Near Final Version

Metro Flood Diversion Authority

Fargo-Moorhead Metropolitan Area Flood Risk Management Project

Appropriations and Financing Whitepaper

Dated as of December 15, 2016

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1. Introduction

a. Project

The Metro Flood Diversion Authority (the "Authority") is issuing a Request for Proposals (the "RFP") to seek competitive proposals ("Proposals") for a public-private partnership for the design, construction, financing, operation and maintenance of the Diversion Channel and Associated Infrastructure Work Package (the "DCAI" or the "Project") of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the "Comprehensive Project"). The purpose of this Appropriations and Financing Whitepaper (this "Whitepaper") is to assist Proposers in understanding the features of the Authority's funding arrangements for the Comprehensive Project and the underlying framework that supports such funding. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Joint Powers Agreement.

The Member Entities of the Authority consist of the City of Fargo, North Dakota ("City of Fargo"); the City of Moorhead, Minnesota ("City of Moorhead"); Cass County, North Dakota ("Cass County"); Clay County, Minnesota ("Clay County"); and the Cass County Joint Water Resource District in North Dakota (the "CCJWRD"). The Member Entities have agreed pursuant to the Joint Powers Agreement dated June 1, 2016 (the "JPA") (the agreement that created the Authority), to cooperate in financing the Comprehensive Project and in the issuance of any Debt Obligations necessary for the Comprehensive Project. The Authority will be the entity entering into the Project Agreement for construction of the DCAI with the Selected Proposer (the "P3 Developer"), with concurrence from the CCJWRD. Pursuant to Article IX of the JPA, the Authority has multiple sources of Pledged Revenues[1] to provide funding for the Comprehensive Project. The Authority has the power to use the Pledged Revenues to make debt service payments on Debt Obligations, Milestone Payments, Availability Payments, and P3 Payments.[2] The Authority will use Pledged Revenues consisting of Cass County sales and use taxes and City of Fargo sales and use taxes, backstopped by special assessments imposed and collected by the CCJWRD, to fund payments due under the Project Agreement.[3]

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[1] The Pledged Revenues include, but are not limited to:
(a) Cass County sales and use tax (as defined in Section 6 of this Whitepaper);
(b) City of Fargo sales and use tax (as defined in Section 6 of this Whitepaper);
(c) Special assessment levies collected by CCJWRD (as defined in Section 8 of this Whitepaper);
(d) State of Minnesota appropriations (as defined in Section 5 of this Whitepaper); and
(e) State of North Dakota appropriations (as defined in Section 4 of this Whitepaper).

[2] As defined in the JPA, "Debt Obligation" means 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; "Milestone Payments" means payments to the P3 Developer for achievement of agreed upon construction or progress milestones, in accordance with the Project Agreement; "Availability Payments" shall mean the periodic performance payments to the P3 Developer for the term of the Project Agreement for the design, construction, financing, operation, and maintenance of the Project in accordance with the agreed technical requirements; and, "P3 Payments" means all payments made to a P3 Developer pursuant to and arising out of the Project Agreement, which include, but are not limited to, termination payments, special allowances, compensation payments for supervening events, and interest on late payments. P3 Payments do not include Milestone or Availability Payments.

[3] Payments due under the Project Agreement may include, *inter alia,* Milestone Payments, Availability Payments, and P3 Payments.

The Comprehensive Project consists of an embankment, with upstream water staging and a downstream Diversion Channel. The Comprehensive Project is being delivered using a "Split Delivery Model," with the Authority responsible for delivering the Project and the United States Army Corps of Engineers ("USACE") responsible for delivering the Southern Embankment and Associated Infrastructure Work Package ("SEAI") and Mitigation and Associated Infrastructure ("MAI"), either directly or as work-in-kind by the Authority.

The Diversion Channel alignment begins at the intersection of Cass County roads CR 16 and CR 17 and extends west and north around several North Dakota cities, including the City of Horace, the City of Fargo, the City of West Fargo and the City of Harwood. The Diversion Channel discharges into the Red River of the North (the "Red River") north of the confluence of the Red River and the Sheyenne River near the City of Georgetown, Minnesota. The Diversion Channel crosses the Sheyenne River, the Maple River, the Lower Rush River and the Rush River, interstates I-94 and I-29, numerous county and township roads, the BNSF Railway ("BNSF") in three locations, and the Red River Valley and Western Railroad Company in one location along its 30-mile path.

The general scope of work for the Project includes the 30-mile Diversion Channel, the Diversion Channel outlet, the Inflow Design Flood Line of Protection ("IDF Line of Protection"), two pairs of interstate bridges, eleven county road bridges or crossings, four railroad bridges, two aqueducts, eleven drain inlets, and two drop structures that direct the flow of the Lower Rush River and the Rush River into the Diversion Channel, as well as recreation features and mitigation of environmental impacts. The depth and width of the Diversion Channel will depend on the P3 Developer's Final Design.

b. Split Delivery Model and Role of USACE

USACE has led the Comprehensive Project since the initial stages of its development. Starting in 2008, USACE began meeting with local stakeholders regarding the need for a major flood risk management project. In September 2011, USACE completed an in-depth feasibility study, which included consultation with various federal, state and local agencies. At that point, the City of Fargo and the City of Moorhead (together, the "Non-Federal Sponsors") and USACE entered into a Design Agreement, which set forth the parties' commitments with respect to initial engineering and design of the Comprehensive Project.[4] On December 19, 2011, USACE submitted a report to the US Congress (the "Chief of Engineers Report") in which it officially recommended authorization of the Comprehensive Project (which authorization would later be granted by the US Congress through Section 7002(2) of the Water Resources Reform and Development Act of 2014 (Public Law 113-121) ("WRRDA")).

On July 11, 2016, the Non-Federal Sponsors and USACE entered into the Project Partnership Agreement ("PPA"), which sets forth the rights and responsibilities of the Non-Federal Sponsors

[4] Originally, the Design Agreement was entered into between the USACE, the City of Fargo, and the City of Moorhead. In 2013, the Authority was added as a party to the Design Agreement. See Design Agreement between the Department of the Army and the City of Fargo, North Dakota and the City of Moorhead, Minnesota for Design for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project dated September 12, 2011. See Amendment Number 1 to the Design Agreement between the Department of the Army and the City of Fargo, North Dakota and the City of Moorhead, Minnesota for Design for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project dated December 19, 2013.

and USACE for implementation of the Comprehensive Project. A copy of the PPA is available on the Project Website. Under the PPA, the Non-Federal Sponsors and USACE agreed to deliver the Comprehensive Project using a "Split Delivery Model," with USACE responsible for the design and construction of the SEAI and MAI, and the Non-Federal Sponsors responsible for the design and construction of the Project, as well as the operation and maintenance of the Comprehensive Project. Under the terms of the PPA, USACE has committed to provide **$450 million** in federal funds,[5] subject to appropriations, for construction of the Comprehensive Project, with the Non-Federal Sponsors responsible for all Comprehensive Project costs in excess of such amount. The Authority intends that the federal funds will be used to fund the SEAI and other non-P3 costs, and will not be used as a source of funds for the DCAI.

2. Executive Summary

a. Introduction

The funding for the Comprehensive Project is comprised of multiple sources. The SEAI will be funded primarily using the **$450 million** in federal funds. The DCAI will be funded primarily using Cass County and City of Fargo sales and use tax revenues, backstopped by special assessments levied by the CCJWRD. The DCAI will also be funded with appropriations from the State of North Dakota. Right-of-way acquisitions for both the SEAI and DCAI will be funded through appropriations from the State of North Dakota and Cass County and City of Fargo sales and use tax revenues.

The sources available to fund Project Agreement payments consisting of Milestone, Availability, and P3 Payments are Cass County and City of Fargo sales and use tax revenues, and appropriations from the State of North Dakota (and special assessments levied by CCJWRD). This Whitepaper will address State of North Dakota and State of Minnesota budgeting and appropriations process, the authority, levy and use of sales and use taxes by Cass County and the City of Fargo, and the levy, appropriation, and collection of the special assessments by CCJWRD (the "Pledged Revenues"). Finally, this Whitepaper will address the use of the Pledged Revenues to make payments due under the Project Agreement.

b. Proposers Due Diligence

Proposers should undertake their own analysis and due diligence regarding each of the following points. Proposers should also familiarize themselves with the terms and conditions of the JPA, which is available on the Authority's website: *www.fmdiversion.com*. Proposers are encouraged to provide input regarding Project Agreement terms and conditions which they envision as necessary from a credit perspective.[6]

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[5] The $450 million in federal funds is established as October 2015 dollars, with annual adjustments for inflation of any remaining balances that are not expended by the USACE. See Article I, Section J of the PPA. As a result, the $450 million will be adjusted for inflation based upon the date of expenditure.

[6] Proposers are directed to the draft Project Agreement (Part J- Termination and Step-In, Termination for Authority Default) to provide input regarding contractual terms and conditions related to clause "(f) JPA-Related Event."

