargo, with which the County or the City execute Future Loans.

“Loan Obligations” means all payments of principal of and interest on the Wells Fargo Loans.

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

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

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

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

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

“Payment Obligations” means all Loan Obligations and Required Payments due to Wells Fargo.

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

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

“Pledged Sales Taxes” means the County’s pledge of its County 2010-2 Sales Tax and the City’s pledge of its City 3-21 Sales Tax to secure all amounts due to Wells Fargo under the Wells Fargo Loan Agreements or for any Future Loan, subject to the terms and conditions of the Wells Fargo Loan Agreements.

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

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

“Required Payments” means all other amounts, charges, costs, fees (including reasonable attorneys’ fees), expenses and sums due the Purchaser, or Lender, as applicable under the City Additional Loan Agreement, the City Refund Loan Agreement, the County Additional Loan Agreement, the County Refund Loan Agreement, and the other Related Documents, whether in the form of a direct reimbursement, or indemnity, payment obligation, and including all payment obligations of the County or City, as applicable, to the Purchaser arising thereunder or under any other Related Document or otherwise with respect to the Note, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the County or City, as applicable, of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or similar proceeding, regardless of whether allowed or allowable in such proceeding), regardless of whether such interest and fees are allowed claims in such proceeding. Required Payments does not include Loan Obligations.

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

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

“State” means the State of North Dakota.

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

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

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

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

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

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

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

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

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

“Wells Fargo Loan Agreements” means (i) the City 2017 Loan Agreement and (ii) the County 2017 Loan Agreement.

“Wells Fargo Loans” means the City 2017 Note and the County 2017 Note.

Section 1.02 TERMS GENERALLY. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s permitted successors and assigns, (c) the words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to this Intergovernmental Agreement (Series 2017) in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits, and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules, to this Intergovernmental Agreement (Series 2017), and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

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

**ARTICLE II.
PURPOSE**

Section 2.01 PURPOSE. This Intergovernmental Agreement (Series 2017) is made pursuant to N.D.C.C. § 54-40-1, which authorizes the joint and cooperative exercise of power common to the contracting Parties. The intent of this Intergovernmental Agreement (Series 2017) is to increase efficiencies with respect to financing the Project by allowing the Parties to cross-pledge the County 2010-2 Sales Tax and City 3-21 Sales Tax, as applicable, for the repayment of all Payment Obligations and Future Payment Obligations, and providing funds to pay or to reimburse the County and the City for expenses incurred in connection with the Project.

Section 2.02 NOT A SEPARATE POLITICAL SUBDIVISION. This Intergovernmental Agreement (Series 2017) does not create a joint venture, partnership, or a separate political subdivision. The Parties intend to exercise their common powers through action of their governing bodies.

**ARTICLE III.
TERM**

Section 3.01 INTERGOVERNMENTAL AGREEMENT (SERIES 2017) EFFECTIVE DATE. This Intergovernmental Agreement (Series 2017) will be effective as of the Effective Date.

Section 3.02 TERM. This Intergovernmental Agreement (Series 2017) shall be in full force and effect on the Intergovernmental Agreement (Series 2017) Effective Date, and the Intergovernmental Agreement (Series 2017) shall be for an indefinite term and shall continue until terminated or rescinded in accordance with the terms and conditions of this Intergovernmental Agreement (Series 2017) and the Wells Fargo Loan Agreements or until all Payment Obligations and Future Payment Obligations are satisfied and discharged in full.

Section 3.03 TERMINATION. Prior to the satisfaction and discharge in full of all Payment Obligations and Future Payment Obligations, this Intergovernmental Agreement (Series 2017) may only be terminated by the mutual consent of the County and the City, evidenced by resolutions adopted by the applicable governing body, and with the prior written consent of Wells Fargo, evidenced by appropriate corporate action. Provided, this Intergovernmental Agreement (Series 2017) may not be terminated prior to the retirement of any debt outstanding pursuant to any Wells Fargo Loan Agreements. Any termination will be without prejudice to any obligations or liabilities of any Parties already accrued prior to termination.

