

**\$15,435,000**  
**CERTIFICATES OF PARTICIPATION, SERIES 2020**  
**EVIDENCING THE PROPORTIONATE INTERESTS IN**  
**RENTAL PAYMENTS TO BE MADE BY**  
  
**BARNES COUNTY, NORTH DAKOTA**  
**PURSUANT TO A LEASE-PURCHASE AGREEMENT**

**Closing – October 14, 2020**

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**1**

DOCUMENT NUMBER 293070

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**GROUND LEASE**

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*by and between*

**BARNES COUNTY, NORTH DAKOTA**  
as Lessor

*and*

**BANK OF NORTH DAKOTA, as Trustee**  
as Ground Lessee

*relating to*

**CERTIFICATES OF PARTICIPATION**  
**SERIES 2020**

**Dated as of October 1, 2020**

This instrument was drafted by:  
Arntson Stewart Wegner PC  
3101 Broadway North, Suite B  
Fargo, North Dakota 58102

293070  
1 of 17

Return To: BARNES COUNTY AUDITOR  
230 4TH ST NW  
VALLEY CITY ND 58072

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## GROUND LEASE

**THIS GROUND LEASE** dated as of October 1, 2020 (this "Ground Lease"), is executed by and between **BARNES COUNTY, NORTH DAKOTA**, a political subdivision of the State of North Dakota, as lessor (the "County"), and the **BANK OF NORTH DAKOTA**, a bank duly organized and existing under the laws of the State of North Dakota, as lessee (the "Ground Lessee").

### RECITALS

**WHEREAS**, the County is the owner of the land described in Exhibit A hereto, located in Barnes County, North Dakota (the "Land"); and

**WHEREAS**, the County proposes to lease the Land to the Ground Lessee and sublease the Land and lease certain improvements constructed thereon (the "Improvements," and together with the Land, the "Project") from the Ground Lessee pursuant to a Lease-Purchase Agreement dated as of the date hereof, by and between the Ground Lessee and the County (the "Lease");

**NOW, THEREFORE**, for and in consideration of the Project and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

*(Remainder of this page intentionally left blank.)*



## ARTICLE I

### DEMISE OF LAND; WARRANTIES

**SECTION 1.1. DEMISE.** Subject to and upon the terms, conditions, covenants and undertaking hereinafter set forth, the County hereby demises and leases to the Ground Lessee, and the Ground Lessee hereby leases from the County FOR THE SUM OF ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the real property legally described in Exhibit A hereto, located in Barnes County, North Dakota, for a term commencing on the date on which this Ground Lease is executed, and ending on May 1, 2070, unless the term of this Ground Lease is terminated earlier in accordance with the provisions of Section 2.1 hereof.

**SECTION 1.2. COUNTY WARRANTIES.** The County covenants and warrants to the Ground Lessee that:

- (a) the County has good and marketable title to the Land;
- (b) the County has authority to enter into, execute and deliver this Ground Lease, and that the County has duly authorized the execution and delivery of this Ground Lease;
- (c) the Land is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the construction of the Improvements on the Land, as contemplated by the Lease;
- (d) all taxes, assessments or impositions of any kind with respect to the Land, except current taxes, have been paid in full;
- (e) the Land is properly zoned for the purpose of the Improvements; and
- (f) the County has authority to enter into, execute and deliver the Lease, and that the County has duly authorized the execution and delivery of the Lease.

**SECTION 1.3. GROUND LESSEE WARRANTIES.** The Ground Lessee covenants and warrants to the County that the Ground Lessee has authority to enter into, execute and deliver this Ground Lease and the Lease, and that the Ground Lessee has duly authorized the execution and delivery of this Ground Lease and the Lease.

*(Remainder of this page intentionally left blank.)*

## ARTICLE II

### TERMINATION

**SECTION 2.1. TERMINATION.** Subject to the other provisions of this Ground Lease, this Ground Lease shall terminate prior to May 1, 2070, upon the occurrence of any one of the following events:

(a) payment by the County of all Rental Payments (as such term is defined in the Lease) and other amounts owing to the Ground Lessee under the Lease;

(b) termination of the Lease by the County for nonappropriation of funds necessary to pay Rental Payments in any fiscal year pursuant to the Lease and receipt by the Ground Lessee of amounts from the sublease and/or lease of the Ground Lessee's leasehold interest in the Land and interest in the Improvements sufficient to:

(i) reimburse the Ground Lessee for all administrative costs and all other liability or expenses, including reasonable attorneys' and accountants' fees, incurred by the Ground Lessee as a result of the termination of the Lease and the exercise of the Ground Lessee's remedies thereunder,

(ii) reimburse the Ground Lessee for all capital costs and expenses in any manner incurred by the Ground Lessee with respect to the Improvements and the Land reasonably necessary in order to render the Improvements and the Land suitable for sublease and/or lease for commercial or other lawful purpose, and

(iii) pay to the Ground Lessee an amount which will equal the outstanding principal amount under the Lease applicable on the last day of the fiscal year of the County for which the Lease last remains in effect;

(c) termination of the Lease by the Ground Lessee upon the occurrence of an event of default by the County thereunder and receipt by the Ground Lessee of amounts from the sublease and/or lease of the Ground Lessee's leasehold interest in the Land and interest in the Improvements sufficient to:

(i) reimburse the Ground Lessee for all administrative costs and all other liability or expenses, including reasonable attorneys' and accountants' fees, incurred by the Ground Lessee as a result of the event of default and termination of the Lease and the exercise of the Ground Lessee's remedies thereunder,

(ii) reimburse the Ground Lessee for all capital costs and expenses in any manner incurred by the Ground Lessee with respect to the Improvements and the Land reasonably necessary in order to render the Improvements and the Land suitable for sublease and/or lease for commercial or other lawful purposes,

(iii) pay to the Ground Lessee an amount which will equal the outstanding principal amount under the Lease applicable on the last day of the fiscal year of the County in effect when the event of default occurs, and

(iv) pay to the Ground Lessee an amount which will equal all Rental Payments due under the Lease through the end of the fiscal year of the County in effect when the event of default occurred and which remain unpaid by the County as well as any other amounts owing under the Lease and unpaid by the County as of the end of such fiscal year.

**SECTION 2.2. USE OF SUBLEASE AND/OR LEASE RENTALS.** The amounts referred to in Section 2.1 hereof, paragraphs (b) and (c), respectively, shall be known as the "Reimbursement Amount." The Reimbursement Amount shall be recovered by allowing the Ground Lessee first to retain from any sublease rentals an amount equal to five percent (5%) thereof, to allow for ongoing administrative costs. Thereafter, the Ground Lessee shall be entitled to interest on the outstanding Reimbursement Amount at the rates per annum then applicable to the Lease, or, in the event that the Ground Lessee shall receive an opinion of an attorney or firm of attorneys nationally recognized as bond counsel to the effect that such interest is includable in gross income of the recipient thereof for federal income tax purposes as a result of the default or nonappropriation and the sublease of the Project, a rate per annum three percent (3%) greater than that applicable to the Lease, during the period of time from the last Rental Payment Date in the fiscal year of the County for which the Lease was in effect until the time when the full Reimbursement Amount is received from sublease rentals. Any amounts of sublease rentals distributed to the Ground Lessee after payment of administrative costs and interest shall be credited to the payment of the Reimbursement Amount.

Use of the Improvements by the Ground Lessee or any subsidiary or affiliate of the Ground Lessee, other than for the purpose of assuming control, making necessary changes in the Improvements and the Land, and the initial subleasing and/or leasing thereof, shall be treated as the sublease and/or lease thereof on a monthly basis at the then-prevailing fair market value.

In the event the Lease is terminated by the County for nonappropriation of funds necessary to pay Rental Payments in any fiscal year, or terminated by the Ground Lessee as a result of the occurrence of an event of default by the County thereunder, the County may subsequently pay the Reimbursement Amount.

**SECTION 2.3. RETURN OF PROJECT SUBJECT TO SUBLEASE OR LEASE.** In the event the Reimbursement Amount is received by the Ground Lessee in full, and the Ground Lessee's interest in the Project has been subleased and/or leased to any sublessee or lessee, as the case may be, pursuant to any subleases or leases that are still in effect, this Ground Lease shall not terminate but the Ground Lessee shall assign and set over to the County all of the Ground Lessee's interest in the Project granted under this Ground Lease, subject to all existing rights created in such sublessees or lessees of the Project by any such subleases or leases.

**SECTION 2.4. REPORTS.** In the event the Lease is terminated by the County for nonappropriation of funds necessary to pay Rental Payments in any fiscal year or terminated as a

result of the occurrence of an event of default by the County thereunder, the Ground Lessee shall keep complete and accurate records regarding any sublease or lease of the Project and shall, within sixty (60) days of the end of the fiscal year of the County (currently December 31), deliver a written report to the County showing:

- (a) all amounts received by the Ground Lessee from any sublease or lease of Improvements and the Land;
- (b) an analysis as to whether the Ground Lessee has received the Reimbursement Amount, with all supporting calculations; and
- (c) the date, if any, in the next fiscal year of the County on which the Ground Lessee expects to receive the Reimbursement Amount.

Such written report shall be verified at the expense of the County by a certified public accountant or firm of certified public accountants not within the regular employ of the Ground Lessee. In the event that on the last day of any fiscal year of the County the Ground Lessee has received the Reimbursement Amount, then all rentals with respect to any sublease or lease of the Project payable after the close of such fiscal year, as well as any rentals payable during such fiscal year in excess of the amounts the Ground Lessee is entitled to receive pursuant to Section 2.2 hereof, shall be the property of the County.

The County may, at its own expense, upon reasonable notice and at the Ground Lessee's offices during normal business hours, examine the Ground Lessee's records in so far as they relate to the Project.

*(Remainder of this page intentionally left blank.)*

## ARTICLE III

### USE OF PROJECT; ADDITIONAL COVENANTS

**SECTION 3.1. USE.** The Ground Lessee shall use the Land for the purpose of subleasing the Land to the County pursuant to the Lease.

**SECTION 3.2. QUIET ENJOYMENT.** Subject to the terms of the Lease, the County shall provide the Ground Lessee with the quiet use and enjoyment of the Land for the term of this Ground Lease; and the Ground Lessee shall, during such term, peaceably and quietly have and hold and enjoy the Land, without suit, trouble or hindrance from the County.

**SECTION 3.3. SURRENDER OF PROJECT.** The Ground Lessee agrees that upon the termination of this Ground Lease it will surrender the Project to the County free and clear of all liens and encumbrances created by or arising under the Ground Lessee or any assignee of the Ground Lessee, except Permitted Encumbrances (as such term is defined in the Lease); provided that in the event that the Project is subject to the rights of any sublessee or lessee of the Ground Lessee granted under any sublease or lease entered into in accordance with the terms of this Ground Lease after the termination of the Lease for nonappropriation by the County or as a result of an event of default by the County, the Ground Lessee agrees to assign and set over to the County the Ground Lessee's entire interest in the Project granted under this Ground Lease subject only to Permitted Encumbrances and the rights of such sublessees or lessees under any such subleases or leases. The Ground Lessee's costs of such assigning and setting over shall be included in the Reimbursement Amount.

**SECTION 3.4. ASSIGNMENT.** So long as the County is not in default under the Lease or has not terminated the Lease pursuant to Section 4.5 thereof, the Ground Lessee will not assign or otherwise dispose of or encumber this Ground Lease without the written consent of the County, which consent shall not be unreasonably withheld. If the Lease is terminated by the County for nonappropriation or terminated by the Ground Lessee as a result of an event of default by the County, the Ground Lessee may assign its interest hereunder and may use, sublease and/or lease the Project without the consent of the County.

**SECTION 3.5. ADDITIONAL COVENANTS.** In the event that any person or entity, however organized (other than the Ground Lessee or any assignee of the Ground Lessee), shall be determined to hold any interest that in any manner affects the County's good and merchantable title to the Land, the County shall use its best efforts to acquire the interest in the Land so held, such acquisition to be made at the County's sole cost and expense. The County hereby agrees to save and keep harmless the Ground Lessee, or any assignee of the Ground Lessee, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expense (including reasonable attorney's fees) of whatever kind and nature, imposed on, incurred by or asserted against the Ground Lessee, or any assignee of the Ground Lessee, that in any way relate to or arise out of the assertion of any interest affecting the County's good and merchantable title to the Land by any person or entity, however organized (other than the Ground Lessee or any assignee of the Ground Lessee).

## ARTICLE V

### HAZARDOUS SUBSTANCES

**SECTION 5.1. COVENANTS REGARDING HAZARDOUS MATERIALS.** The County shall comply with all regulations concerning the environment, health and safety relating to the generation, use, handling, production, disposal, discharge and storage of Hazardous Materials in, on, under or about the Project. The County shall promptly take any and all necessary action in response to the storage, use, disposal, transportation or discharge of any Hazardous Materials in, on, under or about the Project by the County or persons acting on behalf of or at the direction of the County as all applicable laws, rules, regulations or ordinances may require. The County agrees to promptly:

(a) transmit to the Ground Lessee copies of any governmental citations, orders or notices received with respect to Hazardous Materials which may result in a penalty, liability or cost greater than \$1,000;

(b) observe and comply with any and all laws, ordinances, rules, regulations, licensing requirements or conditions relating to the use, maintenance or disposal of Hazardous Materials and all orders or directives from any official, court or governmental agency of competent jurisdiction relating to the use or maintenance or requiring the removal, treatment, containment or other disposal of such Hazardous Material;

(c) pay or otherwise dispose of any lien, charge or imposition relating thereto which, if paid, would constitute a lien upon the Project; and

(d) hold harmless the Ground Lessee from any and all liabilities (including strict liability), obligations, suits, actions, demands, penalties, losses, costs or expenses (including without limitation, consultant's fees, investigation and laboratory fees, reasonable attorneys' fees, expenses and remedial costs), costs of any settlement or judgment and claims of any and every kind whatsoever, which may now or in the future be paid, incurred or suffered by or asserted against the Ground Lessee relating to or arising from the presence, at any time, of Hazardous Materials in, on, under or about the Project, all to the maximum extent permitted by law; the Ground Lessee shall not be liable for any payment whatsoever with regard to clauses (a) through (c) of this Section.

For purposes of this Ground Lease, "Hazardous Substance" means (a) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other substances, materials or pollutants which (i) pose a hazard to the Project, adjacent premises or persons on or about the Project or adjacent premises, (ii) cause the Project to be in violation of any local, state or federal law, rule, regulation or ordinance, or (iii) are defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations, policy guidelines or other publications adopted or promulgated pursuant thereto, including, but not limited to (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., (2) the Hazardous Materials

Transportation Act, as amended, 49 U.S.C. § 1601, et seq., (3) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq., (4) the Clean Air Act, 42 U.S.C. § 7412, (5) the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., (6) The Clean Water Act, 33 U.S.C. § 1317 and 1321(b)(2)A, and (7) rules, regulations, ordinances and other publications adopted or promulgated pursuant to the aforesaid laws; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety or property interests of the County or its employees, users and occupants of the Project or the owners and/or occupants of property adjacent to or surrounding the Project.

Should any governmental authority or any third party demand or initiate legal action to compel the preparation of a corrective action plan or the undertaking of corrective action because of any deposit, spill, discharge, or other release of Hazardous Material that occurs during the term of this Ground Lease, at or from or to the Project, then the County shall, at its own expense, prepare and submit the required corrective action plans and all related bonds and other financial assurances; and the Ground Lessee shall carry out all such corrective action.

The County's obligations and liabilities under this Article shall survive the termination of this Ground Lease.

**SECTION 5.2. COVENANTS AND WARRANTIES REGARDING HISTORICAL USE.** The County covenants and warrants to the Ground Lessee that, on the date of execution of this Ground Lease, no Hazardous Materials have been generated, treated, stored, transferred from, released or disposed of, or otherwise placed, deposited in or located on the Land. The Land is not now, and to the best knowledge of the County, never has been used to a landfill, dump or other disposal, storage, transfer or handling area for Hazardous Materials or for industrial, military or manufacturing purposes, or as a gasoline service station or a facility for selling, dispensing, storing, transferring or handling petroleum and/or petroleum products. Any above ground or underground tanks previously located under, in or about the Land have subsequently been removed or filled. To the extent storage tanks exist on, under or adjacent to the Land, such storage tanks have been duly registered with all appropriate regulatory and governmental bodies and otherwise are in compliance with applicable federal, state and local statutes, regulations, ordinances, and other regulatory requirements.

*(Remainder of this page intentionally left blank.)*

## ARTICLE VI

### MISCELLANEOUS

**SECTION 6.1. SEVERABILITY.** If any term or provision of this Ground Lease, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Ground Lease or the application of such term or provision to persons or circumstance other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

**SECTION 6.2. BINDING EFFECT.** This Ground Lease shall be binding upon, and inure to the benefit of, the parties hereto, and their successors and assigns.

**SECTION 6.3. COUNTERPARTS.** This Ground Lease may be executed in counterparts, each of which shall constitute one and the same instrument.

**SECTION 6.4. APPLICABLE LAW.** This Ground Lease shall be interpreted and enforced in accordance with the laws of the State of North Dakota.

**SECTION 6.5. NO MERGER OF TITLE.** There shall be no merger of this Ground Lease or the leasehold created by this Ground Lease with any other estate in the Land or any part thereof by reason of the fact that the same entity may acquire or own or hold, directly or indirectly, (a) the Land or any part thereof or any interest therein or (b) the Improvements or any part thereof or any interest therein, and no such merger shall occur unless and until all persons having any interest in the Improvements or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

*(Remainder of this page intentionally left blank.)*



IN WITNESS WHEREOF, the parties hereto have executed this Ground Lease as of the date first above written.

**BANK OF NORTH DAKOTA,**  
a bank duly organized and existing under  
the laws of the State of North Dakota,  
as Ground Lessee

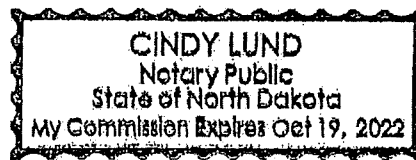
Carrie Willits  
Its: Trust Officer

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF BURLEIGH     )

On this 7<sup>th</sup> day of October, 2020, before me, a Notary Public in and for said County, personally appeared Carrie Willits, the Trust Officer of the Bank of North Dakota, a bank duly organized and existing under the laws of the State of North Dakota referred to in the foregoing instrument, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

Cindy Lund  
Notary Public

(SEAL)



**BARNES COUNTY, NORTH DAKOTA,**  
as Lessor

*William Carlblom*  
Chair of the Board of County Commissioners

*Beth Didier*  
County Auditor

STATE OF NORTH DAKOTA     )  
   ) ss.  
COUNTY OF BARNES             )

On this 8<sup>th</sup> day of October, 2020, before me, a Notary Public in and for said County, personally appeared William Carlblom and Beth Didier, respectively the Chair of the Board of County Commissioners and County Auditor, of Barnes County, North Dakota, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

(SEAL) 

JULIE MINDT Notary Public State of North Dakota My Commission Expires Feb 17, 2021
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*Julie Mindt*  
Notary Public

## ARTICLE IV

### GROUND LESSEE'S DEFAULT; REMEDIES

**SECTION 4.1. DEFAULT BY GROUND LESSEE.** The following shall be an "event of default" or a "default" hereunder: if the Ground Lessee shall fail to (a) pay the consideration provided herein; (b) observe or perform any of the obligations of the Ground Lessee otherwise provided herein; or (c) observe or perform any of its obligations under the Lease in accordance with the terms thereof.

**SECTION 4.2. COUNTY REMEDIES.** The County may, upon the occurrence of an event of default by the Ground Lessee which remains uncured for thirty (30) days after receipt by the Ground Lessee of written notice from the County describing such event of default or at any time subsequently during the existence of such breach or default, subject to its obligation to continue Rental Payments pursuant to the Lease and the rights of existing sublessees, (a) enter into and upon the Land and repossess the same, expelling and removing therefrom all persons and property, and (b) terminate this Ground Lease, holding the Ground Lessee liable for damage for its breach.

*(Remainder of this page intentionally left blank.)*

01/28/88

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE LAND**

Lot 2A of the Replat of Lot 2, Block 1 of the Greenline Deere Second Addition to the City of Valley City, Barnes County, North Dakota

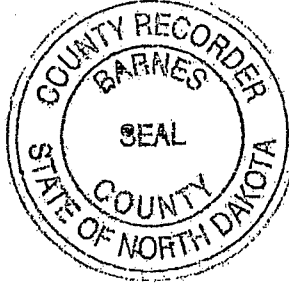
293070  
16 of 17

4-1

Return To: BARNES COUNTY AUDITOR  
230 4TH ST NW  
VALLEY CITY ND 58072

DOCUMENT NUMBER 293070

Grantor	<i>[Signature]</i>
Grantee	<i>[Signature]</i>
Indexed	<i>[Signature]</i>
Checked	<i>[Signature]</i>



Fee: \$ 0.00

293070

OFFICE OF COUNTY RECORDER, County of Barnes, North Dakota  
I hereby certify that the within instrument was filed in this office  
on 10/14/2020 at 10:05 AM and was duly recorded.

*[Signature]* County Recorder  
By \_\_\_\_\_ Deputy

293070

17 of 17

Return To: BARNES COUNTY AUDITOR  
230 4TH ST NW  
VALLEY CITY ND 58072

**2**

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**TRUST AGREEMENT**

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*by*

**BANK OF NORTH DAKOTA  
as Trustee**

*and*

**BARNES COUNTY, NORTH DAKOTA**

*relating to*

**CERTIFICATES OF PARTICIPATION  
SERIES 2020**

**Dated as of October 1, 2020**

**This instrument was drafted by:  
Arntson Stewart Wegner PC  
3101 Broadway North, Suite B  
Fargo, North Dakota 58102**

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## TRUST INDENTURE

**THIS TRUST AGREEMENT** dated as of October 1, 2020 (this “Trust Agreement”), is executed by the **BANK OF NORTH DAKOTA**, a bank duly organized and existing under the laws of the State of North Dakota, as trustee (the “Trustee”), and joined in by **BARNES COUNTY, NORTH DAKOTA**, a political subdivision of the State of North Dakota (the “County”).

### RECITALS

**WHEREAS**, the Trustee and the County have entered into a Lease-Purchase Agreement dated as of the date hereof (the “Lease”); and, among other things, the Lease provides for the sublease of the Land (as defined in the Lease and described in Exhibit A thereto) and the lease and/or sale of the Improvements (as defined in the Lease and described in Exhibit A thereto) by the Trustee to the County, as well as the payment of periodic Rental Payments by the County to the Trustee, with respect thereto; and

**WHEREAS**, for the purpose of obtaining the money required for the financing of the costs of constructing the Improvements, the Trustee holds in trust, for the benefit of the Owners of the Certificates of Participation, Series 2020 herein authorized to be issued (the “Certificates”), all of its right, title and interest in and to the Lease, the Rental Payments and other amounts due under the Lease, the Ground Lease (as defined in the Lease) and the Project (as defined herein), and the right to exercise all rights of the Trustee under the Lease and the Ground Lease; and

**WHEREAS**, in consideration of the execution of this Trust Agreement, the Trustee has agreed to execute and deliver the Certificates, each evidencing a proportionate undivided interest of the Owner thereof in the Lease and the Rental Payments due thereunder; and

**WHEREAS**, Colliers Securities, LLC, Minneapolis, Minnesota, has agreed to purchase the Certificates;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and for other valuable consideration, the parties hereto hereby formally covenant, agree and bind themselves as follows:

*(Remainder of this page intentionally left blank.)*

## ARTICLE I

### DEFINITIONS

**SECTION 1.1. DEFINITIONS.** For all purposes of this Trust Agreement, the terms defined in the Lease and capitalized herein shall have the meanings ascribed to them in the Lease unless the context clearly requires otherwise. In addition, the terms defined in this Section shall, for all purposes of this Trust Agreement, have the meanings herein specified.

**“Additional Certificates”** means any additional Certificates issued pursuant to Section 3.22 hereof.

**“Authorized Officer”** means, when used with respect to the County, the Chair of the Board of County Commissioners or County Auditor or any other person who is designated in writing by the Chair of the Board of County Commissioners or County Auditor as an Authorized Officer for purposes of this Trust Agreement; or when used with respect to the Trustee, any vice president and/or trust officer who is authorized to take the action in question on behalf of the Trustee.

**“Certificate Payment Date”** means May 1 and November 1 of each year, commencing May 1, 2021.

**“Certificates”** means the \$15,435,000 Certificates of Participation, Series 2020.

**“Construction Account”** means the Construction Account within the Trust Fund established pursuant to Article IV hereof.

**“Cost of Issuance Account”** means the Cost of Issuance Account within the Trust Fund established pursuant to Article IV hereof.

**“Costs of Issuance”** means all fees and expenses incurred by the County in connection with the execution and delivery of the Lease and the issuance of the Certificates, including, but not limited to, costs of preparing the Certificates, this Trust Agreement, the Lease, the Ground Lease, the Official Statement relating to the Certificates, and related documents; legal fees (including those of counsel to the Trustee, the County and the Underwriter); rating agency fees and the Trustee’s initial fees.

**“Official Statement”** means the Preliminary Official Statement prepared and distributed by the Underwriter, dated September 18, 2020, together with the Final Official Statement, dated October 5, 2020.

**“Outstanding”** means, when used with reference to the Certificates and as of any particular date, all Certificates theretofore delivered except (i) any Certificate canceled or fully paid by the Trustee at or before said date; (ii) any Certificate in lieu of or in substitution for which another Certificate shall have been delivered pursuant to this Trust Agreement; and (iii) for the sole purpose of determining the percentage of Certificate Owners consenting to an amendment to this Trust

Agreement or authorizing any action by the Trustee or the exercise of any remedy hereunder, any Certificate owned by the County or any of its departments, agencies, institutions, instrumentalities or political subdivisions; for all other purposes, Certificates owned by the County or any such entity which are not described in paragraphs (i) and (ii) shall be treated as Outstanding hereunder.

**“Owner”** or **“Certificate Owner”** or **“Owner of Certificates”** or any similar term means, when used with respect to the Certificates, the registered owner of any Outstanding Certificate.

**“Permitted Investments”** means any investments legal for the investment of the funds of the County under State law, including, but not limited to, Section 21-06-07, N.D.C.C.; provided, however, that to the extent funds on deposit at the close of business of any banking day exceed available federal deposit insurance, the County shall require the financial institution to furnish collateral security, a corporate surety bond executed by a company authorized to do business in the State, or other form of collateral permitted by State law, the market value of which must be at least ten percent (10%) more than the amount on deposit.

**“Principal Office”** means the designated office of the Trustee, initially its office situated in Bismarck, North Dakota, at which the Trustee conducts its corporate trust business; or any office so designated by a successor trustee.

**“Rebate Account”** means the Rebate Account within the Trust Fund established pursuant to Article IV hereof.

**“Record Date”** means the fifteenth (15<sup>th</sup>) day of the calendar month immediately preceding any Certificate Payment Date, regardless whether such day is a business day.

**“Redemption Account”** means the Redemption Account within the Trust Fund established pursuant to Article IV hereof.

**“Register”** means the register maintained by the Registrar pursuant to Section 3.13 hereof.

**“Registrar”** means the Trustee or any successor registrar appointed by the Trustee pursuant to Section 6.3 hereof.

**“Rental Payment Account”** means the Rental Payment Account within the Trust Fund established pursuant to Article IV hereof.

**“Supplemental Trust Agreement”** means any trust agreement supplemental or amendatory to this Trust Agreement entered into by the County and the Trustee pursuant to Article VII hereof.

**“Trust Fund”** means the Trust Fund so designated, which is established by the Trustee under Section 4.1 hereof.

**“Underwriter”** means Colliers Securities, LLC, Minneapolis, Minnesota.

## ARTICLE II

### RECITALS AND REPRESENTATIONS

**SECTION 2.1. LEASE OF THE PROJECT.** The Trustee and the County have, on the date hereof, entered into (a) the Ground Lease, whereby the County has leased the Land to the Trustee for a term as described therein; and (b) the Lease, whereby the Trustee has agreed to sublease the Land and lease and/or sell the Improvements to the County and the County has agreed to sublease the Land and lease and/or purchase the Improvements from the Trustee.

**SECTION 2.2. CREATION OF TRUST.** The Trustee, at the request of the County, hereby creates a trust for the benefit of the Owners from time to time of the Certificates issued hereunder. The trust created hereunder shall be irrevocable while any Certificates are Outstanding hereunder. The corpus of the trust shall consist of:

(a) all of the Trustee's right, title and interest in and to the Lease, including, without limitation, the Rental Payments and other amounts due thereunder, except the rights of the Trustee to compensation, reimbursement or indemnity from the County thereunder, which rights are specifically reserved by the Trustee;

(b) all of the Trustee's right, title and interest in and to the Ground Lease;

(c) the Trust Fund, including all money and securities held in the accounts created therein (other than the Rebate Account created under Section 4.5 hereof); and

(d) any other property or rights hereafter assigned or contributed to the trust by the County or the Trustee by amendment or supplement hereto.

**SECTION 2.3. CONDITIONS PRECEDENT SATISFIED.** All acts, conditions and things required by law to exist, happen and be performed precedent to and in connection with the execution and entering into of this Trust Agreement have happened and have been performed in regular and due time, form and manner as required by law and the parties hereto are now duly empowered to execute and enter into this Trust Agreement.

*(Remainder of this page intentionally left blank.)*

**ARTICLE III**

**CERTIFICATES; TERMS AND PROVISIONS**

**SECTION 3.1. PREPARATION OF CERTIFICATES.** The Trustee is hereby directed to prepare, execute and deliver to the Underwriter, in exchange for the purchase price thereof, Certificates in an aggregate principal amount of \$15,435,000, evidencing undivided ownership interests in the Rental Payments to be paid by the County to the Trustee under the Lease. The total stated principal amount of Certificates that may be issued hereunder is hereby expressly limited to \$15,435,000.

**SECTION 3.2. FORM; DENOMINATIONS; MEDIUM OF PAYMENT.** The Certificates shall be delivered in fully registered form substantially in the form of Exhibit A hereto and by reference made a part of this Trust Agreement, without coupons, in denominations of \$5,000 each or any integral multiple thereof, with such further appropriate particular designation added to or incorporated in such title for the Certificates as may be set forth in the provisions of this Trust Agreement. The Certificates shall be payable in any lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

**SECTION 3.3. DATE OF CERTIFICATES.** The Certificates shall be originally dated as of October 14, 2020. Interest with respect to the Certificates shall accrue from their date of original issue or from the most recent date to which interest has been paid or duly provided for.

**SECTION 3.4. PAYMENT OF PRINCIPAL AND INTEREST WITH RESPECT TO CERTIFICATES.** The Certificates shall mature on May 1 in the years and amounts set forth below, and shall bear interest from the date of issue to the next succeeding Certificate Payment Date or to maturity or prior redemption at the annual rates set forth below:

<u>Maturity (May 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Maturity (May 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2021	\$120,000	4.000%	2031	\$ 420,000	4.000%
2022	305,000	4.000	2032	435,000	4.000
2023	315,000	4.000	2033	455,000	4.000
2024	325,000	4.000	2034	470,000	4.000
2025	340,000	4.000	2036	1,000,000	4.000
2026	355,000	1.000	2037	530,000	4.000
2027	360,000	4.000	2038	550,000	4.000
2028	370,000	4.000	2040	1,170,000	4.000
2029	385,000	4.000	2045	3,295,000	3.000
2030	405,000	4.000	2050	3,830,000	3.125

Interest with respect to the Certificates shall be payable on May 1 and November 1 of each year, to and including the date of maturity set forth above or the date of redemption, whichever is earlier, commencing May 1, 2021.

Principal and interest due on the Certificates represents the Principal Portion of the Rental Payments and the Interest Portion of the Rental Payments, respectively, coming due under the Lease on the twenty-fifth (25<sup>th</sup>) day of the month immediately preceding the corresponding Certificate Payment Date.

**SECTION 3.5. OPTIONAL AND MANDATORY REDEMPTION.**

**Optional Redemption.** On any Certificate Payment Date on or after May 1, 2025, the Principal Portion of the Rental Payments may be prepaid, in whole or in part, and if in part, in multiples of \$5,000, at a price equal to the Principal Portion to be prepaid plus accrued interest to the date of redemption, all pursuant to Article XI of the Lease.

**Mandatory Redemption.** The Term Certificates maturing May 1, 2036, are subject to mandatory sinking fund redemption, by random selection, at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium, on May 1, in the years and in the amounts as follows:

<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>
2035	\$490,000	2036*	\$510,000

\*Final Maturity

The Term Certificates maturing May 1, 2040, are subject to mandatory sinking fund redemption, by random selection, at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium, on May 1, in the years and in the amounts as follows:

<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>
2039	\$575,000	2040*	\$595,000

\*Final Maturity

The Term Certificates maturing May 1, 2045, are subject to mandatory sinking fund redemption, by random selection, at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium, on May 1, in the years and in the amounts as follows:



<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>
2041	\$620,000	2044	\$675,000
2042	640,000	2045*	700,000
2043	660,000		

\*Final Maturity

The Term Certificates maturing May 1, 2050, are subject to mandatory sinking fund redemption, by random selection, at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium, on May 1, in the years and in the amounts as follows:

<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>
2046	\$720,000	2049	\$790,000
2047	740,000	2050*	815,000
2048	765,000		

\*Final Maturity

The principal amount of the Term Certificates may be reduced through the earlier optional redemption, with any partial optional redemptions of the Term Certificates credited against future mandatory redemption requirements for such Term Certificates in such order as the County shall determine.

**SECTION 3.6. EXTRAORDINARY REDEMPTION OF CERTIFICATES.** The Certificates shall be subject to extraordinary redemption and prepayment, in whole but not in part, at the option of the County on any date upon the conditions and terms set forth herein if there occurs an event of damage, destruction or condemnation relating to the Project and the County determines that rebuilding, restoration and replacement of the Project to an acceptable condition would not be economically feasible, subject to the provisions of the Lease relating thereto. Such extraordinary optional redemption shall be at a price equal to the principal amount to be redeemed plus accrued interest to the redemption date without premium.

**SECTION 3.7. LEGENDS.** The Certificates may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Trust Agreement as may be necessary or desirable to comply with custom, or otherwise as may be determined by the County prior to delivery thereof.

**SECTION 3.8. EXECUTION.** The Certificates shall be executed in the name of and by the Trustee, as Trustee under this Trust Agreement, by the manual signature of an Authorized Officer of the Trustee. The Trustee shall execute and deliver the Certificates upon delivery to the Trustee of the following:

(a) an original or certified copy of the resolution adopted by the governing body of the County authorizing or approving the issuance of such Certificates and the execution of this Trust Agreement, the Lease and the Ground Lease;

(b) an original executed Trust Agreement providing for the issuance of such Certificates;

(c) an original executed Lease;

(d) an original executed Ground Lease; and

(e) an opinion of bond counsel as to (i) the tax-exempt status of the interest on the Lease as received by the Owners of the Certificates, and (ii) the due and valid authorization, execution and delivery by the County of this Trust Agreement, the Lease and the Ground Lease.

**SECTION 3.9. INTERCHANGEABILITY OF CERTIFICATES.** Certificates, upon surrender thereof at the Principal Office of the Trustee with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or the Owner's attorney duly authorized in writing, may, at the option of the Owner thereof, be exchanged for an equal aggregate principal amount of Certificates of the same maturity of other authorized denominations.

**SECTION 3.10. NEGOTIABILITY, TRANSFER AND REGISTRY.** All the Certificates issued pursuant to this Trust Agreement shall be negotiable as provided by law, subject to the provisions for registration and transfer contained in this Article and in the Certificates.

**SECTION 3.11. TRANSFER OF CERTIFICATES.** The registration of each Certificate shall be transferable only upon the Register (as described in Section 3.13 hereof), which shall be kept for that purpose at the Principal Office of the Registrar, upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed by the Owner or the Owner's duly authorized attorney. Upon the registration of the transfer and the surrender of any such Certificate, the Registrar shall provide, in the name of the transferee, a new Certificate or Certificates of the same aggregate principal amount and maturity as the surrendered Certificates.

The Registrar shall deem and treat the person in whose name any Outstanding Certificate shall be registered upon the Register as the absolute Owner of such Certificate, whether such Certificate shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal and interest payments with respect to such Certificate and for all other purposes, and all such payments so made to any such Owner or upon the Owner's order shall be valid and effectual to satisfy and discharge the liability upon such Certificate to the extent of the sum or sums so paid, and neither the Registrar, the County nor the Trustee shall be affected by any notice to the contrary.

**SECTION 3.12. REGULATIONS WITH RESPECT TO EXCHANGE AND TRANSFER.** In all cases in which the privilege of exchanging or transferring Certificates is exercised, the Registrar shall execute and deliver Certificates in accordance with the provisions of this Article. All Certificates

surrendered in any such exchanges or transfers shall forthwith be canceled and destroyed by the Registrar. For every such exchange or transfer of Certificates, whether temporary or definitive, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge, required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The cost of transfers and exchanges of Certificates shall be charged to the person requesting them.

**SECTION 3.13. REGISTER.** The Registrar shall keep or cause to be kept at its Principal Office a Register, which shall at all times be open to inspection by the Underwriter and the County; and, upon presentation for such purpose, the Registrar shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Register, Certificates as hereinbefore provided.

**SECTION 3.14. TEMPORARY CERTIFICATES.** Pending preparation of the definitive Certificates, any Certificates delivered under this Trust Agreement may be initially delivered in temporary form exchangeable for definitive Certificates when ready for delivery. The temporary Certificates may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the County, shall be without coupons and may contain such reference to any of the provisions of this Trust Agreement as may be appropriate. Every temporary Certificate shall be executed by the Registrar and be delivered by the Registrar upon the same conditions and in substantially the same manner as definitive Certificates. If the Registrar delivers temporary Certificates, it shall execute and furnish definitive Certificates without delay and, thereupon, the temporary Certificates shall be surrendered for cancellation at the Principal Office of the Registrar and the Registrar shall deliver in exchange for such temporary Certificates an equal aggregate principal amount of definitive Certificates of authorized denominations and of the same maturity and interest rate or rates. Until so exchanged, the temporary Certificates shall be entitled to the same benefits under this Trust Agreement as definitive Certificates delivered pursuant hereto.

**SECTION 3.15. CERTIFICATES MUTILATED, LOST, DESTROYED OR STOLEN.** If any Certificate shall become mutilated, the Registrar, at the expense of the Owner of said Certificate shall execute and deliver a new Certificate of like tenor, maturity and number in exchange and substitution for the Certificate so mutilated, but only upon surrender to the Registrar of the Certificate so mutilated. Every mutilated Certificate so surrendered to the Registrar shall be canceled by it and either destroyed or delivered upon the order of the County. If any Certificate shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Registrar, and, if such evidence is satisfactory to the Registrar and if an indemnity satisfactory to the Registrar shall be given, the Registrar, at the expense of the Certificate Owner, shall execute and deliver a new Certificate of like tenor and maturity and numbered as the Registrar shall determine in lieu of and in substitution for the Certificate so lost, destroyed or stolen. The Registrar may require payment of an appropriate fee for each new Certificate delivered under this Section and of the expenses which may be incurred by the Registrar in carrying out the duties under this Section, from the person requesting the same. Any Certificate issued under the provisions of this Section in lieu of any Certificate alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Trust Agreement with all other Certificates secured by this Trust Agreement. The

Registrar shall not be required to treat both the original Certificate and any duplicate Certificate as being Outstanding for the purpose of determining the principal amount of Certificates which may be issued hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and duplicate Certificate shall be treated as one and the same. Notwithstanding any other provision of this Section, in lieu of delivering a new Certificate for a Certificate which has been mutilated, lost, destroyed or stolen and which has matured, the Registrar may make payment of such Certificate.

**SECTION 3.16. PLACE OF PAYMENT.** The Trustee is hereby appointed as the paying agent for the Certificates. The principal of all Certificates shall be payable at the Principal Office of the Trustee. Interest with respect to Certificates shall be payable by check or draft of the Trustee mailed, or by wire transfer, on the Certificate Payment Date to the Owner of record as of the Record Date at the address shown on the Register. Notwithstanding the provisions hereinabove contained, while DTC's nominee is the Owner of the Certificates, payments of principal of and interest on the Certificates shall be made in accordance with existing arrangements between the Trustee and DTC.

**SECTION 3.17. EVIDENCE OF SIGNATURES OF CERTIFICATE OWNERS AND OWNERSHIP OF CERTIFICATES.** Any request, direction, consent, revocation of consent or other instruments in writing required or permitted by this Trust Agreement to be signed or executed by Certificate Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Certificate Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the holding and ownership of Certificates shall be sufficient for any purpose of this Trust Agreement (except as otherwise herein provided), if made in the following manner:

(a) The fact and date of the execution by any Certificate Owner or the Owner's attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in such jurisdictions that the person signing such instrument acknowledged before him or her the execution thereof. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate shall also constitute sufficient proof of authority.

(b) The ownership of Certificates shall be proved by the Register held by the Registrar under the provision of this Trust Agreement.

Nothing contained in this Article shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which may reasonably seem sufficient to the Trustee. Any request or consent of the Owner of any Certificate shall bind every future Owner of the same Certificate in respect of anything done or suffered to be done by the County or the Trustee in pursuance of such request or consent.

**SECTION 3.18. SECURITIES DEPOSITORY FOR CERTIFICATES.** For purposes of this Section, the following terms shall have the following meanings:

*“Beneficial Owner”* shall mean, whenever used with respect to a Certificate, the person in whose name such Certificate is recorded as the beneficial owner of such Certificate by a Participant on the records of such Participant, or such person’s subrogee.

*“Cede & Co.”* shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Certificates.

*“DTC”* shall mean The Depository Trust Company of New York, New York.

*“Participant”* shall mean any broker-dealer, bank or other financial institution for which DTC holds Certificates as securities depository.

*“Representation Letter”* shall mean the Letter of Representation pursuant to which the sender agrees to comply with DTC’s Operational Arrangements.

(a) The Certificates shall be initially issued as authenticated fully registered Certificates, and one Certificate shall be issued in the principal amount of each stated maturity of the Certificates. Upon initial issuance, the ownership of such Certificates shall be registered in the Register in the name of Cede & Co., as nominee of DTC. The Trustee and the County may treat DTC (or its nominee) as the sole and exclusive owner of the Certificates registered in its name for the purposes of payment of the principal of or interest on the Certificates, selecting the Certificates or portions thereof to be redeemed, if any, giving any notice permitted or required to be given to registered owners of Certificates under this Trust Agreement, registering the transfer of Certificates, and for all other purposes whatsoever; and neither the Trustee nor the County shall be affected by any notice to the contrary. Neither the Trustee nor the County shall have any responsibility or obligation to any Participant, any person claiming to be a Beneficial Owner under or through DTC or any Participant, or any other person which is not shown on the Register as being a registered owner of any Certificates, with respect to the accuracy of any records maintained by DTC or any Participant, with respect to the payment by DTC or any Participant of any amount with respect to the principal of or interest on the Certificates, with respect to any notice which is permitted or required to be given to owners of Certificates under this Trust Agreement, with respect to the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Certificates, or with respect to any consent given or other action taken by DTC as registered owner of the Certificates. So long as any Certificate is registered in the name of Cede & Co., as nominee of DTC, the Trustee shall pay all principal of and interest on such Certificate, and shall give all notices with respect to such Certificate, only to Cede & Co. in accordance with the Representation Letter, and all such payments shall be valid and effective to fully satisfy and discharge the County’s obligations with respect to the principal of and interest on the Certificates to the extent of the sum or sums so paid. No person other than DTC shall receive an authenticated Certificate for each separate stated maturity evidencing the obligation of the County to make payments of principal and

interest. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the Certificates will be transferable to such new nominee in accordance with subsection (d) of this Section.

(b) In the event the County determines that it is in the best interest of the Beneficial Owners that they be able to obtain Certificates in the form of certificates, the County may notify DTC and the Trustee, whereupon DTC shall notify the Participants of the availability through DTC of Certificates in the form of certificates. In such event, the Certificates will be transferable in accordance with subsection (d) of this Section. DTC may determine to discontinue providing its services with respect to the Certificates at any time by giving notice to the County and the Trustee and discharging its responsibilities with respect thereto under applicable law. In such event the Certificates will be transferable in accordance with subsection (d) of this Section.

(c) A Representation Letter, executed by an appropriate officer or officers of the County, is on file with DTC. The Representation Letter sets forth certain matters with respect to, among other things, notices, consents and approvals by Owners of the Certificates and Beneficial Owners and payments on the Certificates. The Trustee shall have the same rights with respect to its actions thereunder as it has with respect to its actions under this Trust Agreement.

(d) In the event that any transfer or exchange of Certificates is permitted under subsections (a) or (b) of this Section, such transfer or exchange shall be accomplished upon receipt by the Trustee of the Certificates to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee in accordance with the provisions of this Trust Agreement. In the event Certificates in the form of certificates are issued to owners other than Cede & Co., its successor as nominee for DTC as owner of all the Certificates, or another securities depository as owner of all the Certificates, the provisions of this Trust Agreement shall also apply to all matters relating thereto, including, without limitation, the printing of such Certificates in the form of certificates and the method of payment of principal of and interest on such Certificates in the form of certificates.

**SECTION 3.19. SELECTION OF CERTIFICATES FOR REDEMPTION.** The Certificates shall be called for redemption in such order as the County shall determine and within a maturity randomly as selected by the Registrar, in accordance with Section 3.5 hereof. If less than all Certificates maturing on the same dates are to be redeemed, the Certificates shall be selected randomly by the Trustee in accordance with its standard practices; provided, however, that the portion of any Certificate to be redeemed shall be in the principal amount of \$5,000 or any multiple thereof, and that in selecting portions of Certificates for redemption, the Trustee shall treat each such Certificate as representing that number of Certificates which is obtained by dividing the principal amount of such Certificate by \$5,000.

**SECTION 3.20. NOTICE OF REDEMPTION.** When redemption is authorized or required pursuant to the provisions hereof, the Trustee shall give to the Certificate Owners notice, at the expense of the County, of the redemption of the Certificates. Such notice must specify (a) the

Certificates to be redeemed, (b) the date of redemption, and (c) the place or places where the redemption will be made. Such notice will further state that on the specified date of redemption there shall become due and payable upon each Certificate to be redeemed, the principal thereof and premium, if any, together with interest accrued to said date of redemption, and that from and after such date of redemption interest thereon shall cease to accrue and be payable. Notice of such redemption shall be given by the Trustee not less than thirty (30) days prior to the redemption date by mailing a copy of the redemption notice by first class, postage prepaid, to the Owners whose Certificates are to be redeemed; provided that notice shall be given to any securities depository in accordance with its operational arrangements including by electronic means. Failure to mail such notice or any defect therein shall not affect the validity of the proceedings for the redemption of any Certificates not affected by such failure or defect.

**SECTION 3.21. EFFECT OF REDEMPTION.** Notice having been given as aforesaid, and the moneys for the redemption, including premium, if any and interest to the applicable date of redemption, having been set aside in the Redemption Account, the Certificates to be redeemed shall become due and payable on said date of redemption, and, upon presentation and surrender thereof at the office or offices specified in said notice, said Certificates shall be paid at the unpaid principal amount thereof, plus any premium due, plus any unpaid and accrued interest to said date of redemption. If, on said date of redemption, moneys for the redemption of all the Certificates to be redeemed, together with interest to said date of redemption, shall be held by the Trustee so as to be available therefor on such date of redemption, and, if notice of redemption thereof shall have been given as aforesaid, then, from and after said date of redemption, interest on the Certificates to be redeemed shall cease to accrue and become payable. If said moneys shall not be available on said date of redemption, such Certificates shall continue to bear interest until paid at the same rates as they would have borne had they not been notified for redemption. All moneys held by or on behalf of the Trustee for the redemption of particular Certificates shall be held in trust for the account of the Owners of the Certificates so to be redeemed for a period ending fifty-nine (59) months from the date of redemption. All such moneys held by the Trustee at the end of such period, including interest or other investment income thereon, shall be paid to the County, and thereafter the Trustee shall have no responsibility for the redemption of Certificates presented for redemption after such date.

**SECTION 3.22. ADDITIONAL CERTIFICATES.**

(a) Additional Certificates may be issued under and be equally and ratably secured by this Trust Agreement on a parity with the Certificates and any other Additional Certificates Outstanding, at any time and from time to time, upon compliance with the provisions of this Section, for any of the following purposes:

(i) to provide funds to pay all or any part of the costs of acquisition, construction, furnishing and equipping of additions or expansions to the Project; or

(ii) to provide funds to pay all or any part of the costs of repairing, replacing or restoring the Project in the event of damage, destruction or condemnation thereto or thereof, but only to the extent that such costs exceed the Net

Proceeds of the insurance or condemnation awards out of which such costs are to be paid pursuant to Article VI or Article VII of the Lease.

(b) Before any Additional Certificates shall be issued under the provisions of this Section, the County shall adopt a resolution (i) authorizing or approving the issuance of such Additional Certificates; (ii) authorizing or approving the execution of a Supplemental Trust Agreement for the purpose of issuing such Additional Certificates and fixing the amount and terms thereof and describing the purpose or purposes for which such Additional Certificates are being issued; and, if required, (iii) authorizing the execution of an amendment to the Lease to provide for Rental Payments at least sufficient to pay, on any Rental Payment date, amounts representing principal, premium, if any, and interest with respect to the Certificates then to be Outstanding (including the Additional Certificates to be issued) as the same become due during such Rental Payment date.

(c) Such Additional Certificates shall have the same designation as the Certificates, shall be dated, shall mature on May 1 or November 1 in such year or years, shall provide for amounts representing interest at such rate or rates not exceeding the maximum rate then permitted by law, and shall be redeemable at such times and prices (subject to the provisions of Article III hereof), all as may be provided by the Supplemental Trust Agreement authorizing the issuance of such Additional Certificates. Except as to any difference in date, maturity, interest rate or redemption provisions, such Additional Certificates shall be on a parity with and shall be entitled to the same benefit and security of this Trust Agreement as the Certificates and any other Additional Certificates Outstanding after the issuance of such Additional Certificates.

(d) Such Additional Certificates shall be executed substantially in the form and manner set forth in Exhibit A hereto, but prior to or simultaneously with the execution of such Additional Certificates there shall be filed with the Trustee the following:

(i) an original or certified copy of a resolution adopted by the governing body of the County authorizing or approving the issuance of such Additional Certificates and the execution of such Supplemental Trust Agreement;

(ii) an original executed counterpart of the Supplemental Trust Agreement providing for the issuance of such Additional Certificates;

(iii) an original executed counterpart of the amendment to the Lease, if required, which amendment shall clearly establish that the County has agreed that the Additional Certificates shall constitute Certificates for the purpose of computing the required Rental Payments;

(iv) a request and authorization to the Trustee, on behalf of the County, executed by an Authorized Officer, to execute the Additional Certificates and to deliver them to the purchaser therein identified upon payment of the purchase price thereof to the Trustee. The Trustee shall be entitled to rely conclusively upon such



request and authorization as to the name of the Underwriter and the amount of such purchase price;

(v) an opinion of counsel nationally recognized in the area of municipal finance to the effect that the issuance of such Additional Certificates will not result in amounts representing interest payable with respect to any Certificates then Outstanding (including such Additional Certificates) becoming includable in gross income for federal income tax purposes; and

(vi) such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of such Additional Certificates.

(e) When the documents described in subsection (d) of this Section have been filed with the Trustee, and when such Additional Certificates have been executed as required by this Trust Agreement, the Trustee shall deliver such Additional Certificates to or upon the order of the purchaser thereof upon payment to the Trustee of the purchase price of such Additional Certificates as specified by the request and authorization of the Authorized Officer of the County. The proceeds of the sale of such Additional Certificates, including any accrued interest and premium thereon paid over to the Trustee, shall be deposited in accordance with Article IV hereof and the provisions of the Supplemental Trust Agreement authorizing the issuance of such Additional Certificates.

(f) Except as provided in this Section, no obligations payable from the sources pledged for payment or security of the Certificates shall be issued.

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## ARTICLE IV

### ESTABLISHMENT AND ADMINISTRATION OF FUNDS AND ACCOUNTS

**SECTION 4.1. TRUST FUND; ACCOUNTS; PAYMENT OF COSTS OF ISSUANCE.** There is hereby established with the Trustee a special trust fund to be designated as the "Barnes County, North Dakota, Lease-Purchase Agreement Trust Fund - Certificates of Participation, Series 2020" (the "Trust Fund"). The Trustee shall keep the Trust Fund in its books and records separate and apart from all other funds and moneys held by it. Within the Trust Fund, there are hereby established the following accounts:

- (a) Construction Account more particularly described in Section 4.2 hereof;
- (b) Rental Payment Account more particularly described in Section 4.3 hereof;
- (c) Redemption Account more particularly described in Section 4.4 hereof;
- (d) Rebate Account more particularly described in Section 4.5 hereof; and
- (e) Cost of Issuance Account more particularly described in Section 4.9 hereof.

On the Closing Date, the Trustee will receive and deposit in the Trust Fund the proceeds of the Certificates in the amount of \$15,615,866.20. \$15,520,583.12 of the proceeds shall be deposited in the Construction Account and applied to Construction Costs as provided in Section 4.2 hereof. Proceeds in the amount of \$95,283.08 will be deposited by the Trustee in the Cost of Issuance Account and used to pay Costs of Issuance (other than Underwriter's Discount) immediately upon receipt of written statements therefor, but within ninety (90) days of the Closing Date. Any amounts so held and remaining in the Cost of Issuance Account ninety (90) days after the Closing Date shall be deposited in the Construction Account.

#### **SECTION 4.2. ESTABLISHMENT AND APPLICATION OF CONSTRUCTION ACCOUNT.**

(a) Within the Trust Fund, there is hereby established a special account to be designated and referred to herein as the "Construction Account." The Trustee shall administer the Construction Account as provided in this Section and Section 4.6 hereof.

(b) Except as provided in subsection (c) of this Section, all moneys deposited in or transferred to the Construction Account pursuant to Sections 4.1 and 4.6 hereof shall be disbursed only for the payment of Construction Costs upon written direction of the County.

(c) Disbursements from the Construction Account shall be made by the Trustee upon receipt of a written request for disbursement executed by an Authorized Officer of the County. Such request may be submitted by facsimile or by email (PDF format). Each such requisition shall be substantially in the form attached hereto as Exhibit B and shall:

(i) set forth the amounts to be disbursed for payment or reimbursement of previous payments of Construction Costs and the person to whom such amounts are to be disbursed;

(ii) certify that the amounts to be disbursed constitute Construction Costs as said term is defined herein and in the Lease, that said amounts are required to be disbursed pursuant to the Lease, and that said amounts are not being paid in advance of the time, if any, fixed for payment; and

(iii) certify that no amount set forth in the requisition was included in any requisition requesting a disbursement previously filed with the Trustee pursuant to this Section, payment of which was actually made by the Trustee.

The Trustee is entitled to reasonably rely in good faith upon the requisition provided for above, and shall have no liability on account of disbursements from the Construction Account made in accordance with the requisition. The Trustee shall not be responsible to collect lien waivers.

(d) After completion of the construction the Improvements, the County shall deliver to the Trustee an Acceptance Certificate in the form attached to the Lease. Upon the earlier of (i) receipt by the Trustee of such certificate, or (ii) October 14, 2023, the Trustee shall transfer any amounts remaining in the Construction Account into the Rental Payment Account. Alternatively, such amounts may be disbursed to the County upon written request, and immediately used to pay additional capital costs relating to the Improvements. The Trustee shall be fully protected in relying on any such request for the release of such amounts to the County and shall have no obligation to see to the application of any such paid amounts. The Construction Account shall be immediately closed after such transfer or disbursement of funds. Upon deposit of remaining amounts into the Rental Payment Account, such amounts shall be segregated into a separate subaccount and applied as a credit against the Principal Portion of the next succeeding Rental Payment due by the County following the date of such deposit. In the event that the amount so deposited exceeds such Principal Portion, it shall be applied as a credit against the Principal Portion of the next subsequent Rental Payments.

**SECTION 4.3. ESTABLISHMENT AND APPLICATION OF RENTAL PAYMENT ACCOUNT.**

(a) Within the Trust Fund, there is hereby established a separate account to be designated and referred to herein as the "Rental Payment Account." Such Rental Payment Account shall be maintained by the Trustee until the Rental Payments are prepaid or paid in full pursuant to the terms of the Lease, or until this Trust Agreement is terminated. The Trustee shall administer the Rental Payment Account as provided in this Section and Section 4.6 hereof.

(b) In addition to the moneys required to be deposited in the Rental Payment Account pursuant to Sections 4.1, 4.2 and 4.6 hereof, if any, except as provided in Section

4.4 hereof, all Rental Payments, and all other moneys received by the Trustee with respect to the Lease or the Project shall be credited by the Trustee to the Rental Payment Account immediately upon their receipt.

(c) The Trustee shall withdraw from the Rental Payment Account, on or before each Certificate Payment Date, an amount equal to the principal and/or interest payments due with respect to the Certificates on such Certificate Payment Date, and shall transmit the same to the Registrar to be applied to the payment of principal and/or interest payments due with respect to the Certificates on such Certificate Payment Date. Amounts in the Rental Payment Account shall not be used to pay for any operation costs of the County.

(d) The Trustee shall transfer from the Rental Payment Account to the Redemption Account, all moneys on hand or received in the Rental Payment Account which are to be used for the redemption of Certificates in accordance with Sections 3.5 and 3.6 hereof.

No amounts shall be withdrawn or transferred from or paid out of the Rental Payment Account except as provided in this Article and Section 5.9 hereof.

**SECTION 4.4. ESTABLISHMENT AND APPLICATION OF REDEMPTION ACCOUNT.**

(a) Within the Trust Fund there is hereby established a separate account to be designated and referred to herein as the "Redemption Account." The Trustee shall administer the Redemption Account as provided in this Section and Section 4.6 hereof.

(b) The Trustee shall deposit in the Redemption Account moneys received in the event of termination of the Lease pursuant to Section 4.5 or 13.2 of the Lease, including, without limitation, all net proceeds received from the sale, lease or other disposition of the Project. In the event of termination of the Lease pursuant to either Sections 4.5, 6.5, 11.1 or 13.2 of the Lease, the Trustee shall transfer to the Redemption Account, all moneys on hand in the Rental Payment Account not needed to pay principal and interest due or past due on the Certificates. All of said moneys shall be set aside in the Redemption Account for the purpose of redeeming the Certificates in advance of their maturity and shall be applied on or after the date of redemption to the payment of principal and interest with respect to the Certificates to be redeemed upon presentation and surrender of such Certificates.

(c) Notwithstanding any other provision of this Trust Agreement, except as provided in subsection (d) of this Section, all moneys on hand in the Redemption Account which will not be used for the redemption of the Certificates within thirty (30) days after the date of its deposit or transfer to the Redemption Account shall be invested at a yield not exceeding the yield on the Certificates, computed in accordance with the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder, unless the County obtains and delivers to the Trustee an opinion of an attorney or firm of attorneys nationally recognized as bond counsel stating that the investment of such moneys may be made without restriction as to yield or may be made subject to another yield limitation, in

which event the moneys in said Redemption Account may be invested in accordance with such opinion. Investment of moneys subject to the yield restrictions herein provided may be made by the purchase of United States Treasury Certificates of Indebtedness - State and Local Government Series, or United States Treasury Notes - State and Local Government Series, or United States Treasury Bonds - State and Local Government Series maturing on or immediately preceding the date of redemption of the Certificates to be redeemed. The Trustee shall have no duty or obligation to determine the yield on any investments made pursuant to this subsection. The County shall provide the Trustee with written instructions regarding any such investments.

(d) Moneys held by the Trustee for the payment of Certificates which have been called for redemption and the interest thereon, after the date set for redemption, may be invested, at the written request of the County, in Permitted Investments without restriction as to yield. Moneys held in the Redemption Account after the date on which such moneys are to be applied for the redemption of the Certificates, shall, upon redemption of all Outstanding Certificates, or upon expiration of the applicable time period specified in Section 3.21 hereof, whichever occurs first, be paid to the County.

#### **SECTION 4.5. ESTABLISHMENT AND APPLICATION OF REBATE ACCOUNT.**

(a) The Trustee shall establish a special account in the Trust Fund designated as the "Rebate Account." All money at any time deposited in the Rebate Account shall be held by the Trustee in trust, to the extent required to satisfy the amount required to be rebated to the United States under the Code, and neither the County, the Lessor, nor any Owner, shall have any rights in or claims to such money. The Trustee shall make information regarding the investments hereunder available to the County and shall make deposits in and disbursements from the Rebate Account in accordance with the written instructions received from the County, shall invest the Rebate Account pursuant to said written instructions, and shall deposit income from such investments immediately upon receipt thereof in the Rebate Account.

(b) The County shall make or cause to be made the calculations required by the Code. The County shall direct the Trustee to make deposits to and disbursements from the Rebate Account in accordance with its written investment instructions to the Trustee and to invest amounts in the Rebate Account pursuant to said investment instructions.

(c) The County shall make or cause to be made the computation of the required deposit to the Rebate Account on or before the end of each fifth (5<sup>th</sup>) bond year. The County shall notify the Trustee within thirty (30) days of the end of each fifth (5<sup>th</sup>) bond year as defined in the Code whether a transfer is required. The Trustee shall upon receipt of direction from the County transfer moneys representing interest income from the Construction Account or the Rental Payment Account, as directed by the County, to the Rebate Account in the amount of the required deposit, if any. If such transfers are not sufficient to meet the rebate requirements of the Code, the County shall immediately pay to the Trustee for deposit in the Rebate Account an amount sufficient to eliminate the

deficiency. Records of the actions required by this Section shall be retained by the Trustee and the County until six (6) years after the Certificates are no longer outstanding.

(d) Not later than thirty (30) days after the end of the fifth (5<sup>th</sup>) bond year as defined in the Code and every five (5) years thereafter, the Trustee, upon written direction from the County, shall pay to the United States not less than ninety percent (90%) of the amount required to be on deposit in the Rebate Account at that time from moneys on deposit in the Rebate Account. Not later than sixty (60) days after the final retirement of the Certificates, the Trustee, upon written direction from the County, shall pay to the United States one hundred percent (100%) of such amount from moneys on deposit in the Rebate Account. Each payment required to be paid to the United States pursuant to this Section shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201-0027. Each payment shall be accompanied by a statement summarizing the determination of the amount to be paid to the United States, as provided by the County. Any amounts remaining in the Rebate Account upon such final payment shall be paid to the County.

(e) The provisions of this Section are intended to comply with the provisions of the Code, and may be amended by the parties at any time as deemed necessary, based on an opinion of counsel nationally recognized in municipal finance to enable the County to comply with the Code for the purpose of maintaining the exemption from gross income of the interest payable on the Lease and the Certificates for federal income tax purposes.

#### **SECTION 4.6. DEPOSIT AND INVESTMENT OF MONEYS IN FUNDS.**

(a) All moneys credited to the Trust Fund shall be deposited or invested in Permitted Investments by the Trustee, or delivered by the Trustee to the County for investment by or at the direction of the County in Permitted Investments. An Authorized Officer of the County shall direct the Trustee as to the appropriate course of action to take with respect to the amounts credited to the Trust Fund. The County hereby authorizes the County Auditor to give such written instructions on behalf of the County until such time as the County instructs the Trustee, in writing, otherwise. If the County does not provide the Trustee with written instructions for such investment (or if the County Auditor does not provide the Trustee with written instructions on behalf of the County), the Trustee shall hold such funds uninvested. Permitted Investments shall be registered in the name of the Trustee, as Trustee. The Trustee may purchase from or sell to itself or any affiliate, as principal or agent, investments authorized by this Section. In the event Permitted Investments are held by one or more financial institutions other than the Trustee pursuant to the written instruction of the County, the County shall require such other financial institution(s) to provide the Trustee a safekeeping receipt describing the terms of the investment and naming the Trustee as the registered owner of the investment. All Permitted Investments made from moneys credited to the Trust Fund, wherever held, remain the property of the Trust Fund, and upon maturity of each Permitted Investment or earlier, as permitted by the terms of the investment, all principal of and interest earned on Permitted Investments shall be made immediately available to the Trustee. If the Permitted Investments are made by or through an account other than the trust accounts established under this Trust Agreement, the Trustee shall have

no responsibility for confirming that such investments are made in accordance with the requirements set forth herein.

(b) Except as provided in Section 4.5(c), all interest or income on the Construction Account shall be retained in the Construction Account until such Construction Account is closed pursuant to Section 4.2 hereof.

(c) Except as provided in Section 4.5(c), all interest or income received by the Trustee on investment of the Rental Payment Account established pursuant to Section 4.3 hereof shall be retained in said Rental Payment Account and be applied to the payment of delinquent payments due on the Certificates, if any, and otherwise shall be applied as set forth in subsection (d) of this Section.

(d) Subsequent to the closing of the Construction Account, and provided that there are no delinquent Rental Payments, amounts retained or deposited in or transferred to the Rental Payment Account pursuant to subsection (c) of this Section shall be applied as a credit against the principal portion of the next Rental Payment due from the County under the Lease following the date of deposit or transfer. At the time of deposit or transfer of said moneys in or to the Rental Payment Account, the Trustee shall report the amount thereof to the County and the amount of the next Rental Payment payable by the County under the Lease shall be reduced by an amount equal to the amount of said deposit or transfer.

(e) Upon request, the Trustee shall furnish to the County an accounting of all investments. The Trustee shall not be liable for any loss resulting from the making or disposition of any investment pursuant to this Section, except to the extent that such loss results from the Trustee's gross negligence or bad faith. Any loss not resulting from the Trustee's gross negligence or bad faith shall be charged to the account with respect to which such investment was made.

(f) The County covenants and agrees that it will at all times direct the Trustee to invest the moneys held in the Trust Fund in a manner which will not violate the provisions of the Code and the regulations promulgated thereunder from time to time.

(g) Upon payment by the County of all Rental Payments shown in Exhibit B to the Lease, or prepayment by the County of all its obligations under the Lease pursuant to Section 6.5 or 11.1 of the Lease, and the payment of all Certificates and the interest coming due thereon or the provision for the payment thereof as provided in Section 7.3 hereof, and the payment of all amounts owed to the Trustee under Section 6.6 hereof, all moneys remaining on hand in the Trust Fund, except amounts, if any, credited to the Rental Payment Account and the Rebate Account, shall be paid to the County.

(h) The Trustee may rely on the investment directions of the County (as provided by the County or another authorized to act on its behalf) as to both the suitability and legality of the directed investments. The County waives notification of brokerage confirmations of

the security transactions as they occur to the extent permitted by law and the Trustee will provide periodic cash transaction statements which will detail all investment transactions.

**SECTION 4.7. UNCLAIMED MONEYS.** All moneys held by the Trustee for the payment or redemption of Certificates shall be held in trust for the account of the Owners of the Certificates so to be paid or redeemed for a period ending fifty-nine (59) months from the date of redemption or the date such payment was due. All such moneys held by the Trustee at the end of such period, including interest or other investment income thereon, shall be paid to the County, and thereafter the Trustee shall have no responsibility for the payment or redemption of such Certificates presented for payment or redemption after such date.

**SECTION 4.8. TERMINATION OF AGREEMENT.** Upon payment by the County of all Rental Payments set forth in the Lease, or of the unpaid balance of the Rental Payments for the Project pursuant to the Lease, and the payment or redemption of all Certificates and the interest coming due thereon or the provision for the payment thereof as provided in Section 7.3 hereof, and the payment of all amounts owed to the Trustee under Section 6.6 hereof, all moneys remaining on hand in the Trust Fund (except those in the Rental Payment Account and the Rebate Account) shall be paid to the County.

**SECTION 4.9. ESTABLISHMENT AND APPLICATION OF COST OF ISSUANCE ACCOUNT.**

(a) Within the Trust Fund, there is hereby established a special account to be designated and referred to herein as the "Cost of Issuance Account." The Trustee shall administer the Cost of Issuance Account as provided in this Section and Section 4.6 hereof.

(b) Except as provided in subsection (c) of this Section, all moneys deposited in or transferred to the Cost of Issuance Account pursuant to Sections 4.1 and 4.6 hereof shall be disbursed only for the payment of Cost of Issuance upon written direction from the County.

(c) Disbursements from the Cost of Issuance Account shall be made by the Trustee upon receipt of a written request for disbursement executed by an Authorized Officer of the County. Such request may be submitted by facsimile or by email (PDF format). Each such requisition shall state: (i) the amount(s) to be paid as Cost of Issuance; (ii) the person(s) to whom such amounts are to be paid, and (iii) that such amount(s) are due and owing to such person(s). Amounts, if any, remaining in the Cost of Issuance Account ninety (90) days after the Closing Date for the Certificates shall be deposited in the Construction Account.

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## ARTICLE V

### COVENANTS; DEFAULT AND LIMITATION OF LIABILITY

**SECTION 5.1. COUNTY TO PERFORM AGREEMENT.** The County covenants and agrees with the Owners of the Certificates, to perform all obligations and duties imposed on it under the Lease and the Ground Lease.

**SECTION 5.2. TRUSTEE TO PERFORM AGREEMENT.** The Trustee covenants and agrees with the Owners of the Certificates, to perform all obligations and duties imposed on it under the Lease and the Ground Lease.

**SECTION 5.3. NOTICE OF NON-PAYMENT.** In the event of delinquency in the payment of Rental Payments due by the County pursuant to the Lease, the Trustee shall, the day following the date upon which such delinquent Rental Payments were due, immediately give written notice of the delinquency and the amount thereof to the County and the Underwriter.

**SECTION 5.4. NOTICE OF EVENT OF DEFAULT.** In the event the County is in default under the terms of the Lease, the Trustee shall give, within ten (10) business days of an Authorized Officer having actual knowledge of such occurrence of default, written notice of such default to the Owners of the Certificates by mail at their addresses as they appear on the Register. Such notice shall specify that the County is in default of the Lease, together with a brief description of such default; provided, however, that failure to give such notice shall not affect any rights of the Owners of the Certificates. Notwithstanding the foregoing, except in the case of default with respect to the payment of one or more Rental Payments, the Trustee shall be protected in withholding such notice if and so long as the board of directors or trustees, the executive committee, or a trust committee of directors or trustees of the Trustee in good faith determine that the withholding of such notice is in the interests of the Owners of Certificates.

**SECTION 5.5. ACTION ON DEFAULT, NONAPPROPRIATION OR TERMINATION.**

(a) Upon the occurrence of an event of default by the County under Section 13.1 of the Lease, and in each and every such case during the continuance of such event of default, or the termination of the Lease pursuant to Section 4.5 of the Lease, the Trustee or, pursuant to Section 5.11 hereof, the Owners of not less than a majority in aggregate principal amount of Certificates at the time Outstanding, shall be entitled, upon notice in writing to the County and the Underwriter, to enforce the rights and exercise the remedies provided to the Trustee in the Lease and the Ground Lease, as appropriate. In such event the Trustee may require a satisfactory indemnity bond be furnished to it by or on behalf of the Owners for the reimbursement of reasonable expenses that it may incur and to protect it against all liability by reason of any action so taken that does not violate the standard of care set forth in Section 6.3 hereof.

(b) Upon the failure by the County to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Trust Agreement,

other than as such failure may constitute a default under the Lease, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the defaulting party by any other party hereto or the Owners of not less than five percent (5%) in aggregate principal amount of Certificates then Outstanding, the Trustee or the Owners of not less than a majority in aggregate principal amount of Certificates at the time Outstanding shall be entitled, upon notice in writing to the County and the Underwriter to take whatever action at law or in equity may appear necessary or desirable to protect and enforce any of the rights vested in the Trustee or the Owners of Certificates by this Trust Agreement or by the Certificates, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Trust Agreement or in aid of the exercise of any power granted in this Trust Agreement or for the enforcement of any other legal or equitable right vested in the Trustee by this Trust Agreement or by law.

(c) Upon termination of the Lease by the Trustee pursuant to Section 13.2 of the Lease, or the County pursuant to Section 4.5 of the Lease, the Trustee shall take whatever actions are reasonably necessary to lease or sell its interest in the Project pursuant to the terms of the Lease and the Ground Lease and shall apply the proceeds of such lease or sale to the redemption of Certificates as soon as reasonably practicable.

**SECTION 5.6. NO REMEDY EXCLUSIVE.** No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Trust Agreement or under the Lease to the Trustee, or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it, it shall not be necessary to give any notice other than such notice as may be required in this Article or by law.

**SECTION 5.7. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.** In the event the County shall default under or otherwise breach any of the provisions contained herein and the Trustee should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the County herein contained, the County agrees that it will on demand therefor pay to the Trustee the reasonable fees of such attorneys and such other related expenses incurred by the Trustee.

**SECTION 5.8. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.** In the event any agreement contained in this Trust Agreement should be breached by a party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**SECTION 5.9. APPLICATION OF MONEYS UPON DEFAULT OR NONAPPROPRIATION.** If at any time after termination of the Lease pursuant to Section 4.5 of the Lease, or after an event of default has occurred under the Lease, the moneys in the Trust Fund, together with any other moneys

available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for herein or otherwise, shall be applied by the Trustee as follows:

(a) First, to the payment of costs, expenses and fees, and reasonable compensation of the Trustee, its agents, accountants and attorneys, and all expenses and liabilities incurred and advances made by the Trustee under this Trust Agreement, the Lease or the Ground Lease;

(b) Second, to the payment to the persons entitled thereto of all interest components of Rental Payments with respect to Certificates as they become due, in the order of the maturity of such Certificates and, if the amount available shall not be sufficient to pay in full any particular interest component of a Rental Payment when due, then to the payment ratably, according to the amounts due on such interest component, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Certificates;

(c) Third, to the payment to the persons entitled thereto of all principal components of Rental Payments with respect to Certificates as they become due, in the order of the maturity of such Certificates, and, if the amount available shall not be sufficient to pay in full any particular principal component of a Rental Payment due, then to the payment ratably, according to the amounts due on such principal component, to the persons entitled thereto, without any discrimination or preference; and

(d) Fourth, to the County.

**SECTION 5.10. COLLECTION OF RENTAL PAYMENTS.** Upon written request and authorization by the Owners of a majority in aggregate principal amount of the Certificates then Outstanding and unpaid, and upon being satisfactorily indemnified by such Owners against any expense and liability with respect thereto, the Trustee shall take any and all appropriate action to collect any Rental Payment not paid when due.

**SECTION 5.11. ACTION BY OWNERS.** In the event the Trustee fails to take any action to eliminate or cure an event of default under the terms of this Trust Agreement, the Lease, or the Ground Lease, the Owners of not less than a majority in aggregate principal amount of Certificates then Outstanding may institute any suit, action, mandamus or other proceeding in equity or at law for the protection or enforcement of any right under this Trust Agreement, the Lease or the Ground Lease, but only if the Trustee shall have been given written notice of such default (unless such default shall consist of a failure to pay a Rental Payment when due) and the continuance thereof and if such percentage of Certificate Owners have first made written request of the Trustee to institute such action or proceedings in its own name as Trustee hereunder and shall have afforded the Trustee sixty (60) days either to proceed to exercise the powers granted therein or granted under law or to institute such action, suit or proceeding in its name and only if, the Trustee shall have been offered by such Owners security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request within a reasonable time.

**SECTION 5.12. NO OBLIGATION BY THE COUNTY TO OWNERS.** Except for the payment of Rental Payments when due in accordance with the Lease and the performance of the other covenants and agreements of the County contained in the Lease, the Ground Lease and in this Trust Agreement, the County shall have no obligation or liability to the Owners of the Certificates with respect to this Trust Agreement or the terms, execution, delivery or transfer of the Certificates, or the distribution of Rental Payments to the Owners by the Trustee.

**SECTION 5.13. NO OBLIGATION WITH RESPECT TO PERFORMANCE BY TRUSTEE.** The County shall not have any obligation or liability to the Trustee or to the Owners of the Certificates with respect to the performance by the Trustee of any duty imposed upon the Trustee under this Trust Agreement.

**SECTION 5.14. NO LIABILITY TO OWNERS FOR PAYMENT.** Except as provided in this Trust Agreement, the Trustee shall not have any obligation or liability to the Owners of the Certificates with respect to the payment of the Rental Payments by the County when due, or with respect to the performance by the County of any other covenant made by it in the Lease, or the Ground Lease.

**SECTION 5.15. LIMITED LIABILITY OF TRUSTEE.** The Trustee shall have no obligation or responsibility for providing information to the Owners concerning the investment character of the Certificates, for the sufficiency or collection of any Rental Payments or other moneys required to be paid to it under the Lease, or for the actions or representations of any other party to this Trust Agreement. The Trustee shall have no obligation or liability to any of the other parties or the Owners of the Certificates with respect to this Trust Agreement itself or the failure or refusal of any other party to perform any covenant or agreement made by any of them under this Trust Agreement, the Ground Lease or the Lease, but shall be responsible solely for the performance of the duties expressly imposed upon it hereunder and under the Lease. The recitals of facts, covenants and agreements contained herein and in the Certificates shall be taken as statements, covenants and agreements of the County and the Trustee assumes no responsibility for the correctness of the same, and makes no representations as to the validity or sufficiency of this Trust Agreement or the Certificates or the Ground Lease or the Lease, and shall incur no responsibility with respect thereto, other than in connection with the duties or obligations herein or therein or in the Certificates specifically assigned to or imposed upon it. Except as provided in Section 6.3 hereof, the Trustee shall not be liable in connection with the performance of its duties hereunder or thereunder, except for its own gross negligence or bad faith. The Trustee shall not be responsible for the sufficiency of the Lease or of the rights to receive moneys pursuant to the Lease, or the value of or title to the Project. Except as provided in Section 6.3 hereof, the Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it under the terms of and in accordance with this Trust Agreement, except when such loss results from the Trustee's gross negligence or bad faith. Notwithstanding any other term of this Trust Agreement, or any related agreement, in no event shall the Trustee be liable for incidental, indirect, special, consequential or punitive damages (including, but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

**SECTION 5.16. INDEMNIFICATION TO TRUSTEE.** To the extent permitted by law, the County shall and hereby agrees to indemnify and save the Trustee harmless from and against all

claims, losses, costs, liabilities and damages, including legal fees and expenses, arising out of (i) any breach or default on the part of the County, in the performance of any of its obligations under this Trust Agreement, if such breach or default is reduced to a written settlement or a judgment favorable to the Trustee, or (ii) any tortious act or failure to act of the County, or of any of its officers, agents or employees with respect to the Project, or (iii) the Trustee's performance of its duties or exercise of its rights under this Trust Agreement, the Ground Lease or the Lease. No indemnification will be made under this Section or elsewhere in this Trust Agreement to the extent such claims result from the Trustee's gross negligence or bad faith. The County's obligations and liabilities under this Article shall survive the termination of this Trust Agreement and the Lease and Ground Lease. For the avoidance of doubt, the County's commitment to indemnify pursuant to this Section shall for all purposes be considered an obligation of the County and not subject to the limitations set forth in Sections 5.1 and 5.4 of the Lease with respect to the County's obligation to make Rental Payments. Indemnification for any tort mentioned in this Section shall be limited to the extent and in the amounts provided for by State law.

**SECTION 5.17. CONTINUING DISCLOSURE.** The County and the Trustee hereby covenant and agree that they will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Indenture, failure of the County or the Trustee to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, the Trustee may (and, at the request of the Owners of at least twenty-five percent (25%) aggregate principal amount of Outstanding Certificates, shall) or any Owner may seek mandate or specific performance by court order, to cause the County or the Trustee, as the case may be, to comply with its obligations under this Section.

*(Remainder of this page intentionally left blank.)*

## ARTICLE VI

### THE TRUSTEE

**SECTION 6.1. EMPLOYMENT OF TRUSTEE.** In consideration of the recitals hereinabove set forth and for other valuable consideration, the County hereby agrees to employ the Trustee to receive, hold, invest and disburse the moneys to be paid to it pursuant to the Lease for credit to the various accounts in the Trust Fund established by this Trust Agreement; to prepare, execute, deliver and deal with the Certificates; to apply and disburse the Rental Payments received from the County to the Owners of Certificates; and to perform certain other functions, all as herein provided and subject to the terms and conditions of this Trust Agreement.

**SECTION 6.2. ACCEPTANCE OF EMPLOYMENT.** In consideration of the compensation herein provided for, the Trustee accepts the employment above referred to subject to the terms and conditions of this Trust Agreement.

**SECTION 6.3. TRUSTEE; DUTIES, REMOVAL AND RESIGNATION.** By executing and delivering this Trust Agreement, the Trustee accepts the duties and obligations of the Trustee provided in this Trust Agreement, but only upon the terms and conditions set forth in this Trust Agreement. The Trustee shall, prior to any event of default and after all events of default which may have occurred have been cured, perform such duties and only such duties as are specifically set forth in this Trust Agreement, and no implied covenants or obligations shall be read into this Trust Agreement against the Trustee. The Trustee shall, during the existence of any event of default which has not been cured, exercise such of the rights and powers vested in it by this Trust Agreement and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of their own affairs. The Trustee and the County may by written agreement between themselves, or the holders of a majority in aggregate principal amount of all Certificates Outstanding may by written request, remove the Trustee initially a party to this Trust Agreement and any successor thereto, and may appoint a successor trustee, but any such successor shall be a trust company or bank having corporate trust powers and having a reported capital and surplus not less than \$25,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms. The Trustee and any successor trustee may at any time resign from the trusts hereby created by giving thirty (30) days written notice to the County and by first class mail to each Certificate Owner as shown on the Register, and such resignation shall take effect upon the appointment of a successor trustee by the Owners or by the County. Such notice to the County may be served personally or sent by registered or certified mail. If an instrument of acceptance by a successor trustee shall not have been delivered to the Trustee within sixty (60) days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee.

**SECTION 6.4. REMOVAL OF TRUSTEE.** The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the County, and signed by the Owners of a majority in aggregate principal amount of then Outstanding Certificates.

The Trustee may be removed at any time by an instrument in writing delivered to the Trustee and signed by the County, which instrument shall take effect sixty (60) days after the date of delivery to the Trustee unless disapproved in writing prior to that date by a majority in aggregate principal amount of then Outstanding Certificates. The County shall give mailed notice of removal of the Trustee to the Owners of all then Outstanding Certificates within ten (10) days after the date of delivery of the instrument of removal to the Trustee.

**SECTION 6.5. APPOINTMENT OF SUCCESSOR TRUSTEE.** In case the Trustee hereunder shall resign or be removed, or be dissolved or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Owners of a majority in aggregate principal amount of the then Outstanding Certificates, by an instrument or concurrent instruments in writing signed by such Owners, or by their attorneys-in-fact, duly authorized. Nevertheless, in case of such vacancy the County by resolution of its governing body may appoint a temporary trustee to fill such vacancy until a successor trustee shall be appointed by the Owners in the manner above provided; and any such temporary trustee so appointed by the County shall immediately and without further act be superseded by the trustee so appointed by such Owners. Every such trustee appointed pursuant to the provisions of this Section shall be a trust company or bank having corporate trust powers and having a reported capital and surplus not less than \$25,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

**SECTION 6.6. COMPENSATION OF TRUSTEE.** The County shall from time to time pay to the Trustee reasonable compensation for the acceptance, administration and performance of the trust created hereby, and shall reimburse the Trustee for all its advances and expenditures made in accordance with the provisions of this Trust Agreement (including the reasonable expenses and disbursements of its counsel), from the date of execution of this Trust Agreement through the date of redemption or maturity of all the Certificates.

**SECTION 6.7. PROTECTION OF TRUSTEE.** The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any written resolution, notice, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or provided pursuant to any of the provisions of this Trust Agreement, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee shall not be bound to recognize any person as an Owner of any Certificate or to take any action at his, her or its request unless such Certificate shall be deposited with the Trustee or evidence of the ownership of such Certificate in the manner described in Section 3.17 hereof shall be furnished to the Trustee. The Trustee may consult with counsel with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith. Whenever in the administration of its duties under this Trust Agreement, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed)

shall be deemed to be conclusively proved and established by the certificate of an Authorized Officer of the County and such certificate shall be full warranty to the Trustee for any action taken or suffered under the provisions of this Trust Agreement in reliance thereon, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable. The Trustee may buy, sell, own, hold and deal in any of the Certificates issued pursuant to this Trust Agreement, and may join in any action which any Owner may be entitled to take with like effect as if the Trustee were not a party to this Trust Agreement. The Trustee, either as principal or agent, may also engage in or be interested in any other unrelated financial or other transaction with the County or the Trustee, and may act as depositary, trustee, or agent for any committee or body of Owners of Certificates or other obligations of the County as freely as if it were not the Trustee hereunder.

The recitals, statements and representations in this Trust Agreement or in the Certificates shall be taken and construed as made by and on the part of the Trustee, and not by the persons signing on behalf of the Trustee, and such persons do not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, accountants, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duties hereunder, and the Trustee shall not be answerable for the default or misconduct of any such attorney, accountant, agent or receiver selected by it with reasonable care. Notwithstanding any provisions to the contrary in this Trust Agreement, the Lease or the Ground Lease, the Trustee shall under no circumstances be required to risk or expend its own funds hereunder. Except as provided in Section 6.3 hereof, the Trustee shall not be answerable for the exercise of any discretion or power under this Trust Agreement, the Lease or the Ground Lease or for anything whatever in connection with the funds and accounts established hereunder, except only for its own bad faith, willful misconduct or gross negligence.

*(Remainder of this page intentionally left blank.)*



## ARTICLE VII

### AMENDMENT; DEFEASANCE; ADMINISTRATIVE PROVISIONS

**SECTION 7.1. AMENDMENT.** This Trust Agreement, the Lease and the Ground Lease may be amended in writing by agreement among all of the parties hereto or thereto, but, except as provided in Section 7.2 hereof, no such amendment shall become effective without the prior written consent of two-thirds (2/3) in aggregate principal amount of the Owners of the Certificates then Outstanding; provided that no such amendment shall impair the right of any Owner to receive the Owner's proportionate share of any Rental Payment in accordance with the Owner's Certificate.

**SECTION 7.2. AMENDMENT TO TRUST AGREEMENT OR LEASE NOT REQUIRING CONSENT OF CERTIFICATE OWNERS.** The County and the Trustee may, without the consent of or notice to any of the Owners of the Certificates, enter into one or more amendments to this Trust Agreement, the Lease, or the Ground Lease for one or more of the following purposes:

(a) to cure any ambiguity or formal defect or omission herein or therein or to correct or supplement any provision herein or therein which may be inconsistent with any other provision herein or therein, or to make provisions with respect to matters or questions arising hereunder or thereunder provided such action shall not, in the judgment of the Trustee (with respect to which the Trustee may rely on an opinion of counsel), materially adversely affect the interests of the Owners of the Certificates;

(b) to grant or confer upon the Owners of the Certificates any additional rights, remedies, power or authority that may lawfully be granted or conferred upon them;

(c) to comply with the requirements of any state or federal securities laws or the Trust Indenture Act of 1939, as from time to time amended, if required by law or regulation lawfully issued thereunder;

(d) to provide for the appointment of a successor trustee or co-trustee pursuant to the terms hereof;

(e) to subject to this Trust Agreement additional revenues, properties or collateral; or

(f) to provide for the issuance of Additional Certificates in accordance with Section 3.22 hereof.

**SECTION 7.3. DEFEASANCE.** If and when the Certificates delivered pursuant hereto shall become due and payable in accordance with their terms, or shall become subject to redemption and have been called for redemption, and the whole amount of the principal and interest due and payable upon all of the Certificates shall have been paid, or provision shall have been made for the payment of the same, by the deposit with the Trustee of cash or the types of securities listed in the definition

of Permitted Investments or investments of the type described in Section 4.4(c) hereof, in an amount sufficient (together with interest earnings thereon), in the opinion of a verification agent, to provide for payment of said principal and interest to the maturity or earliest optional redemption date of the Certificates, and all administrative expenses shall have been paid or provided for, then and in that case, the right, title and interest of the County and the Trustee under this Trust Agreement shall thereupon cease, terminate and become void, and the Trustee shall assign and transfer to or upon the order of the County all property, money except for amounts, if any, credited to the Rental Payment Account and the Rebate Account, investments and rights in the Project (in excess of the amounts required for the foregoing) then held by the Trustee (including the Lease and all payments thereunder and all balances in any fund or account created under this Trust Agreement) and shall execute such documents as may be reasonably required by the County in this regard. All investments made pursuant to this Section shall be made in a manner which will comply with applicable covenants made by the County in Section 4.6 hereof.

**SECTION 7.4. TRUSTEE TO KEEP RECORDS.** The Trustee shall keep a copy of this Trust Agreement and books and records of all moneys received and disbursed under this Trust Agreement, which shall be available for inspection by the County, the Trustee and any Owner at any time during regular business hours.

**SECTION 7.5. NOTICES.** All written notices to be given under this Trust Agreement shall be given by mail to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other parties in writing from time to time:

If to the County: Barnes County  
230 4<sup>th</sup> Street NW  
Valley City, ND 58072  
Attn: County Auditor

If to the Underwriter: Colliers Securities, LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, MN 55402  
Attn: Head of Public Finance

If to the Trustee: Bank of North Dakota  
1200 Memorial Highway  
Bismarck, ND 58504  
Attn: Trust Officer

**SECTION 7.6. GOVERNING LAW.** This Trust Agreement shall be construed and governed in accordance with the laws of the State.

**SECTION 7.7. SEVERABILITY.** Any provision of this Trust Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Trust Agreement.