3. Source of Funds for Direct Costs, Debt Obligations, and Milestone, Availability, and P3 Payments

As provided in the JPA the Authority's direct costs, Debt Obligations, Milestone Payments, Availability Payments, and P3 Payments for the DCAI[7] will be funded through a variety of previously established revenue sources, including:

- Appropriations from the State of North Dakota;
- City of Fargo sales and use taxes;
- Cass County sales and use taxes; and
- Special assessments levied and apportioned upon real property[8] within FM Flood Risk Management District No. 1.[9]

The Availability Payment will have two components consisting of a capital portion and an operations and maintenance portion. The sources of funds for the capital portion of the Availability Payment are Cass County and City of Fargo sales and use tax revenues, and revenue generated from special assessments levied by CCJWRD on property within FM Flood Risk Management District No. 1.[10] The sources of funds for the operations and maintenance portion of the Availability Payment are excess Cass County and City of Fargo sales and use tax revenues, a maintenance levy for the Comprehensive Project by CCJWRD, and storm water maintenance fees.[11]

4. North Dakota Budgetary Process

North Dakota's fiscal year commences July 1st and ends on June 30th of the following calendar year. North Dakota operates under a biennial budget for two consecutive fiscal years, beginning on July 1st of every odd-numbered year and ending on June 30th of the next odd-numbered year (e.g. July 1, 2013 – June 30, 2015). Under North Dakota's Constitution, North Dakota Legislative appropriation acts are limited to a two-year period (a biennium) unless specifically provided otherwise.[12] The appropriations legislation regarding the Comprehensive Project (i.e. SB2020, as defined below) specifically authorizes the carryover of funds across biennia for the Comprehensive Project as more fully set forth in Section 4 of this Whitepaper.

The budgeting process commences in March of every even-numbered year prior to the legislative session, which is held every odd-numbered year, with the governor's budget guidelines and state agencies and institutions preparing biennial budget requests. These budget requests are submitted

[7] Funds from the State of Minnesota will only be utilized for Comprehensive Project elements located within the State of Minnesota. As a result, no State of Minnesota funds will be used for the DCAI.

[8] For purposes of special assessments, the term "real property" includes lots and parcels of land.

[9] The geographical boundaries of FM Flood Risk Management District No. 1 include all lands located within the geographical boundaries of the Comprehensive Project in North Dakota, and include, *inter alia*, the City of Fargo, West Fargo, Horace, Harwood, Reile's Acres, and Frontier.

[10] Cass County sales and use tax is defined in Section 6 of this Whitepaper; City of Fargo sales and use tax is defined in Section 6 of this Whitepaper; Special assessment revenues collected by CCJWRD are defined in Section 8 of this Whitepaper.

[11] See Section 12 of this Whitepaper.

[12] See generally N.D. Ag. Op. 96-L-21 (1996).

to the North Dakota Office of Management and Budget (the "NDOMB") beginning in July. The NDOMB holds selected executive budget hearings to allow agencies an opportunity to explain and justify their budget requests for inclusion in the governor's budget recommendations to the legislative assembly. Revenue forecast information and a revenue advisory committee are also utilized by the NDOMB.

The legislative assembly receives the governor's executive budget recommendations during its organizational session in the December preceding the legislative session. The legislative management's budget section meets following the organizational session to receive more detailed information regarding the executive budget recommendations. Prior to the convening of the legislative session, the legislative fiscal staff prepares a comprehensive analysis of the executive budget recommendations. This analysis is presented to the appropriations committees (for their respective chamber) and is made available to all members of the legislative assembly for the members' use in developing the legislative budget.

The NDOMB introduces bills to provide for the revenue and appropriations levels recommended in the governor's budget. Individual legislators may also introduce bills affecting state revenues or appropriations for an agency. As it develops the legislative budget, the legislative assembly considers the governor's recommendations and information received through public hearings held in each chamber on each appropriation and revenue bill. Each bill having an appropriation of $5,000 or more or a bill with a fiscal note indicating a fiscal impact of $50,000 or more on an agency's appropriations is by rule required to be referred to the appropriations committees.

The majority of the North Dakota Legislative Assembly's work is conducted through the use of several standing committees. Legislators who serve on the appropriations committees have no other standing committee assignments, as those committees meet every day of the week.[13] The North Dakota Senate Appropriations Committee ("Senate Appropriations Committee") consists of thirteen (13) members and forms ad hoc subcommittees to consider specific issues or funding levels for select agencies. The North Dakota House Appropriations Committee ("House Appropriations Committee") consists of twenty-three (23) members and is organized into three formal divisions – education and environment, human resources, and government operations. These divisions hold budget hearings on assigned agencies, develop budget recommendations, and report their recommendations to the full appropriations committee. After public hearings, the appropriations committees submit their recommendations to their respective chambers.[14]

The reports from the appropriations committees include: (1) a recommendation to pass the bill; (2) a recommendation to not pass the bill; (3) a recommendation to amend and pass; (4) a recommendation to amend and do not pass; or (5) make no recommendation. All bills regardless of committee recommendation will be placed on the respective chamber's calendar for final passage. If the committee recommends an amendment, the amendment is placed on the chamber's calendar before the bill is placed on the chamber's calendar. A bill is then given a second reading on the Senate or House floor depending on which chamber the bill was introduced. After the debate, the bill is passed or defeated in the respective chamber; if it is passed, it is delivered to the other chamber for consideration. If the second chamber passes the

[13] *Legislative Branch Function and Process*. North Dakota Legislative Branch. Retrieved from www.legis.nd.gov/research-center/library/legislative-branch-function-and-process. Date accessed 12/5/2016.
[14] Id.

bill without any changes, the bill is enrolled, signed by the presiding officers, and sent to the governor. If changes are made to the bill by the second chamber to consider the bill, a conference committee, comprised of members from both chambers, is appointed by the presiding officers. The conference committee then makes recommendations to both chambers, which must pass the bill in the same form.

Once passed by an affirmative vote of a majority of members in both chambers of the legislative assembly, each bill is delivered to the governor for signature. The governor may use line-item veto authority to veto specific items in a bill.[15] Historically, the North Dakota governor's use of the line item veto has been dependent upon the political and policy preferences of the governor. Former Governor Dalrymple (2010 to December 15, 2016),[16] was very conservative in using his line item veto Authority only one (1) to five (5) times in each of the past five (5) legislative sessions.[17] It is unknown how often incoming Governor Burgum, a resident of Cass County and successful real estate developer of property within Cass County and technology sector entrepreneur, will utilize his line item veto authority. Unless otherwise indicated, an appropriation bill or a tax measure bill becomes effective July 1st following the legislative session, and other bills become effective on August 1st.[18] The legislative assembly approves approximately seventy-five (75) appropriation bills each session. The North Dakota Legislature has always successfully approved a budget prior to July 1st; it has never failed to approve a budget.

If the North Dakota State Legislature was unable to approve a budget by July 1st, the State of North Dakota could only expend funds for previously authorized debt service and to provide funds for the purposes of repelling invasion, suppressing insurrection, defending the state in a time of war, and to provide for the public defense in case of threatened hostilities.[19]

Appropriations for the Comprehensive Project will be included in the budget for the North Dakota State Water Commission (the "SWC"), which is actively involved in water development projects throughout North Dakota through the implementation of a cost-share program. Member entities of the Authority have entered into a cost-share agreement with the SWC for the Comprehensive Project. For the 2015-2017 biennium, the legislative assembly appropriated approximately **$1.125 billion** to the SWC. Funding requests for the SWC are developed by the SWC and its chairperson (the North Dakota governor) and submitted to the governor's office for inclusion within the governor's budget. Funds are appropriated by the legislature to the SWC for both specifically identified projects and as general appropriations. General appropriations may be allocated to various SWC projects, but specific appropriations must be utilized for identified projects. In order for a North Dakota political subdivision to receive funding from SWC, it must enter into a Cost Share Agreement with the SWC. The City of Fargo entered into a Cost Share Agreement with the State of North Dakota, by and through the SWC, dated July 28, 2011, and August 22, 2011, to provide funding for the Comprehensive Project. Subsequently, the Authority

[15] The governor may exercise the line-item veto only when (i) the material vetoed is severable from the material approved, the material approved continues to be a workable bill, and (ii) the fundamental purpose of the legislation is not changed by the deletion. 93 Op. N.D. Att'y Gen. F-05.
[16] See N.D. Const. Article V, Section 5.
[17] Information provided by the North Dakota Legislative Council.
[18] See generally N.D. Const. Article IV, Section 13.
[19] See generally N.D. Const. Article X, Section 13.

entered into a Cost Share Agreement[20] with the State of North Dakota, by and through the SWC, dated July 8, 2016, and July 14, 2016, to provide funding for the Comprehensive Project, and, although CCJWRD is not a signatory to this agreement, its approval is required.

5. North Dakota 2015 Senate Bill No. 2020

During the 2015 legislative assembly, Senate Bill Number 2020 ("SB2020") outlined the appropriations for the SWC for the upcoming biennium, and included the intent of the legislative assembly regarding future water projects. First, SB2020 appropriated **$69 million** for the DCAI and determined any funds not spent by June 30, 2017, were not subject to North Dakota Century Code ("N.D.C.C.") § 54-44.1-11, which precludes the ability of carrying appropriations to a subsequent biennium; therefore, such funds must be carried forward to subsequent bienniums. These funds may be used only for land purchase, construction, and professional fees associated with construction of the Comprehensive Project, which includes the DCAI. The standing North Dakota Legislature has always given deference to legislation that expresses the intent of a prior North Dakota legislature to undertake spending. These funds were specifically earmarked for Fargo interior flood control projects until Federal appropriation was provided for Comprehensive Project construction, at which time the funds could be utilized for the Comprehensive Project. The Comprehensive Project first received appropriations from the USACE in its Fiscal Year 2016 Work Plan.

Second, SB2020 appropriated an additional **$60 million** for flood protection projects within the city limits of the City of Fargo, for the period beginning with the effective date of SB2020 and ending June 30, 2017. Of this **$60 million**, **$30 million** is not subject to N.D.C.C. § 54-44.1-11 and may be continued into the next or subsequent bienniums. The **$60 million** is intended to be spent on components of the Comprehensive Project that will be constructed within the City of Fargo and that are not part of the DCAI.