**ARTICLE IV.
THIRD PARTY BENEFICIARIES**

Section 4.01 THIRD PARTY BENEFICIARIES. The County and the City expressly agree and acknowledged that this Intergovernmental Agreement (Series 2017) is made for the express benefit of the Lenders. At any time during which Payment Obligations or Future Payment Obligations remain unsatisfied, or at any time County or City is otherwise in breach or default of its respective obligations hereunder. Lenders, including but not limited to Wells Fargo, can

enforce pledge any time. Lenders, including but not limited to Wells Fargo, may enforce the terms and conditions of this Intergovernmental Agreement (Series 2017) including, without limitation, seeking a court order directing that Pledged Sales Taxes be paid directly to Lenders until all unpaid Payment Obligations or Future Payment Obligations are satisfied in full. In addition to the foregoing, Lenders shall have all other rights available to it at law or in equity, and all of the rights and remedies provided hereunder are deemed cumulative and not exclusive of any rights or remedies provided by law or otherwise available to Lenders.

ARTICLE V. AUTHORIZATION FOR FUTURE LOANS

Section 5.01 AUTHORIZATION. The County and the City are hereby authorized to enter into the Wells Fargo Loans, Future Loans and/or Future Bonds subject to Section 5.02 of this Intergovernmental Agreement (Series 2017) and the terms and conditions of the Wells Fargo Loan Agreements.

Section 5.02 CONSENT. Neither the County nor the City will execute and deliver, or extend or modify, the Wells Fargo Loans, any Future Loans and/or Future Bonds without receiving the prior written consent of the other Party and/or Wells Fargo to any future loans, except when such prior written consent is not required pursuant to the terms of the Wells Fargo Loan Agreements.

Section 5.03 FORM OF CONSENT. County and/or City consent to a Future Loan or to the Wells Fargo Loans, and any modifications or extensions thereto, shall be in the form of a resolution. Such consent shall not be unreasonably withheld.

ARTICLE VI. LIMITED OBLIGATIONS

Section 6.01 LIMITED OBLIGATIONS. The Wells Fargo Loan Agreements and Future Loans secured by this Intergovernmental Agreement (Series 2017) are special obligations of the County and the City payable solely from the Pledged Sales Tax and do not constitute a charge, lien, or encumbrance upon any property of the County or the City except for the Pledged Sales Tax. The holder of the Future Notes, and/or Sales Tax Revenue Bonds, or a participation therein, shall not ever have the right to compel any exercise of the general taxing authority of the County or the City to pay Payment Obligations or Future Payment Obligations or to pay any other obligations payable pursuant to the Future Notes and/or issue Sales Tax Revenue Bonds, or any document or agreement related thereto. The Wells Fargo Loans, Future Loans and the obligations in any document or agreement related thereto are not general obligations of the County or the City and are not payable from the general fund or other moneys of the County or City, except Pledged Sales Taxes. The County and the City shall have the right to spend sales tax revenues not necessary for the payment of amounts then due and payable pursuant to the Wells Fargo Loans, Future Loans and the obligations in any document or agreement related thereto on any permitted purpose provided by the ordinances levying such pledged sales taxes.

ARTICLE VII. PLEDGE OF REVENUES

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

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

Section 7.03 SUBORDINATE PLEDGE OF COUNTY 2010-2 SALES TAX. The County hereby dedicates, pledges, and grants a security interest in, on a subordinate basis, ninety-one percent (91%) of the proceeds generated by the County 2010-2 Sales Tax to the repayment of the Payment Obligations on the City Additional Loan, the City Refund Loan and Future City Loans, in accordance with the terms and conditions of the Wells Fargo Loan Agreements. The proceeds of the County 2010-2 Sales Tax may be used by the County for any lawful purpose if no Default or Event of Default has occurred and is continuing under any of the Wells Fargo Loan Agreements and no default exists in the payment of Future Loans when due and payable. Such pledge and dedication shall be irrevocable so long as any Payment Obligations on the City Additional Loan, the City Refund Loan and Future City Loans remains outstanding and unpaid. Provided, the County 2010-2 Sales Tax shall terminate on the County 2010-2 Sales Tax Sunset Date, unless prior to that date the electors of the County vote by simple majority of those voting to extend the tax indefinitely or to a time certain. This dedication and pledge shall be subordinate

to the first and prior lien set forth in Section 7.01 of this Intergovernmental Agreement (Series 2017).

