Member _____ introduced the following resolution and moved its adoption:

RESOLUTION APPROVING THE EXECUTION AND DELIVERY OF AN INTERGOVERNMENTAL AGREEMENT (SERIES 2016) BETWEEN CASS COUNTY, NORTH DAKOTA, AND THE CITY OF FARGO, NORTH DAKOTA; CONSENTING TO LOAN AGREEMENTS BETWEEN WELLS FARGO BANK, N.A., AND CASS COUNTY, NORTH DAKOTA; CONSENTING TO LOAN AGREEMENTS BETWEEN WELLS FARGO, N.A., AND THE CITY OF FARGO, NORTH DAKOTA AND CONSENTING TO THE ISSUANCE OF TEMPORARY SALES TAX REVENUE NOTES BY CASS COUNTY AND THE CITY OF FARGO

WHEREAS, the Metro Flood Diversion Authority (the "Diversion Authority") was created by a Joint Powers Agreement[1] ("JPA"), and pursuant to Section 11.03 of the JPA the Diversion Authority's Board must consent and approve of the issuance of Debt Obligations[2] 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 of Fargo, North Dakota (the "City") and Cass County, North Dakota (the "County") previously determined it necessary to cooperate with each other with respect to obtaining interim financing (the "Series A Interim Debt Obligation")[3] for planning, design and the construction of the Project; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the Diversion Authority has reviewed the Intergovernmental Agreement (Series 2016), dated as of August 1, 2016, and approves of the terms and conditions contained within the Intergovernmental Agreement (Series 2016); and

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

WHEREAS, the Diversion Authority has reviewed the Loan Agreement by and between Cass County, North Dakota and Wells Fargo dated as of August 1, 2016, for the County Additional Loan Agreement and approves of the terms and conditions contained within the County Additional Loan Agreement; and

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

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

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

Section 1. Approval and Consent of the Intergovernmental Agreement (Series 2016). The Diversion Authority hereby consents and approves of the Intergovernmental Agreement (Series 2016) by and between the City and the County, dated as of August 1, 2016, which specifically sets forth agreements with respect to the County Refund Loan, the County Additional Loan, the City Refund Loan, and the City Additional Loan, and to refund the U.S. Bank County Loan and the U.S. Bank City Loan.

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

set forth in the proposal of Wells Fargo and in the form of the Temporary Sales Tax Revenue Note Purchase Agreement and the County Additional Loan Agreement, respectively. The Diversion Authority hereby approves the County entering the Temporary Sales Tax Revenue Purchase Agreement and the County Additional Loan Agreement with Wells Fargo and issuing the $50,000,000 Temporary Sales Tax Revenue Note of 2016 of Cass County and the County Additional Note relating thereto substantially in the forms presented to the Diversion Authority at this meeting, with such changes, additions, or deletions as may be approved by the officers of the Diversion Authority signing such document, the Chair and the Secretary.

Section 3. Approval and Consent of Wells Fargo Loans with City. The Diversion Authority hereby consents and approves of the City borrowing up to $50,000,000 from Wells Fargo for the City Refund Loan and up to $50,000,000 from Wells Fargo for the City Additional Loan secured by and payable solely from ninety-one percent (91%) of the pledged County 2010-2 Sales Tax and the City 3-21 Sales Tax, with interest payable at that variable rate set forth in the proposal of Wells Fargo and in the form of the Temporary Sales Tax Revenue Note Purchase Agreement and the City Additional Loan Agreement, respectively. The Diversion Authority hereby approves the City entering the Temporary Sales Tax Revenue Agreement and the City Additional Loan Agreement with Wells Fargo and issuing the $50,000,000 Temporary Sales Tax Revenue Note of 2016 of the City of Fargo and the City Additional Note relating thereto substantially in the forms presented to the Diversion Authority at this meeting, with such changes, additions, or deletions as may be approved by the officers of the Diversion Authority signing such document, the Chair and the Secretary.

Section 4. Acceptance of Wells Fargo Proposals. The governing body of the Diversion Authority has received proposals from Wells Fargo for the (county) Temporary Sales Tax Revenue Note Purchase Agreement, the County Additional Loan Agreement, the (city) Temporary Sales Tax Revenue Note Purchase Agreement, and the City Additional Loan Agreement which are hereby found and determined to be reasonable and advantageous are hereby accepted by the Diversion Authority.

