

Hydraulic Solutions LLC.  
2489 E St Francis St  
Rapid City, SD 57703  
(605) 391-3677  
13dsprinklers@gmail.com



# INVOICE

**BILL TO**

Lyle Jensen  
Fall River County  
906 N River St  
Hot Springs, SD 57747

**INVOICE # 1299**

**DATE 06/17/2020**

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ACTIVITY	QTY	RATE	AMOUNT
<b>Service Work</b> 5/21/20 Fall River Courthouse- Elevator recall and control panel change, reprogrammed and then assisted in the final testing of the elevator (2 trips)			1,384.50

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\$84.50 Sales Tax Included

**BALANCE DUE**

**\$1,384.50**

Invoices are due upon receipt. Your prompt payment is appreciated. All invoices over 15 days may institute a mechanics lien placed on the property.

COUNTY TRAVEL REQUEST FORM

NAME(s): Dan Cullen VSO

CONFERENCE/WORKSHOP: SDDVA VSO Standards meeting

DESTINATION: Sioux Falls, SD

DATE: 19-20 October 2020

REGISTRATION FEE: \$0 County paid

CONFERENCE FEE: \$0 County paid

LODGING: \$119

TUE 20 B,L&D \$40

MEALS: Total = \$40.00

TRAVEL EXPENSES: 399 miles x \$.23 = \$103.27 (personal vehicle)

TOTAL COUNTY EXPENSE: \$262.27

BENEFIT TO ATTEND: Conference with SDDVA to establish standards for County VSO's

**FALL RIVER COUNTY RESOLUTION #2020-30**  
**Contingency Transfers 2020, #3**

WHEREAS, SDCL 7-21-32.2 provides that the Board of County Commissioners may adopt a transfer appropriation from the contingency budget to other appropriations, which are insufficient, a contingency transfer shall be approved and adopted to the following Departments: Mental Illness Board 10100X4221445, \$1,048.52

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners to adopt the Contingency Transfer #3 for 2020.

Dated at Fall River County, South Dakota this 6<sup>th</sup> day of October 2020.

ATTEST:

\_\_\_\_\_  
Joe Falkenburg  
Fall River County Board of Commissioners

\_\_\_\_\_  
Sue Ganje  
Fall River County Auditor's Office

October 6, 2020

**Contingency Transfers #3**

DATE	AMOUNT		ACCOUNT
	\$ 1,048.52	10100X4221445	Mental Illness Board
<b>Grand Total</b>	\$ 1,048.52		



**APPLICATION FOR PERMIT TO OCCUPY COUNTY HIGHWAY RIGHT-OF-WAY**

TO: THE BOARD OF COUNTY COMMISSIONERS

DATE: 9/18/2020

FALL RIVER COUNTY,  
HOT SPRINGS, SOUTH DAKOTA

Application is hereby made by Golden West Telecommunications, South Dakota for permit to occupy highway right-of-way located from: An existing vault near 13321 N Angostura Rd

To: the northeast corner of the intersection of N Angostura Rd and Twin Rock Bend Rd.

AERIAL FACILITIES: Location, type and size of the proposed line and anchors with respect to the centerline of the road or outer edge of the right-of-way and location of crossings showing any right-of-way are shown on Exhibit "A" (Sketch) attached.

UNDERGROUND FACILITIES: A sketch showing the approximate route and location of the proposed facility for which a permit is hereby requested is attached as Exhibit "A" and made a part hereof.

The following information is pertinent to the proposed installation:

1. Intended usage or rating: to provide service to the residence at 27911 Twin Rock Bend Rd
2. Pipe size, cable size and type: Cable: 12ga-22pr copper cable; Duct: Sch 40 PVC
3. Outside diameter: Cable: 0.43" O.D.; Duct: 1.660" O.D.
4. Maximum pressure at which pipeline will be operated: N/A
5. Size and Type of metal casing: N/A
6. Minimum depth of cable or pipeline: 36"
7. Casing will be installed by minimum size boring and will extend from toe of in-slope to toe of in-slope.
8. This installation will comply with the most recently adopted ASA, Code for Gas Transmission and Distribution Pipe systems or the National Safety Code. Marker sign(s) will be installed where appropriate.

The installation and maintenance of said utility facilities will not interfere with or impair construction, maintenance or use of any highway and will comply with all safety regulations of the State and Federal Government. When trenching is done on County R.O.W. the trenches must be tamped to avoid any settlement.

Future adjustments and maintenance will be in accordance with State and Federal Laws and Regulations and will be performed at not cost to the County or the Federal Government.

APPROVED \_\_\_\_\_ 20\_\_

SUBMITTED 18-Sep \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
County Chairman

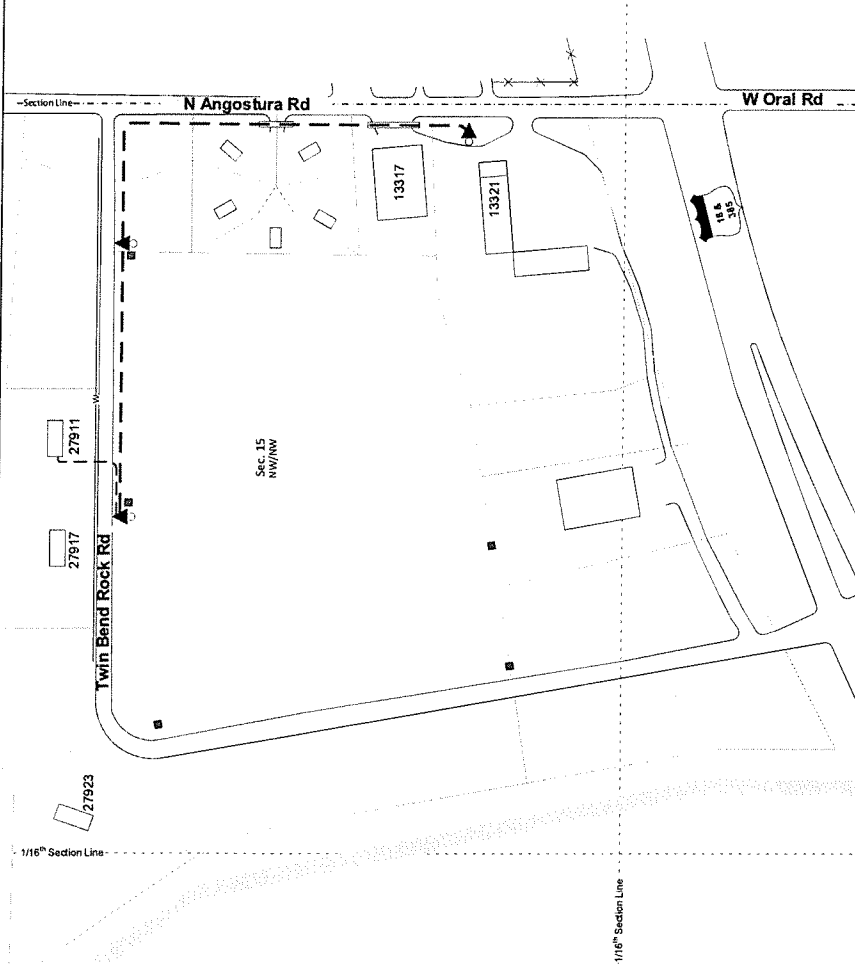
\_\_\_\_\_  
Golden West Telecommunications

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

By *Mickie Abell* Mickie Abell

\_\_\_\_\_  
Right-of-Way Specialist

\_\_\_\_\_  
Title



**CONFIDENTIAL**

Proposed Cable Route



State: South Dakota  
 County: Fall River  
 Range: 6E  
 Twp: 8S

As Staked

**Golden West Telecommunications**

Name: Fall River Co Hwy Co. Bt. 1A  
 WO: Int. Service 12/2012  
 Exch: 161 Service  
 Route: RZD3  
 ROW: Public and Private

Staked By:	CB	Date:	8/21/20
Revised By:	MCA	Date:	9-16-20
Revised By:		Date:	
Revised By:		Date:	
Revised By:		Date:	
Plowed By:		Date:	
As Built By:		Date:	

Drawing No. To Scale  
 Sheet 1 of 1

CAUTION: BURIED FACILITIES MAY BE PRESENT. THE CONTRACTOR IS SOLELY RESPONSIBLE FOR LOCATING PRIOR TO CONSTRUCTION.

**9-54-6. Bonds not general obligations nor payable by taxation--Recitals in bonds.**

Revenue bonds issued pursuant to this chapter shall not be general obligations of the municipality nor shall they be payable in any manner by taxation. Such revenue bonds shall recite the authority under which they are issued, and shall state that they are issued in conformity with the provisions, restrictions, and limitations of this chapter, and that such bonds and the interest thereon are to be paid from the revenue received from the project financed, in whole or in part, by the issuance of the revenue bonds.