**SECTION 7.8. BINDING ON SUCCESSORS.** This Trust Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

**SECTION 7.9. HEADINGS.** Headings preceding the text of the several Articles and Sections hereof, and the table of contents, are solely for convenience of reference and shall not constitute a part of this Trust Agreement or affect its meaning, construction or effect.

**SECTION 7.10. COUNTERPARTS.** This Trust Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

*(Remainder of this page intentionally left blank.)*

**IN WITNESS WHEREOF**, the Trustee has executed this Trust Agreement and the County has joined in, as of the date first above written.

**BANK OF NORTH DAKOTA,  
as Trustee**

*Carrie Willett*

\_\_\_\_\_  
Its: Trust Officer

**BARNES COUNTY, NORTH DAKOTA**

\_\_\_\_\_  
Chair of the Board of County Commissioners

\_\_\_\_\_  
County Auditor

**IN WITNESS WHEREOF**, the Trustee has executed this Trust Agreement and the County has joined in, as of the date first above written.

**BANK OF NORTH DAKOTA,  
as Trustee**

---

Its: Trust Officer

**BARNES COUNTY, NORTH DAKOTA**

*William Coulter*  
\_\_\_\_\_  
Chair of the Board of County Commissioners

*Bernadine*  
\_\_\_\_\_  
County Auditor

**EXHIBIT A**

**FORM OF CERTIFICATE OF PARTICIPATION**

No. R- \_\_\_\_\_

**UNITED STATES OF AMERICA  
STATE OF NORTH DAKOTA**

\$ \_\_\_\_\_

**COUNTY OF BARNES**

**CERTIFICATE OF PARTICIPATION  
SERIES 2020**

**in a Lease-Purchase Agreement by and between  
Bank of North Dakota, as trustee, as Lessor,  
and Barnes County, North Dakota, as Lessee**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
_____ %	May 1, _____	October _____, 2020	

**REGISTERED OWNER: CEDE & CO.**

**PRINCIPAL AMOUNT:**

**DOLLARS**

This is to certify that the above named Registered Owner of this Certificate of Participation (the "Certificate") is the owner of the proportionate interest hereinafter stated in that certain Lease-Purchase Agreement, dated as of October 1, 2020 (the "Lease"), by and between the Bank of North Dakota, as trustee, as Lessor (the "Trustee"), and Barnes County, North Dakota, as Lessee (the "County").

The Registered Owner of this Certificate is entitled to receive, subject to the terms of the Trust Agreement described below, on the maturity date specified above (the "Maturity Date"), the principal sum specified above, representing a portion of the Rental Payment designated as principal coming due on or before the Maturity Date, and to receive the Registered Owner's proportionate share of Rental Payments designated as interest coming due on or before the first day of May and November of each year commencing May 1, 2021 (each such date, a "Certificate Payment Date"), and continuing to and including the Maturity Date or the date of redemption, whichever is earlier, all subject to the provisions referred to herein with respect to the redemption of the principal of this Certificate prior to its stated maturity. Said proportionate share of the Rental Payments designated as interest is the result of the multiplication of the aforesaid portion of the Rental Payment designated as principal coming due on the Rental Payment Date (as defined in the Lease) immediately preceding the Maturity Date by the interest rate specified above per annum. Amounts representing interest payable with respect to this Certificate on any Certificate Payment Date are payable by check or draft drawn on the Trustee and mailed to the person in whose name this Certificate is registered or by wire transfer at the close of business on the fifteenth (15<sup>th</sup>) day

(whether or not a business day) of the calendar month immediately preceding such Rental Payment Date.

Notwithstanding any other provisions of this Certificate, so long as this Certificate is registered in the name of Cede & Co., as nominee of The Depository Trust Company, or in the name of any other nominee of The Depository Trust Company or other securities depository, the Registrar shall pay all principal of and interest on this Certificate, and shall give all notices with respect to this Certificate, only to Cede & Co. or other nominee in accordance with the operational arrangements of The Depository Trust Company or other securities depository as agreed to by the County.

The Certificates are payable from the Rental Payments (as defined in the Lease) and the moneys held in the funds and accounts established pursuant to the Trust Agreement, dated as of October 1, 2020, by the Trustee and joined in by the County (the "Trust Agreement"), subject to the provisions of the Trust Agreement permitting the application thereof for or to the purposes and on the terms and conditions set forth in the Trust Agreement. The obligations of the County under the Lease, including the obligation to make Rental Payments, are subject to termination by the County at the end of any fiscal year if the governing body of the County fails, for any reason, to appropriate sufficient funds to continue the Lease for the subsequent fiscal year, in which case the Lease will terminate at the end of the last fiscal year for which funds were appropriated and the County will have no further obligation to make Rental Payments under the Lease. The obligation of the County to make Rental Payments under the Lease is not a general obligation of the County to which its full faith and credit and ability to levy ad valorem taxes without limitation as to rate or amount are pledged.

The Trustee has no obligation or liability to the Registered Owners for the payment of interest or principal portions pertaining to the Certificates. The Trustee's sole obligation is to administer, for the benefit of the County and the Registered Owners, the various funds and accounts established in the Trust Agreement. The Trustee has no obligation to pay any portion of the interest or principal pertaining to the Certificates from any source other than the funds and accounts established in the Trust Agreement as described herein and the payment of such interest or principal is not a liability or charge upon the credit of the Trustee.

All amounts payable hereunder are to be paid in lawful money of the United States of America, which at the time of payment is legal tender. The principal payable on all Certificates shall be payable at the principal office of the Trustee. Interest payable on all Certificates shall be paid by check or draft of the Trustee mailed on the Certificate Payment Dates to the Registered Owners at their addresses recorded on the Register maintained by the Trustee or by wire transfer in accordance with instructions provided by the Registered Owners.

This Certificate has been executed by the Trustee pursuant to the terms of the Trust Agreement. Copies of the Trust Agreement are on file at the office of the County and at the office of the Trustee, and reference to the Trust Agreement and any and all amendments thereto is made for a description of the pledges and covenants of the County securing the Certificates, the nature, extent and manner of enforcement of such pledges, the rights and remedies of the Registered Owners of the Certificates with respect thereto and the other terms and conditions upon which the

Certificates are delivered thereunder, including, without limitation, rights and remedies accruing pursuant to the Ground Lease dated as of October 1, 2020, by and between the County and the Trustee. To the extent and in the manner permitted by the terms of the Trust Agreement, certain provisions of the Trust Agreement may be amended by the parties thereto without consent of the Registered Owners of the Certificates, while other amendments are permitted only with the written consent of the Registered Owners of at least two-thirds (2/3) in principal amount of the Certificates then outstanding.

This Certificate shall be transferable only upon the register maintained by the Trustee, which shall be kept for that purpose at the corporate trust office of the Trustee, upon surrender hereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the Registered Owner or its duly authorized attorney. Upon the registration of the transfer, and the surrender of this Certificate, the Trustee shall provide in the name of the transferee, a new fully registered Certificate or Certificates of the same maturity and aggregate principal amount as the surrendered Certificates. The Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Trustee shall not be affected by any notice to the contrary.

The Certificates are issuable in fully registered form, without coupons, in denominations of \$5,000 or any integral multiple thereof. The Certificates, upon surrender thereof at the office of the Trustee with a written request for exchange satisfactory to the Trustee duly executed by the Registered Owner or its attorney duly authorized in writing, may be exchanged for an equal aggregate principal amount of fully registered Certificates without coupons of any other authorized denomination of the same maturity.

**Optional Redemption.** The Certificates having a Maturity Date occurring on or after May 1, 2026, are subject to redemption in whole or in part, on May 1, 2025, or any date thereafter, at the option of the County, at a price equal to the principal portion to be redeemed plus accrued interest to the date of redemption.

**Mandatory Redemption.** The Term Certificates maturing May 1, 2036, are subject to mandatory sinking fund redemption, by random selection, at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium, on May 1, in the years and in the amounts as follows:

<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>
2035	\$490,000	2036*	\$510,000

\*Final Maturity

The Term Certificates maturing May 1, 2040, are subject to mandatory sinking fund redemption, by random selection, at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium, on May 1, in the years and in the amounts as follows:



<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>
2039	\$575,000	2040*	\$595,000

\*Final Maturity

The Term Certificates maturing May 1, 2045, are subject to mandatory sinking fund redemption, by random selection, at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium, on May 1, in the years and in the amounts as follows:

<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>
2041	\$620,000	2044	\$675,000
2042	640,000	2045*	700,000
2043	660,000		

\*Final Maturity

The Term Certificates maturing May 1, 2050, are subject to mandatory sinking fund redemption, by random selection, at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium, on May 1, in the years and in the amounts as follows:

<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Redemption Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>
2046	\$720,000	2049	\$790,000
2047	740,000	2050*	815,000
2048	765,000		

\*Final Maturity

**Extraordinary Redemption.** The Certificates are subject to extraordinary redemption and prepayment, in whole but not in part, at the option of the County on any date upon the conditions and terms set forth in the Trust Agreement if there occurs an event of damage, destruction or condemnation. Certificates redeemed as a result of any of the events described above in this paragraph shall be redeemed at a price equal to the principal amount to be redeemed plus accrued interest to the redemption date without premium.

Notice of any such redemption shall be published if, and to the extent, then required by law, and shall also be given to the Registered Owner of each Certificate to be redeemed by first-class mail, addressed to such Registered Owner at the its registered address, not later than thirty (30) days prior to the date fixed for redemption. On or prior to the date fixed for redemption, funds are required to be deposited with the Trustee sufficient to pay the Certificates called and accrued interest thereon. Upon the happening of the above conditions, Certificates thus called shall not bear interest

after the redemption date and, except for the purpose of payment from the funds so deposited, shall no longer be protected by the Trust Agreement.

**IT IS HEREBY CERTIFIED, RECITED AND DECLARED** that all acts, conditions and things required by the Constitution and statutes of the State of North Dakota and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the delivery of this Certificate, exist, have happened and have been performed in due time, form and manner as required by law.

**IN WITNESS WHEREOF**, this Certificate has been executed by the manual signature of an authorized officer of the Trustee.

**BANK OF NORTH DAKOTA,  
as Trustee**  
By: \_\_\_\_\_  
                            *(signature)*  
                            Authorized Representative

Date of Authentication: \_\_\_\_\_.

The following abbreviations, when used in the inscription on the face of this Certificate, shall be construed as though they were written out in full according to applicable laws or regulations: TEN COM-as tenants in common, TEN ENT-as tenants by the entireties, JT TEN-as joint tenants with right of survivorship and not as tenants in common.

UTMA		Under Uniform Transfers to Minors Act
_____	_____	_____
(CUST)	(MINOR)	(STATE)
Custodian		

Additional abbreviations may also be used though not in the above list.

\*\*\*\*\*

**FORM OF ASSIGNMENT**

**FOR VALUE RECEIVED**, the undersigned hereby sells, assigns, and transfers unto \_\_\_\_\_  
the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

**NOTICE:** the assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Certificate in every particular, without alteration or any change whatever.

Signature guaranteed: \_\_\_\_\_

Signature(s) must be guaranteed by a member of the Medallion Signature Program.

The Registrar will not effect transfer of this Certificate unless the information concerning the assignee requested below is provided.

Name and address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(include information for all joint owners if the Certificates are held by joint account.)

**PLEASE INSERT SOCIAL SECURITY NUMBER OR OTHER IDENTIFYING  
NUMBER OF ASSIGNEE** \_\_\_\_\_

**EXHIBIT B**

**REQUEST FOR DISBURSEMENT**

Bank of North Dakota, Trustee under a Trust Agreement dated as of October 1, 2020, by said Trustee and joined in by Barnes County, North Dakota, is hereby requested to pay, from the Construction Account held under said Trust Agreement, to the persons, firms or corporations designated below as payee, the amount set forth opposite each such person's, firm's or corporation's name, in payment of the Construction Costs of the component of the Improvements described on the attached page(s) designated opposite such Payee's name and account.

The undersigned hereby certifies that:

- (a) the amounts to be disbursed constitute Construction Costs as said term is defined in the Lease, that said amounts are required to be disbursed pursuant to such Lease and that said amounts are not being paid in advance of the time, if any, fixed for payment;
- (b) that the amount requested for payment has not been included in any earlier Payment Request Form where payment of which was validly made by said Trustee; and
- (c) that after payment of the amount of this request, there will be sufficient amounts remaining in the Construction Account to complete the construction of the Improvements.

Dated: \_\_\_\_\_.

**BARNES COUNTY, NORTH DAKOTA**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

<u>Payee</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____
_____	_____

3

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**LEASE-PURCHASE AGREEMENT**

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*by and between*

**BANK OF NORTH DAKOTA, as Trustee  
as Lessor**

*and*

**BARNES COUNTY, NORTH DAKOTA  
as Lessee**

*relating to*

**CERTIFICATES OF PARTICIPATION  
SERIES 2020**

**Dated as of October 1, 2020**

**This instrument was drafted by:  
Arntson Stewart Wegner PC  
3101 Broadway North, Suite B  
Fargo, North Dakota 58102**

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## LEASE-PURCHASE AGREEMENT

**THIS LEASE-PURCHASE AGREEMENT** dated as of October 1, 2020 (this "Lease"), is executed by and between the **BANK OF NORTH DAKOTA**, as trustee, a bank duly organized and existing under the laws of the State of North Dakota, as lessor (the "Lessor" and "Trustee"), and **BARNES COUNTY, NORTH DAKOTA**, a political subdivision of the State of North Dakota, as lessee (the "Lessee").

### RECITALS

**WHEREAS**, the Lessee is authorized by Section 11-11-14 of the North Dakota Century Code ("N.D.C.C.") to acquire real and personal property by entering into lease-purchase agreements; and

**WHEREAS**, the Lessee has determined that it is necessary to enter into this Lease to finance the construction of a county correctional facility as further described in Exhibit A attached hereto;

**NOW, THEREFORE**, for and in consideration of the Project (defined herein) and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

*(Remainder of this page intentionally left blank.)*

## ARTICLE I

### DEFINITIONS AND EXHIBITS

**SECTION 1.1. DEFINITIONS.** For all purposes of this Lease, the terms defined in the Trust Agreement and capitalized herein shall have the meanings ascribed to them in the Trust Agreement unless the context clearly requires otherwise. In addition, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

**“Closing Date”** means October 14, 2020, or the date upon which the Certificates are delivered to the Underwriter (as defined in the Trust Agreement) against payment therefor.

**“Construction Costs”** means the costs necessary to construct the Improvements including, without limiting the generality of the foregoing:

- (a) amounts payable to contractors and costs incident to the award of contracts;
- (b) cost of labor, facilities and services furnished by the Lessee and its employees or others, materials and supplies purchased by the Lessee or others, and permits and licenses obtained by the Lessee or others;
- (c) engineering, architectural, legal, planning, underwriting, accounting and other professional and advisory fees;
- (d) premiums for contract bonds and insurance during construction, and costs on account of personal injuries and property damage in the course of construction and insurance against the same;
- (e) interest expenses, including capitalized interest on the Certificates for any period not exceeding the construction period estimated by the Lessee plus one year;
- (f) costs, fees and expenses in connection with the acquisition of real and personal property or rights therein, including premiums for title insurance;
- (g) costs of equipment and furnishings purchased by the Lessee and necessary to the completion and proper operation of the Project; and
- (h) cost of relocation and site preparation and improvements performed by the Lessee in anticipation of the Project.

**“Contractor”** means any person or business hired by the Lessee as a contractor to complete the Improvements or any portion thereof.

**“County Commission”** means the governing body of the Lessee.

**“Fiscal Year”** means the 12-month fiscal period of the Lessee which commences on January 1 every year and ends on December 31.

**“Ground Lease”** means the Ground Lease dated as of the date hereof, by and between the Lessee, as lessor, and the Lessor, as lessee, relating to the Land.

**“Hazardous Material”** means (a) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other substances, materials or pollutants which (i) pose a hazard to the Project, adjacent premises or persons on or about the Project or adjacent premises, (ii) cause the Project to be in violation of any local, state or federal law, rule, regulation or ordinance, or (iii) are defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances” or words of similar import under any applicable local, state or federal law or under the regulations, policy guidelines or other publications adopted or promulgated pursuant thereto, including, but not limited to (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., (2) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1601, et seq., (3) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq., (4) the Clean Air Act, 42 U.S.C. § 7412, (5) the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., (6) The Clean Water Act, 33 U.S.C. § 1317 and 1321(b)(2)A, and (7) rules, regulations, ordinances and other publications adopted or promulgated pursuant to the aforesaid laws; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety or property interests of the Lessee or its employees, users and occupants of the Project or the owners and/or occupants of property adjacent to or surrounding the Project.

**“Improvements”** means the construction and equipping of a new county correctional facility, as described in Exhibit A, to be constructed on the Land.

**“Independent Counsel”** means an attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of the Lessor or the Lessee.

**“Interest Portion”** means the portion of any Rental Payment designated as and comprising interest as shown in Exhibit B.

**“Land”** means the real property described in Exhibit A.

**“Lease Term”** means the period during which this Lease is in effect as specified in Section 4.1 hereof.

**“Net Proceeds”** means any insurance proceeds or condemnation award, paid with respect to the Project, remaining after payment therefrom of all expenses incurred in the collection thereof.

**“Nonappropriation”** means the failure of the County Commission of the Lessee to appropriate money for any Fiscal Year of the Lessee sufficient for the continued performance of this

Lease by the Lessee, as evidenced by the passage of a resolution specifically prohibiting the Lessee (a) from performing its obligations under this Lease, and (b) from using any moneys to pay the Rental Payments due under this Lease for a designated Fiscal Year and all subsequent Fiscal Years.

***“Permitted Encumbrances”*** means, as of any particular time, (a) liens for taxes and assessments not then delinquent, or which the Lessee may, pursuant to Section 8.3 hereof, permit to remain unpaid; (b) this Lease and the Ground Lease and any amendments hereto and thereto; (c) the Trust Agreement; (d) any construction, materialmen’s, supplier’s or vendor’s lien or right not filed or perfected in the manner prescribed by law, other than any lien arising through a contractor or which the Lessee may, pursuant to Article VIII hereof, permit to remain unpaid; (e) minor defects and irregularities in the title to the Project which do not in the aggregate materially impair the use of the Project for the purposes for which they are or may reasonably be expected to be held; (f) easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which do not materially impair the use of the Project for the purposes for which they are or may reasonably be expected to be held; (g) rights reserved to or vested in any municipality or governmental or other public authority to control or regulate or use in any manner any portion of the Project which do not materially impair the use of the Project for the purposes for which they are or may reasonably be expected to be held; (h) any obligations or duties affecting any portion of the Project of any municipality or governmental or other public authority, with respect to any right, power, franchise, grant, license or permit; and (i) present and future valid zoning laws and ordinances.

***“Prepayment Price”*** means the Principal Portion to be prepaid pursuant to Section 11.1 hereof, plus accrued interest to the date of redemption.

***“Principal Portion”*** means the portion of any Rental Payment designated as principal in Exhibit B.

***“Project”*** means the Land together with the Improvements.

***“Rental Payment”*** means the payment due from the Lessee to the Lessor on each Rental Payment Date during the Lease Term, as shown in Exhibit B.

***“Rental Payment Date”*** means the date upon which any Rental Payment is due and payable as shown in Exhibit B (the 25<sup>th</sup> day of April and October).

***“State”*** means the State of North Dakota.

***“State and Federal Laws”*** means the Constitution and any law of the State, and any rule or regulation of any agency or political subdivision of the State; and any law of the United States, and any rule or regulation of any federal agency.

**“Trust Agreement”** means the Trust Agreement, of even date herewith, by the Trustee and joined in by the Lessee, and any amendment thereof or supplement thereto.

**SECTION 1.2. EXHIBITS.** The exhibits described in this Section are attached to and by reference made a part of this Lease and any reference to exhibits in this Lease shall be to these exhibits unless the context clearly requires otherwise:

*Exhibit A:* A legal description of the Land and the Improvements being subleased and leased by the Lessee pursuant to this Lease.

*Exhibit B:* A schedule indicating the date and amount of each Rental Payment coming due during the Lease Term and the provisions for prepayment of this Lease in accordance with Article XI hereof.

*Exhibit C:* A form of Certificate of Acceptance of the Lessee.

*(Remainder of this page intentionally left blank.)*

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

**SECTION 2.1. REPRESENTATIONS, COVENANTS AND WARRANTIES OF LESSEE.** The Lessee represents, covenants and warrants as follows:

(a) The Lessee is a duly formed and validly existing political subdivision of the State, governed by the Constitution and laws of the State.

(b) The Lessee is authorized under the Constitution and laws of the State to construct, operate and maintain the Improvements; to enter into this Lease, the Ground Lease, the Trust Agreement and the transactions contemplated hereby and thereby, and to perform all of its obligations hereunder and thereunder.

(c) The officers of the Lessee executing this Lease, the Ground Lease and the Trust Agreement have been duly authorized to execute and deliver such documents under the terms and provisions of a resolution of the County Commission of the Lessee, or by other appropriate official action.

(d) In authorizing and executing this Lease, the Lessee has complied with all open meeting laws, all public bidding laws and all other State and Federal Laws including, without limitation, Chapter 48-01.2, N.D.C.C., and any other laws relating to this Lease and the construction of the Improvements by the Lessee.

(e) The Improvements will be constructed on the Land and the Lessee will not pledge, mortgage or assign this Lease or the Project, or its duties and obligations hereunder, to any other person, firm or corporation except as provided under the terms of this Lease.

(f) The Lessee will use the Project during the Lease Term to carry out the governmental or proprietary purposes of the Lessee.

(g) Subject to the provisions of Section 4.5 hereof, the officers of the Lessee responsible for budget preparation will include in the annual budget request, for each Fiscal Year during the Lease Term, commencing with the Fiscal Year commencing January 1, 2021, moneys sufficient to pay and for the purpose of paying all Rental Payments and other obligations of the Lessee under this Lease, and will take all actions within their power to seek to have that portion of the budget approved. The Lessee has moneys available and sufficient to pay all obligations under this Lease in the current Fiscal Year.

(h) The Lessee presently intends to continue this Lease for its entire stated Lease Term and to pay all Rental Payments specified in Exhibit B. The Lessee reasonably believes that moneys in an amount sufficient to make all such Rental Payments can and will lawfully be appropriated or budgeted and made available for this purpose.



(i) This Lease does not constitute a general obligation of the Lessee, and the full faith and credit and taxing powers of the Lessee are not pledged for the payment of the Rental Payments or other amounts coming due, or other actions required to be performed, hereunder. The County Commission is not obligated to appropriate or otherwise provide moneys for the payment of the Rental Payments or any other amounts coming due hereunder in any future Fiscal Year; and in the event of Nonappropriation by the County Commission, the Lessee shall not be liable for general, special, incidental, consequential or other damages resulting therefrom, except as provided in Section 4.6 hereof.

(j) The Lessee will file with the Internal Revenue Service the information reporting statement required by Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code"), and Treasury Regulations promulgated thereunder (the "Regulations").

(k) The Lessee will take no action with respect to this Lease or the Project that would cause the Interest Portion of the Rental Payments to become includable in gross income for federal income tax purposes under the Code and Regulations; and the Lessee will take, and will cause its officers, employees and agents to take, all affirmative actions legally within its/their power necessary to ensure that the Interest Portion of the Rental Payments does not become includable in gross income for federal income tax purposes under the Code and the Regulations.

(l) The economic useful life of the Improvements is substantially greater than the Lease Term.

**SECTION 2.2. REPRESENTATIONS, COVENANTS AND WARRANTIES OF LESSOR.** The Lessor represents, covenants and warrants as follows:

(a) The Lessor is a bank duly organized, existing and in good standing under and by virtue of the laws of the State of North Dakota; has power to enter into this Lease, the Ground Lease and the Trust Agreement; is possessed of full power to own and hold real and personal property, and to lease the same; and has duly authorized the execution and delivery of this Lease, the Ground Lease and the Trust Agreement.

(b) To the actual knowledge of the Authorized Officer executing this Lease, without inquiry, neither the execution and delivery of this Lease, the Ground Lease or the Trust Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, (i) conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessor is now a party or by which the Lessor is bound, (ii) constitutes a default under any of the foregoing, or (iii) results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessor, or upon the Project, except Permitted Encumbrances.

## ARTICLE III

### PAYMENT OF COSTS; CONSTRUCTION OF IMPROVEMENTS; LEASE AND SALE OF PROJECT

**SECTION 3.1. PAYMENT OF COSTS; CONSTRUCTION COSTS.** In order to ensure that moneys sufficient to pay all Construction Costs and Costs of Issuance will be available for such purposes when required, the Lessor shall deposit with the Trustee (in the Trust Fund) on the Closing Date, the amounts specified in Section 4.1 of the Trust Agreement, which amounts will be held, invested and disbursed as provided therein.

The Lessee reserves the right to modify the scope of or add items to the Improvements described in Exhibit A. However, no such change by the Lessee will be deemed to (a) increase the amount of moneys required to be deposited by the Lessor pursuant to this Section, or (b) alter the Rental Payments or Prepayment Price; and to the extent such change(s) increase the Construction Costs beyond the amount available in the Construction Account in the Trust Fund, the Lessee shall, prior to undertaking such change, deliver to the Trustee moneys sufficient to pay such excess Construction Costs.

If moneys on hand in the Construction Account are not sufficient to pay all Construction Costs and complete the Improvements as planned, the Lessor is not required to provide additional moneys. In such event, the Lessee shall, without altering the Rental Payments or Prepayment Price, (a) provide additional moneys, or (b) reduce the size or the scope of the Improvements such that the moneys in the Construction Account are sufficient to complete the Improvements without impairing the use or marketability thereof.

**SECTION 3.2. LESSEE TO ACT AS AGENT; CONSTRUCTION OF IMPROVEMENTS.** The Lessor hereby irrevocably appoints the Lessee as its agent in connection with the construction of the Improvements. The Lessee, as agent of the Lessor, has or will enter into all contracts with the Contractors providing for the construction of the Improvements in accordance with the Lessee's specifications. The Lessor shall have no obligation whatsoever with respect to the design, acquisition, construction, installation or operation of the Improvements and no obligation whatsoever with respect to the Improvements other than the obligations set forth in Section 3.1 hereof. Upon final acceptance of the Improvements, the Lessee shall execute and deliver to the Lessor a Certificate of Acceptance substantially in the form of Exhibit C.

**SECTION 3.3. LEASE AND/OR SALE OF PROJECT.** The Lessor hereby leases and/or sells the Improvements and subleases the Land to the Lessee, and the Lessee hereby leases and/or purchases the Improvements and subleases the Land from the Lessor, upon the terms and conditions set forth in this Lease. The Land is subleased, and the Improvements leased and/or sold, in its/their present condition, without representation or warranty of any kind by the Lessor, and subject to (a) the rights of parties in possession, (b) the existing state of title, (c) all applicable legal requirements now or hereafter in effect, and (d) Permitted Encumbrances.

This Lease constitutes a “triple net” lease, requiring the Lessee to pay all expenses, taxes, fees, insurance premiums, rebate payments with respect to the Certificates and costs associated with the Project without the right of offset, as provided herein.

**SECTION 3.4. POSSESSION AND ENJOYMENT.** During the Lease Term, the Lessor shall provide the Lessee with quiet use and enjoyment of the Project and the Lessee shall peaceably and quietly have and hold and enjoy the Project, without suit, trouble or hindrance from the Lessor, except as expressly set forth in this Lease. The Lessor will, at the request and cost of the Lessee, join in any legal action in which the Lessee asserts its right to such possession and enjoyment, to the extent the Trustee may lawfully do so.

**SECTION 3.5. LESSOR ACCESS TO PROJECT.** The Lessor shall have the right at all reasonable times to examine and inspect the Project, and shall have such rights of access to the Project as may be reasonably necessary to cause the proper maintenance thereof in the event of failure by the Lessee to perform its obligations hereunder.

**SECTION 3.6. COMPLIANCE WITH TRUST AGREEMENT.** During the Lease Term, the Lessee shall perform all obligations imposed upon it by the Trust Agreement.

**SECTION 3.7. PERFORMANCE BONDS AND OTHER GUARANTIES.** The Lessee shall cause each Contractor to provide a performance bond or bonds, or another form of financial guaranty covering performance of all contracts and payment for labor and materials, in an amount at least equal to the amount required to be paid by the Lessee under all contracts related to the construction of the Improvements.

**SECTION 3.8. LESSEE LIABILITY.** As between the Lessor and the Lessee, the Lessee assumes liability for all risk of loss during the acquisition, construction, installation and operation of the Improvements. The Lessee shall require that each Contractor maintain in force during the entire acquisition, construction and installation period of the Improvements, builder’s risk or property damage insurance in an amount at least equal to the full value of all work done and materials and equipment provided or delivered by the Contractor, as well as comprehensive liability insurance, worker’s compensation insurance and other insurance required by law or customarily maintained with respect to like projects.

**SECTION 3.9. DEFAULT IN CONTRACTOR PERFORMANCE.** In the event a Contractor defaults under any contract related to the construction of the Improvements, the Lessee will promptly proceed, either separately or in conjunction with others, to exhaust the remedies of the Lessee against such Contractor. The Lessee agrees to advise the Lessor, in writing, of the steps it intends to take in connection with any such default. If the Lessee so notifies the Lessor, the Lessee may, in good faith, in its own name or in the name of the Lessor, with notice to the Lessor, prosecute or defend any action or proceeding or take other action involving the Contractor or surety which the Lessee deems reasonable. In such event, the Lessor shall cooperate fully with the Lessee, but at the expense of the Lessee. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, are to be paid into the Construction Account.

## ARTICLE IV

### TERM OF LEASE; TRANSFER OR SURRENDER OF PROJECT

**SECTION 4.1. LEASE TERM.** This Lease shall be in effect for a term commencing upon the execution and delivery hereof and ending as provided in Section 4.2 hereof.

**SECTION 4.2. TERMINATION OF LEASE TERM.** The Lease Term will terminate upon the occurrence of the first of the following events:

- (a) payment by the Lessee of all Rental Payments due hereunder;
- (b) prepayment by the Lessee of all Rental Payments due hereunder pursuant hereto;
- (c) termination of this Lease by the Lessee pursuant to Section 4.5 hereof; or
- (d) default by the Lessee and election by the Lessor to terminate this Lease pursuant to Article XIII hereof.

**SECTION 4.3. LESSOR INTEREST IN THE PROJECT.** Upon termination of the Lease Term pursuant to Section 4.2, clauses (a) or (b) hereof, and payment of all amounts owed to the Trustee under the Trust Agreement, full and unencumbered legal title to the Project shall pass to the Lessee, and the Lessor shall have no further interest therein. In such event, the Lessor and its officers shall take all actions necessary to authorize, execute and deliver to the Lessee, at the Lessee's costs and expense, such documents as the Lessee shall reasonably require to evidence the transfer of legal title to the Project to the Lessee.

**SECTION 4.4. SURRENDER OF PROJECT.** Upon termination of the Lease Term pursuant to Section 4.2, clauses (c) or (d) hereof, the Lessee shall surrender the Project to the Lessor in the condition in which it was originally received from the Lessor, except as improved, repaired, rebuilt, restored, altered or added to as permitted or required hereby, ordinary wear and tear excepted, and convey to the Lessor or release its interest in the Project under the Lease within ten days after the expiration of the then-current Fiscal Year.

**SECTION 4.5. TERMINATION BY LESSEE.** Upon the occurrence of an event of Nonappropriation, the Lessee shall have the right to terminate this Lease, in whole but not in part, at the end of any Fiscal Year of the Lessee, in the manner and subject to the terms specified in this Section and Section 4.6 hereof. The Lessee may effect such termination by giving the Lessor a written notice of termination on or before October 15, as evidenced by a resolution of the County Commission specifically determining not to provide moneys to pay Rental Payments for the succeeding Fiscal Year and all future Fiscal Years, and stating the County Commission's determination to terminate the Lease, and paying to the Lessor any Rental Payments which are due and have not been paid at or before the end of its then-current Fiscal Year. In the event of

termination of this Lease as provided in this Section, the Lessee shall surrender possession of the Project to the Lessor in accordance with Section 4.4 hereof and convey to the Lessor or release its interest in the Project under this Lease within ten (10) days after the expiration of the Lease Term.

**SECTION 4.6. EFFECT OF TERMINATION.** Upon termination of this Lease as provided in Section 4.5 hereof, the Lessee shall not be responsible for the payment of any additional Rental Payments coming due with respect to succeeding Fiscal Years, but if the Lessee has not delivered possession of the Project to the Lessor in accordance with Section 4.4 hereof and conveyed to the Lessor or release its interest in the Project in accordance with Section 4.5 hereof, the termination shall nevertheless be effective; however, the Lessee shall be responsible for the payment of damages to the Lessor in an amount equal to the amount of the Rental Payments thereafter coming due which are attributable to the number of days during which the Lessee fails to take such actions and for any other loss suffered by the Lessor as a result of the Lessee's failure to take such actions as required.

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## ARTICLE V

### RENTAL PAYMENTS

**SECTION 5.1. RENTAL PAYMENTS.** The Lessee shall pay Rental Payments during the Lease Term in the amounts and on the Rental Payment Dates specified in Exhibit B. All Rental Payments will be paid to the Lessor at its offices at the address specified in Section 14.1 hereof, or to such other person or entity to which the Lessor has assigned such Rental Payments pursuant to Article XII hereof, at such place as such assignee may from time to time designate by written notice to the Lessee. The Lessee shall pay the Rental Payments exclusively from moneys legally available therefor, in lawful money of the United States of America, to the Lessor or, in the event of assignment of the right to receive Rental Payments by the Lessor, to its assignee.

**SECTION 5.2. CURRENT EXPENSE.** The obligations of the Lessee under this Lease, including its obligation to pay the Rental Payments in any Fiscal Year for which this Lease is in effect, constitute a current expense of the Lessee for such Fiscal Year and do not constitute an indebtedness of the Lessee within the meaning of the Constitution and laws of the State. Nothing herein shall constitute a pledge by the Lessee of any taxes or other moneys, other than moneys lawfully appropriated from time to time by or for the benefit of the Lessee in the annual budget of the County Commission and the proceeds or Net Proceeds of the Project to the payment of any Rental Payment or other amount coming due hereunder.

**SECTION 5.3. INTEREST COMPONENT.** A portion of each Rental Payment is paid as and represents the payment of interest. Exhibit B sets forth the interest component of each Rental Payment, herein defined as the Interest Portion.

**SECTION 5.4. RENTAL PAYMENTS TO BE UNCONDITIONAL.** Except as provided in Section 4.5 hereof, the obligation of the Lessee to make Rental Payments or any other payments required hereunder shall be absolute and unconditional in all events. Notwithstanding any dispute between the Lessee and the Lessor, or any other person, the Lessee shall make all Rental Payments and other payments required hereunder when due and shall not withhold any Rental Payment or other payment pending final resolution of such dispute nor shall the Lessee assert any right of set-off or counterclaim against its obligation to make such Rental Payments or other payments required under this Lease. The Lessee's obligation to make Rental Payments or other payments during the Lease Term shall not be abated through accident or unforeseen circumstances (including, without limitation, the occurrence of any environmental liability). However, nothing herein shall be construed to release the Lessor from the performance of its obligations hereunder; and if the Lessor should fail to perform any such obligation, the Lessee may institute such legal action against the Lessor as the Lessee may deem necessary to compel the performance of such obligation or to recover damages therefor.

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## ARTICLE VI

### DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

**SECTION 6.1. DAMAGE, DESTRUCTION AND CONDEMNATION.** If the Project or any portion thereof is destroyed (in whole or in part) or damaged by fire or other casualty, or if title to or the temporary use of the Project or any part thereof, or the interest of the Lessee or the Lessor in the Project or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Lessee shall have the rights specified in this Section with respect to the Net Proceeds of any insurance or condemnation award. All Net Proceeds shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Project by the Lessee and this Lease shall continue in effect, or if the Lessee elects not to repair or rebuild, all Net Proceeds shall be applied to prepay Rental Payments in accordance with Section 6.5 hereof. In either event, all Net Proceeds not needed for such purposes shall belong to the Lessee.

**SECTION 6.2. INSUFFICIENCY OF NET PROCEEDS.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Project, the Lessee shall either (a) complete the work and pay any cost in excess of the amount of the Net Proceeds, and the Lessee agrees that, if by reason of any such insufficiency of the Net Proceeds, the Lessee shall make any payments pursuant to the provisions of this Section that the Lessee shall not be entitled to any reimbursement therefor from the Lessor nor shall the Lessee be entitled to any diminution of the Rental Payments due with respect to the Project; or (b) prepay the Rental Payments, in which event the Net Proceeds shall be used for this purpose in accordance with Section 6.5 hereof.

**SECTION 6.3. COOPERATION OF LESSOR.** The Lessor shall cooperate fully with the Lessee, at the expense of the Lessee, in filing any proof of loss with respect to any insurance policy covering the casualties described in Section 6.1 hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Project or any part thereof and will, to the extent it may lawfully do so, permit the Lessee to litigate in any proceeding resulting therefrom in the name of and on behalf of the Lessor. In no event will the Lessor voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the written consent of the Lessee.

**SECTION 6.4. CONDEMNATION OF OTHER PROPERTY OWNED BY LESSEE.** The Lessee shall be entitled to the Net Proceeds of any condemnation award or portion thereof made for destruction of, damage to or taking of its property not included in the Project.

**SECTION 6.5. EXTRAORDINARY PREPAYMENT.** In the event of damage or destruction of the Project or taking thereof by eminent domain as described in Section 6.1 hereof, the Lessee may prepay its obligations with this Lease by paying to the Lessor an amount equal to all Rental Payments and other amounts then due and owing and unpaid under this Lease, the Principal Portion of all

Rental Payments thereafter coming due as set forth on Exhibit B, and any unpaid interest accrued to the date of payment or redemption of the Certificates pursuant to Section 3.6 of the Trust Agreement. Upon such prepayment the provisions of Section 4.3 hereof will apply.

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## ARTICLE VII

### INSURANCE AND LESSEE NEGLIGENCE

**SECTION 7.1. LIABILITY INSURANCE.** Unless self-insurance is provided by the Lessee, as evidenced by a written certificate specifying the terms and amounts thereof and subject further to the annual verification of the adequacy of the amount of such self-insurance by an independent actuary, upon receipt of possession of the Project, the Lessee shall take such measures as may be necessary to insure that any liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition, maintenance, use or operation of the Project or any part thereof, is covered by a blanket or other general liability insurance policy maintained by the Lessee. The Net Proceeds of all such insurance must be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid.

**SECTION 7.2. PROPERTY INSURANCE.** Pursuant to Section 3.8 hereof, the Lessee has assumed and will continue to assume all risk of loss with respect to the Project. Unless self-insurance is provided by the Lessee, as evidenced by a written certificate specifying the terms and amounts thereof and subject further to the annual verification of the adequacy of the amount of such self-insurance by an independent actuary, the Lessee shall procure and maintain continuously in effect during the Lease Term, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part of the Project damaged or destroyed. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary deductible amounts and need not cover land and building foundations. The Net Proceeds of insurance required by this Section shall be applied to the prompt repair, restoration or replacement of the Project or to the prepayment of Rental Payments as provided in Section 6.5 hereof. Any Net Proceeds not needed for those purposes shall be paid to the Lessee.

**SECTION 7.3. WORKER'S COMPENSATION INSURANCE.** If required by State law, and unless self-insurance is provided by the Lessee, as evidenced by a written certificate specifying the terms and amounts thereof and subject further to the annual verification of the adequacy of the amount of such self-insurance by an independent actuary, the Lessee shall carry worker's compensation insurance covering all employees on, in, near or about the Project, and upon request, shall furnish to the Lessor certificates evidencing such coverage throughout the Lease Term.

**SECTION 7.4. REQUIREMENTS FOR ALL INSURANCE.** All insurance policies (or riders) required by this Article are to be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; and must contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten (10) days before the cancellation or revision becomes effective. All insurance policies or riders required by Sections 7.1 and 7.2 hereof must name the Lessee and the Lessor as insured parties, and any insurance policy or rider required by Section 7.3 hereof must name the Lessee as insured party.

**SECTION 7.5. LESSEE NEGLIGENCE.** As between the Lessor and the Lessee, the Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Project and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of the Lessee, the Lessor or of third parties, and whether such property damage be to the Lessee or the Lessor's property or the property of others, which is proximately caused by the negligent conduct of the Lessee, its officers, employees, agents and lessees, or arising out of the operation, maintenance or use of the Project by the Lessee, its officers, employees, agents and lessees. To the extent permitted by law, the Lessee hereby assumes responsibility for and agrees to indemnify, defend and hold harmless the Lessor, its directors, officers, employees and agents, and any assignee of the Lessor, without payment being made by the Lessor, from and against all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against the Lessor or its directors, officers, employees, agents or assignees that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part on the foregoing, to the maximum extent permitted by law.

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## ARTICLE VIII

### GENERAL MATTERS

**SECTION 8.1. USE; PERMITS.** The Lessee shall exercise due care in the use, operation and maintenance of the Project, and shall not use, operate or maintain the Project improperly, carelessly, in violation of any State and Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. The Lessee shall obtain all permits and licenses necessary for the construction, installation, operation, possession and use of the Project. The Lessee shall comply with all State and Federal Laws applicable to the construction, installation, use, possession and operation of the Project, and if compliance with any such State and Federal Laws requires changes or additions to be made to the Project, such changes or addition are to be made by the Lessee at its own expense.

**SECTION 8.2. MAINTENANCE AND MODIFICATION OF PROJECT BY LESSEE.** During the Lease Term, the Lessee shall, at its own expense, maintain, preserve and keep the Project in good repair, working order and condition, and shall from time to time make all repairs, replacements and improvements necessary to keep the Project in such condition. The Lessor shall have no responsibility for any of these repairs, replacements or improvements. In addition, the Lessee shall, at its own expense, have the right to remodel the Project or to make additions, modifications and improvements thereto. All such additions, modifications and improvements shall thereafter comprise part of the Project and be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage the Project; and the Project, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value not less than the value of the Project immediately prior to the making of such additions, modifications and improvements. Any property for which a substitution or replacement is made pursuant to this Section may be disposed of by the Lessee in such manner and on such terms as are determined by the Lessee. The Lessee will not permit any construction or other lien to be established or remain against the Project for labor or materials furnished in connection with any improvements made by the Lessee pursuant to this Section; provided that if any such lien is established and the Lessee shall first notify the Lessor of the Lessee's intention to do so, the Lessee may in good faith contest any lien filed or established against the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Lessor shall notify the Lessee that, in the opinion of Independent Counsel, by non-payment of any such item, the interest of the Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event the Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide the Trustee with full security against any such loss or forfeiture, in form satisfactory to the Lessor. The Lessor will cooperate fully with the Lessee in any such contest, upon the request and at the expense of the Lessee.

**SECTION 8.3. TAXES, OTHER GOVERNMENTAL CHARGES AND UTILITY CHARGES; COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS.** Except as expressly limited by this Section, the Lessee shall pay all taxes and other charges of any kind which are at any time lawfully assessed or levied against or with respect to the Project, the Rental Payments or any part thereof, or which become due during the Lease Term, whether assessed against the Lessee or the Lessor. The

Lessee shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the Lease Term as and when the same become due. The Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by the Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of the Lessee under this Section.

The Lessee may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Lessor shall notify the Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items, the interest of the Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event the Lessee shall promptly pay such taxes, assessments, utility or other charges or provide the Lessor with full security against any loss which may result from nonpayment, in form satisfactory to the Lessor. The Lessee will notify the Lessor in writing prior to contesting any of the above referenced charges if it intends to leave such charges unpaid during the period of such contest.

The Lessee, at its own expense, will comply with all applicable laws to the extent any failure to comply would have a material adverse effect on the Project or the Lessor's rights hereunder, or would result in the levying of any criminal or civil penalties on either party, whether or not such compliance shall require changes in the Project or property owned by the Lessee or interfere with the use and enjoyment of the Project or any part thereof. The Lessee will take such actions, at the Lessee's cost and expense, to enable the Lessee to obtain all permits and similar authorizations needed for the use of the Project.

**SECTION 8.4. EASEMENTS.** The Lessor may, from time to time at the request of the Lessee, and at the Lessee's cost and expense, cooperate and join with the Lessee:

(a) in granting easements and other rights in the nature of easements, releasing existing easements or other rights in nature of easements which are for the benefit of the Project; and

(b) in executing and delivering to any person any instrument appropriate to

(i) confirm that such grant, release or execution is not detrimental to the proper conduct of the operations of the Lessee on or in the Project;

(ii) show the consideration, if any, being paid for such grant, release or amendment;

(iii) show that such grant, release, dedication, transfer, petition or amendment does not materially impair the use of the Project or reduce their value; or

(iv) confirm that the Lessee will remain obligated hereunder to the same extent as if such grant, release, or amendment had not been made, and the Lessee will perform all obligations of the Lessor under such instrument. The consideration, if any, received for such grant, release or amendment shall be paid to the Lessor and applied against the next succeeding Rental Payment.

**SECTION 8.5. COVENANTS REGARDING HAZARDOUS MATERIALS.** The Lessee shall comply with all regulations concerning the environment, health and safety relating to the generation, use, handling, production, disposal, discharge and storage of Hazardous Materials in, on, under or about the Project. The Lessee shall promptly take any and all necessary action in response to the storage, use, disposal, transportation or discharge of any Hazardous Materials in, on, under or about the Project by the Lessee or persons acting on behalf of or at the direction of the Lessee as all applicable laws, rules, regulations or ordinances may require. The Lessee agrees to promptly:

(a) transmit to the Lessor copies of any governmental citations, orders or notices received with respect to Hazardous Materials which may result in a penalty, liability or cost greater than \$1,000;

(b) observe and comply with any and all laws, ordinances, rules, regulations, licensing requirements or conditions relating to the use, maintenance or disposal of Hazardous Materials and all orders or directives from any official, court or governmental agency of competent jurisdiction relating to the use or maintenance or requiring the removal, treatment, containment or other disposal of such Hazardous Material;

(c) pay or otherwise dispose of any lien, charge or imposition relating thereto which, if not paid, would constitute a lien upon the Project; and

(d) hold harmless the Lessor from any and all liabilities (including strict liability), obligations, suits, actions, demands, penalties, losses, costs or expenses (including without limitation, consultant's fees, investigation and laboratory fees, reasonable attorneys' fees, expenses and remedial costs), costs of any settlement or judgment and claims of any and every kind whatsoever, which may now or in the future be paid (whether before or after the termination of this Agreement), incurred or suffered by or asserted against the Lessor by an person or entity of governmental agency for, with respect to, or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, the Project of any Hazardous Materials and relating to or arising from the presence, at any time, of Hazardous Materials in, on, under or about the Project, all to the maximum extent permitted by law; the Lessor shall not be liable for any payment whatsoever with regard to clauses (a) through of this Section.

Should any governmental authority or any third party demand or initiate legal action to compel the preparation of a corrective action plan or the undertaking of corrective action because of any deposit, spill, discharge, or other release of Hazardous Material that occurs during the term of this Lease, at or from or to the Project, then the Lessee shall, at its own expense, prepare and submit the required corrective action plans and all related bonds and other financial assurances; and the Lessor shall carry out all such corrective action.

The Lessee's obligations and liabilities under this Section shall survive the termination of this Lease.

**SECTION 8.6. COVENANTS AND WARRANTIES REGARDING HISTORICAL USE.** The Lessee covenants and warrants to the Lessor that, on the date of execution of this Lease, no Hazardous Materials have been generated, treated, stored, transferred from, released or disposed of, or otherwise placed, deposited in or located on the Land. The Land is not now, and to the best knowledge of the Lessee, never has been used to a landfill, dump or other disposal, storage, transfer or handling area for Hazardous Materials or for industrial, military or manufacturing purposes, or as a gasoline service station or a facility for selling, dispensing, storing, transferring or handling petroleum and/or petroleum products. No above ground or underground tanks have been located under, in or about the Land and have subsequently been removed or filled. To the extent storage tanks exist on, under or adjacent to the Land, such storage tanks have been duly registered with all appropriate regulatory and governmental bodies and otherwise are in compliance with applicable federal, state and local statutes, regulations, ordinances, and other regulatory requirements.

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## ARTICLE IX

### TITLE

**SECTION 9.1. TITLE.** During the Lease Term, legal title to the Improvements and any and all repairs, replacements, substitutions and modifications thereto shall be in the Lessor, subject to the interest of the Lessee in this Lease; and legal title to the Land shall be in the Lessee, subject to the interest of the Lessor in the Ground Lease. Upon the payment by the Lessee of all Rental Payments as shown in Exhibit B, or prepayment thereof by the Lessee pursuant hereto, full and unencumbered legal title to the Project shall pass to the Lessee, and the Lessor shall have no further interest therein.

**SECTION 9.2. LIENS.** During the Lease Term, the Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Project, other than the respective rights of the Lessor and the Lessee as herein provided and Permitted Encumbrances. Except as expressly provided in Section 8.3 hereof and this Article, the Lessee shall promptly, at its own expense, take such action as may be duly necessary to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The Lessee shall reimburse the Lessor for any expense incurred by the Lessor in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim. The Lessor, however, does not have any obligation to incur any expense or take any action in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

**SECTION 9.3. INSTALLATION OF PERSONAL PROPERTY.** The Lessee may, at any time and from time to time, in its sole discretion and at its own expense, install items of personal property in or upon the Project. All such items shall remain the sole property of the Lessee, in which the Lessor shall have no interest, and may be modified or removed by the Lessee at any time provided that the Lessee shall repair and restore any and all damage to the Project resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent the Lessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease with option to purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Project.

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## ARTICLE X

### WARRANTIES

**SECTION 10.1. MAINTENANCE OF PROJECT.** The Lessee will, at its own expense, keep the Project in reasonable order and condition in light of the use to which the Project will be put and will repair, restore and rebuild all building enclosures and other structures and improvements located therein to the extent provided for under this Lease. The Lessor has no obligation to make or pay for any repairs, replacements, restorations, improvements, alterations, or additions whatsoever on or to the Project. The Lessor shall have no obligation to test, inspect, service or maintain the Project under any circumstances, but such actions shall be the obligation of the Lessee.

**SECTION 10.2. CONTRACTOR'S WARRANTIES.** The Lessor hereby assigns to the Lessee for and during the Lease Term, all of its interest in all Contractor's warranties and guarantees, express or implied, issued on or applicable to the Project or any portion thereof, and the Lessor hereby authorizes the Lessee to obtain the customary services furnished in connection with such warranties and guarantees at the Lessee's expense.

**SECTION 10.3. PATENT INFRINGEMENT.** The Lessor hereby assigns to the Lessee for and during the Lease Term, all of its interest in patent indemnity protection provided by any Contractor with respect to the Project. Such assignment of patent indemnity protection by the Lessor to the Lessee shall constitute the entire liability of the Lessor for any patent infringement by Project furnished pursuant to this Lease.

**SECTION 10.4. DISCLAIMER OF WARRANTIES.** THE PROJECT IS DELIVERED AS-IS, AND THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE LESSEE OF THE PROJECT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROJECT.

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## ARTICLE XI

### OPTION TO PREPAY; DISCHARGE

**SECTION 11.1. OPTION TO PREPAY IN WHOLE OR IN PART.** The Lessee may prepay the unpaid Principal Portion of the Rental Payments, in whole or in part and if in part, in multiples of \$5,000, on May 1, 2025, or any Business Day thereafter, at the Prepayment Price.

**SECTION 11.2. EXERCISE OF PREPAYMENT OPTION.** The Lessee shall give notice to the Lessor of its intention to exercise its prepayment option not less than forty-five (45) days in advance of the date of exercise, and shall pay to the Lessor on the date of exercise, an amount equal to the amount of principal to be prepaid, plus accrued interest to the prepayment date, as shown in Exhibit B, less any Net Proceeds to be applied to the amount to be so paid in accordance with Section 6.2 hereof. The Lessee shall also pay any Rental Payments and other amounts then due hereunder and unpaid.

**SECTION 11.3. DISCHARGE OF LESSEE'S OBLIGATION.** The Lessee may, at any time, discharge its obligation to pay the Rental Payments due under this Lease by depositing irrevocably into escrow with the Trustee, cash or securities of the type permitted for defeasance of the Certificates under Article VII of the Trust Agreement, with interest payable at such times and at such rates and maturing or redeemable at the option of the holder on such dates as shall be required to provide moneys sufficient to pay or prepay all unpaid Rental Payments on the dates when they are due or subject to prepayment as provided in Section 11.1 hereof, as determined by the Lessee, together with computations and an opinion letter of a verification agent showing and attesting to the sufficiency of such moneys and securities for this purpose and an opinion letter of an attorney or firm of attorneys nationally recognized as bond counsel stating that the deposit of such cash or securities will not cause this Lease or the Certificates to become "arbitrage bonds" under Section 148(a) of the Code. The requirements for defeasance set forth in Article VII of the Trust Agreement shall also apply to any defeasance hereunder.

**SECTION 11.4. PREREQUISITE: NO DEFAULT.** The Lessee may exercise the rights specified in this Article only if it is not in default under this Lease.

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## ARTICLE XII

### ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

**SECTION 12.1. DELEGATION AND ASSIGNMENT BY LESSOR.** The Lessor shall not delegate or assign its obligations under this Lease, and no purported delegation or assignment thereof shall be effective unless such delegation or assignment is to a successor Trustee as provided in the Trust Agreement. However, all of the Lessor's right, title and/or interest in and to this Lease, the Rental Payments and other amounts due hereunder, the Ground Lease and the Project may be assigned and reassigned, in whole or in part, to one or more successor Trustees as described in Section 6.5 of the Trust Agreement. The Lessee shall pay all Rental Payments due hereunder to the Lessor, or at the direction of the Lessor, the assignee named in the most recent assignment or notice of assignment filed with the Lessee. During the Lease Term the Lessee shall keep a complete and accurate written record of all such assignments.

**SECTION 12.2. ASSIGNMENT AND SUBLEASING BY LESSEE.** Neither this Lease nor the Lessee's interest in the Project may be assigned or subleased by the Lessee without the written consent of the Lessor. Notwithstanding the foregoing, the Lessee may lease idle beds in the Project to political subdivisions, any State agency or any federal agency on a short-term basis.

**SECTION 12.3. RESTRICTION ON MORTGAGE OR SALE OF PROJECT BY LESSEE.** The Lessee will not mortgage, sell, assign, transfer or convey the Project or any portion thereof during the Lease Term without the written consent of the Lessor.

*(Remainder of this page intentionally left blank.)*

## ARTICLE XIII

### EVENTS OF DEFAULT AND REMEDIES

**SECTION 13.1. EVENTS OF DEFAULT DEFINED.** The following are “events of default” under this Lease and the terms “event of default” or “default” mean, whenever they are used with respect to this Lease, any one or more of the following events:

(a) Failure by the Lessee to pay any Rental Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of three (3) days after written notice is given by the Lessor to the Lessee stating that the payment referred to in such notice has not been received, or for a period of three (3) days after telephonic or other electronic notice is given by the Lessor, such telephonic or other electronic notice to be subsequently confirmed in writing.

(b) Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Lease, the Trust Agreement or the Ground Lease, other than as referred to in clause (a) of this Section, for a period of forty-five (45) days after written notice is given by the Lessor to the Lessee stating such failure and requesting that it be remedied, unless the Lessor agrees in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected.

(c) The filing by the Lessee of a voluntary petition in bankruptcy, or failure by the Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of the Lessee to carry on its governmental or proprietary function or adjudication of the Lessee as a bankrupt, or assignment by the Lessee for the benefit of creditors, or the entry by the Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

The provisions of this Section and Section 13.2 hereof are subject to the following limitation:

The Lessee cannot be deemed to be in default under this Lease if it is unable to carry out its obligations under this Lease, other than its obligation to pay Rental Payments when due, which obligation continues notwithstanding the provisions of this paragraph, by reason of force majeure. The term “force majeure” as used herein means, without limitation, any of the following: strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires;

storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of the Lessee and not resulting from its negligence. The Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Lessee from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of the Lessee and the Lessee shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Lessee unfavorable to the Lessee.

**SECTION 13.2. REMEDIES ON DEFAULT.** Upon the occurrence of and continuation of an event of default as referred to in Section 13.1 hereof, the Lessor may, without any further demand or notice, take one or any combination of the following remedial steps:

(a) The Lessor, with or without terminating this Lease, may declare all Rental Payments due or to become due during the Fiscal Year in effect when the default occurs to be immediately due and payable by the Lessee, whereupon such Rental Payments shall be immediately due and payable.

(b) The Lessor, with or without terminating this Lease, may enforce the Ground Lease and repossess the Project by giving the Lessee written notice to surrender the Project to the Lessor for the remaining term of the Ground Lease, whereupon the Lessee shall do so in the manner provided in Section 4.4 hereof. If the Project or any portion of it has been destroyed or damaged beyond repair, the Lessee shall pay the principal amount of all unpaid Rental Payments as set forth in Exhibit B (less credit for Net Proceeds), to the Lessor. Notwithstanding the fact that the Lessor has taken possession of the Project, the Lessee shall continue be responsible for the Rental Payments due during the Fiscal Year then in effect. If this Lease has not been terminated, the Lessor shall return the Project to the Lessee at the Lessee's expense when the event of default is cured, or as required by the Ground Lease.

(c) If the Lessor terminates this Lease and takes possession of the Project, the Lessor shall thereafter use its best efforts to sell or lease its interest under the Ground Lease and in the Project or any portion thereof in a commercially reasonable manner in accordance with applicable State laws. The Lessor shall apply the proceeds of such sale or lease to pay the following items in the following order:

(i) all costs incurred in securing possession of the Project;

(ii) all expenses incurred in completing the sale or lease including attorney's fees, together with all amounts otherwise owing to the Lessor under this Lease and the Trust Agreement;

(iii) the Principal Portion of all unpaid Rental Payments as shown on Exhibit B; and

(iv) the balance of any Rental Payments owed by the Lessee during the Fiscal Year then in effect.

Any proceeds remaining after the requirements of clauses (i), (ii), (iii) and (iv) of this subsection (c) have been met may be retained by the Lessee.

(d) If the proceeds of a sale or lease of the Lessee's interest in the Project are not sufficient to pay the balance of any Rental Payments owed by the Lessee or any other amounts owed to the Lessor hereunder or under the Trust Agreement during the Fiscal Year then in effect, the Lessor may pursue any other remedy available at law or in equity to require the Lessee to perform any of its obligations hereunder.

**SECTION 13.3. NO REMEDY EXCLUSIVE.** No remedy conferred upon or reserved to the Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by the Lessor or its assignee.

*(Remainder of this page intentionally left blank.)*

**ARTICLE XIV**

**ADMINISTRATIVE PROVISIONS**

**SECTION 14.1. NOTICES.** All written notices to be given under this Lease are to be delivered by mail to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other parties in writing from time to time:

If to the Lessee:	Barnes County 230 4 <sup>th</sup> Street NW, Room 202 Valley City, ND 58072 Attn: County Auditor
If to the Underwriter:	Collier Securities, LLC. 90 South Seventh Street, Suite 4300 Minneapolis, MN 55402 Attn: Head of Public Finance
If to the Lessor or Trustee:	Bank of North Dakota 1200 Memorial Highway Bismarck, ND 58504 Attn: Trust Officer

**SECTION 14.2. FINANCIAL INFORMATION.** During the Lease Term, the Lessee shall annually provide the Lessor with current financial statements, budgets, a certificate of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of the Lessee to continue this Lease as may be requested by the Lessor or its assignee. The Lessor shall have no duty to review the information contained in any financial reports.

**SECTION 14.3. BINDING EFFECT.** This Lease shall inure to the benefit of and be binding upon the Lessor and the Lessee and their respective successors and assigns.

**SECTION 14.4. SEVERABILITY.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 14.5. AMENDMENTS, CHANGES AND MODIFICATIONS.** This Lease may be amended or any of its terms modified only by written document duly authorized, executed and delivered by the Lessor and the Lessee.

**SECTION 14.6. CAPTIONS.** The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provision, article, section or clause of this Lease.

**SECTION 14.7. FURTHER ASSURANCES AND CORRECTIVE INSTRUMENTS.** The Lessor and the Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Lease.

**SECTION 14.8. EXECUTION IN COUNTERPARTS.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 14.9. APPLICABLE LAW.** This Lease shall be governed by and construed in accordance with the laws of the State.

**SECTION 14.10. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.** In the event either party to this Lease should default under any of the provisions hereof and the non-defaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefore pay to the non-defaulting party the reasonable fee of such attorneys and such other expenses so incurred by the non-defaulting party.

**SECTION 14.11. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.** In the event any covenant hereunder should be breached by either party and thereafter waived by the other party, the parties agree that such waiver is limited to the particular breach so waived and not deemed to waive any other breach hereunder.

*(Remainder of this page intentionally left blank.)*

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written.

**BANK OF NORTH DAKOTA,  
as Trustee and as Lessor**

*Carrie Willits*

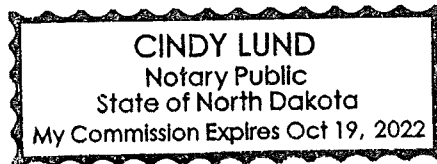
Its: Trust Officer

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF BURLEIGH     )

On this 7<sup>th</sup> day of October, 2020, before me, a Notary Public in and for said County, personally appeared Carrie Willits, the Trust Officer of the Bank of North Dakota, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

*Cindy Lund*  
\_\_\_\_\_  
Notary Public

(SEAL)





**BARNES COUNTY, NORTH DAKOTA,  
as Lessee**

William Carlblom  
Chair of the Board of County Commissioners

Beth Didier  
County Auditor

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF BARNES         )

On this 8<sup>th</sup> day of October, 2020, before me, a Notary Public in and for said County, personally appeared William Carlblom and Beth Didier, respectively the Chair of the Board of County Commissioners and County Auditor, of Barnes County, North Dakota, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

(SEAL) 

JULIE MINDT Notary Public State of North Dakota My Commission Expires Feb 17, 2021
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Julie Mindt  
Notary Public

## **EXHIBIT A**

### **PROJECT DESCRIPTION**

#### **Land**

Lot 2A of the Replat of Lot 2, Block 1 of the Greenline Deere Second Addition to the City of Valley City, Barnes County, North Dakota

#### **Improvements**

The improvements consist of the design, construction, installation and equipping of a 46-bed replacement correctional facility to be located in Valley City, North Dakota.

**EXHIBIT B**

**RENTAL PAYMENT SCHEDULE**

Rental Payment Date*	Principal Portion (P)	Interest Rate	Interest Portion (I)	Rental Payment Due (P+I)	Fiscal Year Total
05/01/2021	120,000.00	4.000%	295,657.33	415,657.33	
11/01/2021			267,743.75	267,743.75	683,401.08
05/01/2022	305,000.00	4.000	267,743.75	572,743.75	
11/01/2022			261,643.75	261,643.75	834,387.50
05/01/2023	315,000.00	4.000	261,643.75	576,643.75	
11/01/2023			255,343.75	255,343.75	831,987.50
05/01/2024	325,000.00	4.000	255,343.75	580,343.75	
11/01/2024			248,843.75	248,843.75	829,187.50
05/01/2025	340,000.00	4.000	248,843.75	588,843.75	
11/01/2025			242,043.75	242,043.75	830,887.50
05/01/2026	355,000.00	1.000	242,043.75	597,043.75	
11/01/2026			240,268.75	240,268.75	837,312.50
05/01/2027	360,000.00	4.000	240,268.75	600,268.75	
11/01/2027			233,068.75	233,068.75	833,337.50
05/01/2028	370,000.00	4.000	233,068.75	603,068.75	
11/01/2028			225,668.75	225,668.75	828,737.50
05/01/2029	385,000.00	4.000	225,668.75	610,668.75	
11/01/2029			217,968.75	217,968.75	828,637.50
05/01/2030	405,000.00	4.000	217,968.75	622,968.75	
11/01/2030			209,868.75	209,868.75	832,837.50
05/01/2031	420,000.00	4.000	209,868.75	629,868.75	
11/01/2031			201,468.75	201,468.75	831,337.50
05/01/2032	435,000.00	4.000	201,468.75	636,468.75	
11/01/2032			192,768.75	192,768.75	829,237.50
05/01/2033	455,000.00	4.000	192,768.75	647,768.75	
11/01/2033			183,668.75	183,668.75	831,437.50
05/01/2034	470,000.00	4.000	183,668.75	653,668.75	
11/01/2034			174,268.75	174,268.75	827,937.50
05/01/2035	490,000.00	4.000	174,268.75	664,268.75	
11/01/2035			164,468.75	164,468.75	828,737.50
05/01/2036	510,000.00	4.000	164,468.75	674,468.75	
11/01/2036			154,268.75	154,268.75	828,737.50

05/01/2037	530,000.00	4.000	154,268.75	684,268.75	
11/01/2037			143,668.75	143,668.75	827,937.50
05/01/2038	550,000.00	4.000	143,668.75	693,668.75	
11/01/2038			132,668.75	132,668.75	826,337.50
05/01/2039	575,000.00	4.000	132,668.75	707,668.75	
11/01/2039			121,168.75	121,168.75	828,837.50
05/01/2040	595,000.00	4.000	121,168.75	716,168.75	
11/01/2040			109,268.75	109,268.75	825,437.50
05/01/2041	620,000.00	3.000	109,268.75	729,268.75	
11/01/2041			99,968.75	99,968.75	829,237.50
05/01/2042	640,000.00	3.000	99,968.75	739,968.75	
11/01/2042			90,368.75	90,368.75	830,337.50
05/01/2043	660,000.00	3.000	90,368.75	750,368.75	
11/01/2043			80,468.75	80,468.75	830,837.50
05/01/2044	675,000.00	3.000	80,468.75	755,468.75	
11/01/2044			70,343.75	70,343.75	825,812.50
05/01/2045	700,000.00	3.000	70,343.75	770,343.75	
11/01/2045			59,843.75	59,843.75	830,187.50
05/01/2046	720,000.00	3.125	59,843.75	779,843.75	
11/01/2046			48,593.75	48,593.75	828,437.50
05/01/2047	740,000.00	3.125	48,593.75	788,593.75	
11/01/2047			37,031.25	37,031.25	825,625.00
05/01/2048	765,000.00	3.125	37,031.25	802,031.25	
11/01/2048			25,078.13	25,078.13	827,109.38
05/01/2049	790,000.00	3.125	25,078.13	815,078.13	
11/01/2049			12,734.38	12,734.38	827,812.51
05/01/2050	815,000.00	3.125	12,734.38	827,734.38	827,734.38
	\$15,435,000.00		\$9,304,819.85	\$24,739,819.85	\$24,739,819.85

\*Rental Payment Date means the 25<sup>th</sup> day of April or October immediately preceding the Certificate payment date shown.

**EXHIBIT C**

**FORM OF ACCEPTANCE CERTIFICATE OF LESSEE**

Bank of North Dakota  
1200 Memorial Highway  
Bismarck, ND 58504  
Attn: Trust Officer

Ladies and Gentlemen:

In accordance with the terms of the Lease-Purchase Agreement dated as of October 1, 2020 (the "Lease"), by and between the Bank of North Dakota (the "Lessor") and the undersigned (the "Lessee"), the Lessee hereby certifies and represents to and agrees with the Lessor as follows:

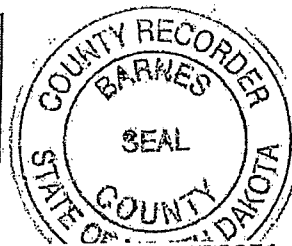
1. The Improvements, as such term is defined in the Lease, have been constructed and accepted on the date indicated below.
2. The Lessee has conducted such inspection and/or testing of the Improvements as it deems necessary and appropriate and hereby acknowledges that it accepts the Improvements for all purposes.
3. No event of default, as such term is defined in the Lease and no event which with notice or lapse of time, or both, could become an event of default, has occurred and is continuing at the date hereof.

**BARNES COUNTY, NORTH DAKOTA**

\_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**4**

Grantor	<i>[Signature]</i>
Grantee	<i>[Signature]</i>
Indexed	<i>[Signature]</i>
Checked	<i>[Signature]</i>



Fee: \$ 0.00  
 293071  
 OFFICE OF COUNTY RECORDER, County of Barnes, North Dakota  
 I hereby certify that the within instrument was filed in this office  
 on 10/14/2020 at 10:05 AM and was duly recorded.  
 \_\_\_\_\_ County Recorder  
 By *[Signature]* Deputy

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE**, made and entered into October 14, 2020, by and between **BARNES COUNTY**, a political subdivision of the State of North Dakota, having its principal office and address at 230 4<sup>th</sup> Street NW, Room 202, Valley City, North Dakota 58072 (the "County"), and the **BANK OF NORTH DAKOTA**, a bank duly organized and existing under the laws of the State of North Dakota, having its principal office and address at 1200 Memorial Highway, Bismarck, ND 58504 (the "Trustee").

The County and the Trustee have entered into a Lease-Purchase Agreement dated as of October 1, 2020, and ending on May 1, 2050, subject to termination as provided therein (the "Lease"), which Lease covers the real property described on Exhibit A attached hereto on which a County corrections facility will be constructed (the "Leased Property").

Upon termination of the Lease following payment or prepayment by the Lessee of all Rental Payments (as defined in the Lease) due thereunder, and payment of all amounts owed to the Trustee under the Trust Agreement between the County and the Trustee dated as of October 1, 2020, full and unencumbered legal title to the Leased Property shall pass to the County, and the Trustee shall have no further interest therein.

Reference is made to the Lease for a full statement of the terms and conditions relating to the County's options and obligations to purchase the Leased Property and all other terms and conditions of the Lease, copies of which are on file in the offices of the Trustee and the County.

**IN WITNESS WHEREOF**, the parties hereto have caused this Memorandum of Lease to be duly executed all as of the date first above written.

*(Remainder of this page intentionally left blank.)*

BARNES COUNTY, NORTH DAKOTA

By: William Carlblom  
Chair

ATTEST:

Beth Didier  
County Auditor

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF BARNES         )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of October, 2020, by William Carlblom and Beth Didier, the Chair of the Board of County Commissioners and County Auditor, respectively, of Barnes County, North Dakota, on behalf of the County.

Julie Mindt  
Notary Public  
My Commission Expires:

JULIE MINDT  
Notary Public  
State of North Dakota  
My Commission Expires Feb 17, 2021

(SEAL)



BANK OF NORTH DAKOTA

By: Carrie Willits

Its: Trust Officer

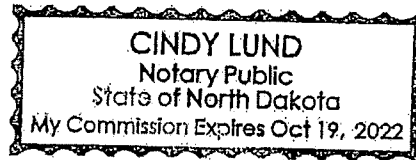
STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF BURLEIGH     )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of October, 2020, by Carrie Willits, the Trust Officer of the Bank of North Dakota, on behalf of the bank.

Cindy Lund

Notary Public  
My Commission Expires:

(SEAL)



DOCUMENT NUMBER 293071

EXHIBIT A TO MEMORANDUM OF LEASE

**LEGAL DESCRIPTION OF THE REAL PROPERTY**

The following real property lying and being in the County of Barnes and State of North Dakota, and described as follows, to-wit:

Lot 2A of the Replat of Lot 2, Block 1 of the Greenline Deere Second Addition to the City of Valley City, Barnes County, North Dakota

**5**

**NEW ISSUE  
BOOK-ENTRY ONLY**

**MOODY'S RATING: "Baa1"  
See "RATING" herein**

*In the opinion of Arntson Stewart Wegner PC, Bond Counsel, according to existing North Dakota and federal laws, regulations, rulings and judicial decisions, and assuming compliance with certain covenants, as of their date of issuance, interest on the Certificates is excludable from the gross income for purposes of federal income taxation and State of North Dakota income tax purposes. Interest on the Certificates is not a specific preference item for purposes of the federal alternative minimum tax for individuals. See "TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS" in this Official Statement.*



**\$15,100,000\***  
**CERTIFICATES OF PARTICIPATION, SERIES 2020**  
**Evidencing the Proportional Interests of the Registered Owners thereof in**  
**Lease Payments under a Lease-Purchase Agreement, dated as of October 1,**  
**2020, between BARNES COUNTY, NORTH DAKOTA, as Lessee, and**  
**BANK OF NORTH DAKOTA, as Lessor**

**Dated: Date of Delivery**

**Due: May 1, as shown on the inside front cover**

The Certificates of Participation, Series 2020 (the "Certificates"), in the original aggregate principal amount of \$15,100,000\* are being delivered and will be used, along with available funds of the County, in order to: (i) finance the costs of participation in the design, construction, installation and equipping of an approximately 46-bed replacement Barnes County Correctional Facility (the "Correctional Facility Project") located in Valley City, North Dakota; and (ii) pay costs of issuance for the Certificates. The Certificates represent proportionate interests in certain lease payments (the "Rental Payments") to be made by Barnes County, North Dakota (the "County") under a Lease-Purchase Agreement, dated as of October 1, 2020 (the "Lease"), pursuant to which the County, as lessee, is leasing the Correctional Facility Project from the Bank of North Dakota (the "Trustee"), as lessor. The County is leasing the site of the Correctional Facility Project (the "Project Site") to the Trustee pursuant to a Ground Lease, dated as of October 1, 2020 (the "Ground Lease"), between the County, as lessor, and the Trustee, as lessee. The Certificates are issued pursuant to a Trust Agreement, dated as of October 1, 2020 (the "Trust Agreement"), by the Trustee and joined in by the County. The Certificates are subject to redemption prior to maturity as described in this Official Statement. See "THE CERTIFICATES" in this Official Statement. Undefined capitalized terms on this cover are defined in the text hereof, APPENDIX C of this Official Statement, or the Trust Agreement.

The County will annually levy and appropriate taxes from a County capital projects tax not to exceed 10 mills (the "Annual Capital Levy"). If the Annual Capital Levy is insufficient to cover the Rental Payments, then the County shall appropriate funds from the County's General Fund. The County will utilize other funds to pay for operations of the Correctional Facility Project. The Lease is subject to termination by the County at the end of any fiscal year as a result of the failure by the County to appropriate funds sufficient to pay the Rental Payments. The Certificates are not secured by a debt service reserve fund. See "SECURITY FOR THE CERTIFICATES" in this Official Statement.

THE CERTIFICATES WILL BE SPECIAL, LIMITED OBLIGATIONS OF THE COUNTY PAYABLE SOLELY FROM RENTAL PAYMENTS TO BE MADE BY THE COUNTY UNDER THE LEASE. THE CERTIFICATES ARE NOT A GENERAL OBLIGATION OF THE COUNTY AND THE FULL FAITH AND CREDIT AND UNLIMITED AD VALOREM TAXING POWERS OF THE COUNTY ARE NOT PLEDGED TO THE PAYMENT OF THE RENTAL PAYMENTS. Additional information regarding the security for the Certificates is provided under the caption "SECURITY FOR THE CERTIFICATES" and "APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE" in this Official Statement.

The Certificates will be issued as fully registered certificates without coupons and when issued will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, to which principal and redemption premium, if any, and interest payments on the Certificates will be made. Individual purchases of Certificates will be made in book-entry form only, in principal amounts of \$5,000 or any integral multiple thereof. Beneficial owners of the Certificates will not receive physical delivery of Certificates. Interest on the Certificates will be payable semiannually on each May 1 and November 1, commencing May 1, 2021\* (each a "Payment Date"), to the registered owner as of the close of business on the 15th day of the calendar month prior to a Payment Date, as fully described in this Official Statement. Principal of the Certificates will be payable on the May Payment Dates as fully described in this Official Statement. The Certificates are subject to redemption prior to maturity under the terms and conditions described in this Official Statement. See "THE CERTIFICATES – Redemption" in this Official Statement.

This cover page contains certain information for quick reference only. This cover page is not intended to be a summary of the Certificates or the security therefor. Potential purchasers of the Certificates should read this Official Statement, including the Appendices hereto, in its entirety prior to making an informed investment decision with respect to the Certificates. An investment in the Certificates involves risks, including, but not limited to, those discussed under "RISK FACTORS" in this Official Statement.

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A detailed maturity schedule for the Certificates is set forth on the inside front cover.

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The Certificates are offered when, as and if issued and accepted by Colliers Securities LLC (the "Underwriter"), subject to the opinion as to their validity and the tax-exempt status of the interest component of the Certificates by Arntson Stewart Wegner PC, Fargo, North Dakota, Bond Counsel. Certain legal matters will be passed upon for the Underwriter by Ballard Spahr LLP, Minneapolis, Minnesota. It is expected that the Certificates will be delivered through the facilities of DTC in New York, New York on or about October \_\_, 2020.



The date of this Official Statement is \_\_\_\_, 2020.

\*Preliminary, subject to change.

This Preliminary Official Statement and the information contained in this Preliminary Official Statement are subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

**MATURITY SCHEDULE**

**\$15,100,000\***

**CERTIFICATES OF PARTICIPATION, SERIES 2020**

**Evidencing the Proportional Interests of the Registered Owners thereof in  
Lease Payments under a Lease-Purchase Agreement, dated as of October 1,  
2020, between BARNES COUNTY, NORTH DAKOTA, as Lessee, and  
BANK OF NORTH DAKOTA, as Lessor**

Maturity Date (May 1)	Principal Amount*	Interest Rate	Yield	Price	CUSIP <sup>(1)</sup>
2021	\$175,000				
2022	320,000				
2023	330,000				
2024	340,000				
2025	350,000				
2026	365,000				
2027	375,000				
2028	385,000				
2029	395,000				
2030	410,000				
2031	420,000				
2032	435,000				
2033	445,000				
2034	460,000				
2035	475,000				
2036	490,000				

\$1,020,000\* \_\_\_% Term Certificates Due May 1, 2038\*  
Price of \_\_\_% to Yield \_\_\_%  
CUSIP: \_\_\_\_\_<sup>(1)</sup>

\$1,110,000\* \_\_\_% Term Certificates Due May 1, 2040\*  
Price of \_\_\_% to Yield \_\_\_%  
CUSIP: \_\_\_\_\_<sup>(1)</sup>

\$1,190,000\* \_\_\_% Term Certificates Due May 1, 2042\*  
Price of \_\_\_% to Yield \_\_\_%  
CUSIP: \_\_\_\_\_<sup>(1)</sup>

\$1,925,000\* \_\_\_% Term Certificates Due May 1, 2045\*  
Price of \_\_\_% to Yield \_\_\_%  
CUSIP: \_\_\_\_\_<sup>(1)</sup>

\$3,685,000\* \_\_\_% Term Certificates Due May 1, 2050\*  
Price of \_\_\_% to Yield \_\_\_%  
CUSIP: \_\_\_\_\_<sup>(1)</sup>

\* Preliminary, subject to change.

<sup>(1)</sup> CUSIP is a registered trademark of the American Bankers Association ("ABA"). CUSIP data is provided by CUSIP Global Services, managed by S&P Global Market Intelligence on behalf of ABA. The CUSIP numbers listed above are being provided solely for the convenience of Holders of the Certificates only at the time of issuance of the Certificates and neither the County nor the Underwriter makes any representation with respect to such numbers or undertakes any responsibility for their accuracy now or at any time in the future.

## Rendering of the Correctional Facility Project



*Source: Barnes County*

**Barnes County, North Dakota  
230 4<sup>th</sup> Street Northwest  
Valley City, North Dakota 58072  
Phone (701) 845-8500**

**County Commission**

<b><u>Name</u></b>	<b><u>District</u></b>	<b><u>Term Expires</u></b>
Cindy Schwehr	District 1	2020
Shawn Olauson	District 2	2022
Bill Carlblom	District 3	2022
Vicky Lovell	District 4	2022
John Froelich	District 5	2020

**Bond Counsel**

Arntson Stewart Wegner PC  
Fargo, North Dakota

**Underwriter**

Colliers Securities LLC  
Minneapolis, Minnesota  
and  
Bismarck, North Dakota

**Underwriter's Counsel**

Ballard Spahr LLP  
Minneapolis, Minnesota

**Trustee**

Bank of North Dakota  
Bismarck, North Dakota

## **USE OF INFORMATION IN THIS OFFICIAL STATEMENT**

This Official Statement does not constitute an offer to sell or a solicitation of an offer to buy any of the securities offered hereby by any person in any jurisdiction in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation. No dealer, salesperson, or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement in connection with the offering of the Certificates, and if given or made, such information or representations must not be relied upon as having been authorized by the County or the Underwriter.

Certain information contained in this Official Statement has been obtained from the County and other sources which are believed to be reliable, but such information is not guaranteed as to completeness or accuracy by the Underwriter. THE INFORMATION AND EXPRESSIONS OF OPINION IN THIS OFFICIAL STATEMENT ARE SUBJECT TO CHANGE, AND NEITHER THE DELIVERY OF THE OFFICIAL STATEMENT NOR ANY SALE MADE HEREUNDER SHALL UNDER ANY CIRCUMSTANCES CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COUNTY SINCE THE DATE THEREOF.

In making an investment decision with respect to the Certificates, investors must rely on their own examination of the Certificates, the Correctional Facility Project, the County, the terms of the offering, and the risks with respect to such an investment. The Certificates have not been recommended by any federal or state securities commission or regulatory authority. Furthermore, no federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of this Official Statement. Any representation to the contrary may be a criminal offense under applicable law. In connection with the offering of the Certificates, the Underwriter may over-allot or effect transactions that stabilize or maintain the market price of the Certificates at a level above that which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.

The order and placement of materials in this Official Statement, including appendices, are not to be deemed a determination of relevance, materiality or importance, and this Official Statement, including the appendices, must be considered in its entirety. The captions and headings in this Official Statement are for convenience only and in no way define, limit or describe the scope or intent, or affect the meaning or construction, of any provisions of this Official Statement. The offering of the Certificates is made only by means of this entire Official Statement.

The Trustee has not participated in the preparation of this Official Statement or any other disclosure documents relating to the Certificates. Except for the information under the heading "THE TRUSTEE", the Trustee has or assumes no responsibility as to the accuracy or completeness of any information contained in this Official Statement or any other such disclosure documents.

The Underwriter has provided the following sentence for inclusion in this Official Statement. The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, the Underwriter's responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The Certificates have not been registered with the Securities and Exchange Commission due to certain exemptions contained in the Securities Act of 1933, as amended. In making an investment decision, investors must rely on their own examination of the County, the Certificates and the terms of the offering, including the merits and risks involved. The Certificates have not been recommended by any federal or state securities commission or regulatory authority, and the foregoing authorities have neither reviewed nor confirmed the accuracy of this document.

### **CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

This Official Statement, including the Appendices hereto, contains statements which should be considered "forward-looking statements," meaning they refer to possible future events or conditions. Such statements are generally identifiable by the words such as "plan," "expect," "estimate," "budget" or similar words. THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. THE COUNTY DOES NOT EXPECT OR INTEND TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN THEIR EXPECTATIONS, OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED, OCCUR.



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## SUMMARY OF THE OFFERING

The following is a summary of certain information discussed in this Official Statement. Capitalized terms used in this Official Statement are defined in the text, defined under “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE”, or used with the meanings assigned in the Trust Agreement relating to the Certificates. This summary is qualified in its entirety by reference to the more detailed information included elsewhere in this Official Statement.

**The Certificates**.....The Certificates of Participation, Series 2020 (the “Certificates”), in the original aggregate principal amount of \$15,100,000\*, dated as of the date of delivery, are being issued in connection with Barnes County, North Dakota (the “County”), as lessee, entering into a Lease-Purchase Agreement, dated as of October 1, 2020 (“Lease”), with the Bank of North Dakota (the “Trustee”), as lessor, with respect to the Correctional Facility Project, as defined below. The Certificates will be issued as fully registered certificates, without coupons, in book-entry form. Interest on the Certificates is payable commencing May 1, 2021\* and semiannually thereafter on each May 1 and November 1 (each a “Payment Date”). Principal of the Certificates is payable, commencing May 1, 2021\*, and annually thereafter on each May 1 Payment Date in the years and in the amounts shown on the inside front cover page hereof. See “THE CERTIFICATES” in this Official Statement.

**Use of Proceeds**.....The proceeds of the Certificates, along with available funds of the County, will be used by the County in order to: (i) finance the costs of participation in the design, construction, installation and equipping of an approximately 46-bed replacement correctional facility for the County (the “Correctional Facility Project”) located in Valley City, North Dakota (the “Project Site”); and (ii) pay costs of issuance for the Certificates. See “SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT” in this Official Statement.

**The Correctional Facility Project**.....The Correctional Facility Project consists of the design, construction, installation, and equipping of a 46-bed replacement correctional facility to be located in Valley City, North Dakota. Valley City is the County seat for Barnes County, North Dakota. The Correctional Facility Project is being constructed to replace the obsolete facilities and eliminate the expense associated with using correctional facilities outside of the County. The County’s correctional facility serves multiple jurisdictions. The County had in place for the original correctional facility, and anticipates having in place for the new Correctional Facility Project, contracts with the City of Valley City and the following North Dakota counties Dickey, LaMoure, Griggs, Ransom, Steele, and Sargent. See “SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT” in this Official Statement.

**Security**.....The Certificates will be issued pursuant to the terms of a Trust Agreement, dated as of October 1, 2020 (the “Trust Agreement”), by the Trustee and joined in by the County. The Certificates will be special, limited obligations of the County payable solely from Rental Payments. The Project Site will be leased to the Trustee, as lessee, by the County, as lessor, pursuant to the terms of a Ground Lease, dated as of October 1, 2020 (the “Ground Lease”). The term of the Ground Lease is until the earlier of (i) the date of payment in full by the County of the Lease and the accompanying payment of the Certificates, or (ii) May 1, 2070 is 50 years. The Trustee, as lessor, will lease back to the County, as lessee, the Correctional Facility Project pursuant to the Lease.

The County will annually levy and appropriate taxes from a County capital projects tax (the “Annual Capital Levy”) to pay debt service on the Certificates. Based upon property tax year 2020 information, the Annual Capital Levy would have raised approximately \$869,220.50 if it had been in place. If the Annual Capital Levy is insufficient to cover the Rental Payments, then the County shall appropriate funds from the County’s General Fund to make the Lease payments, subject to the County’s right to not appropriate sufficient funds in any fiscal year. Subject to an event of

Nonappropriation, the County will utilize other funds to pay for the operations of the Correctional Facility Project.

*The Certificates do not constitute a general obligation of the County and the full faith and credit and unlimited ad valorem taxing powers of the County are not pledged to the payment of the Rental Payments. The Lease is subject to termination by the County at the end of any Fiscal Year of the County if the governing body thereof does not appropriate money sufficient to continue the Lease for the ensuing Fiscal Year. In the event the Lease is terminated pursuant to such nonappropriation, there is no obligation of the County for future Rental Payments though the County shall forfeit its use of the Correctional Facility Project for the remainder of the Ground Lease. Although the Trustee will attempt to lease or generate revenue from the Correctional Facility Project in the event that the County (i) defaults under the terms of the Lease, or (ii) terminates the Lease, no assurance can be given that the Trustee will be able to lease, sell, or generate revenue from the Correctional Facility Project to a user who will pay any rent or pay rent in an amount sufficient to pay debt service on the Certificates. The Certificates will not be secured by a debt service reserve fund. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” and “SECURITY FOR THE CERTIFICATES” in this Official Statement.*

**Book-Entry System**..... The Certificates will be fully registered as to principal and interest in the name of Cede & Co. as nominee of The Depository Trust Company (“DTC”). Subject to certain exceptions described herein, all purchases, sales or other transfers of beneficial ownership in the Certificates are to be made by book-entry only, and no owner will receive, hold or deliver any certificates as long as DTC or any successor securities depository is the registered owner of the Certificates. See “APPENDIX E – BOOK-ENTRY ONLY SYSTEM” in this Official Statement.

**Redemption**..... The Certificates maturing on or after May 1, 20\_\_\* are subject to redemption and prepayment at the option of the County on or after \_\_\_ 1, 20\_\_\*, at a price equal to the principal amount to be redeemed plus accrued interest to the date of redemption, as further described in this Official Statement. Certain maturities of the Certificates are also subject to mandatory sinking fund redemption as described in this Official Statement. In certain circumstances, the Certificates are also subject to mandatory extraordinary redemption in the event of a casualty loss to or the condemnation of all or a portion of the Correctional Facility Project. See “THE CERTIFICATES – Redemption” in this Official Statement.

**Tax Status**..... The County has covenanted to comply with requirements necessary under the Internal Revenue Code of 1986, as amended (the “Code”), to establish and maintain the exclusion from gross income of the interest component of the Rental Payments under the Lease that correspond to the Certificates. See “TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS” and “APPENDIX F – FORM OF BOND COUNSEL OPINION” in this Official Statement.

**Secondary Market Disclosure**..... The County will make certain secondary market disclosure pertaining to the Certificates. See “CONTINUING DISCLOSURE UNDERTAKING” and “APPENDIX D – FORM OF CONTINUING DISCLOSURE UNDERTAKING” in this Official Statement.

**Legal Counsel**..... Certain legal matters incident to the authorization, issuance, sale and delivery of the Certificates are subject to the approval of Arntson Stewart Wegner PC, Fargo, North Dakota, as Bond Counsel. See “LEGAL MATTERS” and “ENFORCEABILITY OF OBLIGATIONS” in this Official Statement.