Last, SB2020 included the legislative assembly's intent for the Comprehensive Project moving forward – providing one-half of the local cost-share of the Comprehensive Project, not to exceed **$570 million**. The legislative assembly expressed its intent that **$120 million** of the **$570 million** is to be used for Fargo interior control projects; that **$450 million** of the **$570 million** is to be used for flood control projects; and, that **$266 million** is to be made available in equal installments over the next four bienniums, beginning July 1, 2017.[21] The legislative assembly further provided that funding for the Comprehensive Project would end June 30, 2021, if no Federal appropriation for construction for the Project had been made by June 30, 2021. As

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[20] Pursuant to the terms and conditions of the Cost Share Agreement, the State of North Dakota will reimburse the Authority 50% of its eligible expenses in an amount up to the maximum amount appropriated by the State of North Dakota. Further, the Authority may only be reimbursed for up to 10% of its administrative costs from the state appropriations. See Agreement for Cost-Share Reimbursement, Fargo Flood Control Project 2015-2017 between the State of North Dakota and Metro Flood Diversion Authority dated July 14, 2016. For Comprehensive Project costs that are not eligible for reimbursement pursuant to the Cost Share Agreement, the Authority will use revenues from sales and use taxes collected by Cass County and the City of Fargo, together with any funds from the levy of special assessments by CCJWRD.

[21] On December 7, 2016, North Dakota Governor Dalrymple released his proposed 2017 biennium budget, which includes $66.5 million for the Comprehensive Project. (See Press Release, State of North Dakota, Office of the Governor, Dalrymple Delivers 2017-2019 Budget Address (December 7, 2016) *available at* https://www.governor.nd.gov/media-center/news/dalrymple-delivers-2017-2019-budget-address.)

previously provided, however, Federal appropriation for construction for the Comprehensive Project occurred in the USACE's Fiscal Year 2016 Work Plan. When a legislative assembly has previously expressed its intent for future appropriations, the appropriations have generally occurred, contingent upon available funds. North Dakota's share of local costs for the Comprehensive Project will be utilized for the Authority's direct costs and Milestone Payments.

6. Minnesota Budgetary Process

It is anticipated that any funds obtained from the state of Minnesota would **not be used** for the DCAI and instead would be used for (a) Comprehensive Project related features located in Minnesota; (b) environmental mitigation projects located in Minnesota; or (c) land acquisition located within Minnesota. The Authority recognizes that Minnesota Department of Natural Resources ("MDNR") permitting for features of the Comprehensive Project located in Minnesota must still be resolved in order to obtain the funds for the Comprehensive Project from the State of Minnesota.

Minnesota's fiscal year begins on July 1st of odd-numbered years and ends on June 30th of the following year. A fiscal year is designated by the year in which it ends; thus, fiscal year 2016 began on July 1, 2015, and ended on June 30, 2016. The state budget operates on a two-year cycle.

The process of creating a new state budget begins in the even-numbered years prior to the beginning of a new biennium. The commissioner of Minnesota Management & Budget prepares and distributes budget instructions and forms to all state agencies. Each agency's proposed budget must show actual expenditures and receipts for the two (2) most recent fiscal years, estimated expenditures and receipts for the current fiscal year, and estimates for each fiscal year of the next biennium. This information must be filed with the commissioner by October 15th. By November 30th the commissioner must send final budget information to legislative ways and means and finance committees. This information is used as the basis for the governor's proposed biennial budget.

Minnesota law requires the governor to submit a three-part budget to the legislature. Part one is the budget message, part two is a detailed operating budget, and part three is a capital expenditure budget. Parts one and two are presented to the legislature in January or February of odd-numbered years and part three is presented to the legislature in January of even-numbered years.

The release of the governor's budget sets the legislative component in motion. Budget proposals are introduced to the legislature and make their way through the legislative process in a number of individual appropriations bills. Once they are approved and passed by the legislature, each bill is sent to the governor who can accept and sign the bill, veto the entire bill, or veto individual line items of the bill. The final budget passed by the legislature does not appear in a single law but is made up of a number of separate appropriations laws.

The state budget can also be modified, under certain circumstances, by the governor through the power of unallotment, which entails reducing spending to avoid an anticipated budget deficit. In order for unallotment to occur, the Minnesota Commissioner of Finance must first determine that probable receipts for the general fund will be less than anticipated and that the amount available for the remainder of the biennium will be less than needed. Once this determination is made, the commissioner must thereafter consult with the Legislative Advisory Commission (the "LAC"). Minnesota law requires only consultation with the LAC and does not give the LAC authority on the proposed unallotment. The commissioner then consults with the governor and seeks approval of the proposed reduction. Since the enactment of statutes authorizing unallotment in 1939, governors have utilized unallotment in 1980 (**$195 million**), 1981, 1986 (**$109 million**), 2003 (**$281 million**), 2008 (**$269 million**), and 2009 (**$2.68 billion**).

Under the terms of the JPA, the Minnesota member entities of the Authority will use their best efforts to actively request appropriations, grants, or cost-share allocations from the State of Minnesota. The State of Minnesota has yet to appropriate any funds for the Comprehensive Project. The JPA anticipates the City of Moorhead requesting an amount of appropriations not to exceed **$100 million**,[22] with Clay County supporting that effort. Minnesota's share of local costs (if any) for the Comprehensive Project will be utilized for the Authority's direct costs and would not be used for the DCAI.

7. Sales and Use Taxes

a. Introduction

Pursuant to and in accordance with the North Dakota Century Code, North Dakota Counties and Cities which have previously adopted a home rule charter may impose, levy and collect sales and use tax upon all retail sales occurring within the boundaries of the respective County or City. The power and authority to adopt, impose, levy and collect a sales and use tax is within the sole authority of a County or City which has adopted a home rule charter. The State of North Dakota is not required to consent to a County or City imposing a Countywide or Citywide sales and use tax. The State of North Dakota currently imposes a five percent (5%) sales and use tax that is in addition to any locally approved County or City sales and use tax. North Dakota Counties and Cities which impose and levy a sales and use tax must enter into an agreement with the State of North Dakota, whereby the North Dakota Office of State Tax Commissioner collects locally imposed sales and use taxes and remits the revenue each and every month to the local jurisdiction, after deducting an administrative fee based upon the number of sales tax permits in the jurisdiction imposing the sales and use tax.[23]

Cass County and the City of Fargo have each previously adopted a home rule charter. Both Cass County and the City of Fargo have each previously imposed, levied and also collected sales taxes for multiple projects, including the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. Any sales and use tax imposed by Cass County is levied upon all retail sales occurring within the geographical areas of Cass County, including areas outside the area benefitted by the Comprehensive Project. Any sales and use tax imposed by Cass County is also levied upon all retail sales occurring within the geographical area of the City of Fargo. Any sales and use tax

[22] The Financial Plan assumes a contribution from the State of Minnesota in the amount of $43 million for the Comprehensive Project subject to appropriations by the State of Minnesota legislature.
[23] As an example, the North Dakota Office of State Tax Commissioner currently imposes a fee of $13,650.00 per month to collect Cass County's sales and use tax and to remit it to Cass County on a monthly basis and a monthly fee that is the lesser of $35 per permit, or 3% of the sales taxes collected to collect the City of Fargo's sales and use tax.

imposed by the City of Fargo is levied upon all retail sales occurring within the geographical area of the City of Fargo. Cass County and the City of Fargo have both legally dedicated and will both legally dedicate sales and use tax revenues as security for and payment of debt service for sales and use tax revenue bonds issued by the City of Fargo and Cass County and as a source of payment for Milestone, Availability, and P3 Payments.

Pursuant to the JPA, both Cass County and the City of Fargo have agreed to coordinate their efforts to extend their respective sales taxes so that at any time during which debt issued for the Comprehensive Project, the Milestone Payments, Availability Payments, and/or P3 Payments remain outstanding, a combined sales and use tax equal to or greater than one percent (1%) would be imposed by either or both Cass County and the City of Fargo.

b. Cass County, North Dakota

Pursuant to Ordinance No. 2010-2, Cass County imposed a one-half of one percent (0.5%) sales and use tax upon the gross receipts of retailers from all sales at retail, including leasing or rental of tangible personal property, within the corporate limits of Cass County ("County 2010-2 Sales Tax"). The proceeds of the County 2010-2 Sales Tax are dedicated for payment of expenses incurred for the planning, engineering, land purchase, construction, and maintenance of a Red River diversion channel 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. Cass County has determined that it will legally pledge not less than ninety-one percent (91%) of the County 2010-2 Sales Tax[24] to sales and use tax revenue bonds issued by Cass County (the "County Sales Tax Bonds") and will dedicate (but not legally pledge) sales and use tax revenues not required for annual debt service or to replenish reasonably required debt service reserve funds on the County Sales Tax Bonds to the payment of debt service[25] for improvement bonds issued by CCJWRD, and Milestone, Availability, and P3 Payments for the Comprehensive Project.[26] For the past five years, sales and use tax revenues in Cass County have been:

2011:	$ 7,612,423
2012:	$14,494,309
2013:	$14,964,867
2014:	$15,986,941
2015:	$16,929,904

[24] Cass County has dedicated not less than 91% of the County 2010-2 Sales to the repayment of temporary and long term debt to provide funds for the planning, design, and construction of the Comprehensive Project and related elements. See Cass County Resolution No. 2014-12 (enacted 7-21-2014); see also Section 9.02(b) of the JPA.
[25] This includes annual debt service on improvement bonds issued for the Comprehensive Project and the warrant issued by CCJWRD.
[26] The County Sales Tax Bonds will be issued pursuant to an open indenture.

