RESOLUTION CONSENTING TO THE REFUNDING OF THE CAPITAL FINANCING PROGRAM, SERIES 2013A BONDS AND THE CAPITAL FINANCING PROGRAM, SERIES 2014B BONDS BY THE METRO FLOOD DIVERSION AUTHORITY

of the

CITY OF FARGO

Approved on June __, 2026

This instrument was drafted by:
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P.O. Box 458
West Fargo, North Dakota 58078

Commissioner ________ introduced the following resolution and moved its adoption:

RESOLUTION CONSENTING TO THE REFUNDING OF THE CAPITAL FINANCING PROGRAM, SERIES 2013A BONDS AND THE CAPITAL FINANCING PROGRAM, SERIES 2014B BONDS BY THE METRO FLOOD DIVERSION AUTHORITY

WHEREAS, prior to the formation of the Metro Flood Diversion Authority (the "Authority"), the City of Fargo, North Dakota (the "City of Fargo") undertook in-town flood protection activities intended to reduce flood risk within the Fargo-Moorhead metropolitan area and to advance a long-term regional flood risk management solution; and

WHEREAS, to finance a portion of those activities, the City of Fargo issued its Capital Financing Program Bonds, Series 2013A, in the original principal amount of $51,375,000 (the "Series 2013A Bonds"), and subsequently issued its Sales Tax Revenue Bonds, Series 2014B, in the original principal amount of $34,230,000 (the "Series 2014B Bonds") each series of which was secured and payable from certain City sales tax revenues; and

WHEREAS, the proceeds of the Series 2013A Bonds and the Series 2014B Bonds were utilized to finance in-town flood mitigation projects, including flood protection improvements and related infrastructure improvements that supported development of what would become the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the "Comprehensive Project"); and

WHEREAS, in order to coordinate the financing, construction, operation, and maintenance of the Comprehensive Project, the City of Fargo, the Cass County Joint Water Resource District, Cass County, North Dakota, Clay County, Minnesota, and the City of Moorhead, Minnesota entered into the Joint Powers Agreement, dated June 1, 2016, formally creating the Authority; and

WHEREAS, following creation of the Authority, financing, construction, and implementation activities relating to the Comprehensive Project became coordinated through the Authority and its member entities, and the Authority became the primary entity responsible for financing the Comprehensive Project; and

WHEREAS, the Series 2013A Bonds and Series 2014B Bonds constituted a portion of the financing utilized to advance the Comprehensive Project prior to establishment of the financing structure currently utilized by the Authority; and

WHEREAS, on June 10, 2021, the Authority, CCJWRD, the Fiscal Agent, and the Trustee entered into the Master Indenture of Trust, which pursuant to Article VII of the Master Indenture of Trust authorizes, in part, the issuance of Temporary Subordinate Sales Tax Revenue Bonds for the purpose of financing the Comprehensive Project; and

WHEREAS, the Master Indenture of Trust sets forth that the Temporary Subordinate Sales Tax Revenue Bonds will be issued pursuant to the terms of a supplemental indenture of trust; and

WHEREAS, in accordance with the terms and conditions of the Master Indenture of Trust and the additional terms and conditions set forth in the Temporary Subordinate Sales Tax Revenue Bond Supplemental Indenture of Trust No. 5 (the "Series 2026 Supplemental Indenture"), the Authority has determined to issue its Temporary Subordinate Sales Tax Revenue Bonds, Series 2026 (the "Series 2026 SSB Bonds") for the purpose of refunding all or a portion of the outstanding

Series 2013A Bonds and Series 2014B Bonds and furthering the financing objectives of the Comprehensive Project; and

WHEREAS, because the Series 2026 SSB Bonds will refund all or a portion of the outstanding Series 2013A Bonds and Series 2014B Bonds previously issued by the City of Fargo, the Authority has requested that the City of Fargo consent to the issuance of the Series 2026 SSB Bonds; and

WHEREAS, the Board of City Commissioners of the City of Fargo finds that the issuance of the Series 2026 SSB Bonds, for the purposes of refunding the outstanding Series 2013A Bonds and Series 2014B Bonds previously issued by the City of Fargo, will further the purposes of the Comprehensive Project and is consistent with the City of Fargo's prior commitments and participation in the Comprehensive Project, and is consistent with the City of Fargo's prior dedication and pledge of sales tax revenues toward financing of the Comprehensive Project.

