

JOINT POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 2017 (the “Effective Date”), by and between the City of Casselton, a North Dakota municipal corporation, whose mailing address is P.O. Box 548, Casselton, ND 58012 (the “City”) and the Casselton Park District, a North Dakota Park District, whose mailing address is P.O. Box 97, Casselton, North Dakota, 58012 (the “District”).

WHEREAS, the City Council of the City (the “City Council”) has determined that the District is in need of supplemental funding in order to improve the health, welfare, and access to recreational activities of the citizens of Casselton; and

WHEREAS, the City Council is authorized under its Home Rule Charter and under North Dakota law to impose, levy and collect sales and use taxes for its public and proprietary functions, activities, operations, undertakings, and improvements; and

WHEREAS, the qualified electors of the City of Casselton by majority vote passed to amend the City’s sales tax ordinance to increase the sales tax from one percent (1%) to two percent (2%) and to dedicate one-half of the two percent (2%) sales tax proceeds to the construction, development and benefit of a community center (the “Wellness Center”) for a period of time commencing on the effective date of this ordinance and terminating upon the repayment of all principal and interest on all bonds, including any refunding bonds issued for the Wellness Center by the City;

WHEREAS, subsequent to the vote the City Council of the City of Casselton passed an amended sales tax ordinance to increase the sales tax from one percent (1%) to two percent (2%) and to dedicate one-half of the two percent (2%) sales tax proceeds to the construction, development and benefit of a community center (the “Wellness Center”) for a period of time commencing on the effective date of this ordinance and terminating upon the repayment of all principal and interest on all bonds, including any refunding bonds issued for the Wellness Center by the City;

WHEREAS, the City and District desire to have the Project built on the property shown on the attached **Exhibit A** (the “Property”);

WHEREAS, the Property is owned by Central Cass School District No. 17 (the “School District”), and the District will enter into a separate ground lease agreement, construction agreement, and use agreement with the School District to facilitate the Wellness Center on the Property;

WHEREAS, the overall cost of the Wellness Center is estimated to be approximately \$4 Million, and of this amount, the City will be contributing \$2 Million through the dedicated sales tax proceeds and the District will be contributing \$500,000, with the remainder of the total coming from other sources;

WHEREAS, the City and District desire to have the City bond for the full \$2.5 Million to be contributed by the City and the District, because the parties believe this is more advantageous, and the District shall make twenty (20) annual payments to the City in the amount of _____ (amount

needed to contribute the \$500,000 over twenty years at the same interest rate as the bonds), to cover the District's share of funding beginning _____ and continuing thereafter on the anniversary date;

WHEREAS, the parties to this Agreement are authorized to jointly exercise their governmental powers by the North Dakota Century Code Chapters 54-40 and 54-40.3, and are agreeable to the establishment and operation of the Wellness Center pursuant to the terms and conditions of the Agreement;

NOW, THEREFORE, pursuant to North Dakota Century Code Chapters 54-40 and 54-40.3, the parties hereto agree as follows:

1. **Purpose.** The purpose of this Agreement is to provide for the funding, design, construction, management, operation, and maintenance of the Wellness Center. The City, under North Dakota law and its Home Rule Charter, has the authority to collect sales and use tax proceeds, pledge the same for the repayment of bonds issued thereon, and design, construct, manage, operate, and maintain the Wellness Center. The District also has the authority to design, construct, manage, operate, and maintain the Wellness Center. Pursuant to North Dakota law, the City and the District may therefore, by agreement, provide for the joint and cooperative exercise of these powers.

2. **Term.** This Agreement shall be for a term of twenty-five (25) years, commencing on the Effective Date of this Agreement (the "Term").

3. **Termination.** The City and the District may terminate this Agreement prior to the Term only upon a joint resolution approved by the governing bodies of both the City and the District.

4. **Facility.** The Wellness Center will be connected to the School District's facility, but the Wellness Center will not be owned by the School District and will have an entrance separate from the School District's facility.