For planning purposes, the County is assuming the following sales and use tax projections over the next fifteen (15) years:[27]

2016:	$16,302,231
2017:	$16,791,298
2018:	$17,295,037
2019:	$17,813,888
2020:	$18,348,305
2021:	$18,898,754
2022:	$19,465,717
2023:	$20,049,688
2024:	$20,651,179
2025:	$21,270,714
2026:	$21,908,836
2027:	$22,566,101
2028:	$23,243,084
2029:	$23,940,376
2030:	$24,658,587

The County 2010-2 Sales Tax was anticipated to expire on March 31, 2031. The Cass County Commission, however, desired to extend the expiration date for the County 2010-2 Sales Tax until 2084, and voted unanimously to place such extension upon the November 8, 2016, ballot. (The County 2010-2 Sales Tax was previously approved by sixty-four percent (64%) of the voters.) On November 8, 2016, the extension of the County 2010-2 Sales Tax was approved by sixty-three percent (63%) of the voters (in both elections, a simple majority of voters was needed in order to pass). Pursuant to the ballot question presented to the voters, sales and use tax revenue generated by the County 2010-2 Sales Tax may be used for Debt Obligations, Milestone Payments, Availability Payments, and any other costs or charges associated with the DCAI and Comprehensive Project.

c. City of Fargo, North Dakota

The City of Fargo has adopted a sales and use tax ("City Flood Control Tax") by enacting Article 3-21 of the City of Fargo Municipal Code. The City Flood Control Tax imposes a one-half of one percent (0.5%) sales and use tax upon the gross receipts of retailers from all retail sales, including the leasing or renting of tangible personal property, within the corporate limits of the City of Fargo. The proceeds of the City Flood Control Tax are dedicated for acquiring property; making, installing, designing, financing, and constructing improvements; engaging in projects that are necessary for the goal of achieving risk reduction and the ability to defend the community against a five hundred (500) year flood event; and servicing bonds or other debt instruments. The City of Fargo has determined that it will dedicate one-hundred percent (100%) of its City Flood Control Tax[28] to sales and use tax revenue bonds issued by City of Fargo (the "City Sales Tax Bonds") and will dedicate (but not legally pledge) sales and use tax revenues not

[27] These projections equal 100% of the County 2010-2 Sales Tax projected to be collected over the next 15 years.

[28] The City of Fargo has dedicated 100% of the City Flood Control Tax to the repayment of temporary and long term debt to provide funds for the planning, design and construction of the Comprehensive Project and related elements. See Resolution Authorizing the Execution and Delivery of an Intergovernmental Agreement with Cass County (enacted on 7-21-2014); see also Section 9.02(a) of the JPA.

required for annual debt service or to replenish reasonably required debt service reserve funds on the City Sales Tax Bonds to the payment of debt service and Milestone, Availability, and P3 Payments for the Comprehensive Project.

In 2012, the City of Fargo adopted a second sales and use tax ("City Infrastructure Tax") by enacting Article 3-22 of the City of Fargo Municipal Code. The City Infrastructure Tax imposes a one-half of one percent (0.5%) sales and use tax upon the gross receipts of retailers from all retail sales, including the leasing or renting of tangible personal property, within the corporate limits of the City of Fargo. The proceeds of the City Infrastructure Tax are dedicated for such infrastructure capital improvements as the governing body of the City of Fargo selects, including streets and traffic management; water supply and treatment needs including construction or expansion of water treatment facilities; water distribution system needs; sewerage treatment and collection system needs, including construction or expansion of sewage treatment facilities; and flood protection or flood risk mitigation projects, and related improvements and activities. The City of Fargo has determined that it will legally dedicate (but not legally pledge) one-hundred percent (100%) of its City Infrastructure Tax not being utilized for present infrastructure projects[29] toward payment of Debt Obligations and Milestone, Availability, and P3 Payments for the Comprehensive Project.

The City Flood Control Tax and the City Infrastructure Tax was anticipated to expire on December 31, 2029, and December 31, 2032, respectively. The City of Fargo City Commission, however, desired to extend the expiration dates for the City Flood Control Tax and the City Infrastructure Tax until 2084, and as a result, voted to place such extensions upon the November 8, 2016, ballot. The City Flood Control Tax was previously approved by ninety and seven/tenths percent (90.7%) of the vote, and the City Infrastructure Tax was previously approved by sixty and three/tenths percent (60.3%) of the vote. On November 8, 2016, the extension of the City Flood Control Tax and the City Infrastructure Tax was approved by sixty-six percent (66%) of the voters (a super majority, i.e. sixty percent (60%), was needed to pass). Pursuant to the ballot question presented to the voters, sales and use tax revenue generated by the City Flood Control Tax and the City Infrastructure Tax may only be used for Debt Obligations, Milestone Payments, Availability Payments, and any and all other costs or charges associated with the Comprehensive Project.

The City of Fargo has additionally imposed a sales and use tax ("City Capital Improvements Tax") by enacting Article 3-20 of the City of Fargo Municipal Code. The City Capital Improvements Tax imposes a one percent (1%) sales and use tax upon the gross receipts of retailers from all retail sales, including the leasing or renting of tangible personal property, within the corporate limits of the City of Fargo. The proceeds of the City Capital Improvements

[29] The City of Fargo previously issued two bond issues to fund In-Town Flood Control Projects in 2013 and 2014 that were payable from a sales tax that was dedicated to various infrastructure (the In-Town Flood Control Projects are part of the Comprehensive Project). The aggregate amount of debt issued was $83.9 million. Individual bond issues were marketed under the State of North Dakota's Capital Financing Program. Series 2013A was issued in the par amount of $51.375 million and Series 2014B was issued in the par amount of $32.512 million. As of December 1, 2016, a total of $75.889 million remains outstanding, which will be fully amortized by 2033. Once these two issues are fully paid and/or defeased, 100% of the City Infrastructure Tax will be available to be utilized for Debt Obligations, Milestone and Availability Payments, and P3 Payments for the Project. The sales tax authorization contained in Section 3(U) of Fargo's Home Rule Charter (HRC) will be used to pay these obligations in the future. The City of Fargo City Commission amended Section 3(U) of the HRC during the voter approved extension of this sales tax authorization to 2084.

Tax are also dedicated for such infrastructure capital improvements as the governing body of the City of Fargo selects, including streets and traffic management; water supply and treatment needs including construction or expansion of water treatment facilities; water distribution system needs; sewage treatment and collection system needs, including construction or expansion of sewage treatment facilities; and flood protection or flood risk mitigation projects. The City of Fargo will dedicate[30] one quarter of the one percent (0.25%) City Capital Improvement Tax toward payment of Debt Obligations[31] and Milestone, Availability, and P3 Payments for the Comprehensive Project until 2028.

For the past five years, sales and use tax revenues in the City of Fargo for the City Flood Control Tax and the City Infrastructure have been:

Please note: These figures represent the net sales tax receipts for the City of Fargo, not the total amounts dedicated to the Comprehensive Project:

Historical Distribution of Sales Taxes

Year	**Infrastructure**	**Flood Control**	**Public Utility**	**Total**
2011	$ 15,515,131	$13,365,237	$20,963,395	$49,843,763
2012	15,046,337	11,368,486	15,047,541	41,462,364
2013	10,806,389	20,202,834	13,102,714	44,111,937
2014	11,528,271	23,651,663	13,313,638	48,493,572
2015	13,018,973	26,037,946	13,018,972	52,075,891

For planning purposes, the City is assuming the following sales and use tax projections over the next sixty-nine (69) years for the Comprehensive Project:

Please note: These figures reflect only the portion of sales tax amounts that will be dedicated to the Comprehensive Project:

Year	**City Capital Improvement Tax (.25%)**	**City Flood Control Tax (.5%)**	**City Infrastructure Tax (.5%)**	**Total**
2016		$13,041,000		$13,041,000
2017	$6,716,115	13,432,230	$13,432,230	33,580,575
2018	6,917,598	13,835,197	13,835,197	34,587,992
2019	7,125,126	14,250,253	14,250,253	35,625,632
2020	7,338,880	14,677,760	14,677,760	36,694,401
2021	7,559,047	15,118,093	15,118,093	37,795,233
2022	7,785,818	15,571,636	15,571,636	38,929,090

[30] The dedication of the 0.25% of the City Capital Improvement Tax **does not** require prior voter approval or approval from the State of North Dakota. Rather, the dedication of the 0.25% of the City Capital Improvement Tax is accomplished by action of the Fargo City Commission (the governing body of the City of Fargo).

[31] This includes annual debt service on improvement bonds issued for the Project and the warrant issued by CCJWRD.

2023	8,019,393	16,038,785	16,038,785	40,096,963
2024	8,259,974	16,519,949	16,519,949	41,299,872
2025	8,507,774	17,015,547	17,015,547	42,538,868
2026	8,763,007	17,526,014	17,526,014	43,815,034
2027	9,025,897	18,051,794	18,051,794	45,129,485
2028	9,296,674	18,593,348	18,593,348	46,483,369
2029		19,151,148	19,151,148	38,302,296
2030		19,725,683	19,725,683	39,451,365
2031		20,317,453	20,317,453	40,634,906
2032		20,926,977	20,926,977	41,853,953
2033		21,554,786	21,554,786	43,109,572
2034		22,201,430	22,201,430	44,402,859
2035		22,867,472	22,867,472	45,734,945
2036		23,553,497	23,553,497	47,106,993
2037		24,260,102	24,260,102	48,520,203
2038		24,987,905	24,987,905	49,975,809
2039		25,737,542	25,737,542	51,475,083
2040		26,509,668	26,509,668	53,019,336
2041		27,304,958	27,304,958	54,609,916
2042		28,124,107	28,124,107	56,248,213
2043		28,967,830	28,967,830	57,935,660
2044		29,836,865	29,836,865	59,673,730
2045		30,731,971	30,731,971	61,463,942
2046		31,653,930	31,653,930	63,307,860
2047		32,603,548	32,603,548	65,207,096
2048		33,581,654	33,581,654	67,163,308
2049		34,589,104	34,589,104	69,178,208
2050		35,626,777	35,626,777	71,253,554
2051		36,695,580	36,695,580	73,391,161
2052		37,796,448	37,796,448	75,592,895
2053		38,930,341	38,930,341	77,860,682
2054		40,098,251	40,098,251	80,196,503
2055		41,301,199	41,301,199	82,602,398
2056		42,540,235	42,540,235	85,080,470
2057		43,816,442	43,816,442	87,632,884
2058		45,130,935	45,130,935	90,261,870
2059		46,484,863	46,484,863	92,969,726
2060		47,879,409	47,879,409	95,758,818
2061		49,315,791	49,315,791	98,631,583
2062		50,795,265	50,795,265	101,590,530
2063		52,319,123	52,319,123	104,638,246
2064		53,888,697	53,888,697	107,777,394
2065		55,505,358	55,505,358	111,010,715
2066		57,170,518	57,170,518	114,341,037
2067		58,885,634	58,885,634	117,771,268
2068		60,652,203	60,652,203	121,304,406
2069		62,471,769	62,471,769	124,943,538
2070		64,345,922	64,345,922	128,691,844
2071		66,276,300	66,276,300	132,552,600