**\$15,100,000\***

**CERTIFICATES OF PARTICIPATION, SERIES 2020**  
**Evidencing the Proportional Interests of the Registered Owners thereof in**  
**Lease Payments under a Lease-Purchase Agreement, dated as of October 1,**  
**2020, between BARNES COUNTY, NORTH DAKOTA, as Lessee, and**  
**BANK OF NORTH DAKOTA, as Lessor**

**INTRODUCTION**

This Official Statement, which includes the Summary of the Offering and the Appendices hereto, sets forth information relating to Barnes County, North Dakota (the “County”) and the Certificates of Participation, Series 2020 (the “Certificates”), in the original aggregate principal amount of \$15,100,000\*. The County is authorized to enter into a Lease-Purchase Agreement, dated as of October 1, 2020 (the “Lease”), with the Bank of North Dakota (the “Trustee”) and the Certificates are authorized to be issued pursuant to (i) a Resolution adopted by the Board of Commissioners of the County (the “County Commission”), and (iii) a Trust Agreement, dated as of October 1, 2020 (the “Trust Agreement”), by the Trustee and joined in by the County.

Definitions of certain capitalized terms used in this Official Statement are contained in “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE.” Certain terms which have been capitalized but not defined herein have the meanings assigned to those terms in the Trust Agreement and the Lease.

The County will use proceeds of the Certificates, along with available funds of the County, in order to: (i) finance the design, construction, installation and equipping of a 46-bed Barnes County Correctional Facility (the “Correctional Facility Project”) located in Valley City, North Dakota (the “Project Site”); and (ii) pay costs of issuance for the Certificates. See “SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT” in this Official Statement.

The Project Site is owned by the County and is leased by the County to the Trustee and, in turn, the Trustee obtained a leasehold interest in the Project Site pursuant to a Ground Lease, dated as of October 1, 2020 (the “Ground Lease”), between the Trustee, as lessee, and the County, as lessor. The County will construct the Correctional Facility Project on the Project Site and the Trustee will lease the Correctional Facility Project to the County pursuant to the terms of the Lease. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” and “SOURCES USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT” in this Official Statement.

The County will annually levy and appropriate taxes from a County capital projects tax (the “Annual Capital Levy”) to pay debt service on the Certificates. Based upon property tax year 2020 information, the Annual Capital Levy would have raised approximately \$869,220.50 if it had been in place. If the Annual Capital Levy is insufficient to cover the Rental Payments, then the County shall appropriate funds from the County’s General Fund to make the Lease payments, subject to the County’s right of nonappropriation in any Fiscal Year. The County will utilize other funds to pay for the operations of the Correctional Facility Project. The County may determine not to renew, and therefore terminate all of the County’s obligations under the Lease on an annual basis. The exercise of the County of its option to not renew, and therefore terminate its obligations under the Lease is determined by a failure of the County Commission to specifically appropriate money sufficient to pay Rental Payments for the next ensuing Fiscal Year (a “Nonappropriation”). The Certificates will be special, limited obligations of the County payable solely from Rental Payments under the Lease. *The Certificates are not secured by a debt service reserve fund.* See “SECURITY FOR THE CERTIFICATES,” “RISK FACTORS” and “APPENDIX C –

DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” in this Official Statement.

*The Certificates are not a general obligation of the County and the full faith and credit and ad valorem taxing powers of the County are not pledged to the payment of the Rental Payments. The Lease is subject to termination by the County at the end of any Fiscal Year of the County if the governing body thereof does not appropriate money sufficient to continue the Lease for the ensuing Fiscal Year. In the event the Lease is terminated pursuant to such nonappropriation, there is no obligation of the County for future Rental Payments though the County shall forfeit its use of the Correctional Facility Project for the remainder of the Ground Lease. Although the Trustee will attempt to lease or generate revenue from the Correctional Facility Project in the event that the County (i) defaults under the terms of the Lease, or (ii) terminates the Lease, no assurance can be given that the Trustee will be able to lease, sell, or generate revenue from the Correctional Facility Project to a user who will pay any rent or pay rent in an amount sufficient to pay debt service on the Certificates.*

This Official Statement contains information about the Lease, the Certificates, the Trust Agreement, the Trustee, the County and other matters pertinent to the offering of the Certificates. The references to and summaries of provisions of the laws of the State and the descriptions of documents included herein do not purport to be complete and are qualified in their entirety by reference to the complete provisions thereof.

**THE COUNTY**

**General Information**

Barnes County is a political subdivision of the State of North Dakota and is located in east-central North Dakota just west of Cass County in the eastern part of North Dakota along Interstate Highway 94. The County encompasses an area of approximately 967,680 acres (1,512 square miles) with an estimated population of 10,415 in 2019, as estimated by the U.S. Census Bureau. The City of Valley City is the county seat of the County and is located approximately 60 miles directly west of Fargo, North Dakota. The County is served by Interstate Highway 94, State Highways 1, 32, 38, 46, and 200 and numerous secondary highways, B-N Railway, SooLine (CP Rail), Greyhound Bus Lines, numerous motor freight carriers, and a county airport located just north of Valley City, North Dakota.

**Form of Government**

The County’s governing body is the County Commission, which is comprised of five commissioners who are elected every two years. The current County Commission members and the expiration of their respective terms of office are as follows:

<u>Name</u>	<u>District</u>	<u>Term Expires</u>
Cindy Schwehr	District 1	2020
Shawn Olauson	District 2	2022
Bill Carlblom	District 3	2022
Vicky Lovell	District 4	2022
John Froelich	District 5	2020

Beth Didier is the County Auditor. Stacie Leier is the Director of Tax Equalization. Tonya Duffy is the State’s Attorney.

## **Principal Governmental Services**

The County provides a number of basic services to its residents which include sheriff's office, development of the community through planning, zoning and building inspections, construction and maintenance of roads, bridges and culverts, cultural and recreational activities, public health services, and corrections.

## **Financial Accounting and Control Procedures**

The County's financial statements are prepared on the accrual basis of accounting for government wide and proprietary fund financial statements and the modified accrual basis for governmental type funds in accordance with generally accepted accounting principles as promulgated by the Governmental Accounting Standards Board ("GASB").

## **SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT**

The County is constructing the Correctional Facility Project to comply with North Dakota laws that require that the County house inmates in the County in either the County's own jail facility or provide for housing of inmates in another County's correctional facility. The County believes that it is more efficient operationally and financially for the County to operate its own correctional facility in the County rather than utilize a correctional facility in another county or counties.

In December 2018, the County received an order from North Dakota Department of Corrections and Rehabilitation that reclassified the County's correctional facility from a Grade One correctional facility to a Grade Three correctional facility. A Grade One correctional facility may house offenders for longer periods of time and a Grade Three correctional facility may not detain or hold inmates for more than ninety-six (96) hours. The Correctional Facility Project is being constructed to replace the obsolete facilities and eliminate the expense associated with using correctional facilities outside of the County as a result of the existing facility being reclassified as a Grade Three correctional facility that can only house offenders for a limited period of time. The County's existing correctional facility was constructed in 1908 and partially renovated in 1977. As of 2018, prior to the reclassification of the existing correctional facility, the average length of stay of an offender in the County's correctional facility was eight (8) days. After the reclassification order from the North Dakota Department of Corrections and Rehabilitation, the County engaged various engineers to review the existing correctional facility for renovation and repairs and the County determined that it would be cost prohibitive to renovate, repair and expand the existing correctional facility to restore it to a Grade One level classification.

As a result of the downgrading of the County's correctional facility from a Grade One facility to a Grade Three facility (and the corresponding limit on the length of time the County can house offenders in its facility), the County has incurred additional costs of approximately \$200,000 a year in 2019 and 2020 for housing offenders in other counties correctional facilities. This approximately \$200,000 amount does not include the cost and time for Barnes County Sheriff's Office officials to transport inmates back and forth from correctional facilities in other jurisdictions

The Correctional Facility Project is a 46-bed jail facility. Construction of the Correctional Facility Project began in July 2020 and substantial completion is anticipated to be achieved in August 2021. The building shell will be constructed of flat precast concrete panels, while the interior utilizes reinforced concrete blocks in secure areas and metal stud walls in administrative sections. The Correctional Facility Project will be primarily a single-story facility with the exception of the inmate housing units. The housing units in the Correctional Facility Project will include 26 beds on the ground floor and 20 beds on the mezzanine level with stairs and an elevator between levels. The cells/dormitory style housing will be



constructed with stacked pre-engineered steel cells and concrete blocks. The County expects that the Correctional Facility Project, when placed in service, will be considered to be a Grade One correctional facility and will be able to house offenders for longer than ninety-six (96) hours. This would enable the County to begin housing offenders from other counties for longer period so time like it had previously done (at that revenues from such activity will rebound to historic levels).

The County's correctional facility serves multiple jurisdictions. The County had in place for the existing correctional facility, and anticipates having in place for the new Correctional Facility Project, contracts with the City of Valley City and the following North Dakota counties Dickey, LaMoure, Griggs, Ransom, Steele, and Sargent. The County received the following revenues in the last three (3) fiscal years as a result of housing offenders for other units of local government: (i) 2017, \$94,375, (ii) 2018, \$76,635, and (iii) 2019, \$26,923 (unaudited).

*Construction Contract.* The Correctional Facility Project will be constructed by AP Midwest, LLC ("AP Midwest"), a Minnesota corporation based in Minneapolis, Minnesota, as construction manager and constructor. AP Midwest has many years of experience providing pre-construction planning, construction management and general contracting services to commercial, healthcare, and education clients. The County entered into an AIA-A133 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price with AP Midwest (the "Construction Contract"). Subject to additions and deductions authorized by the County pursuant to the Construction Contract, the guaranteed maximum price will not exceed \$14,042,959 for construction of the Correctional Facility Project. In addition, architectural, engineering, soft costs and owner contingencies total an additional \$2,170,021, resulting in total project costs of approximately \$16,212,981. The Construction Contract provides that AP Midwest will achieve substantial completion not later than August 2021. The Construction Contract provides that any savings for the construction of the Correctional Facility Project will go to the County. The Construction Contract does not require liquidated damages if there is a delay in the date of Substantial Completion and there is not a completion bonus. The Construction Contract will provide that if AP Midwest is delayed in starting the work by circumstances outside its control, the County, Klein McCarthy & Co. Architects, Ltd. (the "Architect"), and AP Midwest will expend their best efforts to coordinate a completion plan that will satisfy the City of Valley City for issuance of a temporary certificate of occupancy in fall 2021. The Construction Contract does not require a payment and performance bond equal to 100 percent of the guaranteed maximum price. The Construction Contract will not cover the furniture, fixtures, and equipment to be purchased by the County from proceeds of the Certificates for the Correctional Facility Project. The Construction Contract does not contain any special provisions relating to the COVID-19 pandemic.

*Insurance.* The Lease requires the County to maintain in effect "all risk" property insurance on the Correctional Facility Project in amounts comparable to those maintained by prudent owners of such facilities. In the event the Correctional Facility Project is damaged or destroyed, the County may decide, in its discretion, whether to apply insurance claim payment proceeds to restoration of the Correctional Facility Project or the redemption of Certificates.

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*Sources and Uses.* The Certificates are issued for the purposes of providing funds to be used, along with other available funds of the County, to (i) finance the costs of the Correctional Facility Project, and (ii) pay costs of issuance for the Certificates. The table below sets forth the estimated sources and uses of the proceeds of the Certificates.

<b>Sources of Funds:*</b>	
Par Amount of Certificates	\$15,100,000
[Net] Original Issue Premium	700,114
Equity Contribution	700,000
<b>Total Sources of Funds</b>	<b>\$16,500,114</b>

<b>Uses of Funds:*</b>	
Deposit to Construction Account	\$16,212,980
Costs of Issuance <sup>(1)</sup>	287,134
<b>Total Uses of Funds</b>	<b>\$16,500,114</b>

<sup>(1)</sup> *Includes various attorneys' fees, Underwriter's fees and discount, Rating Agency fee, Trustee fees, and other miscellaneous costs.*

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## DEBT SERVICE SCHEDULE

The table below sets forth the amounts required each year to be paid with respect to the Certificates, assuming no prepayments. Interest on the Certificates will be paid on May 1 and November 1 of each year (each a "Payment Date"), commencing May 1, 2021\*. Principal of the Certificates will be paid on May 1 of each year, commencing May 1, 2021\*.

<u>Year (Ending May 1)</u>	<u>Principal Amount*</u>	<u>Interest Amount<sup>(1)*</sup></u>	<u>Annual Debt Service*</u>
2021	\$175,000	\$278,293	\$453,293
2022	320,000	505,900	825,900
2023	330,000	496,300	826,300
2024	340,000	486,400	826,400
2025	350,000	476,200	826,200
2026	365,000	465,700	830,700
2027	375,000	454,750	829,750
2028	385,000	443,500	828,500
2029	395,000	431,950	826,950
2030	410,000	420,100	830,100
2031	420,000	407,800	827,800
2032	435,000	395,200	830,200
2033	445,000	382,150	827,150
2034	460,000	368,800	828,800
2035	475,000	355,000	830,000
2036	490,000	340,750	830,750
2037	500,000	326,050	826,050
2038	520,000	306,050	826,050
2039	545,000	285,250	830,250
2040	565,000	263,450	828,450
2041	585,000	240,850	825,850
2042	605,000	223,300	828,300
2043	625,000	205,150	830,150
2044	640,000	186,400	826,400
2045	660,000	167,200	827,200
2046	680,000	147,400	827,400
2047	710,000	120,200	830,200
2048	735,000	91,800	826,800
2049	765,000	62,400	827,400
2050	795,000	31,800	826,800
<b>Totals</b>	<b>\$15,100,000</b>	<b>\$9,366,093</b>	<b>\$24,466,093</b>

<sup>(1)</sup> Bearing an average interest rate of \_\_\_\_\_% per annum.

## THE CERTIFICATES

The Certificates are dated as of their date of issuance and are issued as fully registered certificates in book-entry form. Interest on the Certificates is payable commencing May 1, 2021\* and semiannually thereafter on each May 1 and November 1 to the holder registered on the books of the County (initially Cede & Co. as nominee of The Depository Trust Company ("DTC")) as of the 15th day of the calendar month prior to a Payment Date. Principal of the Certificates will be paid annually on each May 1,

commencing May 1, 2021\*. The Certificates will mature in the amounts and on the dates shown on the inside front cover page of this Official Statement. The Trustee will act as Certificate Registrar for the Certificates (the “Certificate Registrar”) and the County will pay for registration services.

**Redemption**

**Optional Redemption.** The County may elect on or after \_\_\_\_ 1, 20\_\_\* to prepay the Lease and redeem the Certificates maturing on or after May 1, 20\_\_\*, at a price equal to the principal amount to be redeemed plus accrued interest to the date of redemption. Redemption may be in whole or in part and if in part at the option of the County and in such manner as the County shall determine. If less than all of the Certificates of a maturity are called for redemption, the County will notify the Trustee of the particular amount of such maturity to be prepaid. The Trustee will determine by lot the amount of each participant’s interest in such maturity to be redeemed and each participant will the beneficial ownership interests in such maturity to be redeemed. All prepayments will be at a price of par plus accrued interest. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” in this Official Statement.

All Certificates or portions thereof called for redemption will cease to bear interest after the specified redemption date, provided funds for their redemption are on deposit at the place of payment. In the case of a prepayment in part of Rental Payments, the schedule of Rental Payments due under the Lease is to be recalculated by the County Auditor of the County.

**Mandatory Sinking Fund Redemption.** Certificates maturing on May 1 in the years 2038\*, 2040\*, 2042\*, 2045\*, and 2050\*, are subject to mandatory sinking fund redemption, by random selection, at a redemption price equal to the principal amount so to be redeemed plus accrued interest to the redemption date, without premium, in accordance with the following schedule:

***\$1,020,000\* 2020 Term Certificate Maturing May 1, 2038\****

<b>Payment Date (August 1)</b>	<b>Principal Amount</b>	<b>Payment Date (August 1)</b>	<b>Principal Amount</b>
2037		2038 <sup>(1)</sup>	

<sup>(1)</sup>Stated maturity.

***\$1,110,000\* 2020 Term Certificate Maturing May 1, 2040\****

<b>Payment Date (August 1)</b>	<b>Principal Amount</b>	<b>Payment Date (August 1)</b>	<b>Principal Amount</b>
2039		2040 <sup>(1)</sup>	

<sup>(1)</sup>Stated maturity.

***\$1,190,000\* 2020 Term Certificate Maturing May 1, 2042\****

<b>Payment Date (August 1)</b>	<b>Principal Amount</b>	<b>Payment Date (August 1)</b>	<b>Principal Amount</b>
2041		2042 <sup>(1)</sup>	

<sup>(1)</sup>*Stated maturity.*

***\$1,925,000\* 2020 Term Certificate Maturing May 1, 2045\****

<b>Payment Date (August 1)</b>	<b>Principal Amount</b>	<b>Payment Date (August 1)</b>	<b>Principal Amount</b>
2043 2044		2045 <sup>(1)</sup>	

<sup>(1)</sup>*Stated maturity.*

***\$3,685,000\* 2020 Term Certificate Maturing May 1, 2050\****

<b>Payment Date (August 1)</b>	<b>Principal Amount</b>	<b>Payment Date (August 1)</b>	<b>Principal Amount</b>
2046 2047 2048		2049 2050 <sup>(1)</sup>	

<sup>(1)</sup>*Stated maturity.*

***Extraordinary Mandatory Redemption.*** If the Lease is terminated by reason of the occurrence of a Nonappropriation or an Event of Default under the Lease or the Trustee with the written consent of the County, fails to repair or replace the Correctional Facility Project upon the occurrence of any of the following: (i) the Correctional Facility Project is damaged or destroyed in whole or in part by fire or other casualty; (ii) title to, or the temporary or permanent use of the Correctional Facility Project, or any portion thereof, has been taken by eminent domain by any governmental body; (iii) breach of warranty or any material defect with respect to the Correctional Facility Project becomes apparent; or (iv) title to or the use of either or any portion of the Correctional Facility Project is lost by reason of a defect in title thereto; and the Net Proceeds (as defined in the Lease) of any insurance, performance bond or condemnation award, or Net Proceeds received as a consequence of defaults under contracts relating to the Correctional Facility Project, made available by reason of such occurrences, are insufficient to pay in full, the cost of repairing or replacing such Correctional Facility Project and the County does not appropriate sufficient funds for such purpose, the Certificates are required to be called for redemption. If so called for redemption, the Certificates are to be redeemed in whole but not in part on such date or dates as the Trustee may determine to be in the best interest of the Owners, for a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date (subject to the availability of funds as described below).

If the Net Proceeds, including the Net Proceeds from the exercise of any Lease remedy under the Lease (“Lease Remedies”), otherwise received and other money then available under the Trust Agreement are insufficient to pay in full the principal of and accrued interest on all Outstanding Certificates, including Outstanding Certificates and any Outstanding Additional Certificates, the Trustee may, or at the request of Owners of a majority in aggregate principal amount of the Outstanding Certificates, and upon

indemnification as to costs and expenses as provided in the Trust Agreement, without any further demand or notice, exercise all or any combination of Lease Remedies as provided in the Lease, except as otherwise described above concerning the application of Net Proceeds and other available money for the redemption or payment of Certificates, and the Outstanding Certificates are to be redeemed by the Trustee from the Net Proceeds resulting from the exercise of such Lease Remedies and all other money, if any, then on hand and being held by the Trustee for the benefit of the Owners of the Certificates.

If the Net Proceeds resulting from the exercise of such Lease Remedies and other available money are insufficient to redeem the Outstanding Certificates, including the Outstanding Certificates and any Outstanding Additional Certificates, at one hundred percent (100%) of the principal amount thereof plus interest accrued to the redemption date, then such Net Proceeds resulting from the exercise of such Lease Remedies and other available money are to be allocated proportionately among the Certificates, according to the principal amount thereof Outstanding. In the event that such Net Proceeds resulting from the exercise of such Lease Remedies and other available money are in excess of the amount required to redeem the Certificates at one hundred percent (100%) of the principal amount thereof plus interest accrued to the redemption date, then such excess money is to be paid to the County as an overpayment of the Prepayment Price. Prior to any distribution of the Net Proceeds resulting from the exercise of any of such remedies, the Trustee is entitled to payment of its reasonable and customary fees for all services rendered in connection with such disposition, as well as reimbursement for all reasonable costs and expenses, including attorneys' fees, incurred thereby, from proceeds resulting from the exercise of such Lease Remedies and other available money.

### **Partial Redemption**

If less than all of the Certificates are to be redeemed, the Certificates are to be redeemed only in integral multiples of \$5,000. The Trustee is to treat any Certificate of denomination greater than \$5,000 as representing that number of separate Certificates each of the denomination of \$5,000 as can be obtained by dividing the actual principal amount of such Certificate by \$5,000.

### **Notice of Redemption**

Whenever the Certificates are to be redeemed, the Trustee is required to, not less than thirty (30) days prior to the redemption date (except for Extraordinary Mandatory Redemption notice of which is required to be immediate), mail notice of redemption to all Owners of all Certificates to be redeemed at their registered address. However, failure to give such notice by mailing, or any defect therein, does not affect the validity of any proceedings for the redemption of the Certificates as to which no such failure has occurred.

In the case of an optional redemption under the Trust Agreement, the notice may state (a) that it is conditioned upon the deposit of money, in an amount sufficient to effect the redemption, with the Trustee on or before the redemption date, or (b) that the County retains the right to rescind such notice on or prior to the scheduled redemption date (in either case, a "Conditional Redemption"), and such notice and optional redemption shall be of no effect if such money is not so deposited or if the notice is rescinded as hereinafter described. On or before the redemption date, funds sufficient to redeem such Certificates, including accrued interest thereon to the redemption date, shall be deposited with the Trustee. The Certificates thus called shall not, on or after the specified redemption date, bear any interest and, except for the purpose of payment, shall not be entitled to the lien of the Trust Agreement. Any Conditional Redemption may be rescinded in whole or in part at any time on or before the redemption date if the County delivers a certificate of the County to the Trustee at least five days prior to the effective date of the rescission, which shall be no later than five days prior to the redemption date instructing the Trustee to rescind the redemption notice. The Trustee shall give prompt notice of such rescission to the affected Registered Owners. Any Certificates subject to Conditional Redemption where redemption has been rescinded shall remain outstanding, and the

rescission shall not constitute an Event of Default. Further, in the case of a Conditional Redemption, the failure of the County to make funds available in part or in whole on or before the redemption date shall not constitute an Event of Default, and the Trustee shall give immediate notice to DTC or the affected Registered Owners that the redemption did not occur and that the Certificates called for redemption and not so paid remain outstanding.

All Certificates called for redemption cease to bear interest after the specified redemption date, provided that sufficient funds for redemption are on deposit with the Trustee.

### **Book-Entry Only System**

So long as a book-entry system is used for determining beneficial ownership of the Certificates, the Trustee, as registrar, is to send such notice to DTC or to Cede & Co., as nominee for DTC. DTC was organized to hold securities of its Participants. Any failure of DTC to advise any Participant, or of any Participant or indirect participant to notify the Beneficial Owner, of any such notice and its content or effect does not affect the validity of the redemption of the Certificates called for redemption or any other action premised on that notice. In the event of a partial call, DTC's practice is to determine by lot the amount of the interest of each Participant in the Certificates to be redeemed, and each such Participant then selects by lot the ownership interest in such Certificates to be redeemed. When DTC and Participants allocate the call, the Beneficial Owners of the book-entry interests called are to be notified by the broker or other organization responsible for maintaining the records of those interests and subsequently credited by that organization with the proceeds once the Certificates are redeemed. See "APPENDIX E – BOOK-ENTRY ONLY SYSTEM" in this Official Statement.

## **SECURITY FOR THE CERTIFICATES**

### **Special, Limited Obligations**

The Certificates will be special, limited obligations of the County payable solely from Rental Payments. The Certificates are not a general obligation of the County and the full faith and credit and ad valorem taxing powers of the County are not pledged to the payment of the Rental Payments. The Lease is subject to termination by the County at the end of any Fiscal Year of the County if the governing body thereof does not appropriate money sufficient to continue the Lease for the ensuing Fiscal Year. In the event the Lease is terminated pursuant to such nonappropriation, there is no obligation of the County for future Rental Payments though the County shall forfeit its use of the Correctional Facility Project for the remainder of the Ground Lease. Although the Trustee will attempt to lease or generate revenue from the Correctional Facility Project in the event that the County (i) defaults under the terms of the Lease, or (ii) terminates the Lease, no assurance can be given that the Trustee will be able to lease, sell, or generate revenue from the Correctional Facility Project to a user who will pay any rent or pay rent in an amount sufficient to pay debt service on the Certificates. See "APPENDIX B – AUDITED FINANCIAL STATEMENTS OF THE COUNTY FOR FISCAL YEAR ENDED DECEMBER 31, 2018" in this Official Statement.

Under the terms of the Trust Agreement and the Lease, the County is obligated to make semi-annual Rental Payments to the Trustee on each April 25 and October 25, commencing April 25, 2021\*, such that (i) the April 25, 2021 payment will be equal to 100% of the interest and principal due on the Certificates on the May 1, 2021\* Payment Date, and (ii) for each April 25 and October 25 thereafter will be equal to the sum of (a) the amount of interest due on the Certificates on the next succeeding May 1 or November 1 Payment Date, as applicable, plus (b) one-half (1/2) of the amount of the principal due on the applicable May 1 Payment Date. For example, (i) the October 25, 2021 Rental Payment pays that portion of the interest due on November 1, 2021\* and one-half (1/2) of the principal due on May 1, 2022\* and

(b) the April 25, 2022, Rental Payment pays the interest due on the Certificates on May 1, 2022\* and one-half (1/2) of the principal due on May 1, 2022\*.

### **Rental Payments and Annual Capital Levy by the County**

The County will annually levy and appropriate taxes through the Annual Capital Levy with which to fund its Rental Payments under the Lease. The County will make the Rental Payments directly to the Trustee. Pursuant to Section 11-11-14, N.D.C.C., and the approval of the County Commission, the County is authorized to enter into the Lease and to make an annual tax levy in an amount sufficient to make Rental Payments under the Lease, which Rental Payments under the Lease (subject to the annual right of Nonappropriation) will be in an amount sufficient to pay the principal of and interest on the Certificates when due. The County will utilize other funds to pay for the operations of the Correctional Facility Project, including those saved by not having to transport inmates outside of the County.

The County is authorized pursuant to Section 57-15-06.6, N.D.C.C., to levy the Annual Capital Levy which is a levy not to exceed ten (10) mills for county capital projects tax which is expected to be used to pay the Rental Payments under the Lease. Based upon property tax year 2020 information, the Annual Capital Levy would have raised approximately \$869,220.50 if it had been in place. If the Annual Capital Levy is insufficient to cover the Rental Payments, then the County shall appropriate funds from the County's General Fund to make the Lease payments, subject to the County's right of nonappropriation in any Fiscal Year. North Dakota counties are authorized to levy up to 60 mills for general fund purposes, subject to certain exceptions. The County is currently (in 2020) levying 58.23 mills for its General Fund. In 2019 and 2020, the County has paid approximately \$200,000 a year to house offenders in other correctional facilities as a result of the County's existing correctional facility being reclassified. This amount does not include the increased operational cost for the Sheriff's Office to transport to and from the County or the loss of revenue to the County for the housing of offenders from other jurisdictions when the correctional facility was reclassified. In addition, the County anticipates that the cost savings of the Correctional Facility Project will provide cost savings for the County's General Fund.

### **Rental Payments**

As more fully set forth under the caption "DEFINITIONS" in APPENDIX C, the term "Rental Payments" generally means the amount payable by the County under the Lease during the Lease Term for the right to use the Leased Property. The Lease Term and the schedule of payments of Rental Payments are designed to produce money sufficient to pay the Certificates and interest thereon when due (if the County elects not to terminate the Lease prior to the end of the Lease Term). Rental Payments and Additional Rentals may be paid from any lawfully available County money appropriated for that purpose.

### **Exercise of Remedies under Lease and Trust Agreement**

Upon the occurrence of a Nonappropriation or an Event of Default under the Lease, the Trustee is permitted to sell or lease the Project Site in accordance with the terms of the Ground Lease, or exercise its other remedies under the Lease and the Trust Agreement. See "THE LEASE", "APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE" in this Official Statement. See "THE CERTIFICATES – Redemption" for a description of the terms on which the Certificates are subject to redemption upon the occurrence of a Nonappropriation or an Event of Default under the Lease.

### **No Debt Service Reserve Fund for the Certificates**

The Certificates will not be secured by a debt service reserve fund.



## **Funds Established Pursuant to the Trust Agreement**

The Trust Agreement provides for the establishment of several funds and accounts within the “Barnes County, North Dakota, Lease-Purchase Agreement Trust Fund – Certificates of Participation, Series 2020” (the “Trust Fund”), all of which will be in the custody of the Trustee, which accounts include the Construction Account, the Rental Payment Account, the Redemption Account, the Cost of Issuance Account, and the Rebate Account, certain of which are discussed below. Amounts on deposit in the Rebate Account are not part of the Trust Estate and are not available to pay debt service on the Certificates. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” for a description of certain funds and accounts established pursuant to the Trust Agreement.

**Construction Account.** The Construction Account is established by the Trust Agreement. Pursuant to the Trust Agreement, proceeds of the Certificates not used to pay costs of issuance will be deposited in the Construction Account and will be used for the payment or reimbursement of construction costs. The Trustee will disburse funds upon a written request for disbursement executed by an authorized official of the County. Any revenues received from the investment of amounts in the Construction Account shall be retained in the Construction Account. Upon the completion of the Correctional Facility Project and receipt by the Trustee of an Acceptance Certificate in the form attached to the Lease, the Trustee will transfer any amounts remaining in the Construction Account to the Rental Payment Account. Alternatively, such amounts may be disbursed to the County upon written request, and immediately used to pay additional capital costs relating to the Improvements.

**Rental Payment Account.** The Rental Payment Account is established by the Trust Agreement. Pursuant to the Trust Agreement, the Trustee will deposit into the Rental payment Account: (i) Rental Payments made by the County which is designated and to be paid under Exhibit B to the Lease; and (ii) all other money received by the Trustee with respect to the Lease or the Correctional Facility Project to be deposited into the Rental Payment Account. Money in the Rental Payment Account is to be used solely for the payment of principal and interest on the Certificates. Any revenues received from the investment of amounts in the Rental Payment Account shall be retained in the Rental Payment Account. In the event the Certificates are to be redeemed as described in “THE CERTIFICATES – Redemption,” amounts in the Rental Payment Account will be transferred to the Redemption Account along with other money held by the Trustee for such purpose. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE TRUST AGREEMENT –Accounts” in this Official Statement.

**Cost of Issuance Account.** Money held in the Cost of Issuance Account shall be used to pay Cost of Issuance as directed by the County. The Trustee shall transfer any amounts held in the Cost of Issuance Account that are not required to pay Cost of Issuance to the Construction Account. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE TRUST AGREEMENT –Accounts” in this Official Statement.

**Rebate Account.** The Rebate Account is established by the Trust Agreement. Pursuant to the Trust Agreement, the Trustee is to deposit any money delivered to the Trustee that is accompanied by instructions to deposit the same into the Rebate Account. No later than 30 days after May 1, 2025 and every five years thereafter, the Trustee shall pay to the United States of America 90% of the amount required to be on deposit in the Rebate Account as of such payment date. No later than 60 days after the final retirement of the Certificates, the Trustee shall pay to the United States of America 100% of the amount required to be on deposit in the Rebate Account which shall remain in effect for such period of time as is necessary for such final payment to be made. The Trustee, upon direction from the County, will transfer moneys from the Construction Account or the Rental Payment Account to the Rebate Account the amount required to be

deposited. The County has agreed in the Lease, that if, for any reason, the amount on deposit in the Rebate Account is less than the amount required to be paid to the United States of America on any date, the County will pay to the Trustee as Additional Rentals under the Lease the amount required to make such payments on such date. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE TRUST AGREEMENT –Accounts” in this Official Statement.

### **Additional Certificates**

Under certain circumstances, Additional Certificates may be secured by the Lease Revenues under the Lease and the Correctional Facility Project equally and ratably with the Certificates in accordance with the provisions of the Trust Agreement. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” in this Official Statement.

## **THE LEASE**

The County and the Trustee entered into the Lease, pursuant to which the Trustee leases the Correctional Facility Project to the County. The Correctional Facility Project includes all improvements constructed on the Project Site and the related equipment, and a leasehold interest in Project Site, subject to the terms of the Ground Lease.

The County has a right to renew or not renew (and therefore terminate) the Lease for each fiscal year. The Lease Term terminates under the Lease if a Nonappropriation occurs under the Lease. See “SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT,” “THE CERTIFICATES” and “RISK FACTORS – Right of the County to Terminate the Lease Annually” in this Official Statement.

Under the Lease, the County leases the Project Site for a term ending on the earlier of (i) payment in full of amounts due under the Lease; (ii) the redemption and prepayment of the Rental Payments due under the Lease, (iii) an event of Nonappropriation, or (iv) a termination of the Lease by the Trustee as a result of an Event of Default that is not cured by the County. The Lease is subject to the right of the County to nonappropriate, at the sole option of the County, during any fiscal year. See “SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT” in this Official Statement.

The Lease does not prohibit the County from entering into other lease purchase agreements with the Trustee or any other lessor in respect of real or personal property. An event of default or event of Nonappropriation under any other lease purchase agreement into which the County has entered or may enter does not constitute an Event of Default or an event of Nonappropriation under the Lease. The Lease also permits the issuance of Additional Certificates if certain conditions in the Lease are satisfied. See “SECURITY FOR THE CERTIFICATES – Additional Certificates” in this Official Statement. A summary of certain provisions of the Lease appears in “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE LEASE” to this Official Statement.

## **THE GROUND LEASE**

The Trustee will enter into the Ground Lease with the County in order to obtain a leasehold interest in the Project Site. The term of the Ground Lease is to expire on the earlier of (i) the date of payment in full by the County of the Lease and the accompanying payment of the Certificates, or (ii) May 1, 2070, which date is a little less than fifty (50) years from the issuance of the Certificates, unless such term is

sooner terminated as hereinafter provided. If prior to the expiration date, the Trustee has transferred and conveyed the Trustee's interests in the Project Site, pursuant to the Lease as a result of the County's payment of all Rental Payments and Additional Rentals, then the term of the Ground Lease is to end in connection with such transfer and conveyance.

During the term of the Ground Lease, the Trustee is to use the Project Site solely for the purpose of leasing the Project Site, including the Correctional Facility Project to the County pursuant to the Lease. The County may choose not to renew the Lease with respect to the Correctional Facility Project. Accordingly, a decision by the County not to renew the Lease would mean the loss of use of the Project Site by the County until May 1, 2070, which date is a little less than fifty (50) years from the date of issuance of the Certificates and the County entering into the Lease and the Ground Lease.

### **THE TRUST AGREEMENT**

Under the Trust Agreement, the Trustee is to deliver the Certificates and accept certain duties to act on behalf of the Owners of the Certificates in the receipt and application of amounts which become payable under the Lease. A summary of certain provisions of the Trust Agreement appears in "APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE TRUST AGREEMENT" to this Official Statement. See also "THE CERTIFICATES" and "SECURITY FOR THE CERTIFICATES" in this Official Statement.

### **RISK FACTORS**

THE PURCHASE AND OWNERSHIP OF THE CERTIFICATES IS SUBJECT TO CERTAIN RISKS. EACH PROSPECTIVE INVESTOR IN THE CERTIFICATES SHOULD READ THIS OFFICIAL STATEMENT IN ITS ENTIRETY, INCLUDING THE APPENDICES HERETO. NO PERSON SHOULD PURCHASE ANY OF THE CERTIFICATES WITHOUT CAREFULLY REVIEWING THE FOLLOWING INFORMATION, WHICH SUMMARIZES SOME, BUT NOT ALL, FACTORS THAT SHOULD BE CONSIDERED PRIOR TO SUCH PURCHASE.

#### **Special, Limited Obligations**

The Lease and the Certificates and the interest thereon are special, limited obligations of the County. The Certificates do not constitute general obligations of the County and are not secured by the full faith or the taxing power of the County. No holder of the Certificates may compel the exercise of the taxing power or use of revenues of the County to pay the principal of or interest on the Certificates. The Lease and the Certificates do not evidence a debt of the County within the meaning of any constitutional or statutory provision.

The Certificates and the interest due thereon are payable solely from Rental Payments to be made by the County under the Lease and amounts held in various funds and accounts pursuant to the Trust Agreement. The ability of the Trustee to pay the debt service on the Certificates is dependent upon the sufficiency of the funds annually budgeted and appropriated by the County Commission to pay the Rental Payments required under the terms of the Lease and the corresponding Certificates. Although the County has covenanted to exercise such reasonable measures as are within its powers to collect revenues from the Correctional Facility Project, the County is under no binding obligation to deposit any of its funds into the General Fund to provide for any other costs or debt service.

## **Right of the County to Terminate the Lease Annually**

The obligation of the County to make payments under the Lease does not constitute an obligation of the County to levy taxes or apply its general resources beyond the current fiscal year. Except to the extent payable from the Net Proceeds of certain insurance policies and condemnation awards, from the Net Proceeds of a foreclosure and transfer or leasing (to others) of the Correctional Facility Project or from other amounts made available under the Trust Agreement, the Certificates, and the interest thereon are payable solely from the Rental Payments.

The requirement that the County pay Rental Payments and Additional Rentals under the Lease constitutes a currently budgeted expenditure of the County, payable only if funds are appropriated by the County Commission and for which an encumbrance has been effected in each year, for all Rental Payments and Additional Rentals due under the Lease. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” in this Official Statement. There is no assurance that the County will renew the Lease from fiscal year to fiscal year and therefore not terminate the Lease, and the County has no obligation to do so. There is no penalty to the County if the County does not renew on an annual basis the Lease and therefore terminates all of its obligations under the Lease.

The likelihood that the Lease will continue in effect until the Certificates are fully repaid is dependent upon factors that are beyond the control of the Owners of the Certificates. These factors include but are not limited to, (i) the continuing need of the County for facilities such as the Correctional Facility Project and (ii) the continued ability of the County to generate sufficient funds from property taxes and other sources to pay the Rental Payments required under the Lease and other obligations of the County. Payment of the principal of and interest on the Certificates upon the occurrence of an Event of Default under the Lease or a Nonappropriation will be dependent upon (a) the value of the Correctional Facility Project in a liquidation proceeding instituted by the Trustee, which may be limited due to the County’s retained fee simple interest in the Correctional Facility Project or (b) any rental income from leasing (to others) the Correctional Facility Project.

## **Results of Termination of the Lease**

In the event that the County does not budget and appropriate, with respect to the Lease, money sufficient to pay all Rental Payments and the reasonably estimated Additional Rentals coming due under the Lease for the current Fiscal Year, an event of Nonappropriation is deemed to have occurred. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE LEASE” in this Official Statement for a discussion of the results of a Nonappropriation and the ability of the Trustee to waive, under certain circumstances, the effects of the occurrence of a Nonappropriation without notice to or the consent of the Owners of the Certificates.

If the Lease is terminated because a Nonappropriation or an Event of Default under the Lease has occurred, the County is required to vacate or surrender possession of all the Correctional Facility Project (i) by January 1 of the calendar year after an event of Nonappropriation (which must occur under the terms of the Lease by October 15 prior to the commencement of any Fiscal Year) (in the case of a Nonappropriation) or (ii) after notice by the Trustee (in the case of an Event of Default under the Lease). The County may also terminate the Lease as a result of certain events described in “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” in this Official Statement. Upon the occurrence of a Nonappropriation or an Event of Default under the Lease, the Trustee may transfer or lease the Correctional Facility Project, subject to the terms and provisions of the Lease. Pursuit of Lease Remedies may be a time-consuming process and may entail various legal as well as economic risks. The proceeds realized from Lease Remedies, net of the expense of pursuing such Lease Remedies, may not be sufficient to pay the principal of and interest on the Certificates

at the time when due. The Net Proceeds derived from a transfer or lease of the Correctional Facility Project or the exercise of other Lease Remedies, along with other money then held by the Trustee under the Trust Agreement (with certain exceptions as provided in the Lease and the Trust Agreement), are required to be used to redeem the Certificates and any Additional Certificates to the extent of such money. See “THE CERTIFICATES – Redemption – *Extraordinary Mandatory Redemption*” in this Official Statement.

The Correctional Facility Project consists of certain real property improvements used as a correctional facility. The Correctional Facility Project may not be easily converted to alternate uses. For a discussion of the Correctional Facility Project and the Lease, see “SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT” in this Official Statement. A potential purchaser of the Certificates should not assume that it will be possible to transfer or lease (to others) the Correctional Facility Project (including the Trustee’s leasehold interest in the Correctional Facility Project) after the termination of the Lease (i) for an amount equal to the aggregate principal amount of the Certificates then Outstanding plus accrued interest thereon or, (ii) within a time period that would prevent a default in the timely payment of the principal of and interest on the Certificates. If the Certificates are redeemed subsequent to a termination of the Lease Term for an amount less than the aggregate principal amount thereof and accrued interest thereon, no Owner of any Certificates has any further claim for payment against the Trustee or the County.

### **Impact of COVID-19**

In late 2019, a novel strain of coronavirus (“COVID-19”) emerged in Wuhan, Hubei Province, China. COVID-19 has spread throughout the world, including to the United States, resulting in the World Health Organization proclaiming COVID-19 to be a pandemic and President Trump declaring a national emergency. On March 13, 2020, the Governor of North Dakota (the “Governor”) declared a State emergency with respect to the COVID-19 pandemic. In response to the spread of COVID-19, the United States government, state governments, local governments and private industries have taken measures to limit social interactions in an effort to limit the spread of COVID-19. The effects of the spread of COVID-19 and the government and private responses to the spread continue to rapidly evolve. As of the date of this Official Statement, the Governor has not ordered a “stay in place” order for the residents of the State and the State currently has a lower level incidence of COVID-19 infection than many other jurisdictions.

COVID-19 has caused significant disruptions to the global, national and State economy. The extent to which COVID-19 impacts the County and its financial condition will depend on future developments, which are highly uncertain and cannot be predicted by the City, including the duration of the outbreak and measures taken to address the outbreak.

By executive orders in the spring of 2020, the Governor previously directed: the closure of schools until further notice; the restricted opening of sit-in patrons of restaurants, bars, breweries, cafes, and similar on-site dining establishments and certain other public accommodations. Such executive orders of the Governor have expired and have not been renewed and currently the main COVID-related executive order is the restriction on larger gatherings. However, the North Dakota Department of Corrections and Rehabilitation has put certain operational policies and procedures in place for the transfer of inmates between correctional facilities.

The County has not seen a drastic impact on the retail and service sectors in the County. The County does expect to see a reduction in State aid due to a decrease in oil revenues and any reduction in farming economy production; however, the State of North Dakota has large reserves for such situation and revenue fluctuation.

## **Enforceability of Remedies**

A termination of the Lease as a result of a Nonappropriation or an Event of Default under the Lease will give the Trustee the right to take possession of the Correctional Facility Project and the Project Site, subject to the terms and provisions of the Lease. The enforceability of the Lease, the Trust Agreement and the Certificates is subject to applicable bankruptcy laws, principles of equity affecting the enforcement of creditors' rights generally and liens securing such rights, if any, the police and condemnation powers of the State and its political subdivisions, including the County, and judicial discretion. In addition, the application of zoning and land use requirements and regulations of the County could adversely affect the ability of the Trustee to lease or dispose of the Correctional Facility Project. Because of the delays inherent in enforcing the remedies of the Trustee upon the Correctional Facility Project through the courts, a potential purchaser of the Certificates should not anticipate that the remedies of the Trustee could be accomplished rapidly. Any delays in resolving the Trustee's claim to possession of or title to the Correctional Facility Project may result in delays in the payment of the Certificates. See "ENFORCEABILITY OF OBLIGATIONS" in this Official Statement.

## **Construction Risk**

Construction or improvement of any facility (such as the Correctional Facility Project) is subject to the risks of cost overruns and delays due to a variety of factors including, among other things, site difficulties, labor strife, delays in and shortages of materials, weather conditions, fire and casualty. To reduce construction risks, the County has entered into the Construction Contract. If proceeds of the Certificates are not sufficient to pay all costs of completing the Correctional Facility Project, the County is required under the Lease to provide additional funds or reduce the scope of the Correctional Facility Project.

## **Effects on the Certificates of a Nonappropriation or an Event of Default under the Lease**

Bond Counsel will not render any opinion with respect to the applicability or inapplicability of the registration requirements of the Securities Act of 1933, as amended, to transfers of Certificates subsequent to a termination of the Lease by reason of a Nonappropriation or an Event of Default under the Lease. If the Lease is terminated by reason of a Nonappropriation or an Event of Default under the Lease, there is no assurance that the Certificates may be transferred without compliance with the registration provisions of the Securities Act of 1933, as amended, or the availability of an exemption therefrom.

In addition, Bond Counsel will render no opinion as to the treatment for federal or state income tax purposes of any amounts received by the Owners of the Certificates subsequent to a Nonappropriation or an Event of Default under the Lease. There is no assurance that amounts received by the Owners of the Certificates as interest subsequent to a Nonappropriation or an Event of Default under the Lease will be excludable from gross income for purposes of federal income taxation or exempt from State income taxes.

## **Internal Revenue Code Compliance**

The interest component of the Certificates could lose its tax-exempt status as a result of the County not complying with the various provisions of the Code, and the regulations promulgated thereunder, with respect to tax-exempt bonds such as the Certificates. Following a determination by the Internal Revenue Service (the "IRS") that the interest on the Certificates should be included in gross income for federal tax purposes, the Certificates will not be subject to mandatory redemption as described under the heading "THE CERTIFICATES" in this Official Statement and in the Trust Agreement.

The opinion of Bond Counsel will be obtained as described in "TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS" and "APPENDIX F – FORM OF BOND COUNSEL OPINION" in this Official Statement; however, application for a ruling or determination from the IRS regarding the

tax-exempt status of the interest component of the Certificates has not and will not be made, and an opinion of counsel is not binding upon the IRS. The laws, regulations, court decisions and administrative interpretations upon which the conclusions stated in the opinion of Bond Counsel are based on are subject to change by the United States Congress, the United States Treasury Department and later judicial and administrative decisions.

The interest component of the Certificates may become subject to inclusion in gross income for purposes of federal income taxes retroactively to the date of issuance or the date of the breach of certain tax covenants in the Lease or the Trust Agreement. In either case, the holders or owners of the Certificates may be liable for the payment of federal income taxes for prior years during which the interest component of the Certificates was paid. See "TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS" in this Official Statement.

### **Forward-Looking Statements**

This Official Statement contains certain statements that are "forward-looking" statements within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical facts included in this Official Statement, including without limitation statements that use terminology such as "estimate," "plan," "budget," "expect," "intend," "anticipate," "believe," "may," "will," "continue" and similar expressions, are forward-looking statements. These forward-looking statements include, among other things, the discussions related to the County's operations, future operations, revenues, capital resources and expenditures for capital projects. Although the County believes that the assumptions upon which the forward-looking statements contained in this Official Statement are based are reasonable, any of the assumptions could prove to be inaccurate and, as a result, the forward-looking statements based on those assumptions also could be incorrect. The realization of future revenues of the County is dependent upon, among other things, the matters described in the foregoing paragraphs and future changes in economic and other conditions that are unpredictable and cannot be determined at this time. The Underwriter makes no representation as to the accuracy of the projections contained in this Official Statement or as to the assumptions on which the projections are based.

### **Insurance Coverage; Damage, Destruction, or Condemnation of the Correctional Facility Project**

The County is required under the Lease to maintain insurance with respect to the Correctional Facility Project in an amount at least equal at all times to the actual replacement cost of the Correctional Facility Project, or at its sole option, the County may self-insure for these perils. Initially, the County has elected to include the Correctional Facility Project in the general property and casualty coverage of the County that is carried for most County buildings. The amount of insurance coverage maintained by the County with respect to property and casualty risk coverage is limited and the limits and provisions of such risk coverage are subject to change without the consent of holders of the Certificates. Currently, the County maintains full property and casualty coverage on all County buildings, subject to deductibles, and the County will maintain full coverage on the Correctional Facility Project. As with all policies of risk coverage, the risk coverage carried by the County with respect to the Correctional Facility Project is subject to certain exclusions and limitations and no assurance can be given that the property and casualty risk coverage will not delay or challenge payment to the County in the event that the Correctional Facility Project is destroyed or damaged in the future.

The Lease provides that, subject to the following sentence, the County must promptly Repair any damage to the Correctional Facility Project regardless of the cause or source of such loss or damage. The term "Repair" includes the obligation to replace or rebuild any portion of the Correctional Facility Project that the County cannot repair. The County's Repairs must restore the Correctional Facility Project to at least the same condition as existed immediately before the damage. In lieu of the Repair of the Correctional

Facility Project upon damage, loss or condemnation, if the damage, loss or condemnation is total or the amount of the loss exceeds the principal amount of Outstanding Certificates, the County may, but is not obligated to, pay, out of the net proceeds of any insurance (including self-insurance) or condemnation award (“Net Proceeds”) or otherwise, amounts sufficient to prepay or defease the Certificates. The third party policies of insurance purchased by the County against risks of physical damage to the Correctional Facility Project must be endorsed to provide that the Trustee is an additional insured. However, there can be no assurance that, in the event the Lease is terminated as a result of damage to or destruction of the Correctional Facility Project, money made available by reason of such an occurrence will be sufficient to redeem the Certificates at a price equal to the principal amount of Outstanding Certificates plus accrued interest to the redemption date.

If, during the Lease Term, title to less than all, or substantially all, of the Correctional Facility Project is taken in any condemnation proceeding, the Lease continues and the County may perform any restoration. Upon a total taking, proceeds of such taking will be used by County to prepay the Certificates.

### **No Mortgage**

The Trustee will not receive a mortgage or similar security instrument with respect to fee title for the land on which the Correctional Facility Project is located. Accordingly, the Trustee will not have any right to foreclose on and gain title to any real property of the County other than the Correctional Facility Project, subject to the terms of the Ground Lease, as a result of an Event of Default under the Lease or the Trust Agreement. Under the terms of the Ground Lease, the Trustee will not be able to occupy the Project Site after the date that is fifty (50) years from the date of issuance of the Certificates. However, the Trustee will have the right to attempt to generate revenue from the Correctional Facility Project (i) in the event of a default of the County under the terms of the Lease or (ii) upon the County’s termination of the Lease. The Trustee will have the obligation to attempt to lease and/or operate the Correctional Facility Project (i) during the remaining term of the Lease if the County is in default under the Lease, or (ii) after the County’s termination of the Lease. Prospective purchasers of the Certificates should assume that the Trustee will not be able to realize any value for the Correctional Facility Project upon the Trustee seeking to enforce its rights under the Trust Agreement and the Lease. See “SECURITY FOR THE CERTIFICATES” in this Official Statement.

### **No Debt Service Reserve Fund for the Certificates**

The Certificates will not be secured by a debt service reserve fund. The lack of a debt service reserve fund will affect the ability of the registered owners of the Certificates to receive payments of debt service on the Certificates should the County not make the required payments under the terms of the Lease.

### **No Non-substitution Clause**

The Lease does not contain a non-substitution clause. In the event of a Nonappropriation, or other event of default, by the County under the Lease, the County is not prohibited or restricted in any manner from acquiring or building correctional facilities of the size and nature of the Correctional Facility Project near or adjacent to the Correctional Facility Project or contracting with another county to house its inmates.

### **Amendments to the Lease and the Trust Agreement**

The parties may make certain amendments to the Lease and the Trust Agreement without the consent of the Holders of the Certificates. In addition, certain amendments to the Lease and the Trust Agreement, may be made by the parties if approved by not less than two-thirds (2/3) in aggregate principal amount of the Outstanding Certificates. Such amendments may adversely affect the security of the Holders of the Certificates.



## **Availability of Remedies**

Although the Certificates are secured by the Lease, the practical realization of such security upon a termination of the Lease will depend upon the exercise of various remedies specified by the Trust Agreement. These and other remedies are in many respects dependent upon judicial actions, which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, including; specifically, the United States Bankruptcy Code, the remedies provided in the Lease and the Trust Agreement may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Certificates will be qualified as to the enforceability of the various agreements and instruments entered into in connection with the issuance of the Certificates by limitations imposed by general principles of equity and by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors' generally and laws relating to fraudulent conveyances. See "ENFORCEABILITY OF OBLIGATIONS" in this Official Statement.

## **Secondary Market**

Although the Underwriter intends, but is not obligated, to make a market for the Certificates, there can be no assurance that there will be a secondary market for the Certificates. The absence of such a market for the Certificates could result in investors not being able to resell the Certificates should they need or wish to do so.

## **Maintenance of Rating**

The Certificates will be rated as to their creditworthiness by the Rating Agency. No assurance can be given that the Certificates will maintain their original rating. If the rating on the Certificates decreases, the Certificates may lack liquidity in the secondary market in comparison with other such lease-purchase annual appropriation obligations. Adverse developments, including a decision by the County Commission to not appropriate funds to make the Rental Payments on the Lease may have an unfavorable effect upon a holder's ability to sell the holder's Certificates or the bid and ask prices for the Certificates. See "RATING" in this Official Statement.

## **Risk of Early Redemption**

An event of damage or destruction to the Correctional Facility Project may cause the County to redeem the Certificates from the net proceeds of an insurance claim payment, to the extent those proceeds are not used to repair, restore or rebuild the Correctional Facility Project. See "THE CERTIFICATES – Redemption" and "APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE TRUST AGREEMENT" in this Official Statement.

## **No Credit Enhancement Facility**

There is no credit enhancement facility, letter of credit, or bond insurance policy securing the payment of debt service on the Certificates, nor is there any provision for a credit enhancement facility, letter of credit, or bond insurance policy to be provided to secure the payment of debt service on the Certificates.

## **Bankruptcy Risk**

Bankruptcy proceedings involving the County and equity principles could delay or otherwise adversely affect the enforcement of registered owners' rights or collection of the principal of or interest on the Certificates. A bankruptcy of the County could impose significant risks of delay, limitation or modification of the rights of Owner rights against the County. These risks include, without limitation, the

risk that the interest rate on and repayment and other terms of the Certificates could be modified in bankruptcy proceedings, and, if the value of the collateral for the Certificates, as determined by a court of competent jurisdiction, is less than the full amount due on the Certificates, the Certificates may not be repaid in full. See “ENFORCEABILITY OF OBLIGATIONS” in this Official Statement.

### **Environmental Issues**

A Phase I Environmental Site Assessment was prepared in January 2020 by a nationally-recognized engineering consulting firm located in Bismarck, North Dakota (the “Phase I Report”). The Phase I Report indicated that there was no evidence of any recognized environmental conditions, historical environmental conditions, or conditional environmental conditions for the site of the Project. The Phase I Report indicated to the County that the engineering firm that completed the report did not believe that additional investigation was necessary.

The County believes that it is in material compliance with applicable environmental laws for the Correctional Facility Project. Even though the Phase I Report did not show any evidence of recognized environmental conditions for the Correctional Facility Project, owners of real estate may, in the future, be adversely affected by legislative, regulatory, administrative and enforcement actions involving environmental controls.

### **Summary**

The foregoing is intended only as a summary of certain risk factors attendant to an investment in the Certificates. In order for potential investors to identify risk factors and make an informed decision with respect to the Certificates, potential investors in the Certificates should be thoroughly familiar with this entire Official Statement and the appendices hereto.

## **CONTINUING DISCLOSURE UNDERTAKING**

In order to facilitate compliance by the Underwriter with Securities and Exchange Commission Rule 15c2-12 (the “Rule”), in connection with its execution and delivery of the Lease, the County will enter into an undertaking (the “Continuing Disclosure Undertaking”) to provide certain information, including audited financial results, on an annual basis, and to provide notice of certain specified events contemplated by the Rule, to the information repositories designated in the Continuing Disclosure Undertaking. The proposed form of the Continuing Disclosure Undertaking is appended to this Official Statement as APPENDIX D.

During the last five years, the County has not been subject to any prior continuing disclosure undertakings under the term of the Rule.

Failure to perform the Continuing Disclosure Undertaking does not constitute an Event of Default under the Lease, but the Continuing Disclosure Undertaking does provide that in the event of a failure to perform the Continuing Disclosure Undertaking, the Trustee, on behalf of the Owners of the Certificates, has the right to seek a court order directing the County to perform its obligations thereunder.

## TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS

### Tax Exemption

The opinion of Arntson Stewart Wegner PC, Fargo, North Dakota, Bond Counsel and the descriptions of the tax laws contained in this Official Statement are based on laws and official interpretations of them which are in existence on the date the Certificates are issued. There can be no assurance that those laws or the interpretation of them will not change or that new laws will not be enacted or regulations issued while the Certificates are outstanding in a manner that would adversely affect the value of an investment in the Certificates or the tax treatment of the interest paid on the Certificates.

### Tax Exemption for the Certificates

*Federal.* In the opinion of Bond Counsel, interest on the Certificates is not includable in the “gross income” of the owners thereof for purposes of federal income taxation and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. See “APPENDIX F – FORM OF BOND COUNSEL OPINION” in this Official Statement.

*State of North Dakota.* In the opinion of Bond Counsel, interest on the Certificates is not includable in the “gross income” of the owners thereof for purposes of North Dakota income taxation.

### Bond Premium

The Certificates with stated maturities of May 1, 20\_\_ through May 1, 20\_\_ (the “Premium Bonds”), have been sold to the public at an amount in excess of the stated redemption price at maturity. Such excess of the purchase price of such Premium Bonds over the stated redemption price at maturity constitutes original issue premium with respect to such Premium Bonds. A purchaser of a Premium Bond must amortize any original issue premium over the term of such Premium Bond using constant yield principles, based on the purchaser’s yield to maturity. As original issue premium is amortized, the purchaser’s basis in such Premium Bond is reduced by a corresponding amount, resulting in an increase in the gain (or a decrease in the loss) to be recognized for federal income tax purposes upon a sale or disposition of such Premium Bond prior to its maturity. Even though the purchaser’s basis is reduced, no federal income tax deduction is allowed. Purchasers of any Premium Bonds at a premium, whether at the time of initial issuance or subsequent thereto, should consult with their own tax advisors with respect to the determination and treatment of premium for federal income tax purposes and with respect to state and local tax consequences of owning such Premium Bonds.

### Original Issue Discount

The Certificates with stated maturities of May 1, 20\_\_ and 20\_\_ (the “Discount Bonds”) are being sold at a discount from the principal amount payable on the Discount Bonds at maturity. The difference between the price at which a substantial amount of the Discount Bonds of a given maturity is first sold to the public (the “Issue Price”) and the principal amount payable at maturity constitutes “original issue discount” under the Code. The amount of original issue discount that accrues to a holder of a Discount Bond under Section 1288 of the Code is excluded from gross income for federal income tax purposes and from taxable net income of individuals for North Dakota income tax purposes to the same extent that stated interest on such Discount Bonds would be so excluded. The amount of the original issue discount that accrues with respect to a Discount Bond under Section 1288 is added to the tax basis of the owner in determining gain or loss upon disposition of such Discount Bond (whether by sale, exchange, redemption, or payment at maturity).

Interest in the form of original issue discount accrues under Section 1288 pursuant to a constant yield method that reflects semiannual compounding on days that are determined by reference to the maturity date of the Discount Bond. The amount of original issue discount that accrues for any particular semiannual accrual period generally is equal to the excess of: (i) the product of (a) one-half of the yield on such Bonds (adjusted as necessary for an initial short period), and (b) the adjusted issue price of such Bonds, over (ii) the amount of stated interest actually payable. For purposes of the preceding sentence, the adjusted issue price is determined by adding to the Issue Price for such Bonds the original issue discount that is treated as having accrued during all prior semiannual accrual periods. If a Discount Bond is sold or otherwise disposed of between semiannual compounding dates, then the original issue discount that would have accrued for that semiannual accrual period for federal income tax purposes is allocated ratably to the days in such accrual period.

If a Discount Bond is purchased for a cost that exceeds the sum of the Issue Price plus accrued interest and accrued original issue discount, the amount of original issue discount that is deemed to accrue thereafter to the purchaser is reduced by an amount that reflects amortization of such excess over the remaining term of such Bond.

No opinion is expressed as to state and local income tax treatment of original issue discount. It is possible under certain state and local income tax laws that original issue discount on a Discount Bond may be taxable in the year of accrual, and may be deemed to accrue differently than under federal law.

### **Related Tax Considerations**

Prospective purchasers of the Certificates should also be aware that (i) Section 265 of the Code, denies a deduction for interest on indebtedness incurred or continued to purchase or carry the Certificates or, in the case of a financial institution, a portion of a holder's interest expense allocated to interest on the Certificates, (ii) with respect to insurance companies subject to the tax imposed by Section 831 of the Code, Section 832(b)(5)(B)(i) reduces the deduction for loss reserves by 15 percent of the sum of certain items, including interest on the Certificates, (iii) interest on the Certificates earned by certain foreign corporations doing business in the United States could be subject to a branch profits tax imposed by Section 884 of the Code, (iv) passive investment income, including interest on the Certificates, may be subject to federal income taxation under Section 1375 of the Code for Subchapter S corporations that have Subchapter C earnings and profits at the close of the taxable year if greater than 25 percent of the gross receipts of such Subchapter S corporation is passive investment income and (v) Section 86 of the Code requires receipts of certain Social Security and certain Railroad Retirement benefits to take into account, in determining gross income, receipts or accruals of interest on the Certificates.

Holders of Discount Bonds and Premium Bonds should consult their tax advisors with respect to computation and accrual of original issue discount and with respect to the state and local tax consequences of owning Discount Bonds and Premium Bonds.

### **Legislative Proposals**

Bond Counsel's opinion is given as of its date and Bond Counsel assumes no obligation to update, revise, or supplement such opinion to reflect any changes in facts or circumstances or any changes in law that may hereafter occur. Proposals are regularly introduced in both the United States House of Representatives and the United States Senate that, if enacted, could alter or affect the tax-exempt status on municipal bonds. For example, the federal tax reform legislation (formerly known as the Tax Cuts and Jobs Act) signed by President Trump on December 22, 2017, changed the income tax rates for individuals and corporations and modified the alternative minimum tax for tax years beginning after December 31, 2017, and altered other existing tax law in a manner that may affect the market price for, or marketability of, the

Certificates. Prospective purchasers of the Certificates should consult their own tax advisors regarding the impact of any such change in law.

## **RATING**

Moody's Investors Service, Inc. (the "Rating Agency") has assigned a rating of "Baa1" to the Certificates as shown on the cover page of this Official Statement. Such rating reflects only the view of the Rating Agency, and any explanation of the significance of such rating on the Certificates may be obtained only from the Rating Agency. Generally, rating agencies base their ratings on the information and materials furnished to them and on investigation, studies, and assumptions by the rating agencies. A rating by the Rating Agency is not a recommendation to buy, sell, or hold securities. The rating of the Certificates represents the judgment of the Rating Agency as to the likelihood of timely payment of the Certificates according to their terms, but does not address the likelihood of redemption or acceleration prior to maturity. There is no assurance that such rating will remain in effect for any given period of time or that it may not be lowered, suspended, or withdrawn entirely if, in the judgment of the Rating Agency, circumstances so warrant. Any such downward change in or suspension or withdrawal of such rating may have an adverse effect on the market price and marketability of Certificates.

## **UNDERWRITING**

Pursuant to the terms and conditions of a Certificate Purchase Agreement, the Underwriter has agreed to purchase the Certificates from the County at a purchase price of \$\_\_\_\_\_ (the par amount of the Certificates (\$\_\_\_\_\_), [plus/less] [net] original issue [premium/discount] of \$\_\_\_\_\_, and less Underwriter's discount of \$\_\_\_\_\_). Each maturity of the Certificates is being offered for sale to buyers at the prices and in the amounts as shown on the inside front cover of this Official Statement. The offering prices of the Certificates may be changed from time to time and may be reduced for sales to selected dealers. The Underwriter retains the right to join with other dealers in offering the Certificates to the public.

## **THE TRUSTEE**

The County has appointed the Bank of North Dakota to serve as Trustee. The Trustee is to carry out those duties assignable to it under the Trust Agreement. Except for the contents of this section, the Trustee has not reviewed or participated in the preparation of this Official Statement and assumes no responsibility for the nature, contents, accuracy, fairness or completeness of the information set forth in this Official Statement or for the recitals contained in the Trust Agreement or the Certificates, or for the validity, sufficiency, or legal effect of any of such documents.

Furthermore, the Trustee has no oversight responsibility, and is not accountable, for the use or application by the County of any of the Certificates authenticated or delivered pursuant to the Trust Agreement or for the use or application of the proceeds of such Certificates by the County. The Trustee has not evaluated the risks, benefits, or propriety of any investment in the Certificates and makes no representation, and has reached no conclusions, regarding the value or condition of any assets or revenues pledged or assigned as security for the Certificates, or the investment quality of the Certificates, about all of which the Trustee expresses no opinion and expressly disclaims the expertise to evaluate.

## **RELATIONSHIPS AMONG THE PARTIES**

In connection with the issuance of the Certificates, the County and the Underwriter are being represented by the attorneys or law firms identified below under the heading “LEGAL MATTERS.” Arntson Stewart Wegner PC, Fargo, North Dakota, is acting as Bond Counsel. In other transactions not related to the Certificates, each of these attorneys or law firms may have acted as Bond Counsel or represented the Underwriter or the County, or their respective affiliates, in capacities different from those described under “LEGAL MATTERS,” and there will be no limitations imposed as a result of the issuance of the Certificates on the ability of any of these firms or attorneys to act as Bond Counsel or represent any of these parties in any future transactions. Furthermore, the Underwriter, the County, and their respective affiliates are not limited in engaging in future business transactions with each other. Potential purchasers of the Certificates should not assume that the Underwriter, the County, or their respective counsel or Bond Counsel have not previously engaged in, or will not after the issuance of the Certificates engage in, other transactions with each other or with any affiliates of any of them, and no assurance can be given that there are or will be no past or future relationships or transactions between or among any of these parties or these attorneys or law firms.

## **FINANCIAL STATEMENTS**

The audited financial statements of the County for the fiscal year ended December 31, 2018 (the “Audited Financial Statements”), are attached as APPENDIX B to this Official Statement. Harold J. Rotunda, certified public accountant, West Fargo, North Dakota (“Auditor”) has audited the financial statements of the County for the fiscal year ended December 31, 2018. The County has neither requested nor obtained the consent of the Auditor to include its Independent Auditor’s Report for such Audited Financial Statements in this Official Statement. The Auditor has not reviewed or audited any financial information included in this Official Statement. The audited financial statements of the County are prepared in accordance with the current accounting principles generally accepted and standards set by the Governmental Accounting Standards Board.

## **LEGAL MATTERS**

Legal matters incident to the authorization, issuance, sale and delivery of the Certificates are subject to the approval of Arntson Stewart Wegner PC, Fargo, North Dakota, as Bond Counsel. See “APPENDIX F – FORM OF BOND COUNSEL OPINION” in this Official Statement. Ballard Spahr LLP is acting as counsel to the Underwriter with respect to the issuance of the Certificates.

## **ENFORCEABILITY OF OBLIGATIONS**

The remedies available to the Trustee and the Owners of the Certificates upon an Event of Default under the Lease or the Trust Agreement are in many respects dependent upon regulatory and judicial actions which are often subject to discretion and delay. Under existing law and judicial decisions, including specifically the Federal Bankruptcy Code (Title 11 of the United States Code), the remedies provided for under the Federal Bankruptcy Code, the Lease or the Trust Agreement may not be readily available or may be limited.

The legal opinion to be delivered by Arntson Stewart Wegner PC in connection with the delivery of the Certificates, the Lease and the Trust Agreement will be qualified to the extent that the enforceability of certain legal rights related to the Lease and the Certificates are subject to limitations such as the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or

a court of equity), including judicial limitations on rights to specific performance and bankruptcy, insolvency, reorganization.

## **LITIGATION**

There is no litigation pending in any court or, to the best knowledge of the County threatened, which would restrain or enjoin the issuance or delivery of the Certificates, or which challenges the proceedings of the County taken in connection with the Certificates or the pledge or application of revenues pledged under the Trust Agreement and the Lease. See also “APPENDIX A – Public Comment on the Correctional Facility Project” for more information with respect to prior public comment and questions relating to the Correctional Facility Project.

## **MISCELLANEOUS**

Any statements made in this Official Statement involving matters of opinion or estimates, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of such estimates will be realized. Information and financial data in, or incorporated by reference in, this Official Statement concerning the Correctional Facility Project has been selected and prepared by or on behalf of the County for inclusion in this Official Statement.

The attached Appendices are integral parts of this Official Statement and must be read together with all of the foregoing statements.

The foregoing does not purport to be comprehensive or definitive, and all references to any document herein are qualified in their entirety by reference to each such document. All references to the Certificates are qualified in their entirety by reference to the forms thereof and the information with respect thereto included in the aforesaid documents. Copies of these documents are available for inspection during the period of the offering at the offices of the Underwriter in Bismarck, North Dakota and thereafter at the corporate trust office of the Trustee in Bismarck, North Dakota. The Underwriter makes no representations or warranties as to the accuracy or completeness of the information in any of the Appendices.

### **Registration of Certificates**

Registration or qualification of the offer and sale of the Certificates (as distinguished from registration of the ownership of the Certificates) is not required under the federal Securities Act of 1933, as amended. **THE COUNTY ASSUMES NO RESPONSIBILITY FOR QUALIFICATION OR REGISTRATION OF THE CERTIFICATES FOR SALE UNDER THE SECURITIES LAWS OF ANY JURISDICTION IN WHICH THE CERTIFICATES MAY BE SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED.**

### **Interest of Certain Persons Named in this Official Statement**

The fees to be paid to Bond Counsel, the Trustee, and the Underwriter are contingent upon the sale and delivery of the Certificates.

### **Official Statement Certification of the County**

The preparation of this Official Statement and its distribution has been authorized by the County. This Official Statement has been “deemed final” by the County in compliance with the provisions of Rule 15c2-12. This Official Statement is not to be construed as an agreement or contract between the County and any purchaser, owner or holder of any Certificate.

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**APPENDIX A**

**GENERAL AND FINANCIAL INFORMATION RELATING TO  
THE COUNTY**

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**APPENDIX A**

**GENERAL AND FINANCIAL INFORMATION RELATING TO THE COUNTY**

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## APPENDIX A

### GENERAL AND FINANCIAL INFORMATION RELATING TO THE COUNTY

#### General Information

Barnes County, North Dakota (the “Barnes County”), containing 967,680 acres (1,512 square miles), is located in eastern North Dakota on the edge of the fertile Red River Valley. Barnes County encompasses numerous communities including Dazey, Fingal, Kathryn, Leal, Litchville, Nome, Oriska, Pillsbury, Rogers, Sanborn, Sibley, Tower City, Wimbledon, and Valley City, the county seat. The estimated 2019 population of Barnes County is 10,415.

Barnes County is served by Interstate Highway 94, State Highways 1, 32, 38, 46, and 200 and numerous secondary highways, B-N Railway, SooLine (CP Rail), Greyhound Bus Lines, numerous motor freight carriers, and a county airport located just north of Valley City.

Education in Barnes County is provided by the school districts of Valley City, Litchville-Marion, Griggs County Central, Enderlin, Hope-Page, Maple Valley, Montpelier, and Barnes County North. The Valley City School District has a 2019/2020 fall enrollment of 1,095 and employment of 130. Valley City State University (“VCSU”) provides secondary education.

Valley City hosts the North Dakota Winter Show annually, the largest exposition of its kind in the Midwest. The Winter Show building has a seating capacity of 3,500, with parking facilities for 1,500.

North of Valley City one of the largest earthwork dams in North Dakota, Bald Hill Dam, backs the Sheyenne River to form Lake Ashtabula, a favorite fishing lake and recreation area. The availability of wild water fowl and upland game enhances the recreational land use of the area. Lake Ashtabula has 70,700 acre feet of impounded waters and 5,430 acres of surface water. There are 3,053 acres of land above pool controlled by the United States Corps of Engineers, of which 400 acres are used for parks and camp sites.

The official newspaper of Barnes County is the Valley City Times Record, published at Valley City in Barnes County on Monday through Friday each week.

#### Public Comment on the Correctional Facility Project

The proposed construction and financing of the Correctional Facility Project has been subject to public discussion, including at meetings of the County Commissioners, and requests from counsel in early August and September 2020 for information relating to the Project. The County believes that the vast majority of the public in the County is supportive of the Correctional Facility Project.

However, a small group of residents in the County previously expressed opposition to the construction and financing of the Correctional Facility Project. In August 2020, the County received a petition from certain voters in the County requesting an election on the Project and the County determined that such petition process is not applicable to the financing transaction evidenced by the Lease and the Certificates. Subsequent to receipt of the petition, the group of residents behind the petition attended a public County Commissioners meeting where the Correctional Facility Project was discussed in detail and the public members present were given ample opportunity to express their views on the Correctional Facility Project. Subsequent to the public meeting in early September the County received correspondence from the leader of the petition/resident group that previously opposed construction of the Correctional Facility Project that such individual was resigning from any efforts against the Correctional Facility Project and that he was now out of the country for the foreseeable future. Therefore, the County does not believe that there will be future public opposition to the Correctional Facility Project and the related financing transaction.

**Governmental Organization**

The governing body meets in regular session at the Barnes County Courthouse on the first and third Tuesday of each month, and otherwise as needed. Current board members and their positions are as follows:

<u>Name</u>	<u>Position</u>	<u>Expiration of Term</u>
Cindy Schwehr	Commissioner	2020
Shawn Olauson	Commissioner	2022
Bill Carlblom	Commissioner	2022
Vicky Lovell	Commissioner	2022
John Froelich	Commissioner	2020

Beth Didier is the County Auditor. Stacie Hansen-Leier acts as Director of Tax Equalization. Tonya Duffy serves as State’s Attorney.

**Barnes County Offices**

230 4th Street NW  
 PO Box 239  
 Valley City ND 58072

**Population Statistics**

	<u>1970</u>	<u>1980</u>	<u>1990</u>	<u>2000</u>	<u>2010</u>	<u>2019</u>
Barnes County	14,669	13,960	12,545	11,775	11,066	10,415

*Source: U.S. Census Bureau.*

**Incorporated Municipalities in Barnes County**

<u>City</u>	<u>1980</u>	<u>1990</u>	<u>2000</u>	<u>2010</u>	<u>2019<sup>(1)</sup></u>
Dazey	143	129	91	104	93
Fingal	151	138	133	97	86
Kathryn	95	72	63	52	48
Leal	45	35	36	20	18
Litchville	251	205	191	172	150
Nome	67	82	70	62	56
Oriska	125	103	128	118	112
Pillsbury	46	31	24	12	12
Rogers	68	69	61	46	41
Sanborn	237	164	194	192	170
Sibley	21	41	46	30	28
Tower City <sup>(2)</sup>	293	233	252	253	265
Valley City	7,774	7,163	6,826	6,585	6,323
Wimbledon	330	275	237	216	191

*Source: U.S. Census Bureau.*

<sup>(1)</sup> Estimates.

<sup>(2)</sup> Portion of population in Cass County.

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## Barnes County Residential Building Permits

<u>Year</u>	<u>Single Family</u>		<u>Multi Family</u>		<u>Total Residential</u>	
	<u>Issued</u>	<u>Costs</u>	<u>Issued</u>	<u>Costs</u>	<u>Issued</u>	<u>Costs</u>
2019	5	\$ 1,076,041	0	\$ 0	5	\$ 1,076,041
2018	3	965,000	2	720,000	5	1,685,000
2017	18	3,049,000	3	9,400,000	21	12,449,000
2016	16	3,990,000	2	3,950,000	18	7,940,000
2015	30	6,465,000	0	0	30	6,465,000
2014	34	7,904,170	1	3,000,000	35	10,904,170
2013	20	5,188,000	0	0	20	5,188,000
2012	21	5,122,900	0	0	21	5,122,900

Source: Job Service North Dakota, Workforce Intelligence Network, U.S. Census Bureau.

## Unemployment Figures

<u>Year</u>	<u>Average Labor Force</u>	<u>Average Annual Unemployment figures</u>		
	<u>Barnes County</u>	<u>Barnes County</u>	<u>North Dakota</u>	<u>United States</u>
2019	5,143	3.0%	2.4%	3.7%
2018	5,211	2.7	2.6	3.9
2017	5,410	2.8	2.7	4.4
2016	5,619	3.2	3.1	4.9
2015	5,629	3.2	2.8	5.3
2014	5,587	3.1	2.7	6.2
2013	5,713	3.2	2.9	7.4
2012	5,753	3.4	3.1	8.1

Source: Labor Market Information Center, Job Service North Dakota.

## 2020 Unemployment Figures

<u>2020</u> <u>Monthly</u>	<u>Labor Force</u>	<u>Unemployment Rate</u>		
	<u>Barnes Co.</u>	<u>Barnes County</u>	<u>North Dakota</u>	<u>United States</u>
January	5,095	2.8%	2.8%	4.0%
February	5,148	2.6	2.8	3.8
March	5,152	2.5	2.7	4.5
April	5,125	7.2	9.2	14.4
May	4,980	6.3	8.7	13.0
June	5,008*	4.7*	7.5	11.2

Source: Labor Market Information Center, Job Service North Dakota, LAUS Unit.

\*Preliminary.

## Employment Wage Statistics

<u>Area</u>	<u>Number of</u> <u>Employees</u>	<u>Average Hourly</u> <u>Wage</u>	<u>Average Weekly</u> <u>Wage</u>	<u>Average Annual</u> <u>Wage</u>
Barnes County, ND	4,443	\$19.40	\$ 776.00	\$40,352
State of North Dakota	414,791	\$26.15	\$1,046.00	\$54,392

Source: Labor Market Information Center, Job Service North Dakota, QCEW Unit, 1<sup>st</sup> Quarter 2020, Based on working 40 hours per week.

**Income Total**

The table below shows the annual income data for 2018.

	<u>Median Household Income<sup>(1)</sup></u>	<u>Per Capita Personal Income<sup>(2)</sup></u>	<u>Total Personal Income<sup>(2)</sup></u>
Barnes County	\$ 54,984	\$ 55,784	\$ 588,079,000
North Dakota	66,505	55,598	42,147,700,000
United States	63,179	54,526	17,813,035,000,000

*Source: Labor Market Information Center, Job Service North Dakota, QCEW Unit.*

<sup>(1)</sup> *Income source from U.S. Census Bureau.*

<sup>(2)</sup> *Income source from U.S. Bureau of Econ Analysis.*

**Largest Employers in the Area**

<u>Employer</u>	<u>Business</u>	<u>Employees</u>
Valley City State University	Education	372
Open Door Center	Special Needs Care	350
John Deere Seeding Group Valley City	Air Seeder Manufacturing	275
Sheyenne Care Center	Elderly Health Care	250
Barnes County	Government	130
Valley City Public Schools	Education	130
CHI Mercy Health	Health Care	123
Healthy Food Ingredients	Food Manufacturing	70
LafargeHolcim	Cement	70
City of Valley City	Government	57
Eagle Creek Software Services	Software Services	57

*Source: Valley City - Barnes County Development Corporation.*

**Taxable Sales and Purchases**

<u>Year</u>	<u>Barnes County</u>
2019	\$ 72,828,140
2018	69,466,645
2017	69,972,223
2016	73,102,625
2015	79,583,196
2014	87,949,282
2013	92,502,411
2012	89,983,350

*Sources: North Dakota Sales and Use Tax Statistical Reports.*

**2020 Taxable Sales and Purchases Barnes County**

<u>Quarter</u>	<u>Taxable Sales</u>	<u>Taxable Purchases</u>	<u>Taxable Sales &amp; Purchases</u>
1 <sup>st</sup> 2020	\$ 12,633,139	\$ 1,016,749	\$ 13,649,888

*Sources: North Dakota Sales and Use Tax Statistical Reports.*

## Industry Employment Distribution

The table below shows the Distribution of Industries in Barnes County as of 1<sup>st</sup> Quarter 2020:

<u>Industry</u>	<u>Establishments</u>	<u>Employees</u>
Health Care and Social Assistance	35	956
Educational Services	11	592
Manufacturing	17	470
Retail Trade	43	442
Accommodation and Food Services	34	360
Construction	48	269
Wholesale Trade	34	266
Public Administration	25	227
Professional, Scientific & Technical Services	25	145
Finance and Insurance	27	127

*Source: ND Job Service, Labor Market Information Center, QCEW Unit.*

## Crop Production

Crop production reported in Barnes County for 2019 is as follows:

<u>Crops</u>	<u>Acres Harvested</u>	<u>Production</u>
Barley	8,790	462,000 bu.
Spring Wheat	76,000	4,000,000 bu.
Soybeans	294,000	9,365,000 bu.

*Source: North Dakota Agriculture Statistics, August 2020.*

## Livestock Population

Livestock population in Barnes County as of January 1, 2020 is as follows:

<u>Animal</u>	<u>Number of Head</u>
All Cattle	35,500
Sheep and Lambs	2,400

*Source: North Dakota Agriculture Statistics.*

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## FINANCIAL POSITIONS AND OPERATIONS

This summarizes the year-end fund balances, and General Fund revenues, expenditures and fund balances for the County for the most recent fiscal years.

### General Fund Revenues, Expenditures and Changes in Fund Balances

	<u>2017</u>	<u>2018</u>	<u>2019</u> <u>(unaudited)</u>
<b>REVENUES</b>			
Property Taxes	\$3,408,746.31	\$4,195,618.40	\$4,711,131.13
Intergovernmental	786,165.17	913,570.24	1,021,583.65
Charges for Services	130,307.40	111,506.56	212,559.93
Interest and other	343,186.99	281,693.55	256,527.08
Total Revenues	<u>\$4,668,405.87</u>	<u>\$5,502,388.75</u>	<u>\$6,201,801.79</u>
<b>EXPENDITURES</b>			
Current:			
General Government	\$2,847,370.19	\$4,315,853.72	\$3,080,554.58
Public Safety	1,636,495.46	796,351.01	1,997,920.54
Health and Welfare	--	--	--
Highways	--	--	--
Relief and Charities	--	--	--
Culture and Recreation	--	--	82,466.54
Capital Outlay	--	--	--
Debt Service:			
Principal	--	--	--
Interest Expense	--	--	--
Total Expenditures	<u>\$4,483,865.65</u>	<u>\$5,112,204.73</u>	<u>\$5,160,941.66</u>
Excess of Revenue Over (Under) Expenditures	<u>184,540.22</u>	<u>390,184.02</u>	<u>1,040,860.13</u>
<b>OTHER FINANCING SOURCES (USES)</b>			
Transfers in	3,895.55	214,480.67	--
Transfers out	(270,751.00)	(63,806.52)	(20,000.00)
Bond Proceeds	--	--	--
Net Change in Fund Balances	<u>(82,315.23)</u>	<u>540,858.17</u>	<u>1,020,860.13</u>
<b>FUND BALANCE - Beginning January 1:</b>	\$ 1,867,938.05	\$ 1,785,622.82	\$2,326,480.99
<b>FUND BALANCE - Ending December 31:</b>	<u>\$ 1,785,622.82</u>	<u>\$ 2,326,480.99</u>	<u>\$3,347,341.12</u>
General Fund Balance as Percentage of Revenue	<u>38.25%</u>	<u>42.28%</u>	<u>53.97%</u>

Source: Audited Financial Statements of the County.

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**VALUATIONS**

<u>Year</u>	<u>Market Valuation</u>	<u>Assessed Valuation</u>	<u>Taxable Valuation</u>
2019	\$ 1,525,489,390	\$ 762,744,697	\$ 83,979,362
2018	1,683,719,104	841,859,552	81,946,969
2017	1,616,676,616	808,388,308	78,708,048
2016	1,281,736,793	640,868,397	77,096,411
2015	1,182,598,617	591,299,309	73,903,024
2014	1,072,715,230	536,357,615	69,909,874
2013	1,002,473,800	501,236,900	65,240,718
2012	1,000,263,600	500,131,800	61,976,385
2011	840,763,500	420,381,750	53,802,354

*Source: The County and North Dakota League of Cities archives.*

Valuations as calculated under State statutes which provide, in part, that Assessed Values be 50% of the Full & True Value with farmland and commercial property having a Taxable Value of 10% of the Assessed Value. Residential Taxable Value is 9% of the Assessed Value. Utility Property Values are set by the State.

**BONDED DEBT**

**General Obligation**

None.

**Limited Tax Bonds**

<u>Year</u>	<u>Purpose</u>	<u>Final Maturity</u>	<u>Principal Outstanding</u>
2018	Limited Tax Bonds	05/01/2023	\$ 305,000

**Revenue Bonds**

<u>Year</u>	<u>Purpose</u>	<u>Final Maturity</u>	<u>Principal Outstanding</u>
2020	Certificates of Participation, Series 2020 (Correctional Facility) ( <i>this issue</i> )	05/01/2050	\$ 15,100,000*

*\*Preliminary, subject to change. Not subject to debt limit.*

**Other**

<u>Note Payable</u>	<u>Final Maturity</u>	<u>Principal Outstanding</u>
City- County Health building	2025	\$ 323,234

**DEBT LIMITATION**

According to Article X, Section 15 of the North Dakota Constitution and Section 21-03-04 of the North Dakota Century Code, North Dakota Counties may not become indebted for any purpose in excess of 5% of their assessed value.

**Debt Limit Computation**

Assessed Value:	\$762,744,697
Limit Percentage:	5%
Authorized Debt Limit	\$ 38,137,235
Minus GO Debt:	<u>0</u>
Remaining Debt Capacity:	\$ 38,137,235

**OVERLAPPING GENERAL OBLIGATION BONDED INDEBTEDNESS**

<u>Entity</u> <sup>(1)</sup>	<u>Tax Supported Bonded Debt</u> <sup>(2)(3)</sup>	<u>Percent Allocable To the County</u>	<u>County's Share</u>
City of Valley City	\$9,365,000	100.00%	\$ 9,365,000
Valley City School District	2,515,000	100.00	<u>2,515,000</u>
Total Overlapping GO Bonded Debt:			\$ 11,880,000

Sources: North Dakota League of Cities, North Dakota Department of Public Instruction.

<sup>(1)</sup> Barnes County includes fourteen incorporated cities, three public school districts, one water resource district and a number of park districts. The table is a listing of such entities that report outstanding general obligation bonded indebtedness.

<sup>(2)</sup> Includes general obligation debt supported by special assessments. Excludes State debt.

<sup>(3)</sup> Balance as of June 30, 2020.

**DEBT RATIOS**

2019 Full and True Value/Market Value (100%)	\$1,525,489,390
2019 Assessed Value (50%)	\$762,744,697
2019 Taxable Value	\$83,979,362

**2019 Population (estimate): 10,415**

**Outstanding Debt As of 06/30/2020**

Total Direct General Obligation Debt:	\$ 0
Total Special Assessment Debt:	0
Total Revenue Bonded Debt, including this issue:	15,505,000*
Overlapping G.O. Tax Supported Bonded Debt:	<u>11,880,000</u>
Total Outstanding Debt listed:	\$27,375,000

\*Preliminary, subject to change.

	<u>Per Capita Debt</u>	<i>Percentage of the following Valuations</i>		
		<u>Taxable Valuation</u>	<u>Assessed Valuation</u>	<u>Full &amp; True/ Market Valuation</u>
Net Direct G.O. Debt	\$ 0.00	0.00%	0.00%	0.00%
Net Special Assessment Debt	29.28	0.36	0.04	0.02
Net Revenue Bonded Debt	1,487.76	18.45	2.03	1.02
Overlapping G.O. Debt	<u>1,140.66</u>	<u>14.15</u>	<u>1.56</u>	<u>0.78</u>
<b>Total</b>	<b><u>\$ 2,657.71</u></b>	<b><u>32.96%</u></b>	<b><u>3.63%</u></b>	<b><u>1.82%</u></b>

## TAX INFORMATION

### Tax Levies and Collections

<u>Fiscal Year</u>	<u>Total Tax Levy</u>	<u>Tax Collections*</u>	<u>Percent of Levy Collected</u>
2019	\$ 8,589,812.22	\$ 7,903,988.70	92.02%
2018	8,381,285.80	8,072,620.24	96.32
2017	7,597,067.99	7,374,262.86	97.07
2016	7,906,303.66	7,732,098.59	97.80
2015	7,010,399.79	6,875,509.49	98.08
2014	6,168,799.60	6,055,962.10	98.17
2013	6,424,066.34	6,322,965.60	98.43
2012	6,024,250.76	5,918,659.25	98.25

*Source: Barnes County Auditor, as of July 31, 2020.*

North Dakota Statutes allow a 5% discount on property taxes paid by February 15 of the following year. Taxes may be paid in two installments, without penalty. The first installment must be paid by March 1, and the second by October 15. If installments are not made, the entire tax must be paid by March 1 to avoid penalties.

