

GROWTH INITIATIVE FUND BOARD STRUCTURE CHANGE
(Gartin, Machacek)

SUGGESTED MOTION:

Move to amend the bylaws of the Growth Initiative Fund, Inc. (GIF) to change the board structure by decreasing Cass County appointments from two to one member, and increasing the Greater Fargo Moorhead Economic Development Corporation appointments from three to four members on the GIF Board.

October 30, 2017

To: Cass County Commission

Re: 11/6/17 agenda request regarding Growth Initiative Fund board appointments

Commissioners,

As you may recall from our 7/28/17 budget discussion, the Growth Initiative Fund (GIF), via GFMEDC, had been working with Eide Bailly regarding a desired change in the organizational non-profit status of the GIF, to a Type 1 Supporting Organization of GFMEDC. With the current structure, GFMEDC has had to budget funds into the GIF to pass the annual IRS public support test (which is part of the annual 990 tax return process). The projected 2018 amount would be approximately \$75,000. In that July meeting, the Commissioners discussed bringing this status-change proposal back to the commission before the end of the year, in order to eliminate \$75,000 from the County's 2018 investment to GFMEDC.

To refresh your memory on this recommendation, please refer to the information in the documents attached with this letter. The recommendation received by Eide Bailly for GIF to become a Type 1 Supporting Organization of GFMEDC, will eliminate the public support testing requirement. To comply with this type of structure, GFMEDC will need the ability to appoint/remove a majority of the GIF board members. We will request of Cass County Commission to allow their appointments number to change from two to one, and increase the GFMEDC appointments from three to four. Aside from the update to the appointments structure, operationally the GIF will essentially act the same as it has been for these past years with GFMEDC providing the administrative support and staff time.

Eide Bailly and Nilles Law have been assisting with the process and documentation. Primary steps including making the appointment changes, which are to be reflected in updated Bylaws of both GIF and GFMEDC, as well as amending the GIF Articles of Incorporation to properly reflect the supporting organization relationship.

We look forward to the 11/6/17 meeting to discuss our request to allow the process to move forward. Attached are the draft (red line) amended GIF Bylaws along with other informational supplements. Should you have any questions prior to the meeting, please feel free to ask.

Sincerely,



Jim Gartin
GFMEDC President



John Machacek
GIF Administrator

Reasoning Details

- Due to the front-funding of GIF years ago, every couple years the organization has experienced an issue with the IRS Public Charity Status and Public Support Test (Form 990 Schedule A) as part of the Form 990 tax filing.
- The test requires a certain amount of new public funds to be received to meet a ratio. GIF has needed to acquire an adequate amount of funds in each of those instances.
 - The test includes the cumulative total for the last 5 years. The measurement formula is below.
 - *Total Gifts, Grants, Contributions and Membership Fees*
divided by
Total Gifts, Grants, Contributions and Membership Fees + Gross Income From Interest Dividends, Payments Received On Securities Loans, Rents, Royalties And Income From Similar Sources
 - The result must equal 33 1/3% or greater.
 - An organization can fail the test for one year but not consecutive years. By failing the test in consecutive years, the charitable status of the organization will be in jeopardy.
 - 2017 will be a fail year for the GIF, so if the status structure is not changed, GFMEDC would need to contribute an estimated \$75,000 in 2018 to pass the test.
- Rather than continuing to use this “band-aid” approach to satisfy the testing, Eide Bailly recommended for GIF to become a Type 1 Supporting Organization of GFMEDC, which will eliminate the public support testing requirement.
 - To comply with this type of structure, GFMEDC will need the ability to appoint/remove a majority of the GIF board members. Currently, the seven board appointments are: GFMEDC-3, Cass County-2, Fargo-1, West Fargo-1.
 - We will request of Cass County Commission to allow their appointments number to change from two to one, and increase the GFMEDC appointments from three to four.
- Aside from the update to the appointment structure, the GIF will essentially operate the same as it has been for these past years with GFMEDC providing the administrative support and staff time.