2072	68,264,589	68,264,589	136,529,178
2073	70,312,526	70,312,526	140,625,053
2074	72,421,902	72,421,902	144,843,804
2075	74,594,559	74,594,559	149,189,119
2076	76,832,396	76,832,396	153,664,792
2077	79,137,368	79,137,368	158,274,736
2078	81,511,489	81,511,489	163,022,978
2079	83,956,834	83,956,834	167,913,667
2080	86,475,539	86,475,539	172,951,077
2081	89,069,805	89,069,805	178,139,610
2082	91,741,899	91,741,899	183,483,798
2083	94,494,156	94,494,156	188,988,312
2084	97,328,981	97,328,981	194,657,961

d. Revenue Fund and Pledged Revenues

Under the terms of the JPA, Cass County and the City of Fargo both agreed to levy and collect the County 2010-2 Sales Tax, the City Flood Control Tax, the City Infrastructure Tax, and any Additional Sales and Use Tax necessary for the payment of all Debt Obligations, Milestone Payments, Availability Payments, and P3 Payments for the Comprehensive Project. These funds, once collected, will be deposited by Cass County and the City of Fargo into the Revenue Fund created by the JPA.[32] The above-described sales and use taxes will be the primary sources of revenue for payment of short-term and long-term financing for the Comprehensive Project, including Availability Payments and P3 Payments, commitments that will also be secured by special assessments from FM Flood Risk Management District No. 1. The special assessment security is also backstopped by the requirement that Cass County impose a deficiency levy, if needed and only in the event of insufficient available revenue, unlimited as to amount upon all taxable property within Cass County,[33] as more fully discussed below, which will be levied and deposited into the Revenue Fund if necessary. Together, these Pledged Revenues will be used to fund the Milestone Payments, Availability Payments, and P3 Payments.

8. Sales Tax Revenue Bonds

a. Introduction

At the appropriate time, Cass County and the City of Fargo will each issue permanent sales tax revenue bonds for a portion of the capital costs of the Comprehensive Project that are not paid from appropriations received from the States of North Dakota and Minnesota. The Comprehensive Project includes the SEAI,[34] which will be constructed and funded by USACE. Pursuant to the Project Partnership Agreement executed by and between the Authority, the City

[32] Pursuant to Section 10.04 of the JPA, the Fiscal Agent for the Authority will be responsible for administration of the Revenue Fund. As defined in the JPA, Fiscal Agent means a third party private financial entity or the Bank of North Dakota or a Member Entity appointed by the Diversion Authority Board pursuant to Sections 5.09 and 10.03 of this Agreement to act as Fiscal Agent. Currently, the City of Fargo is serving as the Fiscal Agent pursuant to Section 10.02 of the JPA.

[33] For current information regarding the valuation of property within Cass County, please see Exhibit B.

[34] As set forth in Section 1 of this Whitepaper, USACE is responsible for delivering the SEAI.

of Fargo, the City of Moorhead and the USACE on behalf of the Department of the Army, USACE will provide **$450 million** of federal funding for the SEAI and the MAI. The estimated construction costs associated with the SEAI are anticipated to be less than **$450 million**. Pursuant to the PPA, USACE is authorized to use funds in excess of construction costs for other Comprehensive Project costs, such as land acquisition and administration.

The capital costs of the Project will be financed by (i) the issuance of sales and use tax revenue bonds by Cass County and the City of Fargo, (ii) the issuance of refunding improvement bonds (discussed below) issued by the CCJWRD and, (iii) private financing provided by the P3 Developer. (Please note that the costs of right-of-way acquisition for the Project ***will not be*** financed by private financing provided by the P3 Developer.) The permanent sales tax revenue bonds will be issued pursuant to an open indenture that will allow Cass County and the City of Fargo to utilize sales and use tax revenue to first pay the annual debt service on the permanent sales and use tax bonds, then replenish any required reserve requirements (if necessary), and finally to be available to pay the debt service on any refunding improvement bonds issued by the CCJWRD and any warrants[35] [36] issued by CCJWRD to secure its obligations under Section 9.02(e) of the JPA. See Overview of Financing Graphic attached to this Whitepaper as Exhibit A.

As a result of its entry into the Project Agreement, the Authority anticipates putting in place FM Flood Risk Management District No. 1 prior to substantial completion of the DCAI. The P3 Developer's private financing will be secured by Availability Payments as set forth in the Project Agreement. Ultimately, the CCJWRD will issue and the Authority will hold in trust an improvement warrant[37] equal to the principal amount of P3 Developer's private financing so as to establish the legal right of the Authority to collect sales and tax revenues payments and remit Availability Payments to the P3 Developer.

b. Use of Sales Tax Revenue Bonds

Initially, to cover costs and expenses of the Comprehensive Project, including, but not limited to, land, easements, buildings, structures, machinery and equipment, and the cost of all architectural, engineering, legal and other professional services and other costs reasonable, necessary and incidental, Cass County and the City of Fargo have collectively issued **$200 million** worth of temporary sales tax notes held by Wells Fargo Bank, National Association. These temporary sales tax notes have a first lien on ninety-one percent (91%) of the County 2010-2 Sales Tax revenue and one hundred percent (100%) of the City Flood Control Tax revenue. Cass County's and the City of Fargo's current temporary sales tax notes mature in 2017 and 2018. CCJWRD

[35] Warrants are an enforceable obligation of North Dakota Water Resource Districts, which may be used as security for or as a payment on a contract. A warrant provides the holder of the warrant with the right to redeem the warrant (in accordance with its terms and conditions) for revenue generated by special assessments and/or other revenues (here sales and use tax revenues received from Cass County and the City of Fargo) collected by a Water Resource District from an Assessment District. See generally N.D.C.C. § 16-16.1-34.

[36] During the construction period, the obligation of the P3 Developer under the Project Agreement will be secured by a temporary improvement warrant held by the Authority. The terms and conditions of the temporary warrant will allow the holder of the warrant (the Authority) to sell and/or exchange the warrant for proceeds derived from the issuance of temporary refunding improvement bonds in order to pay the P3 Developer any amounts due in the unlikely event of an Authority default or compensation event.

[37] See Section 10 of this Whitepaper for more information regarding improvement warrants.

will likely issue a temporary refunding improvement bond[38] to pay-off the previously issued **$200 million** of temporary sales tax notes and to provide additional temporary funds for the Comprehensive Project, including the payment of Milestone Payments. The action of CCJWRD will allow Cass County and the City of Fargo to have additional capacity to issue additional temporary sales tax revenue bonds and/or notes during the construction period of the DCAI in order to finance Milestone Payments. These temporary sales tax bonds will have a first lien on ninety-one percent (91%) of the County 2010-2 Sales Tax and one hundred percent (100%) of the City Flood Control Tax. Upon substantial completion of the DCAI the temporary sales tax bond and/or notes will be refunded/prepaid using permanent sales tax revenue bonds (the County Sales Tax Bonds and the City Sales Tax Bonds); Cass County and the City of Fargo anticipate debt service on the permanent sales tax bonds will occur until 2084. Permanent sales tax bonds will continue to have a first lien on the County 2010-2 Sales Tax and the City Flood Control Tax. (The specific terms and conditions of the permanent sales tax bonds, including required reserve amounts, maturities, interest rate and call dates will be determined at the time of issuance of these bonds).

9. Special Assessments

a. Introduction

A further revenue source available for Debt Obligations and Milestone Payments, Availability Payments, and P3 Payments is special assessments. A special assessment is a fee for benefits from a project, levied upon real property located within an assessment district (here, the FM Flood Risk Management District No. 1).[39] The total amount of all special assessments levied within an assessment district may include, *inter alia*, an amount equal to the principal amount of the debt issued for the project, project costs, and contract amounts including the amount of the private financing provided by the P3 Developer,[40] up to one hundred twenty percent (120%) of the CCJWRD's Engineer's Report.[41] The sum of the principal amount[42] of these costs and applicable interest[43] is then amortized as a special assessment against benefitted property and jurisdictions within the assessment district over a period not to exceed thirty years after the date of substantial completion.[44] The specific amount of the special assessment levied against a parcel of property depends upon the benefits received from the project, with benefits considering such

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[38] The sizing of this bond issue is still under development; however, it is anticipated that the par amount of the temporary refunding improvement bond will exceed $200 million.

[39] FM Flood Risk Management District No. 1 benefits eighty-six thousand eight hundred sixty-three (86,863) acres, which includes forty-nine thousand two hundred eight (49,208) protected properties and twenty (20) jurisdictions. The area benefitted by the FM Flood Risk Management District No. 1 is subject to the levy of special assessments by CCJWRD Technical Memorandum: FM Area Diversion Project, Diversion Project Assessment Committee, Assessment District Methodology and Development FM Flood Risk Management District No. 1, Pages 6,7,16 (June 10, 2015). Authored by AE2S, Inc.