### Largest Property Taxpayers

The largest property taxpayers in the County are identified below:

<u>Taxpayer</u>	<u>2019 Taxable Value</u>	<u>Percent of Taxable Valuation</u>
TransCanada Keystone Pipeline LP	\$ 2,490,597	2.97%
Ashtabula Wind, LLC	2,215,790	2.64
BNSF RWY Co	1,998,726	2.38
Mpls St Paul & Sault Ste Marie RR	1,537,596	1.83
Alliance Pipeline Ltd	1,516,059	1.81
Otter Tail Power Company	894,220	1.06
Agair Manufacturing LLC	674,035	0.80
Arthur Companies Inc	632,845	0.75
Kinder Morgan Cochin LLC	562,804	0.67
Archer-Daniels-Midland Co	536,595	0.64

*Source: Barnes County Auditor.*

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**County Mill Levy**

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
General	36.43	45.45	54.88	58.91	58.23
Sinking & Interest	0.74	1.39	1.65	0.00	0.00
Ambulance	1.00	1.00	1.00	1.00	1.00
Older Persons	2.00	2.00	2.00	2.00	2.00
Library	2.52	2.22	2.39	2.30	2.19
Extension	1.46	1.87	2.13	2.22	1.91
Farm to Market	15.00	15.00	11.00	13.00	14.00
Emergency	0.00	0.00	0.25	0.25	0.25
Airport	4.00	2.00	3.00	2.06	1.70
Economic Development	2.36	2.04	2.23	2.23	3.50
CCH	5.00	4.00	5.00	5.00	5.00
Veteran's Services	0.85	1.37	1.80	1.70	1.80
Social Services	16.16	16.00	0.00	0.00	0.00
Weed Control	1.63	2.87	3.98	4.00	2.88
Historical Society	0.75	0.75	0.75	0.75	0.75
Water Resource	3.03	2.59	2.51	2.50	3.00
Road & Bridge	0.50	0.50	0.50	2.78	2.47
Soil Conservation	1.00	1.00	1.00	1.10	1.10
Garrison Conservancy District	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>
Total:	95.43	103.05	97.07	102.80	102.78

*Source: Barnes County Auditor.*

**FUNDS ON HAND**

<u>Fund</u>	<u>Amount as of 07/31/2020</u>
General	\$ 4,835,731.73
Total	\$ 4,835,731.73

*Source: Barnes County Auditor.*

**Audited Financial Statements and Retirement Funds**

The County's financial statements for the year ended December 31, 2018 are attached hereto as "APPENDIX B - AUDITED FINANCIAL STATEMENTS OF THE COUNTY FOR THE FISCAL YEAR ENDED DECEMBER 31, 2018." See Appendix B for detailed information regarding the County's finances, including its participation in the state of North Dakota Public Employees' Retirement System (Note 10).

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**APPENDIX B**

**AUDITED FINANCIAL STATEMENTS OF THE COUNTY FOR  
THE FISCAL YEAR ENDED DECEMBER 31, 2018**

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BARNES COUNTY  
VALLEY CITY, NORTH DAKOTA

FINANCIAL STATEMENTS  
YEAR ENDED DECEMBER 31, 2018



BARNES COUNTY

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BARNES COUNTY  
LIST OF OFFICIALS  
DECEMBER 31, 2018

Commissioners:	Cindy Schwehr John Froelich Mike Metcalf Rodger Berntson Bill Carlblom
Auditor:	Beth Didier
Treasurer:	Vicki Zinck
Sheriff:	Randy McClaflin
County Recorder:	Jody Pfaff
States Attorney:	Carl Martineck

# Harold J. Rotunda

## Certified Public Accountant

### INDEPENDENT AUDITOR'S REPORT

County Commission  
Barnes County  
Valley City, North Dakota

I have audited the accompanying modified cash basis financial statements of the governmental activities, discretely presented component units, each major fund and aggregate remaining fund information of Barnes County as of and for the year ended December 31, 2018, and the related notes to the financial statements, which collectively comprise the County's basic financial statements as listed in the table of contents.

#### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with the modified cash basis of accounting described in Note 1; this includes determining that the modified cash basis of accounting is an acceptable basis for the preparation of the financial statements in the circumstances. Management is also responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

#### **Auditor's Responsibility**

My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with U.S. generally accepted auditing standards. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement in the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, I express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

**Opinion**

In my opinion, the financial statements referred to above present fairly, in all material respects, the respective modified cash basis financial position of the governmental activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of Barnes County as of December 31, 2018, and the changes in modified cash basis financial position and cash flows, where applicable, thereof for the year then ended, in conformity with U.S. generally accepted accounting principles.

**Basis of Accounting**

I draw attention to Note 1 of the financial statements, which describes the basis of accounting. The financial statements are prepared on the modified cash basis of accounting, which is a basis of accounting other than U.S. generally accepted accounting principles. My opinion is not modified with respect to that matter.

/S/

Harold Rotunda  
West Fargo, North Dakota  
June 11, 2019

BARNES COUNTY  
STATEMENT OF NET POSITION- MODIFIED CASH BASIS  
DECEMBER 31, 2018

	PRIMARY GOVERNMENT	
	GOVERNMENTAL ACTIVITIES	COMPONENT UNITS
<b>ASSETS</b>		
Cash and investments	9,738,182.56	735,296.31
Accounts receivable	176,491.81	-
Intergovernmental receivable	36,189.79	-
Capital assets (net of accumulated depreciation)	3,707,328.23	1,523,266.36
Total Assets	13,658,192.39	2,258,562.67
<b>LIABILITIES</b>		
Accounts Payable	3,498.22	-
Long-term liabilities:		-
Due within one year:		
Bonds payable	100,000.00	-
Notes payable	51,187.54	-
Due after one year:		-
Bonds payable	400,000.00	
Notes payable	343,673.77	
Total liabilities	898,359.53	-
<b>DEFERRED INFLOWS OF RESOURCES</b>		
Taxes paid in advance	2,087,052.68	85,609.86
<b>NET POSITION</b>		
Net investment in capital assets	2,812,466.92	1,523,266.36
Restricted for:		
FEMA projects	-	-
Debt service	-	-
General government	-	-
Unrestricted	7,860,313.26	649,686.45
Total net position	10,672,780.18	2,172,952.81

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
STATEMENT OF ACTIVITIES- MODIFIED CASH BASIS  
YEAR ENDED DECEMBER 31, 2018

		Program Revenues		Net (expense) Revenue & Changes in Net Assets	
	Expenses	Charges for Services	Operating grants and Contributions	Governmental Activities	Component units
<b>Governmental Activities:</b>					
General government	3,995,816.15			(3,995,816.15)	170,663.26
Public safety	1,889,784.66			(1,889,784.66)	175,603.73
Health and welfare	1,501,268.00	660,635.59	1,413,747.08	573,114.67	
Highways	2,476,591.81	456,319.64	1,583,371.70	(436,900.47)	
Relief and charities	1,221,611.58		1,331,618.57	110,006.99	
Weed control	251,248.35	8,382.89	31,920.46	(210,945.00)	
Culture and recreation	87,907.42	-		(87,907.42)	
Other capital outlays	24,314.01			(24,314.01)	533,289.15
Interest expense	30,344.04			(30,344.04)	
Depreciation- Unallocated	370,103.03			(370,103.03)	13,587.00
<b>Total Governmental Activities</b>	<b>11,848,989.05</b>	<b>1,125,338.12</b>	<b>4,360,657.81</b>	<b>(6,362,993.12)</b>	<b>893,143.14</b>
<b>General Revenues</b>					
Property taxes				6,693,561.19	426,848.23
Intergovernmental				198,076.38	1,010,311.45
Charges				156,225.83	
Interest income				54,020.91	
Licenses and permits				39,947.18	
Other revenue				490,093.66	272,658.91
<b>Total General revenues</b>				<b>7,631,925.15</b>	<b>1,709,818.59</b>
<b>Change in Net Assets</b>				<b>1,268,932.03</b>	<b>816,675.45</b>
<b>Net Position- January 1</b>				<b>9,403,848.15</b>	<b>1,356,277.36</b>
<b>Net Position- December 31</b>				<b>10,672,780.18</b>	<b>2,172,952.81</b>

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
 BALANCE SHEET- GOVERNMENTAL FUNDS- MODIFIED CASH BASIS  
 DECEMBER 31, 2018

	GENERAL	HIGHWAY FUNDS	SOCIAL SERVICE FUND	CITY-COUNTY HEALTH FUND	OTHER GOVERNMENTAL FUNDS	TOTAL GOVERNMENTAL FUNDS
<b>ASSETS</b>						
Cash and investments	3,635,522.44	4,635,886.27	232,608.88	130,528.04	1,103,636.93	9,738,182.56
Accounts receivable		176,491.81			-	176,491.81
Intergovernmental receivable	-	-	-	36,189.79	-	36,189.79
<b>Total Assets</b>	<b>3,635,522.44</b>	<b>4,812,378.08</b>	<b>232,608.88</b>	<b>166,717.83</b>	<b>1,103,636.93</b>	<b>9,950,864.16</b>
<b>LIABILITIES</b>						
Accounts Payable	3,498.22	-	-	-	-	3,498.22
Prepaid taxes	1,305,543.23	349,711.12	-	110,808.30	320,990.03	2,087,052.68
<b>Total Liabilities</b>	<b>1,309,041.45</b>	<b>349,711.12</b>	<b>-</b>	<b>110,808.30</b>	<b>320,990.03</b>	<b>2,090,550.90</b>
<b>FUND BALANCE</b>						
Restricted for FEMA Projects					-	-
Restricted for Debt Service					-	-
Restricted for General Government		4,462,666.96	232,608.88	55,909.53	792,903.64	5,544,089.01
Unassigned	2,326,480.99				(10,256.74)	2,316,224.25
<b>Total Fund Balance</b>	<b>2,326,480.99</b>	<b>4,462,666.96</b>	<b>232,608.88</b>	<b>55,909.53</b>	<b>782,646.90</b>	<b>7,860,313.26</b>
<b>Total liabilities, deferred inflows of resources and fund balances</b>	<b>3,635,522.44</b>	<b>4,812,378.08</b>	<b>232,608.88</b>	<b>166,717.83</b>	<b>1,103,636.93</b>	<b>9,950,864.16</b>

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
 RECONCILIATION OF GOVERNMENTAL FUNDS BALANCE  
 SHEET TO THE STATEMENT OF NET POSITION  
 DECEMBER 31, 2018

Total Fund Balances for Governmental Funds 7,860,313.26

Total net assets reported for governmental activities in the statement of net assets is different because:

Capital assets used in governmental activities are not financial resources and are not reported in governmental funds

Cost of capital assets	13,930,749.90	
Less accumulated depreciation	10,223,421.67	
Net capital assets		3,707,328.23

Long-term liabilities applicable to the District's governmental activities are not due and payable in the current period and accordingly are not reported as fund liabilities. All liabilities- both current and long-term are reported in the statement of net assets. Balances at year end are:

Bonds payable	(500,000.00)
Leases payable	-
Notes payable	(394,861.31)

Total Net Assets of Governmental Activities 10,672,780.18

The accompanying notes are an integral part of these financial statements.



BARNES COUNTY  
STATEMENT OF REVENUES, EXPENDITURES AND  
CHANGES IN FUND BALANCES- GOVERNMENTAL FUNDS- MODIFIED CASH BASIS  
YEAR ENDED DECEMBER 31, 2018

	GENERAL	HIGHWAY FUNDS	SOCIAL SERVICE FUND	CITY-COUNTY HEALTH FUND	OTHER GOVERNMENTAL FUNDS	TOTAL GOVERNMENTAL FUNDS
Property taxes	4,195,618.40	884,069.85	18,186.75	381,562.74	1,214,123.45	6,693,561.19
Intergovernmental	913,570.24	1,415,847.50	1,331,618.57	615,040.53	282,657.35	4,558,734.19
Charges for services	111,506.56	456,319.64	-	660,635.59	53,102.16	1,281,563.95
Interest and other	281,693.55	37,041.92	4,415.14	37,929.06	222,982.08	584,061.75
<b>Total Revenues</b>	<b>5,502,388.75</b>	<b>2,793,278.91</b>	<b>1,354,220.46</b>	<b>1,695,167.92</b>	<b>1,772,865.04</b>	<b>13,117,921.08</b>
Current:						
General government	4,315,853.72				1,255,517.13	5,571,370.85
Public safety	796,351.01				128,947.54	925,298.55
Health and welfare				1,501,268.00	-	1,501,268.00
Highways		2,539,262.08			28,652.73	2,567,914.81
Relief and charities			1,221,611.58		-	1,221,611.58
Culture and recreation					112,907.32	112,907.32
Capital outlay	-			250,680.11	-	250,680.11
Debt Service						
Principal				48,454.34	100,000.00	148,454.34
Interest expense				23,299.54	6,544.50	29,844.04
<b>Total Expenditures</b>	<b>5,112,204.73</b>	<b>2,539,262.08</b>	<b>1,221,611.58</b>	<b>1,823,701.99</b>	<b>1,632,569.22</b>	<b>12,329,349.60</b>
Excess revenues (expenditures)	390,184.02	254,016.83	132,608.88	(128,534.07)	140,295.82	788,571.48
Other Financing Sources (Uses):						
Transfers in	214,480.67	1,500,000.00			63,806.52	1,778,287.19
Transfers out	(63,806.52)	(1,500,000.00)	(89,044.58)		(125,436.09)	(1,778,287.19)
Bond proceeds		494,500.00			-	494,500.00
<b>Total other financing sources and uses</b>	<b>150,674.15</b>	<b>494,500.00</b>	<b>(89,044.58)</b>	<b>-</b>	<b>(61,629.57)</b>	<b>494,500.00</b>
Net change in fund balances	540,858.17	748,516.83	43,564.30	(128,534.07)	78,666.25	1,283,071.48
Fund balance- beginning	1,785,622.82	3,714,150.13	189,044.58	184,443.60	703,980.65	6,577,241.78
Fund balance- ending	2,326,480.99	4,462,666.96	232,608.88	55,909.53	782,646.90	7,860,313.26

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
 RECONCILIATION OF GOVERNMENTAL STATEMENT OF REVENUES, EXPENDITURES AND  
 CHANGES IN FUND BALANCES TO THE STATEMENT OF ACTIVITIES  
 YEAR ENDED DECEMBER 31, 2018

Net Change in Fund Balances- Total Governmental Funds 1,283,071.48

The change in net assets reported for governmental activities in the statement of activities is different because:

Governmental funds report capital outlay as expenditures. However, in the statement of activities, the cost of those assets is allocated over their estimated useful lives and reported as depreciation expense. This is the amount by which capital outlays exceeded depreciation in the current year.

Current year capital outlay	702,509.24	
Current year depreciation expense	370,103.03	332,406.21

Repayment of long-term debt principal is an expenditure in the governmental funds, but the repayment reduces long-term liabilities in the statement of net assets.	99,500.00	
	48,454.34	
	(494,500.00)	

Change in Net Assets of Governmental Activities 1,268,932.03

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
STATEMENT OF ASSETS AND LIABILITIES- FIDUCIARY  
DECEMBER 31, 2018

AGENCY  
FUNDS

ASSETS

Cash and investments 3,810,037.05

Total Assets 3,810,037.05

LIABILITIES

Prepaid taxes 201,338.12

Due to Other Groups 3,608,698.93

Total liabilities 3,810,037.05

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
 COMBINING STATEMENT OF ACTIVITIES- COMPONENT UNITS- MODIFIED CASH BASIS  
 YEAR ENDED DECEMBER 31, 2018

	WATER RESOURCE	AIRPORT AUTHORITY	TOTAL
Expenditures			
General government	170,663.26		170,663.26
Public safety	-	175,603.73	175,603.73
Highways and streets			-
Economic development	-		-
Other capital outlays	533,289.15	-	533,289.15
Interest expense			-
Depreciation- Unallocated		13,587.00	13,587.00
<b>Total Expenditures</b>	<b>703,952.41</b>	<b>189,190.73</b>	<b>893,143.14</b>
Revenue			
Property taxes	195,533.35	231,314.88	426,848.23
Intergovernmental	399,048.50	611,262.95	1,010,311.45
Charges for services		87,483.43	87,483.43
Miscellaneous	170,170.82	13,481.47	183,652.29
Interest income	420.65	1,102.54	1,523.19
<b>Total Revenues</b>	<b>765,173.32</b>	<b>944,645.27</b>	<b>1,709,818.59</b>
<b>Change in Net Position</b>	<b>61,220.91</b>	<b>755,454.54</b>	<b>816,675.45</b>
<b>Net Position- January 1</b>	<b>257,293.94</b>	<b>1,098,983.42</b>	<b>1,356,277.36</b>
<b>Net Position- December 31</b>	<b>318,514.85</b>	<b>1,854,437.96</b>	<b>2,172,952.81</b>

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
 COMBINING STATEMENT OF NET POSITION- COMPONENT UNITS- MODIFIED CASH BASIS  
 DECEMBER 31, 2018

	WATER RESOURCE	AIRPORT AUTHORITY	TOTAL
<b>ASSETS</b>			
Cash and investments	404,124.71	331,171.60	735,296.31
Accounts receivable	-		-
Taxes receivable	-		-
Intergovernmental receivable			-
Contract for deed			-
Capital assets (net of accumulated depreciation)		1,523,266.36	1,523,266.36
<b>Total Assets</b>	<b>404,124.71</b>	<b>1,854,437.96</b>	<b>2,258,562.67</b>
<b>LIABILITIES</b>			
Accounts Payable	-	-	-
Deferred revenue	-		-
Long-term liabilities:			-
Due within one year:			
Bonds payable		-	-
Notes payable		-	-
Due after one year:			-
Bonds payable			-
Notes payable			-
<b>Total liabilities</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>DEFERRED INFLOWS OF RESOURCES</b>			
Taxes paid in advance	85,609.86		85,609.86
<b>NET POSITION</b>			
Invested in capital assets, net of related debt		1,523,266.36	1,523,266.36
Restricted for:			
Capital projects			-
Debt service			-
Unrestricted	318,514.85	331,171.60	649,686.45
<b>Total net position</b>	<b>318,514.85</b>	<b>1,854,437.96</b>	<b>2,172,952.81</b>

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
VALLEY CITY, NORTH DAKOTA

NOTES TO THE FINANCIAL STATEMENTS  
DECEMBER 31, 2018

NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The financial statements of the Barnes County (County) have been prepared in conformity with the modified cash basis of accounting. The Governmental Accounting Standards Board (GASB) is the accepted standard setting body for establishing governmental accounting and financial reporting principles. The more significant of the County's accounting policies are described below.

A. Reporting Entity

The accompanying financial statements present the activities of the County. The County has considered all potential component units for which the County is financially accountable and other organizations for which the nature and significance of their relationships with the County such that exclusion would cause the County's financial statements to be misleading or incomplete. The Governmental Accounting Standards Board has set forth criteria to be considered in determining financial accountability. This criteria includes appointing a voting majority of an organization's governing body and (1) the ability of the County to impose its will on that organization or (2) the potential for the organization to provide specific financial benefits to, or impose specific financial burdens on the County.

Based on these criteria, there are two component units: Airport Authority and Water Resource District.

B. BASIS OF PRESENTATION, BASIS OF ACCOUNTING

Government-wide statements: The statement of net assets and the statement of activities display information about the primary government, the County. These statements include the financial activities of the overall government, except for fiduciary activities. Eliminations have been made to minimize the double-counting of internal activities. Governmental activities generally are financed through taxes, intergovernmental revenues, and other nonexchange transactions.

BARNES COUNTY

Notes to Financial Statements- Continued

The statement of activities presents a comparison between direct expenses and program revenues for each function of the County's governmental activities. Direct expenses are those that are specifically associated with a program or function and, therefore, are clearly identifiable to a particular function. Program revenues include (a) fees and charges paid by the recipients of goods or services offered by the programs and (b) grants and contributions that are restricted to meeting the operational or capital requirements of a particular program. Revenues that are not classified as program revenues, including all taxes, are presented as general revenues.

**Fund Financial Statements:** The fund financial statements provide information about the County's funds including its fiduciary funds. Separate statements for each fund category - governmental and fiduciary - are presented. The emphasis of fund financial statements is on major governmental funds, each displayed in a separate column. All remaining governmental funds are aggregated and reported as nonmajor funds.

The County reports the following major governmental fund:

**General Fund.** The General Fund is the primary operating fund of the City and always classified as a major fund. It is used to account for all activities except those legally or administratively required to be accounted for in other funds.

**Highway-** The Highway fund is used to account for highway activity for the County. Primary revenue sources are taxes and state aid.

**Social service-** The Social Service fund is used to account for health and welfare activity for the County. Primary revenue sources are taxes and state aid.

**City County Health-** The City County Health fund is used to account for health activity for the County. Primary revenue sources are taxes and state aid.

The County reports the following fund types:

**Agency Funds.** These funds account for assets by the County in a custodial capacity as an agent on behalf of others. The County's agency fund is used to account for various deposits of other governments funds.

BARNES COUNTY  
Notes to Financial Statements- Continued

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation

Government-wide Financial Statements. In the government-wide Statement of Net Assets and the Statement of Activities, activities are presented using the economic resources measurement focus, within the limitations of the modified cash basis of accounting as defined below.

In the fund financial statements, the "current financial resources" measurement focus or the "economic resources" measurement focus, as applied to the modified cash basis of accounting, is used as appropriate.

All governmental funds utilize a "current financial resources" measurement focus. Only current financial assets and liabilities are generally included on their balance sheets. Their operating statements presents sources and uses of available spendable financial resources during a given period. These funds use fund balance as their measure of available spendable financial resources at the end of the period.

In the government-wide Statement of Net Assets and the Statement of Activities, activities are presented using a modified cash basis of accounting. This basis of accounting recognizes assets, liabilities, net assets/fund equity, revenues and expenditures when they result from cash transactions with a provision for depreciation in the government-wide statements. This basis is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

As a result of the use of this modified cash basis of accounting, certain assets and their related revenues (such as accounts receivable and revenue for billed or provided services not yet collected) and certain liabilities and their related expenses (such as accounts payable and expenses for goods or services received but not yet paid, and accrued expenses and liabilities) are not recorded in these financial statements.

If the County utilized the basis of accounting recognized as generally accepted, the fund financial statements for governmental funds would use the modified accrual basis of accounting. All government-wide financial statements would be presented on the accrual basis of accounting.



BARNES COUNTY  
Notes to Financial Statements- Continued

Under the terms of grant agreements, the County funds certain programs by a combination of specific cost-reimbursement grants and general revenues. Thus, when program expenses are incurred, there are both restricted and unrestricted net assets available to finance the program. It is the County's policy to first apply cost-reimbursement grant resources to such programs, and then by general revenues.

D. Budgets

Based upon available financial information and requests by the department heads, the commission and auditor prepares the County budget. The budget is prepared for the general and special revenue funds on the modified cash basis of accounting. The budget includes the proposed expenditures and the means of financing them. All annual appropriations lapse at year-end.

County taxes are levied by the county commission on or before the October meeting. The current budget, except for property taxes, may be amended during the year for any revenues and appropriations not anticipated at the time the budget was prepared.

E. Cash and Investments

Cash includes amounts in demand deposits and money market accounts.

The investments of the County during the year ended December 31, 2018 consist of certificates of deposit stated at fair value with maturities in excess of 3 months.

F. COMPENSATED ABSENCES

Vested or accumulated vacation leave is reported in government-wide statement of net assets. Compensation for unused vacation leave will be granted for all 12 month employees upon termination of employment with the County based on the current rate of pay.

BARNES COUNTY  
Notes to Financial Statements- Continued

G. Capital Assets

Capital assets, which include property, plant, and equipment, are reported in the applicable governmental or business-type activities columns in the government-wide financial statements. Capital assets are defined by the government as assets with an initial, individual cost of more than \$5,000. Such assets are recorded at historical cost or estimated historical cost if purchased or constructed. Net estimated historical cost was used to value the majority of assets acquired prior to January 1, 2004. Prior to January 1, 2004, governmental funds' infrastructure assets were not capitalized. Donated capital assets are recorded at estimated fair market value at the date of donation.

The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend assets lives are not capitalized.

Major outlays for capital assets and improvements are capitalized as projects are constructed. Interest incurred during the construction phase of capital assets of business-type activities is included as part of the capitalized value of the assets constructed.

Property, plant, and equipment of the County is depreciated using the straight line method over the following estimated useful lives:

Permanent Buildings	50
Equipment	10

H. Long-Term Obligations

In the government-wide financial statements, long term debt and other long term obligations are reported as liabilities in the governmental activities statement of net assets. Bond premiums, discounts and issuance costs are recognized in the current period since the amounts are not material.

In the fund financial statements, governmental fund types recognize bond premiums, discounts and issuance costs in the current period. The face amount of the debt is reported as other financing sources. Premiums received on debt issuances are reported as other financing sources while discounts on debt issuances are reported as other financing uses. Issuance costs are reported as debt service expenditures.

BARNES COUNTY  
Notes to Financial Statements- Continued

I. Fund Balance/ Net Position

In the fund financial statements, governmental funds report aggregate amounts for five classifications of fund balances based on the constraints imposed on the use of these resources. The non-spendable fund balance classification includes amounts that cannot be spent because they are either (a) not in spendable form - inventories; or (b) legally or contractually required to be maintained intact.

The spendable portion of the fund balance comprises the remaining four classifications: restricted, committed, assigned, and unassigned.

**Restricted** - This classification reflects the constraints imposed on resources either (a) externally by creditors, grantors, contributors, or laws or regulations of other governments; or (b) imposed by law through constitutional provisions or enabling legislation.

**Committed** - These amounts can only be used for specific purposes pursuant to constraints imposed by formal resolutions or ordinances of the County commission-the County's highest level of decision making authority. Those committed amounts cannot be used for any other purpose unless the council removes the specified use by taking the same type of action imposing the commitment. This classification also includes contractual obligations to the extent that existing resources in the fund have been specifically committed for use in satisfying those contractual requirements.

**Assigned** - This classification reflects the amounts constrained by the County's "intent" to be used for specific purposes, but are neither restricted nor committed. The council has the authority to assign amounts to be used for specific purposes. Assigned fund balances include all remaining amounts (except negative balances) that are reported in governmental funds, other than the General Fund, that are not classified as non-spendable and are neither restricted nor committed.

**Unassigned** - This fund balance is the residual classification for the General Fund. It is also used to report negative fund balances in other governmental funds.

When both restricted and unrestricted resources are available for use, the County's preference is to first use restricted resources, then unrestricted resources-committed, assigned, and unassigned-in order as needed.

BARNES COUNTY  
Notes to Financial Statements- Continued

The Commission has not set a General Fund minimum fund balance.

In the fund financial statements, governmental funds report reservations of fund balance for amounts that are not available for appropriation or are legally restricted by outside parties for use for a specific purpose. Designations of fund balance represent tentative management plans that are subject to change.

J. Interfund Transactions

In the governmental fund statements, transactions that constitute reimbursements to a fund for expenditures initially made from it that are properly applicable to another fund, are recorded as expenditures in the reimbursing fund and as reductions of expenditures in the fund that is reimbursed.

All other interfund transactions, except reimbursements, are reported as transfers. Nonrecurring or nonroutine permanent transfers of equity are reported as residual equity transfers. All other interfund transfers are reported as operating transfers. In the government-wide financial statements, interfund transactions have been eliminated.

NOTE 2: LEGAL COMPLIANCE - BUDGETS

BUDGET AMENDMENTS

The board did not amend the County budget for 2018.

EXPENDITURES OVER APPROPRIATIONS

The County overspent the General fund budget by \$115,814; the Veterans Service Office budget by \$2,837; County Park budget by \$124,728; and City-County Health budget by \$233,348. No remedial action is required.

NOTE 3 DEPOSITS

In accordance with North Dakota Statutes, the County maintains deposits at the depository banks designated by the governing board. All depositories are members of the Federal Reserve System.

Deposits must either be deposited with the Bank of North Dakota or in other financial institution situated and doing business within the state. Deposits, other than with the Bank of North Dakota, must be fully insured or bonded. In lieu of a bond, a financial institution may provide a pledge of securities equal to 110% of the deposit not covered by insurance or bonds.

BARNES COUNTY

Notes to Financial Statements- Continued

Authorized collateral includes bills, notes, or bonds issued by the United State government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, Federal Land Bank bonds, notes, warrants, and certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, and all other forms of securities issued by the State of North Dakota, its boards, agencies, instrumentalities, or by any county, County, township, school district, park district, or other political subdivision of the State of North Dakota whether payable from special revenues or supported by the full faith and credit of the issuing body and bonds issued by another state of the United States, or such other securities approved by the banking board.

At December 31, 2018, the County's carrying amount of deposits was \$13,546,013. Of the bank balances, \$409,570 was covered by Federal Depository Insurance. The remaining balance of \$13,136,443 was collateralized with securities held by the pledging financial institution's agent in the government's name.

Credit Risk

State statutes authorize the County to invest in:(1) Bonds, treasury bills and notes, or other securities that are a direct obligation of, or an obligation insured or guaranteed by, the treasury of the United States, or its agencies, instrumentalities, or organizations created by an act of Congress.(2) Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are the type listed above.(3) Certificates of Deposit fully insured by the federal deposit insurance corporation or the state.(4) Obligations of the state.

Concentration of Credit Risk

The County does not have a limit on the amount it may invest in any one issuer.

BARNES COUNTY  
Notes to Financial Statements- Continued

NOTE 4: PROPERTY TAXES

Taxes receivable represents the past five years of uncollected current and delinquent taxes. No allowance has been established for uncollectible taxes receivable.

The county treasurer acts as and agent to collect property taxes levied in the county for all taxing authorities. Any material tax collections are distributed after the end of each month.

Property taxes are levied as of January 1. The property taxes attach as an enforceable lien on property on January 1 and may be paid in two installments. The first installment includes one-half of the real estate taxes and all the special assessments and the second installment is the balance of the real estate taxes. The first installment is due by March 1 and the second installment is due by October 15. A 5% discount on property taxes is allowed if all taxes and special assessments are paid by February 15. After the due dates, the bill becomes delinquent and penalties are assessed.

Most property owners choose to pay property taxes and special assessments in a single payment on or before February 15 and receive the discount on the property taxes.

NOTE 5: CAPITAL ASSETS

The following is a summary of changes in capital assets for the year ended December 31, 2018:

	Balance January 1	Increases	Decreases	Balance December 31
Construction in progress				
Bldgs and Improvements	6,785,917	344,569		7,130,486
Vehicles & Equipment	6,442,324	357,940		6,800,264
Total Cap Assets	13,228,241	702,509		13,930,750
Less accumulated depreciation for:				
Buildings & Improve	5,041,558	90,267		5,131,825
Vehicles & Equip	4,811,760	279,836		5,091,596
Total Accumulated Dep	9,853,319	370,103		10,223,422
Capital Assets, Net	3,374,922			3,707,328

Depreciation Expense was charged to functions/programs of the County as follows:

Governmental Activities:		
General government		56,864
Public safety		46,295
Highways		266,944
Total Dep Exp-Gov Activities		370,103

BARNES COUNTY  
Notes to Financial Statements- Continued

NOTE 6: LONG-TERM DEBT

Changes in Long-Term Liabilities - During the year ended December 31, 2018, the following changes occurred in liabilities reported in long-term debt:

	Payable 2015	Increases	Decreases	Payable Due Within 2018	One Year
Bonds payable	105,000	500,000	105,000	500,000	100,000
Notes payable	443,316		48,455	394,861	51,187
TOTAL	548,316	500,000	150,867	548,316	148,617

Debt payable at December 31, 2018, is comprised of the following individual issues:

Bonds Payable:

Bridge Bond of 2015 due in annual installments of \$95,000 to 105,000 including interest at 2.0-3.0% through June 2023	<u>500,000</u>
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The annual long-term debt service requirements for bonds payable, as of December 31, 2018, are as follows:

Year Ending December 31	GOVERNMENTAL ACTIVITIES Long-Term Debt	
	Principal	Interest
2019	100,000	11,270
2020	95,000	9,027
2021	100,000	6,685
2022	100,000	4,135
2023	105,000	1,418
Total	500,000	32,535

NOTES PAYABLE

Note payable at local bank due in monthly installments of \$5,979, including interest at 5.50%, through June 2025 when balance of loan is due. Note used to purchase City-County Health building.	394,861
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BARNES COUNTY  
Notes to Financial Statements- Continued

The County is obligated to the following note payable agreements at December 31, 2018 are shown below:

2019	71,627
2020	71,627
2021	71,627
2023	71,627
2024	71,627
2025-2026	<u>113,410</u>
	471,545
Less amount representing interest	<u>76,684</u>
Principal balance remaining	394,861

NOTE 7. FUND BALANCE

Fund balance in the various funds has been restricted or assigned for the following purposes:

Restricted for Debt Service      \$0

NOTE 8. DEFICIT IN FUND BALANCE

The County has a deficit of \$63 in the Winter Show Fund. These deficits will be eliminated by grants and transfers.

NOTE 9: TRANSFERS

The County transfers operating revenues between funds. The County transfers Highway distribution funds to the Road & Bridge fund- \$1,500,000; County Park Fund to General Fund- \$61,630; Social Service Fund to General Fund- \$89,045.



BARNES COUNTY  
Notes to Financial Statements- Continued

NOTE 10: PENSION PLANS

North Dakota Public Employees Retirement System

The County participates in the North Dakota Public Employees Retirement System (PERS) administered by the State of North Dakota. Following is a brief description of the plan:

PERS is a cost-sharing multiple-employer defined benefit pension plan administered by the State of North Dakota. PERS provides for retirement, disability and death benefits to plan members and beneficiaries. If an active employee dies with less than three years of credited service, a death benefit equal to the value of the employee's accumulated contributions, plus interest, is paid to the employee's beneficiary. If the employee has earned more than three years of credited service, the surviving spouse will be entitled to a single payment refund, lifetime monthly payments in an amount equal to 50% of the employees accrued normal retirement benefit, 60 monthly payments equal to the employee's accrued normal retirement benefit calculated as if the employee were age 65 the day before death occurred or monthly payments in an amount equal to the employee's accrued 100% joint and survivor retirement benefit if the member had reached normal retirement age prior to death. If the surviving spouse dies before the employee's accumulated pension benefits are paid, the balance will be paid to the surviving spouse's designated beneficiary.

Eligible employees, who become totally disabled after a minimum of 180 days of service, receive monthly disability benefits that are equal to 25% of their final average salary with a minimum benefit of \$100. To qualify under this section, the employee must meet the criteria established by the Retirement Board for being considered totally disabled.

Employees are entitled to unreduced monthly pension benefits equal to 2% of their final average salary for each year of service beginning when the sum of age and years of credited service equal or exceed 85, or at the normal retirement age (65). The plan permits early retirement at ages 55-64, with three or more years of service.

BARNES COUNTY  
Notes to Financial Statements- Continued

Benefit and contribution provisions are administered in accordance with chapter 54-52 of the North Dakota Century Code. This state statute requires that 7% of the participants annual covered salary be contributed to the plan by either the employee or by the employer under a "salary reduction" agreement. The County had agreed to pay 100% of the member assessments in lieu of a salary increase. The County is required to contribute 7.12% of each participant's salary as the employer's share. The County is required to contribute 1.14% of each participating covered wage to a prefunded retiree health insurance program. The required contributions are determined using an entry age normal actuarial funding method and are included in state statute. The North Dakota Retirement Board was created by the State Legislature and is the governing authority of PERS. The County's contributions to PERS for the fiscal years ending December 31, 2019, 2018, and 2017 were \$138,497, \$126,613, and \$154,342, respectively, equal to the required contributions for the year.

PERS issues a publicly available financial report that includes financial statements and required supplementary information for PERS. That report may be obtained on the NDPERS website <http://ndpers.nd.gov/about/financial/annual-report-archive/>

NOTE 11: RISK MANAGEMENT

The County is exposed to various risks of loss relating to torts; theft of, damage to, and destruction of assets; errors and omissions; injuries to employees; and natural disasters.

In 1986 state agencies and political subdivisions of the State of North Dakota joined together to form the North Dakota Insurance Reserve Fund (NDIRF), a public entity risk pool currently operating as a common risk management and insurance program for the state and over 2,000 political subdivisions. The County pays an annual premium to NDIRF for its general liability and automobile insurance coverage. The coverage by NDIRF is limited to losses of one million dollars per occurrence.

The State Bonding Fund currently provides the County with blanket fidelity bond coverage in the amount of \$1,000,000 for its employees. The State Bonding fund does not currently charge any premium for this coverage.

The County has workers compensation with the Workforce, Safety and Insurance and purchases commercial insurance for personal property, building, inland marine, and boiler and machinery.

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**APPENDIX C**

**DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT,  
THE LEASE, AND THE GROUND LEASE**

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## APPENDIX C

### DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE

The following summaries do not purport to be comprehensive or definitive and all references to the documents summarized below are qualified in their entirety by reference to each such document. All references to the Certificates are qualified in their entirety by reference to the forms thereof and the information with respect thereto included in the following documents. Copies of these documents are available for inspection during the period of the offering at the offices of Colliers Securities LLC, Minneapolis, Minnesota, and thereafter at the principal office of the Trustee. All capitalized terms used in the following summaries which are not expressly defined herein shall have the meanings as defined in the respective documents, unless the context clearly requires a different meaning.

#### DEFINITIONS

*“Additional Certificates”* means any additional Certificates issued pursuant to the Trust Agreement.

*“Authorized Officer”* means, when used with respect to the County, the Chair of the Board of County Commissioners or County Auditor or any other person who is designated in writing by the Chair of the Board of County Commissioners or County Auditor as an Authorized Officer for purposes of the Trust Agreement; or when used with respect to the Trustee, any vice president and/or trust officer who is authorized to take the action in question on behalf of the Trustee.

*“Certificate Payment Date”* means May 1 and November 1 of each year, commencing May 1, 20\_\_.

*“Certificates”* means the \$\_\_\_\_\_ Certificates of Participation, Series 2020.

*“Closing Date”* means October \_\_\_\_, 2020, or the date upon which the Certificates are delivered to the Underwriter against payment therefor.

*“Code”* means the Internal Revenue Code of 1986, as amended.

*“Construction Account”* means the Construction Account within the Trust Fund established pursuant to the Trust Agreement.

*“Cost of Issuance Account”* means the Cost of Issuance Account within the Trust Fund established pursuant to the Trust Agreement.

*“Cost of Issuance”* means all fees and expenses incurred by the County in connection with the execution and delivery of the Lease and the issuance of the Certificates, including, but not limited to, costs of preparing the Certificates, the Trust Agreement, the Lease, the Ground Lease, the Official Statement relating to the Certificates, and related documents; legal fees (including those of counsel to the Trustee, the County and the Underwriter); rating agency fees and the Trustee’s initial fees.

*“County”* means Barnes County, North Dakota.

*“County Commission”* means the governing body of the County.

*“Fiscal Year”* means the 12-month fiscal period of the County which commences on January 1 every year and ends on December 31.

*“Ground Lease”* means the Ground Lease, dated as of October 1, 2020, by and between the County, as lessor, and the Trustee, as lessee, relating to the Land.

*“Improvements”* means the construction and equipping of the Project to be constructed on the Land.

*“Independent Counsel”* means an attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of the County or the Trustee.

*“Interest Portion”* means the portion of any Rental Payment designated as and comprising interest as shown in the Lease.

*“Land”* means the real property described in the Lease.

*“Lease”* means the Lease-Purchase Agreement, dated as of October 1, 2020, between the County, as lessor, and the Trustee, as lessee, relating to the Certificates.

*“Lease Term”* means the period during which the Lease is in effect as specified in the Lease.

*“Net Proceeds”* means any insurance proceeds or condemnation award, paid with respect to the Project, remaining after payment therefrom of all expenses incurred in the collection thereof.

*“Nonappropriation”* means the failure of the County Commission of the County to appropriate money for any Fiscal Year of the County sufficient for the continued performance of the Lease by the Trustee, as lessee, as evidenced by the passage of a resolution specifically prohibiting the Trustee, as lessee, (a) from performing its obligations under the Lease, and (b) from using any moneys to pay the Rental Payments due under the Lease for a designated Fiscal Year and all subsequent Fiscal Years.

*“Official Statement”* means the Preliminary Official Statement prepared and distributed by the Underwriter, dated September 18, 2020, together with the Final Official Statement, dated \_\_\_\_\_, 2020.

*“Outstanding”* means, when used with reference to the Certificates and as of any particular date, all Certificates theretofore delivered except (i) any Certificate canceled or fully paid by the Trustee at or before said date; (ii) any Certificate in lieu of or in substitution for which another Certificate shall have been delivered pursuant to the Trust Agreement; and (iii) for the sole purpose of determining the percentage of Certificate Owners consenting to an amendment to the Trust Agreement or authorizing any action by the Trustee or the exercise of any remedy under the Trust Agreement, any Certificate owned by the County or any of its departments, agencies, institutions, instrumentalities or political subdivisions; for all other purposes, Certificates owned by the County or any such entity which are not described in (i) and (ii) above shall be treated as Outstanding under the Trust Agreement.

*“Owner”* or *“Certificate Owner”* or *“Owner of Certificates”* or any similar term means, when used with respect to the Certificates, the registered owner of any Outstanding Certificate.

*“Permitted Investments”* means any investments legal for the investment of the funds of the County under State law, including, but not limited to, Section 21-06-07, N.D.C.C.; provided, however, that to the extent funds on deposit at the close of business of any banking day exceed available federal deposit insurance, the County shall require the financial institution to furnish collateral security, a corporate surety bond executed by a company authorized to do business in the State, or other form of collateral permitted by State law, the market value of which must be at least ten percent (10%) more than the amount on deposit.

*“Prepayment Price”* means the Principal Portion to be prepaid pursuant to the Lease, plus accrued interest to the date of redemption.

*“Principal Office”* means the designated office of the Trustee, initially its office situated in Bismarck, North Dakota, at which the Trustee conducts its corporate trust business; or any office so designated by a successor trustee.

*“Principal Portion”* means the portion of any Rental Payment designated as principal in the Lease.

*“Project”* means the Land together with the Improvements.

*“Rebate Account”* means the Rebate Account within the Trust Fund established pursuant to the Trust Agreement.

“*Record Date*” means the fifteenth (15<sup>th</sup>) day of the calendar month immediately preceding any Certificate Payment Date, regardless whether such day is a business day.

“*Redemption Account*” means the Redemption Account within the Trust Fund established pursuant to the Trust Agreement.

“*Register*” means the register maintained by the Registrar pursuant to the Trust Agreement.

“*Registrar*” means the Trustee or any successor registrar appointed by the Trustee pursuant to the Trust Agreement.

“*Rental Payment*” means the payment due from the County to the Trustee on each Rental Payment Date during the Lease Term, as shown in the Lease.

“*Rental Payment Account*” means the Rental Payment Account within the Trust Fund established pursuant to the Trust Agreement.

“*Rental Payment Date*” means the date upon which any Rental Payment is due and payable as shown in the Lease (the 25<sup>th</sup> day of April and October).

“*State*” means the State of North Dakota.

“*Supplemental Trust Agreement*” means any trust agreement supplemental or amendatory to the Trust Agreement entered into by the County and the Trustee pursuant to the Trust Agreement.

“*Trust Agreement*” means the Trust Agreement, dated as of October 1, 2020, by the Trustee and joined in by the County, and any amendment thereof or supplement thereto.

“*Trust Fund*” means the Trust Fund so designated, which is established by the Trustee under the Trust Agreement.

“*Trustee*” means the Bank of North Dakota, Bismarck, North Dakota, its successors and assigns.

“*Underwriter*” means Colliers Securities LLC, Minneapolis, Minnesota.

## **THE TRUST AGREEMENT**

*Establishment.* The County and the Trustee will enter into a Trust Agreement which authorizes the Trustee to prepare, execute and deliver the Certificates upon receipt of written instructions from the purchaser of the Certificates. The Trustee shall keep a copy of the Trust Agreement and, subject to the book-entry-only provisions, shall maintain books for the transfer of Certificates.

For the purpose of obtaining the money required for the financing of the costs of acquiring the Project, the Trustee holds in trust, for the benefit of the Owners of the Certificates, all of its right, title and interest in and to the Lease, the Ground Lease, the Rental Payments and other amounts due under the Lease, the Project, and the right to exercise all rights of Trustee under the Lease and Ground Lease; and in consideration of the execution of the Trust Agreement, the Trustee has agreed to execute and deliver the Certificates, each evidencing a proportionate undivided interest of the Owner thereof in the Lease and the Rental Payments due pursuant to the Lease.

*Application of Rental Payments.* All Rental Payments will be paid directly to the Trustee and will be deposited in the Rental Payment Account and applied by the Trustee solely for the benefit of registered owners of the Certificates.



Accounts. The Trust Agreement establishes the Barnes County, North Dakota, Lease-Purchase Agreement Trust Fund - Certificates of Participation, Series 2020 (the "Trust Fund"). The Trustee shall keep the Trust Fund separate and apart from all other funds and moneys held by it. Money in the Trust Fund shall be allotted and paid to the various funds and accounts as described in the Trust Agreement and summarized below:

- Construction Account, into which certain proceeds of the Certificates will be deposited. All moneys deposited in or transferred to the Construction Account shall be disbursed only for the payment of Construction Costs upon written direction of the County. Disbursements from the Construction Account shall be made by the Trustee upon receipt of a written request for disbursement executed by an Authorized Officer of the County. Following payment of all Construction Costs, or the transfer or disbursement described in the Trust Agreement, the Construction Account shall be closed.
- Rental Payment Account, into which shall be deposited (i) all Rental Payments received by the Trustee; (ii) any prepayments of Rental Payments made by the County under the Lease; and (iii) any other moneys received by the Trustee for deposit in the Rental Payment Account. The Trustee shall withdraw from the Rental Payment Account, on or before each Certificate Payment Date, an amount equal to the principal and interest payments due with respect to the Certificates on such Certificate Payment Date, and shall transmit the same to the Registrar to be applied to the payment of principal and interest payments due with respect to the Certificates on such Certificate Payment Date.
- Redemption Account, into which shall be deposited any moneys received for redemption of the Certificates and any moneys received in the event of termination of the Lease for nonappropriation or upon an event of default including, but not limited to, all net proceeds received from the sale, lease or other disposition of the Project. In the event of termination of the Lease, the Trustee shall transfer to the Redemption Account all moneys on hand in the Rental Payment Account not needed to pay principal and interest due or past due on the Certificates. All moneys on hand in the Redemption Account which will not be used for the redemption of the Certificates within 30 days after the date of its deposit or transfer to said Account, shall be invested at a yield not exceeding the yield on the Certificates, unless the County obtains and delivers to the Trustee an opinion of an attorney stating that the investment of such moneys may be made without restriction as to yield or may be made subject to another yield limitation, in which event the moneys in said Redemption Account may be invested in accordance with such opinion. All of said moneys shall be set aside in the Redemption Account for the purpose of redeeming the Certificates in advance of their maturity and shall be applied on or after the date of redemption to the payment of principal and interest with respect to the Certificates to be redeemed upon presentation and surrender of such Certificates.
- Rebate Account, into which shall be deposited the amount required to be rebated to the United States under the Code, and neither the County, the Trustee nor any Owner shall have any rights in or claims to such moneys. The Trustee shall make information regarding the investments under the Rebate Account available to the County and shall make deposits in and disbursements from the Rebate Account in accordance with the written instructions received from the County, shall invest the funds in the Rebate Account pursuant to said written instructions, and shall deposit income from such investments immediately upon receipt thereof in the Rebate Account.
- Cost of Issuance Account, into which certain proceeds of the Certificates will be deposited. All moneys deposited in or transferred to the Cost of Issuance Account shall be disbursed only for the payment of Cost of Issuance upon written direction of the County. Disbursements from the Cost of Issuance Account shall be made by the Trustee upon receipt of a written request for disbursement executed by an Authorized Officer of the County. Amounts remaining in the Cost of Issuance Account ninety (90) days after the Closing Date for the Certificates shall be deposited in the Construction Account.

Redemption. On any Certificate Payment Date on or after May 1, 20\_\_\_, the Principal Portion of the Rental Payments may be prepaid, in whole or in part, and if in part, in multiples of \$5,000, at a price equal to the Principal Portion to be prepaid plus accrued interest to the date of redemption, all pursuant to the Lease.

Certificates maturing on certain dates set forth in the Trust Agreement are subject to mandatory sinking fund redemption, by random selection, at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without a premium, in the years and amounts set forth in the Trust Agreement.

The Certificates shall be subject to extraordinary redemption and prepayment, in whole but not in part, at the option of the County on any date upon the conditions and terms set forth in the Trust Agreement if there occurs an event of damage, destruction or condemnation relating to the Project and the County determines that rebuilding, restoration and replacement of the Project to an acceptable condition would not be economically feasible, subject to the provisions of the Lease. Such extraordinary redemption shall be at a price equal to the principal amount to be redeemed plus accrued interest to the redemption date without premium.

*Additional Certificates.* Provided the County is not in Default on the Lease, Additional Certificates may be issued under and be equally and ratably secured by the Trust Agreement on a parity with the Certificates and any other Additional Certificates Outstanding, at any time and from time to time, upon compliance with the provisions of this Section, for any of the following purposes:

- (i) to provide funds to pay all or any part of the costs of acquisition, construction, furnishing and equipping of additions or expansions to the Project; or
- (ii) to provide funds to pay all or any part of the costs of repairing, replacing or restoring the Project in the event of damage, destruction or condemnation thereto or thereof, but only to the extent that such costs exceed the Net Proceeds of the insurance or condemnation awards out of which such costs are to be paid pursuant to Article VI or Article VII of the Lease.

Before any Additional Certificates shall be issued under the provisions of this Section, the County shall adopt a resolution (a) authorizing or approving the issuance of such Additional Certificates; (b) authorizing or approving the execution of a Supplemental Trust Agreement for the purpose of issuing such Additional Certificates and fixing the amount and terms thereof and describing the purpose or purposes for which such Additional Certificates are being issued; and, if required, (c) authorizing the execution of an amendment to the Lease to provide for Rental Payments at least sufficient to pay, on any Rental Payment date, amounts representing principal, premium, if any, and interest with respect to the Certificates then to be Outstanding (including the Additional Certificates to be issued) as the same become due during such Rental Payment date.

Such Additional Certificates shall have the same designation as the Certificates, shall be dated, shall mature on May 1 or November 1 in such year or years, shall provide for amounts representing interest at such rate or rates not exceeding the maximum rate then permitted by law, and shall be redeemable at such times and prices (subject to the provisions of Article III of the Trust Agreement), all as may be provided by the Supplemental Trust Agreement authorizing the issuance of such Additional Certificates. Except as to any difference in date, maturity, interest rate or redemption provisions, such Additional Certificates shall be on a parity with and shall be entitled to the same benefit and security of the Trust Agreement as the Certificates and any other Additional Certificates Outstanding after the issuance of such Additional Certificates.

Such Additional Certificates shall be executed substantially in the form and manner set forth in Exhibit A to the Trust Agreement, but prior to or simultaneously with the execution of such Additional Certificates there shall be filed with the Trustee the following:

- (1) an original or certified copy of a resolution adopted by the County Commission authorizing or approving the issuance of such Additional Certificates and the execution of such Supplemental Trust Agreement;
- (2) an original executed counterpart of the Supplemental Trust Agreement providing for the issuance of such Additional Certificates;
- (3) an original executed counterpart of the amendment to the Lease, if required, which amendment shall clearly establish that the County has agreed that the Additional Certificates shall constitute Certificates for the purpose of computing the required Rental Payments;

(4) a request and authorization to the Trustee, on behalf of the County, executed by an Authorized Officer, to execute the Additional Certificates and to deliver them to the purchaser therein identified upon payment of the purchase price thereof to the Trustee. The Trustee shall be entitled to rely conclusively upon such request and authorization as to the name of the Underwriter and the amount of such purchase price;

(5) an opinion of counsel nationally recognized in the area of municipal finance to the effect that the issuance of such Additional Certificates will not result in amounts representing interest payable with respect to any Certificates then Outstanding (including such Additional Certificates) becoming includable in gross income for federal income tax purposes; and

(6) such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of such Additional Certificates.

Deposit and Investment of Moneys in Funds. All moneys held by the Trustee in the Trust Fund shall be deposited or invested in Permitted Investments, pursuant to written instructions of an Authorized Officer of the County. Such Permitted Investments shall be registered in the name of the Trustee, as Trustee, and held by the Trustee. The Trustee may purchase from or sell to itself or any affiliate, as principal or agent, investments authorized by the Trust Agreement.

Employment of Trustee. The Trustee and the County agree under the Trust Agreement to employ the Trustee to receive, hold, invest and disburse the moneys to be paid to it pursuant to the Lease for credit to the various accounts in the Trust Fund established by the Trust Agreement; to prepare, execute, deliver and deal with the Certificates; and to apply and disburse the Rental Payments received from the County to the Owners of Certificates; and to perform certain other functions; all as provided in the Trust Agreement and subject to the terms and conditions of the Trust Agreement.

Trustee; Duties, Removal and Resignation. The Trustee shall, prior to any event of default and after curing all events of default which may have occurred, perform such duties and only such duties as are specifically set forth in the Trust Agreement, and no implied covenants or obligations shall be read into the Trust Agreement against the Trustee. The Trustee shall, during the existence of any event of default which has not been cured, exercise such of the rights and powers vested in it by the Trust Agreement and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of their own affairs. The Trustee and the County may by written agreement between themselves, or the holders of a majority in aggregate principal amount of all Certificates Outstanding may by written request, remove the Trustee initially a party to the Trust Agreement and any successor thereto, and may appoint a successor Trustee, but any such successor shall be a trust company or bank having trust powers and having a reported capital and surplus not less than \$25,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms. The Trustee and any successor trustee may at any time resign from the trusts created by the Trust Agreement by giving 30 days written notice to the County and by first class mail to each Certificate Owner as shown on the Register, and such resignation shall take effect upon the appointment of a successor trustee by the Owners or by the County. Such notice to the County may be served personally or sent by registered or certified mail. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 60 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

Appointment of Successor Trustee. In case the Trustee shall resign or be removed, or be dissolved or shall be in course of dissolution or liquidation, or otherwise become incapable of acting under the Trust Agreement, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Owners of a majority in aggregate principal amount of the then Outstanding Certificates, by an instrument or concurrent instrument in writing signed by such Owners, or by their attorney-in-fact, duly authorized. Nevertheless, in case of such vacancy the County by resolution of its governing body may appoint a temporary trustee to fill such vacancy until a successor trustee shall be appointed by the Owners in the manner above provided; and any such temporary trustee so appointed by the County shall immediately and without further act be superseded by the Trustee so appointed by such Owners. Every such Trustee appointed pursuant to the provisions of the Trust Agreement shall be a trust company or bank having trust powers and having a reported capital and surplus

not less than \$25,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

## **THE LEASE**

The following is a summary of certain provisions of the Lease.

Lease Terms and Payments. The Lease is dated as of October 1, 2020, and extends until the date upon which the County has paid all Rental Payments unless terminated prior to said date as described herein and in the Lease. Each Rental Payment is due to the Trustee on the 25<sup>th</sup> of the month preceding each payment date. The first Rental Payment is due on April 25, 2021, and semiannually thereafter on each April 25 and October 25.

The Lease shall terminate upon the earliest of any of the following events:

- (i) the payment by the County of its obligation to pay all Rental Payments required to be paid by it under the Lease;
- (ii) the prepayment by the County of all Rental Payments required to be paid by it under the Lease;
- (iii) termination by the County by Nonappropriation; or
- (iv) a default by the County and the Trustee's election to terminate the Lease.

Nonappropriation. The County shall have the right to terminate the Lease, in whole but not in part, at the end of any Fiscal Year of the County, in the manner and subject to the terms specified in the Lease, if the County Commission does not appropriate or budget moneys sufficient to pay the Rental Payments coming due in the next Fiscal Year, as determined by the County's budget for the Fiscal Year in question. The County may effect such termination by giving the Trustee a written notice of termination by October 15, as evidenced by a resolution of the County Commission specifically determining not to provide moneys to pay Rental Payments for the succeeding Fiscal Year and all future Fiscal Years, and stating the County Commission's determination to terminate the Lease, and by paying to the Trustee any Rental Payments which are due and have not been paid at or before the end of its then current Fiscal Year. In the event of termination of the Lease, the County shall surrender possession of the Project to the Trustee in accordance with the Lease and convey to the Trustee or release its interest in the Project under the Lease within ten days after the expiration of the then-current Fiscal Year.

Covenants of the County. The County represents, covenants and warrants that:

- (i) the County is a duly formed and validly existing political subdivision of the State of North Dakota (the "State"), governed by the Constitution and laws of the State;
- (ii) the County is authorized under the Constitution and laws of the State to construct, operate and maintain the Improvements; to enter into the Lease, the Ground Lease, the Trust Agreement and the transactions contemplated therein, and to perform all of its obligations thereunder;
- (iii) the officers of the County executing the Lease, the Ground Lease and the Trust Agreement have been duly authorized to execute and deliver such documents;
- (iv) the County has complied with all open meeting laws, all public bidding laws and all other State and Federal Laws applicable to the Lease and the construction of the Improvements by the County;
- (v) the County will not pledge, mortgage or assign the Project or the Lease, or its duties and obligations thereunder to any other person, firm or corporation except as provided under the terms of the Lease;

(vi) the Project will be used during the term of the Lease to carry out the governmental or proprietary purposes of the County;

(vii) the officers of the County responsible for budget preparation will include in the annual budget request, for each Fiscal Year during the Term of the Lease, moneys sufficient to pay and for the purpose of paying all Rental Payments and other obligations of the County under the Lease, and the County has moneys available and sufficient to pay all obligations under the Lease in the current Fiscal Year;

(viii) the County intends to continue the Lease for its entire stated Term and to pay all Rental Payments. The County reasonably believes that moneys in an amount sufficient to make all such Rental Payments can and will lawfully be appropriated or budgeted and made available for this purpose;

(ix) the Lease does not constitute a general obligation of the County, and the full faith and credit and taxing powers of the County are not pledged for the payment of the Rental Payments or other amounts coming due, or other actions required to be performed, under the Lease; the County Commission is not obligated to appropriate or otherwise provide moneys for the payment of the Rental Payments or any other amounts coming due under the Lease in any future Fiscal Year; and in the event of Nonappropriation by the County Commission, the County shall not be liable for general, special, incidental, consequential or other damages resulting therefrom except as provided in the Lease;

(x) the County will file with the Internal Revenue Service the information reporting statement required by Section 149(e) of the Code, and Treasury Regulations promulgated thereunder;

(xi) the County will take no action that would cause the Interest Portion of the Rental Payments received by the registered owners of the Certificates to become includable in gross income of such owners for federal income tax purposes under the Code and Regulations, and the County will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the Interest Portion of the Rental Payments received by the registered owners of the Certificates does not become includable in gross income of such owners for federal income tax purposes under the Code and Regulations; and

(xii) the economic useful life of the Improvements is substantially greater than the Lease Term.

*Maintenance and Modification.* The County shall, at its own expense, maintain, preserve and keep the Project in good repair, working order and condition, and shall from time to time make all repairs, replacements and improvements necessary to keep the Project in such condition. The Trustee shall have no responsibility for any of these repairs, replacements or improvements. In addition, the County shall, at its own expense, have the right to remodel the Project or to make additions, modifications and improvements thereto. All such additions, modifications and improvements shall thereafter comprise part of the Project and be subject to the provisions of the Lease. Such additions, modifications and improvements shall not in any way damage the Project and the Project, upon completion of any additions, modifications and improvements made pursuant to the Lease, shall be of a value not less than the value of the Project immediately prior to the making of such additions, modifications and improvements. Any property for which a substitution or replacement is made pursuant to the Lease may be disposed of by the County in such manner and on such terms as are determined by the County.

The County will not permit any construction or other lien to be established or remain against the Project for labor or materials furnished in connection with any improvements made by the County pursuant to the Lease; provided that if any such lien is established and the County shall first notify the Trustee of the County's intention to do so, the County may in good faith contest any lien filed or established against the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Trustee shall notify the County that, in the opinion of counsel, by non-payment of any such item the interest of the Trustee in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event the County shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide the Trustee with full security against any such loss or forfeiture, in form satisfactory to the Trustee. The Trustee will cooperate fully with the County in any such contest, upon the request and at the expense of the County. Subject to certain requirements, the County may issue Additional Certificates on a parity with the Certificates.

*Taxes, Other Governmental Charges and Utility Charges; Compliance with Governmental Requirements.*

Except as expressly limited by the Lease, the County shall pay all taxes and other charges of any kind which are at any time lawfully assessed or levied against or with respect to the Project, the Rental Payments or any part thereof, or which become due during the Term of the Lease, whether assessed against the County or the Trustee. The County shall also pay or cause to be paid when due all gas, water, steam, electricity, heat, power, telephone and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project. The County shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by the Trustee, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment, or charge which is the obligation of the County.

*Insurance and Indemnification.* The County shall cause adequate public liability, workers' compensation and property damage insurance as specified in the Lease to be carried and maintained with respect to the Project and to protect the County from liability in all events. The County may self-insure in compliance with the law and the provisions of the Lease.

*Assignment and Subleasing by the County.* Neither the Lease nor the County's interest in the Project may be assigned or subleased by the County without the written consent of the Trustee. The County will not mortgage, sell, assign, transfer or convey the Project or any portion thereof during the Term of the Lease without the written consent of the Trustee. Notwithstanding the foregoing, the County may lease beds to other local jurisdictions on a short term basis, to the extent the County has idle beds in the Project.

*County Negligence.* As between the Trustee and the County, the County assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Project and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of the County, the Trustee or of third parties, and whether such property damage be to the County or the Trustee's property or the property of others, which is proximately caused by the negligent conduct of the County, its officers, employees, agents, licensees, and lessees, or arising out of the operation, maintenance or use of the Project by the County, its officers, employees, agents, licensees and lessees. To the extent permitted by law, the County assumes responsibility for and agrees to indemnify, defend and hold harmless the Trustee, its directors, officers, employees and agents, and any assignee of the Trustee, without payment being made by the Trustee, from and against all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against the Trustee or its directors, officers, employees, agents or assignees that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part on the foregoing, to the maximum extent permitted by law.

*Events of Default and Remedies.* The occurrence of one or more of the following events shall constitute an Event of Default under the Lease:

(i) failure by the County to pay any Rental Payment or other payment required to be paid under the Lease at the time specified therein and the continuation of said failure for a period of three days after telephonic, telegraphic or other electronic notice to be subsequently confirmed in writing, or after written notice;

(ii) failure by the County to observe and perform any covenant, condition or agreement on its part to be observed or performed under the Trust Agreement, the Lease, or the Ground Lease, other than the failure to timely pay any Rental Payment or other required payment under the Lease, for a period of 45 days after written notice to the County by the Trustee, specifying such failure and requesting that it be remedied, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Trustee shall not withhold unreasonably its consent to an extension of such time if corrective action is instituted by the County within the applicable period and diligently pursued until the default is corrected; or

(iii) the filing by the County of a voluntary petition in bankruptcy, or failure by the County promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of the County to carry on its governmental or proprietary function or adjudication of the County as a bankrupt,

or assignment by the County for the benefit of creditors, or the entry by the County into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the County in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

If a default occurs under the above due to acts or events not within the reasonable control of the County (“Force Majeure”), other than the default described in (i) above, the County shall not be deemed in default during the continuation of such Force Majeure. The term “Force Majeure” as used in the Lease shall mean, without limitation, the following: strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or any of its departments, agencies or officials, or any civil or military trustee; orders or restraints of any kind of the government of the State of North Dakota or any of its departments, agencies or officials; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of the County and not resulting from its negligence.

Upon the occurrence of any Event of Default specified in the Lease, any or all of the following remedies may be taken by the Trustee:

(a) the Trustee, with or without terminating the Lease, may declare all Rental Payments due or to become due during the Fiscal Year in effect when the default occurs to be immediately due and payable;

(b) the Trustee, with or without terminating the Lease, may enforce the Ground Lease, repossess the Project by giving the County written notice to surrender the Project to the Trustee for the remaining term of the Ground Lease. If the Project or any portion of it has been destroyed or damaged beyond repair, the County shall pay the principal amount of all unpaid Rental Payments (less credit for Net Proceeds), to the Trustee. Notwithstanding the fact that the Trustee has taken possession of the Project, the County shall continue to be responsible for the Rental Payments due during the Fiscal Year then in effect. If the Lease has not been terminated, the Trustee shall return the Project to the County at the County’s expense when the event of default is cured, or as required by the Ground Lease;

(c) if the Trustee terminates the Lease and takes possession of the Project, the Trustee shall thereafter use its best efforts to sell or lease its interest in the Project or any portion thereof in a commercially reasonable manner in accordance with applicable State laws. The Trustee shall apply the proceeds of such sale or lease to pay the following items in the following order: (1) all costs incurred in securing possession of the Project; (2) all expenses incurred in completing the sale including attorney’s fees together with all amounts otherwise owing to the Trustee under the Lease or Trust Agreement; (3) the principal portion of all unpaid Rental Payments; and (4) the balance of any Rental Payments owed by the County during the Fiscal Year then in effect. Any sale proceeds remaining after the requirements of clauses (1), (2), (3) and (4) have been met may be retained by the County; or

(d) if the proceeds of sale and or lease of the County’s interest in the Project are not sufficient to pay the balance of any Rental Payments owed by the County during the Fiscal Year then in effect, the Trustee may take any other remedy available at law or in equity to require the County to perform any of its obligations under the Lease.

*Damage, Destruction and Condemnation.* If the Project or any portion thereof is destroyed (in whole or in part) or damaged by fire or other casualty, or if title to or the temporary use of the Project or any part thereof, or the interest of the County or the Trustee in the Project or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Net Proceeds of any insurance or condemnation award shall be applied (i) to the prompt repair, restoration, modification, improvement or replacement of the Project by the County and the Lease shall continue in effect, or (ii) if the County elects not to repair or rebuild, to prepay Rental Payments. In either event, all Net Proceeds not needed for such purposes shall belong to the County.

## **THE GROUND LEASE**

Under the terms of the Ground Lease between the County and the Trustee, the County is leasing the Project to the Trustee. The term of the Ground Lease is until the earlier of (i) May 1, 2070; (ii) the payment by the County of all Rental Payments and other amounts owing to the Trustee under the Lease; or (iii) the termination of the Lease and receipt by the Trustee of funds sufficient to discharge the obligations under the Lease.

Pursuant to the Lease, the Trustee will sublease and sell its interest in the Ground Lease back to the County. At any time when the purchase price for the Project, together with any unpaid or delinquent interest, has been fully paid or provided for, then the purchase of the Project by the County shall be deemed to have occurred.

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**APPENDIX D**

**FORM OF CONTINUING DISCLOSURE UNDERTAKING**

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**APPENDIX D**

**FORM OF CONTINUING DISCLOSURE UNDERTAKING**

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**CONTINUING DISCLOSURE AGREEMENT**

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*between*

**BARNES COUNTY, NORTH DAKOTA**

*and*

**BANK OF NORTH DAKOTA**

*relating to*

**\$\_\_\_\_\_**  
**CERTIFICATES OF PARTICIPATION**  
**SERIES 2020**

**Dated as of October 1, 2020**

**This Instrument Drafted By:**  
**Arntson Stewart Wegner PC**  
**3101 Broadway North, Suite B**  
**Fargo, North Dakota 58102**

## CONTINUING DISCLOSURE AGREEMENT

**THIS CONTINUING DISCLOSURE AGREEMENT** (the “Disclosure Agreement”) is made and entered into as of October 1, 2020, by **BARNES COUNTY, NORTH DAKOTA** (the “County”) and the **BANK OF NORTH DAKOTA** (the “Trustee”), in connection with the \$\_\_\_\_\_ Certificates of Participation, Series 2020 (the “Certificates”) evidencing the proportionate interest in certain rental payments to be made by the County under a Lease-Purchase Agreement dated as of October 1, 2020, between the County and the Trustee (the “Lease”). The Certificates are issued pursuant to a Trust Agreement dated as of October 1, 2020, by the Trustee and the County (the “Trust Agreement”). Pursuant to Section 5.17 of the Trust Agreement, the County and the Trustee covenant and agree as follows:

**SECTION 1. PURPOSE OF THE DISCLOSURE AGREEMENT.** This Disclosure Agreement is being executed and delivered by the County and the Trustee for the benefit of the Owners of the Certificates and in order to assist the Participating Underwriters in complying with the Rule (defined below). This Disclosure Agreement constitutes the written undertaking required by the Rule.

**SECTION 2. DEFINITIONS.** In addition to the definitions set forth in the Trust Agreement, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

**“Annual Report”** shall mean any Annual Report provided by the County pursuant to and as described in, Sections 3 and 4(a) of this Disclosure Agreement.

**“Disclosure Representative”** shall mean the County Auditor of the County or his or her designee, or such other person as the County shall designate in writing to the Dissemination Agent from time to time.

**“Dissemination Agent”** shall mean the Trustee acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the County and which has filed with the Dissemination Agent a written acceptance of such designation.

**“Final Official Statement”** shall mean the deemed final official statement dated October \_\_, 2020, which constitutes the final official statement delivered in connection with the Certificates, which is available from the Repository.

**“Financial Obligation”** means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) a guarantee of (i) or (ii). The term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

**“Financial Statements”** shall mean audited or, if unavailable, unaudited general purpose financial statements of the County prepared in accordance with generally accepted accounting principles, as in effect from time to time or as required to be modified as a matter of law. If unaudited financial statements are provided, audited financial statements will be provided when and if available.

**“Fiscal Year”** shall mean the period beginning on January 1 and ending on December 31 of each year or such other fiscal year determined by the County.

**“Listed Events”** shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

**“Participating Underwriter”** shall mean the original underwriter of the Certificates required to comply with the Rule in connection with the offering of the Certificates.

**“Repository”** shall mean the Electronic Municipal Market Access system maintained by the Municipal Securities Rulemaking Board or any other nationally recognized municipal securities information repository recognized from time to time by the Securities and Exchange Commission for purposes of the Rule.

“**Rule**” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time, and including written interpretations thereof by the Securities and Exchange Commission.

**SECTION 3. PROVISION OF ANNUAL REPORTS.**

(a) The County shall, or shall cause the Dissemination Agent to, not later than December 31 of each Fiscal Year, commencing with the Fiscal Year ending December 31, 2020, provide to the Repository an Annual Report which is consistent with the requirements of Section 4(a) of this Disclosure Agreement. Not later than fifteen (15) Business Days prior to said date, the County shall provide the Annual Report to the Dissemination Agent. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4(b) of this Disclosure Agreement; provided, that the financial statements of the County may be submitted separately from the balance of the Annual Report.

(b) If by fifteen (15) Business Days prior to the date specified in subsection (a) of this Section for providing the Annual Report to the Repository, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the County to determine if the County is in compliance with subsection (a) of this Section. If the County does not provide to the Dissemination Agent a copy of an Annual Report by the applicable date required in Section 3(a) above, the Dissemination Agent shall send a notice to the County, the Repository, and the Participating Underwriter, in substantially the form attached as Exhibit A.

(c) The Dissemination Agent shall transmit the Annual Report to the Repository and file a report with the County certifying that the Annual Report has been provided pursuant to this Disclosure Agreement and stating the date it was provided.

**SECTION 4. CONTENT OF ANNUAL REPORTS.**

(a) The County’s Annual Report shall contain or incorporate by reference the following:

(i) Financial Statements of the County, and

(ii) updated information contained in Appendix A of the Final Official Statement under the headings:

(A) Bonded Debt;

(B) Valuations; and

(C) Tax Information, including County Mill Levy.

(b) Any or all of the items listed above may be incorporated by reference from other documents, including official statements, which have been filed with the Repository. If the document incorporated by reference is a final official statement, it must be available from the Repository. The County shall clearly identify each such other document so incorporated by reference.

**SECTION 5. REPORTING OF LISTED EVENTS.**

(a) The County shall also provide in a timely manner not in excess of ten (10) business days after the occurrence of the event, to the Repository notice of the occurrence of any of the following events of which the Disclosure Representative or designee shall have actual knowledge:

(i) principal and interest payment delinquencies;

(ii) non-payment related defaults;

(iii) unscheduled draws on debt service reserves reflecting financial difficulties (the Certificate issue has no debt service reserves);

(iv) unscheduled draws on credit enhancements reflecting financial difficulties (the Certificate issue has no credit enhancements);

(v) substitution of credit or liquidity providers, or their failure to perform (the Certificate issue has no credit or liquidity providers);

(vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;

(vii) modifications to rights of Owners of the Certificates;

(viii) Certificate calls, if material, and tender offers;

(ix) defeasances;

(x) release, substitution, or sale of property securing repayment of the Certificates;

(xi) rating changes;

(xii) bankruptcy, insolvency, receivership or similar events of the County;

(xiii) the consummation of a merger, consolidation or acquisition involving the County or the sale of all or substantially all of the assets of the County, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material;

(xv) incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, if material; and

(xvi) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties.

(b) Unless otherwise required by law, the County shall provide notices of Listed Events required by this Section to the Repository.

(c) Unless otherwise required by law and subject to technical and economic feasibility, the County shall employ such methods of information transmission as shall be requested or recommended by the designated recipients of the County's information.

**SECTION 6. TERMINATION OF REPORTING OBLIGATION.** The County's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Certificates.

**SECTION 7. DISSEMINATION AGENT.** The County has engaged the Dissemination Agent to assist the County in disseminating information hereunder. The County shall send all Annual Reports required by Section 3 hereof, and Event Notices required by Section 5 hereof, to the Dissemination Agent. The Dissemination Agent shall,

within five (5) days of receipt of such Annual Report and within ten (10) days of the occurrence of the events requiring an Events Notice, forward such information to the Repository. The County may discharge the Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the County Auditor shall be the Dissemination Agent. The Dissemination Agent does not have any duty to review the materials described in this paragraph prior to disseminating such materials.

**SECTION 8. AMENDMENT; WAIVER.** Notwithstanding any other provision of this Disclosure Agreement, the County and the Dissemination Agent may amend this Disclosure Agreement (and the Dissemination Agent shall agree to any amendment so requested by the County) and any provision of this Disclosure Agreement may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to both the County and the Dissemination Agent to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule.

**SECTION 9. ADDITIONAL INFORMATION.** Nothing in this Disclosure Agreement shall be deemed to prevent the County from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the County chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Agreement, the County shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

**SECTION 10. DEFAULT.** In the event of a failure of the County or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Dissemination Agent may (and, at the request of the holders of at least twenty-five percent (25%) aggregate principal amount of Outstanding Certificates, shall), or any beneficial owners, may seek mandate or specific performance by court order, to cause the County or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Trust Agreement, and the sole remedy under this Disclosure Agreement in the event of any failure of the County or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

**SECTION 11. DUTIES, IMMUNITIES AND LIABILITIES OF DISSEMINATION AGENT.** The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the County agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have no duty or obligation to review or verify any information provided to it by the County or to determine the materiality of a Listed Event and shall not be deemed to be acting in any fiduciary capacity for the County, the Certificate Owners or any other party. The Dissemination Agent shall have no responsibility for the County's failure to report to the Dissemination Agent a Listed Event. The obligations of the County under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Certificates.

**SECTION 12. BENEFICIARIES.** This Disclosure Agreement shall inure solely to the benefit of the County, the Dissemination Agent, the Participating Underwriter and the Owners, including beneficial owners, from time to time of the Certificates, and shall create no rights in any other person or entity.

**SECTION 13. COUNTERPARTS.** This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*(Remainder of this page intentionally left blank.)*



**IN WITNESS WHEREOF**, the County and the Dissemination Agent have caused this Disclosure Agreement to be executed by their duly authorized officers, all as of the date first above written.

**BARNES COUNTY, NORTH DAKOTA**

\_\_\_\_\_  
Chair, Board of County Commissioners

ATTEST:

\_\_\_\_\_  
County Auditor

**BANK OF NORTH DAKOTA**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

**NOTICE TO REPOSITORY  
OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: **Barnes County, North Dakota**  
Name of Bond Issue: **Certificates of Participation, Series 2020**  
Date of Issuance: **October \_\_\_\_, 2020**  
Dissemination Agent: **Bank of North Dakota**

**NOTICE IS HEREBY GIVEN** that the Issuer has not provided an Annual Report due \_\_\_\_\_, with respect to the above-named Certificates of Participation as required by the Continuing Disclosure Agreement dated as of October \_\_\_\_, 2020. The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_.

**BANK OF NORTH DAKOTA,  
as Dissemination Agent**

By: \_\_\_\_\_  
Authorized Signatory

cc: Barnes County, North Dakota  
Colliers Securities LLC

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**APPENDIX E**

**BOOK-ENTRY ONLY SYSTEM**

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## APPENDIX E

### BOOK-ENTRY ONLY SYSTEM

*The information in this APPENDIX E concerning DTC (as defined below), Cede & Co. and the Book-Entry System has been furnished by DTC for use in disclosure documents such as this Official Statement. The County and the Underwriter believe such information to be reliable, but neither the County nor the Underwriter takes any responsibility for the accuracy or completeness thereof.*

The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the securities discussed in the body of this Official Statement (the “Certificates”). The Certificates will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Certificate will be issued for each maturity of the Certificates, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.7 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of the Certificates under the DTC system must be made by or through Direct Participants which will receive a credit for the Certificates on DTC’s records. The ownership interest of each actual purchaser of each Certificate (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Certificate are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Certificates, except in the event that use of the book-entry system for the Certificates is discontinued.

To facilitate subsequent transfers, all Certificates deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Certificates with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Certificates; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Certificates are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Certificates may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Certificates, such as redemptions, tenders, defaults, and proposed amendments

to the Certificate documents. For example, Beneficial Owners of the Certificates may wish to ascertain that the nominee holding the Certificates for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

Redemption notices are required to be sent to DTC. If less than all of the Certificates within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to Certificates unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the County as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Certificates are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Certificates will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from the County or the Trustee on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, or County, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the County or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Beneficial Owner will give notice to elect to have its Certificates purchased or tendered, through its Participant, to the Trustee, and will effect delivery of such Certificates by causing the Direct Participant to transfer the Participant's interest in the Certificates, on DTC's records, to the Trustee. The requirement for physical delivery of Certificates in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Certificates are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Certificates to the Trustee's DTC account.

DTC may discontinue providing its services as depository with respect to the Certificates at any time by giving reasonable notice to the County or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Certificate certificates are required to be printed and delivered. The County may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Certificate certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the County believes to be reliable, but the County takes no responsibility for the accuracy thereof.

THE INFORMATION ABOVE DISCUSSING THE BOOK-ENTRY SYSTEM HAS BEEN FURNISHED BY DTC. NO REPRESENTATION IS MADE BY THE COUNTY OR THE UNDERWRITER AS TO THE COMPLETENESS OR ACCURACY OF SUCH INFORMATION OR AS TO THE ABSENCE OF MATERIAL ADVERSE CHANGES IN SUCH INFORMATION SUBSEQUENT TO THE DATE HEREOF. NO ATTEMPT HAS BEEN MADE BY THE COUNTY OR THE UNDERWRITER TO DETERMINE WHETHER DTC IS OR WILL BE FINANCIALLY OR OTHERWISE CAPABLE OF FULFILLING ITS OBLIGATIONS. THE COUNTY HAS NO RESPONSIBILITY OR OBLIGATION TO DTC PARTICIPANTS, INDIRECT PARTICIPANTS OR BENEFICIAL OWNERS, OR THE PERSONS FOR WHICH THEY ACT AS NOMINEES WITH RESPECT TO THE CERTIFICATES, OR FOR ANY PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST PAYMENT THEREON.

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**APPENDIX F**

**FORM OF BOND COUNSEL OPINION**

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**APPENDIX F**

**FORM OF BOND COUNSEL OPINION**

October \_\_\_\_, 2020

Barnes County, North Dakota  
230 4<sup>th</sup> Street NW, Room 202  
Valley City, ND 58072

Colliers Securities LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, MN 55402

\$\_\_\_\_\_,000

**Certificates of Participation, Series 2020  
in a Lease-Purchase Agreement dated as of October 1, 2020, between  
the Bank of North Dakota  
and Barnes County, North Dakota**

We have acted as counsel to Barnes County, North Dakota (the “Lessee”) in connection with the Lease-Purchase Agreement described above (the “Lease”). In such capacity we have reviewed copies of a Ground Lease dated as of October 1, 2020, by and between the Lessee, as lessor, and the Bank of North Dakota (the “Trustee”), as lessee (the “Ground Lease”); the Lease and the exhibits attached thereto; a Trust Agreement dated as of October 1, 2020, executed by the Trustee and joined in by the Lessee, including the form of Certificate of Participation, Series 2020 attached thereto (the “Trust Agreement”); and such certified proceedings and other papers as we deem necessary to render this opinion.

Under the Lease, the Project (as defined therein) is being leased and/or sold to the Lessee, and the Lessee has undertaken to pay rental payments with respect thereto (the “Rental Payments”). The Rental Payments are payable exclusively from moneys to be legally appropriated and provided therefor by the Lessee. In the sole event that moneys are not so appropriated and provided, the Lessee may, by written notice to the Trustee, as lessor, discontinue the Lease at the end of any fiscal year of the Lessee (January 1 through December 31) then in effect. If the Lessee discontinues the Lease at the end of any such fiscal year in the manner provided therein, the Lease is terminated without penalty or liability on the part of the Lessee to pay any Rental Payments coming due after the fiscal year then in effect, but in such event, the Lessee has the obligation to surrender the Project for the remaining term of the Ground Lease, as described in the Lease and the Ground Lease. In the event the Lessee does not discontinue the Lease and pays all Rental Payments due in accordance therewith, the rights of the Trustee in the Project are terminated.

Based on our examination, and based upon existing law, we are of the opinion, as of the date hereof as follows:

1. The Lessee is political subdivision of the State of North Dakota (the “State”), duly organized, existing and operating under the Constitution and laws of the State.
2. The Lessee is authorized and has power under State law to enter into the Lease, the Ground Lease, and the Trust Agreement and to carry out its obligations thereunder and the transactions contemplated thereby.
3. The Lease, the Ground Lease and the Trust Agreement have been duly authorized, approved, executed and delivered by and on behalf of the Lessee and are valid and binding agreements of the Lessee enforceable against the Lessee in accordance with their terms.
4. The Lease and the obligations of the Lessee thereunder are special, limited obligations of the Lessee payable in each fiscal year from amounts appropriated for such purpose in the annual budget of the Lessee, provided

that the Lessee is not obligated to make any such appropriation. In the event the Lessee fails to appropriate funds for the Rental Payments, the Lease will terminate.

5. The interest component of each Rental Payment (as defined in the Lease) received by the registered owners of the Certificates of Participation issued under the Trust Agreement is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. The opinions set forth in the preceding sentence are subject to the condition that the Lessee comply with all requirements of the Internal Revenue Code of 1986, as amended (the "Code"), that must be satisfied subsequent to the execution of the Lease in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The Lessee has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest in gross income for federal income tax purposes to be retroactive to the date of execution of the Lease. We express no opinion regarding other federal tax consequences arising with respect to the Lease.

6. The interest component of the Rental Payments is excluded from gross income for State of North Dakota income tax purposes.

It is to be understood that the rights of the Trustee and the owners of the Certificates of Participation, and the enforceability of the Lease, may be subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may be subject to the exercise of judicial discretion in appropriate cases.

Sincerely,

**ARNTSON STEWART WEGNER PC**

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**Execution Copy**

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**CERTIFICATE PURCHASE AGREEMENT**

**BETWEEN**

**BARNES COUNTY, NORTH DAKOTA,  
as County,**

**AND**

**COLLIERS SECURITIES LLC,  
as Underwriter**

**Dated September 30, 2020**

**Relating to:**

**\$15,435,000  
Barnes County, North Dakota  
Certificates of Participation  
Series 2020**

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This instrument was drafted by:

Ballard Spahr LLP (BWJ)  
2000 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, Minnesota 55402  
(612) 371-6223

**\$15,435,000**  
**Barnes County, North Dakota**  
**Certificates of Participation**  
**Series 2020**

**CERTIFICATE PURCHASE AGREEMENT**

September 30, 2020

Barnes County, North Dakota  
230 4<sup>th</sup> Street Northwest, Room 202  
Valley City, ND 58072

Ladies and Gentlemen:

The undersigned, Colliers Securities LLC (the “Underwriter”), hereby offers to enter into this Certificate Purchase Agreement (this “Certificate Purchase Agreement”) with Barnes County, North Dakota (the “County”), a political subdivision of the State of North Dakota (the “State”), for the purchase by the Underwriter of the Certificates described below. This offer is made subject to acceptance by the County at or prior to 10:00 A.M. on September 30, 2020, Central Time, and upon such acceptance this Certificate Purchase Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the County and the Underwriter. If not so accepted, this Certificate Purchase Agreement will be subject to withdrawal by the Underwriter upon notice delivered by the Underwriter to the County at any time prior to the acceptance hereof by the County. Capitalized terms used in this Certificate Purchase Agreement and not defined herein shall have the meanings given to them in a resolution, adopted on September 29, 2020 (the “Resolution”), by the Board of Commissioners of the County, with respect to the Certificates and the Trust Agreement, dated as of October 1, 2020 (the “Trust Agreement”), between the County and the Bank of North Dakota (the “Trustee”).

Proceeds of the Certificates will be used by the County to: (i) finance the design, construction, installation and equipping of an approximately 40-bed replacement Barnes County Correctional Facility (the “Correctional Facility Project”) located in Valley City, North Dakota; and (ii) pay costs of issuance for the Certificates. The Certificates represent proportionate interests in certain lease payments (the “Rental Payments”) to be made by the County under a Lease-Purchase Agreement, dated as of October 1, 2020 (the “Lease”), pursuant to which the County, as lessee, is leasing the Correctional Facility Project from the Trustee, as lessor. The County is leasing the site of the Correctional Facility Project (the “Project Site”) to the Trustee pursuant to a Ground Lease, dated as of October 1, 2020 (the “Ground Lease”), between the County, as lessor, and the Trustee, as lessee. The Trust Agreement, the Lease, the Ground Lease, and the Continuing Disclosure Agreement (as defined herein), shall be referred to as the “County Documents.”

The County will annually levy and appropriate taxes from a County capital projects tax (the “Annual Capital Levy”) to pay debt service on the Certificates. If the Annual Capital Levy is insufficient to cover the Rental Payments, then the County shall appropriate funds from the County’s General Fund to make the Lease payments, subject to the County’s right of nonappropriation in any Fiscal Year.

1. **Purchase and Sale.**

Subject to the satisfaction by the County of the terms and conditions set forth herein, subject also to the conditions precedent set forth herein, and in reliance upon the representations herein set forth, the Underwriter hereby agrees to purchase from the County upon the terms and conditions set forth herein and the County hereby agrees to sell to the Underwriter the County's Certificates of Participation, Series 2020 (the "Certificates"), in the original aggregate original principal amount of \$15,435,000, all being more fully described in Schedule I hereto, the Resolution, the Trust Agreement, and the Official Statement hereinafter mentioned. The expenses of selling the Certificates shall be paid as provided in Section 6 hereof. The Certificates are described in the Preliminary Official Statement of the County, dated September 18, 2020 (the "Preliminary Official Statement"), and the final Official Statement of the County, to be dated on or about October 5, 2020 (the "Official Statement"), and will be issued and secured pursuant to the terms of the Trust Agreement.

The Certificates will be issued pursuant to the Trust Agreement. Proceeds derived from the sale of the Certificates will be used by the County to (i) finance the Correctional Facility Project, and (ii) pay costs of issuance for the Certificates. Proceeds of the Certificates will be deposited as required by the Trust Agreement.

The County acknowledges and agrees that (i) the purchase and sale of the Certificates pursuant to this Certificate Purchase Agreement is an arm's-length commercial transaction between the County and the Underwriter, (ii) in connection with such transaction, the Underwriter is acting solely as a principal and not as an agent or a fiduciary of the County, (iii) the Underwriter has not assumed (individually or collectively) a fiduciary responsibility in favor of the County with respect to (a) the offering of the Certificates or the process leading thereto (whether or not the Underwriter, or any affiliate of the Underwriter, has advised or is currently advising the County on other matters) or (b) any other obligation to the County except the obligations expressly set forth in this Certificate Purchase Agreement, and (iv) the County has consulted with its own legal and other professional advisors to the extent it deemed appropriate in connection with the offering of the Certificates.

The County acknowledges that the Underwriter, without regard to priority, may allocate the Certificates between customer orders and orders that could be considered to be from "related accounts" for purposes of MSRB Rule G-11. The County hereby agrees to the Underwriter's allocation of the Certificates to the orders that the Underwriter received during the order period for the Certificates, regardless of priority between customer accounts and those accounts that could be considered "related accounts".

2. **Official Statement.**

(a) The County hereby consents to and ratifies the use and distribution by the Underwriter of the Preliminary Official Statement in connection with the public offering and sale of the Certificates by the Underwriter. The County hereby represents and warrants that the Preliminary Official Statement previously furnished to the Underwriter was "deemed final" by the County as of its date for purposes of the Rule 15c2-12 of the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934 (the "Rule").

(b) The County, at its cost, shall provide, or cause to be provided, to the Underwriter within seven (7) business days after the date of this Certificate Purchase Agreement (or within such shorter period as may be approved by the Underwriter or required by applicable rule) such number of copies of a final Official Statement as reasonably requested by the Underwriter, but in sufficient quantity to permit the Underwriter to comply with paragraph (b)(4) of the Rule, Rule G-32 of the Municipal Securities Rulemaking Board (the "MSRB"), and any other applicable rules of the SEC and the MSRB.

(c) The County authorizes the Underwriter to file, to the extent required by any applicable SEC or MSRB rule, and the Underwriter agrees to so file, the Official Statement with the MSRB or its designee. If an amended Official Statement is prepared during the “primary offering disclosure period” (as defined below in this Section), and if required by any applicable SEC or MSRB rule, the Underwriter also shall make the required filings of the amended Official Statement. The County shall provide the Underwriter with the information necessary to complete MSRB Form G-32 for all filings to be made under this Section.

(d) The Official Statement may be delivered in printed and a “designated electronic format” as defined in the MSRB’s Rule G-32 and as may be agreed by the County and the Underwriter. If the Official Statement has been prepared in electronic form, the County hereby confirms that it does not object to distribution of the Official Statement in electronic form.