Process Details

- Eide Bailly has provided information to GFMEDC staff as to the steps and requirements needed to process the change with the IRS. While these processes are occurring as we speak (in 2017), the changes will be effective January 1, 2018 to align with the new tax year in 2018.
- With guidance from Eide Bailly and Nilles Law, GFMEDC staff drafted amended GIF Bylaws, GIF Articles of Incorporation, and GFMEDC Bylaws.
 - The main purpose of the GIF Bylaws amendment was to change the board appointments structure. However, while the effort was being made to amend the Bylaws, other minor updates were included to improve language as well as be

better aligned to GFMEDC Bylaws language that has been updated over the last several years. (See *Bylaws Updates Details*)

- The GIF Board of Directors reviewed and approved the draft amended GIF Bylaws at their October 20, 2017 board meeting. They also reviewed the draft amended GIF Articles of Incorporation and are recommending approval at their joint meeting with GFMEDC in December.
 - Separate from their review and approval of the amended GIF Bylaws, at that meeting, the Board also approved an amendment to Exhibit B Financial Programs. *Section 6. STATE FUNDING PARTNERS PROGRAM* was added to provide opportunities to be a flexible direct funding partner with the Bank of North Dakota and ND Development Fund to assist rapidly growing companies and startup companies. This is in response to recent updates and additions to Bank of North Dakota programming, such as their new Community Match and Accelerated Growth Loan programs.
- GFMEDC presents the information to Cass County Commission as all the organizations continue the prior discussions of modifying the number of Cass County appointments from 2 to 1 and GFMEDC appointments from 3 to 4.
- The GIF Board will attend the 12/14 GFMEDC Board meeting as a joint meeting of the two boards is required to amend the Articles of Incorporation. At that time, the GFMEDC Board will also approve the GIF Bylaws (already approved by GIF Board on 10/20) as well as amended GFMEDC Bylaws.
- Eide Bailly will immediately take the next filing steps that were waiting on the updated Bylaws and Articles documents.

GIF Bylaws Amendments Details

New language is in yellow; deleted language is in red.

In addition to the changes in appointments, other minor updates were made as needed.

- **Article II Purpose** (Page 2) – a minor detail to alter the language to better align with EDC’s updated mission statement.
- **Article III Membership** (*The GFMEDC Board are the “Members”, so some of these changes are to better align with updated GFMEDC Bylaws language*).
 - Page 2 & 3, Section 4. Special Meetings – changed to align with the language from the EDC Bylaws of the Exec Comm or 5 Investors.
 - Page 3, Section 5. Place of Meeting – changed to align with EDC Bylaws
 - Page 3, Section 8. Quorum – changed to align with updated EDC Bylaws
- **Article IV Directors**
 - Page 3, Section 2. Number... - This is the main change made. Cass: Two to One, GFMEDC: Three to Four.
 - Page 3-4, Section 3. Term – gets rid of staggering terms language that was helpful when the GIF switched from a 5 to 7 person board years ago.
 - Page 4 and beyond – changed any Chairperson references to Chair and any Vice Chairperson to Vice Chair.

- Page 4, Section 6. Special Meetings – changed from Fargo to Cass County as it didn't make sense to limit only to Fargo.
- **Article V Officers**
 - Page 5, Section 6. Secretary – deleted the Corporate Seal comment as it was not applicable. Later in the Bylaws, it references not having a Corporate Seal.
 - Page 6, Section 9. Authority and Duties – Deletes the existing Other Officers Section 9 and replace it with similar language from the EDC Bylaws. This better illustrates how the officers can assign others (staff) to help with duties; instead of the references to Asst Sec or Asst Treas, which have not been utilized.
- **Page 8, amendment date** – listed as “Amended effective the 1st day of January 2018” per Eide Bailly to coincide with change in tax stats as of 2018.

As stated earlier, changes to the Bylaws and Exhibits are separate occurrences.

- Page 10, Exhibit A Governmental Entity Contributions – no changes needed
- Page 11, Exhibit B Financial Programs – at the same 10/20/17 GIF Board meeting, this exhibit was amended by adding Section 6 STATE FUNDING PARTNERS PROGRAMS. This puts in place the GIF's ability to participate in funding projects related to recent updates to Bank of North Dakota programs, and in conjunction with the ND Development Fund.