**Source:** SL 1964, ch 148, § 8; SL 1973, ch 59, § 6; SL 1984, ch 43, § 98E.

---

[EXT] language from bond contract

Brian Ahrendt <statesattorney@frcounty.org>

Thu 10/1/2020 4:34 PM

To:Ganje, Sue <Sue.Ganje@state.sd.us>;

**Section VIII.10Limitation on Liability of the Municipality**

. It is understood and agreed by the Borrower that the Bonds shall not be general obligations of the Municipality or give rise to a charge against the general credit or taxing powers of the Municipality, but rather shall be special obligations payable solely from revenues pledged and assigned to the payment thereof and secured by this Loan Agreement. No Holder or Holders of the Bonds shall ever have the right to compel any exercise of the taxing power of the Municipality to pay the Bonds or the interest or premium, if any, thereon, nor to enforce payment thereof against any property of the Municipality except the revenues under this Loan Agreement pledged to the payment thereof. No failure of the Municipality to comply with any term, condition, covenant or agreement herein shall subject the Municipality to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be recovered from the Project or revenues therefrom, including those derived pursuant to this Loan Agreement, and no execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing power of the Municipality. The Bonds shall not constitute a debt of the Municipality within the meaning of any constitutional, statutory or charter limitation. However, nothing contained in this paragraph shall impair the right of the Holder or Holders of the Bonds to enforce covenants made for the security thereof as provided under the Act.

--  
Brian Ahrendt  
State's Attorney  
Fall River/Oglala Lakota Counties  
906 N. River St., Ste. 301  
Hot Springs, SD 57747

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October 1, 2020

**VIA E-MAIL**

County Commissioners  
Fall River County  
906 N. River Street  
Hot Springs, South Dakota 57747

Re: Bond Counsel Services  
Fall River Health Services Hospital Revenue Bonds, Series 2020

Dear County Commissioners:

I am writing to explain our role as legal counsel for Fall River County (the “County”) with respect to the financing for Fall River Health Services (the “Hospital”). It is our understanding that the County will issue Hospital Revenue Bonds (the “Bonds”) in the approximate principal amount of not to exceed \$10,000,000. It is our current understanding that the Bonds will be issued into the municipal bond market and that UMB Bank N.A. (the “Underwriter”) will serve to underwrite and sale the bonds in the market.

As Bond Counsel, it is our responsibility to provide legal representation with respect to the authorization of the issuance of the Bonds. In serving as Bond Counsel, we will prepare appropriate resolutions, notices, agreements, filings and certificates, consult with the Brian Ahrendt, Hospital and Hospital counsel, the Underwriter and Underwriter’s counsel, and undertake such additional duties as we deem necessary to help you through this transaction.

At closing of the issuance of the Bonds, assuming the proper conditions are in place, we will deliver our opinion addressed to the County stating that (1) the Bonds are valid and binding limited obligations payable solely from the net revenues of the Hospital; and (2) the interest paid on the Bonds will be excluded from gross income for federal income tax purposes.

In performing our services as Bond Counsel, our client in this matter will be the County. We will not represent any other party in this financing and it is mutually understood that the services to be provided by us as described herein are solely for the benefit of the County.

Lastly, as we have discussed, our fees for serving as Bond Counsel for this transaction will be paid from the proceeds of the Bonds or directly from the Hospital and will be the solely the responsibility of the Hospital.

After this arrangement is approved on behalf of the County, please have this letter executed in the space below and scan and email an executed copy to me.

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If you have questions regarding this engagement please do not hesitate to contact me.

Best regards,



David D. Grossklaus

DDG:sv

I understand and agree to the arrangements stated above.

By: \_\_\_\_\_  
**Joe Falkenburg, Commission Chair, Fall River County, South Dakota**

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

Acknowledged by Fall River Health Services on this \_\_\_\_\_ day of October, 2020

Fall River Health Services

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

cc: Mr. Brian Ahrendt  
Ms. Sue Ganje  
Ms. Tricia Uhlir  
Mr. Jesse Naze

ORDINANCE NO. \_\_\_\_\_

ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF ECONOMIC DEVELOPMENT REFUNDING REVENUE BONDS, TO PROVIDE FUNDS FOR THE REFINANCING OF AN ECONOMIC DEVELOPMENT PROJECT ON BEHALF OF FALL RIVER HEALTH SERVICES, A SOUTH DAKOTA NONPROFIT CORPORATION

BE IT ORDAINED by the County Commission of Fall River County, South Dakota (the “County” or the “Issuer”), as follows:

1. Legal Authority. The County is, by the Constitution and laws of the State of South Dakota, including South Dakota Codified Laws, Chapter 9-54, as amended, and Chapter 6-8B, as amended (collectively referred to as the “Act”), authorized to issue and sell its revenue bonds for the purpose of financing or refinancing the cost of economic development projects and to enter into agreements necessary or convenient in the exercise of the powers granted by the Act.

2. Authorization of Refunding. Fall River Health Services, a South Dakota nonprofit corporation (the “Borrower”), has proposed that the County issue its Economic Development Refunding Revenue Bonds, Series 2020 (the “Bonds”) and loan the proceeds thereof to the Borrower to be used to pay the principal of and interest on certain outstanding indebtedness of the Borrower (the “Existing Indebtedness”), the proceeds of which were used to acquire and construct certain health service facilities of the Borrower, located at 1201 Highway 71 South in the County (the “Project”), to fund any reserve funds and to pay costs related to the issuance of the Bonds.

In order to provide for the refunding in full of the Existing Indebtedness (the “Refunding”), the Borrower has proposed that the County issue and sell its Economic Development Refunding Revenue Bonds (Fall River Health Services Project), Series 2020 (the “Bonds”), pursuant to the Act, and loan the proceeds thereof to the Borrower pursuant to a loan agreement under terms and conditions requiring the Borrower to undertake and complete the Refunding, fund any necessary reserves and pay certain costs of issuance of the Bonds and to make loan repayments at times and in amounts sufficient to provide for payment of the Bonds in full, when due.

The County hereby determines to proceed with the Refunding, and the issuance of the Bonds, as proposed by the Borrower, in accordance with the terms and provisions hereof.

3. Public Hearing. After publication of the Ordinance, including the notice of public hearing attached hereto as Exhibit A, which notice will be published on the County’s website and at the County Courthouse, on the 20<sup>th</sup> day of October, 2020, the County held a hearing as required by all in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), and all comments made at such public hearing will have been recorded in the minutes of the meeting of the County, and the County deems it necessary and advisable to proceed with the issuance of the Bonds and the loan of the proceeds of the Bonds to the Borrower.

4. Documents Presented. Forms of the following documents relating to the Bonds have been submitted to the County and are now on file in the office of the Finance Officer:

(a) Loan Agreement between the County and the Borrower (the “Loan Agreement”), whereby the County agrees to make a loan to the Borrower of the gross proceeds of sale of the Bonds and the Borrower agrees to complete the Refunding and to pay amounts in repayment of the loan sufficient to provide for the full and prompt payment of the principal of, premium, if any, and interest on the Bonds when due; and

(b) Trust Indenture (the “Indenture”), between the County and UMB Bank, N.A., as trustee (the “Trustee”), authorizing the issuance of and pledging certain revenues, including those to be derived from the Loan Agreement, as security for, the Bonds, and setting forth proposed recitals, covenants and agreements relating thereto; and

(c) Bond Purchase Agreement (the “Bond Purchase Agreement”), by and between UMB Bank, N.A. (the “Underwriter”), the Borrower and the County, providing for the purchase of the Bonds from the County by the Underwriter and setting the terms and conditions of purchase.

5. Findings. It is hereby found, determined and declared that:

(a) The Refunding is authorized by the Act.

(b) The issuance of the Bonds will carry out a public purpose and benefit to and promotes the welfare of the citizens of the County and further the purposes of the Act.

(c) There is no litigation pending or, to the best of its knowledge, threatened against the County relating to the Bonds, the Loan Agreement, the Bond Purchase Agreement or the Indenture or questioning the due organization of the County, or the powers or authority of the County to issue the Bonds and undertake the transactions contemplated hereby.

(d) The execution, delivery and performance of the County’s obligations under the Bonds, the Indenture, the Bond Purchase Agreement and the Loan Agreement do not and will not violate any order of any court or other agency of government or in which the County is a party, or any indenture, agreement or other instrument to which the County is a party or by which it or any of its property is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument.

(e) It is desirable that the Bonds be issued by the County upon the terms set forth in the Indenture, under the provisions of which the County’s interest in the Loan Agreement will be pledged to the Trustee as security for the payment of principal of, premium, if any, and interest on the Bonds.



(f) The Loan Agreement provides for payments by the Borrower to the Trustee for the account of the County of such amounts as will be sufficient to pay the principal of, premium, if any, and interest on the Bonds when due. The Loan Agreement obligates the Borrower to pay or cause to be paid all costs of operation and maintenance of the Project Facilities, including adequate insurance, taxes and special assessments.