[40] See generally N.D.C.C. § 61-16.1-15.

[41] Fargo-Moorhead Area Diversion Project Assessment District Amended Engineer's Report Cass County Joint Water Resource District, dated March 26, 2015, Eric Dodds, North Dakota Professional Engineer #5337.

[42] The amount of private financing provided by the P3 Developer.

[43] The interest rate on warrants held in trust for the Availability Payments cannot exceed 12%.

[44] The interest rate is to be determined and would be a discounted rate at which the capital portion of Availability Payment over term discounts to substantial completion matches the outstanding developer financing.

items as property value, degree of improvement of the property, productivity, and the water management policy.[45]

Benefits may be either direct or indirect. Direct benefits pertain to any lot, piece, or parcel receiving benefits from a project, while indirect benefits are assigned to any county, township, or city, in its corporate capacity, benefitting from the project. Indirect benefits take into consideration infrastructure, community and lifestyle, business and economy, as well as multiple salient benefits of providing a flood-free community.

For flood control projects, direct benefits may be determined utilizing a Geographical Information System (GIS)-based assessment model. This model allows for assessments to be made based upon a parcel's benefit from the project according to value and gross acreage. A key component of this model is its ability to spatially relate and analyze parcel location, benefit, value, and acreage, as well as attach site-specific data and attributes. The spatial and tabular relation of parcel characteristics helps to minimize bias in determining project boundaries and provides an objective and scientific approach for determining direct assessments.

To determine a parcel's benefit, the GIS-based assessment model first considers the probability of flooding before and after the project to assign a Benefit Weighted Factor ("BWF") to areas within the entire project boundary. Parcels within a similar region are then grouped into a Benefit Region ("BR") and the entire BR is assessed a BWF as a whole. Using the BR approach, direct benefits are then applied to each parcel within a BR using the BWF of the BR as a whole in which the parcel is located, along with the value and area of the specific parcel. Considerations for direct benefits to specific parcels are also made for land elevations, FEMA floodplain maps, and local technical expertise.

Indirect benefits may be determined by utilizing a population approach. Population is split amongst all counties, cities, and townships receiving benefits from the project and then considerations are made for that portion of the population within each political entity protected by the project.

A third type of property that is considered in the establishment of a special assessment district is acquired/impacted lands. Owners of this type of property, including temporary and permanent construction easements and right-of-way to construct project features, are not benefitted by the project and their property is not ultimately assessed for the project, but they are afforded the right to vote for or against the project.

b. North Dakota Water Resource Districts

In North Dakota, water resources districts, including the CCJWRD, have the ability to create assessment districts and impose special assessments to finance water projects. The process for creating an assessment district begins with a water resource district reviewing a proposed project and adopting a resolution of necessity.

Thereafter, the water resource district appoints an engineer to prepare profiles, plans, and specifications of the proposed project and to estimate the total cost thereof. Actual assessments

[45] See generally N.D.C.C. § 61-16.1-21.

may be made up to one hundred twenty percent (120%) of this estimated total cost. Once a total cost is estimated, the water resource district will determine the probable share of the total cost that will be levied as an assessment against each of the affected landowners in the proposed project improvement district.

The water resource district next informs affected landowners of the proposed special assessments and holds a public hearing on the proposed project. Affected landowners then have thirty (30) days following the public hearing to cast a vote for the project. If fifty percent (50%) or more of the total votes filed are against the proposed project, then the vote constitutes a bar against proceeding further with the project. If the number of votes filed against the project is less than fifty percent (50%), then the water resource district can issue an order establishing the project. Affected landowners may appeal this order.

Once a project is established, an assessment list is circulated and the water resource district holds a second public hearing to receive any objections to particular assessments. The water resource district, thereafter, has the power to make any necessary alterations to the assessment list before certifying and levying the special assessments by adopting a resolution.

c. FM Flood Risk Management District No. 1

In 2015, the CCJWRD followed this statutory procedure to create FM Flood Risk Management District No. 1, an improvement district intended to finance a portion of the local cost-share of the Comprehensive Project. More than fifty percent (50%) of the ballots returned were in favor of the Comprehensive Project, and the CCJWRD adopted a resolution establishing the Comprehensive Project on May 14, 2015. The engineer's report indicated the total costs to be specially assessed would be **$725 million**.[46] With the creation of FM Flood Risk Management District No. 1, the Authority will utilize the special assessments as a means of security for the payment of all short-term and long-term financing issued by CCJWRD for the Comprehensive Project.

At financial close, CCJWRD will issue temporary warrants in an amount equal to the principal amount of the Availability Payments[47] provided for in the Project Agreement. The Authority will hold the temporary improvement warrants as security for CCJWRD's legal pledges pursuant to the JPA until substantial completion of the DCAI. As set forth in the Project Agreement, one hundred twenty (120) days prior to substantial completion of the DCAI, the P3 Developer will notify the Authority that it anticipates reaching substantial completion. Once the Authority receives the substantial completion notification, it will, pursuant to the terms of the JPA, direct CCJWRD to issue permanent improvement warrants in an amount equal to the principal amount of the Availability Payments to be held by the Authority during the term of the Project Agreement, as security for the CCJWRD's pledge of special assessments pursuant to Section 9.02 of the JPA.

Following substantial completion of the DCAI, CCJWRD will pass a resolution directing that the special assessments be levied and certified. The Secretary of the CCJWRD will then certify the

[46] The actual amount of the assessment may be up to an amount equal to **$870 million**, which is 120% of the estimated total cost.

[47] For purposes of the warrant, the principal amount of the temporary warrant will equal the capital portion of the Availability Payments.

special assessments to the Cass County Auditor, indicating the amount to be assessed against each piece, parcel, lot, or tract of land. Special assessments that have been certified for properties within FM Flood Risk Management District No. 1 must be submitted to the Cass County Auditor by November 1st of the year preceding the first year of the scheduled Availability Payments. Special assessments will be certified; however, the assessments will not be levied against parcels (i.e. added to landowners tax statements) unless it is projected that sales and use taxes collected by Cass County and the City of Fargo are insufficient to pay Debt Obligations or Milestone, Availability, or P3 Payments coming due within the following thirteen (13) months. In such an event, the CCJWRD will be required by law to levy special assessments. If the revenue generated by the levied special assessments is insufficient to pay Debt Obligations or Milestone, Availability, or P3 Payments, the Cass County Board of Commissioners will levy a general tax unlimited as to rate upon all taxable property in the county.[48]

North Dakota law offers an additional level of security for the payment of all short-term and long-term refunding improvement bonds or warrants issued by a North Dakota water resource district. During the month of January of each year, a water resource district must prepare a complete statement of the condition of the finances of the district for the past year and shall file the same with the county auditor.[49] Such statement shall show separately, and in detail, the condition and resources of each and every assessment fund for the payment of project warrants of the district, including the amount of any anticipated deficit and the apportionment thereof.[50] Whenever all revenues collected for a project are insufficient to pay debt issued against such project coming due within the following thirteen (13) months, with interest, the board of county commissioners of each of the counties wherein the water resource district lies shall advance to the water resource district project fund an amount sufficient to pay the deficiency attributable to benefitted property in each county.[51] [52]

Additionally, if it appears to the board at any time that a deficiency exists or is likely to occur within one (1) year in such project fund for the payment of principal or interest due or to become due on such debt, the board of county commissioners of each of the counties wherein the water resource district lies, in order to forestall imminent deficiency in such fund or to promptly restore the ability of such fund to pay principal and interest punctually as the same becomes due, shall advance to such project fund the amount necessary to cover the anticipated deficiency attributable to benefitted property in such county. In order to make such advances, the board of county commissioners of each of the counties will draw upon their general funds.[53]

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[48] Pursuant to North Dakota law, CCJWRD must first draw from the any funds available in the FM Flood Risk Management District No. 1, in the event that fund is insufficient the County is required by law to review the fund and determine whether there has been or likely to occur a default in the funds coming due in the next 13 months. (See N.D.C.C. § 16-16.1-25.) If such a determination is made, the County board shall pay from the County General Fund or levy a general property tax upon all taxable property within the County, unlimited as to rate or amount, to produce an amount sufficient, along with the fund in the Bond Fund to equal 100% of the sums coming due on the obligations secured by the Fund in the next twelve (12) months. See also Section 9.07 through 9.09 of the JPA.

[49] See N.D.C.C. § 16-16.1-25.

[50] Id.

[51] Id.

[52] In practice, CCJWRD prepares their budget in July or August and generally does not file a statement when there is no current deficiency or when no deficiency is anticipated; however, CCJWRD will file a statement with Cass County if such a deficiency exists or is anticipated to occur, in order to pay the deficiency attributable to benefited property.

[53] See N.D.C.C. § 61-16.1-25.