(e) The County shall not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without the prior written consent of the Underwriter. The County covenants to notify the Underwriter promptly if, on or prior to the 25th day after the End of the Underwriting Period (as defined below in this Section), (or such other period as may be agreed to by the County and the Underwriter) any event shall occur, or information comes to the attention of the County, that is reasonably likely to cause the Official Statement (whether or not previously supplemented or amended) to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and if in the opinion of the Underwriter such event requires the preparation and distribution of a supplement or amendment to the Official Statement, to prepare and furnish to the Underwriter, at the County’s expense, such number of copies of the supplement or amendment to the Official Statement, in (i) a “designated electronic format” consistent with the requirements of the MSRB’s Rule G-32 and (ii) a printed format form in substance mutually agreed upon by the County and the Underwriter, as the Underwriter may reasonably request. If such notification shall be given subsequent to the Closing Date, the County also shall furnish, or cause to be furnished, such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably deem necessary to evidence the truth and accuracy of any such supplement or amendment to the Official Statement.

(f) For purposes of this Certificate Purchase Agreement:

(i) the “End of the Underwriting Period” is used as defined in the Rule and shall occur on the Closing; and

(ii) the “Primary Offering Disclosure Period” is used as defined in MSRB Rule G-32 and shall end on the 25th day after the Closing.

### 3. **Representations.**

(a) To the best knowledge of the County and in reliance upon the opinions referred to in Section 5(d)(i) hereof, the County represents to and agrees with the Underwriter as follows:

(i) The Preliminary Official Statement, as of its date does not, and, as of the date of the Official Statement and the Closing, the Official Statement will not contain any untrue or misleading statement of a material fact relating to the County or omit to state any material fact relating to the County necessary to make the statements therein in light of the circumstances under which they were made, not misleading. If, at any time prior to the earlier of (A) receipt of notice from the Underwriter pursuant to Section 2(c) hereof that the Official Statement is no longer



required to be delivered under the Rule or (B) ninety (90) days after the Closing, any event occurs with respect to the County as a result of which the Official Statement as then amended or supplemented might include an untrue statement of a material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the County shall promptly notify the Underwriter in writing of such events. Any information supplied by the County for inclusion in any amendments or supplements to the Official Statement will not contain any untrue or misleading statement of a material fact relating to the County or omit to state any material fact relating to the County necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(ii) The County is a political subdivision of the State and has the full legal right and power pursuant to the authority of (i) Section 11-11-14 of the North Dakota Century Code, (ii) the Resolution, and (iii) the Trust Agreement, to exercise its powers and to (a) issue the Certificates, (b) enter into this Certificate Purchase Agreement, execute the Continuing Disclosure Agreement, dated as of October 1, 2020 (the "Continuing Disclosure Agreement"), (c) annually levy and appropriate taxes to the Certificates pursuant to the Resolution and the Lease as described in the Official Statement, and (d) use the proceeds of the Certificates as contemplated in Section 1 hereof.

(iii) The execution and delivery of this Certificate Purchase Agreement does not, and the execution and delivery of the Certificates, the County Documents, the adoption of the Resolution, and compliance with the provisions of each of them, under the circumstances contemplated thereby, will not, in any material respect, conflict with or constitute on the part of the County a breach of or default under any other agreement or instrument to which the County is a party or any existing law, administrative regulation, court order or consent decree to which the County is subject.

(iv) With respect to such matters that are preconditions to the issuance of the Certificates, the County, at the date of the Closing, will have in all respects complied with North Dakota law.

(v) All approvals, consents and orders of any governmental entity, board, agency, council, commission or other body in or of the County or the State having jurisdiction which would constitute a condition precedent to the performance by the County of its obligations hereunder and under the Resolution, the County Documents, and the Certificates, have been obtained or, if not, will be obtained at the time of or prior to the Closing (provided no representation or warranty is expressed as to any action required under federal or state securities or Blue Sky laws in connection with the purchase and sale of the Certificates by the Underwriter).

(vi) The Certificates, when duly issued, authenticated and delivered in accordance with the Resolution and the Trust Agreement and sold to the Underwriter as provided herein, will be the validly issued and outstanding special, limited obligations of the County entitled to the benefits of the Trust Agreement; provided, however, neither the Certificates nor any interest or premium thereon will ever constitute a pledge of the general credit or taxing powers of the County or constitute an indebtedness of the County within the meaning of any constitutional or statutory provision or limitation.

(vii) The County Documents, and this Certificate Purchase Agreement are valid and binding obligations of the County, provided that, however, the enforceability of such obligations may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable,

and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases and to general principles of equity.

(viii) No litigation is pending or, to the best knowledge of the County, threatened (A) seeking to restrain or enjoin the issuance or delivery of any of the Certificates or the application of proceeds of the Certificates as provided in the Trust Agreement or the collection of the Annual Capital Levy pledged under the Resolution, (B) in any way contesting or affecting the issuance of the Certificates or the validity of the Resolution, the County Documents, the Certificates, or this Certificate Purchase Agreement; and (C) in any way contesting the existence or powers of the County.

(ix) The Preliminary Official Statement was, as of its date, "final" within the meaning of paragraph (b)(1) of the Rule. The County executed and delivered a Rule 15c2-12 Certificate on the date of printing of the Preliminary Official Statement setting forth this designation as final under the Rule.

(x) The County will take no action that could cause the interest on the Certificates to be subject to federal or state income taxation.

(xi) The County has not been in default as to principal or interest with respect to any obligation issued by or guaranteed by the County or with respect to which the County is an obligor.

(xii) The County has not within the last five (5) years been subject to any continuing disclosure undertaking under Rule 15c2-12 promulgated by the Securities and Exchange Commission.

(xiii) The County will enter into the Continuing Disclosure Agreement in the form set forth in the Official Statement.

(b) The Underwriter makes the following representations:

(i) The Underwriter has, and as of Closing will have, all necessary power and authority to execute and deliver this Certificate Purchase Agreement and to consummate all of the actions of the Underwriter contemplated hereby.

(ii) The Underwriter is a registered broker-dealer qualified under federal and state securities laws to offer and sell the Certificates in those jurisdictions where the Certificates will be offered or sold.

4. **Closing.** At 12:00 P.M., Central Time, on October 14, 2020 or such later date as we mutually agree upon (the "Closing"), the County will deliver or cause to be delivered to the Underwriter (through the facilities of The Depository Trust Company), at the offices of the Underwriter or at such other place as we may mutually agree upon, each series of the Certificates in definitive fully registered form, duly executed and authenticated. In addition, the other documents hereinafter mentioned will be delivered at the offices of Arntson Stewart Wegner PC, in Fargo, North Dakota and the Underwriter will accept such delivery and pay in federal funds to the County the purchase price of \$15,615,866.20 (representing the principal amount of the Certificates (\$15,435,000.00), plus a net original issue premium of \$373,803.70, less an Underwriter's discount of \$192,937.50).

Each series of the Certificates will be delivered as fully registered bonds in minimum denominations of \$5,000 and integral multiples of \$5,000 in excess thereof and registered in the name of

Cede & Co. It is anticipated that CUSIP identification numbers will be printed on each of the Certificates, but neither the failure to print such numbers on any Certificate nor any error in the printing of such numbers shall constitute cause for a failure or refusal by the Underwriter to accept delivery of and pay for any Certificates. The Underwriter and the County will cooperate to obtain the CUSIP numbers and the County shall pay for the cost of such CUSIP numbers. Simultaneously with the delivery of the Certificates, the County shall cause to be delivered to the Underwriter an opinion of Bond Counsel dated the date of such delivery as provided in Section 5(d)(i) below.

5. **Conditions Precedent.** The Underwriter has entered into this Certificate Purchase Agreement in reliance upon (i) the representations, warranties and agreements of the County contained herein, the Resolution and the County Documents, and (ii) the performance by the County of its obligations hereunder, if any, and under the above-mentioned documents, both as of the date hereof and as of the date of the Closing. The Underwriter's obligations under this Certificate Purchase Agreement are and shall be subject to the following conditions:

(a) The representations and warranties of the County contained herein shall be true, complete and correct in all material respects on the date of acceptance hereof and on and as of the date of the Closing with the same effect as if made on the date of the Closing.

(b) At the time of the Closing, the Official Statement, the Resolution, and the County Documents shall be in full force and effect, shall each be in form and substance acceptable to the Underwriter in all respects, and shall not have been amended, modified or supplemented except as may have been agreed to in writing by us; and the County shall have duly adopted and there shall be in full force and effect such ordinances and resolutions, and entered into such agreements, as, in the opinion of Arntson Stewart Wegner PC ("Bond Counsel"), and in the opinion of Ballard Spahr LLP, counsel to the Underwriter, shall be necessary to effect the transactions contemplated hereby or the documentation of security for the Certificates.

(c) The Underwriter may terminate this Certificate Purchase Agreement by notification in writing to the County if at any time subsequent to the date hereof and at or prior to the Closing: (A) legislation is enacted by, or favorably reported out of committee to, either House of the Congress of the United States of America, or a decision by a court of the United States of America shall be rendered, or a regulation or ruling shall be issued or proposed by or on behalf of the Treasury Department, the Internal Revenue Service, or any other agency of the Federal government having jurisdiction, or a release or official statement shall be issued by the Treasury Department, the Internal Revenue Service of the United States, or any other agency of the Federal government having jurisdiction, with respect to Federal taxation upon interest received on obligations of the character of the Certificates, which, in the reasonable judgment of the Underwriter, materially adversely affects the market for the Certificates or the sale, at the contemplated offering prices, by the Underwriter of such Certificates; or (B) a stop order, ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission is issued or made to the effect that the issuance, offering, sale or distribution of obligations of the character of the Certificates is in violation of any provisions of the Securities Act of 1933 or of the Trust Indenture Act of 1939; or (C) the Congress of the United States of America shall enact a law, or a bill shall be favorably reported out of committee of either House, or a decision by a court of the United States of America shall be rendered, or a ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission or any other agency of the Federal government having jurisdiction of the subject matter shall be made, to the effect that securities of the County or of any similar public body are not exempt from the registration, qualification or other requirements of the Securities Act of 1933 or the Trust Indenture Act of 1939; or (D) the United States of America has become engaged in hostilities (other than such as exist on the date of this Certificate Purchase Agreement) which have resulted in a declaration of war or a national emergency which, in the reasonable judgment of the Underwriter, adversely affects the market for the

Certificates or the sale, at the contemplated offering prices, by the Underwriter of the Certificates; or (E) there occurs a general suspension of trading on the New York Stock Exchange or the NASDAQ which, in the reasonable judgment of the Underwriter, adversely affects the market for the Certificates or the sale, at the contemplated offering prices, by the Underwriter of the Certificates; or (F) a general banking moratorium has been declared by the United States of America, State of New York or State of North Dakota authorities which, in the reasonable judgment of the Underwriter, materially adversely affects the market for the Certificates or the sale, at the contemplated offering prices, by the Underwriter of the Certificates; or (G) an event occurs which in the reasonable judgment of the Underwriter (1) makes untrue or incorrect in any material respect, as of the time of such event, any statement or information contained in the Official Statement or which is not reflected in the Official Statement but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect and/or (2) adversely affects the market for the Certificates or the sale, at the contemplated offering prices, by the Underwriter of the Certificates; or (H) economic, market or other conditions occur or exist or escalate which, in the reasonable judgment of the Underwriter, render the Certificates incapable of being sold on terms acceptable to the Underwriter; or (I) any suit, proceeding, litigation or other action shall be commenced, or, if commenced prior to the date hereof, shall be continuing or have been adjudicated, which, in any event, in the reasonable judgment of the Underwriter, may affect the marketing, sale or delivery of the Certificates; or (J) a default has occurred with respect to the obligations of, or proceedings have been instituted under the federal bankruptcy laws or any similar state laws by or against, any state of the United States or any city located in the United States having a population in excess of 500,000 persons or against any entity issuing obligations for or on behalf of such a city or state, which in the reasonable opinion of the Underwriter adversely affects the market price or marketability of the Certificates; or (K) the sovereign debt rating of the United States is downgraded by any major credit rating agency or a payment default occurs on United States Treasury obligations, which in the reasonable opinion of the Underwriter adversely affects the market price or marketability of the Certificates; or (L) additional events or announcements related to the COVID-19 virus and its impact result in the cancellation of orders from investors or inability of investors to proceed with the purchase of their Certificates in an amount that the Underwriter deems to have an adverse material impact on the sale of and market for the Certificates.

(d) At or prior to the Closing, the Underwriter shall have received the following documents (in each case with such changes as the Underwriter shall approve):

(i) The opinion of Bond Counsel, dated the date of the Closing, in the form and substance satisfactory to the Underwriter,

(ii) The opinion of Arntson Stewart Wegner PC, as special counsel to the County, dated the date of the Closing and addressed to the Underwriter, in substantially the form attached hereto as Exhibit B;

(iii) The opinion of the State Attorney, dated the date of the Closing and addressed to the County, the Underwriter and the Trustee, in substantially the form attached hereto as Exhibit C;

(iv) The opinion of Ballard Spahr LLP, as counsel to the Underwriter, in customary form and in form and substance satisfactory to the Underwriter;

(v) A certificate of the County, signed by the Chair and the County Auditor of the County, dated the date of the Closing, to the effect that (A) the representations and warranties of the County contained herein and in the Resolution and the County Documents are true and correct in all material respects as of the date of the Closing; (B) no litigation is pending or threatened, to the best knowledge of the officers of the County, (1) seeking to restrain or enjoin the issuance or

delivery of any of the Certificates or the annual appropriation of the Annual Capital Levy, (2) in any way contesting or affecting the issuance of the Certificates or the validity of the Certificates, the Resolution, the County Documents, the Annual Capital Levy, or this Certificate Purchase Agreement, or (3) in any way contesting the existence or powers of the County; (C) the Preliminary Official Statement and the Official Statement (including the appendices thereto) do not (i) contain any untrue or misleading statement of a material fact relating to the County, or (ii) omit to state any material fact relating to the County necessary to make the statements therein in light of the circumstances under which they were made, not misleading; (D) no event affecting the County has occurred since the date of the Official Statement which should be disclosed in the Official Statement, for the purpose for which it is to be used or which should be disclosed therein in order to make the statements and information therein not misleading in any material respect; (E) all resolutions and other actions required to be approved or taken by or on behalf of the County authorizing and approving the transactions described or contemplated in this Certificate Purchase Agreement or in the Official Statement, the execution of or approving of the respective forms of, as the case may be, this Certificate Purchase Agreement and the Certificates have been duly approved by the Board of Commissioners of the County, are in full force and effect and have not been modified, amended or repealed; and (F) the Board of Commissioners of the County has approved the issuance of the Certificates;

(vi) A tax or arbitrage certificate of the County with respect to the Certificates in form satisfactory to Bond Counsel;

(vii) Such additional legal opinions, certificates, proceedings, agreements, instruments and other documents as Bond Counsel or counsel for the Underwriter may reasonably request to evidence compliance with any legal requirements, to provide such additional assurances as the Underwriter may request regarding the truth and accuracy, as of the time of Closing, of any representations given and the due performance or satisfaction at or prior to such time of all agreements then to be performed and all conditions then to be satisfied as conditions precedent to the issuance of the Certificates;

(viii) A rating letter from Moody's Investors Service, Inc. (the "Rating Agency") providing a credit rating for the Certificates of not less than "Baa2";

(ix) On September 29, 2020, the Board of Commissioners of the County adopted the Resolution agreeing to make Rental Payments and other amounts required by the Lease, subject to termination as provided in the Lease; and

(x) The Continuing Disclosure Agreement is in a form and substance satisfactory to the Underwriter.

If the County shall be unable for any reason to satisfy the conditions of the Underwriter's obligation contained in this Certificate Purchase Agreement or if the Underwriter's obligation shall be terminated for any reason permitted by this Certificate Purchase Agreement, this Certificate Purchase Agreement shall terminate and neither the Underwriter nor the County shall have any further obligations or liability hereunder, except that the respective obligations of the County and the Underwriter set forth in Section 6 hereof and as set forth in Section 8(c), shall continue in full force and effect.

The Underwriter may waive in writing compliance with any one or more of the foregoing conditions or extend the time for their performance.

6. **Payment of Expenses.**

(a) Upon and subject to the issuance, sale and delivery of the Certificates by the County at the purchase price set forth in Section 4 hereof, the County agrees to pay either directly or from the proceeds of the Certificates or funds on hand of the County, all expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Certificates, including, without limitation, (i) the reasonable fees and disbursements of Bond Counsel, (ii) the fees and disbursements of the Trustee, (iii) the reasonable fees and disbursements of Underwriter's counsel, (iv) the reasonable costs of registering the Certificates for sale in any state and the cost of preparing or printing of Blue Sky memoranda to be used in connection with the sale of the Certificates, (v) the fees and expenses of the Rating Agency, and (vi) the expenses and costs for CUSIPs and the printing and distribution of the Certificates, the Preliminary Official Statement and the Official Statement and other miscellaneous expenses of the Underwriter in connection with the Certificates.

(b) If the Certificates are not issued and delivered by the County to the Underwriter, as a result of the failure by the County to perform any of its obligations under this Certificate Purchase Agreement, the County agrees that it shall pay the reasonable out-of-pocket expenses of the Underwriter.

7. [RESERVED]

8. **Indemnification.** (a) To the extent permitted by law, the County agrees to indemnify and hold harmless the Underwriter and each person, if any, who controls (as such term is defined in Section 15 of the Securities Act of 1933, as amended) the Underwriter against any and all losses, claims, damages and liability (i) arising out of any statement or information in the Official Statement relating to or provided by the County that is untrue in any material respect or the omission therefrom of any statement which should be contained therein as of the date of the delivery of the Certificates which is necessary to make the statements and information therein not misleading in any material respect; and (ii) to the extent of the aggregate amount paid in settlement of any litigation commenced or threatened arising from a claim based upon any such untrue statement or omission if such settlement is effected with the written consent of the County. In case any claim shall be made or action brought against the Underwriter or any controlling person (as aforesaid) based upon the Official Statement, in respect of which indemnity may be sought against the County, the person or persons seeking indemnity shall promptly notify the County in writing setting forth the particulars of such claim or action and the County shall assume the defense thereof including the retention of counsel and the payment of all expenses. The person or persons seeking indemnity or any such controlling person shall have the right to retain separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such person seeking such indemnity unless (i) the retention of such counsel has been specifically authorized by the County or (ii) in the reasonable judgment of the person seeking such indemnity, such separate counsel is required by reason of any actual or potential conflict of interest.

(b) Nothing herein shall be deemed a waiver by County of the limitations on liability set forth in N.D.C.C. § 32-12.1-03, as amended from time to time, and the County's obligation to indemnify, hold harmless and defend Underwriter and each person, if any who controls the Underwriter, shall be limited by the limitations on liability set forth in N.D.C.C. § 32-12.1-03, less any amounts which the County is required to pay on its own account, or on account of the County's officer's agents or employees.

(c) The Underwriter agrees to indemnify and hold harmless the County and each person, if any, who controls (as such term is defined in Section 15 of the Securities Act of 1933, as amended, and Section 20 of the Securities Exchange Act of 1934, as amended) the County but only with reference to (a) the price and yield of each of the Certificates stated on the inside front cover page of the Official Statement, and (b) the information under the heading "UNDERWRITING" in the Official Statement, which

information has been furnished by the Underwriter specifically for use in preparation thereof. In case any claim shall be made or action brought against the County or any controlling person (as aforesaid), based upon the Official Statement or this Certificate Purchase Agreement, in respect of which indemnity may be sought against the Underwriter, the County or any controlling person shall promptly notify the Underwriter in writing setting forth the particulars of such claim or action and the Underwriter shall assume the defense thereof, including the retaining of counsel and the payment of all expenses. In no case shall the Underwriter be responsible for any amount in excess of the underwriting fee applicable to the Certificates purchased by it pursuant to this Certificate Purchase Agreement. The County or any controlling person shall have the right to retain separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the party retaining such counsel unless the retaining of such counsel has been specifically authorized by the Underwriter or, in the reasonable judgment of the indemnified party, such separate counsel is required by reason of any actual or potential conflict of interest.

No recourse shall be had against the Underwriter for loss, damage, liability, cost or expense (whether direct, indirect or consequential) of the County arising out of or in defending, prosecuting, negotiating or responding to any inquiry, questionnaire, audit, suit, action, or other proceeding brought or received from the Internal Revenue Service in connection with the Certificates or otherwise relating to the tax treatment of interest on the Certificates.

(d) The indemnities contained herein shall survive the Closing under this Certificate Purchase Agreement and any investigation made by or on behalf of the Underwriter, the County or any person who controls any of such parties of any matters described in or related to the transactions contemplated hereby and by the Official Statement, the Resolution, the Trust Agreement, the Ground Lease, and the Lease.

#### **9. Establishment of Issue Price.**

(a) The Underwriter agrees to assist the County in establishing the issue price of the Certificates and shall execute and deliver to the County on the Closing Date an "issue price" or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit A, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Certificates.

(b) The Underwriter confirms that at least 10% of each maturity of the Certificates has been sold to the public at a single price (the "10% test") (if different interest rates apply within a maturity, each separate CUSIP number within that maturity is evaluated separately). Schedule I attached to this Certificate Purchase Agreement sets forth the first price at which the Underwriter has sold to the public 10% of each such maturity of Certificates.

(c) The Underwriter confirms that the Underwriter has offered the Certificates to the public on or before the date of this Certificate Purchase Agreement (the "Sale Date") at the offering price or prices (the "initial offering price"), or at the corresponding yield or yields, set forth in Schedule I attached hereto.

(d) The Underwriter confirms that it does not have any selling group agreement and any retail distribution agreement relating to the initial sale of the Certificates to the public.

(e) The Underwriter acknowledges that sales of any Certificates to any person that is a related party to the Underwriter shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(i) "public" means any person other than an underwriter or a related party;

(ii) “underwriter” means (A) any person that agrees pursuant to a written contract with the County (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Certificates to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Certificates to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Certificates to the public); and

(iii) a purchaser of any of the Certificates is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (A) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

10. **Miscellaneous.**

(a) Except as otherwise provided, any notice or other communication herein required or permitted to be given shall be in writing or by email or facsimile transmission or by telephone with subsequent written confirmation and may be personally served or sent by United States mail and shall be deemed to have been given upon receipt by the party entitled. For the purposes hereof, the addresses of the parties hereto (until notice of a change thereof is delivered as provided in this Section 9(a)) shall be as follows:

To the Underwriter:                      Colliers Securities LLC  
90 South 7<sup>th</sup> Street, Suite 4300  
Minneapolis MN 55402-4115  
Attn: Head of Public Finance

To the County:                              Barnes County, North Dakota  
230 4<sup>th</sup> Street Northwest, Room 202  
Valley City, ND 58072  
Attn: Beth Didier, County Auditor

The Underwriter and the County may, by notice given under this Certificate Purchase Agreement, designate other addresses to which notices or other communications shall be directed.

(b) This Certificate Purchase Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. The terms “successors” and “assigns” shall not include any purchaser of any of the Certificates from the Underwriter merely because of such purchase.

(c) All of the representations, warranties and covenants made in this Certificate Purchase Agreement remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any party hereto, (ii) delivery of and any payment for any Certificates hereunder, or (iii) termination or cancellation of this Certificate Purchase Agreement.

(d) Section headings have been inserted in this Certificate Purchase Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Certificate



Purchase Agreement and will not be used in the interpretation of any provisions of this Certificate Purchase Agreement.

(e) If any provision of this Certificate Purchase Agreement is held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provisions of this Certificate Purchase Agreement invalid, inoperative or unenforceable to any extent whatever.

(f) This Certificate Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which constitute one and the same document.


(g) The terms of this Certificate Purchase Agreement shall not be waived, altered, modified, amended or supplemented in any manner whatsoever except by written instrument signed by all of the parties hereto.

(h) This Certificate Purchase Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota without giving effect to the conflicts of laws principles thereof.

(i) The parties agree that the electronic signature of a party to this Certificate Purchase Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Certificate Purchase Agreement. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

(The remainder of this page is intentionally left blank.)

**COLLIERS SECURITIES LLC,**  
as Underwriter herein specified

By   
Craig D. Theis  
Its: Senior Vice President

(Signature page to the Certificate Purchase Agreement for the Barnes County Certificates of Participation,  
Series 2020)

Approved and Agreed to:

**BARNES COUNTY, NORTH DAKOTA**

By: *Bill Caulton*  
Its: Chair of County Commission

By: *B. B. M. W. W. W.*  
Its: County Auditor

(Signature page to the Certificate Purchase Agreement for the Barnes County Certificates of Participation,  
Series 2020)

Acknowledged by:

**BANK OF NORTH DAKOTA**

By: Carrie Wellits  
Its: Trust Officer

(Signature page to the Certificate Purchase Agreement for the Barnes County Certificates of Participation,  
Series 2020)

SCHEDULE I

**\$15,435,000**  
**Barnes County, North Dakota**  
**Certificates of Participation**  
**Series 2020**

Dated date: October 14, 2020

Maturity Dates and Schedule of Certificates

**Serial Certificates**

<u>Maturity Date (May 1)</u>	<u>Principal Amount*</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>Price</u>
2021	\$120,000	4.000%	0.625%	101.840%
2022	305,000	4.000	0.700	105.069
2023	315,000	4.000	0.750	108.184
2024	325,000	4.000	0.800	111.169
2025	340,000	4.000	0.900	113.781
2026	355,000	1.000	1.000	100.000
2027	360,000	4.000	1.250 <sup>(1)</sup>	112.118
2028	370,000	4.000	1.400 <sup>(1)</sup>	111.415
2029	385,000	4.000	1.600 <sup>(1)</sup>	110.484
2030	405,000	4.000	1.800 <sup>(1)</sup>	109.563
2031	420,000	4.000	2.000 <sup>(1)</sup>	108.651
2032	435,000	4.000	2.100 <sup>(1)</sup>	108.198
2033	455,000	4.000	2.200 <sup>(1)</sup>	107.747
2034	470,000	4.000	2.250 <sup>(1)</sup>	107.523
2037	530,000	4.000	2.400 <sup>(1)</sup>	106.852
2038	550,000	4.000	2.450 <sup>(1)</sup>	106.630

<sup>(1)</sup>Yield to optional redemption date of May 1, 2025.

**Term Certificates**

\$1,000,000 4.000% Term Certificates Due May 1, 2036  
 Price of 107.075% to Yield of 2.350%<sup>(1)</sup>

<u>Payment Date (May 1)</u>	<u>Principal Amount</u>	<u>Payment Date (May 1)</u>	<u>Principal Amount</u>
2035	\$490,000	2036 <sup>(2)</sup>	\$510,000

<sup>(1)</sup>Yield to optional redemption date of May 1, 2025.

<sup>(2)</sup>Stated Maturity.

\$1,170,000 4.000% Term Certificates Due May 1, 2040  
Price of 105.856% to Yield of 2.625%<sup>(1)</sup>

<u>Payment Date (May 1)</u>	<u>Principal Amount</u>	<u>Payment Date (May 1)</u>	<u>Principal Amount</u>
2039	\$575,000	2040 <sup>(2)</sup>	\$595,000

<sup>(1)</sup>Yield to optional redemption date of May 1, 2025.

<sup>(2)</sup>Stated Maturity.

\$3,295,000 3.000% Term Certificates Due May 1, 2045  
Price of 96.616% to Yield of 3.200%

<u>Payment Date (May 1)</u>	<u>Principal Amount</u>	<u>Payment Date (May 1)</u>	<u>Principal Amount</u>
2041	\$620,000	2044	\$675,000
2042	640,000	2045 <sup>(1)</sup>	700,000
2043	660,000		

<sup>(1)</sup>Stated Maturity.

\$3,830,000 3.125% Term Certificates Due May 1, 2050  
Price of 95.799% to Yield of 3.350%

<u>Payment Date (May 1)</u>	<u>Principal Amount</u>	<u>Payment Date (May 1)</u>	<u>Principal Amount</u>
2046	\$720,000	2049	\$790,000
2047	740,000	2050 <sup>(1)</sup>	815,000
2048	765,000		

<sup>(1)</sup>Stated Maturity.

Optional Redemption

The Certificates are subject to optional redemption by the County on May 1, 2025, and on any date thereafter, at a price equal to the principal amount plus accrued interest to the date of redemption, without premium.

EXHIBIT A

FORM OF ISSUE PRICE CERTIFICATE

\$15,435,000

Certificates of Participation, Series 2020  
in a Lease-Purchase Agreement dated as of October 1, 2020, between  
the Bank of North Dakota  
and Barnes County, North Dakota

ISSUE PRICE CERTIFICATE

The undersigned, on behalf of Colliers Securities LLC (“Colliers”), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Certificates”).

1. **SALE OF THE CERTIFICATES.** As of the date of this certificate, for each Maturity of the Certificates, the first price at which at least 10% of such Maturity of the Certificates was sold to the Public is the respective price listed in Schedule A.

2. **DEFINED TERMS.**

“*Issuer*” means Barnes County, North Dakota.

“*Maturity*” means Certificates with the same credit and payment terms. Certificates with different maturity dates, or Certificates with the same maturity date but different stated interest rates, are treated as separate maturities.

“*Public*” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50% common ownership, directly or indirectly.

“*Underwriter*” means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Certificates to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Certificates to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Certificates to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Colliers’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Compliance Certificate and with respect to compliance with the federal income tax rules affecting the Certificates, and by Arntson Stewart Wegner PC in connection with rendering its opinion that the interest component of the payments on the Certificates is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038, and other federal income tax advice that it may give to the Issuer from time to time relating to the Certificates.

Dated: October 14, 2020.

COLLIERS SECURITIES LLC

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Craig D. Theis  
Senior Vice President

**SCHEDULE A**

**SALE PRICES**

*(Attached)*



**EXHIBIT B**  
**FORM OF OPINION OF COUNSEL TO THE COUNTY**

October 14, 2020

Colliers Securities LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, Minnesota 55402

Re: \$15,435,000 Barnes County, North Dakota  
Certificates of Participation, Series 2020  
(the "Certificates")

We have acted as Special Counsel to Barnes County, North Dakota (the "County") in connection with the issuance of the above-referenced Certificates pursuant to a Trust Agreement, dated as of October 1, 2020 (the "Trust Agreement"), between the Bank of North Dakota, as trustee, and the County. This opinion is rendered to satisfy Paragraph 5(d)(ii) of the Certificate Purchase Agreement, dated September 30, 2020 (the "Purchase Agreement"), between Colliers Securities LLC and the County. Words and terms used in this letter and not otherwise defined herein are intended to have the meanings assigned to them in the Purchase Agreement.

We have reviewed such portions of the Official Statement dated October 5 2020, relating to the Certificates (the "Official Statement") as we have deemed appropriate for purposes of this opinion and such other documents relating to the Certificates as are referred to in our approving opinion.

Based upon our examination, and assuming the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies of the originals of such documents, and the accuracy of the statements of fact contained in such documents, we are of the opinion that pursuant to the laws of the State of North Dakota and of the United States of America in force and effect on the date hereof:

1. The offer and sale of the Certificates is exempt from registration pursuant to the Securities Act of 1933, as amended, and will not result in the Trust Agreement being subject to qualification pursuant to the Trust Indenture Act of 1939, as amended.
2. The statements contained (but not incorporated by reference) in the Official Statement under the headings entitled "SUMMARY OF THE OFFERING," "THE CERTIFICATES," "SECURITY FOR THE CERTIFICATES," and "TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS," and in "APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE," and APPENDIX F - "FORM OF BOND COUNSEL OPINION," insofar as such statements purport to summarize certain, applicable provisions of the Certificates, the Trust Agreement, the Lease, the Ground Lease, certain laws of the State of North Dakota, certain provisions of the Internal Revenue Code of 1986, as amended, and certain matters related to us, fairly summarize the information that they purport to summarize.
3. The Purchase Agreement has been duly and validly authorized, executed and delivered by the County.

We hereby consent to the used of our name and references to our opinion in the Official Statement under the caption "TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS" and on the cover of the Official Statement.

Sincerely,

**ARNTSON STEWART WEGNER PC**

**EXHIBIT C**

**FORM OF OPINION OF STATE ATTORNEY**

October 14, 2020

Barnes County, North Dakota  
230 4<sup>th</sup> Street NW  
Valley City, ND 58072

Colliers Securities LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, MN 55402

Bank of North Dakota  
1200 Memorial Highway  
Bismarck, ND 58504

**\$15,435,000**

**Certificates of Participation, Series 2020**

**In a Lease-Purchase Agreement dated as of October 1, 2020, between  
Bank of North Dakota and Barnes County, North Dakota**

I am the State's Attorney for Barnes County, North Dakota (the "County") and have represented the County in connection with the Lease-Purchase Agreement described above (the "Lease") between the County, as lessee, and the Bank of North Dakota, as lessor (the "Trustee"). In such capacity I have reviewed copies of the following documents (together, the "Financing Documents"):

1. The Ground Lease dated as of October 1, 2020 (the "Ground Lease"), by and between the County, as lessor, and the Trustee, as lessee;
2. The Lease and the exhibits attached thereto;
3. The Trust Agreement dated as of October 1, 2020 (the "Trust Agreement"), executed by the Trustee and joined in by the County, including the form of Certificate of Participation, Series 2020 (the "Certificates") attached thereto;
4. A Resolution duly adopted by the governing body of the Issuer on September 29, 2020;
5. Preliminary Official Statement dated September 18, 2020, and the final Official Statement relating to the Certificates dated October 5, 2020, inclusive of appendices and exhibits thereto (collectively, the "Official Statement");
6. Continuing Disclosure Agreement dated as of October 1, 2020, between the County and the Trustee;
7. Purchase Agreement dated September 30, 2020, between the County and Colliers Securities LLC relating to the Certificates; and
8. Such certified proceedings and other papers as I deem necessary to render this opinion.

Based upon the foregoing, I am of the opinion, as of the date hereof and under existing law, as follows:

1. The County is a political subdivision of the State of North Dakota (the "State"), duly organized, existing and operating under the Constitution and laws of the State.

2. The actions of the County approving and authorizing the execution and delivery of the Financing Documents were duly taken at a meeting of the governing body of the County that was called and held pursuant to State law and with all public notice required by State law and at which a quorum was present and acting throughout.

3. To my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body known to be pending or threatened against or affecting the County to restrain or enjoin the County from entering into the Financing Documents, the issuance or delivery of the Certificates by the Trustee, the anticipated appropriation of funds by the County to make Rental Payments (as defined in the Lease), and the construction of the County jail project financed with proceeds of the Lease and the Certificates or in any way contesting or affecting any authority for the County to enter into the Financing Documents and the issuance of the Certificates by the Trustee or the validity of the Certificates or the Financing Documents or in any way contesting the existence or powers of the County with respect to the Financing Documents or the issuance of the Certificates or the security therefor wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Financing Documents or the validity of the Certificates.

4. The execution and delivery of the Financing Documents and compliance with the provisions thereof, under the circumstances contemplated thereby, to my knowledge do not and will not in any material respect conflict with or constitute on the part of the County a breach of or default under any agreement or other instrument to which the County is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the County is subject.

5. The Financing Documents have been duly authorized, executed and delivered by the County and, assuming due authorization, execution and delivery by the other parties thereto where applicable, are valid and binding obligations of the County, enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency, reorganization or creditor's rights generally and to the application of equitable principles.

6. Based upon the information made available to me, and without having undertaken to determine independently or assuming any responsibility for the accuracy, completeness or fairness of the statements contained in the Official Statement, nothing has come to my attention which would lead me to believe that the statements and information contained in the Official Statement with respect to the County (excluding therefrom the statistical and financial data included in the Official Statement, as to which I express no opinion) as of the date of the Official Statement or as of the date hereof, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

Enforceability of the Certificates, the Resolution and the Financing Documents may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws relating to the enforcement of creditors' rights generally or by equitable principles, whether considered at law or in equity, including the exercise of judicial discretion.

Sincerely,

Tonya Duffy  
Barnes County State's Attorney

**7**

**NEW ISSUE  
BOOK-ENTRY ONLY**

**MOODY'S RATING: "Baa1"  
See "RATING" herein**

*In the opinion of Arntson Stewart Wegner PC, Bond Counsel, according to existing North Dakota and federal laws, regulations, rulings and judicial decisions, and assuming compliance with certain covenants, as of their date of issuance, interest on the Certificates is excludable from the gross income for purposes of federal income taxation and State of North Dakota income tax purposes. Interest on the Certificates is not a specific preference item for purposes of the federal alternative minimum tax for individuals. See "TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS" in this Official Statement.*



**\$15,435,000**  
**CERTIFICATES OF PARTICIPATION, SERIES 2020**  
**Evidencing the Proportional Interests of the Registered Owners thereof in**  
**Lease Payments under a Lease-Purchase Agreement, dated as of October 1,**  
**2020, between BARNES COUNTY, NORTH DAKOTA, as Lessee, and**  
**BANK OF NORTH DAKOTA, as Lessor**

**Dated: Date of Delivery**

**Due: May 1, as shown on the inside front cover**

The Certificates of Participation, Series 2020 (the "Certificates"), in the original aggregate principal amount of \$15,435,000 are being delivered and will be used, along with available funds of the County, in order to: (i) finance the costs of participation in the design, construction, installation and equipping of an approximately 46-bed replacement Barnes County Correctional Facility (the "Correctional Facility Project") located in Valley City, North Dakota; and (ii) pay costs of issuance for the Certificates. The Certificates represent proportionate interests in certain lease payments (the "Rental Payments") to be made by Barnes County, North Dakota (the "County") under a Lease-Purchase Agreement, dated as of October 1, 2020 (the "Lease"), pursuant to which the County, as lessee, is leasing the Correctional Facility Project from the Bank of North Dakota (the "Trustee"), as lessor. The County is leasing the site of the Correctional Facility Project (the "Project Site") to the Trustee pursuant to a Ground Lease, dated as of October 1, 2020 (the "Ground Lease"), between the County, as lessor, and the Trustee, as lessee. The Certificates are issued pursuant to a Trust Agreement, dated as of October 1, 2020 (the "Trust Agreement"), by the Trustee and joined in by the County. The Certificates are subject to redemption prior to maturity as described in this Official Statement. See "THE CERTIFICATES" in this Official Statement. Undefined capitalized terms on this cover are defined in the text hereof, APPENDIX C of this Official Statement, or the Trust Agreement.

The County will annually levy and appropriate taxes from a County capital projects tax not to exceed 10 mills (the "Annual Capital Levy"). If the Annual Capital Levy is insufficient to cover the Rental Payments, then the County shall appropriate funds from the County's General Fund. The County will utilize other funds to pay for operations of the Correctional Facility Project. The Lease is subject to termination by the County at the end of any fiscal year as a result of the failure by the County to appropriate funds sufficient to pay the Rental Payments. The Certificates are not secured by a debt service reserve fund. See "SECURITY FOR THE CERTIFICATES" in this Official Statement.

THE CERTIFICATES WILL BE SPECIAL, LIMITED OBLIGATIONS OF THE COUNTY PAYABLE SOLELY FROM RENTAL PAYMENTS TO BE MADE BY THE COUNTY UNDER THE LEASE. THE CERTIFICATES ARE NOT A GENERAL OBLIGATION OF THE COUNTY AND THE FULL FAITH AND CREDIT AND UNLIMITED AD VALOREM TAXING POWERS OF THE COUNTY ARE NOT PLEDGED TO THE PAYMENT OF THE RENTAL PAYMENTS. Additional information regarding the security for the Certificates is provided under the caption "SECURITY FOR THE CERTIFICATES" and "APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE" in this Official Statement.

The Certificates will be issued as fully registered certificates without coupons and when issued will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, to which principal and redemption premium, if any, and interest payments on the Certificates will be made. Individual purchases of Certificates will be made in book-entry form only, in principal amounts of \$5,000 or any integral multiple thereof. Beneficial owners of the Certificates will not receive physical delivery of Certificates. Interest on the Certificates will be payable semiannually on each May 1 and November 1, commencing May 1, 2021 (each a "Payment Date"), to the registered owner as of the close of business on the 15th day of the calendar month prior to a Payment Date, as fully described in this Official Statement. Principal of the Certificates will be payable on the May Payment Dates as fully described in this Official Statement. The Certificates are subject to redemption prior to maturity under the terms and conditions described in this Official Statement. See "THE CERTIFICATES – Redemption" in this Official Statement.

This cover page contains certain information for quick reference only. This cover page is not intended to be a summary of the Certificates or the security therefor. Potential purchasers of the Certificates should read this Official Statement, including the Appendices hereto, in its entirety prior to making an informed investment decision with respect to the Certificates. An investment in the Certificates involves risks, including, but not limited to, those discussed under "RISK FACTORS" in this Official Statement.

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A detailed maturity schedule for the Certificates is set forth on the inside front cover.

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The Certificates are offered when, as and if issued and accepted by Colliers Securities LLC (the "Underwriter"), subject to the opinion as to their validity and the tax-exempt status of the interest component of the Certificates by Arntson Stewart Wegner PC, Fargo, North Dakota, Bond Counsel. Certain legal matters will be passed upon for the Underwriter by Ballard Spahr LLP, Minneapolis, Minnesota. It is expected that the Certificates will be delivered through the facilities of DTC in New York, New York on or about October 14, 2020.



*The date of this Official Statement is October 5, 2020.*

**MATURITY SCHEDULE**

**\$15,435,000**

**CERTIFICATES OF PARTICIPATION, SERIES 2020**

**Evidencing the Proportional Interests of the Registered Owners thereof in  
Lease Payments under a Lease-Purchase Agreement, dated as of October 1,  
2020, between BARNES COUNTY, NORTH DAKOTA, as Lessee, and  
BANK OF NORTH DAKOTA, as Lessor**

Maturity Date (May 1)	Principal Amount	Interest Rate	Yield	Price	CUSIP <sup>(2)</sup>
2021	\$120,000	4.000%	0.625%	101.840%	067789 AA5
2022	305,000	4.000	0.700	105.069	067789 AB3
2023	315,000	4.000	0.750	108.184	067789 AC1
2024	325,000	4.000	0.800	111.169	067789 AD9
2025	340,000	4.000	0.900	113.781	067789 AE7
2026	355,000	1.000	1.000	100.000	067789 AF4
2027	360,000	4.000	1.250 <sup>(1)</sup>	112.118	067789 AG2
2028	370,000	4.000	1.400 <sup>(1)</sup>	111.415	067789 AH0
2029	385,000	4.000	1.600 <sup>(1)</sup>	110.484	067789 AJ6
2030	405,000	4.000	1.800 <sup>(1)</sup>	109.563	067789 AK3
2031	420,000	4.000	2.000 <sup>(1)</sup>	108.651	067789 AL1
2032	435,000	4.000	2.100 <sup>(1)</sup>	108.198	067789 AM9
2033	455,000	4.000	2.200 <sup>(1)</sup>	107.747	067789 AN7
2034	470,000	4.000	2.250 <sup>(1)</sup>	107.523	067789 AP2
2037	530,000	4.000	2.400 <sup>(1)</sup>	106.852	067789 AR8
2038	550,000	4.000	2.450 <sup>(1)</sup>	106.630	067789 AV9

\$1,000,000 4.000% Term Certificates Due May 1, 2036  
Price of 107.075% to Yield 2.350%<sup>(1)</sup>  
CUSIP: 067789 AQ0<sup>(2)</sup>

\$1,170,000 4.000% Term Certificates Due May 1, 2040  
Price of 105.856% to Yield 2.625%<sup>(1)</sup>  
CUSIP: 067789 AS6<sup>(2)</sup>

\$3,295,000 3.000% Term Certificates Due May 1, 2045  
Price of 96.616% to Yield 3.200%  
CUSIP: 067789 AT4<sup>(2)</sup>

\$3,830,000 3.125% Term Certificates Due May 1, 2050  
Price of 95.799% to Yield 3.350%  
CUSIP: 067789 AU1<sup>(2)</sup>

<sup>(1)</sup> Yield to optional redemption date of May 1, 2025.

<sup>(2)</sup> CUSIP is a registered trademark of the American Bankers Association ("ABA"). CUSIP data is provided by CUSIP Global Services, managed by S&P Global Market Intelligence on behalf of ABA. The CUSIP numbers listed above are being provided solely for the convenience of Holders of the Certificates only at the time of issuance of the Certificates and neither the County nor the Underwriter makes any representation with respect to such numbers or undertakes any responsibility for their accuracy now or at any time in the future.

## Rendering of the Correctional Facility Project



*Source: Barnes County*



**Barnes County, North Dakota  
230 4<sup>th</sup> Street Northwest  
Valley City, North Dakota 58072  
Phone (701) 845-8500**

**County Commission**

<b><u>Name</u></b>	<b><u>District</u></b>	<b><u>Term Expires</u></b>
Cindy Schwehr	District 1	2020
Shawn Olauson	District 2	2022
Bill Carlblom	District 3	2022
Vicky Lovell	District 4	2022
John Froelich	District 5	2020

**Bond Counsel**

Arntson Stewart Wegner PC  
Fargo, North Dakota

**Underwriter**

Colliers Securities LLC  
Minneapolis, Minnesota  
and  
Bismarck, North Dakota

**Underwriter's Counsel**

Ballard Spahr LLP  
Minneapolis, Minnesota

**Trustee**

Bank of North Dakota  
Bismarck, North Dakota

## **USE OF INFORMATION IN THIS OFFICIAL STATEMENT**

This Official Statement does not constitute an offer to sell or a solicitation of an offer to buy any of the securities offered hereby by any person in any jurisdiction in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation. No dealer, salesperson, or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement in connection with the offering of the Certificates, and if given or made, such information or representations must not be relied upon as having been authorized by the County or the Underwriter.

Certain information contained in this Official Statement has been obtained from the County and other sources which are believed to be reliable, but such information is not guaranteed as to completeness or accuracy by the Underwriter. THE INFORMATION AND EXPRESSIONS OF OPINION IN THIS OFFICIAL STATEMENT ARE SUBJECT TO CHANGE, AND NEITHER THE DELIVERY OF THE OFFICIAL STATEMENT NOR ANY SALE MADE HEREUNDER SHALL UNDER ANY CIRCUMSTANCES CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COUNTY SINCE THE DATE THEREOF.

In making an investment decision with respect to the Certificates, investors must rely on their own examination of the Certificates, the Correctional Facility Project, the County, the terms of the offering, and the risks with respect to such an investment. The Certificates have not been recommended by any federal or state securities commission or regulatory authority. Furthermore, no federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of this Official Statement. Any representation to the contrary may be a criminal offense under applicable law. In connection with the offering of the Certificates, the Underwriter may over-allot or effect transactions that stabilize or maintain the market price of the Certificates at a level above that which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.

The order and placement of materials in this Official Statement, including appendices, are not to be deemed a determination of relevance, materiality or importance, and this Official Statement, including the appendices, must be considered in its entirety. The captions and headings in this Official Statement are for convenience only and in no way define, limit or describe the scope or intent, or affect the meaning or construction, of any provisions of this Official Statement. The offering of the Certificates is made only by means of this entire Official Statement.

The Trustee has not participated in the preparation of this Official Statement or any other disclosure documents relating to the Certificates. Except for the information under the heading "THE TRUSTEE", the Trustee has or assumes no responsibility as to the accuracy or completeness of any information contained in this Official Statement or any other such disclosure documents.

The Underwriter has provided the following sentence for inclusion in this Official Statement. The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, the Underwriter's responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The Certificates have not been registered with the Securities and Exchange Commission due to certain exemptions contained in the Securities Act of 1933, as amended. In making an investment decision, investors must rely on their own examination of the County, the Certificates and the terms of the offering, including the merits and risks involved. The Certificates have not been recommended by any federal or state securities commission or regulatory authority, and the foregoing authorities have neither reviewed nor confirmed the accuracy of this document.

### **CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

This Official Statement, including the Appendices hereto, contains statements which should be considered "forward-looking statements," meaning they refer to possible future events or conditions. Such statements are generally identifiable by the words such as "plan," "expect," "estimate," "budget" or similar words. THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. THE COUNTY DOES NOT EXPECT OR INTEND TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN THEIR EXPECTATIONS, OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED, OCCUR.

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## SUMMARY OF THE OFFERING

The following is a summary of certain information discussed in this Official Statement. Capitalized terms used in this Official Statement are defined in the text, defined under “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE”, or used with the meanings assigned in the Trust Agreement relating to the Certificates. This summary is qualified in its entirety by reference to the more detailed information included elsewhere in this Official Statement.

**The Certificates**..... The Certificates of Participation, Series 2020 (the “Certificates”), in the original aggregate principal amount of \$15,435,000, dated as of the date of delivery, are being issued in connection with Barnes County, North Dakota (the “County”), as lessee, entering into a Lease-Purchase Agreement, dated as of October 1, 2020 (“Lease”), with the Bank of North Dakota (the “Trustee”), as lessor, with respect to the Correctional Facility Project, as defined below. The Certificates will be issued as fully registered certificates, without coupons, in book-entry form. Interest on the Certificates is payable commencing May 1, 2021 and semiannually thereafter on each May 1 and November 1 (each a “Payment Date”). Principal of the Certificates is payable, commencing May 1, 2021, and annually thereafter on each May 1 Payment Date in the years and in the amounts shown on the inside front cover page hereof. See “THE CERTIFICATES” in this Official Statement.

**Use of Proceeds**..... The proceeds of the Certificates, along with available funds of the County, will be used by the County in order to: (i) finance the costs of participation in the design, construction, installation and equipping of an approximately 46-bed replacement correctional facility for the County (the “Correctional Facility Project”) located in Valley City, North Dakota (the “Project Site”); and (ii) pay costs of issuance for the Certificates. See “SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT” in this Official Statement.

**The Correctional Facility Project**..... The Correctional Facility Project consists of the design, construction, installation, and equipping of a 46-bed replacement correctional facility to be located in Valley City, North Dakota. Valley City is the County seat for Barnes County, North Dakota. The Correctional Facility Project is being constructed to replace the obsolete facilities and eliminate the expense associated with using correctional facilities outside of the County. The County’s correctional facility serves multiple jurisdictions. The County had in place for the original correctional facility, and anticipates having in place for the new Correctional Facility Project, contracts with the City of Valley City and the following North Dakota counties Dickey, LaMoure, Griggs, Ransom, Steele, and Sargent. See “SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT” in this Official Statement.

**Security**..... The Certificates will be issued pursuant to the terms of a Trust Agreement, dated as of October 1, 2020 (the “Trust Agreement”), by the Trustee and joined in by the County. The Certificates will be special, limited obligations of the County payable solely from Rental Payments. The Project Site will be leased to the Trustee, as lessee, by the County, as lessor, pursuant to the terms of a Ground Lease, dated as of October 1, 2020 (the “Ground Lease”). The term of the Ground Lease is until the earlier of (i) the date of payment in full by the County of the Lease and the accompanying payment of the Certificates, or (ii) May 1, 2070 is 50 years. The Trustee, as lessor, will lease back to the County, as lessee, the Correctional Facility Project pursuant to the Lease.

The County will annually levy and appropriate taxes from a County capital projects tax (the “Annual Capital Levy”) to pay debt service on the Certificates. Based upon property tax year 2020 information, the Annual Capital Levy would have raised approximately \$869,220.50 if it had been in place. If the Annual Capital Levy is insufficient to cover the Rental Payments, then the County shall appropriate funds from the County’s General Fund to make the Lease payments, subject to the County’s right to not appropriate sufficient funds in any fiscal year. Subject to an event of

Nonappropriation, the County will utilize other funds to pay for the operations of the Correctional Facility Project.

*The Certificates do not constitute a general obligation of the County and the full faith and credit and unlimited ad valorem taxing powers of the County are not pledged to the payment of the Rental Payments. The Lease is subject to termination by the County at the end of any Fiscal Year of the County if the governing body thereof does not appropriate money sufficient to continue the Lease for the ensuing Fiscal Year. In the event the Lease is terminated pursuant to such nonappropriation, there is no obligation of the County for future Rental Payments though the County shall forfeit its use of the Correctional Facility Project for the remainder of the Ground Lease. Although the Trustee will attempt to lease or generate revenue from the Correctional Facility Project in the event that the County (i) defaults under the terms of the Lease, or (ii) terminates the Lease, no assurance can be given that the Trustee will be able to lease, sell, or generate revenue from the Correctional Facility Project to a user who will pay any rent or pay rent in an amount sufficient to pay debt service on the Certificates. The Certificates will not be secured by a debt service reserve fund. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” and “SECURITY FOR THE CERTIFICATES” in this Official Statement.*

**Book-Entry System**..... The Certificates will be fully registered as to principal and interest in the name of Cede & Co. as nominee of The Depository Trust Company (“DTC”). Subject to certain exceptions described herein, all purchases, sales or other transfers of beneficial ownership in the Certificates are to be made by book-entry only, and no owner will receive, hold or deliver any certificates as long as DTC or any successor securities depository is the registered owner of the Certificates. See “APPENDIX E – BOOK-ENTRY ONLY SYSTEM” in this Official Statement.

**Redemption**..... The Certificates are subject to redemption and prepayment at the option of the County on or after May 1, 2025, at a price equal to the principal amount to be redeemed plus accrued interest to the date of redemption, as further described in this Official Statement. Certain maturities of the Certificates are also subject to mandatory sinking fund redemption as described in this Official Statement. In certain circumstances, the Certificates are also subject to mandatory extraordinary redemption in the event of a casualty loss to or the condemnation of all or a portion of the Correctional Facility Project. See “THE CERTIFICATES – Redemption” in this Official Statement.

**Tax Status**..... The County has covenanted to comply with requirements necessary under the Internal Revenue Code of 1986, as amended (the “Code”), to establish and maintain the exclusion from gross income of the interest component of the Rental Payments under the Lease that correspond to the Certificates. See “TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS” and “APPENDIX F – FORM OF BOND COUNSEL OPINION” in this Official Statement.

**Secondary Market Disclosure**..... The County will make certain secondary market disclosure pertaining to the Certificates. See “CONTINUING DISCLOSURE UNDERTAKING” and “APPENDIX D – FORM OF CONTINUING DISCLOSURE UNDERTAKING” in this Official Statement.

**Legal Counsel**..... Certain legal matters incident to the authorization, issuance, sale and delivery of the Certificates are subject to the approval of Arntson Stewart Wegner PC, Fargo, North Dakota, as Bond Counsel. See “LEGAL MATTERS” and “ENFORCEABILITY OF OBLIGATIONS” in this Official Statement.

**\$15,435,000**  
**CERTIFICATES OF PARTICIPATION, SERIES 2020**  
**Evidencing the Proportional Interests of the Registered Owners thereof in**  
**Lease Payments under a Lease-Purchase Agreement, dated as of October 1,**  
**2020, between BARNES COUNTY, NORTH DAKOTA, as Lessee, and**  
**BANK OF NORTH DAKOTA, as Lessor**

**INTRODUCTION**

This Official Statement, which includes the Summary of the Offering and the Appendices hereto, sets forth information relating to Barnes County, North Dakota (the “County”) and the Certificates of Participation, Series 2020 (the “Certificates”), in the original aggregate principal amount of \$15,435,000. The County is authorized to enter into a Lease-Purchase Agreement, dated as of October 1, 2020 (the “Lease”), with the Bank of North Dakota (the “Trustee”) and the Certificates are authorized to be issued pursuant to (i) a Resolution adopted by the Board of Commissioners of the County (the “County Commission”), and (iii) a Trust Agreement, dated as of October 1, 2020 (the “Trust Agreement”), by the Trustee and joined in by the County.

Definitions of certain capitalized terms used in this Official Statement are contained in “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE.” Certain terms which have been capitalized but not defined herein have the meanings assigned to those terms in the Trust Agreement and the Lease.

The County will use proceeds of the Certificates, along with available funds of the County, in order to: (i) finance the design, construction, installation and equipping of a 46-bed Barnes County Correctional Facility (the “Correctional Facility Project”) located in Valley City, North Dakota (the “Project Site”); and (ii) pay costs of issuance for the Certificates. See “SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT” in this Official Statement.

The Project Site is owned by the County and is leased by the County to the Trustee and, in turn, the Trustee obtained a leasehold interest in the Project Site pursuant to a Ground Lease, dated as of October 1, 2020 (the “Ground Lease”), between the Trustee, as lessee, and the County, as lessor. The County will construct the Correctional Facility Project on the Project Site and the Trustee will lease the Correctional Facility Project to the County pursuant to the terms of the Lease. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” and “SOURCES USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT” in this Official Statement.

The County will annually levy and appropriate taxes from a County capital projects tax (the “Annual Capital Levy”) to pay debt service on the Certificates. Based upon property tax year 2020 information, the Annual Capital Levy would have raised approximately \$869,220.50 if it had been in place. If the Annual Capital Levy is insufficient to cover the Rental Payments, then the County shall appropriate funds from the County’s General Fund to make the Lease payments, subject to the County’s right of nonappropriation in any Fiscal Year. The County will utilize other funds to pay for the operations of the Correctional Facility Project. The County may determine not to renew, and therefore terminate all of the County’s obligations under the Lease on an annual basis. The exercise of the County of its option to not renew, and therefore terminate its obligations under the Lease is determined by a failure of the County Commission to specifically appropriate money sufficient to pay Rental Payments for the next ensuing Fiscal Year (a “Nonappropriation”). The Certificates will be special, limited obligations of the County payable solely from Rental Payments under the Lease. *The Certificates are not secured by a debt service reserve fund.* See “SECURITY FOR THE CERTIFICATES,” “RISK FACTORS” and “APPENDIX C –



DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” in this Official Statement.

*The Certificates are not a general obligation of the County and the full faith and credit and ad valorem taxing powers of the County are not pledged to the payment of the Rental Payments. The Lease is subject to termination by the County at the end of any Fiscal Year of the County if the governing body thereof does not appropriate money sufficient to continue the Lease for the ensuing Fiscal Year. In the event the Lease is terminated pursuant to such nonappropriation, there is no obligation of the County for future Rental Payments though the County shall forfeit its use of the Correctional Facility Project for the remainder of the Ground Lease. Although the Trustee will attempt to lease or generate revenue from the Correctional Facility Project in the event that the County (i) defaults under the terms of the Lease, or (ii) terminates the Lease, no assurance can be given that the Trustee will be able to lease, sell, or generate revenue from the Correctional Facility Project to a user who will pay any rent or pay rent in an amount sufficient to pay debt service on the Certificates.*

This Official Statement contains information about the Lease, the Certificates, the Trust Agreement, the Trustee, the County and other matters pertinent to the offering of the Certificates. The references to and summaries of provisions of the laws of the State and the descriptions of documents included herein do not purport to be complete and are qualified in their entirety by reference to the complete provisions thereof.

**THE COUNTY**

**General Information**

Barnes County is a political subdivision of the State of North Dakota and is located in east-central North Dakota just west of Cass County in the eastern part of North Dakota along Interstate Highway 94. The County encompasses an area of approximately 967,680 acres (1,512 square miles) with an estimated population of 10,415 in 2019, as estimated by the U.S. Census Bureau. The City of Valley City is the county seat of the County and is located approximately 60 miles directly west of Fargo, North Dakota. The County is served by Interstate Highway 94, State Highways 1, 32, 38, 46, and 200 and numerous secondary highways, B-N Railway, SooLine (CP Rail), Greyhound Bus Lines, numerous motor freight carriers, and a county airport located just north of Valley City, North Dakota.

**Form of Government**

The County’s governing body is the County Commission, which is comprised of five commissioners who are elected every two years. The current County Commission members and the expiration of their respective terms of office are as follows:

<u>Name</u>	<u>District</u>	<u>Term Expires</u>
Cindy Schwehr	District 1	2020
Shawn Olauson	District 2	2022
Bill Carlblom	District 3	2022
Vicky Lovell	District 4	2022
John Froelich	District 5	2020

Beth Didier is the County Auditor. Stacie Leier is the Director of Tax Equalization. Tonya Duffy is the State’s Attorney.

## **Principal Governmental Services**

The County provides a number of basic services to its residents which include sheriff's office, development of the community through planning, zoning and building inspections, construction and maintenance of roads, bridges and culverts, cultural and recreational activities, public health services, and corrections.

## **Financial Accounting and Control Procedures**

The County's financial statements are prepared on the accrual basis of accounting for government wide and proprietary fund financial statements and the modified accrual basis for governmental type funds in accordance with generally accepted accounting principles as promulgated by the Governmental Accounting Standards Board ("GASB").

## **SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT**

The County is constructing the Correctional Facility Project to comply with North Dakota laws that require that the County house inmates in the County in either the County's own jail facility or provide for housing of inmates in another County's correctional facility. The County believes that it is more efficient operationally and financially for the County to operate its own correctional facility in the County rather than utilize a correctional facility in another county or counties.

In December 2018, the County received an order from North Dakota Department of Corrections and Rehabilitation that reclassified the County's correctional facility from a Grade One correctional facility to a Grade Three correctional facility. A Grade One correctional facility may house offenders for longer periods of time and a Grade Three correctional facility may not detain or hold inmates for more than ninety-six (96) hours. The Correctional Facility Project is being constructed to replace the obsolete facilities and eliminate the expense associated with using correctional facilities outside of the County as a result of the existing facility being reclassified as a Grade Three correctional facility that can only house offenders for a limited period of time. The County's existing correctional facility was constructed in 1908 and partially renovated in 1977. As of 2018, prior to the reclassification of the existing correctional facility, the average length of stay of an offender in the County's correctional facility was eight (8) days. After the reclassification order from the North Dakota Department of Corrections and Rehabilitation, the County engaged various engineers to review the existing correctional facility for renovation and repairs and the County determined that it would be cost prohibitive to renovate, repair and expand the existing correctional facility to restore it to a Grade One level classification.

As a result of the downgrading of the County's correctional facility from a Grade One facility to a Grade Three facility (and the corresponding limit on the length of time the County can house offenders in its facility), the County has incurred additional costs of approximately \$200,000 a year in 2019 and 2020 for housing offenders in other counties correctional facilities. This approximately \$200,000 amount does not include the cost and time for Barnes County Sheriff's Office officials to transport inmates back and forth from correctional facilities in other jurisdictions

The Correctional Facility Project is a 46-bed jail facility. Construction of the Correctional Facility Project began in July 2020 and substantial completion is anticipated to be achieved in August 2021. The building shell will be constructed of flat precast concrete panels, while the interior utilizes reinforced concrete blocks in secure areas and metal stud walls in administrative sections. The Correctional Facility Project will be primarily a single-story facility with the exception of the inmate housing units. The housing units in the Correctional Facility Project will include 26 beds on the ground floor and 20 beds on the mezzanine level with stairs and an elevator between levels. The cells/dormitory style housing will be

constructed with stacked pre-engineered steel cells and concrete blocks. The County expects that the Correctional Facility Project, when placed in service, will be considered to be a Grade One correctional facility and will be able to house offenders for longer than ninety-six (96) hours. This would enable the County to begin housing offenders from other counties for longer period so time like it had previously done (at that revenues from such activity will rebound to historic levels).

The County's correctional facility serves multiple jurisdictions. The County had in place for the existing correctional facility, and anticipates having in place for the new Correctional Facility Project, contracts with the City of Valley City and the following North Dakota counties Dickey, LaMoure, Griggs, Ransom, Steele, and Sargent. The County received the following revenues in the last three (3) fiscal years as a result of housing offenders for other units of local government: (i) 2017, \$94,375, (ii) 2018, \$76,635, and (iii) 2019, \$26,923 (unaudited).

*Construction Contract.* The Correctional Facility Project will be constructed by AP Midwest, LLC ("AP Midwest"), a Minnesota corporation based in Minneapolis, Minnesota, as construction manager and constructor. AP Midwest has many years of experience providing pre-construction planning, construction management and general contracting services to commercial, healthcare, and education clients. The County entered into an AIA-A133 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price with AP Midwest (the "Construction Contract"). Subject to additions and deductions authorized by the County pursuant to the Construction Contract, the guaranteed maximum price will not exceed \$14,042,959 for construction of the Correctional Facility Project. In addition, architectural, engineering, soft costs and owner contingencies total an additional \$2,170,021, resulting in total project costs of approximately \$16,212,981. The Construction Contract provides that AP Midwest will achieve substantial completion not later than August 2021. The Construction Contract provides that any savings for the construction of the Correctional Facility Project will go to the County. The Construction Contract does not require liquidated damages if there is a delay in the date of Substantial Completion and there is not a completion bonus. The Construction Contract will provide that if AP Midwest is delayed in starting the work by circumstances outside its control, the County, Klein McCarthy & Co. Architects, Ltd. (the "Architect"), and AP Midwest will expend their best efforts to coordinate a completion plan that will satisfy the City of Valley City for issuance of a temporary certificate of occupancy in fall 2021. The Construction Contract does not require a payment and performance bond equal to 100 percent of the guaranteed maximum price. The Construction Contract will not cover the furniture, fixtures, and equipment to be purchased by the County from proceeds of the Certificates for the Correctional Facility Project. The Construction Contract does not contain any special provisions relating to the COVID-19 pandemic.

*Insurance.* The Lease requires the County to maintain in effect "all risk" property insurance on the Correctional Facility Project in amounts comparable to those maintained by prudent owners of such facilities. In the event the Correctional Facility Project is damaged or destroyed, the County may decide, in its discretion, whether to apply insurance claim payment proceeds to restoration of the Correctional Facility Project or the redemption of Certificates.

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*Sources and Uses.* The Certificates are issued for the purposes of providing funds to be used, along with other available funds of the County, to (i) finance the costs of the Correctional Facility Project, and (ii) pay costs of issuance for the Certificates. The table below sets forth the estimated sources and uses of the proceeds of the Certificates.

<b>Sources of Funds:</b>	
Par Amount of Certificates	\$15,435,000
Net Original Issue Premium	373,804
Equity Contribution	<u>700,000</u>
<b>Total Sources of Funds</b>	<b>\$16,508,804</b>

<b>Uses of Funds:</b>	
Deposit to Construction Account	\$16,212,980
Costs of Issuance <sup>(1)</sup>	<u>295,824</u>
<b>Total Uses of Funds</b>	<b>\$16,508,804</b>

<sup>(1)</sup> *Includes various attorneys' fees, Underwriter's fees and discount, Rating Agency fee, Trustee fees, and other miscellaneous costs.*

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## DEBT SERVICE SCHEDULE

The table below sets forth the amounts required each year to be paid with respect to the Certificates, assuming no prepayments. Interest on the Certificates will be paid on May 1 and November 1 of each year (each a "Payment Date"), commencing May 1, 2021. Principal of the Certificates will be paid on May 1 of each year, commencing May 1, 2021.

<u>Year (Ending May 1)</u>	<u>Principal Amount</u>	<u>Interest Amount<sup>(1)</sup></u>	<u>Annual Debt Service</u>
2021	\$120,000	\$295,657	\$415,657
2022	305,000	535,488	840,488
2023	315,000	523,288	838,288
2024	325,000	510,688	835,688
2025	340,000	497,688	837,688
2026	355,000	484,088	839,088
2027	360,000	480,538	840,538
2028	370,000	466,138	836,138
2029	385,000	451,338	836,338
2030	405,000	435,938	840,938
2031	420,000	419,738	839,738
2032	435,000	402,938	837,938
2033	455,000	385,538	840,538
2034	470,000	367,338	837,338
2035	490,000	348,538	838,538
2036	510,000	328,938	838,938
2037	530,000	308,538	838,538
2038	550,000	287,338	837,338
2039	575,000	265,338	840,338
2040	595,000	242,338	837,338
2041	620,000	218,538	838,538
2042	640,000	199,938	839,938
2043	660,000	180,738	840,738
2044	675,000	160,938	835,938
2045	700,000	140,688	840,688
2046	720,000	119,688	839,688
2047	740,000	97,188	837,188
2048	765,000	74,063	839,063
2049	790,000	50,156	840,156
2050	815,000	25,469	840,469
<b>Totals</b>	<b><u>\$15,435,000</u></b>	<b><u>\$9,304,820</u></b>	<b><u>\$24,739,820</u></b>

<sup>(1)</sup> Bearing an average interest rate of 4.000% per annum.

## THE CERTIFICATES

The Certificates are dated as of their date of issuance and are issued as fully registered certificates in book-entry form. Interest on the Certificates is payable commencing May 1, 2021 and semiannually thereafter on each May 1 and November 1 to the holder registered on the books of the County (initially Cede & Co. as nominee of The Depository Trust Company ("DTC")) as of the 15th day of the calendar month prior to a Payment Date. Principal of the Certificates will be paid annually on each May 1,

commencing May 1, 2021. The Certificates will mature in the amounts and on the dates shown on the inside front cover page of this Official Statement. The Trustee will act as Certificate Registrar for the Certificates (the “Certificate Registrar”) and the County will pay for registration services.

**Redemption**

**Optional Redemption.** The County may elect on or after May 1, 2025 to prepay the Lease and redeem the Certificates at a price equal to the principal amount to be redeemed plus accrued interest to the date of redemption. Redemption may be in whole or in part and if in part at the option of the County and in such manner as the County shall determine. If less than all of the Certificates of a maturity are called for redemption, the County will notify the Trustee of the particular amount of such maturity to be prepaid. The Trustee will determine by lot the amount of each participant’s interest in such maturity to be redeemed and each participant will the beneficial ownership interests in such maturity to be redeemed. All prepayments will be at a price of par plus accrued interest. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” in this Official Statement.

All Certificates or portions thereof called for redemption will cease to bear interest after the specified redemption date, provided funds for their redemption are on deposit at the place of payment. In the case of a prepayment in part of Rental Payments, the schedule of Rental Payments due under the Lease is to be recalculated by the County Auditor of the County.

**Mandatory Sinking Fund Redemption.** Certificates maturing on May 1 in the years 2036, 2040, 2045, and 2050, are subject to mandatory sinking fund redemption, by random selection, at a redemption price equal to the principal amount so to be redeemed plus accrued interest to the redemption date, without premium, in accordance with the following schedule:

***\$1,000,000 2020 Term Certificate Maturing May 1, 2036***

<b>Payment Date (May 1)</b>	<b>Principal Amount</b>	<b>Payment Date (May 1)</b>	<b>Principal Amount</b>
2035	\$490,000	2036 <sup>(1)</sup>	\$510,000

<sup>(1)</sup>Stated maturity.

***\$1,170,000 2020 Term Certificate Maturing May 1, 2040***

<b>Payment Date (May 1)</b>	<b>Principal Amount</b>	<b>Payment Date (May 1)</b>	<b>Principal Amount</b>
2039	\$575,000	2040 <sup>(1)</sup>	\$595,000

<sup>(1)</sup>Stated maturity.

**\$3,295,000 2020 Term Certificate Maturing May 1, 2045**

<b>Payment Date (May 1)</b>	<b>Principal Amount</b>	<b>Payment Date (May 1)</b>	<b>Principal Amount</b>
2041	\$620,000	2044	\$675,000
2042	640,000	2045 <sup>(1)</sup>	700,000
2043	660,000		

<sup>(1)</sup>Stated maturity.

**\$3,830,000 2020 Term Certificate Maturing May 1, 2050**

<b>Payment Date (May 1)</b>	<b>Principal Amount</b>	<b>Payment Date (May 1)</b>	<b>Principal Amount</b>
2046	\$720,000	2049	\$790,000
2047	740,000	2050 <sup>(1)</sup>	815,000
2048	765,000		

<sup>(1)</sup>Stated maturity.

**Extraordinary Mandatory Redemption.** If the Lease is terminated by reason of the occurrence of a Nonappropriation or an Event of Default under the Lease or the Trustee with the written consent of the County, fails to repair or replace the Correctional Facility Project upon the occurrence of any of the following: (i) the Correctional Facility Project is damaged or destroyed in whole or in part by fire or other casualty; (ii) title to, or the temporary or permanent use of the Correctional Facility Project, or any portion thereof, has been taken by eminent domain by any governmental body; (iii) breach of warranty or any material defect with respect to the Correctional Facility Project becomes apparent; or (iv) title to or the use of either or any portion of the Correctional Facility Project is lost by reason of a defect in title thereto; and the Net Proceeds (as defined in the Lease) of any insurance, performance bond or condemnation award, or Net Proceeds received as a consequence of defaults under contracts relating to the Correctional Facility Project, made available by reason of such occurrences, are insufficient to pay in full, the cost of repairing or replacing such Correctional Facility Project and the County does not appropriate sufficient funds for such purpose, the Certificates are required to be called for redemption. If so called for redemption, the Certificates are to be redeemed in whole but not in part on such date or dates as the Trustee may determine to be in the best interest of the Owners, for a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date (subject to the availability of funds as described below).

If the Net Proceeds, including the Net Proceeds from the exercise of any Lease remedy under the Lease (“Lease Remedies”), otherwise received and other money then available under the Trust Agreement are insufficient to pay in full the principal of and accrued interest on all Outstanding Certificates, including Outstanding Certificates and any Outstanding Additional Certificates, the Trustee may, or at the request of Owners of a majority in aggregate principal amount of the Outstanding Certificates, and upon indemnification as to costs and expenses as provided in the Trust Agreement, without any further demand or notice, exercise all or any combination of Lease Remedies as provided in the Lease, except as otherwise described above concerning the application of Net Proceeds and other available money for the redemption or payment of Certificates, and the Outstanding Certificates are to be redeemed by the Trustee from the Net Proceeds resulting from the exercise of such Lease Remedies and all other money, if any, then on hand and being held by the Trustee for the benefit of the Owners of the Certificates.

If the Net Proceeds resulting from the exercise of such Lease Remedies and other available money are insufficient to redeem the Outstanding Certificates, including the Outstanding Certificates and any Outstanding Additional Certificates, at one hundred percent (100%) of the principal amount thereof plus interest accrued to the redemption date, then such Net Proceeds resulting from the exercise of such Lease Remedies and other available money are to be allocated proportionately among the Certificates, according to the principal amount thereof Outstanding. In the event that such Net Proceeds resulting from the exercise of such Lease Remedies and other available money are in excess of the amount required to redeem the Certificates at one hundred percent (100%) of the principal amount thereof plus interest accrued to the redemption date, then such excess money is to be paid to the County as an overpayment of the Prepayment Price. Prior to any distribution of the Net Proceeds resulting from the exercise of any of such remedies, the Trustee is entitled to payment of its reasonable and customary fees for all services rendered in connection with such disposition, as well as reimbursement for all reasonable costs and expenses, including attorneys' fees, incurred thereby, from proceeds resulting from the exercise of such Lease Remedies and other available money.

### **Partial Redemption**

If less than all of the Certificates are to be redeemed, the Certificates are to be redeemed only in integral multiples of \$5,000. The Trustee is to treat any Certificate of denomination greater than \$5,000 as representing that number of separate Certificates each of the denomination of \$5,000 as can be obtained by dividing the actual principal amount of such Certificate by \$5,000.

### **Notice of Redemption**

Whenever the Certificates are to be redeemed, the Trustee is required to, not less than thirty (30) days prior to the redemption date (except for Extraordinary Mandatory Redemption notice of which is required to be immediate), mail notice of redemption to all Owners of all Certificates to be redeemed at their registered address. However, failure to give such notice by mailing, or any defect therein, does not affect the validity of any proceedings for the redemption of the Certificates as to which no such failure has occurred.

In the case of an optional redemption under the Trust Agreement, the notice may state (a) that it is conditioned upon the deposit of money, in an amount sufficient to effect the redemption, with the Trustee on or before the redemption date, or (b) that the County retains the right to rescind such notice on or prior to the scheduled redemption date (in either case, a "Conditional Redemption"), and such notice and optional redemption shall be of no effect if such money is not so deposited or if the notice is rescinded as hereinafter described. On or before the redemption date, funds sufficient to redeem such Certificates, including accrued interest thereon to the redemption date, shall be deposited with the Trustee. The Certificates thus called shall not, on or after the specified redemption date, bear any interest and, except for the purpose of payment, shall not be entitled to the lien of the Trust Agreement. Any Conditional Redemption may be rescinded in whole or in part at any time on or before the redemption date if the County delivers a certificate of the County to the Trustee at least five days prior to the effective date of the rescission, which shall be no later than five days prior to the redemption date instructing the Trustee to rescind the redemption notice. The Trustee shall give prompt notice of such rescission to the affected Registered Owners. Any Certificates subject to Conditional Redemption where redemption has been rescinded shall remain outstanding, and the rescission shall not constitute an Event of Default. Further, in the case of a Conditional Redemption, the failure of the County to make funds available in part or in whole on or before the redemption date shall not constitute an Event of Default, and the Trustee shall give immediate notice to DTC or the affected Registered Owners that the redemption did not occur and that the Certificates called for redemption and not so paid remain outstanding.



All Certificates called for redemption cease to bear interest after the specified redemption date, provided that sufficient funds for redemption are on deposit with the Trustee.

### **Book-Entry Only System**

So long as a book-entry system is used for determining beneficial ownership of the Certificates, the Trustee, as registrar, is to send such notice to DTC or to Cede & Co., as nominee for DTC. DTC was organized to hold securities of its Participants. Any failure of DTC to advise any Participant, or of any Participant or indirect participant to notify the Beneficial Owner, of any such notice and its content or effect does not affect the validity of the redemption of the Certificates called for redemption or any other action premised on that notice. In the event of a partial call, DTC's practice is to determine by lot the amount of the interest of each Participant in the Certificates to be redeemed, and each such Participant then selects by lot the ownership interest in such Certificates to be redeemed. When DTC and Participants allocate the call, the Beneficial Owners of the book-entry interests called are to be notified by the broker or other organization responsible for maintaining the records of those interests and subsequently credited by that organization with the proceeds once the Certificates are redeemed. See "APPENDIX E – BOOK-ENTRY ONLY SYSTEM" in this Official Statement.

## **SECURITY FOR THE CERTIFICATES**

### **Special, Limited Obligations**

The Certificates will be special, limited obligations of the County payable solely from Rental Payments. The Certificates are not a general obligation of the County and the full faith and credit and ad valorem taxing powers of the County are not pledged to the payment of the Rental Payments. The Lease is subject to termination by the County at the end of any Fiscal Year of the County if the governing body thereof does not appropriate money sufficient to continue the Lease for the ensuing Fiscal Year. In the event the Lease is terminated pursuant to such nonappropriation, there is no obligation of the County for future Rental Payments though the County shall forfeit its use of the Correctional Facility Project for the remainder of the Ground Lease. Although the Trustee will attempt to lease or generate revenue from the Correctional Facility Project in the event that the County (i) defaults under the terms of the Lease, or (ii) terminates the Lease, no assurance can be given that the Trustee will be able to lease, sell, or generate revenue from the Correctional Facility Project to a user who will pay any rent or pay rent in an amount sufficient to pay debt service on the Certificates. See "APPENDIX B – AUDITED FINANCIAL STATEMENTS OF THE COUNTY FOR FISCAL YEAR ENDED DECEMBER 31, 2018" in this Official Statement.

Under the terms of the Trust Agreement and the Lease, the County is obligated to make semi-annual Rental Payments to the Trustee on each April 25 and October 25, commencing April 25, 2021, such that (i) the April 25, 2021 payment will be equal to 100% of the interest and principal due on the Certificates on the May 1, 2021 Payment Date, and (ii) for each April 25 and October 25 thereafter will be equal to the sum of (a) the amount of interest due on the Certificates on the next succeeding May 1 or November 1 Payment Date, as applicable, plus (b) one-half (1/2) of the amount of the principal due on the applicable May 1 Payment Date. For example, (i) the October 25, 2021 Rental Payment pays that portion of the interest due on November 1, 2021 and one-half (1/2) of the principal due on May 1, 2022 and (b) the April 25, 2022, Rental Payment pays the interest due on the Certificates on May 1, 2022 and one-half (1/2) of the principal due on May 1, 2022.

## **Rental Payments and Annual Capital Levy by the County**

The County will annually levy and appropriate taxes through the Annual Capital Levy with which to fund its Rental Payments under the Lease. The County will make the Rental Payments directly to the Trustee. Pursuant to Section 11-11-14, N.D.C.C., and the approval of the County Commission, the County is authorized to enter into the Lease and to make an annual tax levy in an amount sufficient to make Rental Payments under the Lease, which Rental Payments under the Lease (subject to the annual right of Nonappropriation) will be in an amount sufficient to pay the principal of and interest on the Certificates when due. The County will utilize other funds to pay for the operations of the Correctional Facility Project, including those saved by not having to transport inmates outside of the County.

The County is authorized pursuant to Section 57-15-06.6, N.D.C.C., to levy the Annual Capital Levy which is a levy not to exceed ten (10) mills for county capital projects tax which is expected to be used to pay the Rental Payments under the Lease. Based upon property tax year 2020 information, the Annual Capital Levy would have raised approximately \$869,220.50 if it had been in place. If the Annual Capital Levy is insufficient to cover the Rental Payments, then the County shall appropriate funds from the County's General Fund to make the Lease payments, subject to the County's right of nonappropriation in any Fiscal Year. North Dakota counties are authorized to levy up to 60 mills for general fund purposes, subject to certain exceptions. The County is currently (in 2020) levying 58.23 mills for its General Fund. In 2019 and 2020, the County has paid approximately \$200,000 a year to house offenders in other correctional facilities as a result of the County's existing correctional facility being reclassified. This amount does not include the increased operational cost for the Sheriff's Office to transport to and from the County or the loss of revenue to the County for the housing of offenders from other jurisdictions when the correctional facility was reclassified. In addition, the County anticipates that the cost savings of the Correctional Facility Project will provide cost savings for the County's General Fund.

## **Rental Payments**

As more fully set forth under the caption "DEFINITIONS" in APPENDIX C, the term "Rental Payments" generally means the amount payable by the County under the Lease during the Lease Term for the right to use the Leased Property. The Lease Term and the schedule of payments of Rental Payments are designed to produce money sufficient to pay the Certificates and interest thereon when due (if the County elects not to terminate the Lease prior to the end of the Lease Term). Rental Payments and Additional Rentals may be paid from any lawfully available County money appropriated for that purpose.

## **Exercise of Remedies under Lease and Trust Agreement**

Upon the occurrence of a Nonappropriation or an Event of Default under the Lease, the Trustee is permitted to sell or lease the Project Site in accordance with the terms of the Ground Lease, or exercise its other remedies under the Lease and the Trust Agreement. See "THE LEASE", "APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE" in this Official Statement. See "THE CERTIFICATES – Redemption" for a description of the terms on which the Certificates are subject to redemption upon the occurrence of a Nonappropriation or an Event of Default under the Lease.

## **No Debt Service Reserve Fund for the Certificates**

The Certificates will not be secured by a debt service reserve fund.

## **Funds Established Pursuant to the Trust Agreement**

The Trust Agreement provides for the establishment of several funds and accounts within the “Barnes County, North Dakota, Lease-Purchase Agreement Trust Fund – Certificates of Participation, Series 2020” (the “Trust Fund”), all of which will be in the custody of the Trustee, which accounts include the Construction Account, the Rental Payment Account, the Redemption Account, the Cost of Issuance Account, and the Rebate Account, certain of which are discussed below. Amounts on deposit in the Rebate Account are not part of the Trust Estate and are not available to pay debt service on the Certificates. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” for a description of certain funds and accounts established pursuant to the Trust Agreement.

**Construction Account.** The Construction Account is established by the Trust Agreement. Pursuant to the Trust Agreement, proceeds of the Certificates not used to pay costs of issuance will be deposited in the Construction Account and will be used for the payment or reimbursement of construction costs. The Trustee will disburse funds upon a written request for disbursement executed by an authorized official of the County. Any revenues received from the investment of amounts in the Construction Account shall be retained in the Construction Account. Upon the completion of the Correctional Facility Project and receipt by the Trustee of an Acceptance Certificate in the form attached to the Lease, the Trustee will transfer any amounts remaining in the Construction Account to the Rental Payment Account. Alternatively, such amounts may be disbursed to the County upon written request, and immediately used to pay additional capital costs relating to the Improvements.

**Rental Payment Account.** The Rental Payment Account is established by the Trust Agreement. Pursuant to the Trust Agreement, the Trustee will deposit into the Rental payment Account: (i) Rental Payments made by the County which is designated and to be paid under Exhibit B to the Lease; and (ii) all other money received by the Trustee with respect to the Lease or the Correctional Facility Project to be deposited into the Rental Payment Account. Money in the Rental Payment Account is to be used solely for the payment of principal and interest on the Certificates. Any revenues received from the investment of amounts in the Rental Payment Account shall be retained in the Rental Payment Account. In the event the Certificates are to be redeemed as described in “THE CERTIFICATES – Redemption,” amounts in the Rental Payment Account will be transferred to the Redemption Account along with other money held by the Trustee for such purpose. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE TRUST AGREEMENT –Accounts” in this Official Statement.

**Cost of Issuance Account.** Money held in the Cost of Issuance Account shall be used to pay Cost of Issuance as directed by the County. The Trustee shall transfer any amounts held in the Cost of Issuance Account that are not required to pay Cost of Issuance to the Construction Account. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE TRUST AGREEMENT –Accounts” in this Official Statement.

**Rebate Account.** The Rebate Account is established by the Trust Agreement. Pursuant to the Trust Agreement, the Trustee is to deposit any money delivered to the Trustee that is accompanied by instructions to deposit the same into the Rebate Account. No later than 30 days after May 1, 2025 and every five years thereafter, the Trustee shall pay to the United States of America 90% of the amount required to be on deposit in the Rebate Account as of such payment date. No later than 60 days after the final retirement of the Certificates, the Trustee shall pay to the United States of America 100% of the amount required to be on deposit in the Rebate Account which shall remain in effect for such period of time as is necessary for such final payment to be made. The Trustee, upon direction from the County, will transfer moneys from the Construction Account or the Rental Payment Account to the Rebate Account the amount required to be

deposited. The County has agreed in the Lease, that if, for any reason, the amount on deposit in the Rebate Account is less than the amount required to be paid to the United States of America on any date, the County will pay to the Trustee as Additional Rentals under the Lease the amount required to make such payments on such date. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE TRUST AGREEMENT –Accounts” in this Official Statement.

### **Additional Certificates**

Under certain circumstances, Additional Certificates may be secured by the Lease Revenues under the Lease and the Correctional Facility Project equally and ratably with the Certificates in accordance with the provisions of the Trust Agreement. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” in this Official Statement.

## **THE LEASE**

The County and the Trustee entered into the Lease, pursuant to which the Trustee leases the Correctional Facility Project to the County. The Correctional Facility Project includes all improvements constructed on the Project Site and the related equipment, and a leasehold interest in Project Site, subject to the terms of the Ground Lease.

The County has a right to renew or not renew (and therefore terminate) the Lease for each fiscal year. The Lease Term terminates under the Lease if a Nonappropriation occurs under the Lease. See “SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT,” “THE CERTIFICATES” and “RISK FACTORS – Right of the County to Terminate the Lease Annually” in this Official Statement.

Under the Lease, the County leases the Project Site for a term ending on the earlier of (i) payment in full of amounts due under the Lease; (ii) the redemption and prepayment of the Rental Payments due under the Lease, (iii) an event of Nonappropriation, or (iv) a termination of the Lease by the Trustee as a result of an Event of Default that is not cured by the County. The Lease is subject to the right of the County to nonappropriate, at the sole option of the County, during any fiscal year. See “SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT” in this Official Statement.

The Lease does not prohibit the County from entering into other lease purchase agreements with the Trustee or any other lessor in respect of real or personal property. An event of default or event of Nonappropriation under any other lease purchase agreement into which the County has entered or may enter does not constitute an Event of Default or an event of Nonappropriation under the Lease. The Lease also permits the issuance of Additional Certificates if certain conditions in the Lease are satisfied. See “SECURITY FOR THE CERTIFICATES – Additional Certificates” in this Official Statement. A summary of certain provisions of the Lease appears in “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE LEASE” to this Official Statement.

## **THE GROUND LEASE**

The Trustee will enter into the Ground Lease with the County in order to obtain a leasehold interest in the Project Site. The term of the Ground Lease is to expire on the earlier of (i) the date of payment in full by the County of the Lease and the accompanying payment of the Certificates, or (ii) May 1, 2070, which date is a little less than fifty (50) years from the issuance of the Certificates, unless such term is

sooner terminated as hereinafter provided. If prior to the expiration date, the Trustee has transferred and conveyed the Trustee's interests in the Project Site, pursuant to the Lease as a result of the County's payment of all Rental Payments and Additional Rentals, then the term of the Ground Lease is to end in connection with such transfer and conveyance.

During the term of the Ground Lease, the Trustee is to use the Project Site solely for the purpose of leasing the Project Site, including the Correctional Facility Project to the County pursuant to the Lease. The County may choose not to renew the Lease with respect to the Correctional Facility Project. Accordingly, a decision by the County not to renew the Lease would mean the loss of use of the Project Site by the County until May 1, 2070, which date is a little less than fifty (50) years from the date of issuance of the Certificates and the County entering into the Lease and the Ground Lease.

### **THE TRUST AGREEMENT**

Under the Trust Agreement, the Trustee is to deliver the Certificates and accept certain duties to act on behalf of the Owners of the Certificates in the receipt and application of amounts which become payable under the Lease. A summary of certain provisions of the Trust Agreement appears in "APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE TRUST AGREEMENT" to this Official Statement. See also "THE CERTIFICATES" and "SECURITY FOR THE CERTIFICATES" in this Official Statement.

### **RISK FACTORS**

THE PURCHASE AND OWNERSHIP OF THE CERTIFICATES IS SUBJECT TO CERTAIN RISKS. EACH PROSPECTIVE INVESTOR IN THE CERTIFICATES SHOULD READ THIS OFFICIAL STATEMENT IN ITS ENTIRETY, INCLUDING THE APPENDICES HERETO. NO PERSON SHOULD PURCHASE ANY OF THE CERTIFICATES WITHOUT CAREFULLY REVIEWING THE FOLLOWING INFORMATION, WHICH SUMMARIZES SOME, BUT NOT ALL, FACTORS THAT SHOULD BE CONSIDERED PRIOR TO SUCH PURCHASE.