(g) Under the provisions of the Act, and as provided in the Loan Agreement and Indenture, the Bonds are not to be payable from nor charged upon any funds other than amounts payable pursuant to the Loan Agreement and moneys in the funds and accounts held by the Trustee which are pledged to the payment thereof; no owners of the Bonds shall ever have the right to compel the exercise of the taxing power of the County to pay any of the Bonds or the interest thereon, nor to enforce payment thereof against any property of the County; the Bonds shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the County (other than the interest of the County in the Loan Repayments to be made by the Borrower under the Loan Agreement); and each Bond issued under the Indenture shall recite that such Bond is issued pursuant to the Act and that such Bond, including interest thereon, is payable solely from the sources described therein and shall not constitute or give rise to a charge against the general credit or taxing powers of the County.

6. Approval and Execution of Documents. The forms of Loan Agreement, Indenture and Bond Purchase Agreement, referred to in paragraph 2, are approved. The Loan Agreement and Indenture shall be executed in the name and on behalf of the County by the Mayor and the Finance Officer, or executed by other officers of the County, in substantially the form on file, but with all such changes therein, not inconsistent with the Act or other law, as may be approved by the officers executing the same, which approval shall be conclusively evidenced by the execution thereof, and then shall be delivered to the Trustee. The Bond Purchase Agreement shall be executed by one or more officers of the County, as provided therein. The County hereby appoints UMB Bank, N.A. as trustee under the Indenture.

7. Approval, Execution and Delivery of Bonds. The County shall proceed forthwith to issue the Bonds in an aggregate principal amount of not to exceed \$10,000,000, and to be in the forms and upon the terms set forth in the Indenture, which terms are for this purpose incorporated in this Ordinance and made a part hereof; provided, however, that the maturities of the Bonds, the interest rates thereon, and any provisions for the optional or mandatory redemption thereof shall all be as set forth in the final form of the Indenture to be approved, executed and delivered by the officers of the County authorized to do so by the provisions of this Ordinance, which approval shall be conclusively evidenced by such execution and delivery; but provided further that, in no event, shall such rates of interest on the Bonds produce a net interest cost in excess of 5.00% per annum. The Underwriter has agreed pursuant to the provisions of the Bond Purchase Agreement, and subject to the conditions therein set forth, to purchase the Bonds at the purchase price set forth in the Bond Purchase Agreement, and said purchase price is hereby found to be favorable and is hereby accepted. The Chair, County Auditor and other County officers are authorized and directed to prepare and execute the Bonds as prescribed in the Indenture and to deliver them to the Trustee, together with a certified copy of this Ordinance and the other documents required by Section 2.08 of the Indenture, for authentication, registration and delivery to the Underwriter. As provided in the Indenture, each Bond shall contain a recital

that it is issued pursuant to the Act, and such recital shall, to the full extent permitted by law, be conclusive evidence of the validity and regularity of the issuance thereof.

8. Consent to the Use of Preliminary Official Statement and Official Statement. The County hereby consents to the use and distribution of the Preliminary Official Statement and the Official Statement relating to the Bonds in connection with the offering and sale of the Bonds by the Underwriter. Notwithstanding the foregoing, the County has not prepared or assisted in the preparation of the Preliminary Official Statement or the Official Statement and, except for the information contained under the captions “THE COUNTY” and “LITIGATION - The County,” the County disclaims any responsibility for the disclosures set forth in the Preliminary Official Statement or the Official Statement or otherwise made in connection with the offer, sale and distribution of the Bonds. For purposes of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, the County deems the information in the Preliminary Official Statement under the captions “THE COUNTY” and “LITIGATION – The County” to be final as of its date.

9. Certificates, etc. The Chair, County Auditor and other officers of the County are authorized and directed to prepare and furnish to bond counsel and the purchaser of the Bonds, when issued, certified copies of all proceedings and records of the County relating to the Bonds, and such other affidavits and certificates as may be required to show the facts appearing from the books and records in the officers’ custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the County as to the truth of all statements contained therein.

10. Qualified Tax-Exempt Obligations. In order to qualify the Bonds as “qualified tax exempt obligations” within the meaning of Section 265(b)(3) of the Code, and the County hereby makes the following factual statements and representations:

(A) The County hereby designates the Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code;

(B) The reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii) of Section 265(b)(3)(c) of the Code) which will be issued by the County (and all entities whose obligations will be aggregated with those of the County) during this calendar year 2020 will not exceed \$10,000,000; and

(C) Not more than \$10,000,000 of obligations issued by the County during this calendar year 2020 (including the Bonds) have been designated for purposes of Section 265(b)(3) of the Code.

11. Effective Date; Repeals. This Ordinance shall become effective twenty days following publication and all provisions of ordinances, resolutions and other actions and proceedings of the County which are in any way inconsistent with the terms and provisions of this Ordinance are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Ordinance.

[The balance of this page intentionally left blank]

The above and foregoing Ordinance was moved for adoption by the  
Commissioners \_\_\_\_\_ and upon roll call

voted aye, and

voted nay, whereupon the Chair declared the Ordinance to be duly passed and adopted.

\_\_\_\_\_  
Chair

Attest: \_\_\_\_\_  
County Auditor

First Reading: October 6, 2020.  
Second Reading and Adoption: October 20, 2020  
Published: \_\_\_\_\_, 2020.  
Effective Date: \_\_\_\_\_, 2020.

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Fall River County, South Dakota  
Economic Development Refunding Revenue Bonds  
(Fall River Health Services Project)  
Series 2020B

**TRUST INDENTURE**

Dated as of \_\_\_\_\_ 1, 2020

**FALL RIVER COUNTY**

TO

**UMB BANK, N.A.,  
as Trustee**

---

This instrument was drafted by:

Dorsey & Whitney LLP  
801 Grand, Suite 4100  
Des Moines, Iowa 50309

§ \_\_\_\_\_  
Fall River County, South Dakota  
Economic Development Refunding Revenue Bonds  
(Fall River Health Services Project),  
Series 2020B

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## TRUST INDENTURE

This TRUST INDENTURE, dated as of the 1st day of \_\_\_\_\_, 2020, by and between FALL RIVER COUNTY, a South Dakota municipal corporation (herein sometimes called the "County") and UMB BANK, N.A., a national banking association with trust powers having its main office and place of business in the County of \_\_\_\_\_ (herein sometimes called the "Trustee");

### WITNESSETH:

WHEREAS, the County is a duly organized and existing municipal corporation under the laws of South Dakota, including South Dakota Codified Laws, Chapter 9-54, as amended, and Chapter 6-B, as amended (herein together called the "Act"); and

WHEREAS, the County has agreed to make a loan to Fall River Health Services, a nonprofit corporation organized and existing under the laws of South Dakota (the "Borrower"), pursuant to a Loan Agreement of even date herewith (the "Loan Agreement"), to provide for the refinancing of a Project (as more fully described herein) through the refinancing of certain outstanding indebtedness of the Borrower (as more fully described herein, the "Refunded Indebtedness"); and

WHEREAS, the County has determined to issue its refunding revenue bonds, to be designated "Economic Development Refunding Revenue Bonds (Fall River Health Services Project), Series 2020B" (the "Series 2020B Bonds"), as in this Indenture hereinafter provided; and

WHEREAS, the proceeds of the Series 2020B Bonds, together with any other required funds, will be used by the Borrower pursuant to the Loan Agreement for the specific authorized purposes of refunding in full the Refunded Indebtedness, as described herein, and to fund necessary reserves, and partially defray costs of issuance of the Series 2020B Bonds; and

WHEREAS, the Loan Agreement requires the Borrower to make payments thereunder in amounts and at times sufficient to pay the principal of, premium (if any) and interest on the Series 2020B Bonds when due; and

WHEREAS, the Borrower has requested Fall River County, South Dakota (the "County") to issue its \$\_\_\_\_\_ Economic Development Refunding Revenue Bonds (Fall River Health Services Project), Series 2020A (the "Series 2020A Bonds") pursuant to a Trust Indenture dated as of even date herewith (the "Series 2020A Indenture") between the County and the Trustee, as trustee thereunder (in such capacity, the "Series 2020A Trustee"), and loan the proceeds of the Series 2020A Bonds to the Borrower pursuant to a Loan Agreement, dated as even date herewith (the "Series 2020A Loan Agreement") between the County and the Borrower; and

WHEREAS, the Borrower has agreed to execute and deliver to the Trustee a [Mortgage] of even date herewith, to equally and ratably secure the payment of the Series 2020B Bonds, the Series 2020A Bonds and any Additional Bonds (as defined herein and in the Series 2020A

Indenture) and the Borrower's obligations under the Loan Agreement and the Series 2020A Loan Agreement; and

WHEREAS, the execution and delivery of this Indenture and the Loan Agreement and the issuance of the Series 2020B Bonds have been in all respects duly and validly authorized by the County Commission of the County pursuant to a resolution adopted by the County Commission on October 20, 2020 (the "Bond Ordinance"); and

WHEREAS, the Series 2020B Bonds, the form of assignment therefor and the Trustee's authentication certificate to be endorsed on the Series 2020B Bonds are to be in substantially the following forms (the text of which forms may be printed on the face, or on the back, or partly on the face and partly on the back), to wit:

(Form of fully registered Series 2020B Bond)

UNITED STATES OF AMERICA  
STATE OF SOUTH DAKOTA  
COUNTY OF FALL RIVER  
FALL RIVER COUNTY

No. R\_\_

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

Economic Development Refunding Revenue Bond  
(Fall River Health Services Project)  
Series 2020B

Interest Rate	Maturity	Date of Original Issue	CUSIP
	_____, 20__	_____, 2020	

Registered Owner: CEDE & CO.

