

MIDA BOND HOST APPROVAL
YMCA OF CASS AND CLAY COUNTIES

SUGGESTED MOTION:

Move to adopt resolution #2023-08, Resolution approving the Issuance of Bonds by the City of Frontier, North Dakota, on behalf of YMCA of Cass and Clay Counties under the Municipal Industrial Development Act and authorize the execution of the Intergovernmental Agreement.



CONTRACT APPROVAL

REQUIRED BY DEPARTMENT:

DEPARTMENT: Administration DATE OF REQUEST: 06-13-2023

COMPANY REQUESTING CONTRACT: City of Frontier/ YMCA of Cass and Clay Counties

BRIEF PROJECT DESCRIPTION: Intergovernmental Agreement for MIDA Bonds

NEW CONTRACT OR CONTRACT RENEWAL

REQUIRED BY STATE'S ATTORNEY OFFICE:

STATE'S ATTORNEY SIGNATURE: *Mathin Naumann* 6/15/2023

STATE'S ATTORNEY COMMENTS:

Approved as to form.

**RESOLUTION APPROVING THE ISSUANCE OF BONDS
BY THE CITY OF FRONTIER, NORTH DAKOTA, ON BEHALF
OF YMCA OF CASS AND CLAY COUNTIES UNDER THE
MUNICIPAL INDUSTRIAL DEVELOPMENT ACT AND
AUTHORIZING THE EXECUTION OF AN AGREEMENT**

BE IT RESOLVED by the County Commission (the “Commission”) of Cass County, North Dakota (the “County”), as follows:

SECTION 1. RECITALS AND FINDINGS.

1.1. YMCA of Cass and Clay Counties, a North Dakota nonprofit corporation (the “Corporation”), has requested the City of Frontier, North Dakota (“Frontier”) to issue revenue bonds, in one or more series (the “Bonds”) for the benefit of the Corporation in the aggregate principal amount not to exceed \$7,200,000, under the provisions of Chapter 40-57, North Dakota Century Code (the “Act”), to (i) construct and equip a new child care facility to be located at 5107 30th Avenue South, Fargo, North Dakota (the “Project”), and (ii) pay the costs of issuing the Bonds.

1.2. The Corporation has proposed that the County and Frontier enter into an agreement under Section 40-57-03, Subsections 1 and 8 of the Act, which permit the Project located within the boundaries of the County to be financed by Frontier if an agreement is entered into between the County and Frontier.

1.3. At a public hearing held on the date hereof, all parties who appeared at the hearing were given an opportunity to express their views with respect to the proposal to finance the Project through the issuance of revenue bonds under the Act by Frontier, and interested persons were given the opportunity to submit written comments to the County Auditor before the time of the hearing.

SECTION 2. APPROVAL AND AUTHORIZATION.

2.1. The County hereby approves the issuance of the Bonds by Frontier under the Act, in one or more series and the use the proceeds thereof to finance the Project located in the County. Such Bonds may be issued on such terms and conditions as Frontier, the Corporation and the purchaser of the Bonds may deem desirable and without further approval or consent of this Commission.

2.2. The Agreement is hereby approved in substantially the form now on file in the office of the County Auditor, and the Chair and County Auditor of the County are authorized to execute the same in the name of and on behalf of the County. In the event of the disability or the resignation or other absence of the Chair or County Auditor of the County, such other officers of the County who may act in their behalf shall without further act or authorization of the County do all things and execute all instruments and documents required to be done or to be executed by such absent or disabled officials. The approval hereby given to the Agreement includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by the States

Attorney and by the County officials authorized herein to execute the Agreement prior to their execution; and such County officials are hereby authorized to approve said changes on behalf of the County.

2.3. Neither this approval nor any actions, agreements, or legal matters related hereto or executed in pursuance hereof, shall in any manner or form create an indebtedness or liability of the County, but is solely an accommodation by the County to satisfy the requirements of the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended. The Bonds, if and when issued, will not constitute a charge, lien or encumbrance upon any property of the County and such obligations will not be a charge against the general credit or taxing powers of the County but will be payable from sums paid by the Corporation. The Bonds shall not be deemed to constitute a debt or liability of the County, Frontier, the State of North Dakota, or of any other political subdivision thereof or a pledge of the faith and credit of the County, the State of North Dakota, and neither the County, the State of North Dakota, nor any political subdivision thereof will be liable on the Bonds.

Adopted by the County Commission of Cass County on this 19th day of June, 2023.

Chair

ATTEST:

County Auditor

Commissioner _____ moved the adoption of the above resolution;
Commissioner _____ seconded the motion and, upon a vote being taken thereon, the
following voted in favor: Commissioners _____;
the following voted against: _____; and the following were absent: _____;
whereupon the Resolution was declared carried.