AMENDED
BYLAWS
OF
GROWTH INITIATIVE FUND

AMENDED BYLAWS
OF
GROWTH INITIATIVE FUND

ARTICLE I.
Offices

The principal office of the Corporation shall be located in the City of Fargo, Cass County, North Dakota. The Corporation may have such other offices, either within or without the State of North Dakota, as the Board of Directors may designate or as the business of the Corporation may require from time to time.

The registered office of the Corporation required by the North Dakota Nonprofit Corporation Act to be maintained in North Dakota shall be the principal office of the Corporation in Fargo, North Dakota. The address of the registered and principal office may be changed from time to time by the Board of Directors.

ARTICLE II.
Purpose

The purpose of Growth Initiative Fund, Inc. shall be to promote economic development in Cass County, North Dakota. The Corporation shall exist to create and manage financial programs to ~~encourage primary sector growth and retention~~ grow and diversify the economy in Cass County.

The Corporation is organized exclusively for purposes set forth in Section 501(c)(3) of the Internal Revenue Code, including for such purposes of the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code that may be primarily involved with economic development.

ARTICLE III.
Membership

Section 1. MEMBERS. The members of this Corporation shall be composed of those persons who are at-large directors, agency directors, and community directors of the Greater Fargo Moorhead Economic Development Corporation ("GFMEDC"). When any person shall cease to be a Director of the GFMEDC, such person shall cease to be a member of this Corporation automatically and without any affirmative action on the part of the Corporation.

Section 2. POWERS, RIGHTS AND DUTIES. The powers, duties and rights reserved to the members shall included but not be limited to the right to recommend any amendments and/or modifications to the Bylaws and/or policies and procedures.

Section 3. MEETING. Regular meetings of the members shall be held on an annual basis. The members shall approve the annual budget of the Corporation and may transact any other business provided, however, that no business with respect to which special notice is required by law shall be transacted unless such notice shall have been given.

Section 4. SPECIAL MEETINGS. ~~Special meetings of the members may be held at any meeting of the Board of Directors of GFMEDC whether that meeting was called expressly as a meeting of the members of the Corporation or for any other purpose. Special meetings of the members may be called by or at the request of the Chairman, any two Directors or by not less than 25% of the members.~~ A special meeting of the Members may be called for any purpose or purposes

at any time by the GFMEDC Executive Committee or any five (5) directors. The form and timelines of the notice required for any such meeting shall be as provided in the Bylaws of the GFMEDC.

Section 5. PLACE OF MEETINGS. ~~Meetings, whether regular or special, shall be held at the principal office of the Corporation unless otherwise determined by the members.~~ Meetings of the Members shall be held in Cass County, North Dakota, or Clay County, Minnesota, at such place as may be designated by the GFMEDC Executive Committee or a majority of the members of the Board present and voting at the meeting.

Section 6. WAIVER OF NOTICE. Any member may waive notice of any meeting. Attendance of a member at any meeting shall constitute a waiver of notice of such meeting, except where such member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 7. ACTION WITHOUT MEETING. Any action required or permitted to be taken at a meeting of the members may be taken and effective without a meeting if the consent to such action is in writing setting forth the action so taken and is signed by all members and filed with the records of the Corporation.

Section 8. QUORUM. ~~A majority of the number~~ Thirteen (13) of the members shall constitute a quorum for the transaction of any business at any meeting of the members, but if less than ~~a majority~~ 13 are present at a meeting, a majority of the members present may adjourn the meeting from time to time without further notice. The act of a majority of the members present at a meeting at which a quorum is present shall be the act of the members.

ARTICLE IV.
Board of Directors

Section 1. GENERAL POWERS. The business and the property of the Corporation shall be managed and controlled by its Board of Directors. The Directors may exercise all such powers and do all such things as may be exercised or done by the Corporation subject to the provisions of the Articles of Incorporation, these Bylaws, and all applicable law. Directors shall receive no compensation for their services as Directors, but this shall not restrict the payment of reasonable compensation to a Director when the Director renders administrative, professional or other bona fide services to the Corporation in a capacity other than as a Director.