5. **Funding.** The overall budget for construction of the Wellness Center is \$4 Million. Of that amount, the City will contribute \$2.0 Million and the District will contribute \$500,000, with the remainder of the total coming from other sources. Because the parties find it is more advantageous for the City to bond for the full \$2.5 Million, however, the City will issue bonds backed by the dedicated sales and use tax proceeds in the amount of \$2.5 Million, and the District shall make twenty (20) annual payments to the City in the amount of _____, (amount needed to repay \$500,000 over twenty (20) years at the same interest rate as the bonds issued by the City) to cover the District's share of funding beginning with its first payment on _____ and continuing thereafter on the anniversary date of the first payment. The City will deposit the \$2.5 Million in bond proceeds into an account upon which the District may draw and use only for the construction, and initial furnishing, of the Wellness Center. The District will not apply bond proceeds in any manner or to any extent that would cause the bonds to lose tax-exempt status under the Internal Revenue Code of 1986, as may be amended from time to time.

6. **Ownership of Facility.** The Wellness Center will be owned by the District.

7. **Design of Facility.** The Wellness Center will be designed as determined by the District in conjunction with any agreements the District shall make with any other entities. The City shall not be involved in the design of the Wellness Center and need not provide any approval for any designs. Any future improvements, renovations, or expansions of the Wellness Center will be within the discretion of the District.

8. **Construction of Facility.** The Wellness Center will be constructed on the Property. The construction of the Wellness Center shall be as determined by the District in conjunction with any agreements the District shall make with any other entities. The City shall not be involved in the construction of the Wellness Center and will not enter into the construction contract for the Wellness Center.

9. **Maintenance, Management, and Operation of Facility.** The City shall have no role in the maintenance, management, or operation of the Wellness Center. The maintenance, management, and operation of the Wellness Center shall be by the District and/or with any persons or entities which may contract with the District, while taking into consideration the recommendations of the Advisory Committee. The District shall be responsible for all costs and expenses associated with the maintenance, management, and operation of the Wellness Center, and the District acknowledges that it will receive no compensation from the City for the maintenance, management, or operation of the Wellness Center.

10. **Use of Facility.** The Wellness Center shall be operated as a public facility and be made available to other public and private entities and individuals. Use of the Wellness Center shall be provided to the public no less than forty (40) hours per week during the hours of 6:00 a.m. to 9:00 p.m., for no less than forty (40) weeks per year. The District may make the Wellness Center available to other groups or entities by agreement, including the School District; provided, however, in no case shall the Wellness Center be reserved for more School District hours per month than public hours per month. The District shall have the discretion to determine the requirements for membership to use the Wellness Center and any user or registration fees. Except as otherwise provided by this Agreement or any other agreement entered between the City and the District, the City is not entitled to receive any operating revenue from the District, including from the Wellness Center. The District shall provide the equipment, services, and programming as shown on the attached **Exhibit B**.

11. **Wellness Center Advisory Committee.** There is hereby established a Community Advisory Committee (the "Committee") to provide community input and advise the District regarding the use, management, and operation of the Wellness Center. The Committee's function is to only provide recommendations to the District, which the District may or may not follow in its sole discretion, and the Committee will not have separate powers. The Committee shall be comprised of the following members:

- a) Two individuals appointed by the Mayor of the City;
- b) Two individuals appointed by the President of the Park Board;
- c) Two individuals appointed by the President of the School Board; and
- d) One person appointed by the Committee.

Unless otherwise provided the Committee shall act by majority vote of a quorum of the Committee members. At least fifty percent of the Committee members shall be required to be present for a quorum.

Each member shall serve on the Committee for as long as desired, but not less than one (1) year. In the event an individual decides to no longer be a member, he or she shall notify the Committee, and the Committee will ask the respective office responsible for appointing that seat on the Committee to do so. In addition, the individual (including the successor in office) or group that appointed the member may remove and replace the member in the discretion of the individual or group.

Within thirty (30) calendar days of the Effective Date of this Agreement, the Mayor of the City, the President of the Park Board, and the President of the School Board shall circulate the names and contact information of the individuals they are appointing to serve on the Committee to the Park Board Clerk. The Park Board Clerk shall thereafter contact those individuals and schedule an initial meeting of those six (6) members of the Committee to occur within thirty (30) calendar days of the Park Board Clerk's receipt of the names and contact information for the members. The Park Board Clerk shall notice this meeting. Those six (6) members will meet during the designated time and select the individual who will serve as the seventh (7th) member of the Committee. The Park Board Clerk shall also attend the meeting, draft meeting minutes, and notify the individual selected by the Committee to serve on the Committee.