Section 5. Authorization of Documents. The execution and delivery of the (county) Temporary Sales Tax Revenue Note Purchase Agreement, the County Additional Loan Agreement, the County, the $50,000,000 Temporary Sales Tax Revenue Note of 2016 of Cass County, the (city) Temporary Sales Tax Revenue Note Purchase Agreement, the City Additional Loan Agreement, the $50,000,000 Temporary Sales Tax Revenue Note of 2016 of the City of Fargo, and the Intergovernmental Agreement (Series 2016) are hereby approved and authorized to be executed and delivered in substantially the same form presented to the Flood Diversion Board at this meeting on behalf of Chair of the Cass County Commission and the Cass County Auditor, and the Mayor and City 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) Temporary Sales Tax Revenue Note Purchase Agreement, the County Additional Loan Agreement, the $50,000,000 Temporary Sales Tax Revenue Note of 2016 of Cass County, the (city) Temporary Sales Tax Revenue Note Purchase Agreement, the City Additional Loan Agreement, the $50,000,000 Temporary Sales Tax Revenue Note of 2016 of the City of Fargo, and the Intergovernmental Agreement (Series 2016), and to deliver them to Wells Fargo, which execution and delivery will be conclusive evidence of the approval of any

modifications with respect to the (county) Temporary Sales Tax Revenue Note Purchase Agreement, the County Additional Loan Agreement, the $50,000,000 Temporary Sales Tax Revenue Note of 2016 of Cass County, the (city) Temporary Sales Tax Revenue Note Purchase Agreement, the City Additional Loan Agreement, the $50,000,000 Temporary Sales Tax Revenue Note of 2016 of the City of Fargo, and the Intergovernmental Agreement (Series 2016).

The Authorized Officers are hereby authorized and directed to execute and deliver such other necessary or appropriate agreements, certifications, and other documents in connection with the (county) Temporary Sales Tax Revenue Note Purchase Agreement, the County Additional Loan Agreement, the $50,000,000 Temporary Sales Tax Revenue Note of 2016 of Cass County, the (city) Temporary Sales Tax Revenue Note Purchase Agreement, the City Additional Loan Agreement, the $50,000,000 Temporary Sales Tax Revenue Note of 2016 of the City of Fargo, and the Intergovernmental Agreement (Series 2016).

In the event of the absence or unavailability of any Authorized Officer, 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 or the City to act on behalf of its Authorized Officers in such circumstances 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 6. North Dakota Law Applies. This Resolution and any transactions contemplated herein will be controlled by the laws of the State of North Dakota.

Section 7. This Resolution shall take effect immediately upon adoption.

Adopted August 11, 2016.

METRO FLOOD DIVERSION AUTHORITY

_____
Darrell Vanyo, Chair
Diversion Authority Board

ATTEST:

_____
Heather Worden, Secretary

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

INTERGOVERNMENTAL AGREEMENT

(Series 2016)

BY AND BETWEEN

CASS COUNTY, NORTH DAKOTA
as County

AND

CITY OF FARGO, NORTH DAKOTA
as City

Dated as of August 1, 2016

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

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INTERGOVERNMENTAL AGREEMENT
(Series 2016)

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

RECITALS

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

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

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

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

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

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

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

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

WHEREAS, the U.S. Bank County Loan financed the costs of the Project[1] during the construction period thereof in anticipation of permanent financing and was secured by and payable from a lien on and pledge of the Pledged Sales Taxes; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I.
DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Commission" means the Fargo City Commission.

"County" means Cass County, North Dakota, its successors and assigns.

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

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

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

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

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

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

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

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

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

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

"Effective Date" means August 16, 2016.

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

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

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

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

"Future Loan Proceeds" means any proceeds from Future Loans.

"Future Loans" means Future County Loans and Future City Loans, collectively.

"Future Notes" means promissory notes executed in connection with Future Loans.

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

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

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

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

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

"Intergovernmental Agreement (Series 2016)" means this Agreement.

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

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

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

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

"Loan Proceeds" means any proceeds from the Wells Fargo Loan Agreements.

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

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

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

"Party" *or* ***"Parties"*** means the City and/or the County, as applicable.

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

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

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

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

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

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

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

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

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

"Sales Tax Revenues" means, collectively, the City 3-21 City Sales Tax and the County's 2010-2 Sales Tax.

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

"State" means the State of North Dakota.

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

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

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

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

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

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

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

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

"Wells Fargo" means Wells Fargo Bank, National Association.

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

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

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

ARTICLE II.
PURPOSE

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

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

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

ARTICLE III.
TERM

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

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

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

ARTICLE IV.
THIRD PARTY BENEFICIARIES

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

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

ARTICLE V.
AUTHORIZATION FOR FUTURE LOANS

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

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

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

ARTICLE VI.
LIMITED OBLIGATIONS

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

ARTICLE VII.
PLEDGE OF REVENUES

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

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

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

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

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

Section 7.05 SUBORDINATE PLEDGE OF SALES TAX FOR CROSS REIMBURSEMENT.

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

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

ARTICLE VIII.
AGREEMENT TO PAY DEBT SERVICE

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

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

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

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

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

ARTICLE IX.
OVERSIGHT

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

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

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

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

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

ARTICLE X.
COVENANTS

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

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

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

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

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

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

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

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

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

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

ARTICLE XII.
MISCELLANEOUS

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

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

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

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

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

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

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

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

If to City:

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

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

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

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

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

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

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

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

CITY:

CITY OF FARGO, NORTH DAKOTA

BY: _____
Timothy J. Mahoney, Mayor

BY: _____
Steven Sprague, City Auditor

COUNTY:

CASS COUNTY, NORTH DAKOTA

BY: _____
Mary Scherling, Chair
Board of County Commissioners

BY: _____
Michael Montplaisir, County Auditor