Principal Amount:

DOLLARS

The Fall River County, a municipal corporation in the County of Fall River and State of South Dakota (hereinafter sometimes called the "County"), for value received, hereby promises to pay solely from the sources hereinafter described to the registered owner specified above or registered assigns, the principal amount set forth above on the maturity date specified above, upon the presentation and surrender hereof, and to pay to the registered owner hereof interest on such principal amount from such sources at the interest rate specified above from the date of original issue set forth above, or the most recent interest payment date to which interest has been paid or duly provided for as specified below, on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year, commencing \_\_\_\_\_ 1, 202\_\_\_\_, until said principal amount is paid. Principal and the redemption price is payable in lawful money of the United States of America at the office of UMB Bank, N.A., in \_\_\_\_\_, \_\_\_\_\_, as Trustee under the Indenture hereinafter described or of its successor as Trustee. Interest shall be paid on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1 interest payment date by check or draft mailed to the person in whose name this Bond is registered at the close of business on the fifteenth day of the preceding month (whether or not a business day) at his address set forth on the registration records maintained by the Trustee. Notwithstanding anything else set forth herein, so long as the Bonds of this series are in Book-Entry Form (as described in the Indenture), principal, premium, if any, and interest shall be paid in accordance with the requirements of The Depository Trust Company, New York, New York, as in effect from time to time. Any such interest not punctually paid or provided for will cease to be payable on such regular record dates and such defaulted interest may be paid to the person in whose name this Bond shall be registered at the close of business on a special record

date for the payment of such defaulted interest established by the Trustee pursuant to the Indenture.

This Bond is issued pursuant to South Dakota Codified Laws, Chapter 9-54, as amended, and Chapter 6-8B, as amended (herein collectively called the “Act”), and in conformity with the provisions, restrictions and limitations thereof. This Bond does not constitute a charge against the general credit or properties or taxing powers of the County and does not grant to the owner of this Bond any right to have the County levy any taxes or appropriate any funds for the payment of the principal hereof or interest hereon, nor is this Bond a general obligation of the County or the individual officers or agents thereof. This Bond and interest hereon are payable solely from the moneys received pursuant to the Loan Agreement, or held by the Trustee in a Fund or Account appropriated to the payment of the Bonds of this series under the Indenture, hereinafter mentioned, including loan repayments to be made by Fall River Health Services, a nonprofit corporation organized and existing under the laws of South Dakota (hereinafter called the “Borrower”).

This Bond is one of a duly authorized series of special, limited obligation Bonds of an aggregate principal amount of \$\_\_\_\_\_, in denominations of \$5,000 or integral multiples thereof not exceeding the principal amount maturing in any year, and numbered from R-1 upwards, and of like tenor and effect except as to serial number, denomination, interest rate, maturity and right of prior redemption, all of which have been authorized by law to be issued and have been issued or are to be issued for the purpose of funding a loan from the County to the Borrower in order to provide financing funding a loan from the County to the Borrower in order to provide refinancing for the Project described in the Loan Agreement (herein called the “Loan Agreement”) between the County and the Borrower dated as of \_\_\_\_\_ 1, 2020, a Bond Ordinance of the County Commission adopted October 20, 2020 (the “Bond Ordinance”), and a Trust Indenture (the “Indenture”) dated as of \_\_\_\_\_ 1, 2020, duly executed and delivered by the County to the Trustee. The Series 2020B Bonds are and are to be equally and ratably secured by the Loan Agreement, the Indenture, and the Bond Ordinance. The Bonds and the Economic Development Refunding Revenue Bonds (Fall River Health Services Project), Series 2020A (the “Series 2020A Bonds”) are secured by a [Mortgage] dated as of \_\_\_\_\_ 1, 2020 (the “Mortgage”) from the Borrower to the Trustee, which creates a lien on and security interest in certain Mortgaged Property (defined therein).

Reference is hereby made to all such documents and any supplements thereto for a description and limitation of the property, revenues and funds pledged and appropriated to the payment of the Bonds, the nature and extent of the security thereby created, the rights of the owners of the Bonds, the rights, duties and immunities of the Trustee, and the rights, immunities and obligations of the County thereunder. Certified copies of the Bond Ordinance and executed counterparts of the Indenture and Loan Agreement are on file at the office of the Trustee and at the office of the Finance Officer.

The Bonds of this series are subject to extraordinary redemption at the direction of the Borrower on any interest payment date in whole, but not in part, in certain events of damage to

or destruction or condemnation of the Project Facilities, or change of law as provided in Sections 4.07 and 5.10 of the Loan Agreement, at a redemption price equal to par plus accrued interest.

The Bonds maturing on or after \_\_\_\_\_ 1, 20\_\_\_\_ are subject to optional redemption on \_\_\_\_\_ 1, 20\_\_\_\_ or any date thereafter, in whole or in part, and if in part, in such principal amounts and maturities as the Borrower may designate, at a redemption price of par plus accrued interest to the date fixed for redemption, but without any premium.

The Bonds maturing in the years \_\_\_\_\_ and \_\_\_\_\_ are subject to mandatory redemption through application of the Sinking Fund provided for in the Indenture, from Loan Repayments to be made by the Borrower, at a redemption price equal to par plus accrued interest, such Bonds to be selected by lot by the Trustee, on \_\_\_\_\_ 1 of the years and in the amounts, respectively, as is set forth in the Indenture.

The Bonds of this series are subject to mandatory redemption in the event of a Determination of Taxability, as defined in the Indenture, that interest upon the Bonds is includible in gross income for purposes of federal income taxation. In the event of a Determination of Taxability, the Borrower is obligated to cause each of the Bonds of this series to be redeemed at a redemption price equal to par, plus accrued interest.

Notice of any such redemption shall be given to the registered owner of each such Bond by first class mail, addressed to him at his registered address, not earlier than sixty days nor later than thirty days prior to the date fixed for redemption. Prior to the date fixed for redemption, funds shall be deposited with the Trustee sufficient to pay the Bonds called and accrued interest thereon, plus any premium required. Upon the happening of the above conditions, Bonds thus called shall not bear interest after the call date and, except for the purpose of payment, from the funds so deposited, shall no longer be protected by the Indenture.

This Bond is transferable, as provided in the Indenture, only upon the registration records kept at the office of the Trustee by the registered owner hereof in person or by his duly authorized attorney, upon surrender of this Bond for transfer at the office of the Trustee, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Trustee duly executed by the registered owner hereof or his duly authorized attorney, and, upon payment of any tax, fee or other governmental charge required to be paid with respect to such transfer, one or more fully registered Bonds of this series of the same principal amount and interest rate will be issued to the designated transferee or transferees.

The Bonds of this series are issuable only as fully registered bonds without coupons in denominations of \$5,000 or any integral multiple thereof not exceeding the principal amount maturing in any year. As provided in the Indenture and subject to certain limitations therein set forth, the Bonds of this series are exchangeable for a like aggregate principal amount of Bonds of this series of a different authorized denomination, as requested by the registered owner or his duly authorized attorney upon surrender thereof to the Trustee.

In case an event of default as defined in the Indenture or Loan Agreement occurs, the principal of this Bond and all other Bonds outstanding may be declared or may become due and payable prior to the stated maturity hereof in the manner and with the effect and subject to the conditions provided in the Indenture, but no owner of any Bond shall have any right to enforce the provisions of the Indenture or Loan Agreement except as provided in the Indenture.

With the consent of the County and Trustee and to the extent permitted by and as provided in the Indenture, the terms and provisions of the Indenture and Loan Agreement or of any instrument supplemental thereto, may be modified or altered by the assent or authority of the holders of at least 66 2/3% in aggregate principal amount of the Bonds then outstanding thereunder.

It is hereby certified and recited: That the issuance of the Bonds and the undertaking of the Project will promote the public welfare and carry out the purposes of the Act; that all acts, conditions and things required to be done precedent to and in the issuance of this Bond and the series of which it is a part have been properly done, have happened and have been performed in regular and due time, form and manner as required by law; and that this Bond and the series of which it is a part does not constitute a debt of the County within the meaning of any constitutional or statutory limitation.

This Bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the execution of the certificate hereon endorsed by the Trustee under the Indenture.

IN WITNESS WHEREOF, the Fall River County, by its County Commission, has caused this Bond to be executed in its name by the manual or facsimile signatures of its duly authorized officers, all as of the Date of Original Issue specified above.