The Committee shall next meet for a regular meeting within thirty (30) calendar days after the date of the initial meeting. The Park Board Clerk shall notice this meeting, attend the meeting, and draft meeting minutes. During this first regular meeting, the Committee shall designate a chair of the Committee to preside over Committee meetings, shall designate a clerk to notice meetings and draft meeting minutes, and set a regular meeting schedule for the Committee. The Committee shall designate a new chair or clerk of the Committee if the individuals appointed to fill those positions cease to be members of the Committee. The Committee shall meet not less than two (2) times each calendar year. The Committee may also call special meetings at such times, dates, and meeting places as the Committee deems appropriate.

There will be no compensation or benefits paid to any member of the Committee.

12. **Liability.** For the purposes of Chapter 32-12.1 of the North Dakota Century Code, the employees and officers of a party are deemed to be employees of that party. Under no circumstances will a party, irrespective of whether it may have waived the limit on liability set forth in Chapter 32-12.1 of the North Dakota Century Code, be required to pay on behalf of itself or the other party, any amounts in excess of the limits on liability established in Chapter 32-12.1 of the North Dakota Century Code applicable to any one party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for each party. The District shall procure and maintain, or by agreement shall have other entities procure and maintain, casualty insurance and liability insurance covering the Wellness Center. The insurance procured by the District, or its designee by agreement, shall name the City as an additional insured. The City shall have no obligation to provide insurance regarding the Wellness Center and shall not be responsible for the cost of any premiums associated with insurance procured for the Wellness Center.

13. **No Waiver of Limits of Liability.** Nothing herein will be deemed a waiver by any party of the limitations on liability set forth in N.D.C.C. § 32-12.1-03, as amended from time to time.

14. **Audits.** The City agrees that the District or the State Auditor, or any of their duly authorized representatives, may examine any books, records, documents, and the accounting practices and procedures of the City. Any party requesting the State Auditor conduct such an examination is liable for the costs of the examination. The District agrees that the City, or any of its duly authorized representatives, may examine any books, records, documents, and the accounting practices and procedures of the District relating to the Wellness Center during the term of this Agreement.

15. **Notice.** Any notice or election required or permitted to be given or served by any party to this Agreement upon any other will be deemed given or served in accordance with the provisions of this Agreement if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid and in any case properly addressed as follows:

If to Casselton: Attn: City Auditor
City of Casselton
P.O. Box 548
Casselton, ND 58012

If to District: Attn: Director
Casselton Park District
P.O. Box 97
Casselton, ND 58012

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this Agreement.

16. **Time is of the Essence.** Time is of the essence of each provision of this entire Agreement and of all the conditions thereof.

17. **Entire Agreement.** This Agreement constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties with respect to the subject premises. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein.

18. **Amendments.** No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

19. **No Forbearance.** The failure or delay of any party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and

effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right to enforce each and every term of this Agreement.

20. **Remedies.** Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this Agreement.

21. **Binding Effect.** All covenants, agreements, warranties and provisions of this Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. When used herein, the singular will include the plural, the plural will include the singular, and the use of one gender will include all other genders, as and when the context so requires.

22. **Governing Law.** This Agreement has been made and entered into under the laws of the State of North Dakota, and said laws will control its interpretation.

23. **Rules of Construction.** The parties acknowledge that they have had the opportunity to review this Agreement, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this Agreement.

24. **Dispute Resolution.** In the event there is a dispute that cannot be resolved informally, the City and the District shall select a mediator to mediate the dispute, all parties equally sharing the cost. If the dispute is not resolved by mediation, the City and the District may pursue any legal remedy.

25. **Assignment.** Neither the City nor the District may assign this Agreement to any other person unless written consent is obtained from the other party to this Agreement.

26. **Severability.** If a court of competent jurisdiction finds any portion of this Agreement to be contrary to law, invalid, or unenforceable, the remainder of this Agreement will remain in full force and effect.

27. **Headings.** Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

28. **Execution in Counterparts.** This Agreement may be executed in counterparts with all parties to this Agreement having a fully-executed counterpart.

(Remainder of this page intentionally left blank.)

**CITY OF CASSELTON,
NORTH DAKOTA**

Lee Anderson, Mayor

ATTEST:

Sheila Klevgard, City Auditor for the City
of Casselton, North Dakota

DRAFT

CASSELTON PARK DISTRICT

Jonathan Warrey, President
Board of Casselton Park District
Casselton, North Dakota

ATTEST:

Shawna Bosse, Secretary-Treasurer
Board of Casselton Park District
Casselton, North Dakota

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