10. Improvement Warrants and Refunding Improvement Bonds

a. Introduction

As a result of the creation of FM Flood Risk Management District No. 1, CCJWRD is authorized to issue improvement warrants and refunding improvement bonds for eligible costs associated with construction costs associated with the Comprehensive Project. As a means to secure future Availability Payments and P3 Payments to the P3 Developer during the construction of the DCAI, the CCJWRD will issue a temporary improvement warrant to the Authority with a maturity date that conforms to the substantial completion of the construction of the DCAI. The temporary improvement warrant will be secured by the pledge of special assessments. The temporary improvement warrant will also be payable from excess County 2010-2 Sales Tax and City Flood Control Tax revenues available after the payment of debt service and any reasonably required debt service reserve funds for temporary sales tax bonds and/or notes.[54]

Once the DCAI reaches completion, the CCJWRD will certify special assessments for FM Flood Risk Management District No. 1 and will issue a permanent improvement warrant to be held by the Authority to secure CCJWRD's pledge of revenues under the JPA. The permanent improvement warrant will be a thirty (30) year warrant[55] and will be payable from excess County 2010-2 Sales Tax and City Flood Control Tax revenues and any revenue generated by special assessments levied upon property within FM Flood Risk Management District No. 1. The Authority anticipates making payments to the P3 Developer over the course of this thirty (30) year period, approximately, based upon the Project Agreement entered between the P3 Developer and the Authority. In the event sales and use taxes are insufficient to make Availability or P3 Payments, the CCJWRD and the Authority will rely upon revenues generated by the special assessments levied upon property within FM Flood Risk Management District No. 1 and if necessary, a countywide general tax levy in Cass County as more fully described in Section 8 of this Whitepaper. The temporary and permanent improvement warrants will be issued on parity with other improvement warrants issued by CCJWRD to cover other initial costs and expenses of the Comprehensive Project and Milestone Payments.

b. Warrants and Refunding Improvement Bonds

CCJWRD issues warrants that are payable out of funds generated by assessment districts and other sources of revenue pledged for the repayment of the warrants. In the case of the FM Flood Risk Management District No. 1, the warrants will be secured by the special assessments and payable from sales and use tax revenues available after the payment of permanent sales and use tax bonds. When a water resource district issues refunding improvement bonds, it holds the warrants in trust[56] for the bondholders as security for the repayment of the debt service on the refunding improvement bonds. In the event that the revenues are ever projected to be insufficient to make debt service payments, the County or Counties in which the Assessment District is located must follow the procedure outlined above in Section 8(c).

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[54] See generally N.D.C.C. § 61-16.1-34 and N.D.C.C. § 16-16.1-36, which authorize the issuance of temporary warrants and refunding improvement bonds.

[55] See N.D.C.C. § 61-16.1-34, which provides, in relevant part, "The warrant shall be payable serially in such amounts as the board determines, extending over a period of not more than thirty years."

[56] An indenture with a trustee may also be used.

With respect to FM Flood Risk Management District No. 1, CCJWRD will hold the improvement warrants in trust and will issue refunding improvement bonds. The refunding improvement bonds will be payable out of excess County 2010-2 Sales Tax and City Flood Control revenues and special assessments collected.

11. Other Considerations

Under North Dakota law, North Dakota political subdivisions including Counties, Cities, water resource districts, and the Authority do not have the right and/or authority to declare bankruptcy. Bondholders and holders of warrants have the right to compel the collection of sales and use, special assessments and/or deficiency levies through the use of a legal proceeding referred to as a Writ of Mandamus.

12. Operations and Maintenance

Pursuant to the JPA, the operations and maintenance of the Comprehensive Project,[57] including transportation elements of the Comprehensive Project will be financed from a variety of revenue sources. The first source of revenue for maintenance costs will be excess sales and use taxes. If any excess revenues of the County 2010-2 Sales Tax, the City Flood Control Tax, the City Infrastructure Tax, or any Additional Sales and Use Tax remain after the payment of Debt Obligations, Milestone Payments, Availability Payments, and P3 Payments, these revenues may be used for operations and maintenance of the Comprehensive Project.

The second source of revenue will be maintenance levy from FM Flood Risk Management District No. 1. It is anticipated that while operations and maintenance for the Project (DCAI) will be performed by the successful Proposer; operations and maintenance of the SEAI will be performed by the Authority and/or its Member Entities. When the CCJWRD created the FM Flood Risk Management District No. 1 under North Dakota law, the CCJWRD also created a maintenance district. The maintenance district includes the same properties and benefits as are included in the FM Flood Risk Management District No. 1, and the CCJWRD can levy special assessments within the district for maintenance costs (the "Maintenance Levy"). Under North Dakota law, the determination of how much property may be assessed for a maintenance levy is based upon the value of the property deemed to be benefitted by the project. Specifically, the maintenance levy assessment may not exceed four dollars ($4.00) per acre annually for agricultural lands and two dollars ($2.00) annually for each five hundred dollars ($500) of taxable valuation[58] of non-agricultural property.[59] Currently, within FM Flood Risk Management District No. 1 the total taxable valuation of non-agricultural property is fourteen billion one hundred ninety-two million seven hundred twelve thousand thirty dollars (**$14,192,712,030**). With respect to the FM Flood Risk Management District No. 1, the property benefitted will include developed property within the cities of Fargo, West Fargo, Reile's Acres, Harwood,

[57] Please note that the operations and maintenance portion of the Availability Payment and operations and maintenance for other project elements will be funded through the sources set forth in this Section.

[58] By way of example, a non-agricultural property having a taxable value of $200,000 would receive an annual maintenance assessment of $800 each year. ($200,000 ÷ $500 = 400 x $2.00 = $800.)

[59] Another method for determining the assessment amount for urban parcels is a weighted method based on benefit, in proportion to agricultural land benefit.

Horace, and Frontier, North Dakota. As a result, FM Flood Risk Management District No. 1 has sufficient capacity to provide funds for operations and maintenance of the Comprehensive Project.[60]

The third source of revenue will be a Storm Water Maintenance Fee[61] levied and collected monthly by the City of Moorhead, Minnesota. The authority of the City of Moorhead to levy the Storm Water Maintenance Fee for the Comprehensive Project is not subject to review, consent, or approval of the State of Minnesota.

[60] North Dakota law limits a water resource district to only accumulate a maximum reserve fund of an amount not exceeding the total sum provided by the maximum permissible levy; however, until such sum is reached, a district may continue to levy the annual maintenance levy, and the maintenance levy may remain in place as long as is needed. See N.D.C.C. § 61-16.1-45.

[61] Pursuant to the JPA, the Minnesota Member Entities are responsible for 2% of the comprehensive maintenance costs. The City of Moorhead's current Storm Water Maintenance Fee generates approximately **$2.5 million** (in 2016 dollars) per year.

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EXHIBIT A

Preliminary
Overview of Capital Financing

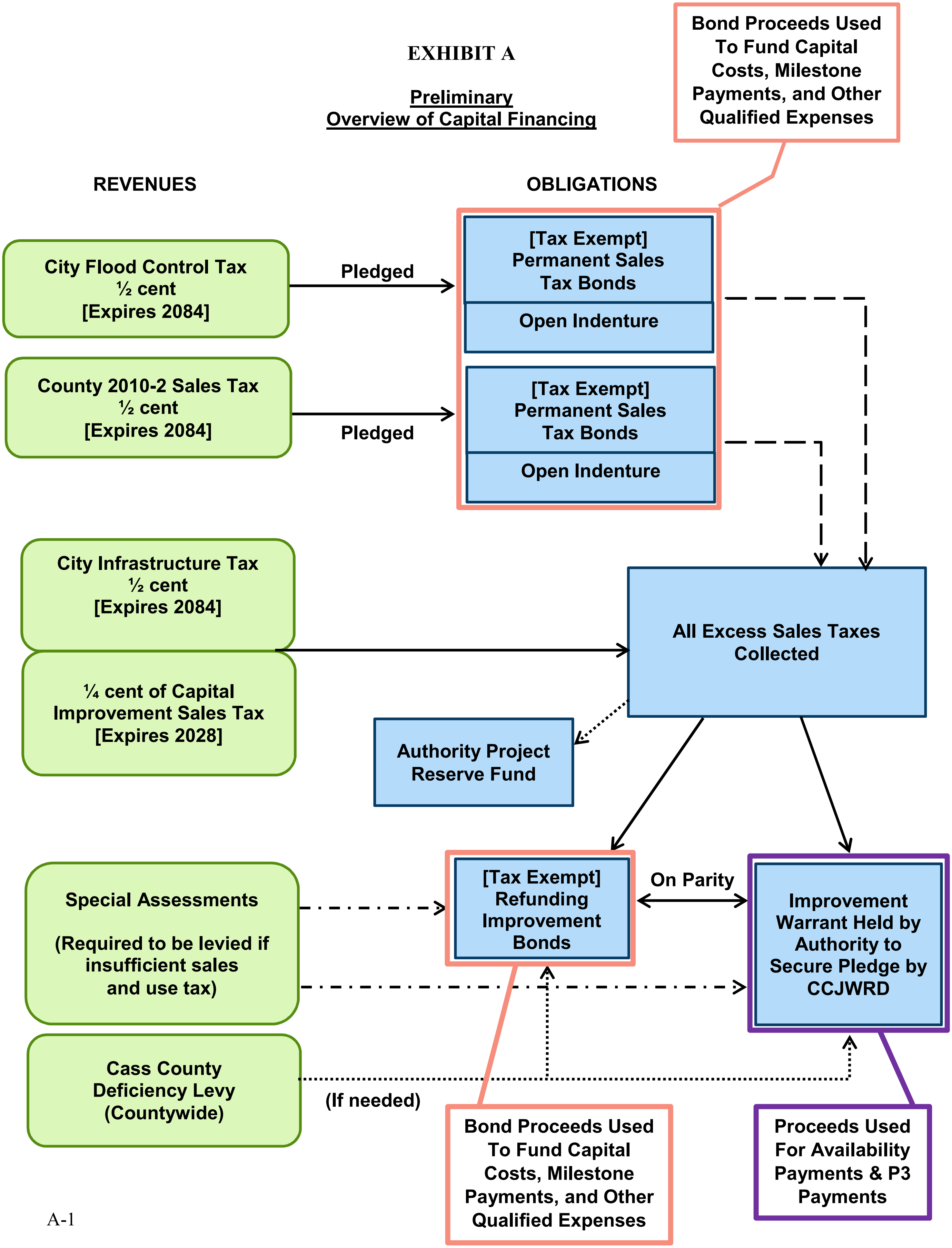

EXHIBIT B

Valuations

Table B - 1
City of Fargo
Property Values
(Assessment 2015/Collection 2016)

	Market Value	Assessed Value	Taxable Value
Real Property:			
Residential	$4,640,610,756	$2,320,305,378	$208,827,484
Agricultural	3,005,940	1,502,970	150,297
Commercial	4,703,499,560	2351,749,780	235,174,978
Utilities:			
Railroad	6,088,160	3,044,080	304,408
Other Utilities	96,224,260	48,112,130	4,811,213
Sub-Total	$9,449,428,676	$4,724,714,338	$449,268,380
Less: Incremental Value	(248,608,020)	(124,304,010)	(12,430,401)
Total	$9,200,820,656	$4,600,410,328	$436,837,979

Table B - 2
City of Fargo
Trend in Valuations

Assessment Year	Market Value(1)	Assessed Value(1)	Taxable Value
2015	$ 9,449,428,676	$ 4,724,714,338	$ 449,268,380
2014	8,396,434,015	4,080,365,741	387,008,093
2013	7,804,358,364	3,902,179,182	360,271,576
2012	7,325,922,438	3,662,961,219	346,750,408
2011	7,037,515,596	3,518,757,798	332,779,107

(1) Does not include the subtraction of incremental value.