#### **Special, Limited Obligations**

The Lease and the Certificates and the interest thereon are special, limited obligations of the County. The Certificates do not constitute general obligations of the County and are not secured by the full faith or the taxing power of the County. No holder of the Certificates may compel the exercise of the taxing power or use of revenues of the County to pay the principal of or interest on the Certificates. The Lease and the Certificates do not evidence a debt of the County within the meaning of any constitutional or statutory provision.

The Certificates and the interest due thereon are payable solely from Rental Payments to be made by the County under the Lease and amounts held in various funds and accounts pursuant to the Trust Agreement. The ability of the Trustee to pay the debt service on the Certificates is dependent upon the sufficiency of the funds annually budgeted and appropriated by the County Commission to pay the Rental Payments required under the terms of the Lease and the corresponding Certificates. Although the County has covenanted to exercise such reasonable measures as are within its powers to collect revenues from the Correctional Facility Project, the County is under no binding obligation to deposit any of its funds into the General Fund to provide for any other costs or debt service.

## **Right of the County to Terminate the Lease Annually**

The obligation of the County to make payments under the Lease does not constitute an obligation of the County to levy taxes or apply its general resources beyond the current fiscal year. Except to the extent payable from the Net Proceeds of certain insurance policies and condemnation awards, from the Net Proceeds of a foreclosure and transfer or leasing (to others) of the Correctional Facility Project or from other amounts made available under the Trust Agreement, the Certificates, and the interest thereon are payable solely from the Rental Payments.

The requirement that the County pay Rental Payments and Additional Rentals under the Lease constitutes a currently budgeted expenditure of the County, payable only if funds are appropriated by the County Commission and for which an encumbrance has been effected in each year, for all Rental Payments and Additional Rentals due under the Lease. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” in this Official Statement. There is no assurance that the County will renew the Lease from fiscal year to fiscal year and therefore not terminate the Lease, and the County has no obligation to do so. There is no penalty to the County if the County does not renew on an annual basis the Lease and therefore terminates all of its obligations under the Lease.

The likelihood that the Lease will continue in effect until the Certificates are fully repaid is dependent upon factors that are beyond the control of the Owners of the Certificates. These factors include but are not limited to, (i) the continuing need of the County for facilities such as the Correctional Facility Project and (ii) the continued ability of the County to generate sufficient funds from property taxes and other sources to pay the Rental Payments required under the Lease and other obligations of the County. Payment of the principal of and interest on the Certificates upon the occurrence of an Event of Default under the Lease or a Nonappropriation will be dependent upon (a) the value of the Correctional Facility Project in a liquidation proceeding instituted by the Trustee, which may be limited due to the County’s retained fee simple interest in the Correctional Facility Project or (b) any rental income from leasing (to others) the Correctional Facility Project.

## **Results of Termination of the Lease**

In the event that the County does not budget and appropriate, with respect to the Lease, money sufficient to pay all Rental Payments and the reasonably estimated Additional Rentals coming due under the Lease for the current Fiscal Year, an event of Nonappropriation is deemed to have occurred. See “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE LEASE” in this Official Statement for a discussion of the results of a Nonappropriation and the ability of the Trustee to waive, under certain circumstances, the effects of the occurrence of a Nonappropriation without notice to or the consent of the Owners of the Certificates.

If the Lease is terminated because a Nonappropriation or an Event of Default under the Lease has occurred, the County is required to vacate or surrender possession of all the Correctional Facility Project (i) by January 1 of the calendar year after an event of Nonappropriation (which must occur under the terms of the Lease by October 15 prior to the commencement of any Fiscal Year) (in the case of a Nonappropriation) or (ii) after notice by the Trustee (in the case of an Event of Default under the Lease). The County may also terminate the Lease as a result of certain events described in “APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE” in this Official Statement. Upon the occurrence of a Nonappropriation or an Event of Default under the Lease, the Trustee may transfer or lease the Correctional Facility Project, subject to the terms and provisions of the Lease. Pursuit of Lease Remedies may be a time-consuming process and may entail various legal as well as economic risks. The proceeds realized from Lease Remedies, net of the expense of pursuing such Lease Remedies, may not be sufficient to pay the principal of and interest on the Certificates

at the time when due. The Net Proceeds derived from a transfer or lease of the Correctional Facility Project or the exercise of other Lease Remedies, along with other money then held by the Trustee under the Trust Agreement (with certain exceptions as provided in the Lease and the Trust Agreement), are required to be used to redeem the Certificates and any Additional Certificates to the extent of such money. See “THE CERTIFICATES – Redemption – *Extraordinary Mandatory Redemption*” in this Official Statement.

The Correctional Facility Project consists of certain real property improvements used as a correctional facility. The Correctional Facility Project may not be easily converted to alternate uses. For a discussion of the Correctional Facility Project and the Lease, see “SOURCES AND USES OF FUNDS AND THE CORRECTIONAL FACILITY PROJECT” in this Official Statement. A potential purchaser of the Certificates should not assume that it will be possible to transfer or lease (to others) the Correctional Facility Project (including the Trustee’s leasehold interest in the Correctional Facility Project) after the termination of the Lease (i) for an amount equal to the aggregate principal amount of the Certificates then Outstanding plus accrued interest thereon or, (ii) within a time period that would prevent a default in the timely payment of the principal of and interest on the Certificates. If the Certificates are redeemed subsequent to a termination of the Lease Term for an amount less than the aggregate principal amount thereof and accrued interest thereon, no Owner of any Certificates has any further claim for payment against the Trustee or the County.

### **Impact of COVID-19**

In late 2019, a novel strain of coronavirus (“COVID-19”) emerged in Wuhan, Hubei Province, China. COVID-19 has spread throughout the world, including to the United States, resulting in the World Health Organization proclaiming COVID-19 to be a pandemic and President Trump declaring a national emergency. On March 13, 2020, the Governor of North Dakota (the “Governor”) declared a State emergency with respect to the COVID-19 pandemic. In response to the spread of COVID-19, the United States government, state governments, local governments and private industries have taken measures to limit social interactions in an effort to limit the spread of COVID-19. The effects of the spread of COVID-19 and the government and private responses to the spread continue to rapidly evolve. As of the date of this Official Statement, the Governor has not ordered a “stay in place” order for the residents of the State and the State currently has a lower level incidence of COVID-19 infection than many other jurisdictions.

COVID-19 has caused significant disruptions to the global, national and State economy. The extent to which COVID-19 impacts the County and its financial condition will depend on future developments, which are highly uncertain and cannot be predicted by the City, including the duration of the outbreak and measures taken to address the outbreak.

By executive orders in the spring of 2020, the Governor previously directed: the closure of schools until further notice; the restricted opening of sit-in patrons of restaurants, bars, breweries, cafes, and similar on-site dining establishments and certain other public accommodations. Such executive orders of the Governor have expired and have not been renewed and currently the main COVID-related executive order is the restriction on larger gatherings. However, the North Dakota Department of Corrections and Rehabilitation has put certain operational policies and procedures in place for the transfer of inmates between correctional facilities.

The County has not seen a drastic impact on the retail and service sectors in the County. The County does expect to see a reduction in State aid due to a decrease in oil revenues and any reduction in farming economy production; however, the State of North Dakota has large reserves for such situation and revenue fluctuation.

## **Enforceability of Remedies**

A termination of the Lease as a result of a Nonappropriation or an Event of Default under the Lease will give the Trustee the right to take possession of the Correctional Facility Project and the Project Site, subject to the terms and provisions of the Lease. The enforceability of the Lease, the Trust Agreement and the Certificates is subject to applicable bankruptcy laws, principles of equity affecting the enforcement of creditors' rights generally and liens securing such rights, if any, the police and condemnation powers of the State and its political subdivisions, including the County, and judicial discretion. In addition, the application of zoning and land use requirements and regulations of the County could adversely affect the ability of the Trustee to lease or dispose of the Correctional Facility Project. Because of the delays inherent in enforcing the remedies of the Trustee upon the Correctional Facility Project through the courts, a potential purchaser of the Certificates should not anticipate that the remedies of the Trustee could be accomplished rapidly. Any delays in resolving the Trustee's claim to possession of or title to the Correctional Facility Project may result in delays in the payment of the Certificates. See "ENFORCEABILITY OF OBLIGATIONS" in this Official Statement.

## **Construction Risk**

Construction or improvement of any facility (such as the Correctional Facility Project) is subject to the risks of cost overruns and delays due to a variety of factors including, among other things, site difficulties, labor strife, delays in and shortages of materials, weather conditions, fire and casualty. To reduce construction risks, the County has entered into the Construction Contract. If proceeds of the Certificates are not sufficient to pay all costs of completing the Correctional Facility Project, the County is required under the Lease to provide additional funds or reduce the scope of the Correctional Facility Project.

## **Effects on the Certificates of a Nonappropriation or an Event of Default under the Lease**

Bond Counsel will not render any opinion with respect to the applicability or inapplicability of the registration requirements of the Securities Act of 1933, as amended, to transfers of Certificates subsequent to a termination of the Lease by reason of a Nonappropriation or an Event of Default under the Lease. If the Lease is terminated by reason of a Nonappropriation or an Event of Default under the Lease, there is no assurance that the Certificates may be transferred without compliance with the registration provisions of the Securities Act of 1933, as amended, or the availability of an exemption therefrom.

In addition, Bond Counsel will render no opinion as to the treatment for federal or state income tax purposes of any amounts received by the Owners of the Certificates subsequent to a Nonappropriation or an Event of Default under the Lease. There is no assurance that amounts received by the Owners of the Certificates as interest subsequent to a Nonappropriation or an Event of Default under the Lease will be excludable from gross income for purposes of federal income taxation or exempt from State income taxes.

## **Internal Revenue Code Compliance**

The interest component of the Certificates could lose its tax-exempt status as a result of the County not complying with the various provisions of the Code, and the regulations promulgated thereunder, with respect to tax-exempt bonds such as the Certificates. Following a determination by the Internal Revenue Service (the "IRS") that the interest on the Certificates should be included in gross income for federal tax purposes, the Certificates will not be subject to mandatory redemption as described under the heading "THE CERTIFICATES" in this Official Statement and in the Trust Agreement.

The opinion of Bond Counsel will be obtained as described in "TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS" and "APPENDIX F – FORM OF BOND COUNSEL OPINION" in this Official Statement; however, application for a ruling or determination from the IRS regarding the



tax-exempt status of the interest component of the Certificates has not and will not be made, and an opinion of counsel is not binding upon the IRS. The laws, regulations, court decisions and administrative interpretations upon which the conclusions stated in the opinion of Bond Counsel are based on are subject to change by the United States Congress, the United States Treasury Department and later judicial and administrative decisions.

The interest component of the Certificates may become subject to inclusion in gross income for purposes of federal income taxes retroactively to the date of issuance or the date of the breach of certain tax covenants in the Lease or the Trust Agreement. In either case, the holders or owners of the Certificates may be liable for the payment of federal income taxes for prior years during which the interest component of the Certificates was paid. See "TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS" in this Official Statement.

### **Forward-Looking Statements**

This Official Statement contains certain statements that are "forward-looking" statements within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical facts included in this Official Statement, including without limitation statements that use terminology such as "estimate," "plan," "budget," "expect," "intend," "anticipate," "believe," "may," "will," "continue" and similar expressions, are forward-looking statements. These forward-looking statements include, among other things, the discussions related to the County's operations, future operations, revenues, capital resources and expenditures for capital projects. Although the County believes that the assumptions upon which the forward-looking statements contained in this Official Statement are based are reasonable, any of the assumptions could prove to be inaccurate and, as a result, the forward-looking statements based on those assumptions also could be incorrect. The realization of future revenues of the County is dependent upon, among other things, the matters described in the foregoing paragraphs and future changes in economic and other conditions that are unpredictable and cannot be determined at this time. The Underwriter makes no representation as to the accuracy of the projections contained in this Official Statement or as to the assumptions on which the projections are based.

### **Insurance Coverage; Damage, Destruction, or Condemnation of the Correctional Facility Project**

The County is required under the Lease to maintain insurance with respect to the Correctional Facility Project in an amount at least equal at all times to the actual replacement cost of the Correctional Facility Project, or at its sole option, the County may self-insure for these perils. Initially, the County has elected to include the Correctional Facility Project in the general property and casualty coverage of the County that is carried for most County buildings. The amount of insurance coverage maintained by the County with respect to property and casualty risk coverage is limited and the limits and provisions of such risk coverage are subject to change without the consent of holders of the Certificates. Currently, the County maintains full property and casualty coverage on all County buildings, subject to deductibles, and the County will maintain full coverage on the Correctional Facility Project. As with all policies of risk coverage, the risk coverage carried by the County with respect to the Correctional Facility Project is subject to certain exclusions and limitations and no assurance can be given that the property and casualty risk coverage will not delay or challenge payment to the County in the event that the Correctional Facility Project is destroyed or damaged in the future.

The Lease provides that, subject to the following sentence, the County must promptly Repair any damage to the Correctional Facility Project regardless of the cause or source of such loss or damage. The term "Repair" includes the obligation to replace or rebuild any portion of the Correctional Facility Project that the County cannot repair. The County's Repairs must restore the Correctional Facility Project to at least the same condition as existed immediately before the damage. In lieu of the Repair of the Correctional

Facility Project upon damage, loss or condemnation, if the damage, loss or condemnation is total or the amount of the loss exceeds the principal amount of Outstanding Certificates, the County may, but is not obligated to, pay, out of the net proceeds of any insurance (including self-insurance) or condemnation award (“Net Proceeds”) or otherwise, amounts sufficient to prepay or defease the Certificates. The third party policies of insurance purchased by the County against risks of physical damage to the Correctional Facility Project must be endorsed to provide that the Trustee is an additional insured. However, there can be no assurance that, in the event the Lease is terminated as a result of damage to or destruction of the Correctional Facility Project, money made available by reason of such an occurrence will be sufficient to redeem the Certificates at a price equal to the principal amount of Outstanding Certificates plus accrued interest to the redemption date.

If, during the Lease Term, title to less than all, or substantially all, of the Correctional Facility Project is taken in any condemnation proceeding, the Lease continues and the County may perform any restoration. Upon a total taking, proceeds of such taking will be used by County to prepay the Certificates.

### **No Mortgage**

The Trustee will not receive a mortgage or similar security instrument with respect to fee title for the land on which the Correctional Facility Project is located. Accordingly, the Trustee will not have any right to foreclose on and gain title to any real property of the County other than the Correctional Facility Project, subject to the terms of the Ground Lease, as a result of an Event of Default under the Lease or the Trust Agreement. Under the terms of the Ground Lease, the Trustee will not be able to occupy the Project Site after the date that is fifty (50) years from the date of issuance of the Certificates. However, the Trustee will have the right to attempt to generate revenue from the Correctional Facility Project (i) in the event of a default of the County under the terms of the Lease or (ii) upon the County’s termination of the Lease. The Trustee will have the obligation to attempt to lease and/or operate the Correctional Facility Project (i) during the remaining term of the Lease if the County is in default under the Lease, or (ii) after the County’s termination of the Lease. Prospective purchasers of the Certificates should assume that the Trustee will not be able to realize any value for the Correctional Facility Project upon the Trustee seeking to enforce its rights under the Trust Agreement and the Lease. See “SECURITY FOR THE CERTIFICATES” in this Official Statement.

### **No Debt Service Reserve Fund for the Certificates**

The Certificates will not be secured by a debt service reserve fund. The lack of a debt service reserve fund will affect the ability of the registered owners of the Certificates to receive payments of debt service on the Certificates should the County not make the required payments under the terms of the Lease.

### **No Non-substitution Clause**

The Lease does not contain a non-substitution clause. In the event of a Nonappropriation, or other event of default, by the County under the Lease, the County is not prohibited or restricted in any manner from acquiring or building correctional facilities of the size and nature of the Correctional Facility Project near or adjacent to the Correctional Facility Project or contracting with another county to house its inmates.

### **Amendments to the Lease and the Trust Agreement**

The parties may make certain amendments to the Lease and the Trust Agreement without the consent of the Holders of the Certificates. In addition, certain amendments to the Lease and the Trust Agreement, may be made by the parties if approved by not less than two-thirds (2/3) in aggregate principal amount of the Outstanding Certificates. Such amendments may adversely affect the security of the Holders of the Certificates.

## **Availability of Remedies**

Although the Certificates are secured by the Lease, the practical realization of such security upon a termination of the Lease will depend upon the exercise of various remedies specified by the Trust Agreement. These and other remedies are in many respects dependent upon judicial actions, which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, including; specifically, the United States Bankruptcy Code, the remedies provided in the Lease and the Trust Agreement may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Certificates will be qualified as to the enforceability of the various agreements and instruments entered into in connection with the issuance of the Certificates by limitations imposed by general principles of equity and by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors' generally and laws relating to fraudulent conveyances. See "ENFORCEABILITY OF OBLIGATIONS" in this Official Statement.

## **Secondary Market**

Although the Underwriter intends, but is not obligated, to make a market for the Certificates, there can be no assurance that there will be a secondary market for the Certificates. The absence of such a market for the Certificates could result in investors not being able to resell the Certificates should they need or wish to do so.

## **Maintenance of Rating**

The Certificates will be rated as to their creditworthiness by the Rating Agency. No assurance can be given that the Certificates will maintain their original rating. If the rating on the Certificates decreases, the Certificates may lack liquidity in the secondary market in comparison with other such lease-purchase annual appropriation obligations. Adverse developments, including a decision by the County Commission to not appropriate funds to make the Rental Payments on the Lease may have an unfavorable effect upon a holder's ability to sell the holder's Certificates or the bid and ask prices for the Certificates. See "RATING" in this Official Statement.

## **Risk of Early Redemption**

An event of damage or destruction to the Correctional Facility Project may cause the County to redeem the Certificates from the net proceeds of an insurance claim payment, to the extent those proceeds are not used to repair, restore or rebuild the Correctional Facility Project. See "THE CERTIFICATES – Redemption" and "APPENDIX C – DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE – THE TRUST AGREEMENT" in this Official Statement.

## **No Credit Enhancement Facility**

There is no credit enhancement facility, letter of credit, or bond insurance policy securing the payment of debt service on the Certificates, nor is there any provision for a credit enhancement facility, letter of credit, or bond insurance policy to be provided to secure the payment of debt service on the Certificates.

## **Bankruptcy Risk**

Bankruptcy proceedings involving the County and equity principles could delay or otherwise adversely affect the enforcement of registered owners' rights or collection of the principal of or interest on the Certificates. A bankruptcy of the County could impose significant risks of delay, limitation or modification of the rights of Owner rights against the County. These risks include, without limitation, the

risk that the interest rate on and repayment and other terms of the Certificates could be modified in bankruptcy proceedings, and, if the value of the collateral for the Certificates, as determined by a court of competent jurisdiction, is less than the full amount due on the Certificates, the Certificates may not be repaid in full. See “ENFORCEABILITY OF OBLIGATIONS” in this Official Statement.

### **Environmental Issues**

A Phase I Environmental Site Assessment was prepared in January 2020 by a nationally-recognized engineering consulting firm located in Bismarck, North Dakota (the “Phase I Report”). The Phase I Report indicated that there was no evidence of any recognized environmental conditions, historical environmental conditions, or conditional environmental conditions for the site of the Project. The Phase I Report indicated to the County that the engineering firm that completed the report did not believe that additional investigation was necessary.

The County believes that it is in material compliance with applicable environmental laws for the Correctional Facility Project. Even though the Phase I Report did not show any evidence of recognized environmental conditions for the Correctional Facility Project, owners of real estate may, in the future, be adversely affected by legislative, regulatory, administrative and enforcement actions involving environmental controls.

### **Summary**

The foregoing is intended only as a summary of certain risk factors attendant to an investment in the Certificates. In order for potential investors to identify risk factors and make an informed decision with respect to the Certificates, potential investors in the Certificates should be thoroughly familiar with this entire Official Statement and the appendices hereto.

## **CONTINUING DISCLOSURE UNDERTAKING**

In order to facilitate compliance by the Underwriter with Securities and Exchange Commission Rule 15c2-12 (the “Rule”), in connection with its execution and delivery of the Lease, the County will enter into an undertaking (the “Continuing Disclosure Undertaking”) to provide certain information, including audited financial results, on an annual basis, and to provide notice of certain specified events contemplated by the Rule, to the information repositories designated in the Continuing Disclosure Undertaking. The proposed form of the Continuing Disclosure Undertaking is appended to this Official Statement as APPENDIX D.

During the last five years, the County has not been subject to any prior continuing disclosure undertakings under the term of the Rule.

Failure to perform the Continuing Disclosure Undertaking does not constitute an Event of Default under the Lease, but the Continuing Disclosure Undertaking does provide that in the event of a failure to perform the Continuing Disclosure Undertaking, the Trustee, on behalf of the Owners of the Certificates, has the right to seek a court order directing the County to perform its obligations thereunder.

## TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS

### **Tax Exemption**

The opinion of Arntson Stewart Wegner PC, Fargo, North Dakota, Bond Counsel and the descriptions of the tax laws contained in this Official Statement are based on laws and official interpretations of them which are in existence on the date the Certificates are issued. There can be no assurance that those laws or the interpretation of them will not change or that new laws will not be enacted or regulations issued while the Certificates are outstanding in a manner that would adversely affect the value of an investment in the Certificates or the tax treatment of the interest paid on the Certificates.

### **Tax Exemption for the Certificates**

*Federal.* In the opinion of Bond Counsel, interest on the Certificates is not includable in the “gross income” of the owners thereof for purposes of federal income taxation and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. See “APPENDIX F – FORM OF BOND COUNSEL OPINION” in this Official Statement.

*State of North Dakota.* In the opinion of Bond Counsel, interest on the Certificates is not includable in the “gross income” of the owners thereof for purposes of North Dakota income taxation.

### **Bond Premium**

The Certificates with stated maturities of May 1, 2021 through May 1, 2025, May 1, 2027 through May 1, 2034, May 1, 2036 through May 1, 2038, and May 1, 2040 (the “Premium Bonds”), have been sold to the public at an amount in excess of the stated redemption price at maturity. Such excess of the purchase price of such Premium Bonds over the stated redemption price at maturity constitutes original issue premium with respect to such Premium Bonds. A purchaser of a Premium Bond must amortize any original issue premium over the term of such Premium Bond using constant yield principles, based on the purchaser’s yield to maturity. As original issue premium is amortized, the purchaser’s basis in such Premium Bond is reduced by a corresponding amount, resulting in an increase in the gain (or a decrease in the loss) to be recognized for federal income tax purposes upon a sale or disposition of such Premium Bond prior to its maturity. Even though the purchaser’s basis is reduced, no federal income tax deduction is allowed. Purchasers of any Premium Bonds at a premium, whether at the time of initial issuance or subsequent thereto, should consult with their own tax advisors with respect to the determination and treatment of premium for federal income tax purposes and with respect to state and local tax consequences of owning such Premium Bonds.

### **Original Issue Discount**

The Certificates with stated maturities of May 1, 2045 and 2050 (the “Discount Bonds”) are being sold at a discount from the principal amount payable on the Discount Bonds at maturity. The difference between the price at which a substantial amount of the Discount Bonds of a given maturity is first sold to the public (the “Issue Price”) and the principal amount payable at maturity constitutes “original issue discount” under the Code. The amount of original issue discount that accrues to a holder of a Discount Bond under Section 1288 of the Code is excluded from gross income for federal income tax purposes and from taxable net income of individuals for North Dakota income tax purposes to the same extent that stated interest on such Discount Bonds would be so excluded. The amount of the original issue discount that accrues with respect to a Discount Bond under Section 1288 is added to the tax basis of the owner in determining gain or loss upon disposition of such Discount Bond (whether by sale, exchange, redemption, or payment at maturity).

Interest in the form of original issue discount accrues under Section 1288 pursuant to a constant yield method that reflects semiannual compounding on days that are determined by reference to the maturity date of the Discount Bond. The amount of original issue discount that accrues for any particular semiannual accrual period generally is equal to the excess of: (i) the product of (a) one-half of the yield on such Bonds (adjusted as necessary for an initial short period), and (b) the adjusted issue price of such Bonds, over (ii) the amount of stated interest actually payable. For purposes of the preceding sentence, the adjusted issue price is determined by adding to the Issue Price for such Bonds the original issue discount that is treated as having accrued during all prior semiannual accrual periods. If a Discount Bond is sold or otherwise disposed of between semiannual compounding dates, then the original issue discount that would have accrued for that semiannual accrual period for federal income tax purposes is allocated ratably to the days in such accrual period.

If a Discount Bond is purchased for a cost that exceeds the sum of the Issue Price plus accrued interest and accrued original issue discount, the amount of original issue discount that is deemed to accrue thereafter to the purchaser is reduced by an amount that reflects amortization of such excess over the remaining term of such Bond.

No opinion is expressed as to state and local income tax treatment of original issue discount. It is possible under certain state and local income tax laws that original issue discount on a Discount Bond may be taxable in the year of accrual, and may be deemed to accrue differently than under federal law.

### **Related Tax Considerations**

Prospective purchasers of the Certificates should also be aware that (i) Section 265 of the Code, denies a deduction for interest on indebtedness incurred or continued to purchase or carry the Certificates or, in the case of a financial institution, a portion of a holder's interest expense allocated to interest on the Certificates, (ii) with respect to insurance companies subject to the tax imposed by Section 831 of the Code, Section 832(b)(5)(B)(i) reduces the deduction for loss reserves by 15 percent of the sum of certain items, including interest on the Certificates, (iii) interest on the Certificates earned by certain foreign corporations doing business in the United States could be subject to a branch profits tax imposed by Section 884 of the Code, (iv) passive investment income, including interest on the Certificates, may be subject to federal income taxation under Section 1375 of the Code for Subchapter S corporations that have Subchapter C earnings and profits at the close of the taxable year if greater than 25 percent of the gross receipts of such Subchapter S corporation is passive investment income and (v) Section 86 of the Code requires receipts of certain Social Security and certain Railroad Retirement benefits to take into account, in determining gross income, receipts or accruals of interest on the Certificates.

Holders of Discount Bonds and Premium Bonds should consult their tax advisors with respect to computation and accrual of original issue discount and with respect to the state and local tax consequences of owning Discount Bonds and Premium Bonds.

### **Legislative Proposals**

Bond Counsel's opinion is given as of its date and Bond Counsel assumes no obligation to update, revise, or supplement such opinion to reflect any changes in facts or circumstances or any changes in law that may hereafter occur. Proposals are regularly introduced in both the United States House of Representatives and the United States Senate that, if enacted, could alter or affect the tax-exempt status on municipal bonds. For example, the federal tax reform legislation (formerly known as the Tax Cuts and Jobs Act) signed by President Trump on December 22, 2017, changed the income tax rates for individuals and corporations and modified the alternative minimum tax for tax years beginning after December 31, 2017, and altered other existing tax law in a manner that may affect the market price for, or marketability of, the

Certificates. Prospective purchasers of the Certificates should consult their own tax advisors regarding the impact of any such change in law.

## **RATING**

Moody's Investors Service, Inc. (the "Rating Agency") has assigned a rating of "Baa1" to the Certificates as shown on the cover page of this Official Statement. Such rating reflects only the view of the Rating Agency, and any explanation of the significance of such rating on the Certificates may be obtained only from the Rating Agency. Generally, rating agencies base their ratings on the information and materials furnished to them and on investigation, studies, and assumptions by the rating agencies. A rating by the Rating Agency is not a recommendation to buy, sell, or hold securities. The rating of the Certificates represents the judgment of the Rating Agency as to the likelihood of timely payment of the Certificates according to their terms, but does not address the likelihood of redemption or acceleration prior to maturity. There is no assurance that such rating will remain in effect for any given period of time or that it may not be lowered, suspended, or withdrawn entirely if, in the judgment of the Rating Agency, circumstances so warrant. Any such downward change in or suspension or withdrawal of such rating may have an adverse effect on the market price and marketability of Certificates.

## **UNDERWRITING**

Pursuant to the terms and conditions of a Certificate Purchase Agreement, the Underwriter has agreed to purchase the Certificates from the County at a purchase price of \$15,615,866.20 (the par amount of the Certificates (\$15,435,000.00), plus net original issue premium of \$373,803.70, and less Underwriter's discount of \$192,937.50. Each maturity of the Certificates is being offered for sale to buyers at the prices and in the amounts as shown on the inside front cover of this Official Statement. The offering prices of the Certificates may be changed from time to time and may be reduced for sales to selected dealers. The Underwriter retains the right to join with other dealers in offering the Certificates to the public.

## **THE TRUSTEE**

The County has appointed the Bank of North Dakota to serve as Trustee. The Trustee is to carry out those duties assignable to it under the Trust Agreement. Except for the contents of this section, the Trustee has not reviewed or participated in the preparation of this Official Statement and assumes no responsibility for the nature, contents, accuracy, fairness or completeness of the information set forth in this Official Statement or for the recitals contained in the Trust Agreement or the Certificates, or for the validity, sufficiency, or legal effect of any of such documents.

Furthermore, the Trustee has no oversight responsibility, and is not accountable, for the use or application by the County of any of the Certificates authenticated or delivered pursuant to the Trust Agreement or for the use or application of the proceeds of such Certificates by the County. The Trustee has not evaluated the risks, benefits, or propriety of any investment in the Certificates and makes no representation, and has reached no conclusions, regarding the value or condition of any assets or revenues pledged or assigned as security for the Certificates, or the investment quality of the Certificates, about all of which the Trustee expresses no opinion and expressly disclaims the expertise to evaluate.

## **RELATIONSHIPS AMONG THE PARTIES**

In connection with the issuance of the Certificates, the County and the Underwriter are being represented by the attorneys or law firms identified below under the heading “LEGAL MATTERS.” Arntson Stewart Wegner PC, Fargo, North Dakota, is acting as Bond Counsel. In other transactions not related to the Certificates, each of these attorneys or law firms may have acted as Bond Counsel or represented the Underwriter or the County, or their respective affiliates, in capacities different from those described under “LEGAL MATTERS,” and there will be no limitations imposed as a result of the issuance of the Certificates on the ability of any of these firms or attorneys to act as Bond Counsel or represent any of these parties in any future transactions. Furthermore, the Underwriter, the County, and their respective affiliates are not limited in engaging in future business transactions with each other. Potential purchasers of the Certificates should not assume that the Underwriter, the County, or their respective counsel or Bond Counsel have not previously engaged in, or will not after the issuance of the Certificates engage in, other transactions with each other or with any affiliates of any of them, and no assurance can be given that there are or will be no past or future relationships or transactions between or among any of these parties or these attorneys or law firms.

## **FINANCIAL STATEMENTS**

The audited financial statements of the County for the fiscal year ended December 31, 2018 (the “Audited Financial Statements”), are attached as APPENDIX B to this Official Statement. Harold J. Rotunda, certified public accountant, West Fargo, North Dakota (“Auditor”) has audited the financial statements of the County for the fiscal year ended December 31, 2018. The County has neither requested nor obtained the consent of the Auditor to include its Independent Auditor’s Report for such Audited Financial Statements in this Official Statement. The Auditor has not reviewed or audited any financial information included in this Official Statement. The audited financial statements of the County are prepared in accordance with the current accounting principles generally accepted and standards set by the Governmental Accounting Standards Board.

## **LEGAL MATTERS**

Legal matters incident to the authorization, issuance, sale and delivery of the Certificates are subject to the approval of Arntson Stewart Wegner PC, Fargo, North Dakota, as Bond Counsel. See “APPENDIX F – FORM OF BOND COUNSEL OPINION” in this Official Statement. Ballard Spahr LLP is acting as counsel to the Underwriter with respect to the issuance of the Certificates.

## **ENFORCEABILITY OF OBLIGATIONS**

The remedies available to the Trustee and the Owners of the Certificates upon an Event of Default under the Lease or the Trust Agreement are in many respects dependent upon regulatory and judicial actions which are often subject to discretion and delay. Under existing law and judicial decisions, including specifically the Federal Bankruptcy Code (Title 11 of the United States Code), the remedies provided for under the Federal Bankruptcy Code, the Lease or the Trust Agreement may not be readily available or may be limited.

The legal opinion to be delivered by Arntson Stewart Wegner PC in connection with the delivery of the Certificates, the Lease and the Trust Agreement will be qualified to the extent that the enforceability of certain legal rights related to the Lease and the Certificates are subject to limitations such as the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or



a court of equity), including judicial limitations on rights to specific performance and bankruptcy, insolvency, reorganization.

## **LITIGATION**

There is no litigation pending in any court or, to the best knowledge of the County threatened, which would restrain or enjoin the issuance or delivery of the Certificates, or which challenges the proceedings of the County taken in connection with the Certificates or the pledge or application of revenues pledged under the Trust Agreement and the Lease. See also “APPENDIX A – Public Comment on the Correctional Facility Project” for more information with respect to prior public comment and questions relating to the Correctional Facility Project.

## **MISCELLANEOUS**

Any statements made in this Official Statement involving matters of opinion or estimates, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of such estimates will be realized. Information and financial data in, or incorporated by reference in, this Official Statement concerning the Correctional Facility Project has been selected and prepared by or on behalf of the County for inclusion in this Official Statement.

The attached Appendices are integral parts of this Official Statement and must be read together with all of the foregoing statements.

The foregoing does not purport to be comprehensive or definitive, and all references to any document herein are qualified in their entirety by reference to each such document. All references to the Certificates are qualified in their entirety by reference to the forms thereof and the information with respect thereto included in the aforesaid documents. Copies of these documents are available for inspection during the period of the offering at the offices of the Underwriter in Bismarck, North Dakota and thereafter at the corporate trust office of the Trustee in Bismarck, North Dakota. The Underwriter makes no representations or warranties as to the accuracy or completeness of the information in any of the Appendices.

### **Registration of Certificates**

Registration or qualification of the offer and sale of the Certificates (as distinguished from registration of the ownership of the Certificates) is not required under the federal Securities Act of 1933, as amended. **THE COUNTY ASSUMES NO RESPONSIBILITY FOR QUALIFICATION OR REGISTRATION OF THE CERTIFICATES FOR SALE UNDER THE SECURITIES LAWS OF ANY JURISDICTION IN WHICH THE CERTIFICATES MAY BE SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED.**

### **Interest of Certain Persons Named in this Official Statement**

The fees to be paid to Bond Counsel, the Trustee, and the Underwriter are contingent upon the sale and delivery of the Certificates.

### **Official Statement Certification of the County**

The preparation of this Official Statement and its distribution has been authorized by the County. This Official Statement has been “deemed final” by the County in compliance with the provisions of Rule 15c2-12. This Official Statement is not to be construed as an agreement or contract between the County and any purchaser, owner or holder of any Certificate.

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**APPENDIX A**

**GENERAL AND FINANCIAL INFORMATION RELATING TO  
THE COUNTY**

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**APPENDIX A**

**GENERAL AND FINANCIAL INFORMATION RELATING TO THE COUNTY**

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## APPENDIX A

### GENERAL AND FINANCIAL INFORMATION RELATING TO THE COUNTY

#### General Information

Barnes County, North Dakota (the “Barnes County”), containing 967,680 acres (1,512 square miles), is located in eastern North Dakota on the edge of the fertile Red River Valley. Barnes County encompasses numerous communities including Dazey, Fingal, Kathryn, Leal, Litchville, Nome, Oriska, Pillsbury, Rogers, Sanborn, Sibley, Tower City, Wimbledon, and Valley City, the county seat. The estimated 2019 population of Barnes County is 10,415.

Barnes County is served by Interstate Highway 94, State Highways 1, 32, 38, 46, and 200 and numerous secondary highways, B-N Railway, SooLine (CP Rail), Greyhound Bus Lines, numerous motor freight carriers, and a county airport located just north of Valley City.

Education in Barnes County is provided by the school districts of Valley City, Litchville-Marion, Griggs County Central, Enderlin, Hope-Page, Maple Valley, Montpelier, and Barnes County North. The Valley City School District has a 2019/2020 fall enrollment of 1,095 and employment of 130. Valley City State University (“VCSU”) provides secondary education.

Valley City hosts the North Dakota Winter Show annually, the largest exposition of its kind in the Midwest. The Winter Show building has a seating capacity of 3,500, with parking facilities for 1,500.

North of Valley City one of the largest earthwork dams in North Dakota, Bald Hill Dam, backs the Sheyenne River to form Lake Ashtabula, a favorite fishing lake and recreation area. The availability of wild water fowl and upland game enhances the recreational land use of the area. Lake Ashtabula has 70,700 acre feet of impounded waters and 5,430 acres of surface water. There are 3,053 acres of land above pool controlled by the United States Corps of Engineers, of which 400 acres are used for parks and camp sites.

The official newspaper of Barnes County is the Valley City Times Record, published at Valley City in Barnes County on Monday through Friday each week.

#### Public Comment on the Correctional Facility Project

The proposed construction and financing of the Correctional Facility Project has been subject to public discussion, including at meetings of the County Commissioners, and requests from counsel in early August and September 2020 for information relating to the Project. The County believes that the vast majority of the public in the County is supportive of the Correctional Facility Project.

However, a small group of residents in the County previously expressed opposition to the construction and financing of the Correctional Facility Project. In August 2020, the County received a petition from certain voters in the County requesting an election on the Project and the County determined that such petition process is not applicable to the financing transaction evidenced by the Lease and the Certificates. Subsequent to receipt of the petition, the group of residents behind the petition attended a public County Commissioners meeting where the Correctional Facility Project was discussed in detail and the public members present were given ample opportunity to express their views on the Correctional Facility Project. Subsequent to the public meeting in early September the County received correspondence from the leader of the petition/resident group that previously opposed construction of the Correctional Facility Project that such individual was resigning from any efforts against the Correctional Facility Project and that he was now out of the country for the foreseeable future. Therefore, the County does not believe that there will be future public opposition to the Correctional Facility Project and the related financing transaction.

**Governmental Organization**

The governing body meets in regular session at the Barnes County Courthouse on the first and third Tuesday of each month, and otherwise as needed. Current board members and their positions are as follows:

<u>Name</u>	<u>Position</u>	<u>Expiration of Term</u>
Cindy Schwehr	Commissioner	2020
Shawn Olauson	Commissioner	2022
Bill Carlblom	Commissioner	2022
Vicky Lovell	Commissioner	2022
John Froelich	Commissioner	2020

Beth Didier is the County Auditor. Stacie Hansen-Leier acts as Director of Tax Equalization. Tonya Duffy serves as State’s Attorney.

**Barnes County Offices**

230 4th Street NW  
 PO Box 239  
 Valley City ND 58072

**Population Statistics**

	<u>1970</u>	<u>1980</u>	<u>1990</u>	<u>2000</u>	<u>2010</u>	<u>2019</u>
Barnes County	14,669	13,960	12,545	11,775	11,066	10,415

*Source: U.S. Census Bureau.*

**Incorporated Municipalities in Barnes County**

<u>City</u>	<u>1980</u>	<u>1990</u>	<u>2000</u>	<u>2010</u>	<u>2019<sup>(1)</sup></u>
Dazey	143	129	91	104	93
Fingal	151	138	133	97	86
Kathryn	95	72	63	52	48
Leal	45	35	36	20	18
Litchville	251	205	191	172	150
Nome	67	82	70	62	56
Oriska	125	103	128	118	112
Pillsbury	46	31	24	12	12
Rogers	68	69	61	46	41
Sanborn	237	164	194	192	170
Sibley	21	41	46	30	28
Tower City <sup>(2)</sup>	293	233	252	253	265
Valley City	7,774	7,163	6,826	6,585	6,323
Wimbledon	330	275	237	216	191

*Source: U.S. Census Bureau.*

<sup>(1)</sup> Estimates.

<sup>(2)</sup> Portion of population in Cass County.

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## Barnes County Residential Building Permits

<u>Year</u>	<u>Single Family</u>		<u>Multi Family</u>		<u>Total Residential</u>	
	<u>Issued</u>	<u>Costs</u>	<u>Issued</u>	<u>Costs</u>	<u>Issued</u>	<u>Costs</u>
2019	5	\$ 1,076,041	0	\$ 0	5	\$ 1,076,041
2018	3	965,000	2	720,000	5	1,685,000
2017	18	3,049,000	3	9,400,000	21	12,449,000
2016	16	3,990,000	2	3,950,000	18	7,940,000
2015	30	6,465,000	0	0	30	6,465,000
2014	34	7,904,170	1	3,000,000	35	10,904,170
2013	20	5,188,000	0	0	20	5,188,000
2012	21	5,122,900	0	0	21	5,122,900

Source: Job Service North Dakota, Workforce Intelligence Network, U.S. Census Bureau.

## Unemployment Figures

<u>Year</u>	<u>Average Labor Force</u>	<u>Average Annual Unemployment figures</u>		
	<u>Barnes County</u>	<u>Barnes County</u>	<u>North Dakota</u>	<u>United States</u>
2019	5,143	3.0%	2.4%	3.7%
2018	5,211	2.7	2.6	3.9
2017	5,410	2.8	2.7	4.4
2016	5,619	3.2	3.1	4.9
2015	5,629	3.2	2.8	5.3
2014	5,587	3.1	2.7	6.2
2013	5,713	3.2	2.9	7.4
2012	5,753	3.4	3.1	8.1

Source: Labor Market Information Center, Job Service North Dakota.

## 2020 Unemployment Figures

<u>2020</u> <u>Monthly</u>	<u>Labor Force</u> <u>Barnes Co.</u>	<u>Unemployment Rate</u>		
		<u>Barnes County</u>	<u>North Dakota</u>	<u>United States</u>
January	5,095	2.8%	2.8%	4.0%
February	5,148	2.6	2.8	3.8
March	5,152	2.5	2.7	4.5
April	5,125	7.2	9.2	14.4
May	4,980	6.3	8.7	13.0
June	5,008*	4.7*	7.5	11.2

Source: Labor Market Information Center, Job Service North Dakota, LAUS Unit.

\*Preliminary.

## Employment Wage Statistics

<u>Area</u>	<u>Number of</u> <u>Employees</u>	<u>Average Hourly</u> <u>Wage</u>	<u>Average Weekly</u> <u>Wage</u>	<u>Average Annual</u> <u>Wage</u>
Barnes County, ND	4,443	\$19.40	\$ 776.00	\$40,352
State of North Dakota	414,791	\$26.15	\$1,046.00	\$54,392

Source: Labor Market Information Center, Job Service North Dakota, QCEW Unit, 1<sup>st</sup> Quarter 2020, Based on working 40 hours per week.



**Income Total**

The table below shows the annual income data for 2018.

	<u>Median Household Income</u> <sup>(1)</sup>	<u>Per Capita Personal Income</u> <sup>(2)</sup>	<u>Total Personal Income</u> <sup>(2)</sup>
Barnes County	\$ 54,984	\$ 55,784	\$ 588,079,000
North Dakota	66,505	55,598	42,147,700,000
United States	63,179	54,526	17,813,035,000,000

*Source: Labor Market Information Center, Job Service North Dakota, QCEW Unit.*

<sup>(1)</sup> *Income source from U.S. Census Bureau.*

<sup>(2)</sup> *Income source from U.S. Bureau of Econ Analysis.*

**Largest Employers in the Area**

<u>Employer</u>	<u>Business</u>	<u>Employees</u>
Valley City State University	Education	372
Open Door Center	Special Needs Care	350
John Deere Seeding Group Valley City	Air Seeder Manufacturing	275
Sheyenne Care Center	Elderly Health Care	250
Barnes County	Government	130
Valley City Public Schools	Education	130
CHI Mercy Health	Health Care	123
Healthy Food Ingredients	Food Manufacturing	70
LafargeHolcim	Cement	70
City of Valley City	Government	57
Eagle Creek Software Services	Software Services	57

*Source: Valley City - Barnes County Development Corporation.*

**Taxable Sales and Purchases**

<u>Year</u>	<u>Barnes County</u>
2019	\$ 72,828,140
2018	69,466,645
2017	69,972,223
2016	73,102,625
2015	79,583,196
2014	87,949,282
2013	92,502,411
2012	89,983,350

*Sources: North Dakota Sales and Use Tax Statistical Reports.*

**2020 Taxable Sales and Purchases Barnes County**

<u>Quarter</u>	<u>Taxable Sales</u>	<u>Taxable Purchases</u>	<u>Taxable Sales &amp; Purchases</u>
1 <sup>st</sup> 2020	\$ 12,633,139	\$ 1,016,749	\$ 13,649,888

*Sources: North Dakota Sales and Use Tax Statistical Reports.*

## Industry Employment Distribution

The table below shows the Distribution of Industries in Barnes County as of 1<sup>st</sup> Quarter 2020:

<u>Industry</u>	<u>Establishments</u>	<u>Employees</u>
Health Care and Social Assistance	35	956
Educational Services	11	592
Manufacturing	17	470
Retail Trade	43	442
Accommodation and Food Services	34	360
Construction	48	269
Wholesale Trade	34	266
Public Administration	25	227
Professional, Scientific & Technical Services	25	145
Finance and Insurance	27	127

*Source: ND Job Service, Labor Market Information Center, QCEW Unit.*

## Crop Production

Crop production reported in Barnes County for 2019 is as follows:

<u>Crops</u>	<u>Acres Harvested</u>	<u>Production</u>
Barley	8,790	462,000 bu.
Spring Wheat	76,000	4,000,000 bu.
Soybeans	294,000	9,365,000 bu.

*Source: North Dakota Agriculture Statistics, August 2020.*

## Livestock Population

Livestock population in Barnes County as of January 1, 2020 is as follows:

<u>Animal</u>	<u>Number of Head</u>
All Cattle	35,500
Sheep and Lambs	2,400

*Source: North Dakota Agriculture Statistics.*

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## FINANCIAL POSITIONS AND OPERATIONS

This summarizes the year-end fund balances, and General Fund revenues, expenditures and fund balances for the County for the most recent fiscal years.

### General Fund Revenues, Expenditures and Changes in Fund Balances

	<u>2017</u>	<u>2018</u>	<u>2019</u> <u>(unaudited)</u>
<b>REVENUES</b>			
Property Taxes	\$3,408,746.31	\$4,195,618.40	\$4,711,131.13
Intergovernmental	786,165.17	913,570.24	1,021,583.65
Charges for Services	130,307.40	111,506.56	212,559.93
Interest and other	343,186.99	281,693.55	256,527.08
Total Revenues	<u>\$4,668,405.87</u>	<u>\$5,502,388.75</u>	<u>\$6,201,801.79</u>
<b>EXPENDITURES</b>			
Current:			
General Government	\$2,847,370.19	\$4,315,853.72	\$3,080,554.58
Public Safety	1,636,495.46	796,351.01	1,997,920.54
Health and Welfare	--	--	--
Highways	--	--	--
Relief and Charities	--	--	--
Culture and Recreation	--	--	82,466.54
Capital Outlay	--	--	--
Debt Service:			
Principal	--	--	--
Interest Expense	--	--	--
Total Expenditures	<u>\$4,483,865.65</u>	<u>\$5,112,204.73</u>	<u>\$5,160,941.66</u>
Excess of Revenue Over (Under) Expenditures	<u>184,540.22</u>	<u>390,184.02</u>	<u>1,040,860.13</u>
<b>OTHER FINANCING SOURCES (USES)</b>			
Transfers in	3,895.55	214,480.67	--
Transfers out	(270,751.00)	(63,806.52)	(20,000.00)
Bond Proceeds	--	--	--
Net Change in Fund Balances	<u>(82,315.23)</u>	<u>540,858.17</u>	<u>1,020,860.13</u>
<b>FUND BALANCE - Beginning January 1:</b>	\$ 1,867,938.05	\$ 1,785,622.82	\$2,326,480.99
<b>FUND BALANCE - Ending December 31:</b>	<u>\$ 1,785,622.82</u>	<u>\$ 2,326,480.99</u>	<u>\$3,347,341.12</u>
General Fund Balance as Percentage of Revenue	<u>38.25%</u>	<u>42.28%</u>	<u>53.97%</u>

*Source: Audited Financial Statements of the County.*

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**VALUATIONS**

<u>Year</u>	<u>Market Valuation</u>	<u>Assessed Valuation</u>	<u>Taxable Valuation</u>
2019	\$ 1,525,489,390	\$ 762,744,697	\$ 83,979,362
2018	1,683,719,104	841,859,552	81,946,969
2017	1,616,676,616	808,388,308	78,708,048
2016	1,281,736,793	640,868,397	77,096,411
2015	1,182,598,617	591,299,309	73,903,024
2014	1,072,715,230	536,357,615	69,909,874
2013	1,002,473,800	501,236,900	65,240,718
2012	1,000,263,600	500,131,800	61,976,385
2011	840,763,500	420,381,750	53,802,354

*Source: The County and North Dakota League of Cities archives.*

Valuations as calculated under State statutes which provide, in part, that Assessed Values be 50% of the Full & True Value with farmland and commercial property having a Taxable Value of 10% of the Assessed Value. Residential Taxable Value is 9% of the Assessed Value. Utility Property Values are set by the State.

**BONDED DEBT**

**General Obligation**

None.

**Limited Tax Bonds**

<u>Year</u>	<u>Purpose</u>	<u>Final Maturity</u>	<u>Principal Outstanding</u>
2018	Limited Tax Bonds	05/01/2023	\$ 305,000

**Revenue Bonds**

<u>Year</u>	<u>Purpose</u>	<u>Final Maturity</u>	<u>Principal Outstanding</u>
2020	Certificates of Participation, Series 2020 (Correctional Facility) ( <i>this issue</i> )	05/01/2050	\$ 15,435,000*

*\* Not subject to debt limit.*

**Other**

<u>Note Payable</u>	<u>Final Maturity</u>	<u>Principal Outstanding</u>
City- County Health building	2025	\$ 323,234

**DEBT LIMITATION**

According to Article X, Section 15 of the North Dakota Constitution and Section 21-03-04 of the North Dakota Century Code, North Dakota Counties may not become indebted for any purpose in excess of 5% of their assessed value.

**Debt Limit Computation**

Assessed Value:	\$762,744,697
Limit Percentage:	5%
Authorized Debt Limit	\$ 38,137,235
Minus GO Debt:	<u>0</u>
Remaining Debt Capacity:	\$ 38,137,235

**OVERLAPPING GENERAL OBLIGATION BONDED INDEBTEDNESS**

<u>Entity</u> <sup>(1)</sup>	<u>Tax Supported Bonded Debt</u> <sup>(2)(3)</sup>	<u>Percent Allocable To the County</u>	<u>County's Share</u>
City of Valley City	\$9,365,000	100.00%	\$ 9,365,000
Valley City School District	2,515,000	100.00	<u>2,515,000</u>
Total Overlapping GO Bonded Debt:			\$ 11,880,000

Sources: North Dakota League of Cities, North Dakota Department of Public Instruction.

<sup>(1)</sup> Barnes County includes fourteen incorporated cities, three public school districts, one water resource district and a number of park districts. The table is a listing of such entities that report outstanding general obligation bonded indebtedness.

<sup>(2)</sup> Includes general obligation debt supported by special assessments. Excludes State debt.

<sup>(3)</sup> Balance as of June 30, 2020.

**DEBT RATIOS**

2019 Full and True Value/Market Value (100%)	\$1,525,489,390
2019 Assessed Value (50%)	\$762,744,697
2019 Taxable Value	\$83,979,362

**2019 Population (estimate): 10,415**

***Outstanding Debt As of 06/30/2020***

Total Direct General Obligation Debt:	\$ 0
Total Special Assessment Debt:	305,000
Total Revenue Bonded Debt, including this issue:	15,435,000
Overlapping G.O. Tax Supported Bonded Debt:	<u>11,880,000</u>
Total Outstanding Debt listed:	\$27,620,000

***Percentage of the following Valuations***

	<u>Per Capita Debt</u>	<u>Taxable Valuation</u>	<u>Assessed Valuation</u>	<u>Full &amp; True/ Market Valuation</u>
Net Direct G.O. Debt	\$ 0.00	0.00%	0.00%	0.00%
Net Special Assessment Debt	29.28	0.36	0.04	0.02
Net Revenue Bonded Debt	1,482.00	18.38	2.02	1.01
Overlapping G.O. Debt	<u>1,140.66</u>	<u>14.15</u>	<u>1.56</u>	<u>0.78</u>
<b>Total</b>	<b><u>\$ 2,651.94</u></b>	<b><u>32.89%</u></b>	<b><u>3.62%</u></b>	<b><u>1.81%</u></b>

## TAX INFORMATION

### Tax Levies and Collections

<u>Fiscal Year</u>	<u>Total Tax Levy</u>	<u>Tax Collections*</u>	<u>Percent of Levy Collected</u>
2019	\$ 8,589,812.22	\$ 7,903,988.70	92.02%
2018	8,381,285.80	8,072,620.24	96.32
2017	7,597,067.99	7,374,262.86	97.07
2016	7,906,303.66	7,732,098.59	97.80
2015	7,010,399.79	6,875,509.49	98.08
2014	6,168,799.60	6,055,962.10	98.17
2013	6,424,066.34	6,322,965.60	98.43
2012	6,024,250.76	5,918,659.25	98.25

*Source: Barnes County Auditor, as of July 31, 2020.*

North Dakota Statutes allow a 5% discount on property taxes paid by February 15 of the following year. Taxes may be paid in two installments, without penalty. The first installment must be paid by March 1, and the second by October 15. If installments are not made, the entire tax must be paid by March 1 to avoid penalties.

### Largest Property Taxpayers

The largest property taxpayers in the County are identified below:

<u>Taxpayer</u>	<u>2019 Taxable Value</u>	<u>Percent of Taxable Valuation</u>
TransCanada Keystone Pipeline LP	\$ 2,490,597	2.97%
Ashtabula Wind, LLC	2,215,790	2.64
BNSF RWY Co	1,998,726	2.38
Mpls St Paul & Sault Ste Marie RR	1,537,596	1.83
Alliance Pipeline Ltd	1,516,059	1.81
Otter Tail Power Company	894,220	1.06
Agair Manufacturing LLC	674,035	0.80
Arthur Companies Inc	632,845	0.75
Kinder Morgan Cochin LLC	562,804	0.67
Archer-Daniels-Midland Co	536,595	0.64

*Source: Barnes County Auditor.*

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**County Mill Levy**

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
General	36.43	45.45	54.88	58.91	58.23
Sinking & Interest	0.74	1.39	1.65	0.00	0.00
Ambulance	1.00	1.00	1.00	1.00	1.00
Older Persons	2.00	2.00	2.00	2.00	2.00
Library	2.52	2.22	2.39	2.30	2.19
Extension	1.46	1.87	2.13	2.22	1.91
Farm to Market	15.00	15.00	11.00	13.00	14.00
Emergency	0.00	0.00	0.25	0.25	0.25
Airport	4.00	2.00	3.00	2.06	1.70
Economic Development	2.36	2.04	2.23	2.23	3.50
CCH	5.00	4.00	5.00	5.00	5.00
Veteran's Services	0.85	1.37	1.80	1.70	1.80
Social Services	16.16	16.00	0.00	0.00	0.00
Weed Control	1.63	2.87	3.98	4.00	2.88
Historical Society	0.75	0.75	0.75	0.75	0.75
Water Resource	3.03	2.59	2.51	2.50	3.00
Road & Bridge	0.50	0.50	0.50	2.78	2.47
Soil Conservation	1.00	1.00	1.00	1.10	1.10
Garrison Conservancy District	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>
Total:	95.43	103.05	97.07	102.80	102.78

*Source: Barnes County Auditor.*

**FUNDS ON HAND**

<u>Fund</u>	<u>Amount as of 07/31/2020</u>
General	\$ 4,835,731.73
Total	\$ 4,835,731.73

*Source: Barnes County Auditor.*

**Audited Financial Statements and Retirement Funds**

The County's financial statements for the year ended December 31, 2018 are attached hereto as "APPENDIX B - AUDITED FINANCIAL STATEMENTS OF THE COUNTY FOR THE FISCAL YEAR ENDED DECEMBER 31, 2018." See Appendix B for detailed information regarding the County's finances, including its participation in the state of North Dakota Public Employees' Retirement System (Note 10).

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**APPENDIX B**

**AUDITED FINANCIAL STATEMENTS OF THE COUNTY FOR  
THE FISCAL YEAR ENDED DECEMBER 31, 2018**

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BARNES COUNTY  
VALLEY CITY, NORTH DAKOTA

FINANCIAL STATEMENTS  
YEAR ENDED DECEMBER 31, 2018

BARNES COUNTY

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BARNES COUNTY  
LIST OF OFFICIALS  
DECEMBER 31, 2018

Commissioners:	Cindy Schwehr John Froelich Mike Metcalf Rodger Berntson Bill Carlblom
Auditor:	Beth Didier
Treasurer:	Vicki Zinck
Sheriff:	Randy McClaflyn
County Recorder:	Jody Pfaff
States Attorney:	Carl Martineck

# Harold J. Rotunda

## Certified Public Accountant

### INDEPENDENT AUDITOR'S REPORT

County Commission  
Barnes County  
Valley City, North Dakota

I have audited the accompanying modified cash basis financial statements of the governmental activities, discretely presented component units, each major fund and aggregate remaining fund information of Barnes County as of and for the year ended December 31, 2018, and the related notes to the financial statements, which collectively comprise the County's basic financial statements as listed in the table of contents.

#### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with the modified cash basis of accounting described in Note 1; this includes determining that the modified cash basis of accounting is an acceptable basis for the preparation of the financial statements in the circumstances. Management is also responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

#### **Auditor's Responsibility**

My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with U.S. generally accepted auditing standards. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement in the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, I express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

**Opinion**

In my opinion, the financial statements referred to above present fairly, in all material respects, the respective modified cash basis financial position of the governmental activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of Barnes County as of December 31, 2018, and the changes in modified cash basis financial position and cash flows, where applicable, thereof for the year then ended, in conformity with U.S. generally accepted accounting principles.

**Basis of Accounting**

I draw attention to Note 1 of the financial statements, which describes the basis of accounting. The financial statements are prepared on the modified cash basis of accounting, which is a basis of accounting other than U.S. generally accepted accounting principles. My opinion is not modified with respect to that matter.

/S/

Harold Rotunda  
West Fargo, North Dakota  
June 11, 2019

BARNES COUNTY  
STATEMENT OF NET POSITION- MODIFIED CASH BASIS  
DECEMBER 31, 2018

	PRIMARY GOVERNMENT	
	GOVERNMENTAL ACTIVITIES	COMPONENT UNITS
<b>ASSETS</b>		
Cash and investments	9,738,182.56	735,296.31
Accounts receivable	176,491.81	-
Intergovernmental receivable	36,189.79	-
Capital assets (net of accumulated depreciation)	3,707,328.23	1,523,266.36
Total Assets	13,658,192.39	2,258,562.67
<b>LIABILITIES</b>		
Accounts Payable	3,498.22	-
Long-term liabilities:		-
Due within one year:		
Bonds payable	100,000.00	-
Notes payable	51,187.54	-
Due after one year:		-
Bonds payable	400,000.00	
Notes payable	343,673.77	
Total liabilities	898,359.53	-
<b>DEFERRED INFLOWS OF RESOURCES</b>		
Taxes paid in advance	2,087,052.68	85,609.86
<b>NET POSITION</b>		
Net investment in capital assets	2,812,466.92	1,523,266.36
Restricted for:		
FEMA projects	-	-
Debt service	-	-
General government		-
Unrestricted	7,860,313.26	649,686.45
Total net position	10,672,780.18	2,172,952.81

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
STATEMENT OF ACTIVITIES- MODIFIED CASH BASIS  
YEAR ENDED DECEMBER 31, 2018

		Program Revenues		Net (expense) Revenue & Changes in Net Assets	
	Expenses	Charges for Services	Operating grants and Contributions	Governmental Activities	Component units
<b>Governmental Activities:</b>					
General government	3,995,816.15			(3,995,816.15)	170,663.26
Public safety	1,889,784.66			(1,889,784.66)	175,603.73
Health and welfare	1,501,268.00	660,635.59	1,413,747.08	573,114.67	
Highways	2,476,591.81	456,319.64	1,583,371.70	(436,900.47)	
Relief and charities	1,221,611.58		1,331,618.57	110,006.99	
Weed control	251,248.35	8,382.89	31,920.46	(210,945.00)	
Culture and recreation	87,907.42	-		(87,907.42)	
Other capital outlays	24,314.01			(24,314.01)	533,289.15
Interest expense	30,344.04			(30,344.04)	
Depreciation- Unallocated	370,103.03			(370,103.03)	13,587.00
<b>Total Governmental Activities</b>	<b>11,848,989.05</b>	<b>1,125,338.12</b>	<b>4,360,657.81</b>	<b>(6,362,993.12)</b>	<b>893,143.14</b>
<b>General Revenues</b>					
Property taxes				6,693,561.19	426,848.23
Intergovernmental				198,076.38	1,010,311.45
Charges				156,225.83	
Interest income				54,020.91	
Licenses and permits				39,947.18	
Other revenue				490,093.66	272,658.91
<b>Total General revenues</b>				<b>7,631,925.15</b>	<b>1,709,818.59</b>
<b>Change in Net Assets</b>				<b>1,268,932.03</b>	<b>816,675.45</b>
<b>Net Position- January 1</b>				<b>9,403,848.15</b>	<b>1,356,277.36</b>
<b>Net Position- December 31</b>				<b>10,672,780.18</b>	<b>2,172,952.81</b>

The accompanying notes are an integral part of these financial statements.



BARNES COUNTY  
 BALANCE SHEET- GOVERNMENTAL FUNDS- MODIFIED CASH BASIS  
 DECEMBER 31, 2018

	GENERAL	HIGHWAY FUNDS	SOCIAL SERVICE FUND	CITY-COUNTY HEALTH FUND	OTHER GOVERNMENTAL FUNDS	TOTAL GOVERNMENTAL FUNDS
<b>ASSETS</b>						
Cash and investments	3,635,522.44	4,635,886.27	232,608.88	130,528.04	1,103,636.93	9,738,182.56
Accounts receivable		176,491.81			-	176,491.81
Intergovernmental receivable	-	-	-	36,189.79	-	36,189.79
<b>Total Assets</b>	<b>3,635,522.44</b>	<b>4,812,378.08</b>	<b>232,608.88</b>	<b>166,717.83</b>	<b>1,103,636.93</b>	<b>9,950,864.16</b>
<b>LIABILITIES</b>						
Accounts Payable	3,498.22	-	-	-	-	3,498.22
Prepaid taxes	1,305,543.23	349,711.12	-	110,808.30	320,990.03	2,087,052.68
<b>Total Liabilities</b>	<b>1,309,041.45</b>	<b>349,711.12</b>	<b>-</b>	<b>110,808.30</b>	<b>320,990.03</b>	<b>2,090,550.90</b>
<b>FUND BALANCE</b>						
Restricted for FEMA Projects					-	-
Restricted for Debt Service					-	-
Restricted for General Government		4,462,666.96	232,608.88	55,909.53	792,903.64	5,544,089.01
Unassigned	2,326,480.99				(10,256.74)	2,316,224.25
<b>Total Fund Balance</b>	<b>2,326,480.99</b>	<b>4,462,666.96</b>	<b>232,608.88</b>	<b>55,909.53</b>	<b>782,646.90</b>	<b>7,860,313.26</b>
<b>Total liabilities, deferred inflows of resources and fund balances</b>	<b>3,635,522.44</b>	<b>4,812,378.08</b>	<b>232,608.88</b>	<b>166,717.83</b>	<b>1,103,636.93</b>	<b>9,950,864.16</b>

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
 RECONCILIATION OF GOVERNMENTAL FUNDS BALANCE  
 SHEET TO THE STATEMENT OF NET POSITION  
 DECEMBER 31, 2018

Total Fund Balances for Governmental Funds 7,860,313.26

Total net assets reported for governmental activities in the statement of net assets is different because:

Capital assets used in governmental activities are not financial resources and are not reported in governmental funds

Cost of capital assets	13,930,749.90	
Less accumulated depreciation	10,223,421.67	
Net capital assets		3,707,328.23

Long-term liabilities applicable to the District's governmental activities are not due and payable in the current period and accordingly are not reported as fund liabilities. All liabilities- both current and long-term are reported in the statement of net assets. Balances at year end are:

Bonds payable	(500,000.00)
Leases payable	-
Notes payable	(394,861.31)

Total Net Assets of Governmental Activities 10,672,780.18

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
STATEMENT OF REVENUES, EXPENDITURES AND  
CHANGES IN FUND BALANCES- GOVERNMENTAL FUNDS- MODIFIED CASH BASIS  
YEAR ENDED DECEMBER 31, 2018

	GENERAL	HIGHWAY FUNDS	SOCIAL SERVICE FUND	CITY-COUNTY HEALTH FUND	OTHER GOVERNMENTAL FUNDS	TOTAL GOVERNMENTAL FUNDS
Property taxes	4,195,618.40	884,069.85	18,186.75	381,562.74	1,214,123.45	6,693,561.19
Intergovernmental	913,570.24	1,415,847.50	1,331,618.57	615,040.53	282,657.35	4,558,734.19
Charges for services	111,506.56	456,319.64	-	660,635.59	53,102.16	1,281,563.95
Interest and other	281,693.55	37,041.92	4,415.14	37,929.06	222,982.08	584,061.75
<b>Total Revenues</b>	<b>5,502,388.75</b>	<b>2,793,278.91</b>	<b>1,354,220.46</b>	<b>1,695,167.92</b>	<b>1,772,865.04</b>	<b>13,117,921.08</b>
Current:						
General government	4,315,853.72				1,255,517.13	5,571,370.85
Public safety	796,351.01				128,947.54	925,298.55
Health and welfare				1,501,268.00	-	1,501,268.00
Highways		2,539,262.08			28,652.73	2,567,914.81
Relief and charities			1,221,611.58		-	1,221,611.58
Culture and recreation					112,907.32	112,907.32
Capital outlay	-			250,680.11	-	250,680.11
Debt Service						
Principal				48,454.34	100,000.00	148,454.34
Interest expense				23,299.54	6,544.50	29,844.04
<b>Total Expenditures</b>	<b>5,112,204.73</b>	<b>2,539,262.08</b>	<b>1,221,611.58</b>	<b>1,823,701.99</b>	<b>1,632,569.22</b>	<b>12,329,349.60</b>
Excess revenues (expenditures)	390,184.02	254,016.83	132,608.88	(128,534.07)	140,295.82	788,571.48
Other Financing Sources (Uses):						
Transfers in	214,480.67	1,500,000.00			63,806.52	1,778,287.19
Transfers out	(63,806.52)	(1,500,000.00)	(89,044.58)		(125,436.09)	(1,778,287.19)
Bond proceeds		494,500.00			-	494,500.00
<b>Total other financing sources and uses</b>	<b>150,674.15</b>	<b>494,500.00</b>	<b>(89,044.58)</b>	<b>-</b>	<b>(61,629.57)</b>	<b>494,500.00</b>
<b>Net change in fund balances</b>	<b>540,858.17</b>	<b>748,516.83</b>	<b>43,564.30</b>	<b>(128,534.07)</b>	<b>78,666.25</b>	<b>1,283,071.48</b>
Fund balance- beginning	1,785,622.82	3,714,150.13	189,044.58	184,443.60	703,980.65	6,577,241.78
Fund balance- ending	2,326,480.99	4,462,666.96	232,608.88	55,909.53	782,646.90	7,860,313.26

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
 RECONCILIATION OF GOVERNMENTAL STATEMENT OF REVENUES, EXPENDITURES AND  
 CHANGES IN FUND BALANCES TO THE STATEMENT OF ACTIVITIES  
 YEAR ENDED DECEMBER 31, 2018

Net Change in Fund Balances- Total Governmental Funds 1,283,071.48

The change in net assets reported for governmental activities in the statement of activities is different because:

Governmental funds report capital outlay as expenditures. However, in the statement of activities, the cost of those assets is allocated over their estimated useful lives and reported as depreciation expense. This is the amount by which capital outlays exceeded depreciation in the current year.

Current year capital outlay	702,509.24	
Current year depreciation expense	370,103.03	332,406.21

Repayment of long-term debt principal is an expenditure in the governmental funds, but the repayment reduces long-term liabilities in the statement of net assets.	99,500.00	
	48,454.34	
	(494,500.00)	

Change in Net Assets of Governmental Activities 1,268,932.03

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
STATEMENT OF ASSETS AND LIABILITIES- FIDUCIARY  
DECEMBER 31, 2018

AGENCY  
FUNDS

ASSETS

Cash and investments 3,810,037.05

Total Assets 3,810,037.05

LIABILITIES

Prepaid taxes 201,338.12

Due to Other Groups 3,608,698.93

Total liabilities 3,810,037.05

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
 COMBINING STATEMENT OF ACTIVITIES- COMPONENT UNITS- MODIFIED CASH BASIS  
 YEAR ENDED DECEMBER 31, 2018

	WATER RESOURCE	AIRPORT AUTHORITY	TOTAL
Expenditures			
General government	170,663.26		170,663.26
Public safety	-	175,603.73	175,603.73
Highways and streets			-
Economic development	-		-
Other capital outlays	533,289.15	-	533,289.15
Interest expense			-
Depreciation- Unallocated		13,587.00	13,587.00
 Total Expenditures	 703,952.41	 189,190.73	 893,143.14
Revenue			
Property taxes	195,533.35	231,314.88	426,848.23
Intergovernmental	399,048.50	611,262.95	1,010,311.45
Charges for services		87,483.43	87,483.43
Miscellaneous	170,170.82	13,481.47	183,652.29
Interest income	420.65	1,102.54	1,523.19
 Total Revenues	 765,173.32	 944,645.27	 1,709,818.59
 Change in Net Position	 61,220.91	 755,454.54	 816,675.45
Net Position- January 1	257,293.94	1,098,983.42	1,356,277.36
Net Position- December 31	318,514.85	1,854,437.96	2,172,952.81

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
 COMBINING STATEMENT OF NET POSITION- COMPONENT UNITS- MODIFIED CASH BASIS  
 DECEMBER 31, 2018

	WATER RESOURCE	AIRPORT AUTHORITY	TOTAL
<b>ASSETS</b>			
Cash and investments	404,124.71	331,171.60	735,296.31
Accounts receivable	-		-
Taxes receivable	-		-
Intergovernmental receivable			-
Contract for deed			-
Capital assets (net of accumulated depreciation)		1,523,266.36	1,523,266.36
<b>Total Assets</b>	<b>404,124.71</b>	<b>1,854,437.96</b>	<b>2,258,562.67</b>
<b>LIABILITIES</b>			
Accounts Payable	-	-	-
Deferred revenue	-		-
Long-term liabilities:			-
Due within one year:			
Bonds payable		-	-
Notes payable		-	-
Due after one year:			-
Bonds payable			-
Notes payable			-
<b>Total liabilities</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>DEFERRED INFLOWS OF RESOURCES</b>			
Taxes paid in advance	85,609.86		85,609.86
<b>NET POSITION</b>			
Invested in capital assets, net of related debt		1,523,266.36	1,523,266.36
Restricted for:			
Capital projects			-
Debt service			-
Unrestricted	318,514.85	331,171.60	649,686.45
<b>Total net position</b>	<b>318,514.85</b>	<b>1,854,437.96</b>	<b>2,172,952.81</b>

The accompanying notes are an integral part of these financial statements.

BARNES COUNTY  
VALLEY CITY, NORTH DAKOTA

NOTES TO THE FINANCIAL STATEMENTS  
DECEMBER 31, 2018

NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The financial statements of the Barnes County (County) have been prepared in conformity with the modified cash basis of accounting. The Governmental Accounting Standards Board (GASB) is the accepted standard setting body for establishing governmental accounting and financial reporting principles. The more significant of the County's accounting policies are described below.

A. Reporting Entity

The accompanying financial statements present the activities of the County. The County has considered all potential component units for which the County is financially accountable and other organizations for which the nature and significance of their relationships with the County such that exclusion would cause the County's financial statements to be misleading or incomplete. The Governmental Accounting Standards Board has set forth criteria to be considered in determining financial accountability. This criteria includes appointing a voting majority of an organization's governing body and (1) the ability of the County to impose its will on that organization or (2) the potential for the organization to provide specific financial benefits to, or impose specific financial burdens on the County.

Based on these criteria, there are two component units: Airport Authority and Water Resource District.

B. BASIS OF PRESENTATION, BASIS OF ACCOUNTING

Government-wide statements: The statement of net assets and the statement of activities display information about the primary government, the County. These statements include the financial activities of the overall government, except for fiduciary activities. Eliminations have been made to minimize the double-counting of internal activities. Governmental activities generally are financed through taxes, intergovernmental revenues, and other nonexchange transactions.



BARNES COUNTY

Notes to Financial Statements- Continued

The statement of activities presents a comparison between direct expenses and program revenues for each function of the County's governmental activities. Direct expenses are those that are specifically associated with a program or function and, therefore, are clearly identifiable to a particular function. Program revenues include (a) fees and charges paid by the recipients of goods or services offered by the programs and (b) grants and contributions that are restricted to meeting the operational or capital requirements of a particular program. Revenues that are not classified as program revenues, including all taxes, are presented as general revenues.

**Fund Financial Statements:** The fund financial statements provide information about the County's funds including its fiduciary funds. Separate statements for each fund category - governmental and fiduciary - are presented. The emphasis of fund financial statements is on major governmental funds, each displayed in a separate column. All remaining governmental funds are aggregated and reported as nonmajor funds.

The County reports the following major governmental fund:

**General Fund.** The General Fund is the primary operating fund of the City and always classified as a major fund. It is used to account for all activities except those legally or administratively required to be accounted for in other funds.

**Highway-** The Highway fund is used to account for highway activity for the County. Primary revenue sources are taxes and state aid.

**Social service-** The Social Service fund is used to account for health and welfare activity for the County. Primary revenue sources are taxes and state aid.

**City County Health-** The City County Health fund is used to account for health activity for the County. Primary revenue sources are taxes and state aid.

The County reports the following fund types:

**Agency Funds.** These funds account for assets by the County in a custodial capacity as an agent on behalf of others. The County's agency fund is used to account for various deposits of other governments funds.

BARNES COUNTY  
Notes to Financial Statements- Continued

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation

Government-wide Financial Statements. In the government-wide Statement of Net Assets and the Statement of Activities, activities are presented using the economic resources measurement focus, within the limitations of the modified cash basis of accounting as defined below.

In the fund financial statements, the "current financial resources" measurement focus or the "economic resources" measurement focus, as applied to the modified cash basis of accounting, is used as appropriate.

All governmental funds utilize a "current financial resources" measurement focus. Only current financial assets and liabilities are generally included on their balance sheets. Their operating statements presents sources and uses of available spendable financial resources during a given period. These funds use fund balance as their measure of available spendable financial resources at the end of the period.

In the government-wide Statement of Net Assets and the Statement of Activities, activities are presented using a modified cash basis of accounting. This basis of accounting recognizes assets, liabilities, net assets/fund equity, revenues and expenditures when they result from cash transactions with a provision for depreciation in the government-wide statements. This basis is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

As a result of the use of this modified cash basis of accounting, certain assets and their related revenues (such as accounts receivable and revenue for billed or provided services not yet collected) and certain liabilities and their related expenses (such as accounts payable and expenses for goods or services received but not yet paid, and accrued expenses and liabilities) are not recorded in these financial statements.

If the County utilized the basis of accounting recognized as generally accepted, the fund financial statements for governmental funds would use the modified accrual basis of accounting. All government-wide financial statements would be presented on the accrual basis of accounting.

BARNES COUNTY  
Notes to Financial Statements- Continued

Under the terms of grant agreements, the County funds certain programs by a combination of specific cost-reimbursement grants and general revenues. Thus, when program expenses are incurred, there are both restricted and unrestricted net assets available to finance the program. It is the County's policy to first apply cost-reimbursement grant resources to such programs, and then by general revenues.

D. Budgets

Based upon available financial information and requests by the department heads, the commission and auditor prepares the County budget. The budget is prepared for the general and special revenue funds on the modified cash basis of accounting. The budget includes the proposed expenditures and the means of financing them. All annual appropriations lapse at year-end.

County taxes are levied by the county commission on or before the October meeting. The current budget, except for property taxes, may be amended during the year for any revenues and appropriations not anticipated at the time the budget was prepared.

E. Cash and Investments

Cash includes amounts in demand deposits and money market accounts.

The investments of the County during the year ended December 31, 2018 consist of certificates of deposit stated at fair value with maturities in excess of 3 months.

F. COMPENSATED ABSENCES

Vested or accumulated vacation leave is reported in government-wide statement of net assets. Compensation for unused vacation leave will be granted for all 12 month employees upon termination of employment with the County based on the current rate of pay.

BARNES COUNTY  
Notes to Financial Statements- Continued

G. Capital Assets

Capital assets, which include property, plant, and equipment, are reported in the applicable governmental or business-type activities columns in the government-wide financial statements. Capital assets are defined by the government as assets with an initial, individual cost of more than \$5,000. Such assets are recorded at historical cost or estimated historical cost if purchased or constructed. Net estimated historical cost was used to value the majority of assets acquired prior to January 1, 2004. Prior to January 1, 2004, governmental funds' infrastructure assets were not capitalized. Donated capital assets are recorded at estimated fair market value at the date of donation.

The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend assets lives are not capitalized.

Major outlays for capital assets and improvements are capitalized as projects are constructed. Interest incurred during the construction phase of capital assets of business-type activities is included as part of the capitalized value of the assets constructed.

Property, plant, and equipment of the County is depreciated using the straight line method over the following estimated useful lives:

Permanent Buildings	50
Equipment	10

H. Long-Term Obligations

In the government-wide financial statements, long term debt and other long term obligations are reported as liabilities in the governmental activities statement of net assets. Bond premiums, discounts and issuance costs are recognized in the current period since the amounts are not material.

In the fund financial statements, governmental fund types recognize bond premiums, discounts and issuance costs in the current period. The face amount of the debt is reported as other financing sources. Premiums received on debt issuances are reported as other financing sources while discounts on debt issuances are reported as other financing uses. Issuance costs are reported as debt service expenditures.

BARNES COUNTY  
Notes to Financial Statements- Continued

I. Fund Balance/ Net Position

In the fund financial statements, governmental funds report aggregate amounts for five classifications of fund balances based on the constraints imposed on the use of these resources. The non-spendable fund balance classification includes amounts that cannot be spent because they are either (a) not in spendable form - inventories; or (b) legally or contractually required to be maintained intact.

The spendable portion of the fund balance comprises the remaining four classifications: restricted, committed, assigned, and unassigned.

**Restricted** - This classification reflects the constraints imposed on resources either (a) externally by creditors, grantors, contributors, or laws or regulations of other governments; or (b) imposed by law through constitutional provisions or enabling legislation.

**Committed** - These amounts can only be used for specific purposes pursuant to constraints imposed by formal resolutions or ordinances of the County commission-the County's highest level of decision making authority. Those committed amounts cannot be used for any other purpose unless the council removes the specified use by taking the same type of action imposing the commitment. This classification also includes contractual obligations to the extent that existing resources in the fund have been specifically committed for use in satisfying those contractual requirements.

**Assigned** - This classification reflects the amounts constrained by the County's "intent" to be used for specific purposes, but are neither restricted nor committed. The council has the authority to assign amounts to be used for specific purposes. Assigned fund balances include all remaining amounts (except negative balances) that are reported in governmental funds, other than the General Fund, that are not classified as non-spendable and are neither restricted nor committed.

**Unassigned** - This fund balance is the residual classification for the General Fund. It is also used to report negative fund balances in other governmental funds.

When both restricted and unrestricted resources are available for use, the County's preference is to first use restricted resources, then unrestricted resources-committed, assigned, and unassigned-in order as needed.

BARNES COUNTY  
Notes to Financial Statements- Continued

The Commission has not set a General Fund minimum fund balance.

In the fund financial statements, governmental funds report reservations of fund balance for amounts that are not available for appropriation or are legally restricted by outside parties for use for a specific purpose. Designations of fund balance represent tentative management plans that are subject to change.

J. Interfund Transactions

In the governmental fund statements, transactions that constitute reimbursements to a fund for expenditures initially made from it that are properly applicable to another fund, are recorded as expenditures in the reimbursing fund and as reductions of expenditures in the fund that is reimbursed.

All other interfund transactions, except reimbursements, are reported as transfers. Nonrecurring or nonroutine permanent transfers of equity are reported as residual equity transfers. All other interfund transfers are reported as operating transfers. In the government-wide financial statements, interfund transactions have been eliminated.

NOTE 2: LEGAL COMPLIANCE - BUDGETS

BUDGET AMENDMENTS

The board did not amend the County budget for 2018.

EXPENDITURES OVER APPROPRIATIONS

The County overspent the General fund budget by \$115,814; the Veterans Service Office budget by \$2,837; County Park budget by \$124,728; and City-County Health budget by \$233,348. No remedial action is required.

NOTE 3 DEPOSITS

In accordance with North Dakota Statutes, the County maintains deposits at the depository banks designated by the governing board. All depositories are members of the Federal Reserve System.

Deposits must either be deposited with the Bank of North Dakota or in other financial institution situated and doing business within the state. Deposits, other than with the Bank of North Dakota, must be fully insured or bonded. In lieu of a bond, a financial institution may provide a pledge of securities equal to 110% of the deposit not covered by insurance or bonds.

BARNES COUNTY

Notes to Financial Statements- Continued

Authorized collateral includes bills, notes, or bonds issued by the United State government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, Federal Land Bank bonds, notes, warrants, and certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, and all other forms of securities issued by the State of North Dakota, its boards, agencies, instrumentalities, or by any county, County, township, school district, park district, or other political subdivision of the State of North Dakota whether payable from special revenues or supported by the full faith and credit of the issuing body and bonds issued by another state of the United States, or such other securities approved by the banking board.

At December 31, 2018, the County's carrying amount of deposits was \$13,546,013. Of the bank balances, \$409,570 was covered by Federal Depository Insurance. The remaining balance of \$13,136,443 was collateralized with securities held by the pledging financial institution's agent in the government's name.

Credit Risk

State statutes authorize the County to invest in:(1) Bonds, treasury bills and notes, or other securities that are a direct obligation of, or an obligation insured or guaranteed by, the treasury of the United States, or its agencies, instrumentalities, or organizations created by an act of Congress.(2) Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are the type listed above.(3) Certificates of Deposit fully insured by the federal deposit insurance corporation or the state.(4) Obligations of the state.

Concentration of Credit Risk

The County does not have a limit on the amount it may invest in any one issuer.

BARNES COUNTY  
Notes to Financial Statements- Continued

NOTE 4: PROPERTY TAXES

Taxes receivable represents the past five years of uncollected current and delinquent taxes. No allowance has been established for uncollectible taxes receivable.

The county treasurer acts as and agent to collect property taxes levied in the county for all taxing authorities. Any material tax collections are distributed after the end of each month.

Property taxes are levied as of January 1. The property taxes attach as an enforceable lien on property on January 1 and may be paid in two installments. The first installment includes one-half of the real estate taxes and all the special assessments and the second installment is the balance of the real estate taxes. The first installment is due by March 1 and the second installment is due by October 15. A 5% discount on property taxes is allowed if all taxes and special assessments are paid by February 15. After the due dates, the bill becomes delinquent and penalties are assessed.

Most property owners choose to pay property taxes and special assessments in a single payment on or before February 15 and receive the discount on the property taxes.

NOTE 5: CAPITAL ASSETS

The following is a summary of changes in capital assets for the year ended December 31, 2018:

	Balance January 1	Increases	Decreases	Balance December 31
Construction in progress				
Bldgs and Improvements	6,785,917	344,569		7,130,486
Vehicles & Equipment	6,442,324	357,940		6,800,264
Total Cap Assets	13,228,241	702,509		13,930,750
Less accumulated depreciation for:				
Buildings & Improve	5,041,558	90,267		5,131,825
Vehicles & Equip	4,811,760	279,836		5,091,596
Total Accumulated Dep	9,853,319	370,103		10,223,422
Capital Assets, Net	3,374,922			3,707,328

Depreciation Expense was charged to functions/programs of the County as follows:

Governmental Activities:	
General government	56,864
Public safety	46,295
Highways	266,944
Total Dep Exp-Gov Activities	370,103



BARNES COUNTY  
Notes to Financial Statements- Continued

NOTE 6: LONG-TERM DEBT

Changes in Long-Term Liabilities - During the year ended December 31, 2018, the following changes occurred in liabilities reported in long-term debt:

	Payable 2015	Increases	Decreases	Payable Due Within 2018	One Year
Bonds payable	105,000	500,000	105,000	500,000	100,000
Notes payable	443,316		48,455	394,861	51,187
TOTAL	548,316	500,000	150,867	548,316	148,617

Debt payable at December 31, 2018, is comprised of the following individual issues:

Bonds Payable:

Bridge Bond of 2015 due in annual installments of \$95,000 to 105,000 including interest at 2.0-3.0% through June 2023	<u>500,000</u>
--	----------------

The annual long-term debt service requirements for bonds payable, as of December 31, 2018, are as follows:

Year Ending December 31	GOVERNMENTAL ACTIVITIES Long-Term Debt	
	Principal	Interest
2019	100,000	11,270
2020	95,000	9,027
2021	100,000	6,685
2022	100,000	4,135
2023	105,000	1,418
Total	500,000	32,535

NOTES PAYABLE

Note payable at local bank due in monthly installments of \$5,979, including interest at 5.50%, through June 2025 when balance of loan is due. Note used to purchase City-County Health building.	394,861
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BARNES COUNTY  
Notes to Financial Statements- Continued

The County is obligated to the following note payable agreements at December 31, 2018 are shown below:

2019	71,627
2020	71,627
2021	71,627
2023	71,627
2024	71,627
2025-2026	<u>113,410</u>
	471,545
Less amount representing interest	<u>76,684</u>
Principal balance remaining	394,861

NOTE 7. FUND BALANCE

Fund balance in the various funds has been restricted or assigned for the following purposes:

Restricted for Debt Service      \$0

NOTE 8. DEFICIT IN FUND BALANCE

The County has a deficit of \$63 in the Winter Show Fund. These deficits will be eliminated by grants and transfers.

NOTE 9: TRANSFERS

The County transfers operating revenues between funds. The County transfers Highway distribution funds to the Road & Bridge fund- \$1,500,000; County Park Fund to General Fund- \$61,630; Social Service Fund to General Fund- \$89,045.

BARNES COUNTY  
Notes to Financial Statements- Continued

NOTE 10: PENSION PLANS

North Dakota Public Employees Retirement System

The County participates in the North Dakota Public Employees Retirement System (PERS) administered by the State of North Dakota. Following is a brief description of the plan:

PERS is a cost-sharing multiple-employer defined benefit pension plan administered by the State of North Dakota. PERS provides for retirement, disability and death benefits to plan members and beneficiaries. If an active employee dies with less than three years of credited service, a death benefit equal to the value of the employee's accumulated contributions, plus interest, is paid to the employee's beneficiary. If the employee has earned more than three years of credited service, the surviving spouse will be entitled to a single payment refund, lifetime monthly payments in an amount equal to 50% of the employees accrued normal retirement benefit, 60 monthly payments equal to the employee's accrued normal retirement benefit calculated as if the employee were age 65 the day before death occurred or monthly payments in an amount equal to the employee's accrued 100% joint and survivor retirement benefit if the member had reached normal retirement age prior to death. If the surviving spouse dies before the employee's accumulated pension benefits are paid, the balance will be paid to the surviving spouse's designated beneficiary.

Eligible employees, who become totally disabled after a minimum of 180 days of service, receive monthly disability benefits that are equal to 25% of their final average salary with a minimum benefit of \$100. To qualify under this section, the employee must meet the criteria established by the Retirement Board for being considered totally disabled.

Employees are entitled to unreduced monthly pension benefits equal to 2% of their final average salary for each year of service beginning when the sum of age and years of credited service equal or exceed 85, or at the normal retirement age (65). The plan permits early retirement at ages 55-64, with three or more years of service.

BARNES COUNTY  
Notes to Financial Statements- Continued

Benefit and contribution provisions are administered in accordance with chapter 54-52 of the North Dakota Century Code. This state statute requires that 7% of the participants annual covered salary be contributed to the plan by either the employee or by the employer under a "salary reduction" agreement. The County had agreed to pay 100% of the member assessments in lieu of a salary increase. The County is required to contribute 7.12% of each participant's salary as the employer's share. The County is required to contribute 1.14% of each participating covered wage to a prefunded retiree health insurance program. The required contributions are determined using an entry age normal actuarial funding method and are included in state statute. The North Dakota Retirement Board was created by the State Legislature and is the governing authority of PERS. The County's contributions to PERS for the fiscal years ending December 31, 2019, 2018, and 2017 were \$138,497, \$126,613, and \$154,342, respectively, equal to the required contributions for the year.

PERS issues a publicly available financial report that includes financial statements and required supplementary information for PERS. That report may be obtained on the NDPERS website <http://ndpers.nd.gov/about/financial/annual-report-archive/>

NOTE 11: RISK MANAGEMENT

The County is exposed to various risks of loss relating to torts; theft of, damage to, and destruction of assets; errors and omissions; injuries to employees; and natural disasters.

In 1986 state agencies and political subdivisions of the State of North Dakota joined together to form the North Dakota Insurance Reserve Fund (NDIRF), a public entity risk pool currently operating as a common risk management and insurance program for the state and over 2,000 political subdivisions. The County pays an annual premium to NDIRF for its general liability and automobile insurance coverage. The coverage by NDIRF is limited to losses of one million dollars per occurrence.

The State Bonding Fund currently provides the County with blanket fidelity bond coverage in the amount of \$1,000,000 for its employees. The State Bonding fund does not currently charge any premium for this coverage.

The County has workers compensation with the Workforce, Safety and Insurance and purchases commercial insurance for personal property, building, inland marine, and boiler and machinery.