Section 2. NUMBER AND QUALIFICATIONS. The number of Directors of the Corporation shall be seven and shall be selected as follows:

One Director shall be appointed by the Cass County Commission and such Director shall reside in Cass County.

One Director shall be appointed by the Fargo City Commission.

One Director shall be appointed by the West Fargo City Commission.

Four Directors shall be appointed by the GFMEDC.

The entity appointing a Director shall have the right to remove a Director so appointed at any time and appoint a successor for such Director. Any vacancy occurring in the Board of Directors shall be promptly filled by appointment by the entity responsible for selecting such Director.

Section 3. TERM. Directors shall be appointed to hold office for three (3) years and may not serve more than three (3) consecutive terms totaling no more than nine (9) consecutive years. Directors may be appointed for additional terms after a one (1) year break or absence

from the Board of Directors. {Language regarding staggered terms from 2003 was deleted. 2003 was when term limits were added to the Bylaws.}

Section 4. ANNUAL MEETING. The annual meeting of the Board of Directors shall be held once a year. The Chair~~man~~ may designate a regular meeting to act as the annual meeting.

Section 5. REGULAR MEETINGS. The Board of Directors may provide, by resolution, the time and place, either within or without the State of North Dakota, for the holding of regular meetings without other notice than such resolution.

Section 6. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by or at the request of the Chair~~man~~ or any two Directors. The special meeting shall be held at a place designated in the notice in Fargo Cass County, North Dakota.

Section 7. NOTICE. Notice of any special meeting shall be given at least five (5) days previously thereto by written notice delivered personally or mailed to each Director at their business address, or by notice given at least two days prior thereto by facsimile or electronic mail. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. Any Director may waive notice of any meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the Board of Directors need be specified in the notice of such meeting.

Section 8. QUORUM. A majority of the Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 9. MANNER OF ACTING. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 10. COMMITTEES. The Board of Directors may appoint such committees and delegate to such committees such powers and responsibilities as it may from time to time deem appropriate.

Section 11. ELECTRONIC COMMUNICATION. A conference among Directors by any means of communication through which the Directors may simultaneously hear each other during the conference constitutes a Board meeting, if the same notice is given of the conference as would be required for a meeting, and if the number of Directors participating in the conference would be sufficient to constitute a quorum at a meeting. A Director may participate in a Board meeting not described in the immediately preceding sentence by any means of communication through which the Director, other Directors so participating and all Directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by any means referred to in this Section 11 constitutes presence in person at the meeting.

ARTICLE V. Officers

Section 1. NUMBER. The Officers of the Corporation shall be elected by the Board of Directors and shall include a Chair~~man~~, a Vice Chair~~man~~, a Secretary and Treasurer. The Board of Directors may also appoint such other Officers and Assistant Officers as it may deem necessary. Except as provided in these Bylaws, the Board of Directors shall fix the powers, duties and compensation of all Officers. Officers may, but need not be Directors of the Corporation.

Section 2. ELECTION AND TERM OF OFFICE. Officers shall be elected at each annual meeting of the Board of Directors and shall hold office at the pleasure of the Board. Each officer shall hold office until a successor shall have been duly elected unless prior thereto the Officer shall have resigned or been removed from office as hereinafter provided.

Section 3. REMOVAL AND VACANIES. Any officer or agent elected or appointed by the Board of Directors may be removed from office with or without cause at any time by the vote of a majority of the Board of Directors. Any vacancy in any office of the Corporation shall be filled by the Board of Directors.

Section 4. CHAIRMAN. The Chairman shall have general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The Chairman shall have the general powers and duties usually vested in the office of the chairman of a corporation and shall have such other powers and perform such other duties as the Board of Directors may from time to time prescribe.

Section 5. VICE CHAIRMAN. The Vice Chairman shall have such powers and perform such duties as the chairman or the Board of Directors may from time to time prescribe. In the absence of the Chairman or in the event of the Chairman's death, inability or refusal to act, the Vice Chairman shall perform the duties of the Chairman, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman.