Source: Cass County Auditor.

Valuations (cont'd.)

Table B - 3
Cass County
True and Full Value, Assessed Value, and Actual Value of Taxable Property
Last Ten Fiscal Years
(Unaudited)

	True and Full Value of Real Property					Total
Fiscal Year	Residential Property	Commercial Property	Farmland	Total True & Full Value	Total Taxable Value	Direct Tax Rate
2006	$ 4,350,871,760	$ 2,538,581,120	$ 567,002,700	$ 7,456,455,580	$ 357,775,914	62.00
2007	4,832,498,250	2,818,409,200	601,733,400	8,252,640,850	395,777,450	61.00
2008	5,231,690,770	3,127,203,900	600,649,500	8,959,544,170	428,417,209	61.00
2009	5,507,269,150	3,252,963,470	599,811,100	9,360,043,720	446,981,324	61.00
2010	5,729,017,391	3,370,663,490	628,445,100	9,728,125,981	464,365,075	61.00
2011	5,871,885,336	3,516,327,890	677,416,550	10,065,626,776	481,032,464	64.00
2012	6,035,161,188	3,659,791,030	723,805,350	10,418,757,568	496,726,180	65.75
2013	6,178,466,848	3,868,885,870	856,233,100	10,903,585,818	521,035,701	63.60
2014	6,416,212,498	4,125,432,120	941,070,200	11,482,714,818	548,947,150	62.67
2015	6,870,590,258	4,520,934,400	1,025,443,920	12,416,968,578	594,023,291	62.67

Source: Cass County Auditor's Office.
Notes: -Taxable values for a given fiscal year are from the prior calendar year's tax roll.
-Direct tax rate per $1,000 of taxable value.
-Property in Cass County is assessed annually. The county assesses property at true and full value. For residential and commercial property, true and full is market value. For farmland, true and full value is productivity value. True and full for all property is reduced by 50% to arrive at assessed value. Taxable value is calculated at 10% of assessed value for commercial property and farmland. Residential property is calculated at 9% of assessed value. Taxable value also includes centrally assessed property such as railroads, pipelines, and electric. Taxable valuation is also reduced for homestead credits and veteran's credits as approved by state statute.

Tax Levies and Collections

Table B - 4
City of Fargo Tax Levies and Collections

Levy Year	Collection Year	Amount of Levy	Collected First Year Amount	Collected First Year % of Net Levy	Collected as of 8/31/16 Amount	Collected as of 8/31/16 % of Levy
2015	2016	$28,012,985	$25,966,426	92.69%	$25,966,426	92.69%
2014	2015	26,036,427	24,827,881	95.36	24,910,736	95.68
2013	2014	23,964,157	22,836,361	95.29	23,002,478	95.99
2012	2013	23,439,045	22,311,513	95.19	22,516,734	96.07

Source: Cass County Auditor.

Table B - 5
Cass County
Property Tax Levies and Collections
Last Ten Fiscal Years
(Unaudited)

Fiscal Year	Taxes Levied for the Fiscal Year Original Levy	Adjustments	Total Adjusted Levy	Collected Within the Fiscal Year of the Levy Amount	Collected Within the Fiscal Year of the Levy Percentage of Original Levy	Total Collections to Date Amount	Total Collections to Date Percentage of Original Levy
2006	$ 21,664,145	$ 62,709	$ 21,726,855	$ 20,417,670	94.25%	$ 20,800,936	95.74%
2007	23,559,443	114,190	23,673,632	22,321,890	94.75%	22,666,683	95.75%
2008	25,588,742	(67,783)	25,520,959	24,114,604	94.24%	24,413,754	95.66%
2009	26,590,924	30,767	26,621,691	24,973,314	93.92%	25,482,097	95.72%
2010	27,662,317	122,353	27,784,670	26,097,270	94.34%	26,590,054	95.70%
2011	30,083,068	137,071	30,220,138	28,482,450	94.68%	28,912,780	95.67%
2012	31,927,747	145,152	32,072,900	30,332,994	95.01%	30,667,913	95.62%
2013	32,379,259	320,621	32,699,880	31,086,237	96.01%	31,269,731	95.63%
2014	33,559,573	36,609	33,596,182	32,078,024	95.59%	32,171,368	95.76%
2015	36,204,233	275,533	36,479,766	34,819,280	96.17%	34,819,280	95.45%

Source: Cass County Auditor.

Note: The information in this schedule relates to the county's own property tax levies, and does not include those it collects on behalf of other governments.

Top Ten Taxpayers

Table B - 6
City of Fargo
Top Ten Taxpayers

Taxpayer	Assessed Valuation	Percent of Total Assessed Valuation
Sanford/Meritcare	$ 77,071,950	1.68%
INREIT Properties	71,407,300	1.55
West Acres Development Co.	51,938,950	1.13
Matrix Properties	30,997,250	0.67
R&B Development	23,991,900	0.52
Dakota UPREIT	23,752,900	0.52
Innovis Health	22,828,850	0.50
Wal-Mart Real Estate	21,751,850	0.47
RCV Ltd partnership/Van Raden	20,276,750	0.44
Osgood Investments	19,448,350	0.42
Total	$363,466,050	7.90%

Source: City of Fargo Assessor's Office.

Table B - 7
Cass County
Principal Property Tax Payers
Current Year and Nine Years Ago
(Unaudited)

Employer	Fiscal Year 2015 Taxable Value	Fiscal Year 2015 Percentage of Total Taxable Value	Fiscal Year 2006 Taxable Value	Fiscal Year 2006 Percentage of Total Taxable Value
INREIT Properties LLLP	$ 6,562,955	1.10%		
Northern States Power Company	6,118,943	1.03%	4,049,932	1.13%
West Acres Development Co.	4,916,665	0.83%	3,495,570	0.98%
Burlington Northern	3,888,753	0.65%		
Matrix Properties Corp.	2,746,230	0.46%	1,283,670	0.36%
Sanford Medical Center	2,648,945	0.45%		
Innovis Health LLC	1,990,315	0.34%		
Blue Cross of North Dakota	1,879,625	0.32%	1,385,400	0.39%
Wal-Mart Real Estate Business Trust	1,566,600	0.26%		
Meritcare Medical Group	1,259,180	0.21%	2,441,814	0.68%
Cass Equipment Corporation			935,300	0.26%
Dakota Specialty Institute			2,928,705	0.82%
Medical Properties, Inc.			1,212,800	0.34%
Vanraden Homes Inc.			863,086	0.24%
Lexus Tower LTD Partnership			731,060	0.20%
Total Attributable to Ten Largest Property Taxpayers	33,578,211	5.65%	19,327,337	5.40%
TOTAL GROSS TAXABLE VALUE	$ 594,023,291	100.00%	357,775,914	100.00%

Source: Cass County Auditor's Office.

Largest Employers

Table B - 8
City of Fargo
Principal Employers

Firm	Type of Business	Number of Employees
Sanford Health	Health Services	6,664
North Dakota State University	Education-Training	4,232
Essentia Health	Hospital	3,167
Fargo Public School District No. 1	Education-Training	1,816
Noridian Healthcare Solutions	Insurance	1,666
Fargo Veterans Affair Health Care System	Hospital	1,022
Blue Cross Blue Shield of North Dakota	Insurance	961
U.S. Bank	Financial Institution	955
City of Fargo	Government	881
Microsoft	Computer Software-Services	877

Sources: Greater Fargo Moorhead Economic Development Corporation, Fargo Moorhead Chamber of Commerce, and City Records. Information as of September 2016.

Table B - 9
Cass County
Principal Employers
Current Year and Nine Years Ago
(Unaudited)

	2015		2006	
Employer	Number of Employees	Percentage of Total County Employment	Number of Employees	Percentage of Total County Employment
Sanford Health	6,664	7.17%		
North Dakota State University	4,232	4.55%	2,127	2.66%
Essentia Health	3,167	3.41%		
Fargo Public School District #1	1,816	1.95%	1,383	1.73%
Noridian Health Care Solutions	1,666	1.79%	1,492	1.86%
West Fargo Public Schools	1,432	1.54%	584	0.73%
Fargo VA Health Care Systems	1,022	1.10%		
Blue Cross Blue Shield of ND	961	1.03%		
U.S. Bank Service Center	955	1.03%	1,089	1.36%
City of Fargo	881	0.95%	632	0.79%
CNH Industrial America LLC			660	0.82%
Meritcare Health Systems			3,961	4.95%
Microsoft Great Plains			1,055	1.32%
Dakota Clinic			575	0.72%
Total	22,796	24.53%	13,558	16.94%

Source: Cass County Auditor's Office.