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**APPENDIX C**

**DEFINITIONS AND SUMMARY OF THE TRUST  
AGREEMENT, THE LEASE, AND THE GROUND LEASE**

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## APPENDIX C

### DEFINITIONS AND SUMMARY OF THE TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE

The following summaries do not purport to be comprehensive or definitive and all references to the documents summarized below are qualified in their entirety by reference to each such document. All references to the Certificates are qualified in their entirety by reference to the forms thereof and the information with respect thereto included in the following documents. Copies of these documents are available for inspection during the period of the offering at the offices of Colliers Securities LLC, Minneapolis, Minnesota, and thereafter at the principal office of the Trustee. All capitalized terms used in the following summaries which are not expressly defined herein shall have the meanings as defined in the respective documents, unless the context clearly requires a different meaning.

#### DEFINITIONS

*“Additional Certificates”* means any additional Certificates issued pursuant to the Trust Agreement.

*“Authorized Officer”* means, when used with respect to the County, the Chair of the Board of County Commissioners or County Auditor or any other person who is designated in writing by the Chair of the Board of County Commissioners or County Auditor as an Authorized Officer for purposes of the Trust Agreement; or when used with respect to the Trustee, any vice president and/or trust officer who is authorized to take the action in question on behalf of the Trustee.

*“Certificate Payment Date”* means May 1 and November 1 of each year, commencing May 1, 2021.

*“Certificates”* means the \$15,435,000 Certificates of Participation, Series 2020.

*“Closing Date”* means October 14, 2020, or the date upon which the Certificates are delivered to the Underwriter against payment therefor.

*“Code”* means the Internal Revenue Code of 1986, as amended.

*“Construction Account”* means the Construction Account within the Trust Fund established pursuant to the Trust Agreement.

*“Cost of Issuance Account”* means the Cost of Issuance Account within the Trust Fund established pursuant to the Trust Agreement.

*“Cost of Issuance”* means all fees and expenses incurred by the County in connection with the execution and delivery of the Lease and the issuance of the Certificates, including, but not limited to, costs of preparing the Certificates, the Trust Agreement, the Lease, the Ground Lease, the Official Statement relating to the Certificates, and related documents; legal fees (including those of counsel to the Trustee, the County and the Underwriter); rating agency fees and the Trustee’s initial fees.

*“County”* means Barnes County, North Dakota.

*“County Commission”* means the governing body of the County.

*“Fiscal Year”* means the 12-month fiscal period of the County which commences on January 1 every year and ends on December 31.

*“Ground Lease”* means the Ground Lease, dated as of October 1, 2020, by and between the County, as lessor, and the Trustee, as lessee, relating to the Land.

*“Improvements”* means the construction and equipping of the Project to be constructed on the Land.



*“Independent Counsel”* means an attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of the County or the Trustee.

*“Interest Portion”* means the portion of any Rental Payment designated as and comprising interest as shown in the Lease.

*“Land”* means the real property described in the Lease.

*“Lease”* means the Lease-Purchase Agreement, dated as of October 1, 2020, between the County, as lessor, and the Trustee, as lessee, relating to the Certificates.

*“Lease Term”* means the period during which the Lease is in effect as specified in the Lease.

*“Net Proceeds”* means any insurance proceeds or condemnation award, paid with respect to the Project, remaining after payment therefrom of all expenses incurred in the collection thereof.

*“Nonappropriation”* means the failure of the County Commission of the County to appropriate money for any Fiscal Year of the County sufficient for the continued performance of the Lease by the Trustee, as lessee, as evidenced by the passage of a resolution specifically prohibiting the Trustee, as lessee, (a) from performing its obligations under the Lease, and (b) from using any moneys to pay the Rental Payments due under the Lease for a designated Fiscal Year and all subsequent Fiscal Years.

*“Official Statement”* means the Preliminary Official Statement prepared and distributed by the Underwriter, dated September 18, 2020, together with the Final Official Statement, dated October 5, 2020.

*“Outstanding”* means, when used with reference to the Certificates and as of any particular date, all Certificates theretofore delivered except (i) any Certificate canceled or fully paid by the Trustee at or before said date; (ii) any Certificate in lieu of or in substitution for which another Certificate shall have been delivered pursuant to the Trust Agreement; and (iii) for the sole purpose of determining the percentage of Certificate Owners consenting to an amendment to the Trust Agreement or authorizing any action by the Trustee or the exercise of any remedy under the Trust Agreement, any Certificate owned by the County or any of its departments, agencies, institutions, instrumentalities or political subdivisions; for all other purposes, Certificates owned by the County or any such entity which are not described in (i) and (ii) above shall be treated as Outstanding under the Trust Agreement.

*“Owner”* or *“Certificate Owner”* or *“Owner of Certificates”* or any similar term means, when used with respect to the Certificates, the registered owner of any Outstanding Certificate.

*“Permitted Investments”* means any investments legal for the investment of the funds of the County under State law, including, but not limited to, Section 21-06-07, N.D.C.C.; provided, however, that to the extent funds on deposit at the close of business of any banking day exceed available federal deposit insurance, the County shall require the financial institution to furnish collateral security, a corporate surety bond executed by a company authorized to do business in the State, or other form of collateral permitted by State law, the market value of which must be at least ten percent (10%) more than the amount on deposit.

*“Prepayment Price”* means the Principal Portion to be prepaid pursuant to the Lease, plus accrued interest to the date of redemption.

*“Principal Office”* means the designated office of the Trustee, initially its office situated in Bismarck, North Dakota, at which the Trustee conducts its corporate trust business; or any office so designated by a successor trustee.

*“Principal Portion”* means the portion of any Rental Payment designated as principal in the Lease.

*“Project”* means the Land together with the Improvements.

*“Rebate Account”* means the Rebate Account within the Trust Fund established pursuant to the Trust Agreement.

“*Record Date*” means the fifteenth (15<sup>th</sup>) day of the calendar month immediately preceding any Certificate Payment Date, regardless whether such day is a business day.

“*Redemption Account*” means the Redemption Account within the Trust Fund established pursuant to the Trust Agreement.

“*Register*” means the register maintained by the Registrar pursuant to the Trust Agreement.

“*Registrar*” means the Trustee or any successor registrar appointed by the Trustee pursuant to the Trust Agreement.

“*Rental Payment*” means the payment due from the County to the Trustee on each Rental Payment Date during the Lease Term, as shown in the Lease.

“*Rental Payment Account*” means the Rental Payment Account within the Trust Fund established pursuant to the Trust Agreement.

“*Rental Payment Date*” means the date upon which any Rental Payment is due and payable as shown in the Lease (the 25<sup>th</sup> day of April and October).

“*State*” means the State of North Dakota.

“*Supplemental Trust Agreement*” means any trust agreement supplemental or amendatory to the Trust Agreement entered into by the County and the Trustee pursuant to the Trust Agreement.

“*Trust Agreement*” means the Trust Agreement, dated as of October 1, 2020, by the Trustee and joined in by the County, and any amendment thereof or supplement thereto.

“*Trust Fund*” means the Trust Fund so designated, which is established by the Trustee under the Trust Agreement.

“*Trustee*” means the Bank of North Dakota, Bismarck, North Dakota, its successors and assigns.

“*Underwriter*” means Colliers Securities LLC, Minneapolis, Minnesota.

## **THE TRUST AGREEMENT**

*Establishment.* The County and the Trustee will enter into a Trust Agreement which authorizes the Trustee to prepare, execute and deliver the Certificates upon receipt of written instructions from the purchaser of the Certificates. The Trustee shall keep a copy of the Trust Agreement and, subject to the book-entry-only provisions, shall maintain books for the transfer of Certificates.

For the purpose of obtaining the money required for the financing of the costs of acquiring the Project, the Trustee holds in trust, for the benefit of the Owners of the Certificates, all of its right, title and interest in and to the Lease, the Ground Lease, the Rental Payments and other amounts due under the Lease, the Project, and the right to exercise all rights of Trustee under the Lease and Ground Lease; and in consideration of the execution of the Trust Agreement, the Trustee has agreed to execute and deliver the Certificates, each evidencing a proportionate undivided interest of the Owner thereof in the Lease and the Rental Payments due pursuant to the Lease.

*Application of Rental Payments.* All Rental Payments will be paid directly to the Trustee and will be deposited in the Rental Payment Account and applied by the Trustee solely for the benefit of registered owners of the Certificates.

Accounts. The Trust Agreement establishes the Barnes County, North Dakota, Lease-Purchase Agreement Trust Fund - Certificates of Participation, Series 2020 (the "Trust Fund"). The Trustee shall keep the Trust Fund separate and apart from all other funds and moneys held by it. Money in the Trust Fund shall be allotted and paid to the various funds and accounts as described in the Trust Agreement and summarized below:

- Construction Account, into which certain proceeds of the Certificates will be deposited. All moneys deposited in or transferred to the Construction Account shall be disbursed only for the payment of Construction Costs upon written direction of the County. Disbursements from the Construction Account shall be made by the Trustee upon receipt of a written request for disbursement executed by an Authorized Officer of the County. Following payment of all Construction Costs, or the transfer or disbursement described in the Trust Agreement, the Construction Account shall be closed.
- Rental Payment Account, into which shall be deposited (i) all Rental Payments received by the Trustee; (ii) any prepayments of Rental Payments made by the County under the Lease; and (iii) any other moneys received by the Trustee for deposit in the Rental Payment Account. The Trustee shall withdraw from the Rental Payment Account, on or before each Certificate Payment Date, an amount equal to the principal and interest payments due with respect to the Certificates on such Certificate Payment Date, and shall transmit the same to the Registrar to be applied to the payment of principal and interest payments due with respect to the Certificates on such Certificate Payment Date.
- Redemption Account, into which shall be deposited any moneys received for redemption of the Certificates and any moneys received in the event of termination of the Lease for nonappropriation or upon an event of default including, but not limited to, all net proceeds received from the sale, lease or other disposition of the Project. In the event of termination of the Lease, the Trustee shall transfer to the Redemption Account all moneys on hand in the Rental Payment Account not needed to pay principal and interest due or past due on the Certificates. All moneys on hand in the Redemption Account which will not be used for the redemption of the Certificates within 30 days after the date of its deposit or transfer to said Account, shall be invested at a yield not exceeding the yield on the Certificates, unless the County obtains and delivers to the Trustee an opinion of an attorney stating that the investment of such moneys may be made without restriction as to yield or may be made subject to another yield limitation, in which event the moneys in said Redemption Account may be invested in accordance with such opinion. All of said moneys shall be set aside in the Redemption Account for the purpose of redeeming the Certificates in advance of their maturity and shall be applied on or after the date of redemption to the payment of principal and interest with respect to the Certificates to be redeemed upon presentation and surrender of such Certificates.
- Rebate Account, into which shall be deposited the amount required to be rebated to the United States under the Code, and neither the County, the Trustee nor any Owner shall have any rights in or claims to such moneys. The Trustee shall make information regarding the investments under the Rebate Account available to the County and shall make deposits in and disbursements from the Rebate Account in accordance with the written instructions received from the County, shall invest the funds in the Rebate Account pursuant to said written instructions, and shall deposit income from such investments immediately upon receipt thereof in the Rebate Account.
- Cost of Issuance Account, into which certain proceeds of the Certificates will be deposited. All moneys deposited in or transferred to the Cost of Issuance Account shall be disbursed only for the payment of Cost of Issuance upon written direction of the County. Disbursements from the Cost of Issuance Account shall be made by the Trustee upon receipt of a written request for disbursement executed by an Authorized Officer of the County. Amounts remaining in the Cost of Issuance Account ninety (90) days after the Closing Date for the Certificates shall be deposited in the Construction Account.

Redemption. On any Certificate Payment Date on or after May 1, 2025, the Principal Portion of the Rental Payments may be prepaid, in whole or in part, and if in part, in multiples of \$5,000, at a price equal to the Principal Portion to be prepaid plus accrued interest to the date of redemption, all pursuant to the Lease.

Certificates maturing on certain dates set forth in the Trust Agreement are subject to mandatory sinking fund redemption, by random selection, at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without a premium, in the years and amounts set forth in the Trust Agreement.

The Certificates shall be subject to extraordinary redemption and prepayment, in whole but not in part, at the option of the County on any date upon the conditions and terms set forth in the Trust Agreement if there occurs an event of damage, destruction or condemnation relating to the Project and the County determines that rebuilding, restoration and replacement of the Project to an acceptable condition would not be economically feasible, subject to the provisions of the Lease. Such extraordinary redemption shall be at a price equal to the principal amount to be redeemed plus accrued interest to the redemption date without premium.

*Additional Certificates.* Provided the County is not in Default on the Lease, Additional Certificates may be issued under and be equally and ratably secured by the Trust Agreement on a parity with the Certificates and any other Additional Certificates Outstanding, at any time and from time to time, upon compliance with the provisions of this Section, for any of the following purposes:

- (i) to provide funds to pay all or any part of the costs of acquisition, construction, furnishing and equipping of additions or expansions to the Project; or
- (ii) to provide funds to pay all or any part of the costs of repairing, replacing or restoring the Project in the event of damage, destruction or condemnation thereto or thereof, but only to the extent that such costs exceed the Net Proceeds of the insurance or condemnation awards out of which such costs are to be paid pursuant to Article VI or Article VII of the Lease.

Before any Additional Certificates shall be issued under the provisions of this Section, the County shall adopt a resolution (a) authorizing or approving the issuance of such Additional Certificates; (b) authorizing or approving the execution of a Supplemental Trust Agreement for the purpose of issuing such Additional Certificates and fixing the amount and terms thereof and describing the purpose or purposes for which such Additional Certificates are being issued; and, if required, (c) authorizing the execution of an amendment to the Lease to provide for Rental Payments at least sufficient to pay, on any Rental Payment date, amounts representing principal, premium, if any, and interest with respect to the Certificates then to be Outstanding (including the Additional Certificates to be issued) as the same become due during such Rental Payment date.

Such Additional Certificates shall have the same designation as the Certificates, shall be dated, shall mature on May 1 or November 1 in such year or years, shall provide for amounts representing interest at such rate or rates not exceeding the maximum rate then permitted by law, and shall be redeemable at such times and prices (subject to the provisions of Article III of the Trust Agreement), all as may be provided by the Supplemental Trust Agreement authorizing the issuance of such Additional Certificates. Except as to any difference in date, maturity, interest rate or redemption provisions, such Additional Certificates shall be on a parity with and shall be entitled to the same benefit and security of the Trust Agreement as the Certificates and any other Additional Certificates Outstanding after the issuance of such Additional Certificates.

Such Additional Certificates shall be executed substantially in the form and manner set forth in Exhibit A to the Trust Agreement, but prior to or simultaneously with the execution of such Additional Certificates there shall be filed with the Trustee the following:

- (1) an original or certified copy of a resolution adopted by the County Commission authorizing or approving the issuance of such Additional Certificates and the execution of such Supplemental Trust Agreement;
- (2) an original executed counterpart of the Supplemental Trust Agreement providing for the issuance of such Additional Certificates;
- (3) an original executed counterpart of the amendment to the Lease, if required, which amendment shall clearly establish that the County has agreed that the Additional Certificates shall constitute Certificates for the purpose of computing the required Rental Payments;

(4) a request and authorization to the Trustee, on behalf of the County, executed by an Authorized Officer, to execute the Additional Certificates and to deliver them to the purchaser therein identified upon payment of the purchase price thereof to the Trustee. The Trustee shall be entitled to rely conclusively upon such request and authorization as to the name of the Underwriter and the amount of such purchase price;

(5) an opinion of counsel nationally recognized in the area of municipal finance to the effect that the issuance of such Additional Certificates will not result in amounts representing interest payable with respect to any Certificates then Outstanding (including such Additional Certificates) becoming includable in gross income for federal income tax purposes; and

(6) such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of such Additional Certificates.

Deposit and Investment of Moneys in Funds. All moneys held by the Trustee in the Trust Fund shall be deposited or invested in Permitted Investments, pursuant to written instructions of an Authorized Officer of the County. Such Permitted Investments shall be registered in the name of the Trustee, as Trustee, and held by the Trustee. The Trustee may purchase from or sell to itself or any affiliate, as principal or agent, investments authorized by the Trust Agreement.

Employment of Trustee. The Trustee and the County agree under the Trust Agreement to employ the Trustee to receive, hold, invest and disburse the moneys to be paid to it pursuant to the Lease for credit to the various accounts in the Trust Fund established by the Trust Agreement; to prepare, execute, deliver and deal with the Certificates; and to apply and disburse the Rental Payments received from the County to the Owners of Certificates; and to perform certain other functions; all as provided in the Trust Agreement and subject to the terms and conditions of the Trust Agreement.

Trustee; Duties, Removal and Resignation. The Trustee shall, prior to any event of default and after curing all events of default which may have occurred, perform such duties and only such duties as are specifically set forth in the Trust Agreement, and no implied covenants or obligations shall be read into the Trust Agreement against the Trustee. The Trustee shall, during the existence of any event of default which has not been cured, exercise such of the rights and powers vested in it by the Trust Agreement and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of their own affairs. The Trustee and the County may by written agreement between themselves, or the holders of a majority in aggregate principal amount of all Certificates Outstanding may by written request, remove the Trustee initially a party to the Trust Agreement and any successor thereto, and may appoint a successor Trustee, but any such successor shall be a trust company or bank having trust powers and having a reported capital and surplus not less than \$25,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms. The Trustee and any successor trustee may at any time resign from the trusts created by the Trust Agreement by giving 30 days written notice to the County and by first class mail to each Certificate Owner as shown on the Register, and such resignation shall take effect upon the appointment of a successor trustee by the Owners or by the County. Such notice to the County may be served personally or sent by registered or certified mail. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 60 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

Appointment of Successor Trustee. In case the Trustee shall resign or be removed, or be dissolved or shall be in course of dissolution or liquidation, or otherwise become incapable of acting under the Trust Agreement, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Owners of a majority in aggregate principal amount of the then Outstanding Certificates, by an instrument or concurrent instrument in writing signed by such Owners, or by their attorney-in-fact, duly authorized. Nevertheless, in case of such vacancy the County by resolution of its governing body may appoint a temporary trustee to fill such vacancy until a successor trustee shall be appointed by the Owners in the manner above provided; and any such temporary trustee so appointed by the County shall immediately and without further act be superseded by the Trustee so appointed by such Owners. Every such Trustee appointed pursuant to the provisions of the Trust Agreement shall be a trust company or bank having trust powers and having a reported capital and surplus

not less than \$25,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

## **THE LEASE**

The following is a summary of certain provisions of the Lease.

*Lease Terms and Payments.* The Lease is dated as of October 1, 2020, and extends until the date upon which the County has paid all Rental Payments unless terminated prior to said date as described herein and in the Lease. Each Rental Payment is due to the Trustee on the 25<sup>th</sup> of the month preceding each payment date. The first Rental Payment is due on April 25, 2021, and semiannually thereafter on each April 25 and October 25.

The Lease shall terminate upon the earliest of any of the following events:

- (i) the payment by the County of its obligation to pay all Rental Payments required to be paid by it under the Lease;
- (ii) the prepayment by the County of all Rental Payments required to be paid by it under the Lease;
- (iii) termination by the County by Nonappropriation; or
- (iv) a default by the County and the Trustee's election to terminate the Lease.

*Nonappropriation.* The County shall have the right to terminate the Lease, in whole but not in part, at the end of any Fiscal Year of the County, in the manner and subject to the terms specified in the Lease, if the County Commission does not appropriate or budget moneys sufficient to pay the Rental Payments coming due in the next Fiscal Year, as determined by the County's budget for the Fiscal Year in question. The County may effect such termination by giving the Trustee a written notice of termination by October 15, as evidenced by a resolution of the County Commission specifically determining not to provide moneys to pay Rental Payments for the succeeding Fiscal Year and all future Fiscal Years, and stating the County Commission's determination to terminate the Lease, and by paying to the Trustee any Rental Payments which are due and have not been paid at or before the end of its then current Fiscal Year. In the event of termination of the Lease, the County shall surrender possession of the Project to the Trustee in accordance with the Lease and convey to the Trustee or release its interest in the Project under the Lease within ten days after the expiration of the then-current Fiscal Year.

*Covenants of the County.* The County represents, covenants and warrants that:

- (i) the County is a duly formed and validly existing political subdivision of the State of North Dakota (the "State"), governed by the Constitution and laws of the State;
- (ii) the County is authorized under the Constitution and laws of the State to construct, operate and maintain the Improvements; to enter into the Lease, the Ground Lease, the Trust Agreement and the transactions contemplated therein, and to perform all of its obligations thereunder;
- (iii) the officers of the County executing the Lease, the Ground Lease and the Trust Agreement have been duly authorized to execute and deliver such documents;
- (iv) the County has complied with all open meeting laws, all public bidding laws and all other State and Federal Laws applicable to the Lease and the construction of the Improvements by the County;
- (v) the County will not pledge, mortgage or assign the Project or the Lease, or its duties and obligations thereunder to any other person, firm or corporation except as provided under the terms of the Lease;

(vi) the Project will be used during the term of the Lease to carry out the governmental or proprietary purposes of the County;

(vii) the officers of the County responsible for budget preparation will include in the annual budget request, for each Fiscal Year during the Term of the Lease, moneys sufficient to pay and for the purpose of paying all Rental Payments and other obligations of the County under the Lease, and the County has moneys available and sufficient to pay all obligations under the Lease in the current Fiscal Year;

(viii) the County intends to continue the Lease for its entire stated Term and to pay all Rental Payments. The County reasonably believes that moneys in an amount sufficient to make all such Rental Payments can and will lawfully be appropriated or budgeted and made available for this purpose;

(ix) the Lease does not constitute a general obligation of the County, and the full faith and credit and taxing powers of the County are not pledged for the payment of the Rental Payments or other amounts coming due, or other actions required to be performed, under the Lease; the County Commission is not obligated to appropriate or otherwise provide moneys for the payment of the Rental Payments or any other amounts coming due under the Lease in any future Fiscal Year; and in the event of Nonappropriation by the County Commission, the County shall not be liable for general, special, incidental, consequential or other damages resulting therefrom except as provided in the Lease;

(x) the County will file with the Internal Revenue Service the information reporting statement required by Section 149(e) of the Code, and Treasury Regulations promulgated thereunder;

(xi) the County will take no action that would cause the Interest Portion of the Rental Payments received by the registered owners of the Certificates to become includable in gross income of such owners for federal income tax purposes under the Code and Regulations, and the County will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the Interest Portion of the Rental Payments received by the registered owners of the Certificates does not become includable in gross income of such owners for federal income tax purposes under the Code and Regulations; and

(xii) the economic useful life of the Improvements is substantially greater than the Lease Term.

*Maintenance and Modification.* The County shall, at its own expense, maintain, preserve and keep the Project in good repair, working order and condition, and shall from time to time make all repairs, replacements and improvements necessary to keep the Project in such condition. The Trustee shall have no responsibility for any of these repairs, replacements or improvements. In addition, the County shall, at its own expense, have the right to remodel the Project or to make additions, modifications and improvements thereto. All such additions, modifications and improvements shall thereafter comprise part of the Project and be subject to the provisions of the Lease. Such additions, modifications and improvements shall not in any way damage the Project and the Project, upon completion of any additions, modifications and improvements made pursuant to the Lease, shall be of a value not less than the value of the Project immediately prior to the making of such additions, modifications and improvements. Any property for which a substitution or replacement is made pursuant to the Lease may be disposed of by the County in such manner and on such terms as are determined by the County.

The County will not permit any construction or other lien to be established or remain against the Project for labor or materials furnished in connection with any improvements made by the County pursuant to the Lease; provided that if any such lien is established and the County shall first notify the Trustee of the County's intention to do so, the County may in good faith contest any lien filed or established against the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Trustee shall notify the County that, in the opinion of counsel, by non-payment of any such item the interest of the Trustee in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event the County shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide the Trustee with full security against any such loss or forfeiture, in form satisfactory to the Trustee. The Trustee will cooperate fully with the County in any such contest, upon the request and at the expense of the County. Subject to certain requirements, the County may issue Additional Certificates on a parity with the Certificates.

Taxes, Other Governmental Charges and Utility Charges; Compliance with Governmental Requirements.

Except as expressly limited by the Lease, the County shall pay all taxes and other charges of any kind which are at any time lawfully assessed or levied against or with respect to the Project, the Rental Payments or any part thereof, or which become due during the Term of the Lease, whether assessed against the County or the Trustee. The County shall also pay or cause to be paid when due all gas, water, steam, electricity, heat, power, telephone and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project. The County shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by the Trustee, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment, or charge which is the obligation of the County.

Insurance and Indemnification. The County shall cause adequate public liability, workers' compensation and property damage insurance as specified in the Lease to be carried and maintained with respect to the Project and to protect the County from liability in all events. The County may self-insure in compliance with the law and the provisions of the Lease.

Assignment and Subleasing by the County. Neither the Lease nor the County's interest in the Project may be assigned or subleased by the County without the written consent of the Trustee. The County will not mortgage, sell, assign, transfer or convey the Project or any portion thereof during the Term of the Lease without the written consent of the Trustee. Notwithstanding the foregoing, the County may lease beds to other local jurisdictions on a short term basis, to the extent the County has idle beds in the Project.

County Negligence. As between the Trustee and the County, the County assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Project and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of the County, the Trustee or of third parties, and whether such property damage be to the County or the Trustee's property or the property of others, which is proximately caused by the negligent conduct of the County, its officers, employees, agents, licensees, and lessees, or arising out of the operation, maintenance or use of the Project by the County, its officers, employees, agents, licensees and lessees. To the extent permitted by law, the County assumes responsibility for and agrees to indemnify, defend and hold harmless the Trustee, its directors, officers, employees and agents, and any assignee of the Trustee, without payment being made by the Trustee, from and against all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against the Trustee or its directors, officers, employees, agents or assignees that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part on the foregoing, to the maximum extent permitted by law.

Events of Default and Remedies. The occurrence of one or more of the following events shall constitute an Event of Default under the Lease:

(i) failure by the County to pay any Rental Payment or other payment required to be paid under the Lease at the time specified therein and the continuation of said failure for a period of three days after telephonic, telegraphic or other electronic notice to be subsequently confirmed in writing, or after written notice;

(ii) failure by the County to observe and perform any covenant, condition or agreement on its part to be observed or performed under the Trust Agreement, the Lease, or the Ground Lease, other than the failure to timely pay any Rental Payment or other required payment under the Lease, for a period of 45 days after written notice to the County by the Trustee, specifying such failure and requesting that it be remedied, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Trustee shall not withhold unreasonably its consent to an extension of such time if corrective action is instituted by the County within the applicable period and diligently pursued until the default is corrected; or

(iii) the filing by the County of a voluntary petition in bankruptcy, or failure by the County promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of the County to carry on its governmental or proprietary function or adjudication of the County as a bankrupt,



or assignment by the County for the benefit of creditors, or the entry by the County into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the County in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

If a default occurs under the above due to acts or events not within the reasonable control of the County (“Force Majeure”), other than the default described in (i) above, the County shall not be deemed in default during the continuation of such Force Majeure. The term “Force Majeure” as used in the Lease shall mean, without limitation, the following: strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or any of its departments, agencies or officials, or any civil or military trustee; orders or restraints of any kind of the government of the State of North Dakota or any of its departments, agencies or officials; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of the County and not resulting from its negligence.

Upon the occurrence of any Event of Default specified in the Lease, any or all of the following remedies may be taken by the Trustee:

(a) the Trustee, with or without terminating the Lease, may declare all Rental Payments due or to become due during the Fiscal Year in effect when the default occurs to be immediately due and payable;

(b) the Trustee, with or without terminating the Lease, may enforce the Ground Lease, repossess the Project by giving the County written notice to surrender the Project to the Trustee for the remaining term of the Ground Lease. If the Project or any portion of it has been destroyed or damaged beyond repair, the County shall pay the principal amount of all unpaid Rental Payments (less credit for Net Proceeds), to the Trustee. Notwithstanding the fact that the Trustee has taken possession of the Project, the County shall continue to be responsible for the Rental Payments due during the Fiscal Year then in effect. If the Lease has not been terminated, the Trustee shall return the Project to the County at the County’s expense when the event of default is cured, or as required by the Ground Lease;

(c) if the Trustee terminates the Lease and takes possession of the Project, the Trustee shall thereafter use its best efforts to sell or lease its interest in the Project or any portion thereof in a commercially reasonable manner in accordance with applicable State laws. The Trustee shall apply the proceeds of such sale or lease to pay the following items in the following order: (1) all costs incurred in securing possession of the Project; (2) all expenses incurred in completing the sale including attorney’s fees together with all amounts otherwise owing to the Trustee under the Lease or Trust Agreement; (3) the principal portion of all unpaid Rental Payments; and (4) the balance of any Rental Payments owed by the County during the Fiscal Year then in effect. Any sale proceeds remaining after the requirements of clauses (1), (2), (3) and (4) have been met may be retained by the County; or

(d) if the proceeds of sale and or lease of the County’s interest in the Project are not sufficient to pay the balance of any Rental Payments owed by the County during the Fiscal Year then in effect, the Trustee may take any other remedy available at law or in equity to require the County to perform any of its obligations under the Lease.

*Damage, Destruction and Condemnation.* If the Project or any portion thereof is destroyed (in whole or in part) or damaged by fire or other casualty, or if title to or the temporary use of the Project or any part thereof, or the interest of the County or the Trustee in the Project or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Net Proceeds of any insurance or condemnation award shall be applied (i) to the prompt repair, restoration, modification, improvement or replacement of the Project by the County and the Lease shall continue in effect, or (ii) if the County elects not to repair or rebuild, to prepay Rental Payments. In either event, all Net Proceeds not needed for such purposes shall belong to the County.

## **THE GROUND LEASE**

Under the terms of the Ground Lease between the County and the Trustee, the County is leasing the Project to the Trustee. The term of the Ground Lease is until the earlier of (i) May 1, 2070; (ii) the payment by the County of all Rental Payments and other amounts owing to the Trustee under the Lease; or (iii) the termination of the Lease and receipt by the Trustee of funds sufficient to discharge the obligations under the Lease.

Pursuant to the Lease, the Trustee will sublease and sell its interest in the Ground Lease back to the County. At any time when the purchase price for the Project, together with any unpaid or delinquent interest, has been fully paid or provided for, then the purchase of the Project by the County shall be deemed to have occurred.

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**APPENDIX D**

**FORM OF CONTINUING DISCLOSURE UNDERTAKING**

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**APPENDIX D**

**FORM OF CONTINUING DISCLOSURE UNDERTAKING**

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**CONTINUING DISCLOSURE AGREEMENT**

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*between*

**BARNES COUNTY, NORTH DAKOTA**

*and*

**BANK OF NORTH DAKOTA**

*relating to*

**\$15,435,000  
CERTIFICATES OF PARTICIPATION  
SERIES 2020**

**Dated as of October 1, 2020**

**This Instrument Drafted By:  
Arntson Stewart Wegner PC  
3101 Broadway North, Suite B  
Fargo, North Dakota 58102**

## CONTINUING DISCLOSURE AGREEMENT

**THIS CONTINUING DISCLOSURE AGREEMENT** (the “Disclosure Agreement”) is made and entered into as of October 1, 2020, by **BARNES COUNTY, NORTH DAKOTA** (the “County”) and the **BANK OF NORTH DAKOTA** (the “Trustee”), in connection with the \$15,435,000 Certificates of Participation, Series 2020 (the “Certificates”) evidencing the proportionate interest in certain rental payments to be made by the County under a Lease-Purchase Agreement dated as of October 1, 2020, between the County and the Trustee (the “Lease”). The Certificates are issued pursuant to a Trust Agreement dated as of October 1, 2020, by the Trustee and the County (the “Trust Agreement”). Pursuant to Section 5.17 of the Trust Agreement, the County and the Trustee covenant and agree as follows:

**SECTION 1. PURPOSE OF THE DISCLOSURE AGREEMENT.** This Disclosure Agreement is being executed and delivered by the County and the Trustee for the benefit of the Owners of the Certificates and in order to assist the Participating Underwriters in complying with the Rule (defined below). This Disclosure Agreement constitutes the written undertaking required by the Rule.

**SECTION 2. DEFINITIONS.** In addition to the definitions set forth in the Trust Agreement, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

**“Annual Report”** shall mean any Annual Report provided by the County pursuant to and as described in, Sections 3 and 4(a) of this Disclosure Agreement.

**“Disclosure Representative”** shall mean the County Auditor of the County or his or her designee, or such other person as the County shall designate in writing to the Dissemination Agent from time to time.

**“Dissemination Agent”** shall mean the Trustee acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the County and which has filed with the Dissemination Agent a written acceptance of such designation.

**“Final Official Statement”** shall mean the deemed final official statement dated October 5, 2020, which constitutes the final official statement delivered in connection with the Certificates, which is available from the Repository.

**“Financial Obligation”** means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) a guarantee of (i) or (ii). The term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

**“Financial Statements”** shall mean audited or, if unavailable, unaudited general purpose financial statements of the County prepared in accordance with generally accepted accounting principles, as in effect from time to time or as required to be modified as a matter of law. If unaudited financial statements are provided, audited financial statements will be provided when and if available.

**“Fiscal Year”** shall mean the period beginning on January 1 and ending on December 31 of each year or such other fiscal year determined by the County.

**“Listed Events”** shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

**“Participating Underwriter”** shall mean the original underwriter of the Certificates required to comply with the Rule in connection with the offering of the Certificates.

**“Repository”** shall mean the Electronic Municipal Market Access system maintained by the Municipal Securities Rulemaking Board or any other nationally recognized municipal securities information repository recognized from time to time by the Securities and Exchange Commission for purposes of the Rule.

“**Rule**” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time, and including written interpretations thereof by the Securities and Exchange Commission.

**SECTION 3. PROVISION OF ANNUAL REPORTS.**

(a) The County shall, or shall cause the Dissemination Agent to, not later than December 31 of each Fiscal Year, commencing with the Fiscal Year ending December 31, 2020, provide to the Repository an Annual Report which is consistent with the requirements of Section 4(a) of this Disclosure Agreement. Not later than fifteen (15) Business Days prior to said date, the County shall provide the Annual Report to the Dissemination Agent. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4(b) of this Disclosure Agreement; provided, that the financial statements of the County may be submitted separately from the balance of the Annual Report.

(b) If by fifteen (15) Business Days prior to the date specified in subsection (a) of this Section for providing the Annual Report to the Repository, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the County to determine if the County is in compliance with subsection (a) of this Section. If the County does not provide to the Dissemination Agent a copy of an Annual Report by the applicable date required in Section 3(a) above, the Dissemination Agent shall send a notice to the County, the Repository, and the Participating Underwriter, in substantially the form attached as Exhibit A.

(c) The Dissemination Agent shall transmit the Annual Report to the Repository and file a report with the County certifying that the Annual Report has been provided pursuant to this Disclosure Agreement and stating the date it was provided.

**SECTION 4. CONTENT OF ANNUAL REPORTS.**

(a) The County’s Annual Report shall contain or incorporate by reference the following:

(i) Financial Statements of the County, and

(ii) updated information contained in Appendix A of the Final Official Statement under the headings:

(A) Bonded Debt;

(B) Valuations; and

(C) Tax Information, including Tax Levies and Collections, Largest Property Taxpayers, and County Mill Levy.

(b) Any or all of the items listed above may be incorporated by reference from other documents, including official statements, which have been filed with the Repository. If the document incorporated by reference is a final official statement, it must be available from the Repository. The County shall clearly identify each such other document so incorporated by reference.

**SECTION 5. REPORTING OF LISTED EVENTS.**

(a) The County shall also provide in a timely manner not in excess of ten (10) business days after the occurrence of the event, to the Repository notice of the occurrence of any of the following events of which the Disclosure Representative or designee shall have actual knowledge:

(i) principal and interest payment delinquencies;

(ii) non-payment related defaults;



(iii) unscheduled draws on debt service reserves reflecting financial difficulties (the Certificate issue has no debt service reserves);

(iv) unscheduled draws on credit enhancements reflecting financial difficulties (the Certificate issue has no credit enhancements);

(v) substitution of credit or liquidity providers, or their failure to perform (the Certificate issue has no credit or liquidity providers);

(vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;

(vii) modifications to rights of Owners of the Certificates;

(viii) Certificate calls, if material, and tender offers;

(ix) defeasances;

(x) release, substitution, or sale of property securing repayment of the Certificates;

(xi) rating changes;

(xii) bankruptcy, insolvency, receivership or similar events of the County;

(xiii) the consummation of a merger, consolidation or acquisition involving the County or the sale of all or substantially all of the assets of the County, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material;

(xv) incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, if material; and

(xvi) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties.

(b) Unless otherwise required by law, the County shall provide notices of Listed Events required by this Section to the Repository.

(c) Unless otherwise required by law and subject to technical and economic feasibility, the County shall employ such methods of information transmission as shall be requested or recommended by the designated recipients of the County's information.

**SECTION 6. TERMINATION OF REPORTING OBLIGATION.** The County's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Certificates.

**SECTION 7. DISSEMINATION AGENT.** The County has engaged the Dissemination Agent to assist the County in disseminating information hereunder. The County shall send all Annual Reports required by Section 3 hereof, and Event Notices required by Section 5 hereof, to the Dissemination Agent. The Dissemination Agent shall,

within five (5) days of receipt of such Annual Report and within ten (10) days of the occurrence of the events requiring an Events Notice, forward such information to the Repository. The County may discharge the Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the County Auditor shall be the Dissemination Agent. The Dissemination Agent does not have any duty to review the materials described in this paragraph prior to disseminating such materials.

**SECTION 8. AMENDMENT; WAIVER.** Notwithstanding any other provision of this Disclosure Agreement, the County and the Dissemination Agent may amend this Disclosure Agreement (and the Dissemination Agent shall agree to any amendment so requested by the County) and any provision of this Disclosure Agreement may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to both the County and the Dissemination Agent to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule.

**SECTION 9. ADDITIONAL INFORMATION.** Nothing in this Disclosure Agreement shall be deemed to prevent the County from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the County chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Agreement, the County shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

**SECTION 10. DEFAULT.** In the event of a failure of the County or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Dissemination Agent may (and, at the request of the holders of at least twenty-five percent (25%) aggregate principal amount of Outstanding Certificates, shall), or any beneficial owners, may seek mandate or specific performance by court order, to cause the County or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Trust Agreement, and the sole remedy under this Disclosure Agreement in the event of any failure of the County or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

**SECTION 11. DUTIES, IMMUNITIES AND LIABILITIES OF DISSEMINATION AGENT.** The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the County agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have no duty or obligation to review or verify any information provided to it by the County or to determine the materiality of a Listed Event and shall not be deemed to be acting in any fiduciary capacity for the County, the Certificate Owners or any other party. The Dissemination Agent shall have no responsibility for the County's failure to report to the Dissemination Agent a Listed Event. The obligations of the County under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Certificates.

**SECTION 12. BENEFICIARIES.** This Disclosure Agreement shall inure solely to the benefit of the County, the Dissemination Agent, the Participating Underwriter and the Owners, including beneficial owners, from time to time of the Certificates, and shall create no rights in any other person or entity.

**SECTION 13. COUNTERPARTS.** This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*(Remainder of this page intentionally left blank.)*

**IN WITNESS WHEREOF**, the County and the Dissemination Agent have caused this Disclosure Agreement to be executed by their duly authorized officers, all as of the date first above written.

**BARNES COUNTY, NORTH DAKOTA**

\_\_\_\_\_  
Chair, Board of County Commissioners

ATTEST:

\_\_\_\_\_  
County Auditor

**BANK OF NORTH DAKOTA**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

**NOTICE TO REPOSITORY  
OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: **Barnes County, North Dakota**  
Name of Bond Issue: **Certificates of Participation, Series 2020**  
Date of Issuance: **October 14, 2020**  
Dissemination Agent: **Bank of North Dakota**

**NOTICE IS HEREBY GIVEN** that the Issuer has not provided an Annual Report due \_\_\_\_\_, with respect to the above-named Certificates of Participation as required by the Continuing Disclosure Agreement dated as of October 1, 2020. The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_.

**BANK OF NORTH DAKOTA,  
as Dissemination Agent**

By: \_\_\_\_\_  
Authorized Signatory

cc: Barnes County, North Dakota  
Colliers Securities LLC

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**APPENDIX E**

**BOOK-ENTRY ONLY SYSTEM**

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## APPENDIX E

### BOOK-ENTRY ONLY SYSTEM

*The information in this APPENDIX E concerning DTC (as defined below), Cede & Co. and the Book-Entry System has been furnished by DTC for use in disclosure documents such as this Official Statement. The County and the Underwriter believe such information to be reliable, but neither the County nor the Underwriter takes any responsibility for the accuracy or completeness thereof.*

The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the securities discussed in the body of this Official Statement (the “Certificates”). The Certificates will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Certificate will be issued for each maturity of the Certificates, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.7 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of the Certificates under the DTC system must be made by or through Direct Participants which will receive a credit for the Certificates on DTC’s records. The ownership interest of each actual purchaser of each Certificate (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Certificate are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Certificates, except in the event that use of the book-entry system for the Certificates is discontinued.

To facilitate subsequent transfers, all Certificates deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Certificates with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Certificates; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Certificates are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Certificates may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Certificates, such as redemptions, tenders, defaults, and proposed amendments



to the Certificate documents. For example, Beneficial Owners of the Certificates may wish to ascertain that the nominee holding the Certificates for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

Redemption notices are required to be sent to DTC. If less than all of the Certificates within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to Certificates unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the County as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Certificates are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Certificates will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from the County or the Trustee on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, or County, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the County or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Beneficial Owner will give notice to elect to have its Certificates purchased or tendered, through its Participant, to the Trustee, and will effect delivery of such Certificates by causing the Direct Participant to transfer the Participant's interest in the Certificates, on DTC's records, to the Trustee. The requirement for physical delivery of Certificates in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Certificates are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Certificates to the Trustee's DTC account.

DTC may discontinue providing its services as depository with respect to the Certificates at any time by giving reasonable notice to the County or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Certificate certificates are required to be printed and delivered. The County may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Certificate certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the County believes to be reliable, but the County takes no responsibility for the accuracy thereof.

THE INFORMATION ABOVE DISCUSSING THE BOOK-ENTRY SYSTEM HAS BEEN FURNISHED BY DTC. NO REPRESENTATION IS MADE BY THE COUNTY OR THE UNDERWRITER AS TO THE COMPLETENESS OR ACCURACY OF SUCH INFORMATION OR AS TO THE ABSENCE OF MATERIAL ADVERSE CHANGES IN SUCH INFORMATION SUBSEQUENT TO THE DATE HEREOF. NO ATTEMPT HAS BEEN MADE BY THE COUNTY OR THE UNDERWRITER TO DETERMINE WHETHER DTC IS OR WILL BE FINANCIALLY OR OTHERWISE CAPABLE OF FULFILLING ITS OBLIGATIONS. THE COUNTY HAS NO RESPONSIBILITY OR OBLIGATION TO DTC PARTICIPANTS, INDIRECT PARTICIPANTS OR BENEFICIAL OWNERS, OR THE PERSONS FOR WHICH THEY ACT AS NOMINEES WITH RESPECT TO THE CERTIFICATES, OR FOR ANY PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST PAYMENT THEREON.

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**APPENDIX F**

**FORM OF BOND COUNSEL OPINION**

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**APPENDIX F**

**FORM OF BOND COUNSEL OPINION**

October 14, 2020

Barnes County, North Dakota  
230 4<sup>th</sup> Street NW, Room 202  
Valley City, ND 58072

Colliers Securities LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, MN 55402

**\$15,435,000**  
**Certificates of Participation, Series 2020**  
**in a Lease-Purchase Agreement dated as of October 1, 2020, between**  
**the Bank of North Dakota**  
**and Barnes County, North Dakota**

We have acted as counsel to Barnes County, North Dakota (the “Lessee”) in connection with the Lease-Purchase Agreement described above (the “Lease”). In such capacity we have reviewed copies of a Ground Lease dated as of October 1, 2020, by and between the Lessee, as lessor, and the Bank of North Dakota (the “Trustee”), as lessee (the “Ground Lease”); the Lease and the exhibits attached thereto; a Trust Agreement dated as of October 1, 2020, executed by the Trustee and joined in by the Lessee, including the form of Certificate of Participation, Series 2020 attached thereto (the “Trust Agreement”); and such certified proceedings and other papers as we deem necessary to render this opinion.

Under the Lease, the Project (as defined therein) is being leased and/or sold to the Lessee, and the Lessee has undertaken to pay rental payments with respect thereto (the “Rental Payments”). The Rental Payments are payable exclusively from moneys to be legally appropriated and provided therefor by the Lessee. In the sole event that moneys are not so appropriated and provided, the Lessee may, by written notice to the Trustee, as lessor, discontinue the Lease at the end of any fiscal year of the Lessee (January 1 through December 31) then in effect. If the Lessee discontinues the Lease at the end of any such fiscal year in the manner provided therein, the Lease is terminated without penalty or liability on the part of the Lessee to pay any Rental Payments coming due after the fiscal year then in effect, but in such event, the Lessee has the obligation to surrender the Project for the remaining term of the Ground Lease, as described in the Lease and the Ground Lease. In the event the Lessee does not discontinue the Lease and pays all Rental Payments due in accordance therewith, the rights of the Trustee in the Project are terminated.

Based on our examination, and based upon existing law, we are of the opinion, as of the date hereof as follows:

1. The Lessee is political subdivision of the State of North Dakota (the “State”), duly organized, existing and operating under the Constitution and laws of the State.
2. The Lessee is authorized and has power under State law to enter into the Lease, the Ground Lease, and the Trust Agreement and to carry out its obligations thereunder and the transactions contemplated thereby.
3. The Lease, the Ground Lease and the Trust Agreement have been duly authorized, approved, executed and delivered by and on behalf of the Lessee and are valid and binding agreements of the Lessee enforceable against the Lessee in accordance with their terms.
4. The Lease and the obligations of the Lessee thereunder are special, limited obligations of the Lessee payable in each fiscal year from amounts appropriated for such purpose in the annual budget of the Lessee, provided

that the Lessee is not obligated to make any such appropriation. In the event the Lessee fails to appropriate funds for the Rental Payments, the Lease will terminate.

5. The interest component of each Rental Payment (as defined in the Lease) received by the registered owners of the Certificates of Participation issued under the Trust Agreement is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. The opinions set forth in the preceding sentence are subject to the condition that the Lessee comply with all requirements of the Internal Revenue Code of 1986, as amended (the "Code"), that must be satisfied subsequent to the execution of the Lease in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The Lessee has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest in gross income for federal income tax purposes to be retroactive to the date of execution of the Lease. We express no opinion regarding other federal tax consequences arising with respect to the Lease.

6. The interest component of the Rental Payments is excluded from gross income for State of North Dakota income tax purposes.

It is to be understood that the rights of the Trustee and the owners of the Certificates of Participation, and the enforceability of the Lease, may be subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may be subject to the exercise of judicial discretion in appropriate cases.

Sincerely,

**ARNTSON STEWART WEGNER PC**

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**CONTINUING DISCLOSURE AGREEMENT**

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*between*

**BARNES COUNTY, NORTH DAKOTA**

*and*

**BANK OF NORTH DAKOTA**

*relating to*

**\$15,435,000  
CERTIFICATES OF PARTICIPATION  
SERIES 2020**

**Dated as of October 1, 2020**

**This Instrument Drafted By:  
Arntson Stewart Wegner PC  
3101 Broadway North, Suite B  
Fargo, North Dakota 58102**

## CONTINUING DISCLOSURE AGREEMENT

**THIS CONTINUING DISCLOSURE AGREEMENT** (the “Disclosure Agreement”) is made and entered into as of October 1, 2020, by **BARNES COUNTY, NORTH DAKOTA** (the “County”) and the **BANK OF NORTH DAKOTA** (the “Trustee”), in connection with the \$15,435,000 Certificates of Participation, Series 2020 (the “Certificates”) evidencing the proportionate interest in certain rental payments to be made by the County under a Lease-Purchase Agreement dated as of October 1, 2020, between the County and the Trustee (the “Lease”). The Certificates are issued pursuant to a Trust Agreement dated as of October 1, 2020, by the Trustee and the County (the “Trust Agreement”). Pursuant to Section 5.17 of the Trust Agreement, the County and the Trustee covenant and agree as follows:

**SECTION 1. PURPOSE OF THE DISCLOSURE AGREEMENT.** This Disclosure Agreement is being executed and delivered by the County and the Trustee for the benefit of the Owners of the Certificates and in order to assist the Participating Underwriters in complying with the Rule (defined below). This Disclosure Agreement constitutes the written undertaking required by the Rule.

**SECTION 2. DEFINITIONS.** In addition to the definitions set forth in the Trust Agreement, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

**“Annual Report”** shall mean any Annual Report provided by the County pursuant to and as described in, Sections 3 and 4(a) of this Disclosure Agreement.

**“Disclosure Representative”** shall mean the County Auditor of the County or his or her designee, or such other person as the County shall designate in writing to the Dissemination Agent from time to time.

**“Dissemination Agent”** shall mean the Trustee acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the County and which has filed with the Dissemination Agent a written acceptance of such designation.

**“Final Official Statement”** shall mean the deemed final official statement dated October 5, 2020, which constitutes the final official statement delivered in connection with the Certificates, which is available from the Repository.

**“Financial Obligation”** means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) a guarantee of (i) or (ii). The term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.



***“Financial Statements”*** shall mean audited or, if unavailable, unaudited general purpose financial statements of the County prepared in accordance with generally accepted accounting principles, as in effect from time to time or as required to be modified as a matter of law. If unaudited financial statements are provided, audited financial statements will be provided when and if available.

***“Fiscal Year”*** shall mean the period beginning on January 1 and ending on December 31 of each year or such other fiscal year determined by the County.

***“Listed Events”*** shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

***“Participating Underwriter”*** shall mean the original underwriter of the Certificates required to comply with the Rule in connection with the offering of the Certificates.

***“Repository”*** shall mean the Electronic Municipal Market Access system maintained by the Municipal Securities Rulemaking Board or any other nationally recognized municipal securities information repository recognized from time to time by the Securities and Exchange Commission for purposes of the Rule.

***“Rule”*** shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time, and including written interpretations thereof by the Securities and Exchange Commission.

### **SECTION 3. PROVISION OF ANNUAL REPORTS.**

(a) The County shall, or shall cause the Dissemination Agent to, not later than December 31 of each Fiscal Year, commencing with the Fiscal Year ending December 31, 2020, provide to the Repository an Annual Report which is consistent with the requirements of Section 4(a) of this Disclosure Agreement. Not later than fifteen (15) Business Days prior to said date, the County shall provide the Annual Report to the Dissemination Agent. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4(b) of this Disclosure Agreement; provided, that the financial statements of the County may be submitted separately from the balance of the Annual Report.

(b) If by fifteen (15) Business Days prior to the date specified in subsection (a) of this Section for providing the Annual Report to the Repository, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the County to determine if the County is in compliance with subsection (a) of this Section. If the County does not provide to the Dissemination Agent a copy of an Annual Report by the applicable date required in Section 3(a) above, the Dissemination Agent shall send a notice

to the County, the Repository, and the Participating Underwriter, in substantially the form attached as Exhibit A.

(c) The Dissemination Agent shall transmit the Annual Report to the Repository and file a report with the County certifying that the Annual Report has been provided pursuant to this Disclosure Agreement and stating the date it was provided.

**SECTION 4. CONTENT OF ANNUAL REPORTS.**

(a) The County's Annual Report shall contain or incorporate by reference the following:

(i) Financial Statements of the County, and

(ii) updated information contained in Appendix A of the Final Official Statement under the headings:

(A) Bonded Debt;

(B) Valuations; and

(C) Tax Information, including Tax Levies and Collections, Largest Property Taxpayers, and County Mill Levy.

(b) Any or all of the items listed above may be incorporated by reference from other documents, including official statements, which have been filed with the Repository. If the document incorporated by reference is a final official statement, it must be available from the Repository. The County shall clearly identify each such other document so incorporated by reference.

**SECTION 5. REPORTING OF LISTED EVENTS.**

(a) The County shall also provide in a timely manner not in excess of ten (10) business days after the occurrence of the event, to the Repository notice of the occurrence of any of the following events of which the Disclosure Representative or designee shall have actual knowledge:

(i) principal and interest payment delinquencies;

(ii) non-payment related defaults;

(iii) unscheduled draws on debt service reserves reflecting financial difficulties (the Certificate issue has no debt service reserves);

(iv) unscheduled draws on credit enhancements reflecting financial difficulties (the Certificate issue has no credit enhancements);

(v) substitution of credit or liquidity providers, or their failure to perform (the Certificate issue has no credit or liquidity providers);

(vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;

(vii) modifications to rights of Owners of the Certificates;

(viii) Certificate calls, if material, and tender offers;

(ix) defeasances;

(x) release, substitution, or sale of property securing repayment of the Certificates;

(xi) rating changes;

(xii) bankruptcy, insolvency, receivership or similar events of the County;

(xiii) the consummation of a merger, consolidation or acquisition involving the County or the sale of all or substantially all of the assets of the County, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material;

(xv) incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, if material; and

(xvi) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties.

(b) Unless otherwise required by law, the County shall provide notices of Listed Events required by this Section to the Repository.

(c) Unless otherwise required by law and subject to technical and economic feasibility, the County shall employ such methods of information transmission as shall be requested or recommended by the designated recipients of the County's information.

**SECTION 6. TERMINATION OF REPORTING OBLIGATION.** The County's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Certificates.

**SECTION 7. DISSEMINATION AGENT.** The County has engaged the Dissemination Agent to assist the County in disseminating information hereunder. The County shall send all Annual Reports required by Section 3 hereof, and Event Notices required by Section 5 hereof, to the Dissemination Agent. The Dissemination Agent shall, within five (5) days of receipt of such Annual Report and within ten (10) days of the occurrence of the events requiring an Events Notice, forward such information to the Repository. The County may discharge the Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the County Auditor shall be the Dissemination Agent. The Dissemination Agent does not have any duty to review the materials described in this paragraph prior to disseminating such materials.

**SECTION 8. AMENDMENT; WAIVER.** Notwithstanding any other provision of this Disclosure Agreement, the County and the Dissemination Agent may amend this Disclosure Agreement (and the Dissemination Agent shall agree to any amendment so requested by the County) and any provision of this Disclosure Agreement may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to both the County and the Dissemination Agent to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule.

**SECTION 9. ADDITIONAL INFORMATION.** Nothing in this Disclosure Agreement shall be deemed to prevent the County from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the County chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Agreement, the County shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

**SECTION 10. DEFAULT.** In the event of a failure of the County or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Dissemination Agent may (and, at the request of the holders of at least twenty-five percent (25%) aggregate principal amount of

Outstanding Certificates, shall), or any beneficial owners, may seek mandate or specific performance by court order, to cause the County or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Trust Agreement, and the sole remedy under this Disclosure Agreement in the event of any failure of the County or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

**SECTION 11. DUTIES, IMMUNITIES AND LIABILITIES OF DISSEMINATION AGENT.** The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the County agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have no duty or obligation to review or verify any information provided to it by the County or to determine the materiality of a Listed Event and shall not be deemed to be acting in any fiduciary capacity for the County, the Certificate Owners or any other party. The Dissemination Agent shall have no responsibility for the County's failure to report to the Dissemination Agent a Listed Event. The obligations of the County under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Certificates.

**SECTION 12. BENEFICIARIES.** This Disclosure Agreement shall inure solely to the benefit of the County, the Dissemination Agent, the Participating Underwriter and the Owners, including beneficial owners, from time to time of the Certificates, and shall create no rights in any other person or entity.

**SECTION 13. COUNTERPARTS.** This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*(Remainder of this page intentionally left blank.)*

IN WITNESS WHEREOF, the County and the Dissemination Agent have caused this Disclosure Agreement to be executed by their duly authorized officers, all as of the date first above written.

**BARNES COUNTY, NORTH DAKOTA**

*William Coulter*  
Chair, Board of County Commissioners

ATTEST:

*Beth Vidie*  
County Auditor

**BANK OF NORTH DAKOTA**

By: \_\_\_\_\_  
Its: Trust Officer

**IN WITNESS WHEREOF**, the County and the Dissemination Agent have caused this Disclosure Agreement to be executed by their duly authorized officers, all as of the date first above written.

**BARNES COUNTY, NORTH DAKOTA**

\_\_\_\_\_  
Chair, Board of County Commissioners

ATTEST:

\_\_\_\_\_  
County Auditor

**BANK OF NORTH DAKOTA**

By: Carrie Willett  
Its: Trust Officer

**EXHIBIT A**

**NOTICE TO REPOSITORY  
OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: **Barnes County, North Dakota**  
Name of Bond Issue: **Certificates of Participation, Series 2020**  
Date of Issuance: **October 14, 2020**  
Dissemination Agent: **Bank of North Dakota**

**NOTICE IS HEREBY GIVEN** that the Issuer has not provided an Annual Report due \_\_\_\_\_, with respect to the above-named Certificates of Participation as required by the Continuing Disclosure Agreement dated as of October 1, 2020. The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_.

**BANK OF NORTH DAKOTA,  
as Dissemination Agent**

By: \_\_\_\_\_  
Authorized Signatory

cc: Barnes County, North Dakota  
Colliers Securities LLC



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Barnes County, North Dakota  
Certificates of Participation  
Series 2020

**RULE 15C2-12 CERTIFICATE AUTHORIZING PRINTING OF  
A PRELIMINARY OFFICIAL STATEMENT**

**September 18, 2020**

The undersigned authorized representative, on behalf of Barnes County, North Dakota (the "County"), hereby represents the following:

1. The County has received a complete and final copy of the Preliminary Official Statement, dated September 18, 2020 (the "Preliminary Official Statement"), with respect to the above-referenced bonds.
2. The County consents to and approves of the distribution of the Preliminary Official Statement with respect to the offer and sale of the above-referenced bonds.
3. Within the meaning of SEC Rule 15c2-12, the Preliminary Official Statement is deemed final as of its date by the County (except for the permitted omission of certain interest rate and certificate pricing information).

**BARNES COUNTY, NORTH DAKOTA**

By: Beth Dedier  
Its: County Auditor

DMNORTH #7341449 v1

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**RESOLUTION #2020-4 RELATING TO  
LEASE-PURCHASE FINANCING OF COUNTY JAIL**

**BE IT RESOLVED** by the Board of County Commissioners of Barnes County, North Dakota (the "County"), as follows:

**SECTION 1. AUTHORIZATION.**

1.1. Authorization. The County is authorized by Section 11-11-14 of the North Dakota Century Code, to enter into a lease-purchase agreement for the purpose of financing the acquisition, construction, and equipping of a new County jail (the "Project"). It is hereby found, determined and declared to be necessary and desirable and in the best interest of the County to begin preliminary proceedings to finance the Project by entering into a lease-purchase agreement and to create certificates of participation (the "Certificates") therein.

1.2. Financing and Sale. The County hereby engages Colliers Securities LLC as the underwriter with respect to the financing of the Project. The County hereby engages Arntson Stewart Wegner PC as bond counsel for the financing.

1.3. Financing Documents. The County authorizes Colliers Securities LLC and Arntson Stewart Wegner PC to complete the proceedings necessary for the sale and issuance of the Certificates. The County Auditor is authorized and directed to review and approve on behalf of the County an official statement to be distributed to potential purchasers of the Certificates. Provided, the lease-purchase agreement and related documents, and the issuance of the Certificates, including terms of sale, are subject to approval by the Board of County Commissioners at a subsequent meeting.

**SECTION 2. REIMBURSEMENT.**

2.1. Recitals.

(a) The Internal Revenue Service has issued Section 1.150-2 of the Income Tax Regulations (the "Reimbursement Regulations") dealing with the issuance of bonds all or a portion of the proceeds of which are to be used to reimburse the County for expenditures made prior to the date of issuance of such bonds.

(b) The Reimbursement Regulations generally require that the County make a declaration of its official intent to reimburse itself for such prior expenditures out of the proceeds of a subsequently issued series of bonds within 60 days after payment of the expenditures, that the bonds be issued and the reimbursement allocation be made from the proceeds of such bonds within the reimbursement period (as defined in the Reimbursement Regulations), and that the expenditures reimbursed be capital expenditures or costs of issuance of the bonds.

(c) The County desires to comply with requirements of the Reimbursement Regulations with respect to the Project and the proceeds of the Certificates.

2.2. Official Intent Declaration.

(a) The County proposes to undertake the Project and to make original expenditures with respect thereto prior to the issuance of the Certificates (reimbursement bonds within the meaning of the Reimbursement Regulations), and reasonably expects to issue the Certificates (reimbursement bonds) for the Project, in one or more series, in a maximum principal amount of \$16,500,000.

(b) Other than (i) de minimis amounts permitted to be reimbursed pursuant to Section 1.150-2(f)(1) of the Reimbursement Regulations or (ii) expenditures constituting preliminary expenditures as defined in Section 1.150-2(f)(2) of the Reimbursement Regulations, the County will not seek reimbursement for any original expenditures with respect to the Project paid more than 60 days prior to the date of adoption of this resolution. All original expenditures for which reimbursement is sought will be capital expenditures or costs of issuance of the Certificates.

2.3. Budgetary Matters. As of the date hereof, there are no County funds reserved, pledged, allocated on a long term basis or otherwise set aside (or reasonably expected to be reserved, pledged, allocated on a long term basis or otherwise set aside) to provide permanent financing for the original expenditures related to the Project, other than pursuant to the issuance of the Certificates (reimbursement bonds). Consequently, it is not expected that the issuance of the Certificates (reimbursement bonds) will result in the creation of any replacement proceeds.

2.4. Reimbursement Allocations. The County shall be responsible for making the "reimbursement allocations" described in the Reimbursement Regulations, being generally the transfer of the appropriate amount of proceeds of the Certificates (reimbursement bonds) to reimburse the source of temporary financing used by the County to make payment of the original expenditures relating to the Project. Each reimbursement allocation shall be made within 30 days of the date of issuance of the Certificates (reimbursement bonds), shall be evidenced by an entry on the official books and records of the County maintained for the Certificates (reimbursement bonds) and shall specifically identify the original expenditures being reimbursed.

*(Remainder of page intentionally left blank.)*

Dated August 4, 2020.

**BARNES COUNTY, NORTH DAKOTA**

Bill Carlblom  
Chairman, Board of County Commissioners

Attest:

Bea M. Sieder  
County Auditor

The governing body of the County acted on the foregoing resolution at a properly noticed meeting held in Valley City, North Dakota, on August 4, 2020, with the motion for adoption made by Bill Carlblom and seconded by John Froelich, and the roll call vote on the motion was as follows:

"Aye" Bill Carlblom, John Froelich, Shawn Olson, Vicky Lovell  
*Audrey Schwabe,*

"Nay" None

Absent None

**CERTIFICATION OF MINUTES RELATING TO  
CERTIFICATES OF PARTICIPATION**

Issuer: Barnes County, North Dakota

Governing Body: County Commission

Kind, date, time and place of meeting: A special meeting held September 29, 2020, at 5:00 p.m., in the Commission Room at the Barnes County Courthouse.


Members present: Schwehr, Lovell, Carlblom, Froelich

Members absent: Olauson

Document Attached: **RESOLUTION RELATING TO LEASE-PURCHASE OF COUNTY CORRECTIONS FACILITY; PROVIDING FOR THE FINANCING THEREOF AND ISSUANCE OF CERTIFICATES OF PARTICIPATION THEREIN; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE AGREEMENT AND APPROVING AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS**

The undersigned, being the duly qualified and acting County Auditor of Barnes County, North Dakota, certify that the Resolution attached hereto, as described above, has been carefully compared with the original records of the County in my legal custody; that the Resolution is a correct and complete copy of the Resolution approved by the County Commission at the meeting; that the Resolution has not been amended, modified or rescinded; and that the meeting was duly held by the County Commission at the time and place and was attended throughout by the members indicated above, pursuant to call and notice of such meeting given as required by law.

**WITNESS** my hand officially as such recording officer this 14<sup>th</sup> day of October, 2020.

  
\_\_\_\_\_  
County Auditor

**RESOLUTION RELATING TO LEASE-PURCHASE OF  
COUNTY CORRECTIONS FACILITY;  
PROVIDING FOR THE FINANCING THEREOF AND  
ISSUANCE OF CERTIFICATES OF PARTICIPATION THEREIN;  
AUTHORIZING THE EXECUTION AND DELIVERY OF  
A LEASE-PURCHASE AGREEMENT AND APPROVING  
AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS**

**BE IT RESOLVED** by the County Commission (the "County Commission") of Barnes County, North Dakota (the "County"), as follows:

**SECTION 1. AUTHORIZATION AND SALE.**

1.1. Authorization. The County is authorized by Section 11-11-14 of the North Dakota Century Code, to enter into a Lease-Purchase Agreement (the "Lease"), for the purpose of financing the acquisition, construction, and equipping of a new County corrections facility, as further described in the Lease (the "Project"). It is hereby found, determined and declared to be necessary and desirable and in the best interest of the County to execute and deliver the Lease and to create certificates of participation therein (the "Certificates") for such purposes. The County Commission hereby authorizes the execution and delivery of the Lease and the creation of the Certificates therein for the purpose of financing the Project.

1.2. Financing and Sale. The County has engaged Colliers Securities LLC (the "Underwriter") as the underwriter with respect to the financing of the Project. The Underwriter has offered to purchase the Certificates at a price of \$15,615,866.20, representing the principal amount of the Certificates of \$15,435,000.00, plus a net reoffering premium of \$373,803.70, less the Underwriter's discount of \$192,937.50, and upon the further terms and conditions set forth in the Certificate Purchase Agreement between the County and the Underwriter (the "Purchase Agreement"), which terms are equivalent to a net interest rate on the Certificates of 3.3075% per annum. The offer is hereby accepted and the Chair of the County Commission, or any authorized designee thereof, is hereby authorized to execute the Purchase Agreement. The County Commission hereby ratifies all action heretofore taken with respect to the sale of the Certificates.

**SECTION 2. DOCUMENTS.**

2.1. Ground Lease. The County has agreed with the Bank of North Dakota, Bismarck, North Dakota, acting as trustee (the "Trustee"), that the County will ground lease certain real property underlying the Project to the Trustee pursuant to a Ground Lease (the "Ground Lease") between the Trustee, as ground lessee, and the County, as ground lessor.



2.2. Lease-Purchase Agreement. The County has agreed with the Trustee that the Trustee will sublease the real property underlying the Project to the County and lease and agree to sell the Project to the County pursuant to the Lease between the Trustee, as lessor, and the County, as lessee.

2.3. Trust Agreement. The Trustee will execute and deliver a Trust Agreement (the "Trust Agreement"), joined in by the County, pursuant to which the Trustee will (i) issue the Certificates representing proportionate interests in the Rental Payments (as defined in the Lease) to be made by the County under the Lease, and (ii) receive the proceeds of the sale of the Certificates and disburse such proceeds to finance the Project and to pay costs of issuance of the Certificates.

2.4. Continuing Disclosure. In order to permit the Underwriter to comply with paragraph (b)(5) of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (as in effect and interpreted from time to time, the "Rule"), the County shall enter into a Continuing Disclosure Agreement with the Trustee (the "Continuing Disclosure Agreement"). Pursuant to the Continuing Disclosure Agreement the County will agree, for the benefit of the Owners from time to time of any Certificates which are Outstanding, to provide annual reports of financial statements and other specified information and notice of the occurrence of certain events, if material, as thereafter described (the "Disclosure Covenants"). The County is the only "obligated person" in respect of the Certificates within the meaning of the Rule for purposes of identifying the entities in respect of which continuing disclosure must be made.

2.5. Forms of Documents. In connection with this proposed financing and the issuance of the Certificates, forms of the Purchase Agreement, the Ground Lease, the Lease, the Trust Agreement and the Continuing Disclosure Agreement (the "Documents") have been prepared, submitted to the County and filed with the County Auditor.

**SECTION 3. APPROVAL OF DOCUMENTS; OFFICIAL STATEMENT.**

3.1. Approval of Documents. The Documents are hereby approved and shall be executed in the name and on behalf of the County by the Chair and County Auditor, or their respective authorized designees, in substantially the form on file, but with such changes as may be approved by the officers executing the same, which approval shall be conclusively evidenced by the execution thereof. The Chair and County Auditor, or their respective authorized designees, are also authorized and directed to execute such closing certificates and other contracts or documents as may be necessary in the opinion of special counsel to the County, Arntson Stewart Wegner PC, to complete the issuance and delivery of the Certificates, and the certifications, recitals, representations, warranties and covenants therein shall constitute the certifications, recitals, representations, warranties and covenants of the County. County approval of all documents certificates, contracts and documents relating to the Lease and the Certificates shall be conclusively evidenced by the execution thereof, and no further County Commission action shall be required.

3.2. Official Statement. The County Auditor, or any authorized designee thereof, is hereby authorized to approve and execute, and the Underwriter is hereby authorized to prepare and

distribute, on behalf of the County, the Preliminary Official Statement and the Final Official Statement relating to the Certificates (together, the "Official Statement"), which Final Official Statement shall include the offering price, payment dates, the interest rates, selling compensation, delivery date and such other information relating to the Lease and Certificates required to be included in the Official Statement by Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934. The officers of the County are hereby authorized and directed to execute such certificates as may be appropriate concerning the accuracy, completeness and sufficiency of the Official Statement.

**SECTION 4. ISSUANCE OF CERTIFICATES.** Upon all acts, conditions and things which are required by the Constitution and laws of the State of North Dakota to be done, to exist, to happen and to be performed precedent to and in the valid issuance of the Lease and the Certificates, the County shall proceed forthwith to cause the Trustee to issue the Certificates in the form and upon the terms set forth in the Trust Agreement. The Certificates shall be prepared, executed and delivered as prescribed in the Trust Agreement and the officers of the County shall deliver to the Trustee a certified copy of this resolution and other documents required by the Trust Agreement, for authentication and delivery to the Underwriter or the registered owners of the Certificates. The Trustee is hereby appointed authenticating agent with respect to the Certificates, and as paying agent for the Certificates pursuant to the Trust Agreement.

**SECTION 5. PAYMENT OF RENTAL PAYMENTS.** The County will pay to the Trustee promptly when due, all of the Rental Payments and other amounts required by the Lease. Payment of the Rental Payments is subject to the provisions for termination set forth in the Lease, which provides that the Lease is subject to termination by the County, without penalty, at the end of any fiscal year of the County, in accordance with the terms thereof. Neither the full faith and credit nor the ad valorem taxing powers of the County are pledged to the payment of the County's obligations under the Lease, the Certificates, or any obligation of the County thereunder.

**SECTION 6. TAX COVENANTS AND ARBITRAGE MATTERS.**

6.1. Covenant. The County covenants and agrees with the owners from time to time of the Certificates, that it will not take, or permit to be taken by any of its officers, employees or agents, any action which would cause the interest component of the Rental Payments payable under the Lease and received by the registered owners of the Certificates to become subject to taxation under the Internal Revenue Code of 1986, as amended (the "Code"), and any regulations issued thereunder (the "Treasury Regulations"), in effect at the time of such action, and that it will take, or it will cause its officers, employees or agents to take, all affirmative actions within their powers which may be necessary to insure that the interest component of the Rental Payments payable under the Lease and received by the registered owners of the Certificates will not become subject to taxation under the Code and the Treasury Regulations, as presently existing or as hereafter amended and made applicable to the Certificates. So long as the Certificates are outstanding, the County will not enter into any lease, use agreement or other contract or agreement respecting the Project which would

cause the Lease and Certificates to be considered a “private activity bond” or “private loan bond” pursuant to the provisions of Section 141 of the Code.

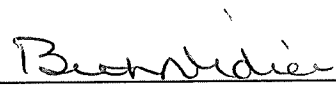
6.2. Arbitrage Certification. The Chair and County Auditor, or their respective authorized designees, being the officers of the County charged with the responsibility for issuing the Lease and Certificates pursuant to this resolution, are authorized and directed to execute and deliver to the Underwriter a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Treasury Regulations, stating the facts, estimates and circumstances in existence on the date of issue and delivery of the Lease and Certificates which make it reasonable to expect that the proceeds of the Lease and Certificates will not be used in a manner that would cause the Lease and Certificates to be an arbitrage bond within the meaning of the Code and Treasury Regulations.

6.3. Arbitrage Rebate. The County acknowledges that the arbitrage rebate requirements of Section 148(f) of the Code are applicable to the Lease and Certificates, and the County hereby covenants and agrees to make computations, retain records and pay amounts to the United States at the times and in the manner required by said Section 148(f) of the Code. The County reserves the right to avail itself of any of the spending exceptions to arbitrage rebate set forth in Section 148(f)(4)(C) of the Code and related Treasury Regulations.

Dated: September 29, 2020

  
\_\_\_\_\_  
Chair, Board of County Commissioners

ATTEST:

  
\_\_\_\_\_  
County Auditor

The motion for the adoption of the foregoing resolution was duly made by Commissioner Schwehr, seconded by Commissioner Lovell, and upon vote being taken thereon, the following voted in favor: Schwehr, Lovell, Carlblom and Froelich; the following voted against the same: None; and the following were absent: Olauson; whereupon the resolution was declared duly passed and adopted and was signed by the Chair and attested by the County Auditor.

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**CERTIFICATE OF  
BARNES COUNTY, NORTH DAKOTA**

The undersigned, William Carlblom and Beth Didier, the Chair of the Board of County Commissioners and County Auditor, respectively, of Barnes County, North Dakota (the "County"), hereby certify in connection with the issuance of \$15,435,000 Certificates of Participation, Series 2020 (the "Certificates"), as follows:

1. The following documents, all dated as of October 1, 2020, except as noted (together, the "County Documents") have been duly authorized, executed and delivered by the County pursuant to Resolutions adopted August 4 and September 29, 2020 (together, the "Resolutions"), and, assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding agreements of the County enforceable in accordance with their terms except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights and by the availability of equitable remedies:

(a) the Trust Agreement (the "Trust Agreement") executed by Bank of North Dakota (the "Trustee") and joined in by the County;

(b) the Ground Lease between the County and the Trustee (the "Ground Lease");

(c) the Lease-Purchase Agreement between the County and the Trustee (the "Lease");

(d) the Continuing Disclosure Agreement between the County and the Trustee (the "Continuing Disclosure Agreement");

(e) the Certificate Purchase Agreement dated September 30, 2020 (the "Purchase Agreement"), between the County and Colliers Securities LLC and acknowledged by the Trustee (the "Underwriter").

2. The representations, covenants and warranties of the County contained in the Lease and the Purchase Agreement are true and correct in all material respects on and as of the date hereof as if made on the date hereof.

3. No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, is pending or to the best of our knowledge, threatened against the County, affecting the existence of the County or the titles of its officers to our respective offices or seeking to prohibit, restrain or enjoin the issuance, delivery or sale of the Certificates or the payment of Rental Payments (as defined in the Lease) or the appropriation of the capital projects levy for fiscal year 2021, which Rental Payments are pledged to pay the principal of and interest on the Certificates or in any way contesting or affecting the validity or enforceability of the Certificates, the capital projects levy or the County Documents or contesting the powers of the County or any authority for the issuance of the Certificates, the adoption of the Resolutions or the execution of the

County Documents, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Certificates, the Resolutions or the County Documents and that there is no litigation pending or, to the best of our knowledge, threatened against the County or involving any of the property or assets under the control of the County which involves the possibility of any judgment or liability, not fully covered by insurance, which may result in any material adverse change in the business, properties, assets or in the condition, financial or otherwise, of the County.

4. The County has taken all necessary official action relating to the County Documents and has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the dated hereof.

5. The Resolutions have been duly adopted by the County on August 4 and September 29, 2020, and have not been modified, amended or rescinded as of the date hereof.

6. We have caused the Official Statement dated October 5, 2020, to be carefully examined by representatives of the County and based on such examination, as of the date of the Official Statement and at all times subsequent through and including the date hereof, the Official Statement did not and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements and information therein not misleading in any material respect. No event affecting the County has occurred since the date of the Official Statement that should be disclosed in the Official Statement for the purpose for which it is to be used or that is necessary to be disclosed therein in order to make the statements and information therein not misleading in any material respect.

7. The execution and delivery of the County Documents and compliance with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute on the part of the County a breach of or a default under any indenture, mortgage, deed of trust, agreement or other instrument to which the County is a party or any law, public administrative rule or regulation, court order or consent decree to which the County is subject.

8. The Trustee is requested to execute and deliver the \$15,435,000 aggregate principal amount of Certificates issued pursuant to the Trust Agreement in fully registered form. The Trustee is further authorized and directed to deliver the Certificates through the book-entry system of The Depository Trust Company, New York, New York, on behalf of the Underwriter, upon the receipt by the Trustee of a wire transfer in federal funds for the account of the County in the amount of \$15,615,866.20, representing the principal amount of the Certificates of \$15,435,000.00, plus a net reoffering premium for the Certificates of \$373,803.70, less the Underwriter's discount of \$192,937.50. The Trustee is hereby directed to deposit such proceeds from the sale of the Certificates to the credit of the various Funds as specified in Section 4.1 of the Trust Agreement.

All capitalized terms used in this Certificate shall have the same meanings as in the Trust Agreement and the Lease, unless otherwise defined herein.

Dated: October 14, 2020.

**BARNES COUNTY, NORTH DAKOTA**

William Coulter  
Chair

Ben Nedien  
County Auditor

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# TAX COMPLIANCE CERTIFICATE

**\$15,435,000**

## **BARNES COUNTY, NORTH DAKOTA CERTIFICATES OF PARTICIPATION SERIES 2020**

The undersigned, William Carlblom and Beth Didier, the Chair of the Board of County Commissioners and County Auditor, respectively, of Barnes County, North Dakota (the "County") and being the persons duly charged among others, with responsibility for issuing the \$15,435,000 Certificates of Participation, Series 2020 evidencing the proportionate interests in rental payments to be made by the County (the "Certificates"), hereby certify, in the name of and on behalf of the County, with respect to the Certificates, issued in accordance with the Resolutions adopted by the County on August 4 and September 29, 2020 (together, the "Resolutions"), and the Trust Agreement dated as of October 1, 2020 (the "Trust Agreement"), executed by the Bank of North Dakota (the "Trustee"), and joined in by the County, as follows:

### **1. IN GENERAL.**

**1.1.** This Certificate is executed for the purpose of certifying and establishing certain facts, estimates, circumstances and the reasonable expectations of the County as to certain events regarding the Certificates. The County has not been notified of any listing or proposed listing of it by the Internal Revenue Service as an issuer whose nonarbitrage certification may not be relied upon. The County's reasonable expectation that the Certificates are not "arbitrage bonds" is based upon Section 148 of the Internal Revenue Code of 1986, as amended (the "Code") and Treasury Regulations Sections 1.148-0 through 1.148-11 relating to "arbitrage bonds."

**1.2.** To the best of the undersigned's knowledge, information and belief, the expectations of the County contained in this Certificate are reasonable. The County is not aware of any facts or circumstances that would materially change the conclusions and representations set out in this Certificate or cause it to question the accuracy of the representations made by the County for the purposes of this Certificate.

**1.3.** The certifications and representations of the undersigned may be relied upon as a certification of the County pursuant to Treasury Regulation Section 1.148-2(b)(2).

**1.4.** The capitalized terms use herein and not otherwise defined shall have the same meanings as defined in the Trust Agreement or the Lease-Purchase Agreement dated as of October 1, 2020, between the County and the Trustee (the "Lease").

**2. THE CERTIFICATES.**

**2.1.** The Certificates are being issued for the purposes of financing, together with other funds of the County, the acquisition, construction and equipping of a corrections facility and paying the Costs of Issuance, all as more fully described herein (the "Project"). The Project cost is approximately \$16,212,980 and will be paid from the net proceeds of the Certificates and available funds of the County.

**2.2.** The Rental Payments under the Lease are special, limited obligations of the County, and subject to annual appropriation by the County under the Lease.

**3. SOURCE AND DISBURSEMENT OF FUNDS.**

**3.1.** The Certificates were sold to Colliers Securities LLC, Minneapolis, Minnesota (the "Underwriter"), at a purchase price of \$15,615,866.20 (the "Sale Proceeds") (representing the \$15,435,000.00 aggregate principal amount of the Certificates, less an underwriting discount of \$192,937.50, plus a net reoffering premium of \$373,803.70. Accordingly, the net amount received from the sale of the Certificates will be \$15,615,866.20.

**3.2.** Pursuant to the Trust Agreement, the Trustee will deposit the proceeds of the Certificates to the following Accounts:

(a) \$15,520,583.12 of the Sale Proceeds will be deposited by the Trustee in the Construction Account and used to pay Construction Costs; and

(b) \$95,283.08 of the Sale Proceeds will be deposited by the Trustee in the Costs of Issuance Fund and used to pay the costs of issuance of the Certificates remaining after deducting the Underwriter's discount.

**4. FUNDS AND ACCOUNTS.**

**4.1. *Rental Payment Account.*** The Trust Agreement provides for a Rental Payment Account which is to be used primarily to achieve a proper matching of revenues and debt service within each bond year and constitutes a "bona fide debt service fund" as defined the Treasury Regulations Section 1.148-1(b). Moneys deposited into the Rental Payment Account may be derived from the following: (i) accrued or capitalized interest on the Certificates, (ii) Rental Payments pursuant to the Lease, (iii) amounts remaining in the Construction Account following completion of the Project, (iv) investment earnings, and (v) any other moneys required by the terms of the Trust Agreement to be deposited in the Rental Payment Account under the Lease for credit to the Rental Payment Account.

The interest component of the Rental Payments is payable semiannually on May 1 and November 1 in each year beginning May 1, 2021, from the Rental Payment Account. The principal

component of the Rental Payments is due annually on May 1 in each year commencing May 1, 2021, and are payable from the Rental Payment Account. Rental Payments will be made to the Trustee for deposit in the Rental Payment Account on or before April 25 and October 25 each year to aggregate the amount of each interest and principal payment due on the Certificates.

The Rental Payment Account will at no time contain funds (including any investment earnings) that will exceed the principal and interest payments due on all Certificates in the next 13 months. All moneys in the Rental Payment Account will be depleted at least once a year except for a reasonable carry over amount not to exceed the greater of (a) earnings on the Rental Payment Account for the immediately preceding bond year or (b) one-twelfth of the debt service on the Certificates for the immediately preceding bond year. Moneys in the Rental Payment Account will be invested in Permitted Investments in accordance with the Trust Agreement, and any earnings on or income from such investments will, upon receipt, be retained in the Rental Payment Account.

**4.2. Construction Account.** The Trust Agreement provides that \$15,520,583.12 of Certificate proceeds will be deposited in the Construction Account. Moneys in the Construction Account will be used to pay or reimburse the County for Construction Costs. The County adopted a resolution on August 4, 2020, authorizing the expenditure of funds for the Project and declaring its official intent to reimburse the expenditures with the proceeds of bonds in accordance with Treas. Reg. Section 150-2. All of the Certificate proceeds used to reimburse the County were for Project costs, (a) paid by the County from its own cash and have been or could be capitalized for accounting purposes, and (b) were not paid prior to June 5, 2020, the 60<sup>th</sup> day before the adoption by the Issuer of the reimbursement resolution except for (i) preliminary expenditures not exceeding \$3,161,760.74 (20% of the issue price), or (ii) costs of issuance or an amount not exceeding \$100,000.

Sale Proceeds of the Certificates deposited and held in the Construction Account may, before being used to pay or reimburse the County for the costs of constructing and equipping the Project, be invested in obligations that bear a yield that is materially higher than the yield of the Certificates until expiration of the three-year temporary period because:

- (i) the County has entered into binding contracts with third parties obligating the expenditure of at least 5% of the proceeds of the Certificates deposited in the Construction Account,
- (ii) the County will proceed with due diligence with the construction, equipping and improving of the Project to completion and the allocation of Certificate proceeds to Project expenditures, and
- (iii) at least 85% of the proceeds of the Certificates deposited in the Construction Account are reasonably expected to be expended on costs of the Project within three years of the date of issuance of the Certificates.

On or after October 14, 2023, any proceeds in the Construction Account or otherwise set aside to pay costs of the Project shall be invested in obligations that bear a yield that does not exceed the yield of the Certificates.

**4.3. *Cost of Issuance Account.*** Certificate proceeds in the amount of \$192,937.50, will be used to pay the Underwriter's discount on the Certificates. Certificate proceeds in the amount of \$95,283.08, will be deposited in the Cost of Issuance Account and will be used to pay other costs incurred in connection with the issuance of the Certificates. Amounts, if any, remaining in the Cost of Issuance Account ninety (90) days after the Closing Date for the Certificates shall be deposited in the Construction Account.

**4.4. *Redemption Account.*** The Trust Agreement establishes a Redemption Account to be used for the purpose of redeeming the Certificates in advance of their maturity. Moneys deposited into the Redemption Account may be derived from prepayments of Rent, insurance proceeds or condemnation awards to be used for redemption of the Certificates. Moneys in the Redemption Account shall be applied on or after the date of redemption to the payment of principal and interest with respect to the Certificates to be redeemed upon presentation and surrender of such Certificates.

**4.5. *Rebate Account.*** The Trust Agreement establishes a Rebate Account into which money will be deposited to the extent required to satisfy the amount required to be rebated to the United States under the Code.

**4.6. *Investment of Moneys.*** Moneys in the Accounts described above are to be invested as directed by the County, subject to the provisions of the Trust Agreement. All investment income derived from moneys in the Rental Payment Account are to be retained therein and are to be credited to the next required Rental Payment. Investment income derived from moneys in the Construction Account are to be retained therein until the Construction Account is closed.

**4.7. *No Other Funds.*** Except to the extent indicated in this Certificate, the County has established no other funds or accounts, nor does the County expect to establish any other funds or accounts, which may be used to pay principal of, premium, if any, or interest on the Certificates, which may be pledged as collateral for the Certificates or with respect to which there exists a reasonable assurance that such funds or accounts will be available to pay debt service on the Certificates if the County encounters financial difficulties.

**5. YIELD.**

**5.1.** As used in this Certificate, the term "yield" refers to that discount rate which, when used in computing the present worth of all payments of principal and interest to be paid on an obligation, produces an amount equal to the purchase price of such obligation. The yield on obligations acquired with Gross Proceeds (as defined in the Treasury Regulations) of the Certificates and the yield on the Certificates shall be calculated by use of the same frequency interval of compounding.

**5.2.** The yield on the Certificates (the "Certificate Yield") is calculated by assuming that the purchase price of the Certificates is \$15,808,803.70 (which is the principal amount of the Certificates of \$15,435,000.00, plus the net reoffering premium of \$373,803.70, representing the initial offering price to the public (excluding bond houses and brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Certificates were sold as represented by the Underwriter as set forth in the Certificate and Receipt of the Underwriter. The Certificate Yield is 2.8917943%.

**6. MINOR PORTION.**

**6.1.** Except for amounts invested in a bona fide debt service fund or invested for a temporary period pursuant to Sections 4.1, 4.2, and 4.3 hereof, the aggregate amount of Certificate proceeds and other moneys that are pledged to secure the Certificates that will be invested at a yield that is materially higher than the yield of the Certificates will be less than a major portion of the proceeds of the Certificates and will not at any time exceed \$100,000 (the "Minor Portion"). The Minor Portion may be invested without regard to yield limitation pursuant to Section 148(e) of the Code and notwithstanding any other yield limitation set forth herein. Investment of the moneys described in this Section 6.1 will be subject to the arbitrage rebate requirements.

**7. REBATE PROVISIONS.**

**7.1.** The County has covenanted in Section 4.5 of the Trust Agreement, to the extent required by law to comply with the applicable rebate requirements imposed under Section 148(f) of the Code including the requirement to make, or to cause a rebate analyst to make, periodic calculations of the amount subject to rebate and to make all required rebate payments to the United States at the times and in the amounts required by the Code and the Treasury Regulations.

**7.2.** Records of the determination of the rebate amount, if any, shall be provided by the County or an expert retained by and acting on behalf of the County and shall be retained by the County until six years after the retirement of the last obligation of the Certificates.

**7.3.** The County expects the Certificates to qualify for the 18-month spending exception to the arbitrage rebate requirements pursuant to Section 1.148-7(d) of the Treasury Regulations.

**8. MISCELLANEOUS.**

**8.1.** The County covenants to and for the benefit of the holders of the Certificates that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest component of the Rental Payment under Section 103 of the Code, including, but not limited to, the following:

(a) *Arbitrage.* The County will not directly or indirectly use or permit the use of any proceeds of the Certificates or any other funds of the County in such manner, or take or

omit to take any action, that would cause the Certificates to be “arbitrage bonds” within the meaning of Section 148(a) of the Code. To that end, the County will comply with all requirements of Section 148 of the Code to the extent applicable to the Certificates. In the event that any time the County or the Trustee is of the opinion that for purposes of this Section 8.1, it is necessary to restrict or limit the yield on the investment of any monies held by the County or the Trustee, the County and the Trustee shall take such action as may be necessary to restrict or limit such yield.

(b) *No Additional Obligations.* No other tax-exempt obligations are being sold by the County at substantially the same time as the Certificates, sold pursuant to the same plan of financing with the Certificates and which are reasonably expected to be paid from substantially the same source of funds as the Certificates.

(c) *Rebate Payments.* The County hereby agrees that there shall be paid from time to time all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applied to the Certificates from time to time.

(d) *Registration.* The County shall take all necessary action to have the Certificates registered within the meaning of Section 149(a) of the Code and any regulations promulgated thereunder.

(e) *Prohibition on Federal Guarantee.* The County shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Certificates to be “federally guaranteed” within the meaning of Section 149(b) of the Code and any regulations promulgated thereunder.