Section 7.04 SUBORDINATE PLEDGE OF CITY 3-21 SALES TAX. The City hereby dedicates, pledges, and grants a security interest in, on a subordinate basis, the proceeds generated by the City 3-21 Sales Tax to the repayment of the Payment Obligations on the County Additional Loan, the County Refund Loan and Future County Loans, in accordance with the terms and conditions of the Wells Fargo Loan Agreements. The proceeds of the City 3-21 Sales Tax may be used by the City for any lawful purpose if no Default or Event of Default has occurred and is continuing under any of the Wells Fargo Loan Agreements and no default exists in the payment of Future Loans when due and payable. Such pledge and dedication shall be irrevocable so long as any Payment Obligations on the County Additional Loan, the County Refund Loan and Future County Loans remains outstanding and unpaid. Provided, the City 3-21 Sales Tax shall terminate on the City 3-21 Sales Tax Sunset Date, unless prior to that date the electors of the City vote by a super majority of sixty percent (60%) of those voting to extend the tax indefinitely or to a time certain. This dedication and pledge shall be subordinate to the first and prior lien set forth in Section 7.02 of this Intergovernmental Agreement (Series 2017).

Section 7.05 SUBORDINATE PLEDGE OF SALES TAX FOR CROSS REIMBURSEMENT.

- (a) **County Pledge.** The County hereby dedicates and pledges for payment of the loan repayment obligation set forth in Section 8.02 of this Intergovernmental Agreement (Series 2017) and the reimbursement obligation set forth in Section 8.04 of this Intergovernmental Agreement (Series 2017) the County 2010-2 Sales Tax proceeds. The proceeds of the County 2010-2 Sales Tax may be used by the County for any lawful purpose if no Default exists in the payment of the Payment Obligations on the City Additional Loan, the City Refund Loan and Future City Loans, when due and payable. Such pledge and dedication shall be irrevocable so long as any Payment Obligations on the City Additional Loan, the City Refund Loan and Future City Loans 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 the County vote by a simple majority of those voting to extend the tax indefinitely or to a time certain. This dedication and pledge shall be subordinate to the liens set forth in Sections 7.01 and 7.03 of this Intergovernmental Agreement (Series 2017). The County shall not reimburse the City until it has satisfied its Payment Obligations on the County Additional Loan, the County Refund Loan, and any future County loans and no Event of Default exists.
- (b) **City Pledge.** The City hereby dedicates and pledges for payment of the loan repayment obligation set forth in Section 8.02 of this Intergovernmental Agreement (Series 2017) and the reimbursement obligation set forth in Section 8.04 of this Intergovernmental Agreement (Series 2017) 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 Payment Obligations on the County Additional Loan, the County Refund Loan and Future County Loans when due and payable. Such pledge and dedication shall be irrevocable so long as

any Payment Obligations on the County Additional Loan, the County Refund Loan and Future County Loans remain outstanding and unpaid. Provided, the City 3-21 Sales Tax shall terminate on the City 3-21 Sales Tax Sunset Date, unless prior to that date, the electors of the City vote by a super majority of sixty percent (60%) of those voting to extend the tax indefinitely or to a time certain. This dedication and pledge shall be subordinate to the liens set forth in Sections 7.02 and 7.04 of this Intergovernmental Agreement (Series 2017). The City shall not reimburse the County until it has satisfied its Payment Obligations on the City Additional Loan, the City Refund Loan, and any future City loans and no Event of Default exists.

ARTICLE VIII. AGREEMENT TO PAY DEBT SERVICE

Section 8.01 ACKNOWLEDGEMENT OF OBLIGATION. The City and the County hereby acknowledge that they are obligated and indebted to each other to pay one-half of the Payment Obligations and Future Payment Obligations.

Section 8.02 PROMISE OF REPAYMENT. The County and the City hereby promise and agree to pay to each other one-half of the Payment Obligations and Future Payment Obligations.

Section 8.03 AUTHORITY FISCAL AGENT. The City, as Fiscal Agent for the Metro Flood Diversion Authority, shall maintain a separate and distinct fund to track all Metro Flood Diversion Authority funds deposited to, and the expenses paid from, the FM Diversion Project Fund as more fully described in Section 9.03 of this Intergovernmental Agreement (Series 2017).