Section 6. SECRETARY. The Secretary shall attend all meetings of the Board of Directors and record all votes and the minutes of all proceedings of the Board of Directors in a book to be kept for the purpose, and shall custody of all documents and records of the Corporation, except those connected with the office of the Treasurer. ~~The Secretary shall have the custody of the corporate seal and attest the same when properly authorized to do so.~~ The Secretary shall give or cause to be given notice of all meetings of the Board of Directors, and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

Section 7. TREASURER. The Treasurer shall have the care and custody of the corporate funds and securities of the Corporation and shall disburse the funds of the Corporation as may be ordered from time to time by the Board of Directors. The Treasurer shall keep full and accurate account of all receipts and disbursements in books belonging to the Corporation and shall have such other powers and perform such other duties as the Board of Directors may from time to time prescribe.

Section 8. GENERAL ADMINISTRATION. Unless provided otherwise by resolution adopted by the Board of Directors, the GFMEDC President shall be the chief administrative officer of the Corporation.

The chief administrative officer (a) shall have the responsibility for the day to day management of the Corporation; (b) shall be present at all meetings of the Board of Directors; (c) shall see that all directives and resolutions of the board are carried into effect; and (d) shall perform such other duties as may from time to time be assigned by the board. During any absence or disability of the chief administrative officer, the GFMEDC Executive Committee shall select a person to fulfill those responsibilities.

~~Section 9. OTHER OFFICERS. The Assistant Secretaries and Assistant Treasurers, in the order of their seniority unless otherwise determined by the Board of Directors, shall, in the absence or disability of the Secretary or Treasurer, perform the duties and exercise the powers of the Secretary and Treasurer respectively. Such Assistant Secretaries and Assistant Treasurers shall have such other powers and perform such other duties as the Board of Directors may from time to time prescribe. Any other Officers appointed by the Board of Directors and shall have such~~

~~powers, perform such duties and be responsible to such other Officers as the Board of Directors may from time to time prescribe.~~

Section 9. AUTHORITY AND DUTIES. In addition to the foregoing authority and duties, all officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board. Unless prohibited by a resolution approved by the affirmative vote of a majority of the Directors participating in a duly-held meeting, the Chair may delegate some or all of the duties and powers of an office to other persons.

ARTICLE VI.
Contracts, Loans, Checks and Deposits

Section 1. CONTRACTS. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances.

Section 2. LOANS. No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. CHECKS, DRAFTS, ETC. All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. DEPOSITS. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE VII.
Governmental Entities Administration

Section 1. ADMINISTRATIVE AGREEMENT AND INDEMNIFICATION. The governmental entities of CASS COUNTY, NORTH DAKOTA, the CITY OF FARGO, and the CITY OF WEST FARGO, grant the Corporation the authority to administer the financial programs established with funds contributed by the governmental entities as part of the agreement made and entered into on the 14th day of February, 1997. These funds contributed by the governmental entities are listed in Exhibit "A" 'Governmental Entity Contributions'.

To the extent any claims are not otherwise covered by insurance, the governmental entities hereby agree to indemnify, save harmless and defend the Corporation and its employees and agents and the GFMEDC and its agents and employees who will be providing administrative services to the Corporation, from any and all costs, expenses (including attorney's fees and costs), liabilities, claims or causes of action arising out of or relating to the administration of the Corporation, provided that the person indemnified acted in good faith and the act or omission did not constitute willful misconduct or gross negligence.

Section 2. LOAN PROCEDURES. The procedures applicable to business of the Corporation shall be as follows:

- a) All financial program applications will be submitted directly by the applicant to GFMEDC.

b) The Corporation shall:

- 1) Control and administer financial programs, as stated in Exhibit "B" 'Financial Programs of Growth Initiative Fund', in Cass County, Fargo, and West Fargo.
- 2) Review financial program applications for consideration as submitted directly by GFMEDC.
- 3) Make and approve loans.
- 4) Receive all repayments of the loans.
- 5) Account for all borrowers' loans.

c) Loan Pool funds shall be accounted for separately from GFMEDC funds.

Section 3. FUNDING. It is the intent that the funds contributed by the governmental entities will constitute a perpetual revolving fund for financial programs. All funds contributed by the governmental entities to the Corporation shall be used exclusively for financial programs and expenses to third parties such as professional services and insurance premiums. No reimbursement shall be paid to GFMEDC for staffing or other administrative services with funds contributed by the governmental entities. Any funds to compensate GFMEDC and reimburse GFMEDC its out-of-pocket costs shall come from funds contributed to the Corporation by parties other than the governmental entities.