**FALL RIVER COUNTY**

\_\_\_\_\_  
[Chair]

\_\_\_\_\_  
[County Auditor]

Countersigned:

\_\_\_\_\_  
Attorney actually residing in the State of South  
Dakota and duly licensed to practice therein.

\_\_\_\_\_  
**CERTIFICATE OF AUTHENTICATION**

This is one of the Bonds described in the within mentioned Indenture.

Dated: \_\_\_\_\_, 2020

UMB Bank, N.A., Trustee

By \_\_\_\_\_  
Authorized Signature



ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
(Please Print or Typewrite Name and Address of Transferee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

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

Signature(s) must be guaranteed by a financial institution that is a member of the Securities Transfer Agent Medallion Program ("STAMP"), the Stock Exchange Medallion Program ("SEMP"), the New York Stock Exchange, Inc. Medallion Signature Program ("MSP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, SEMP or MSP, all in accordance with the Securities Exchange Act of 1934, as amended.

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

The Trustee will not effect transfer of this Bond unless the information concerning the transferee requested below is provided.

Name and Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Include information for all joint owners if the Bond is held by joint account)

Insert social security or other identifying number of Transferee

\_\_\_\_\_

and

WHEREAS, the execution and delivery of this Indenture have been duly authorized by the County Commission, and all conditions, acts and things necessary and required by the Constitution and laws of the State of South Dakota, or otherwise, to exist, to have happened or to have been performed precedent to and in the execution and delivery of this Indenture, and in the issuance of the Series 2020B Bonds, do exist, have happened or have been performed in regular form, time and manner, and the execution and delivery of this Indenture have been in all respects duly authorized; and

WHEREAS, the Trustee has accepted the trust created by this Indenture and in evidence thereof has joined in the execution hereof;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

#### GRANTING CLAUSES

That the Fall River County in order to secure the payment of the principal of, premium (if any) and interest on the Bonds issued under this Indenture according to their tenor and effect and the performance and observance of each and all of the covenants and conditions herein and therein contained, and for and in consideration of the premises and of the purchase and acceptance of the Bonds by the respective purchaser or purchasers and registered owners or Holders thereof, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, has executed and delivered this Indenture and has granted, bargained, sold, assigned, transferred, conveyed, pledged and set over, and by these presents does hereby grant, bargain, sell, assign, transfer, convey, pledge and set over, unto the Trustee, and to its successor or successors in the trust hereby created and to its assigns forever:

#### I.

All of the rights and interests of the County in the Loan Agreement dated as of \_\_\_\_\_ 1, 2020 between the County and the Borrower, except for the rights of the County relating to expenses, indemnity, payment of attorneys' fees and advances of the County under Sections 4.04(b), 6.01, 7.04 and 7.05 thereof.

#### II.

A first lien on and pledge of all right, title and interest in (i) the moneys and investments in the Bond Fund, Sinking Fund, Reserve Fund and Optional Redemption Fund covenanted to be created and maintained under this Indenture, and (ii) moneys and investments in the Project Fund not paid out to meet Refunding Costs.

### III.

Any and all other property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, assigned or transferred, or in which a security interest is granted by the County or the Borrower or by anyone in behalf of them or with their written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same according to the terms hereof including but not limited to the Mortgage.

TO HAVE AND TO HOLD all and singular the said property hereby conveyed and assigned, or agreed or intended so to be, to the Trustee, its successor or successors in trust and its and their assigns, FOREVER.

IN TRUST NEVERTHELESS, upon the terms and trust herein set forth, for the equal and proportionate benefit, security and protection of all Holders of the Bonds issued or to be issued under and secured by this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any of the others;

PROVIDED, HOWEVER, that if the County, its successors or assigns, shall well and truly pay or cause to be paid the principal of the Bonds and the premium (if any) and interest due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee sums sufficient to pay the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof; then upon such final payment this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture to be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all said property hereby assigned or pledged is to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the County has agreed and covenanted and does hereby agree and covenant with the Trustee and with the respective owners from time to time of the said Bonds or any part thereof, as follows, that is to say:

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## ARTICLE I

### DEFINITIONS AND INTERPRETATION

Section 1.01 Definitions. All words and phrases defined in Article I of the Loan Agreement and in the Mortgage and not otherwise defined herein shall have the same meaning in this Indenture unless the context hereof clearly requires otherwise. In addition, unless the context otherwise requires, the terms defined in this Article I and in the recitals and succeeding Articles of this Indenture shall, for all purposes of this Indenture and of any indenture supplemental hereto, have the meanings herein specified, such definitions to be equally applicable to both the singular and plural forms of any of the terms defined:

“Act” means, collectively, South Dakota Codified Laws, Chapter 9-54, as amended, and Chapter 6-8B, as amended.

“Authorized Borrower Representative” means any person at the time designated to act on behalf of the Borrower by written certificate furnished to the County and the Trustee, containing the specimen signature of such person and signed by the [President., any Vice President, the Secretary or the Treasurer of the Borrower]. Such Certificate may designate an alternate or alternates.

“Authorized Municipal Representative” means the person at the time designated to act on behalf of the County by resolution or written certificate furnished to the Borrower and the Trustee, containing the specimen signature of such person and signed on behalf of the County by its [Chair or Finance Officer]. Such Certificate may designate an alternate or alternates.

“Beneficial Owner” means with respect to Bonds while in Book-Entry Form, each person who beneficially owns such Bond(s) and on whose behalf, directly or indirectly, such Bond is held by the Depository pursuant to a Book-Entry System.

“Bond Fund” means the Bond Fund established under Section 5.01 of this Indenture.

“Bond Ordinance” means the ordinance of the County adopted by the County Commission on October 20, 2020, authorizing the issuance and sale of the Series 2020B Bonds, as the same may be amended, modified or supplemented by any amendments or modifications thereof.

“Bonds” means the Series 2020B Bonds and any Additional Bonds issued hereunder.

“Book-Entry Form” means Bonds which are held in the name of the Depository (or its nominee) with each maturity evidenced by a single Bond certificate.

“Book-Entry System” means a system of recordkeeping, securities clearance and funds transfer and settlement maintained for securities by the Depository and the Participants.

“Certificate” means a certification in writing required or permitted by the provisions of the Loan Agreement or this Indenture signed and delivered to the Trustee or other proper person or persons. If and to the extent required by the provisions of Section 1.02 hereof, each Certificate shall include the statements provided for in said Section 1.02.

“Certified Resolution” means a copy of a resolution or ordinance of the County Commission, certified by the Finance Officer to have been duly adopted by said County Commission and to be in full force and effect on the date of such certification.

“County” means the County.

“Closing Date” means the date on which the Series 2020B Bonds are initially delivered to the Original Purchaser.

“County” means Fall River County, South Dakota.

“County Commission” or “Cmmission” means the County Commission of the County, or its successor as governing body of the County.

“Default” means default by the County in the performance or observance of any of the covenants, agreements or conditions on its part contained in this Indenture, or in the Series 2020B Bonds and Additional Bonds outstanding hereunder, exclusive of any notice or period of grace required for a default to constitute an “event of default” as hereinafter provided.

“Depository” means The Depository Trust Company in New York, New York, its successors or assigns, or any other person who shall be a Holder of all Bonds directly or indirectly for the Original Purchaser to act as the Depository; provided that any Depository shall be registered or qualified as a “clearing agency” within the meaning of Section 17A of the Securities Exchange Act, as amended.

“Determination of Taxability” means the issuance of a statutory notice of deficiency by the Internal Revenue Service, or a ruling of the National Office or any District Office, or a final decision by any court of competent jurisdiction that interest on the Bonds is includible in the gross income of the recipient under Section 103 and related Sections of the Internal Revenue Code and regulations thereunder, as in effect on the date of issuance of the Series 2020B Bonds, provided that the period for a contest or appeal, if any, of such action, ruling or decision has expired without any such appeal or contest having been instituted, or, if instituted, such contest or appeal has been unsuccessfully concluded. Inclusion of interest on the Bonds in the computation of any alternative minimum tax shall not be a Determination of Taxability.

“Draw Request” means a draw request referred to in Section 4.04 of this Indenture, substantially in the form set forth as Exhibit A hereto.

“Event of Default” means an Event of Default described in Section 7.01 of this Indenture which has not been cured.

“Holder,” “Bondholder” or “Owner” whenever employed herein with respect to a Bond means the person in whose name such Bond shall be registered.

“Indenture” means this Trust Indenture between the County and UMB Bank, N.A., as Trustee, dated as of \_\_\_\_\_ 1, 2020, under which the Bonds are authorized to be issued, and including any amendments or supplements thereto.

“Independent”, when used with reference to an attorney, engineer, architect, certified public accountant, consultant or other professional person, means a person who (i) is in fact independent, (ii) does not have any material financial interest in the Borrower or the transaction to which his Certificate or opinion relates (other than payment to be received for professional services rendered), and (iii) is not connected with the County or the Borrower as an officer, director or employee.

“Independent Counsel” means an Independent attorney duly admitted to practice law before the highest court of any state.

“Independent Engineer” means an Independent engineer or engineering firm or an Independent architect or architectural firm qualified to practice the profession of engineering or architecture under the laws of South Dakota.