(f) *Form 8038-G.* The County shall timely file federal information returns with respect to the Certificates as required by Section 149(e) of the Code.

(g) *Private Activity Bonds.* The County shall not use the Project financed with the proceeds of the Certificates or permit use thereof in such manner so as to cause the Certificates to become “private activity bonds” as defined in Section 141 of the Code.

(h) *No Sale of Project.* No portion of the Project is expected to be sold or otherwise disposed of prior to the last maturity of the Certificates.

**8.2.** None of the proceeds of the Certificates will be used directly or indirectly to replace funds of the County, used directly or indirectly to acquire investments at a yield materially higher than the yield on the Certificates or otherwise invested in any manner, except as such investments are specifically authorized above.

**8.3.** In connection with the issuance of the Certificates, the County has not and will not engage in any transaction or series of transactions that attempts to circumvent the provisions of Section 148 of the Code or Treasury Regulations Section 1.148, (i) enabling the County to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (ii) increasing the burden on the market for tax-exempt obligations including, without limitation, the selling of more Certificates than would otherwise be necessary, or the issuing of Certificates sooner, or allowing them to remain outstanding longer, than would otherwise be necessary to accomplish the governmental purpose of the Certificates.

**8.4.** The County reasonably expects that at least 85% of the net sale proceeds of the Certificates will be expended for costs of the Project with three years from the date hereof, and not more than 50% of the proceeds of the Certificates will be invested in nonpurpose investments having a substantially guaranteed yield for four years or more.

**8.5.** To the best of the undersigned's knowledge, information and belief, the above expectations are reasonable. On the basis of the foregoing, it is not expected that the proceeds of the Certificates will be used in a manner that would cause the Certificates to be "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code and the regulations applicable or promulgated thereunder, and to the best of the undersigned's knowledge and belief, there are no other facts, estimates or circumstances that would materially change the foregoing conclusion.

*(Remainder of this page intentionally left blank.)*

WITNESS my hand this 14<sup>th</sup> day of October, 2020.

**BARNES COUNTY, NORTH DAKOTA**

William Campbell  
Chair

Beth Bidler  
County Auditor



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**Information Return for Tax-Exempt Governmental Bonds**

(Rev. September 2018)

Under Internal Revenue Code section 149(e)

See separate instructions.

OMB No. 1545-0720

Department of the Treasury  
Internal Revenue Service

Caution: If the issue price is under \$100,000, use Form 8038-GC.  
Go to www.irs.gov/F8038G for instructions and the latest information.

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name <b>Barnes County, North Dakota</b>		2 Issuer's employer identification number (EIN) <b>45-6002198</b>	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see Instructions) <b>James H. Stewart, Attorney</b>		3b Telephone number of other person shown on 3a <b>701-280-0195</b>	
4 Number and street (or P.O. box if mail is not delivered to street address) <b>3101 Broadway North</b>	Room/suite <b>B</b>	5 Report number (For IRS Use Only) <b>3</b>	
6 City, town, or post office, state, and ZIP code <b>Fargo, ND 58102</b>		7 Date of Issue <b>October 14, 2020</b>	
8 Name of Issue <b>Certificates of Participation, Series 2020</b>		9 CUSIP number <b>067789 AU1</b>	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see Instructions) <b>Beth Didier, County Auditor</b>		10b Telephone number of officer or other employee shown on 10a <b>701-845-6666</b>	

**Part II Type of Issue (enter the issue price).** See the instructions and attach schedule.

11 Education	11	
12 Health and hospital	12	
13 Transportation	13	
14 Public safety	14	15,808,804
15 Environment (including sewage bonds)	15	
16 Housing	16	
17 Utilities	17	
18 Other. Describe	18	
19a If bonds are TANs or RANs, check only box 19a		<input type="checkbox"/>
19b If bonds are BANs, check only box 19b		<input type="checkbox"/>
20 If bonds are in the form of a lease or installment sale, check box		<input checked="" type="checkbox"/>

**Part III Description of Bonds.** Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	05-01-2050	\$ 15,808,804	\$ 15,435,000	17.457 years	2.8917943 %

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

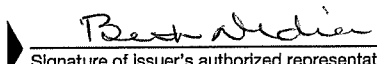
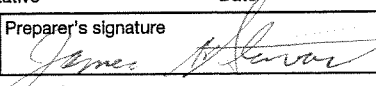
22 Proceeds used for accrued interest	22	0
23 Issue price of entire issue (enter amount from line 21, column (b))	23	15,808,804
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	288,221
25 Proceeds used for credit enhancement	25	
26 Proceeds allocated to reasonably required reserve or replacement fund	26	
27 Proceeds used to refund prior tax-exempt bonds. Complete Part V	27	
28 Proceeds used to refund prior taxable bonds. Complete Part V	28	
29 Total (add lines 24 through 28)	29	288,221
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	15,520,583

**Part V Description of Refunded Bonds.** Complete this part only for refunding bonds.

31 Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded	_____ years
32 Enter the remaining weighted average maturity of the taxable bonds to be refunded	_____ years
33 Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY)	_____
34 Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)	_____

**Part VI Miscellaneous**

<b>35</b>	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .	<b>35</b>	0	
<b>36a</b>	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC). See instructions . . . . .	<b>36a</b>	0	
<b>b</b>	Enter the final maturity date of the GIC ▶ (MM/DD/YYYY) _____			
<b>c</b>	Enter the name of the GIC provider ▶ _____			
<b>37</b>	Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .	<b>37</b>	0	
<b>38a</b>	If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:			
<b>b</b>	Enter the date of the master pool bond ▶ (MM/DD/YYYY) _____			
<b>c</b>	Enter the EIN of the issuer of the master pool bond ▶ _____			
<b>d</b>	Enter the name of the issuer of the master pool bond ▶ _____			
<b>39</b>	If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . .			<input type="checkbox"/>
<b>40</b>	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . .			<input type="checkbox"/>
<b>41a</b>	If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:			
<b>b</b>	Name of hedge provider ▶ _____			
<b>c</b>	Type of hedge ▶ _____			
<b>d</b>	Term of hedge ▶ _____			
<b>42</b>	If the issuer has superintegrated the hedge, check box . . . . .			<input type="checkbox"/>
<b>43</b>	If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . .			<input type="checkbox"/>
<b>44</b>	If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . .			<input type="checkbox"/>
<b>45a</b>	If some portion of the proceeds was used to reimburse expenditures, check here <input checked="" type="checkbox"/> and enter the amount of reimbursement . . . . .			\$ <u>1,358,994</u>
<b>b</b>	Enter the date the official intent was adopted ▶ (MM/DD/YYYY) <u>08/04/2020</u>			

<b>Signature and Consent</b>	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.				
		10-14-2020	Beth Didier, County Auditor		
	Signature of issuer's authorized representative	Date	Type or print name and title		
<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	James H. Stewart		10-14-2020		P01075592
	Firm's name ▶ Arntson Stewart Wegner PC	Firm's EIN ▶ 27-4397059			
Firm's address ▶ 3101 Broadway North, Suite B, Fargo, ND 58102	Phone no. 701-280-0195				

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# The Depository Trust Company

A subsidiary of the Depository Trust & Clearing Corporation

## BLANKET ISSUER LETTER OF REPRESENTATIONS

(To be completed by Issuer and Co-Issuer(s), if applicable)

Barnes County, North Dakota

(Name of Issuer and Co-Issuer(s), if applicable)

October 1, 2020

(Date)

### The Depository Trust Company

570 Washington Blvd, 4th FL

Jersey City, NJ 07310

Attention: Underwriting Department

Ladies and Gentlemen:

This letter sets forth our understanding with respect to all issues (the "Securities") that Issuer shall request to be made eligible for deposit by The Depository Trust Company ("DTC").

Issuer is: **(Note: Issuer shall represent one and cross out the other.)**

~~[incorporated in]~~ [formed under the laws of] North Dakota.

To induce DTC to accept the Securities as eligible for deposit at DTC, and to act in accordance with DTC's Rules with respect to the Securities, Issuer represents to DTC that issuer will comply with the requirements stated in DTC's Operational Arrangements, as they may be amended from time to time.

Very truly yours,

**Note:**

Schedule A contains statements that DTC believes accurately describe DTC, the method of effecting book-entry transfers of securities distributed through DTC, and certain related matters.

Barnes County, North Dakota

(Issuer)

By:

*Beth Didier*

(Authorized Officer's Signature)

Beth Didier, County Auditor

(Print Name)

230 4th Street NW, Room 202

(Street Address)

Valley City, North Dakota, USA 58072

(City)

(State)

(Country)

(Zip Code)

701-845-6666

(Phone Number)

bdidier@barnescounty.us

(E-mail Address)

**DTCC**

# The Depository Trust Company

A subsidiary of the Depository Trust & Clearing Corporation

## Additional Signature Page to BLANKET ISSUER LETTER OF REPRESENTATIONS For use with Co-Issuers

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(Name of Issuer and Co-Issuer(s), if applicable)

In signing this Blanket Issuer Letter of Representations dated as of \_\_\_\_\_.

Co-Issuer agrees to and shall be bound by all "Issuer" representations.

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(Co-Issuer)

By: \_\_\_\_\_  
(Authorized Officer's Signature)

---

(Print Name)

---

(Street Address)

---

(City) (State) (Country) (Zip Code)

---

(Phone Number)

---

(E-mail Address)

**SAMPLE OFFERING DOCUMENT LANGUAGE**  
**DESCRIBING BOOK-ENTRY-ONLY ISSUANCE**

(Prepared by DTC--bracketed material may be applicable only to certain issues)

1. The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the securities (the "Securities"). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for [each issue of] the Securities, [each] in the aggregate principal amount of such issue, and will be deposited with DTC. [If, however, the aggregate principal amount of [any] issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such issue.]

2. DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC's records. The ownership interest of each actual purchaser of each Security ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

**SCHEDULE A**  
(To Blanket Issuer Letter of Representations)

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. [Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.]

[6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.]

7. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

[9. A Beneficial Owner shall give notice to elect to have its Securities purchased or tendered, through its Participant, to [Tender/Remarketing] Agent, and shall effect delivery of such Securities by causing the Direct Participant to transfer the Participant's interest in the Securities, on DTC's records, to [Tender/Remarketing] Agent. The requirement for physical delivery of Securities in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Securities are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Securities to [Tender/Remarketing] Agent's DTC account.]

10. DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

11. Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

12. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.



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# MOODY'S

## INVESTORS SERVICE

### **Rating Action: Moody's assigns initial A2 issuer rating and Baa1 lease rating to Barnes County, ND; stable outlook**

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18 Sep 2020

New York, September 18, 2020 -- Moody's Investors Service assigns an initial A2 issuer rating to Barnes County, ND. Concurrently, Moody's has assigned an initial Baa1 rating to the county's \$15 million of Certificates of Participation, Series 2020. Following the sale, the county will have \$15 million certificate of participation (COPs) debt outstanding. The outlook is stable.

The issuer rating reflects the county's hypothetical general obligation unlimited tax (GOULT) rating and serves as a reference for the county's lease rating. The county has no rated GOULT bonds outstanding.

#### RATINGS RATIONALE

The A2 issuer rating reflects the county's moderately-sized tax base with economic concentration in agriculture and a slowly aging and declining population. Fund balance and liquidity are healthy relative to budget, but more limited on an absolute basis. The county is undertaking a large capital project to replace its aging jail and the rating considers the increased debt burden and fixed costs following the COP issuance. The pension burden associated with the county's participation in a state-wide pension plans is moderate.

The Baa1 rating on the county's COPs is notched twice from the county's issuer rating to reflect annual appropriation risk and the relatively weak political support for the project (county correctional facility) being financed. While county residents have been unsuccessful in petitioning for a reverse referendum, the petition reflects weak voter sentiment for the project.

The coronavirus outbreak is a social risk under our ESG framework, given the substantial implications for public health and safety. The coronavirus crisis is not a key driver for this rating action. We do not see any material immediate credit risks for the county. However, the situation surrounding coronavirus is rapidly evolving and the longer-term impact will depend on both the severity and duration of the crisis. If our view of the credit quality of the county changes, we will update the rating and/or outlook at that time.

#### RATING OUTLOOK

The stable outlook reflects the expectation that the county's operating reserves will remain sound relative to budget over the next two years. The majority of the county's operating revenue comes from property taxes, which will provide a predictable source of revenue for county operations.

#### FACTORS THAT COULD LEAD TO AN UPGRADE OF THE RATINGS

- Sustained economic activity that drives both resident incomes and diversification of tax base
- Successful completion of the jail project and demonstrated ability to absorb it into the county's operating budget
- Demonstrated history of stronger political support for the jail project (lease rating)

#### FACTORS THAT COULD LEAD TO A DOWNGRADE OF THE RATINGS

- Narrowing of operating reserves and liquidity
- Economic contraction that drives reduction in resident incomes and wealth
- Significant growth in debt or pension burdens

#### LEGAL SECURITY

The Series 2020 COPs are secured by lease payments subject to annual appropriation. Though not pledged, the county intends to use revenue generated from a 10 mill annual capital projects levy to support annual

lease payments.

#### USE OF PROCEEDS

The Series 2020 COPs will finance the replacement of the county's 40-bed correctional facility.

#### PROFILE

Barnes county is located in eastern North Dakota (Aa1 stable) and has an estimated population of 10,415. Valley City serves as the county seat and is approximately 60 miles west of the City of Fargo, ND (Aa2 stable). The county provides law enforcement, health and social services, roadway construction and maintenance and general administrative services.

#### METHODOLOGY

The principal methodology used in the issuer rating was US Local Government General Obligation Debt published in July 2020 and available at [https://www.moody.com/researchdocumentcontentpage.aspx?docid=PBM\\_1230443](https://www.moody.com/researchdocumentcontentpage.aspx?docid=PBM_1230443). The principal methodology used in the lease rating was Lease, Appropriation, Moral Obligation and Comparable Debt of US State and Local Governments published in July 2018 and available at [https://www.moody.com/researchdocumentcontentpage.aspx?docid=PBM\\_1102364](https://www.moody.com/researchdocumentcontentpage.aspx?docid=PBM_1102364). Alternatively, please see the Rating Methodologies page on [www.moody.com](http://www.moody.com) for a copy of these methodologies.

#### REGULATORY DISCLOSURES

For further specification of Moody's key rating assumptions and sensitivity analysis, see the sections Methodology Assumptions and Sensitivity to Assumptions in the disclosure form. Moody's Rating Symbols and Definitions can be found at: [https://www.moody.com/researchdocumentcontentpage.aspx?docid=PBC\\_79004](https://www.moody.com/researchdocumentcontentpage.aspx?docid=PBC_79004).

For ratings issued on a program, series, category/class of debt or security this announcement provides certain regulatory disclosures in relation to each rating of a subsequently issued bond or note of the same series, category/class of debt, security or pursuant to a program for which the ratings are derived exclusively from existing ratings in accordance with Moody's rating practices. For ratings issued on a support provider, this announcement provides certain regulatory disclosures in relation to the credit rating action on the support provider and in relation to each particular credit rating action for securities that derive their credit ratings from the support provider's credit rating. For provisional ratings, this announcement provides certain regulatory disclosures in relation to the provisional rating assigned, and in relation to a definitive rating that may be assigned subsequent to the final issuance of the debt, in each case where the transaction structure and terms have not changed prior to the assignment of the definitive rating in a manner that would have affected the rating. For further information please see the ratings tab on the issuer/entity page for the respective issuer on [www.moody.com](http://www.moody.com).

Regulatory disclosures contained in this press release apply to the credit rating and, if applicable, the related rating outlook or rating review.

Moody's general principles for assessing environmental, social and governance (ESG) risks in our credit analysis can be found at [https://www.moody.com/researchdocumentcontentpage.aspx?docid=PBC\\_1133569](https://www.moody.com/researchdocumentcontentpage.aspx?docid=PBC_1133569).

At least one ESG consideration was material to the credit rating action(s) announced and described above.

Please see [www.moody.com](http://www.moody.com) for any updates on changes to the lead rating analyst and to the Moody's legal entity that has issued the rating.

Please see the ratings tab on the issuer/entity page on [www.moody.com](http://www.moody.com) for additional regulatory disclosures for each credit rating.

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MJKK and MSFJ also maintain policies and procedures to address Japanese regulatory requirements.

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## TRUSTEE'S CERTIFICATE AND RECEIPT

The undersigned representative of the Bank of North Dakota, a bank duly organized and existing under the laws of the State of North Dakota, as trustee (the "Trustee") under that certain Trust Agreement dated as of October 1, 2020 (the "Trust Agreement"), executed by the Trustee and joined in by Barnes County, North Dakota, does hereby certify that:

1. The Trust Agreement has been duly signed, acknowledged, and delivered on behalf of the Trustee by a duly appointed, qualified, and acting officer of the Trustee who, at the time of such signing and delivery and on the date hereof, was authorized to perform such acts.

2. The Trustee is qualified to act as such under the terms of the Trust Agreement, has accepted the trust thereunder, and is bound by its terms.

3. Pursuant to the provisions of the Trust Agreement, the Trustee has executed \$15,435,000 aggregate principal amount of Certificates of Participation, Series 2020 (the "Certificates") Evidencing the Proportionate Interests in Rental Payments to be Made by Barnes County, North Dakota Pursuant to a Lease-Purchase Agreement, in the form set forth in the Trust Agreement. Each of the Certificates was signed by a person who was and is duly authorized by the Trustee to execute such Certificates on behalf of the Trustee.

4. The Trustee will deliver the Certificates through the book-entry system of The Depository Trust Company on behalf of Colliers Securities LLC, Minneapolis, Minnesota, upon receipt of \$15,615,866.20, representing the principal amount of the Certificates of \$15,435,000.00, plus a net original issue premium of \$373,803.70, less the underwriter's discount of \$192,937.50.

5. The Trustee has received the proceeds of the Certificates, and has deposited and applied the same pursuant to and in accordance with Section 4.1 of the Trust Agreement.

Capitalized terms used in this certificate shall have the same meanings set forth in the Trust Agreement, unless otherwise defined herein.

Dated: October 14, 2020.

**BANK OF NORTH DAKOTA**

By: Carrie Willott  
Its: Trust Officer



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**CERTIFICATES OF PARTICIPATION, SERIES 2020**  
**Evidencing the Proportional Interests of the Registered Owners thereof in**  
**Lease Payments under a Lease-Purchase Agreement, dated as of October 1,**  
**2020, between BARNES COUNTY, NORTH DAKOTA, as Lessee, and**  
**BANK OF NORTH DAKOTA, as Lessor**

**PRELIMINARY BLUE SKY MEMORANDUM**

September 30, 2020

Colliers Securities LLC  
120 North Third Street  
Bismarck, ND 58502

Re: Barnes County, North Dakota Certificates of Participation, Series 2020

Ladies and Gentlemen:

This Preliminary Blue Sky Memorandum sets forth in summary form our comments as to the requirements of the securities or “Blue Sky” laws of the jurisdictions enumerated herein with respect to the proposed offering and sale to the public of the Certificates of Participation, Series 2020 (the “Certificates”) to be issued by Barnes County, North Dakota.

This Preliminary Blue Sky Memorandum is based upon an examination of Section 18 of the Securities Act of 1933, as amended, statements contained in the Official Statement relating to the Certificates and the State, and the securities laws of the several jurisdictions and the rules and regulations, where published, of the authorities administering such laws, all as set forth in the CCH Blue Sky Law Reporter or upon informal interpretive advice or “no-action” letters obtained from certain securities commissions or their representatives relating to similar securities. Please note, however, that the securities laws of certain jurisdictions provide that the burden of claiming an exemption is upon the claimant and that informal interpretive advice and “no-action” letters are not binding upon a court of law.

We have not obtained opinions of counsel in other jurisdictions nor formal rulings from state regulatory commissions, departments, or other administrative bodies or officials. Statements made or conclusions expressed herein are also subject to change upon the exercise of broad discretionary powers vested in administrative authorities authorizing them, among other things, to withdraw or deny exemptions, to require additional information or action, to impose additional or special requirements, to revoke or suspend permits, to refuse registrations, or to issue stop orders. This Preliminary Blue Sky Memorandum does not purport to cover the requirements under any of the laws in the jurisdictions enumerated herein with respect to:

- (i) The registration or licensing of dealers, brokers, or salesmen;
- (ii) The form or substance of advertising; or
- (iii) The legality of investments in the Certificates by any bank, savings institution, trust company, insurance company, or other institutional investor, which is subject to statutory or other restrictions as to its investments.

In view of the foregoing limitations, this Preliminary Blue Sky Memorandum is furnished only for your general information and is not to be relied upon as an opinion of counsel. Further, this Preliminary Blue Sky Memorandum is given only as of the date hereof, and we assume no obligation to revise or supplement its contents to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

Very truly yours,

BALLARD SPAHR LLP

**CERTIFICATES OF PARTICIPATION, SERIES 2020**  
**Evidencing the Proportional Interests of the Registered Owners thereof in**  
**Lease Payments under a Lease-Purchase Agreement, dated as of October 1,**  
**2020, between BARNES COUNTY, NORTH DAKOTA, as Lessee, and**  
**BANK OF NORTH DAKOTA, as Lessor**

**PRELIMINARY BLUE SKY MEMORANDUM**

September 30, 2020

(The attached letter of Ballard Spahr LLP, dated September 30, 2020, is incorporated by reference and made a part of this Memorandum as if fully set forth herein.)

NOTE: THIS MEMORANDUM ASSUMES THAT THE SELLER OF THE CERTIFICATES IS REGISTERED OR LICENSED AS A BROKER OR DEALER IN THESE JURISDICTIONS. THEREFORE, THIS MEMORANDUM DOES NOT ADDRESS BROKER-DEALER REGISTRATION ISSUES.

PART I.

EXEMPT SECURITIES

*A. Jurisdictions Where Action is Not Required*

It is believed that offers and sales of the Certificates may be made in any amount to anyone in the following jurisdictions without registration of the Certificates or any filing being made with the local securities law administrator.

Alabama	Kansas	Oklahoma
Alaska	Kentucky	Oregon
Arkansas	Louisiana	Rhode Island
California	Maine	South Carolina
Colorado	Maryland	South Dakota
Connecticut	Massachusetts	Tennessee
Delaware	Michigan	Texas
Florida	Minnesota	Utah
Georgia	Mississippi	Vermont
Hawaii	Missouri	Virginia
Idaho	New Jersey	Washington, D.C.
Illinois	New Mexico	West Virginia
Indiana	North Carolina	Wisconsin
Iowa	North Dakota	Wyoming

*B. Jurisdictions Where Action is Required*

It is believed that offers and sales of the Certificates may be made in the following jurisdictions only after certain filings have been made, certain state fees have been paid, or information sufficient to support a claim of exemption has been obtained. We are taking such action as necessary to permit the sale of Certificates in the following jurisdictions, and offers and sales of the Certificates to any person (subject to Part II of this Memorandum) are prohibited in such jurisdictions without such action:

None

*C. Jurisdictions Where Action Has Not Been Taken*

No action is being taken to make the Certificates eligible or to determine eligibility for offer or sale in the following states or jurisdictions. PRIOR TO ANY OFFER OR SALE IN ANY OTHER STATE, A DETERMINATION MUST BE MADE WHETHER AN EXEMPTION IS AVAILABLE AND WHAT ACTION MUST BE TAKEN TO SECURE SUCH EXEMPTION.

New York

PART II.

EXEMPT TRANSACTIONS

In the following jurisdictions, the Certificates may be offered for sale and sold to the classes of persons or institutions indicated below without registration or other filings therein relating to the Certificates, except as otherwise indicated:

Montana: Any bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, qualified institutional buyer under SEC Rule 144A, or other financial institution or institutional buyer, whether the purchaser is acting for itself or in some fiduciary capacity.

Nebraska: Any bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust (*"pension or profit-sharing trust"* means an employee benefit plan, as defined in Title I of the Employee Retirement Income Security Act of 1974 (*"ERISA"*), if (i) the investment decisions are made by a "plan fiduciary," as defined in Section 3(21) of ERISA, which is either a bank, insurance company or registered investment adviser or (ii) the employee benefit plan has total assets in excess of \$5,000,000) or other financial institution or institutional buyer (*"financial institution or institutional buyer"* meaning (i) any bank as defined in Section 3(a)(2) of the Securities Act of 1933, whether acting in its individual or fiduciary capacity; (ii) any insurance company as defined in Section 2(13) of the Securities Act of 1933; (iii) any business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940; and (iv) any small business investment company licensed by the United States Small Business Administration, pursuant to Section 301(c) or (d) of the Small Business Investment Company Act of 1958), or to an individual accredited investor (*"individual accredited investor"* includes (i) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, or (ii) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year) or to a broker dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

Nevada: Any financial or institutional investor (*"financial or institutional investor"* means a depository institution; insurance company; a separate account of an

insurance company; an investment company as defined in the Investment Company Act of 1940; an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$5,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is either a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser under the Investment Advisers Act of 1940, a depository institution, or an insurance company, and any other institutional buyer (including, without limitation, any accredited investor as defined under Rule 501 of Regulation D of the Securities Act of 1933, as amended), whether the purchaser is acting for itself or others in a fiduciary capacity other than as an agent); *provided*, that the seller either is registered or is not required to be registered as a broker-dealer under the Securities Exchange Act of 1934 and has no place of business in Nevada and effects transactions therein exclusively with the foregoing classes of purchasers.

New Hampshire: Any offer or sale to a bank savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity; *provided*, that any seller who is not registered as a broker-dealer in the state has no place of business there and effects transactions therein exclusively with or through the foregoing classes of purchasers. "*Institutional buyer*" means an organization or person with a net worth of more than \$25,000,000, but excluding from the calculation of net worth certain intangible and other assets as *provided* by administrative order of the New Hampshire Bureau of Securities Regulation.

New York: Any bank ("*bank*" means a state or national bank, trust company or savings institution incorporated under the laws and subject to the examination, supervision and control of any state or of the United States or of any insular possession thereof), syndicate, corporation or group formed for the specific purpose of acquiring such securities for resale to the public directly or through other syndicates or groups, or any person purchasing such securities on the floor of any securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934; and, *as part of a private placement*, any bank, corporation, savings institution, trust company, insurance company, investment company, as defined in the federal investment company act of nineteen hundred forty, pension or profit-sharing trust, or other financial institution or institutional buyer, whether the purchaser is acting for himself or itself or in some fiduciary capacity.

Ohio: An unlicensed Ohio dealer may sell to any licensed Ohio dealer. In addition, a licensed Ohio dealer may sell to the issuer, a dealer or an institutional investor.

"*Institutional investor*" means any corporation, bank (defined to include any bank, trust company, savings and loan association, savings bank or credit union organized under the laws of the United States or any state), insurance company, pension fund or pension fund trust, employees' profit sharing fund or employees' profit sharing trust, any association engaged, as a substantial part of its business or operations, in purchasing or holding securities, or any trust in respect of which a bank is trustee or co-trustee.

Pennsylvania:

Any institutional investor (*"institutional investor"* means any bank, insurance company, pension or profit-sharing plan or trust (except a municipal pension plan or system), investment company as defined in the Investment Company Act of 1940, or any person, other than an individual, which controls any of the foregoing, the Federal government, state, or any agency or political subdivision thereof or any person so designated by regulation of the Pennsylvania Securities Commission, whether the buyer is acting for itself or in some fiduciary capacity. *"Municipal pension plan or system"* means a pension plan or system *provided* by a municipality as those terms are defined in section 102 of the Pennsylvania Municipal Pension Plan Funding Standard and Recover[y] Act. The other institutional investors designated by regulation of such commission are (1) any corporation or business trust or wholly-owned subsidiary of such person (a) which has a tangible net worth, which shall include net worth less the amount of all items of goodwill, pre-operating, deferred and development expenses, patents, trademarks, licenses or other similar accounts, on a consolidated basis of not less than \$10,000,000, as reflected on its most recent audited financial statements (*"most recent"* audited financial statements meaning audited financial statements dated not more than 16 months prior to the date of the transaction in which such person proposes to purchase securities), and (b) which has been in existence for 18 months, (2) any college, university or other public or private institution which has received exempt status under Section 501 (c)(3) of the Internal Revenue Code of 1954 and which has total endowment or trust funds, including annuity and life income funds, of not less than \$5,000,000 according to its most recently audited financial statements; *provided*, that the aggregate dollar amount of the securities being sold to such person shall not exceed 5% of such endowment or trust funds; (3) a wholly-owned subsidiary of any bank (*"bank"* means a bank, savings bank, savings institution, savings and loan association, thrift institution, trust company or similar organization which is organized or chartered under the laws of a state or of the United States, is authorized to and receives deposits and is supervised and examined by an official or agency of a state or by the United States if its deposits are insured by the Federal Deposit Insurance Corporation or a successor authorized by Federal law; *"bank"* does not include a holding company for a bank or a bank-in-organization); (4) a person, except an individual or an entity whose security holders consist entirely of one individual or group of individuals who are related, which is organized primarily for the purpose of purchasing, in nonpublic offerings, securities of corporations or issuers engaged in research and development activities in conjunction with a corporation and which complies with certain conditions; (5) a Small Business Investment Company as defined in Section 103 of the Small Business Investment Act of 1958 which meets certain conditions; (6) a Seed Capital Fund, as defined in Section 2 and authorized in Section 6 of the Small Business Incubators Act; (7) a Business Development Credit Corporation, as authorized by the Business Development Credit Corporation Law; (8) a person whose security holders consist solely of institutional investors or broker-dealers; (9) a person as to which the issuer reasonably believed qualified as an institutional investor at the time of the offer or sale of the securities on the basis of written representations made by the purchaser to the issuer; and (10) a qualified institutional buyer as that term is defined in Rule 144A under the Securities Act of 1933, or any successor rule thereto; *provided*, that any seller who is not registered as a broker-dealer in

Pennsylvania has no place of business there, and effects transactions therein exclusively with or through the foregoing classes of purchasers.

Washington:

Any bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, qualified institutional buyer under SEC Rule 144A, or other financial institution or institutional buyer, whether the purchaser is acting for itself or in some fiduciary capacity. (The Administrator has interpreted the term "institutional buyer" to mean: (1) a corporation, business trust, or a partnership or wholly owned subsidiary of such an entity, which has been operating for at least 12 months and which has a net worth on a consolidated basis of at least \$10,000,000 as determined by the entity's most recent audited financial statements, such statements to be dated within 16 months of the transaction made in reliance upon this exemption; (2) any entity which has been granted exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986 and which has a total endowment or trust funds of \$5,000,000 or more according to its most recent audited financial statements, such statements to be dated within 16 months of the transaction made in reliance upon this exemption; or (3) any wholly owned subsidiary of a bank, savings, institution, insurance company or investment company as defined in the Investment Company Act of 1940. The Administrator has further found that the term "institutional buyer" does not include a natural person, individual retirement account (IRA), Keogh account or other self-directed pension plan.)



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Minneapolis, MN 55402-2119  
TEL 612.371.3211  
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www.ballardspahr.com

**\$15,435,000**  
**CERTIFICATES OF PARTICIPATION, SERIES 2020**  
**Evidencing the Proportional Interests of the Registered Owners thereof in**  
**Lease Payments under a Lease-Purchase Agreement, dated as of October 1,**  
**2020, between BARNES COUNTY, NORTH DAKOTA, as Lessee, and**  
**BANK OF NORTH DAKOTA, as Lessor**

**BLUE SKY MEMORANDUM**

September 30, 2020

Colliers Securities LLC  
120 North Third Street  
Bismarck, ND 58502

Re: Barnes County, North Dakota Certificates of Participation, Series 2020

Ladies and Gentlemen:

This Blue Sky Memorandum sets forth in summary form our comments as to the requirements of the securities or “Blue Sky” laws of the jurisdictions enumerated herein with respect to the proposed offering and sale to the public of the Certificates of Participation, Series 2020 (the “Certificates”) to be issued by Barnes County, North Dakota.

This Blue Sky Memorandum is based upon an examination of Section 18 of the Securities Act of 1933, as amended, statements contained in the Official Statement relating to the Certificates and the State, and the securities laws of the several jurisdictions and the rules and regulations, where published, of the authorities administering such laws, all as set forth in the CCH Blue Sky Law Reporter or upon informal interpretive advice or “no-action” letters obtained from certain securities commissions or their representatives relating to similar securities. Please note, however, that the securities laws of certain jurisdictions provide that the burden of claiming an exemption is upon the claimant and that informal interpretive advice and “no-action” letters are not binding upon a court of law.

We have not obtained opinions of counsel in other jurisdictions nor formal rulings from state regulatory commissions, departments, or other administrative bodies or officials. Statements made or conclusions expressed herein are also subject to change upon the exercise of broad discretionary powers vested in administrative authorities authorizing them, among other things, to withdraw or deny exemptions, to require additional information or action, to impose additional or special requirements, to revoke or suspend permits, to refuse registrations, or to issue stop orders. This Blue Sky Memorandum does not purport to cover the requirements under any of the laws in the jurisdictions enumerated herein with respect to:

- (i) The registration or licensing of dealers, brokers, or salesmen;
- (ii) The form or substance of advertising; or
- (iii) The legality of investments in the Certificates by any bank, savings institution, trust company, insurance company, or other institutional investor, which is subject to statutory or other restrictions as to its investments.

In view of the foregoing limitations, this Blue Sky Memorandum is furnished only for your general information and is not to be relied upon as an opinion of counsel. Further, this Blue Sky Memorandum is given only as of the date hereof, and we assume no obligation to revise or supplement its contents to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

Very truly yours,

BALLARD SPAHR LLP

**\$15,435,000**  
**CERTIFICATES OF PARTICIPATION, SERIES 2020**  
**Evidencing the Proportional Interests of the Registered Owners thereof in**  
**Lease Payments under a Lease-Purchase Agreement, dated as of October 1,**  
**2020, between BARNES COUNTY, NORTH DAKOTA, as Lessee, and**  
**BANK OF NORTH DAKOTA, as Lessor**

**BLUE SKY MEMORANDUM**

September 30, 2020

(The attached letter of Ballard Spahr LLP, dated September 30, 2020, is incorporated by reference and made a part of this Memorandum as if fully set forth herein.)

NOTE: THIS MEMORANDUM ASSUMES THAT THE SELLER OF THE CERTIFICATES IS REGISTERED OR LICENSED AS A BROKER OR DEALER IN THESE JURISDICTIONS. THEREFORE, THIS MEMORANDUM DOES NOT ADDRESS BROKER-DEALER REGISTRATION ISSUES.

PART I.

EXEMPT SECURITIES

*A. Jurisdictions Where Action is Not Required*

It is believed that offers and sales of the Certificates may be made in any amount to anyone in the following jurisdictions without registration of the Certificates or any filing being made with the local securities law administrator.

Alabama	Kansas	Oklahoma
Alaska	Kentucky	Oregon
Arkansas	Louisiana	Rhode Island
California	Maine	South Carolina
Colorado	Maryland	South Dakota
Connecticut	Massachusetts	Tennessee
Delaware	Michigan	Texas
Florida	Minnesota	Utah
Georgia	Mississippi	Vermont
Hawaii	Missouri	Virginia
Idaho	New Jersey	Washington, D.C.
Illinois	New Mexico	West Virginia
Indiana	North Carolina	Wisconsin
Iowa	North Dakota	Wyoming

*B. Jurisdictions Where Action is Required*

It is believed that offers and sales of the Certificates may be made in the following jurisdictions only after certain filings have been made, certain state fees have been paid, or information sufficient to support a claim of exemption has been obtained. We are taking such action as necessary to permit the sale of Certificates in the following jurisdictions, and offers and sales of the Certificates to any person (subject to Part II of this Memorandum) are prohibited in such jurisdictions without such action:

None

*C. Jurisdictions Where Action Has Not Been Taken*

No action is being taken to make the Certificates eligible or to determine eligibility for offer or sale in the following states or jurisdictions. PRIOR TO ANY OFFER OR SALE IN ANY OTHER STATE, A DETERMINATION MUST BE MADE WHETHER AN EXEMPTION IS AVAILABLE AND WHAT ACTION MUST BE TAKEN TO SECURE SUCH EXEMPTION.

New York

PART II.

EXEMPT TRANSACTIONS

In the following jurisdictions, the Certificates may be offered for sale and sold to the classes of persons or institutions indicated below without registration or other filings therein relating to the Certificates, except as otherwise indicated:

Montana: Any bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, qualified institutional buyer under SEC Rule 144A, or other financial institution or institutional buyer, whether the purchaser is acting for itself or in some fiduciary capacity.

Nebraska: Any bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust (*"pension or profit-sharing trust"* means an employee benefit plan, as defined in Title I of the Employee Retirement Income Security Act of 1974 (*"ERISA"*), if (i) the investment decisions are made by a "plan fiduciary," as defined in Section 3(21) of ERISA, which is either a bank, insurance company or registered investment adviser or (ii) the employee benefit plan has total assets in excess of \$5,000,000) or other financial institution or institutional buyer (*"financial institution or institutional buyer"* meaning (i) any bank as defined in Section 3(a)(2) of the Securities Act of 1933, whether acting in its individual or fiduciary capacity; (ii) any insurance company as defined in Section 2(13) of the Securities Act of 1933; (iii) any business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940; and (iv) any small business investment company licensed by the United States Small Business Administration, pursuant to Section 301(c) or (d) of the Small Business Investment Company Act of 1958), or to an individual accredited investor (*"individual accredited investor"* includes (i) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, or (ii) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year) or to a broker dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

Nevada: Any financial or institutional investor (*"financial or institutional investor"*) means a depository institution; insurance company; a separate account of an insurance company; an investment company as defined in the Investment Company Act of 1940; an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$5,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is either a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser under the Investment Advisers Act of 1940, a depository institution, or an insurance company, and any other institutional buyer (including, without limitation, any accredited investor as defined under Rule 501 of Regulation D of the Securities Act of 1933, as amended), whether the purchaser is acting for itself or others in a fiduciary capacity other than as an agent); *provided*, that the seller either is registered or is not required to be registered as a broker-dealer under the Securities Exchange Act of 1934 and has no place of business in Nevada and effects transactions therein exclusively with the foregoing classes of purchasers.

New Hampshire: Any offer or sale to a bank savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity; *provided*, that any seller who is not registered as a broker-dealer in the state has no place of business there and effects transactions therein exclusively with or through the foregoing classes of purchasers. *"Institutional buyer"* means an organization or person with a net worth of more than \$25,000,000, but excluding from the calculation of net worth certain intangible and other assets as *provided* by administrative order of the New Hampshire Bureau of Securities Regulation.

New York: Any bank (*"bank"*) means a state or national bank, trust company or savings institution incorporated under the laws and subject to the examination, supervision and control of any state or of the United States or of any insular possession thereof), syndicate, corporation or group formed for the specific purpose of acquiring such securities for resale to the public directly or through other syndicates or groups, or any person purchasing such securities on the floor of any securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934; and, *as part of a private placement*, any bank, corporation, savings institution, trust company, insurance company, investment company, as defined in the federal investment company act of nineteen hundred forty, pension or profit-sharing trust, or other financial institution or institutional buyer, whether the purchaser is acting for himself or itself or in some fiduciary capacity.

Ohio: An unlicensed Ohio dealer may sell to any licensed Ohio dealer. In addition, a licensed Ohio dealer may sell to the issuer, a dealer or an institutional investor.

*"Institutional investor"* means any corporation, bank (defined to include any bank, trust company, savings and loan association, savings bank or credit union organized under the laws of the United States or any state), insurance company, pension fund or pension fund trust, employees' profit sharing fund or employees' profit sharing trust, any association engaged, as a substantial part of its business

or operations, in purchasing or holding securities, or any trust in respect of which a bank is trustee or co-trustee.

Pennsylvania:

Any institutional investor (*"institutional investor"* means any bank, insurance company, pension or profit-sharing plan or trust (except a municipal pension plan or system), investment company as defined in the Investment Company Act of 1940, or any person, other than an individual, which controls any of the foregoing, the Federal government, state, or any agency or political subdivision thereof or any person so designated by regulation of the Pennsylvania Securities Commission, whether the buyer is acting for itself or in some fiduciary capacity. *"Municipal pension plan or system"* means a pension plan or system *provided* by a municipality as those terms are defined in section 102 of the Pennsylvania Municipal Pension Plan Funding Standard and Recover[y] Act. The other institutional investors designated by regulation of such commission are (1) any corporation or business trust or wholly-owned subsidiary of such person (a) which has a tangible net worth, which shall include net worth less the amount of all items of goodwill, pre-operating, deferred and development expenses, patents, trademarks, licenses or other similar accounts, on a consolidated basis of not less than \$10,000,000, as reflected on its most recent audited financial statements (*"most recent"* audited financial statements meaning audited financial statements dated not more than 16 months prior to the date of the transaction in which such person proposes to purchase securities), and (b) which has been in existence for 18 months, (2) any college, university or other public or private institution which has received exempt status under Section 501 (c)(3) of the Internal Revenue Code of 1954 and which has total endowment or trust funds, including annuity and life income funds, of not less than \$5,000,000 according to its most recently audited financial statements; *provided*, that the aggregate dollar amount of the securities being sold to such person shall not exceed 5% of such endowment or trust funds; (3) a wholly-owned subsidiary of any bank (*"bank"* means a bank, savings bank, savings institution, savings and loan association, thrift institution, trust company or similar organization which is organized or chartered under the laws of a state or of the United States, is authorized to and receives deposits and is supervised and examined by an official or agency of a state or by the United States if its deposits are insured by the Federal Deposit Insurance Corporation or a successor authorized by Federal law; *"bank"* does not include a holding company for a bank or a bank-in-organization); (4) a person, except an individual or an entity whose security holders consist entirely of one individual or group of individuals who are related, which is organized primarily for the purpose of purchasing, in nonpublic offerings, securities of corporations or issuers engaged in research and development activities in conjunction with a corporation and which complies with certain conditions; (5) a Small Business Investment Company as defined in Section 103 of the Small Business Investment Act of 1958 which meets certain conditions; (6) a Seed Capital Fund, as defined in Section 2 and authorized in Section 6 of the Small Business Incubators Act; (7) a Business Development Credit Corporation, as authorized by the Business Development Credit Corporation Law; (8) a person whose security holders consist solely of institutional investors or broker-dealers; (9) a person as to which the issuer reasonably believed qualified as an institutional investor at the time of the offer or sale of the securities on the basis of written representations made by the purchaser to the issuer; and (10) a qualified institutional buyer as that term is defined in Rule 144A under the Securities Act of 1933, or any successor rule

thereto; *provided*, that any seller who is not registered as a broker-dealer in Pennsylvania has no place of business there, and effects transactions therein exclusively with or through the foregoing classes of purchasers.

Washington:

Any bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, qualified institutional buyer under SEC Rule 144A, or other financial institution or institutional buyer, whether the purchaser is acting for itself or in some fiduciary capacity. (The Administrator has interpreted the term "institutional buyer" to mean: (1) a corporation, business trust, or a partnership or wholly owned subsidiary of such an entity, which has been operating for at least 12 months and which has a net worth on a consolidated basis of at least \$10,000,000 as determined by the entity's most recent audited financial statements, such statements to be dated within 16 months of the transaction made in reliance upon this exemption; (2) any entity which has been granted exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986 and which has a total endowment or trust funds of \$5,000,000 or more according to its most recent audited financial statements, such statements to be dated within 16 months of the transaction made in reliance upon this exemption; or (3) any wholly owned subsidiary of a bank, savings, institution, insurance company or investment company as defined in the Investment Company Act of 1940. The Administrator has further found that the term "institutional buyer" does not include a natural person, individual retirement account (IRA), Keogh account or other self-directed pension plan.)



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**\$15,435,000**  
**Certificates of Participation, Series 2020**  
**in a Lease-Purchase Agreement dated as of October 1, 2020, between**  
**the Bank of North Dakota**  
**and Barnes County, North Dakota**

**ISSUE PRICE CERTIFICATE**

The undersigned, on behalf of Colliers Securities LLC (“Colliers”), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Certificates”).

**1. SALE OF THE CERTIFICATES.** As of the date of this certificate, for each Maturity of the Certificates, the first price at which at least 10% of such Maturity of the Certificates was sold to the Public is the respective price listed in Schedule A.

**2. DEFINED TERMS.**

**“Issuer”** means Barnes County, North Dakota.

**“Maturity”** means Certificates with the same credit and payment terms. Certificates with different maturity dates, or Certificates with the same maturity date but different stated interest rates, are treated as separate maturities.

**“Public”** means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50% common ownership, directly or indirectly.

**“Underwriter”** means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Certificates to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Certificates to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Certificates to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Colliers’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Compliance Certificate and with respect to compliance with the federal income tax rules affecting the Certificates, and by Arntson Stewart Wegner PC in connection with rendering its opinion that the interest component of the payments on the Certificates is excluded from gross income for federal income tax purposes,

the preparation of the Internal Revenue Service Form 8038, and other federal income tax advice that it may give to the Issuer from time to time relating to the Certificates.

Dated: October 14, 2020.

**COLLIERS SECURITIES LLC**



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Craig D. Theis  
Senior Vice President

**SCHEDULE A**

**SALE PRICES**

*(Attached)*

SCHEDULE I

**\$15,435,000**  
**Barnes County, North Dakota**  
**Certificates of Participation**  
**Series 2020**

Dated date: October 14, 2020

Maturity Dates and Schedule of Certificates

**Serial Certificates**

<u>Maturity Date (May 1)</u>	<u>Principal Amount*</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>Price</u>
2021	\$120,000	4.000%	0.625%	101.840%
2022	305,000	4.000	0.700	105.069
2023	315,000	4.000	0.750	108.184
2024	325,000	4.000	0.800	111.169
2025	340,000	4.000	0.900	113.781
2026	355,000	1.000	1.000	100.000
2027	360,000	4.000	1.250 <sup>(1)</sup>	112.118
2028	370,000	4.000	1.400 <sup>(1)</sup>	111.415
2029	385,000	4.000	1.600 <sup>(1)</sup>	110.484
2030	405,000	4.000	1.800 <sup>(1)</sup>	109.563
2031	420,000	4.000	2.000 <sup>(1)</sup>	108.651
2032	435,000	4.000	2.100 <sup>(1)</sup>	108.198
2033	455,000	4.000	2.200 <sup>(1)</sup>	107.747
2034	470,000	4.000	2.250 <sup>(1)</sup>	107.523
2037	530,000	4.000	2.400 <sup>(1)</sup>	106.852
2038	550,000	4.000	2.450 <sup>(1)</sup>	106.630

<sup>(1)</sup>Yield to optional redemption date of May 1, 2025.

**Term Certificates**

\$1,000,000 4.000% Term Certificates Due May 1, 2036  
 Price of 107.075% to Yield of 2.350%<sup>(1)</sup>

<u>Payment Date (May 1)</u>	<u>Principal Amount</u>	<u>Payment Date (May 1)</u>	<u>Principal Amount</u>
2035	\$490,000	2036 <sup>(2)</sup>	\$510,000

<sup>(1)</sup>Yield to optional redemption date of May 1, 2025.

<sup>(2)</sup>Stated Maturity.

\$1,170,000 4.000% Term Certificates Due May 1, 2040  
Price of 105.856% to Yield of 2.625%<sup>(1)</sup>

Payment Date (May 1)	Principal Amount	Payment Date (May 1)	Principal Amount
2039	\$575,000	2040 <sup>(2)</sup>	\$595,000

<sup>(1)</sup>Yield to optional redemption date of May 1, 2025.

<sup>(2)</sup>Stated Maturity.

\$3,295,000 3.000% Term Certificates Due May 1, 2045  
Price of 96.616% to Yield of 3.200%

Payment Date (May 1)	Principal Amount	Payment Date (May 1)	Principal Amount
2041	\$620,000	2044	\$675,000
2042	640,000	2045 <sup>(1)</sup>	700,000
2043	660,000		

<sup>(1)</sup>Stated Maturity.

\$3,830,000 3.125% Term Certificates Due May 1, 2050  
Price of 95.799% to Yield of 3.350%

Payment Date (May 1)	Principal Amount	Payment Date (May 1)	Principal Amount
2046	\$720,000	2049	\$790,000
2047	740,000	2050 <sup>(1)</sup>	815,000
2048	765,000		

<sup>(1)</sup>Stated Maturity.

Optional Redemption

The Certificates are subject to optional redemption by the County on May 1, 2025, and on any date thereafter, at a price equal to the principal amount plus accrued interest to the date of redemption, without premium.

**20**

# Barnes County State's Attorney

230 4th St. NW, Room 301, Valley City, ND 58072

Phone: 701-845-8526 · Fax: 701-845-8543 · Email: [states\\_attorney@barnescounty.us](mailto:states_attorney@barnescounty.us) · Web: [www.co.barnes.nd.us](http://www.co.barnes.nd.us)

**Tonya Duffy**  
State's Attorney

**Tanya Zachrison**  
Administrative Assistant

**Beverly Virnig**  
Administrative Assistant

**Katie Nechiporenko**  
Assistant State's Attorney

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October 14, 2020

Barnes County, North Dakota  
230 4<sup>th</sup> Street NW  
Valley City, ND 58072

Colliers Securities LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, MN 55402

Bank of North Dakota  
1200 Memorial Highway  
Bismarck, ND 58504

**\$15,435,000**

## **Certificates of Participation, Series 2020**

**In a Lease-Purchase Agreement dated as of October 1, 2020, between  
Bank of North Dakota and Barnes County, North Dakota**

I am the State's Attorney for Barnes County, North Dakota (the "County") and have represented the County in connection with the Lease-Purchase Agreement described above (the "Lease") between the County, as lessee, and the Bank of North Dakota, as lessor (the "Trustee"). In such capacity I have reviewed copies of the following documents (together, the "Financing Documents"):

1. The Ground Lease dated as of October 1, 2020 (the "Ground Lease"), by and between the County, as lessor, and the Trustee, as lessee;
2. The Lease and the exhibits attached thereto;
3. The Trust Agreement dated as of October 1, 2020 (the "Trust Agreement"), executed by the Trustee and joined in by the County, including the form of Certificate of Participation, Series 2020 (the "Certificates") attached thereto;
4. A Resolution duly adopted by the governing body of the Issuer on September 29, 2020;
5. Preliminary Official Statement dated September 18, 2020, and the final Official Statement relating to the Certificates dated October 5, 2020, inclusive of appendices and exhibits thereto (collectively, the "Official Statement");



# Barnes County State's Attorney

230 4th St. NW, Room 301, Valley City, ND 58072

Phone: 701-845-8526 · Fax: 701-845-8543 · Email: [states\\_attorney@barnescounty.us](mailto:states_attorney@barnescounty.us) · Web: [www.co.barnes.nd.us](http://www.co.barnes.nd.us)

6. Continuing Disclosure Agreement dated as of October 1, 2020, between the County and the Trustee;
7. Certificate Purchase Agreement dated September 30, 2020, between the County and Colliers Securities LLC relating to the Certificates; and
8. Such certified proceedings and other papers as I deem necessary to render this opinion.

Based upon the foregoing, I am of the opinion, as of the date hereof and under existing law, as follows:

1. The County is a political subdivision of the State of North Dakota (the "State"), duly organized, existing and operating under the Constitution and laws of the State.
2. The actions of the County approving and authorizing the execution and delivery of the Financing Documents were duly taken at a meeting of the governing body of the County that were called and held pursuant to State law and with all public notice required by State law and at which a quorum was present and acting throughout.
3. To my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body known to be pending or threatened against or affecting the County to restrain or enjoin the County from entering into the Financing Documents, the issuance or delivery of the Certificates by the Trustee, the anticipated appropriation of funds by the County to make Rental Payments (as defined in the Lease), and the construction of the County jail project financed with proceeds of the Lease and the Certificates or in any way contesting or affecting any authority for the County to enter into the Financing Documents and the issuance of the Certificates by the Trustee or the validity of the Certificates or the Financing Documents or in any way contesting the existence or powers of the County with respect to the Financing Documents or the issuance of the Certificates or the security therefor wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Financing Documents or the validity of the Certificates.
4. The execution and delivery of the Financing Documents and compliance with the provisions thereof, under the circumstances contemplated thereby, to my knowledge do not and will not in any material respect conflict with or constitute on the part of the County a breach of or default under any agreement or other instrument to which the County is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the County is subject.
5. The Financing Documents have been duly authorized, executed and delivered by the County and, assuming due authorization, execution and delivery by the other parties thereto where applicable, are valid and binding obligations of the County, enforceable in accordance with their respective terms, subject to laws relating to bankruptcy,

# Barnes County State's Attorney

230 4th St. NW, Room 301, Valley City, ND 58072

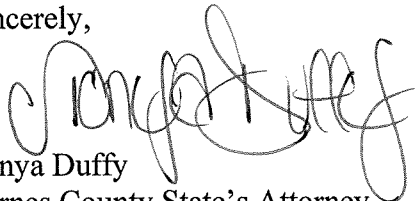
Phone: 701-845-8526 · Fax: 701-845-8543 · Email: [states\\_attorney@barnescounty.us](mailto:states_attorney@barnescounty.us) · Web: [www.co.barnes.nd.us](http://www.co.barnes.nd.us)

insolvency, reorganization or creditor's rights generally and to the application of equitable principles.

6. Based upon the information made available to me, and without having undertaken to determine independently or assuming any responsibility for the accuracy, completeness or fairness of the statements contained in the Official Statement, nothing has come to my attention which would lead me to believe that the statements and information contained in the Official Statement with respect to the County (excluding therefrom the statistical and financial data included in the Official Statement, as to which I express no opinion) as of the date of the Official Statement or as of the date hereof, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

Enforceability of the Certificates, the Resolution and the Financing Documents may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws relating to the enforcement of creditors' rights generally or by equitable principles, whether considered at law or in equity, including the exercise of judicial discretion.

Sincerely,



Tonya Duffy  
Barnes County State's Attorney

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# ARNTSON STEWART WEGNER PC

ATTORNEYS AT LAW

JON M. ARNTSON\*  
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\*Also licensed in Minnesota

SCOTT D. WEGNER\*\*  
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Bismarck, ND 58503-5554  
(701) 255-1008

\*\*Also licensed in Minnesota and South Dakota

October 14, 2020

Barnes County, North Dakota  
230 4<sup>th</sup> Street NW, Room 202  
Valley City, ND 58072

Colliers Securities LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, MN 55402

**\$15,435,000**  
**Certificates of Participation, Series 2020**  
**in a Lease-Purchase Agreement dated as of October 1, 2020, between**  
**the Bank of North Dakota**  
**and Barnes County, North Dakota**

We have acted as counsel to Barnes County, North Dakota (the "Lessee") in connection with the Lease-Purchase Agreement described above (the "Lease"). In such capacity we have reviewed copies of a Ground Lease dated as of October 1, 2020, by and between the Lessee, as lessor, and the Bank of North Dakota (the "Trustee"), as lessee (the "Ground Lease"); the Lease and the exhibits attached thereto; a Trust Agreement dated as of October 1, 2020, executed by the Trustee and joined in by the Lessee, including the form of Certificate of Participation, Series 2020 attached thereto (the "Trust Agreement"); and such certified proceedings and other papers as we deem necessary to render this opinion.

Under the Lease, the Project (as defined therein) is being leased and/or sold to the Lessee, and the Lessee has undertaken to pay rental payments with respect thereto (the "Rental Payments"). The Rental Payments are payable exclusively from moneys to be legally appropriated and provided therefor by the Lessee. In the sole event that moneys are not so appropriated and provided, the Lessee may, by written notice to the Trustee, as lessor, discontinue the Lease at the end of any fiscal year of the Lessee (January 1 through December 31) then in effect. If the Lessee discontinues the Lease at the end of any such fiscal year in the manner provided therein, the Lease is terminated without penalty or liability on the part of the Lessee to pay any Rental Payments coming due after the fiscal year then in effect, but in such event, the Lessee has the obligation to surrender the Project for the remaining term of the Ground Lease, as described in the Lease and the Ground Lease. In the event the Lessee does not discontinue the Lease and pays all Rental Payments due in accordance therewith, the rights of the Trustee in the Project are terminated.

Barnes County, North Dakota  
Colliers Securities LLC  
October 14, 2020  
Page 2

Based on our examination, and based upon existing law, we are of the opinion, as of the date hereof as follows:

1. The Lessee is political subdivision of the State of North Dakota (the "State"), duly organized, existing and operating under the Constitution and laws of the State.

2. The Lessee is authorized and has power under State law to enter into the Lease, the Ground Lease, and the Trust Agreement and to carry out its obligations thereunder and the transactions contemplated thereby.

3. The Lease, the Ground Lease and the Trust Agreement have been duly authorized, approved, executed and delivered by and on behalf of the Lessee and are valid and binding agreements of the Lessee enforceable against the Lessee in accordance with their terms.

4. The Lease and the obligations of the Lessee thereunder are special, limited obligations of the Lessee payable in each fiscal year from amounts appropriated for such purpose in the annual budget of the Lessee, provided that the Lessee is not obligated to make any such appropriation. In the event the Lessee fails to appropriate funds for the Rental Payments, the Lease will terminate.

5. The interest component of each Rental Payment (as defined in the Lease) received by the registered owners of the Certificates of Participation issued under the Trust Agreement is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. The opinions set forth in the preceding sentence are subject to the condition that the Lessee comply with all requirements of the Internal Revenue Code of 1986, as amended (the "Code"), that must be satisfied subsequent to the execution of the Lease in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The Lessee has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest in gross income for federal income tax purposes to be retroactive to the date of execution of the Lease. We express no opinion regarding other federal tax consequences arising with respect to the Lease.

6. The interest component of the Rental Payments is excluded from gross income for State of North Dakota income tax purposes.

It is to be understood that the rights of the Trustee and the owners of the Certificates of Participation, and the enforceability of the Lease, may be subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter

Barnes County, North Dakota  
Colliers Securities LLC  
October 14, 2020  
Page 3

enacted to the extent constitutionally applicable and that their enforcement may be subject to the exercise of judicial discretion in appropriate cases.

Sincerely,

**ARNTSON STEWART WEGNER PC**

*Arntson Stewart Wegner PC*

**22**

# ARNTSON STEWART WEGNER PC

## ATTORNEYS AT LAW

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(701) 255-1008

\*\* Also licensed in Minnesota and South Dakota

October 14, 2020

Colliers Securities LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, Minnesota 55402

Re: \$15,435,000 Barnes County, North Dakota  
Certificates of Participation, Series 2020  
(the "Certificates")

We have acted as Special Counsel to Barnes County, North Dakota (the "County") in connection with the issuance of the above-referenced Certificates pursuant to a Trust Agreement, dated as of October 1, 2020 (the "Trust Agreement"), between the Bank of North Dakota, as trustee, and the County. This opinion is rendered to satisfy Paragraph 5(d)(ii) of the Certificate Purchase Agreement, dated September 30, 2020 (the "Purchase Agreement"), between Colliers Securities LLC and the County. Words and terms used in this letter and not otherwise defined herein are intended to have the meanings assigned to them in the Purchase Agreement.

We have reviewed such portions of the Official Statement dated October 5, 2020, relating to the Certificates (the "Official Statement") as we have deemed appropriate for purposes of this opinion and such other documents relating to the Certificates as are referred to in our approving opinion.

Based upon our examination, and assuming the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies of the originals of such documents, and the accuracy of the statements of fact contained in such documents, we are of the opinion that pursuant to the laws of the State of North Dakota and of the United States of America in force and effect on the date hereof:

1. The offer and sale of the Certificates is exempt from registration pursuant to the Securities Act of 1933, as amended, and will not result in the Trust Agreement being subject to qualification pursuant to the Trust Indenture Act of 1939, as amended.

2. The statements contained (but not incorporated by reference) in the Official Statement under the headings entitled "SUMMARY OF THE OFFERING," "THE CERTIFICATES," "SECURITY FOR THE CERTIFICATES," and "TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS," and in "APPENDIX C – DEFINITIONS AND SUMMARY OF THE



Colliers Securities LLC  
October 14, 2020  
Page 2

TRUST AGREEMENT, THE LEASE, AND THE GROUND LEASE,” and APPENDIX F - “FORM OF BOND COUNSEL OPINION,” insofar as such statements purport to summarize certain, applicable provisions of the Certificates, the Trust Agreement, the Lease, the Ground Lease, certain laws of the State of North Dakota, certain provisions of the Internal Revenue Code of 1986, as amended, and certain matters related to us, fairly summarize the information that they purport to summarize.

3. The Purchase Agreement has been duly and validly authorized, executed and delivered by the County.

We hereby consent to the used of our name and references to our opinion in the Official Statement under the caption “TAX EXEMPTION AND OTHER FEDERAL TAX CONSIDERATIONS” and on the cover of the Official Statement.

Sincerely,

**ARNTSON STEWART WEGNER PC**



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2000 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402-2119  
TEL 612.371.3211  
FAX 612.371.3207  
www.ballardspahr.com

**\$15,435,000**  
**Barnes County, North Dakota**  
**Certificates of Participation**  
**Series 2020**

October 14, 2020

Colliers Securities LLC  
90 South 7th Street, Suite 4300  
Minneapolis, MN 55402-4108

The above-referenced obligations (the "Certificates") were issued by Barnes County, North Dakota (the "County") pursuant to a resolution of the governing body of the County, adopted on September 29, 2020 (the "Resolution") and a Trust Agreement, dated as of October 1, 2020 (the "Trust Agreement"), by the Bank of North Dakota (the "Trustee") and joined in by the County. We have acted as counsel to Colliers Securities LLC (the "Underwriter") in connection with the purchase and sale by the Underwriter of the Certificates pursuant to the terms and conditions of the Certificate Purchase Agreement, dated September 30, 2020 (the "Certificate Purchase Agreement"), between the Underwriter and the County, acknowledged by the Trustee. All capitalized terms used herein but not defined herein have the meanings assigned to them in the Resolution or the Certificate Purchase Agreement.

Proceeds derived from the issuance and sale of the Certificates, along with available funds of the County, in order to: (i) finance the design, construction, installation and equipping of a 46-bed Barnes County Correctional Facility (the "Correctional Facility Project") located in Valley City, North Dakota (the "Project Site"); and (ii) pay costs of issuance for the Certificates. The Project Site is owned by the County and is leased by the County to the Trustee and, in turn, the Trustee obtained a leasehold interest in the Project Site pursuant to a Ground Lease, dated as of October 1, 2020, between the Trustee, as lessee, and the County, as lessor. The County will construct the Correctional Facility Project on the Project Site and the Trustee will lease the Correctional Facility Project to the County pursuant to the terms of the Lease-Purchase Agreement, dated as of October 1, 2020, between the Trustee, as lessor, and the County, as lessee.

In connection with our engagement, we have (i) examined originals or copies, certified or otherwise identified to our satisfaction as being true copies, of the documents delivered on October 14, 2020, pursuant to the Certificate Purchase Agreement, including the Preliminary Official Statement, dated September 18, 2020 (the "Preliminary Official Statement") and the Official Statement, dated October 5, 2020 (the "Official Statement") relating to the Certificates, and (ii) participated with the Underwriter in

various discussions with representatives of the County and Arntson Stewart Wegner PC (Bond Counsel), on such other matters and law as we deemed necessary. We have also reviewed, and believe the Underwriter may reasonably rely upon, the opinions delivered to the Underwriter today pursuant to the Certificate Purchase Agreement.

We have not verified the information contained in the Preliminary Official Statement or Official Statement (including the Appendices thereto) and we are not passing upon and do not assume any responsibility for the accuracy, completeness, or fairness of any of the statements contained in the Preliminary Official Statement or Official Statement (including the Appendices thereto) and we make no representation that we have independently verified the accuracy, completeness, or fairness of such statements. However, to assist the Underwriter in its investigation concerning the Preliminary Official Statement and the Official Statement, certain of our lawyers responsible for this matter have reviewed certain documents and have participated in conferences in which the contents of the Preliminary Official Statement and the Official Statement and related matters were discussed. Based solely upon such review and our participation described above, during the course of our work on this matter, nothing has come to our attention that causes us to believe that the Preliminary Official Statement, as of its date or the date of the Certificate Purchase Agreement, or the Official Statement, as of its date or the date hereof, contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary in order to make the statements made in the Preliminary Official Statement and the Official Statement, in light of the circumstances under which they were made, not misleading; provided, however, we express no belief or view as to (a) offering prices, interest rates, selling compensation, aggregate principal amount, principal amounts per maturity, delivery date and rating omitted from the Preliminary Official Statement; (b) any forecasts, projections, estimates, or expressions of opinion, assumptions, statistical or accounting data, or information or assessments of or reports on the effectiveness of internal control over financial reporting contained in the Preliminary Official Statement or Official Statement or in Appendices thereto, (c) any information or statements relating to the book-entry only system and The Depository Trust Company, including but not limited to the information in APPENDIX E, (d) the audited financial statements of the County included in APPENDIX B, or (e) any information incorporated or included by reference in the Preliminary Official Statement or Official Statement.

We are furnishing this letter to the Underwriter solely for its benefit and may not be relied upon, used, circulated, quoted or otherwise referred to by any other person. We disclaim any obligation to update this letter. We consent to references to us as counsel to the Underwriter in the Preliminary Official Statement or Official Statement. Our engagement with respect to the Certificates terminates upon delivery of this letter.

Sincerely,

*Ballard Spahr LLP*

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**\$15,435,000**

Barnes County, North Dakota  
Correctional Facility Lease Revenue Bonds, Series 2020  
Proposed Final

## Sources & Uses

Dated 10/14/2020 | Delivered 10/14/2020

### Sources Of Funds

Par Amount of Bonds	\$15,435,000.00
Issuer Equity Contribution	700,000.00
Reoffering Premium	373,803.70

**Total Sources** **\$16,508,803.70**

### Uses Of Funds

Deposit to Project Construction Fund	16,212,980.00
Total Underwriter's Discount (1.250%)	192,937.50
Costs of Issuance	97,882.50
Rounding Amount	5,003.70

**Total Uses** **\$16,508,803.70**

**\$15,435,000**

Barnes County, North Dakota  
Correctional Facility Lease Revenue Bonds, Series 2020  
Proposed Final

## Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+i
05/01/2021	120,000.00	4.000%	295,657.33	415,657.33
05/01/2022	305,000.00	4.000%	535,487.50	840,487.50
05/01/2023	315,000.00	4.000%	523,287.50	838,287.50
05/01/2024	325,000.00	4.000%	510,687.50	835,687.50
05/01/2025	340,000.00	4.000%	497,687.50	837,687.50
05/01/2026	355,000.00	1.000%	484,087.50	839,087.50
05/01/2027	360,000.00	4.000%	480,537.50	840,537.50
05/01/2028	370,000.00	4.000%	466,137.50	836,137.50
05/01/2029	385,000.00	4.000%	451,337.50	836,337.50
05/01/2030	405,000.00	4.000%	435,937.50	840,937.50
05/01/2031	420,000.00	4.000%	419,737.50	839,737.50
05/01/2032	435,000.00	4.000%	402,937.50	837,937.50
05/01/2033	455,000.00	4.000%	385,537.50	840,537.50
05/01/2034	470,000.00	4.000%	367,337.50	837,337.50
05/01/2035	490,000.00	4.000%	348,537.50	838,537.50
05/01/2036	510,000.00	4.000%	328,937.50	838,937.50
05/01/2037	530,000.00	4.000%	308,537.50	838,537.50
05/01/2038	550,000.00	4.000%	287,337.50	837,337.50
05/01/2039	575,000.00	4.000%	265,337.50	840,337.50
05/01/2040	595,000.00	4.000%	242,337.50	837,337.50
05/01/2041	620,000.00	3.000%	218,537.50	838,537.50
05/01/2042	640,000.00	3.000%	199,937.50	839,937.50
05/01/2043	660,000.00	3.000%	180,737.50	840,737.50
05/01/2044	675,000.00	3.000%	160,937.50	835,937.50
05/01/2045	700,000.00	3.000%	140,687.50	840,687.50
05/01/2046	720,000.00	3.125%	119,687.50	839,687.50
05/01/2047	740,000.00	3.125%	97,187.50	837,187.50
05/01/2048	765,000.00	3.125%	74,062.50	839,062.50
05/01/2049	790,000.00	3.125%	50,156.26	840,156.26
05/01/2050	815,000.00	3.125%	25,468.76	840,468.76
<b>Total</b>	<b>\$15,435,000.00</b>	<b>-</b>	<b>\$9,304,819.85</b>	<b>\$24,739,819.85</b>

### Yield Statistics

Bond Year Dollars	\$275,851.38
Average Life	17.872 Years
Average Coupon	3.3731280%
Net Interest Cost (NIC)	3.3075614%
True Interest Cost (TIC)	3.3106161%
Bond Yield for Arbitrage Purposes	2.8917943%
All Inclusive Cost (AIC)	3.3604802%

### IRS Form 8038

Net Interest Cost	3.2362499%
Weighted Average Maturity	17.457 Years

**\$15,435,000**

Barnes County, North Dakota  
Correctional Facility Lease Revenue Bonds, Series 2020  
Proposed Final

## Debt Service Schedule

Part 1 of 2

Date	Principal	Coupon	Interest	Total P+I
10/14/2020	-	-	-	-
05/01/2021	120,000.00	4.000%	295,657.33	415,657.33
11/01/2021	-	-	267,743.75	267,743.75
05/01/2022	305,000.00	4.000%	267,743.75	572,743.75
11/01/2022	-	-	261,643.75	261,643.75
05/01/2023	315,000.00	4.000%	261,643.75	576,643.75
11/01/2023	-	-	255,343.75	255,343.75
05/01/2024	325,000.00	4.000%	255,343.75	580,343.75
11/01/2024	-	-	248,843.75	248,843.75
05/01/2025	340,000.00	4.000%	248,843.75	588,843.75
11/01/2025	-	-	242,043.75	242,043.75
05/01/2026	355,000.00	1.000%	242,043.75	597,043.75
11/01/2026	-	-	240,268.75	240,268.75
05/01/2027	360,000.00	4.000%	240,268.75	600,268.75
11/01/2027	-	-	233,068.75	233,068.75
05/01/2028	370,000.00	4.000%	233,068.75	603,068.75
11/01/2028	-	-	225,668.75	225,668.75
05/01/2029	385,000.00	4.000%	225,668.75	610,668.75
11/01/2029	-	-	217,968.75	217,968.75
05/01/2030	405,000.00	4.000%	217,968.75	622,968.75
11/01/2030	-	-	209,868.75	209,868.75
05/01/2031	420,000.00	4.000%	209,868.75	629,868.75
11/01/2031	-	-	201,468.75	201,468.75
05/01/2032	435,000.00	4.000%	201,468.75	636,468.75
11/01/2032	-	-	192,768.75	192,768.75
05/01/2033	455,000.00	4.000%	192,768.75	647,768.75
11/01/2033	-	-	183,668.75	183,668.75
05/01/2034	470,000.00	4.000%	183,668.75	653,668.75
11/01/2034	-	-	174,268.75	174,268.75
05/01/2035	490,000.00	4.000%	174,268.75	664,268.75
11/01/2035	-	-	164,468.75	164,468.75
05/01/2036	510,000.00	4.000%	164,468.75	674,468.75
11/01/2036	-	-	154,268.75	154,268.75
05/01/2037	530,000.00	4.000%	154,268.75	684,268.75
11/01/2037	-	-	143,668.75	143,668.75
05/01/2038	550,000.00	4.000%	143,668.75	693,668.75
11/01/2038	-	-	132,668.75	132,668.75
05/01/2039	575,000.00	4.000%	132,668.75	707,668.75
11/01/2039	-	-	121,168.75	121,168.75
05/01/2040	595,000.00	4.000%	121,168.75	716,168.75
11/01/2040	-	-	109,268.75	109,268.75
05/01/2041	620,000.00	3.000%	109,268.75	729,268.75
11/01/2041	-	-	99,968.75	99,968.75
05/01/2042	640,000.00	3.000%	99,968.75	739,968.75



**\$15,435,000**

Barnes County, North Dakota  
Correctional Facility Lease Revenue Bonds, Series 2020  
Proposed Final

**Debt Service Schedule**

Part 2 of 2

Date	Principal	Coupon	Interest	Total P+I
11/01/2042	-	-	90,368.75	90,368.75
05/01/2043	660,000.00	3.000%	90,368.75	750,368.75
11/01/2043	-	-	80,468.75	80,468.75
05/01/2044	675,000.00	3.000%	80,468.75	755,468.75
11/01/2044	-	-	70,343.75	70,343.75
05/01/2045	700,000.00	3.000%	70,343.75	770,343.75
11/01/2045	-	-	59,843.75	59,843.75
05/01/2046	720,000.00	3.125%	59,843.75	779,843.75
11/01/2046	-	-	48,593.75	48,593.75
05/01/2047	740,000.00	3.125%	48,593.75	788,593.75
11/01/2047	-	-	37,031.25	37,031.25
05/01/2048	765,000.00	3.125%	37,031.25	802,031.25
11/01/2048	-	-	25,078.13	25,078.13
05/01/2049	790,000.00	3.125%	25,078.13	815,078.13
11/01/2049	-	-	12,734.38	12,734.38
05/01/2050	815,000.00	3.125%	12,734.38	827,734.38
<b>Total</b>	<b>\$15,435,000.00</b>	<b>-</b>	<b>\$9,304,819.85</b>	<b>\$24,739,819.85</b>

**Yield Statistics**

Bond Year Dollars	\$275,851.38
Average Life	17.872 Years
Average Coupon	3.3731280%
Net Interest Cost (NIC)	3.3075614%
True Interest Cost (TIC)	3.3106161%
Bond Yield for Arbitrage Purposes	2.8917943%
All Inclusive Cost (AIC)	3.3604802%

**IRS Form 8038**

Net Interest Cost	3.2362499%
Weighted Average Maturity	17.457 Years

**\$15,435,000**

Barnes County, North Dakota  
Correctional Facility Lease Revenue Bonds, Series 2020  
Proposed Final

## Pricing Summary

Maturity	Type of Bond	Coupon	Yield	Maturity Value	Price	YTM	Call Date	Call Price	Dollar Price
05/01/2021	Serial Coupon	4.000%	0.625%	120,000.00	101.840%	-	-	-	122,208.00
05/01/2022	Serial Coupon	4.000%	0.700%	305,000.00	105.069%	-	-	-	320,460.45
05/01/2023	Serial Coupon	4.000%	0.750%	315,000.00	108.184%	-	-	-	340,779.60
05/01/2024	Serial Coupon	4.000%	0.800%	325,000.00	111.169%	-	-	-	361,299.25
05/01/2025	Serial Coupon	4.000%	0.900%	340,000.00	113.781%	-	-	-	386,855.40
05/01/2026	Serial Coupon	1.000%	1.000%	355,000.00	100.000%	-	-	-	355,000.00
05/01/2027	Serial Coupon	4.000%	1.250%	360,000.00	112.118%	c 2.015%	05/01/2025	100.000%	403,624.80
05/01/2028	Serial Coupon	4.000%	1.400%	370,000.00	111.415%	c 2.341%	05/01/2025	100.000%	412,235.50
05/01/2029	Serial Coupon	4.000%	1.600%	385,000.00	110.484%	c 2.623%	05/01/2025	100.000%	425,363.40
05/01/2030	Serial Coupon	4.000%	1.800%	405,000.00	109.563%	c 2.849%	05/01/2025	100.000%	443,730.15
05/01/2031	Serial Coupon	4.000%	2.000%	420,000.00	108.651%	c 3.035%	05/01/2025	100.000%	456,334.20
05/01/2032	Serial Coupon	4.000%	2.100%	435,000.00	108.198%	c 3.148%	05/01/2025	100.000%	470,661.30
05/01/2033	Serial Coupon	4.000%	2.200%	455,000.00	107.747%	c 3.243%	05/01/2025	100.000%	490,248.85
05/01/2034	Serial Coupon	4.000%	2.250%	470,000.00	107.523%	c 3.306%	05/01/2025	100.000%	505,358.10
05/01/2036	Term 1 Coupon	4.000%	2.350%	1,000,000.00	107.075%	c 3.410%	05/01/2025	100.000%	1,070,750.00
05/01/2037	Serial Coupon	4.000%	2.400%	530,000.00	106.852%	c 3.453%	05/01/2025	100.000%	566,315.60
05/01/2038	Serial Coupon	4.000%	2.450%	550,000.00	106.630%	c 3.491%	05/01/2025	100.000%	586,465.00
05/01/2040	Term 2 Coupon	4.000%	2.625%	1,170,000.00	105.856%	c 3.581%	05/01/2025	100.000%	1,238,515.20
05/01/2045	Term 3 Coupon	3.000%	3.200%	3,295,000.00	96.616%	-	-	-	3,183,497.20
05/01/2050	Term 4 Coupon	3.125%	3.350%	3,830,000.00	95.799%	-	-	-	3,669,101.70
<b>Total</b>	-	-	-	<b>\$15,435,000.00</b>	-	-	-	-	<b>\$15,808,803.70</b>

### Bid Information

Par Amount of Bonds	\$15,435,000.00
Reoffering Premium or (Discount)	373,803.70
Gross Production	\$15,808,803.70
Total Underwriter's Discount (1.250%)	\$(192,937.50)
Bid (101.172%)	15,615,866.20
Total Purchase Price	\$15,615,866.20
Bond Year Dollars	\$275,851.38
Average Life	17.872 Years
Average Coupon	3.3731280%
Net Interest Cost (NIC)	3.3075614%
True Interest Cost (TIC)	3.3106161%

**\$15,435,000**

Barnes County, North Dakota  
Correctional Facility Lease Revenue Bonds, Series 2020  
Proposed Final

### Coverage Ratio

Date	Total Revenues	Total D/S	Coverage
05/01/2021	434,610.25	415,657.33	1.05x
05/01/2022	869,220.50	840,487.50	1.03x
05/01/2023	869,220.50	838,287.50	1.04x
05/01/2024	869,220.50	835,687.50	1.04x
05/01/2025	869,220.50	837,687.50	1.04x
05/01/2026	869,220.50	839,087.50	1.04x
05/01/2027	869,220.50	840,537.50	1.03x
05/01/2028	869,220.50	836,137.50	1.04x
05/01/2029	869,220.50	836,337.50	1.04x
05/01/2030	869,220.50	840,937.50	1.03x
05/01/2031	869,220.50	839,737.50	1.04x
05/01/2032	869,220.50	837,937.50	1.04x
05/01/2033	869,220.50	840,537.50	1.03x
05/01/2034	869,220.50	837,337.50	1.04x
05/01/2035	869,220.50	838,537.50	1.04x
05/01/2036	869,220.50	838,937.50	1.04x
05/01/2037	869,220.50	838,537.50	1.04x
05/01/2038	869,220.50	837,337.50	1.04x
05/01/2039	869,220.50	840,337.50	1.03x
05/01/2040	869,220.50	837,337.50	1.04x
05/01/2041	869,220.50	838,537.50	1.04x
05/01/2042	869,220.50	839,937.50	1.03x
05/01/2043	869,220.50	840,737.50	1.03x
05/01/2044	869,220.50	835,937.50	1.04x
05/01/2045	869,220.50	840,687.50	1.03x
05/01/2046	869,220.50	839,687.50	1.04x
05/01/2047	869,220.50	837,187.50	1.04x
05/01/2048	869,220.50	839,062.50	1.04x
05/01/2049	869,220.50	840,156.26	1.03x
05/01/2050	869,220.50	840,468.76	1.03x
<b>Total</b>	<b>\$25,642,004.75</b>	<b>\$24,739,819.85</b>	<b>-</b>

**\$15,435,000**

Barnes County, North Dakota  
Correctional Facility Lease Revenue Bonds, Series 2020  
Proposed Final

## Detail Costs Of Issuance

Dated 10/14/2020 | Delivered 10/14/2020

### COSTS OF ISSUANCE DETAIL

Bond Counsel	\$40,000.00
Underwriter's Counsel	\$25,000.00
Rating Agency Fee	\$27,000.00
Trustee Fee	\$2,882.50
Miscellaneous	\$3,000.00
<b>TOTAL</b>	<b>\$97,882.50</b>

**25**

No. R-1

UNITED STATES OF AMERICA  
STATE OF NORTH DAKOTA

\$120,000

COUNTY OF BARNES

CERTIFICATE OF PARTICIPATION  
SERIES 2020

in a Lease-Purchase Agreement by and between  
Bank of North Dakota, as trustee, as Lessor,  
and Barnes County, North Dakota, as Lessee

**SPECIMEN**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
4.000%	May 1, 2021	October 14, 2020	067789 AA5

**REGISTERED OWNER: CEDE & CO.**

**PRINCIPAL AMOUNT: ONE HUNDRED TWENTY THOUSAND AND  
NO/100 DOLLARS**

This is to certify that the above named Registered Owner of this Certificate of Participation (the "Certificate") is the owner of the proportionate interest hereinafter stated in that certain Lease-Purchase Agreement, dated as of October 1, 2020 (the "Lease"), by and between the Bank of North Dakota, as trustee, as Lessor (the "Trustee"), and Barnes County, North Dakota, as Lessee (the "County").

The Registered Owner of this Certificate is entitled to receive, subject to the terms of the Trust Agreement described below, on the maturity date specified above (the "Maturity Date"), the principal sum specified above, representing a portion of the Rental Payment designated as principal coming due on or before the Maturity Date, and to receive the Registered Owner's proportionate share of Rental Payments designated as interest coming due on or before the first day of May and November of each year commencing May 1, 2021 (each such date, a "Certificate Payment Date"), and continuing to and including the Maturity Date or the date of redemption, whichever is earlier, all subject to the provisions referred to herein with respect to the redemption of the principal of this Certificate prior to its stated maturity. Said proportionate share of the Rental Payments designated as interest is the result of the multiplication of the aforesaid portion of the Rental Payment designated as principal coming due on the Rental Payment Date (as defined in the Lease) immediately preceding the Maturity Date by the interest rate specified above per annum. Amounts representing interest payable with respect to this Certificate on any Certificate Payment Date are payable by check or draft drawn on the Trustee and mailed to the person in whose name this Certificate is registered or by wire transfer at the close of business on the fifteenth (15<sup>th</sup>) day (whether or not a business day) of the calendar month immediately preceding such Rental Payment Date.

Notwithstanding any other provisions of this Certificate, so long as this Certificate is registered in the name of Cede & Co., as nominee of The Depository Trust Company, or in the name of any other nominee of The Depository Trust Company or other securities depository, the Registrar shall pay all principal of and interest on this Certificate, and shall give all notices with respect to this Certificate, only to Cede & Co. or other nominee in accordance with the operational arrangements of The Depository Trust Company or other securities depository as agreed to by the County.

The Certificates are payable from the Rental Payments (as defined in the Lease) and the moneys held in the funds and accounts established pursuant to the Trust Agreement, dated as of October 1, 2020, by the Trustee and joined in by the County (the "Trust Agreement"), subject to the provisions of the Trust Agreement permitting the application thereof for or to the purposes and on the terms and conditions set forth in the Trust Agreement. The obligations of the County under the Lease, including the obligation to make Rental Payments, are subject to termination by the County at the end of any fiscal year if the governing body of the County fails, for any reason, to appropriate sufficient funds to continue the Lease for the subsequent fiscal year, in which case the Lease will terminate at the end of the last fiscal year for which funds were appropriated and the County will have no further obligation to make Rental Payments under the Lease. The obligation of the County to make Rental Payments under the Lease is not a general obligation of the County to which its full faith and credit and ability to levy ad valorem taxes without limitation as to rate or amount are pledged.

The Trustee has no obligation or liability to the Registered Owners for the payment of interest or principal portions pertaining to the Certificates. The Trustee's sole obligation is to administer, for the benefit of the County and the Registered Owners, the various funds and accounts established in the Trust Agreement. The Trustee has no obligation to pay any portion of the interest or principal pertaining to the Certificates from any source other than the funds and accounts established in the Trust Agreement as described herein and the payment of such interest or principal is not a liability or charge upon the credit of the Trustee. All amounts payable hereunder are to be paid in lawful money of the United States of America, which at the time of payment is legal tender. The principal payable on all Certificates shall be payable at the principal office of the Trustee. Interest payable on all Certificates shall be paid by check or draft of the Trustee mailed on the Certificate Payment Dates to the Registered Owners at their addresses recorded on the Register maintained by the Trustee or by wire transfer in accordance with instructions provided by the Registered Owners.

This Certificate has been executed by the Trustee pursuant to the terms of the Trust Agreement. Copies of the Trust Agreement are on file at the office of the County and at the office of the Trustee, and reference to the Trust Agreement and any and all amendments thereto is made for a description of the pledges and covenants of the County securing the Certificates, the nature, extent and manner of enforcement of such pledges, the rights and remedies of the Registered Owners of the Certificates with respect thereto and the other terms and conditions upon which the Certificates are delivered thereunder, including, without limitation, rights and remedies accruing pursuant to the Ground Lease dated as of October 1, 2020, by and between the County and the Trustee. To the extent and in the manner permitted by the terms of the Trust Agreement, certain provisions of the Trust Agreement may be amended by the parties thereto without consent of the Registered Owners of the Certificates, while other amendments are permitted only with the written consent of the Registered Owners of at least two-thirds (2/3) in principal amount of the Certificates then outstanding.

This Certificate shall be transferable only upon the register maintained by the Trustee, which shall be kept for that purpose at the corporate trust office of the Trustee, upon surrender hereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the Registered Owner or its duly authorized attorney. Upon the registration of the transfer, and the surrender of this Certificate, the Trustee shall provide in the name of the transferee, a new fully registered Certificate or Certificates of the same maturity and aggregate principal amount as the surrendered Certificates. The Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Trustee shall not be affected by any notice to the contrary.

The Certificates are issuable in fully registered form, without coupons, in denominations of \$5,000 or any integral multiple thereof. The Certificates, upon surrender thereof at the office of the Trustee with a written request for exchange satisfactory to the Trustee duly executed by the Registered Owner or its attorney duly authorized in writing, may be exchanged for an equal aggregate principal amount of fully registered Certificates without coupons of any other authorized denomination of the same maturity.

**Optional Redemption.** The Certificates having a Maturity Date occurring on or after May 1, 2026, are subject to redemption in whole or in part, on May 1, 2025, or any date thereafter, at the option of the County, at a price equal to the principal portion to be redeemed plus accrued interest to the date of redemption.

**Mandatory Redemption.** The Term Certificates maturing May 1, 2036, 2040, 2045 and 2050, are subject to mandatory sinking fund redemption, by random selection, at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium, on May 1, in the years and in the amounts as follows:

Term Bonds Maturing 5-1-2036		Term Bonds Maturing 5-1-2040		Term Bonds Maturing 5-1-2045		Term Bonds Maturing 5-1-2050	
Redemption Date	Principal Amount	Redemption Date	Principal Amount	Redemption Date	Principal Amount	Redemption Date	Principal Amount
5-1-2035	\$490,000	5-1-2039	\$575,000	5-1-2042	\$620,000	5-1-2046	\$720,000
5-1-2036*	\$510,000	5-1-2040*	\$595,000	5-1-2043	\$640,000	5-1-2047	\$740,000
				5-1-2044	\$660,000	5-1-2048	\$765,000
				5-1-2045*	\$675,000	5-1-2049	\$790,000
					\$700,000	5-1-2050*	\$815,000

\*Final Maturity

**Extraordinary Redemption.** The Certificates are subject to extraordinary redemption and prepayment, in whole but not in part, at the option of the County on any date upon the conditions and terms set forth in the Trust Agreement if there occurs an event of damage, destruction or condemnation. Certificates redeemed as a result of any of the events described above in this paragraph shall be redeemed at a price equal to the principal amount to be redeemed plus accrued interest to the redemption date without premium.

Notice of any such redemption shall be published if, and to the extent, then required by law, and shall also be given to the Registered Owner of each Certificate to be redeemed by first-class mail, addressed to such Registered Owner at its registered address, not later than thirty (30) days prior to the date fixed for redemption. On or prior to the date fixed for redemption, funds are required to be deposited with the Trustee sufficient to pay the Certificates called and accrued interest thereon. Upon the happening of the above conditions, Certificates thus called shall not bear interest after the redemption date and, except for the purpose of payment from the funds so deposited, shall no longer be protected by the Trust Agreement.

**IT IS HEREBY CERTIFIED, RECITED AND DECLARED** that all acts, conditions and things required by the Constitution and statutes of the State of North Dakota and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the delivery of this Certificate, exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, this Certificate has been executed by the manual signature of an authorized officer of the Trustee.

BANK OF NORTH DAKOTA, as Trustee

By: **SPECIMEN**  
Authorized Representative

Date of Authentication: \_\_\_\_\_

The following abbreviations, when used in the inscription on the face of this Certificate, shall be construed as though they were written out in full according to applicable laws or regulations: TEN COM-as tenants in common, TEN ENT-as tenants by the entireties, JT TEN-as joint tenants with right of survivorship and not as tenants in common.

UTMA \_\_\_\_\_ Under Uniform Transfers to Minors Act  
(CUST) \_\_\_\_\_ (MINOR) \_\_\_\_\_ (STATE) \_\_\_\_\_  
Custodian

Additional abbreviations may also be used though not in the above list.

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**FORM OF ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto \_\_\_\_\_

the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

**NOTICE:** the assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Certificate in every particular, without alteration or any change whatever.

Signature guaranteed: \_\_\_\_\_

Signature(s) must be guaranteed by a member of the Medallion Signature Program.

The Registrar will not effect transfer of this Certificate unless the information concerning the assignee requested below is provided.

Name and address: \_\_\_\_\_ (include information for all joint owners if the Certificates are held by joint account.)

PLEASE INSERT SOCIAL SECURITY NUMBER OR OTHER IDENTIFYING NUMBER OF ASSIGNEE \_\_\_\_\_