Section 4. REPAYMENT OF LOANS. All repayments of the loans currently existing or made in the future will be placed in the Loan Pool.

Section 5. REPORTS AND NOTIFICATIONS. The Corporation shall give the governmental entities notice of any regular or special meeting of the Board of Directors, and any amendments to the Bylaws or Appendixes. The Corporation shall provide the governmental entities an Annual Report and the annual Audit Report. The Corporation shall promptly notify the appropriate governmental entity of each loan approval. The notification to Fargo and West Fargo shall be to its Mayor and the notification to Cass County shall be to the Chairman of the County commission. In addition, each governmental entity may designate additional persons to receive these notifications. The governmental entities shall have the right at any reasonable time to inspect the books and records of the Corporation relating to the Loan Pool. The Corporation will furnish minutes to governmental entities on request of any meeting at which the Corporation takes any action on any loan.

ARTICLE VIII. Indemnification

The Corporation shall indemnify to the fullest extent authorized or permitted by law (as now or hereafter in effect), any officer or director made or threatened to be made a party to or witness in any threatened, pending or completed civil, criminal, administrative, arbitration or investigative proceeding, including a proceeding by or in the right of the Corporation by reason of the fact that such officer or director is or was a director or officer of the Corporation, or by reason of the fact that such director or officer while a director or officer of the Corporation is or was serving at the request of the Corporation, or whose duties as a director or officer involve or involved service as a director, officer, partner, trustee or agent of another organization, against all judgments, penalties, fines, settlements and reasonable expenses, including attorneys' fees and disbursements. The Corporation may, but shall not be required to indemnify agents or employees of the Corporation other than directors and officers to the fullest extent permitted by law as determined by the Board of Directors from time to time.

The Corporation may purchase and maintain insurance on behalf of any person and such person's official capacity against any liability asserted against and incurred by such person in or

arising from that capacity whether or not the Corporation would otherwise be required to indemnify the person against the liability.

ARTICLE IX.
Miscellaneous

Section 1. FISCAL YEAR. The Fiscal year of the Corporation shall begin on the 1st day of January and end on the 31st day of December in each year.

Section 2. SEAL. The Corporation shall have no seal and none shall be required to bind the Corporation on any document.

Section 3. AMENDMENTS. These Bylaws may be altered, amended or repealed by the Board of Directors at any regular or special meeting of the Directors to the full extent permitted by law provided that any alteration or amendment is approved by the members of the Corporation.

Section 4. DISSOLUTION. The Corporation may be dissolved by the approval of the Board of Directors at any regular or special meeting of the Directors to the full extent permitted by law provided that any dissolution is approved by the members of the Corporation. In the event of the dissolution of the Corporation, the entities shall be entitled to its proportionate share of the Corporation's funds. Payment to the entity shall be made as follows:

- (a) An immediate payment of its proportionate share of any cash that has not been committed for loans; and
- (b) Its proportionate share of all payments received by the Corporation from borrowers on outstanding loans including loans made from committed funds at the time of dissolution, as such payments are received by the Corporation.
- (c) Notwithstanding the foregoing, any funds contributed by Cass County which have been repurposed pursuant to Amendment No. 5 shall be returned to Cass County; provided, however, to the extent that such funds have been used for grants or the like and no longer are maintained by the GIF or subject to an obligation to be repaid to GIF, then Cass County acknowledges that such funds will not be repaid to Cass County.

Adopted this 15th day of June, 1993.

Amended this 8th day of February, 2011

Amended effective the 1st day of January 2018

Director

Director

Director

Director

Director

Director

Director

EXHIBIT "A"
GOVERNMENTAL ENTITY CONTRIBUTIONS
OF
GROWTH INITIATIVE FUND

ARTICLE I.
Contributions

Section 1. AGREEMENT. As originally adopted in the February 14, 1997 Memorandum of Understanding as amended by Amendment No. 1 dated February 1, 1999, Amendment No. 2 dated January 3, 2000, Amendment No. 3 dated February 1, 2001, Amendment No. 4 dated August 27, 2003 and Amendment No. 5 dated June 6, 2011, the three governmental entities of the City of Fargo, the City of West Fargo, and Cass County desired to have the GIF administer the PACE Program and act as the "community" in the PACE program and to deal generally with all matters regarding the PACE Program and any successor program for Fargo, West Fargo, and Cass County.