Section 8.04 PAYMENT OF PRINCIPAL AND INTEREST.

a. City Payments. The City shall pay, when due, all payment obligations due under the City 2017 Loan Agreement and City 2017 Note. The City shall then request reimbursement for all payments made pursuant to this subsection from the Metro Flood Diversion Authority's Fiscal Agent.

b. County Payments. The County shall pay, when due, all payment obligations due under the County 2017 Loan Agreement and County 2017 Note. The County shall then request reimbursement for all payments made pursuant to this subsection from the Metro Flood Diversion Authority's Fiscal Agent.

Section 8.05 REIMBURSEMENT OF OVERPAYMENT. In the event that either the City or the County ever pays more than one-half of the Payment Obligations and Future Payment Obligations, the Party incurring the overpayment obligation shall be reimbursed by the other Party. This obligation shall be subordinate and a junior lien to the first and prior liens set forth in Sections 7.01 and 7.02 of this Intergovernmental Agreement (Series 2017). The reimbursement obligations set forth in this Section shall not be satisfied until the party obligated to make the reimbursement has satisfied its Payment Obligations under the Wells Fargo Loans.

ARTICLE IX. OVERSIGHT

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

Section 9.02 DRAWS. The City and the County shall coordinate with the Diversion Finance Committee and determine when to make Draws on Future Loans. Prior to making any Draw, the City and the County shall obtain approval from the Metro Flood Diversion Authority Finance Committee. Proceeds from said Draws shall be deposited in an account and paid out in accordance with Section 9.01 of this Intergovernmental Agreement (Series 2017).

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

Section 9.04 FUNDS OPEN TO INSPECTION. At all times during the term of this Intergovernmental Agreement (Series 2017), both Parties shall make available their financial records with respect to the above-described funds. The Parties agree that cash basis accounting procedures shall govern.

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

ARTICLE X. COVENANTS

Section 10.01 COMPLIANCE WITH COVENANTS. The City and the County agree to comply with any and all covenants contained in the Wells Fargo Loans and Future Loans. The City and the County do hereby covenant and agree that they will fully and properly perform each and all covenants contained and referred to in the Wells Fargo Loans and Future Loans, or extension thereof.

Section 10.02 OWNERSHIP OF PROPERTY ACQUIRED WITH LOAN PROCEEDS. The City and the County agree and acknowledge that, pursuant to the Act, they have entered into a Joint

Powers Agreement, which established the Metro Flood Diversion Authority. Pursuant to the Joint Powers Agreement, the Metro Flood Diversion Authority will use the proceeds of the Wells Fargo Loans and any Future Loans for an authorized governmental purpose, including but not limited to, land acquisition, design costs, engineering costs, and administrative costs associated with the Project. The land acquisition and construction of the Project will be undertaken by the Member Entities, under the direction of the Metro Flood Diversion Authority pursuant to and in accordance with the Joint Powers Agreement.

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

Section 10.04 COVENANTS TO LEVY AND COLLECT SALES TAX. Until all Payment Obligations and Future Payment Obligations have been discharged as provided in Future Loan Agreements, or bond documents the City and the County hereby covenant and agree that they will fully and properly perform each and all of the covenants contained and referred to in this Intergovernmental Agreement (Series 2017), the Wells Fargo Loan Agreements and Future Loan Agreements, and each and all of the duties prescribed in the County 2010-2 Sales Tax Ordinance and the City 3-21 Sales Tax Ordinance. The City and the County also covenant that each shall levy and collect the County 2010-2 Sales Tax and the City 3-21 Sales Tax, as the case may be, as necessary for the payment of all Payment Obligations and Future Payment Obligations.

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

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

**ARTICLE XI.
MISCELLANEOUS**

Section 11.01 TERMS SUPPLEMENTAL TO FUTURE LOAN AGREEMENTS. The terms of this Intergovernmental Agreement (Series 2017) are supplemental to the terms and conditions set forth in the Wells Fargo Loan Agreements and, to the extent that they conflict with Future Loan Agreements, the terms of the Wells Fargo Loan Agreements shall prevail.