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT, dated as of July 1, 2023, is entered into between **CASS COUNTY, NORTH DAKOTA** (“Cass County”) and the **CITY OF FRONTIER, NORTH DAKOTA** (“Frontier” and together with Cass County, the “Political Subdivisions”).

RECITALS:

The Political Subdivisions are each authorized pursuant to Chapter 40-57 of the North Dakota Century Code (the “Act”) to issue revenue bonds and to loan the proceeds thereof to a contracting party to finance revenue producing facilities that the governing body determines to be necessary or desirable and in furtherance of the public health or welfare.

YMCA of Cass and Clay Counties, a North Dakota nonprofit corporation (the “Corporation”), has requested the City of Frontier to issue Childcare Facilities Revenue Bonds (YMCA of Cass and Clay Counties Project) Series 2023 (the “Bonds”) in an aggregate amount not exceeding \$7,200,000 for the purposes of (i) constructing and equipping a new childcare facility located at 5107 30th Avenue South, Fargo, North Dakota (the “Project”), and (ii) paying the costs of issuance.

Section 40-57-03, subsections (1) and (8) of the Act authorize municipalities to enter into and perform agreements with other municipalities concerning the planning, construction, lease, or other acquisition and financing of a project, including an agreement whereby a municipality issues its revenue bonds on behalf of one or more other municipalities to finance a project located within the boundaries of another municipality.

The governing bodies of the Political Subdivisions have each held public hearings regarding the issuance of Bonds to finance the Project and following the public hearings have given approval to the Project, the issuance of the Bonds under the Act by Frontier and the execution and delivery of this Intergovernmental Agreement.

The Political Subdivisions have determined that an intergovernmental approach should be taken concerning the financing of the Project and that it is in the best interests of the Political Subdivisions and the Corporation to finance the Project by Bonds to be issued by Frontier.

NOW, THEREFORE, THE POLITICAL SUBDIVISIONS AGREE AS FOLLOWS:

SECTION 1. AUTHORITY FOR INTERGOVERNMENTAL AGREEMENT. This Intergovernmental Agreement is authorized by Section 40-57-03, subsections (1) and (8) of the Act, which authorize a municipality to issue revenue bonds to finance projects on behalf of one or more other municipalities.

SECTION 2. PURPOSE OF THE INTERGOVERNMENTAL AGREEMENT. The purpose of this Intergovernmental Agreement is to permit the financing of the Project located in Cass County through Bonds to be issued by Frontier.

SECTION 3. TERMS OF THE INTERGOVERNMENTAL AGREEMENT. Cass County hereby consents to the issuance of Bonds by Frontier to finance the Project located within the boundaries of Cass County. Frontier may authorize, execute and deliver the Bonds, loan agreements and any other necessary documents on such terms and conditions as it may deem desirable without further approval or consent from Cass County. The Bonds and all of the other documents, agreements and certifications may be entered into and executed solely by authorized officers of Frontier.

SECTION 4. NO LIABILITY. Neither this Intergovernmental Agreement nor any actions, agreements, or legal matters related hereto or in pursuance hereof, shall in any manner or form create an indebtedness or liability of the Political Subdivisions. The Bonds shall be special, limited obligations of Frontier payable solely from proceeds, revenues and other amounts specifically pledged thereto. The Bonds and the interest thereon shall neither constitute nor give rise to a pecuniary liability, general or moral obligation or a pledge of the full faith or credit of the Political Subdivisions, the State of North Dakota or any political subdivision thereof.

SECTION 5. INDEMNIFICATION. The Corporation hereby agrees to jointly and severally indemnify and hold the Political Subdivisions harmless from any and all claims, demands, lawsuits, administrative or regulatory actions or investigations initiated toward or against the Political Subdivisions as a result of the issuance of the Bonds, including any post-compliance obligations related thereto, and has agreed or will agree to fully reimburse the Political Subdivisions for any and all costs, including attorneys' fees or other professional fees, incurred by the Political Subdivisions in responding to such claims, demands, lawsuits, administrative or regulatory actions or investigations.

SECTION 6. TERMINATION. This Intergovernmental Agreement shall terminate upon the retirement or defeasance of the last outstanding Bond and this Intergovernmental Agreement may not be terminated in advance of such retirement or defeasance.

IN WITNESS WHEREOF, duly authorized officers of the Political Subdivisions have executed this Intergovernmental Agreement as of the date set forth above.

CASS COUNTY, NORTH DAKOTA

By: _____
Chair

ATTEST:

By: _____
County Auditor

CITY OF FRONTIER, NORTH DAKOTA

By: _____
Mayor

ATTEST:

By: _____
City Auditor

YMCA of Cass and Clay Counties agrees to be bound by the provisions of Section 5 of this Intergovernmental Agreement.

YMCA OF CASS AND CLAY COUNTIES

By: _____
President