Section 2. FUNDING. The intent of the three governmental entities in the Memorandum of Understanding was to contribute money as well as assign existing PACE loans and future PACE loan repayments to the GIF for the PACE Program to constitute a perpetual revolving fund for PACE loans.

The contributions and loan assignments from the three governmental entities to the GIF are as follows:

- (a) Cash Contributions.
 - 1. City of Fargo - \$1,927,498.72
 - 2. City of West Fargo- \$274,916.00
 - 3. Cass County - \$3,721,276.00

- (b) PACE Loan Contributions
 - 1. City of Fargo - \$815,644.00
 - 2. City of West Fargo - \$56,069.32
 - 3. Cass County - \$500,000

ARTICLE II.
Amendments

To reflect any future contributions, this Appendix may be amended by the Board of Directors at any regular or special meeting of the Directors to the full extent permitted by law provided that any alteration or amendment is approved by the members of the GIF.

Secretary

PREVIOUS VERSION ADOPTED: February 8, 2011
AMENDED: September 20, 2013

AS AMENDED
EXHIBIT "B"

FINANCIAL PROGRAMS OF GROWTH INITIATIVE FUND

ARTICLE I.
Financial Programs

Section 1. PACE PROGRAM. As originally adopted February 14, 1997. The intent of the PACE Program is participation with the Bank of North Dakota to buy down interest rate loans to new or expanding businesses in the County. GIF shall act as the "community" as provided in Chapter 6-09.14 of the North Dakota Century Code, and administer the PACE Program in accordance with Chapter 6-09.14 and the rules and regulations of the Bank of North Dakota.

Section 2. NEW TECHNOLOGY FUND. As originally adopted August 27, 2003. The intent of the New Technology Fund is to encourage the development of an industry cluster by providing direct loans. Up to \$750,000 has been appropriated for the New Technology Fund.

Section 3. NDSU RESEARCH & TECH PARK INCUBATOR FUND. As originally adopted February 17, 2006. The intent of the NDSU Research & Tech Park Incubator Fund is to assist in the construction of the Business & Technology Incubator. The Incubator will receive the funding through a zero interest loan and will be collateralized by future pledges to the Incubator. It is intended that up to \$750,000 will be appropriated for the NDSU Research & Tech Park Incubator Fund.

Section 4. Flex PACE PROGRAM. As originally adopted October 22, 2010. The Flex PACE program is similar with the PACE program in that it is an interest buy down program through the Bank of North Dakota. With the Flex PACE program, there is no job creation requirements tied to the loan program. GIF shall act as the "community" as provided in Chapter 6-09.14 of the North Dakota Century Code. To be eligible an applicant must be determined to be a "Primary Sector" or "Targeted Sector" company identified by GFMEDC.

Section 5. REPURPOSING OF CASS COUNTY FUNDS. As originally adopted March 23, 2011. The GIF shall have the authority to repurpose up to \$3,721,276 of the contributions made by Cass County to the GIF to be used by the GIF in the execution of the economic strategy of the GFMEDC and Cass County. Projects must be consistent with the economic strategy of the GFMEDC and Cass County.

Section 6. STATE FUNDING PARTNERS PROGRAM. As originally adopted October 20, 2017. The intent of the State Funding Partners Program is to provide opportunities to be a flexible direct funding partner with the Bank of North Dakota and ND Development Fund to assist rapidly growing companies and startup companies.

ARTICLE II.
Amendments

This Appendix may be altered, amended, or repealed by the Board of Directors at any regular or special meeting of the Directors to the full extent permitted by law provided that any alteration or amendment is approved by the members of the GIF.

Secretary

PREVIOUS VERSION ADOPTED: September 18, 2015
AMENDED: October 20, 2017