“Interest Payment Date” means, the first day of each \_\_\_\_ and \_\_\_\_ (or if such day is not a Business Day, on the next succeeding Business Day), commencing \_\_\_\_\_ 1, 202\_\_.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

“Letter of Representations” means the Blanket Letter of Representations between the Depository and the County and any amendments or supplements thereto.

“Loan Agreement” means the Loan Agreement of even date herewith, between the County and the Borrower, as amended or supplemented from time to time.

“Mortgaged Property” shall have the meaning given such term in the Mortgage.

“County” means the Fall River County, a South Dakota municipal corporation, its successors and assigns.

“Opinion of Counsel” means a written opinion of counsel (who need not be Independent Counsel unless so specified) appointed by the Borrower or County and acceptable to the Trustee or appointed by the Trustee. If and to the extent required by the provisions of Section 1.02 hereof, each Opinion of Counsel shall include the statements provided for in said Section 1.02.

“Optional Redemption Fund” means the Optional Redemption Fund established under Section 5.02 of this Indenture.

“Original Purchaser” means UMB Bank, N.A.

“Outstanding” when used as of any particular time with reference to Bonds means (subject to the provisions of Section 9.03 of this Indenture pertaining to Bonds held by the County and the Borrower) all Bonds theretofore authenticated and delivered by the Trustee under the Indenture except: (i) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (ii) Bonds for the payment or redemption of which funds or direct obligations of or obligations fully guaranteed by the United States of America in the necessary amount shall have theretofore been deposited with the Trustee (whether upon or prior to the maturity or the redemption date of such Bonds), provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given pursuant to Article III of this Indenture, or provision satisfactory to the Trustee shall have been made for the giving of such notice; and (iii) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the terms of Section 2.07 pertaining to replacement of Bonds.

“Participants” means participants of the Depository in connection with the Book-Entry System.

“Predecessor Bonds” of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by such particular Bond, and for purposes of this definition, any Bond authenticated and delivered under Section 2.07 hereof in lieu of a lost, destroyed or stolen Bond shall be deemed to evidence the same debt as the lost, destroyed or stolen Bond.

“Project” means the Project described in Section 1.03 hereof.

“Refunding Costs” means the costs defined in Section 4.03 of this Indenture.

“Project Facilities” shall have the meaning set forth in the Loan Agreement.

“Project Fund” means the Project Fund established under Section 4.02 hereof.

“Qualified Investments” means investments authorized by the Act and described in Section 5.05 of this Indenture.

“Redeem” or “Redemption” means and includes “prepay” or “prepayment” as the case may be.

“Refunded Indebtedness” means [the HUD loans to be refunded by the County].

“Refunding Account” means the Refunding Account established within the Project Fund pursuant to Section 4.02 hereof.

“Regular Record Date” for the interest payable on any interest payment date on the fully registered Bonds of any series means the date specified in the provisions of this Indenture creating such series.

“Reserve Fund” means the Reserve Fund established under Section 5.03 hereof.

“Reserve Requirement” means an amount equal to \$\_\_\_\_\_.

“Responsible Officer” of any Trustee hereunder means and includes the chairman of the board of directors, the president, every vice president, every assistant vice president, the cashier, every assistant cashier, every corporate trust officer, and every officer and assistant officer of such trustee, other than those specifically above mentioned, to whom any corporate trust matter is referred because of his knowledge of, and familiarity with, a particular subject.

“Series 2020B Bonds” means the Fall River County, South Dakota Economic Development Refunding Revenue Bonds (Fall River Health Services Project), Series 2020B, as described in Section 2.01 of this Indenture.

Series 2020A Bonds means the City of Hot Springs, South Dakota Economic Development Refunding Revenue Bonds (Fall River Health Services Project), Series 2020A, issued under and pursuant to the Series 2020A Indenture.

“Series 2020A Indenture” means the Trust Indenture, dated as of even date herewith, between the City and the City Trustee.

“Series 2020A Loan Agreement” means the Loan Agreement, dated as of even date herewith, between the City and the Borrower.

“Series 2020A Trustee” means UMB Bank, N.A., as trustee under and pursuant to the Series 2020A Indenture.

“Sinking Fund” means the Sinking Fund established under Section 3.08 hereof.

“Special Record Date” for the payment of any Defaulted Interest (as defined in Section 2.05 hereof) on fully registered Bonds means a date fixed by the Trustee pursuant to Section 2.05 hereof.

“Trustee” means the trustee at the time serving as such under the Indenture.

“Trust Estate” means the interests of the County in the Loan Agreement assigned under Granting Clause I of the Indenture; the revenues, moneys, investments, contract rights, general intangibles and instruments and proceeds and products and accessions thereof as set forth in Granting Clause II of this Indenture; and additional property held by the Trustee pursuant to Granting Clause III of this Indenture.



Section 1.02 Characteristics of Certificate or Opinion. Every Certificate or Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture or the Loan Agreement, and except for certificates and opinions given pursuant to Section 2.08 hereof, shall include: (i) a statement that the person or persons making such Certificate or opinion have read such covenant or condition and the definitions herein relating thereto; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Certificate or opinion are based; (iii) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such covenant or condition has been complied with; and (iv) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any Certificate made or given by an officer of the County or the Borrower or by an Independent engineer, architect, consultant or other person may be based, insofar as it relates to legal matters, upon an Opinion of Counsel, unless such person knows that the Opinion with respect to the matters upon which his Certificate may be based as aforesaid is erroneous, or, in the exercise of reasonable care, should have known that the same was erroneous. Any such Certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, information with respect to which is in the possession of the County or the Borrower, upon a supporting Certificate of an officer or officers of the County or the Borrower, unless the signer knows that the supporting Certificate with respect to the matters upon which his Certificate or opinion may be based as aforesaid is erroneous, or, in the exercise of reasonable care, should have known that the same was erroneous.

Section 1.03 Description of Project. The term "Project" refers to the facilities originally financed or refinanced with the proceeds of the Refunded Indebtedness, consisting of the Project Facilities, including a 25-bed hospital facility and ancillary services, a 48-bed nursing facility attached to the hospital, a physician's outpatient clinic, and site and other improvements, all located at 1201 Highway 71 South, Hot Springs, South Dakota 57747. The Series 2020B Bonds are being issued to refund in full the Refunded Indebtedness and, accordingly will provide refinancing for the Project.

Section 1.04 Additional Provisions as to Interpretation. All references herein to "Articles", "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; and the words "herein", "hereof", "hereunder" and other words of similar import refer to this Indenture as a whole and not any particular Article, Section or subdivision hereof.

Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or funds in the necessary amount to pay or redeem any Bonds, the amount so to be deposited or held shall be the principal amount of such Bonds and all unpaid interest thereon to maturity, except that in the case of Bonds which are to be redeemed prior to maturity and in respect of which there shall have been furnished to the Trustee proof satisfactory to it that notice of such redemption on a specified redemption date has been duly given or

provision satisfactory to the Trustee shall be made for such notice, the amount so to be deposited or held shall be the principal amount of such Bonds and interest thereon to the redemption date, together with the redemption premium, if any.

Any terms defined in the Loan Agreement but not defined herein shall have the same meaning herein unless the context hereof clearly requires otherwise.

This Indenture is governed by and shall be construed in accordance with the laws of South Dakota.

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ARTICLE II

FORM, EXECUTION AND REGISTRATION OF BONDS

Section 2.01 Form, Maturities and Numeration of Series 2020B Bonds. The Series 2020B Bonds to be issued and secured under this Indenture shall each be designated "Fall River County Economic Development Refunding Revenue Bond (Fall River Health Services Project), Series 2020B." The Series 2020B Bonds and Certificates of Trustee and Assignment shall be substantially in the form set forth in the recitals hereof. The Series 2020B Bonds shall be issued in fully registered form in the denomination of \$5,000 each, or any integral multiple thereof not exceeding the principal amount maturing in any year, initially numbered from R-1 upwards in order of maturity, and the Series 2020B Bonds originally issued, and not in exchange for Predecessor Bonds, shall be dated \_\_\_\_\_ 1, 2020. Series 2020B Bonds issued in exchange for Predecessor Bonds shall be dated the date to which interest has been paid on the Series 2020B Bonds being surrendered for exchange, or dated \_\_\_\_\_ 1, 2020, if issued prior to the first interest payment date, and shall be numbered in order of issuance commencing with the next number after the highest number assigned to the initial Bonds. No Series 2020B Bond shall represent principal payable or maturing in different years. The Series 2020B Bonds shall bear interest payable semiannually on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 each year, commencing \_\_\_\_\_ 1, 2020, from the issue date thereof, or the most recent interest payment date to which interest has been paid or duly provided for. Interest shall be calculated on the basis of a 360-day year, consisting of twelve 30-day months. The principal and redemption price of the Series 2020B Bonds shall be payable to the registered owner upon presentation at the office of the Trustee in such coin or currency of the United States of America as may be, on the respective dates of payment thereof, legal tender for the payment of public and private debts, and interest on Series 2020B Bonds shall be paid by check or draft mailed to the registered owner at his registered address. The Regular Record Date for the payment of interest on the Series 2020B Bonds payable, and punctually paid or duly provided for, on any interest payment date shall be the 15th day (whether or not a business day) of the calendar month next preceding such interest payment date. The Series 2020B Bonds shall be in the aggregate principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), and shall mature on \_\_\_\_\_ 1 of the years and bear interest at the rates per annum, according to years of maturity, as follows:

<u>Year</u>	<u>Amount</u>	<u>Rate</u>	<u>Year</u>	<u>Amount</u>	<u>Rate</u>
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Section 2.02 Execution of Bonds. The Bonds shall be signed in the name of the County by the manual or the facsimile signatures of the [Chair and Finance Officer] (or other officers) of the County, and countersigned by the manual or facsimile signature of an attorney actually residing in the State of South Dakota and duly licensed to practice therein, said signatures shall be authenticated by the Trustee, which is hereby designated as authenticating agent, and the Bonds shall be sealed with the official seal of the County or facsimile thereof. In the event that any of the officers whose signatures appear on any Bonds shall cease to be officers of the County before such Bonds shall have been authenticated or delivered by the Trustee, such Bonds may, nevertheless, be authenticated, delivered, and issued, and upon such authentication, delivery and issue, shall be binding upon the County as though those officers who signed and sealed the same had continued to be such officers of the County; and, also, any Bond may be signed and sealed on behalf of the County by such person who, at the actual date of execution of such Bond, shall be the proper officer of the County, although at the date of such Bond such person shall not have been such an officer of the County. Upon the execution and delivery of this Indenture the County shall execute and deliver the Series 2020B Bonds to the Trustee for authentication.

Section 2.03 Authentication of Bonds. No Bonds shall be valid or obligatory for any purpose or shall be entitled to any right or benefit hereunder or under the Loan Agreement or the Bond Ordinance unless a Responsible Officer of the Trustee shall manually endorse and execute on such Bond a certificate of authentication substantially in the form of the Certificate of Trustee hereinabove set forth. Such Certificate of Trustee upon any Bond shall be conclusive evidence that such Bond so authenticated has been duly issued under this Indenture and that the Holder thereof is entitled to the benefits of this Indenture, the Loan Agreement, and the Bond Ordinance.

No Bonds shall be authenticated by the Trustee except in accordance with this Article.

The Trustee shall not be required to authenticate any Bond unless provided with the documents referred to in Section 2.08.

Section 2.04 Registration, Transfers and Exchange. As long as any of the Bonds issued hereunder shall remain outstanding, the County shall maintain and keep at the office of the Trustee, as paying agent, an office or agency for the payment of the principal of and interest on such Bonds, as in this Indenture provided, and for the registration and transfer of such Bonds, and shall also keep at said office of the Trustee records of such registration and transfer. The County does hereby appoint the Trustee, and its successors in the trust from time to time, as its agent to maintain said office and agency at the office of the Trustee.

Upon surrender for transfer of any fully registered Bond at the office of the Trustee with a written instrument of transfer satisfactory to the Trustee, duly executed by the registered owner or his duly authorized attorney, and upon payment of any tax, fee or other governmental charge required to be paid with respect to such transfer, the County shall execute and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more fully registered Bonds of the same series, of any authorized denominations and of a like aggregate principal amount, interest rate and maturity.

Except as the right of exchange may be limited as to Bonds of any series, fully registered Bonds, upon surrender thereof at the office of the Trustee may, at the option of the registered owner thereof, be exchanged for an equal aggregate principal amount of fully registered Bonds of the same series, maturity and interest rate of any authorized denominations.

In all cases in which the privilege of exchanging Bonds or transferring fully registered Bonds is exercised, the County shall execute and the Trustee shall deliver Bonds in accordance with the provisions of this Indenture. For every such exchange or transfer of Bonds, whether temporary or definitive, the County or the Trustee 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. Notwithstanding any other provision of this Indenture, the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the County or the Trustee incurred in connection therewith (except any applicable tax, fee or other governmental charge) shall be paid by the Borrower pursuant to the Loan Agreement. The County shall not be obligated to make any such exchange or transfer of Bonds during the fifteen (15) days next preceding the date of the first publication or the mailing (if there is no publication) of notice of redemption in the case of a proposed redemption of Bonds. The County and Trustee shall not be required to make any transfer or exchange of any Bonds called for redemption.

Section 2.05 Payment of Interest on Bonds; Interest Rights Preserved. Interest on any fully registered Bond of any series which is payable, and is punctually paid or duly provided for, on any interest payment date shall be paid to the person in whose name that Bond (or one or more Predecessor Bonds) is registered at the close of business on the Regular Record Date for such interest specified in the provisions of this Indenture creating such series.

Any interest on the Bonds which is payable, but is not punctually paid or duly provided for, on any interest payment date (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date solely by virtue of such Holder having been such Holder; and such Defaulted Interest may be paid by the Trustee, as provided in Subsection A or B below:

A. The Trustee may elect that payment of any Defaulted Interest on the fully registered Bonds of any series may be made to the persons in whose names such Bonds (or their respective Predecessor Bonds) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Trustee shall fix a Special Record Date for the payment of such Defaulted Interest not more than 15 nor less than 10 days prior to the date of the proposed payment. The Trustee shall promptly notify the Borrower and the County of such Special Record Date and, at the expense of the Borrower, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each Holder of a fully registered Bond of such series at his address as it appears in the registration records not less than 10 days prior to such Special

Record Date. The Trustee may, in its discretion and at the expense of the Borrower, cause a similar notice to be published at least once in a financial newspaper, but such publication shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Bonds of such series (or their respective Predecessor Bonds) are registered on such Special Record Date and shall no longer be payable pursuant to the following Subsection B.

B. The Trustee may make payment of any Defaulted Interest on the fully registered Bonds of any series in any other lawful manner, if such payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Bond delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Bond shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond and each such Bond shall bear interest from such date that neither gain nor loss in interest shall result from such transfer, exchange or substitution.

Section 2.06 Ownership of Bonds. As to any Bond, the County, the Borrower and the Trustee and their respective successors, each in its discretion, may deem and treat the person in whose name the same for the time being shall be registered as the absolute owner thereof for all purposes and neither the County nor the Trustee nor their respective successors shall be affected by any notice to the contrary. Payment of or on account of the principal of any such Bond shall be made only to or upon the order of the registered owner thereof, but such registration may be changed as above provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 2.07 Reissuance of Mutilated, Destroyed, Stolen or Lost Bonds. In case any outstanding Bond shall become mutilated or be destroyed, stolen or lost, the Trustee shall authenticate and deliver a new Bond of like tenor, number and amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender of such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, upon filing with the Trustee evidence satisfactory to the County and the Trustee that such Bond has been destroyed, stolen or lost and upon furnishing the County, the Trustee and the Borrower with indemnity satisfactory to them and complying with such other reasonable regulations as the County, the Trustee and the Borrower may establish and payment of any expenses which the County, the Trustee or the Borrower may incur in connection therewith. In the event any such Bond shall have matured, instead of issuing a substitute Bond, the County may pay the same without surrender thereof.

Section 2.08 Conditions for Authentication of Series 2020B Bonds. The Trustee shall not authenticate and deliver the Series 2020B Bonds to be issued and delivered pursuant to the

Indenture unless theretofore or simultaneously therewith there shall have been delivered to the Trustee the following:

(a) Certified copies of the Bond Ordinance authorizing the issuance of the Series 2020B Bonds and the execution and delivery of the Loan Agreement and this Indenture.

(b) Executed counterparts of the Loan Agreement, this Indenture, and a UCC-1 financing statement executed by the County, as debtor thereunder, and describing as collateral all rights of the County under the Loan Agreement (except certain rights to indemnity and repayment of expenses, advances and legal fees).

(c) Executed counterparts of the Mortgage and a UCC-1 financing statement given by the Borrower, as debtor thereunder, and describing as collateral all assets of the Borrower for which the Borrower has granted a lien under and pursuant to the Mortgage.

(d) The manually signed approving opinion of Dorsey & Whitney LLP, Des Moines, Iowa, as Bond Counsel to the Underwriter, concerning the validity and legality of the Series 2020B Bonds and exemption of interest thereon from federal income taxation under the Internal Revenue Code.

(e) A Certificate of the Authorized Borrower Representative to the effect that the Borrower has deposited in the Project Fund or has on hand such amounts of moneys as are then estimated to be needed to pay the Refunding Costs in excess of the proceeds of the Series 2020B Bonds to be deposited in the Project Fund pursuant to Section 4.01 hereof.

(f) An order for authentication and registration of the Series 2020B Bonds, signed by the Finance Officer or other officer of the County, specifying the aggregate principal amount of the Series 2020B Bonds to be issued, and directing the Trustee to deliver the Series 2020B Bonds described therein to or upon the order of the purchaser upon payment of the purchase price set forth therein.