Section 11.02 WRITTEN AMENDMENT REQUIRED. No amendment, modification, or waiver of any condition, provision, or term will be valid or of any effect unless made in writing signed by the Party or Parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any Party of any default of another Party will not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the Parties thereto under and pursuant to this Intergovernmental Agreement (Series 2017). During any period in which the Wells Fargo Loans, or any extension thereof, remain unpaid, the Parties shall obtain written consent to amend or modify this Intergovernmental Agreement (Series 2017) from Wells Fargo. In the event that Wells Fargo enters into a participation agreement regarding the Wells Fargo Loans, Wells Fargo shall require as a condition of such participation agreement that Wells Fargo is authorized thereunder to provide consent to any amendments of this Intergovernmental Agreement (Series 2017). The failure to obtain written consent of Wells Fargo to an amendment or modification, when required, shall result in the invalidation of any such amendment or modification.

Section 11.03 GRAMMATICAL CONSTRUCTION. Whenever the singular member is used herein, the same includes the plural where appropriate, and the words of any gender include any other genders where appropriate.

Section 11.04 DEFAULT. Upon the occurrence of any non-performance of either Party's obligations under this Intergovernmental Agreement (Series 2017) which has not been cured within thirty (30) Days after written notice to the breaching Party, the non-breaching Party may take any one or more of the following remedial steps: (a) terminate this Intergovernmental Agreement (Series 2017); (b) suspend the non-breaching Party's performance under this Intergovernmental Agreement (Series 2017) until it receives assurances from the breaching Party satisfactory to the non-breaching Party that the breaching Party will cure such event of default and perform its obligations under this Intergovernmental Agreement (Series 2017); and/or (c) commence legal or administrative proceedings for the collection of any amounts due hereunder or the enforcement of any covenant, agreement, or obligation of the breaching Party; provided, however, that the provisions of this Section 11.04 shall, in all respects, be subject to the rights of Lenders as set forth in 4.01 hereof.

Section 11.05 SEVERABILITY CLAUSE. Each provision, section, sentence, clause, phrase, and word of this Intergovernmental Agreement (Series 2017) is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Intergovernmental Agreement (Series 2017).

Section 11.06 FORCE MAJEURE. Neither Party will be liable to the other Party during any period in which its performance is delayed or prevented, in whole or in part, by circumstance beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike, or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Party of the same.

Section 11.07 NOTICE. All notices, certificates, or other communications required under this Intergovernmental Agreement (Series 2017) will be deemed sufficiently given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows:

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

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

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

Section 11.08 AGREEMENT BINDING ON SUCCESSORS. This Intergovernmental Agreement (Series 2017) will be binding upon and inure to the benefit of the Parties hereto and their respective personal representatives, successors, and assigns.

Section 11.09 NORTH DAKOTA LAW APPLIES. This Intergovernmental Agreement (Series 2017) will be controlled by the laws of the State of North Dakota.

Section 11.10 RELATIONSHIP TO THE JOINT POWERS AGREEMENT. This Intergovernmental Agreement (Series 2017) is expressly authorized by the Joint Powers Agreement. Nothing in this Intergovernmental Agreement (Series 2017) is intended to amend, modify, or repeal any section or power of the Joint Powers Agreement. This Intergovernmental Agreement (Series 2017) is to be treated as an independent agreement and the third party beneficiaries to this Intergovernmental Agreement (Series 2017) are not entitled to assert any rights under the Joint Powers Agreement.

Section 11.11 WAIVER OF VENUE/SELECTION. The Parties stipulate and agree that the District Court of Cass County, North Dakota, will be the sole and exclusive venue for any lawsuit pertaining to this contract, and both Parties consent to the personal jurisdiction in said court in the event of any such lawsuit.

Section 11.12 EXECUTION IN COUNTERPARTS. This Intergovernmental Agreement (Series 2017) may be executed in counterparts with both the County and the City having a fully-executed counterpart.

(Signatures on following pages.)

PRELIMINARY

CITY:

CITY OF FARGO, NORTH DAKOTA

BY: _____
Timothy J. Mahoney, Mayor

BY: _____
Steven Sprague, City Auditor

PRELIMINARY

COUNTY:

CASS COUNTY, NORTH DAKOTA

BY: _____
Chad Peterson, Chair
Board of County Commissioners

BY: _____
Michael Montplaisir, County Auditor

PRELIMINARY