NOW THEREFORE, BE IT RESOLVED by the governing body of the City of Fargo, North Dakota:

1. <u>Definitions</u>. The terms used herein shall have the meaning as assigned to them in the Master Indenture of Trust and the Series 2026 Supplemental Indenture unless a different meaning clearly appears from the context.

2. <u>Refunding of the Series 2013A Bonds and the Series 2014B Bonds</u>. The City of Fargo hereby consents to the refunding of the Series 2013A Bonds and the Series 2014B Bonds by the Authority.

3. <u>Acknowledgment of Continuation of Existing Pledge of Sales Tax Revenues</u>.

    a. The City of Fargo acknowledges that, pursuant to the Resolution Pledging and Dedicating One Hundred Percent (100%) of the City 3-21 Sales Tax; One Hundred Percent (100%) of the City 3-22 Sales Tax; and Twenty-Five Percent (25%) of the One-Cent ($0.01) City 3-20 Sales Tax to the Metro Flood Diversion Authority, adopted May 17, 2021 (the "City Pledge Resolution"), the City of Fargo irrevocably pledged and dedicated certain sales tax revenues to the Authority for the payment of Debt Obligations and other financing obligations issued in connection with the Comprehensive Project. With respect to the City 3-20 Sales Tax, such acknowledgment relates solely to the tax as authorized as of the date of adoption of this Resolution <u>*until the sunset date of the current City 3-20 Sales Tax (12-31-2028)*</u> and shall not be construed to apply to any extension, renewal, replacement, or successor tax absent further action of the City Commission.

    b. The City of Fargo further acknowledges that the Series 2026 SSB Bonds constitute Debt Obligations issued in connection with the Comprehensive Project and are consistent with the financing structure established pursuant to the City Pledge Resolution, the Joint Powers Agreement, the Master Indenture of Trust, and related financing documents.

    c. Nothing in this Resolution, including the refunding of all or a portion of the Series 2013A Bonds and Series 2014B Bonds through the issuance of the Series 2026 Bonds, shall be construed to amend, terminate, impair, release, reduce, or otherwise modify the City of Fargo's pledges, dedications, covenants, or obligations established pursuant to the City Pledge Resolution unless expressly authorized pursuant to the terms thereof and the other applicable financing documents.

4. Authorization for Redemption and ACH Transfer. In connection with the refunding of all or a portion of the Series 2013A Bonds and Series 2014B Bonds, the Mayor, City Auditor, Finance Director, City Administrator, and such other City officials as may be appropriate are authorized and directed to coordinate with the North Dakota Public Finance Authority, the Authority, the Trustee, Bond Counsel, and other financing participants to establish a redemption date for the refunded obligations, provide notice of the date on which funds will be available for transfer, review and approve final interest calculations and invoices associated with the redemption of the refunded obligations, and authorize and effectuate ACH transfers or other payments necessary to complete the redemption and refunding of such obligations.

5. North Dakota Law Applies. Except as expressly preempted by federal law, the Resolution shall be governed by and construed in accordance with the substantive and procedural the laws of the State of North Dakota, as they presently exist or may be amended and as a result, any claim, demand, or cause of action arising under and/or relating to the terms of this Resolution shall be brought in an appropriate venue in the State of North Dakota. This provision does not, nor is intended to, apply to claims under federal securities law and/or federal tax law.

6. Electronic Signatures; Counterparts. The electronic signature of a party or individual to the notices, certificates, this Resolution, and all other documents arising out of or relating to the Bond transaction authorized in this Resolution shall be deemed as valid as an original signature of such party or individual and shall be effective to bind such party or individual. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; (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; or (iii) a digital signature of an authorized representative of any party provided by *AdobeSign®* or *Docusign®* (or such other digital signature provider as specified by such party).

7. Effective Date. This Resolution shall take effect immediately upon adoption.

Dated: June __, 2026.

APPROVED:

____

Dr. Timothy J. Mahoney, Mayor

ATTEST:

Susan Thompson, City Auditor

The motion for adoption of the foregoing resolution was duly seconded by Commissioner _________ and upon roll call vote, the following Commissioners voted in favor thereof: ____. The following Commissioners were absent and not voting: __________________. The following Commissioners voted against the same: none. All of the Commissioners having voted aye, the resolution was declared duly passed and adopted.