(g) A tax certificate or agreement of the County, the Trustee and the Borrower as to Section 148 of the Internal Revenue Code as to absence of arbitrage expectation, which may be based on certifications of the Borrower.

(h) Such further certifications, documents and Opinions of Counsel as the Trustee, the County or Bond Counsel may require.

Section 2.09 Book-Entry System. The Bonds shall be initially issued in Book-Entry Form by using and delivering to the Depository one typed Bond for each stated maturity of the Bonds, registered to CEDE & Co, and by entering into the Letter of Representations, if not previously entered into. While the Bonds remain issued in Book-Entry Form, the provisions of this Indenture which conflict with the operation of the Book-Entry System shall not apply, and the provisions of the Letter of Representations previously entered into or to be entered into by

the County (the "Letter of Representations") and the Operational Arrangements referenced therein relating to such Book-Entry System and the following provisions shall prevail.

(a) Registration, Recording and Transfer of Ownership. The Depository (or its nominees) shall be and remain recorded on the registration records maintained by the Trustee as the Holder of all Bonds which are in Book-Entry Form. No transfer of any Bond in Book-Entry Form shall be made, except from one Depository to another (or its nominee) or except to terminate the Book-Entry Form. All Bonds of each stated maturity in Book-Entry Form shall be issued and remain in a single Bond certificate registered in the name of the Depository (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Letter of Representations or as otherwise directed by written notice from the Borrower obligated on the Bonds to the County, Trustee and Depository, the County shall, upon delivery of all Bonds from the Depository, promptly execute, and the Trustee shall thereupon authenticate and deliver, Bonds to all persons who were Beneficial Owners thereof immediately prior to such termination; and the Trustee shall register such Beneficial Owners as Holders of the applicable Bonds. The Trustee, as bond registrar and paying agent, shall maintain accurate books and records of the principal balance, if any, of each such Outstanding Bond in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new Bond in Book-Entry Form in exchange for a previous Bond, the Trustee shall designate thereon the principal balance remaining on such Bond according to the Trustee's books and records.

(b) Notices. The County and the Trustee shall each give notices to the Depository of such matters and at such times as are required by the Letter of Representations. All notices of any nature required or permitted hereunder to be delivered to a Holder of a Bond in Book-Entry Form shall be transmitted to Beneficial Owners of such Bonds at such times and in such manner as shall be determined by the Depository and the Participants in accordance with the Book-Entry System and Letter of Representations.

(c) Payments. All payments of principal of, premium, if any, and interest on Bonds while in Book-Entry Form shall be paid to the Depository in accordance with the Book-Entry System and Letter of Representations in same day funds by wire transfer. All payments of principal of, premium, if any, and interest on any Bonds in Book-Entry Form due Beneficial Owners shall be made at such times and in such manner as shall be determined by the Depository and the Participants in accordance with the Book-Entry System and Letter of Representations.

(d) Limitations on Liability. With respect to Bonds in Book-Entry Form, and any Beneficial Owners thereof, except as expressly provided to the contrary herein, the County, the Borrower and the Trustee shall have no responsibility, liability or obligation of any nature whatsoever with respect to (i) the non-payment to any Beneficial Owner or any other person, other than the Depository, of any amount due for principal or interest; (ii) the failure to give any notice or other information to the applicable Beneficial Owner; (iii) the inaccuracy of the records of the Depository or any Participant, or (iv) the failure in any manner of the Depository or any Participant to timely or properly comply with procedures or requirements of the Book-Entry



System. No such payment, failure or inaccuracy shall cause an Event of Default under the Indenture or the Loan Agreement.

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## ARTICLE III

### REDEMPTION OF BONDS

Section 3.01 Redemption of Series 2020B Bonds. The Series 2020B Bonds shall be subject to redemption prior to maturity only as follows:

(a) The Series 2020B Bonds are subject to extraordinary redemption at the direction of the Borrower on any interest payment date in whole, but not in part, at a redemption price equal to par, plus accrued interest to the redemption date, upon the happening of certain events of damage to or destruction or condemnation of the Project or change of law rendering the Loan Agreement unenforceable or impossible of performance, all as more fully provided in Section 4.07 of the Loan Agreement.

(b) The Series 2020B Bonds are also subject to mandatory redemption in the event of a Determination of Taxability. In such event, each of the outstanding Series 2020B Bonds shall be subject to mandatory redemption and shall be redeemed on the first interest payment date occurring at least 45 days after notice to the Borrower of the Determination of Taxability, and the Borrower shall cause notice thereof to be given to the Holders of the Bonds, as more fully provided in Section 4.08 of the Loan Agreement, at a redemption price equal to par, plus accrued interest.

(c) The Series 2020B Bonds maturing on or after \_\_\_\_\_ 1, 20\_\_ are subject to optional redemption on \_\_\_\_\_ 1, 20\_\_ or any date thereafter, in whole or in part, and if in part, in such principal amounts and maturities as the Borrower may designate, at a redemption price of par plus accrued interest to the date fixed for redemption, but without any premium.

(d) The Series 2020B Bonds maturing on \_\_\_\_\_ 1, 20\_\_ and \_\_\_\_\_ 1, 20\_\_ are subject to mandatory redemption through operation of the Sinking Fund provided for in Section 3.08 hereof, at a redemption price equal to par plus accrued interest, such Bonds to be selected by lot by the Trustee, on May 1 of the years and in the amounts, respectively set forth in Section 3.08.

Notice of any such redemption of Bonds shall be mailed in the form provided by Section 3.02 and in the manner and to the extent required by Section 3.03. Prior to the date fixed for redemption, funds shall be deposited with the Trustee sufficient to pay the Bonds called and accrued interest thereon, plus any premium required. Upon the happening of the above conditions, any Bonds thus called shall not bear interest after the call date, and except for the purpose of payment by application of the funds so deposited, shall no longer be protected by the Indenture.

Section 3.02 Written Notice to Trustee. If the Bonds are to be redeemed pursuant to Section 3.01 hereof, and written notice of an election to exercise an option to redeem Bonds under Section 4.07 of the Loan Agreement or written notice of a Determination of Taxability under Section 4.08 of the Loan Agreement shall have been given to the Trustee by the Borrower,

the Trustee shall prepare a notice in the name of the County or in its own name describing the outstanding Bonds to be redeemed, the date of redemption, and the redemption price. If the Borrower shall fail to give notice of redemption under Section 4.08(c) of the Loan Agreement, the Trustee is authorized to give notice of redemption, as provided by Section 4.08(c) of the Loan Agreement.

Section 3.03 Mailing and Publication of Notice. Notice of redemption (including when only a portion of the Bonds is to be redeemed, the series and numbers of such Bonds or the maturities thereof) shall be mailed by the Trustee, not less than thirty days nor more than sixty days before the redemption date by first class mail, to the registered owners of any Bonds which are to be redeemed, at their last addresses appearing upon the registry books of the County. If required by the Act or other applicable law a similar notice shall also be published in such manner as may be required by the Act or other applicable law. No notice of redemption need be given if the Holders of all Bonds called for redemption waive notice thereof in writing and such waiver is filed with the Trustee. Any notice of optional redemption hereunder may be rescinded by written notice given by the Borrower to the Trustee no later than five (5) Business Days prior to the date specified for redemption. The Trustee shall give notice of such rescission as soon thereafter as practicable to the same parties and in the same manner as notice of redemption was given pursuant to this Section 3.03.

Section 3.04 Deposit for Redemption. Unless notice of redemption is rescinded as set forth in Section 3.03 hereof, on or prior to the redemption date, there shall be deposited with the Trustee cash in an aggregate amount which shall be sufficient to pay the redemption price of the Bonds to be redeemed, and interest thereon to the redemption date; and there shall be deposited, or arrangements shall be made with the Trustee to deposit, with the Trustee a sum sufficient to pay the proper expenses and charges of the Trustee in connection with such redemption. Upon deposit with the Trustee of the aggregate amount of such redemption price and interest, such moneys shall be set aside by the Trustee and held by it for the account of the respective Holders of the Bonds being redeemed.

Section 3.05 Payment of Redeemed Bonds. After notice of redemption shall have been given as provided in Section 3.03, and money for payment of the redemption price of, and interest accrued to the date fixed for redemption on, the Bonds specified in such notice shall become due and payable on the redemption date. Payment of the redemption price and interest shall be made to or upon order of each registered owner, upon the surrender of the Bonds. Any installment of interest maturing on or prior to the redemption date shall be payable to the registered owners of Bonds on the relevant Record Dates according to the terms of such Bonds and the provisions of Section 2.05 hereof and the notice of redemption herein provided for may so state. If redemption moneys are available for the payment of all of the Bonds called for redemption on the redemption date, the Bonds so called shall cease to draw interest after the redemption date, and such Bonds shall not be deemed to be outstanding hereunder for any purpose, except that the Holders thereof, on presentation, as herein provided, shall be entitled to receive payment of the redemption price and interest accrued thereon to the redemption date from the moneys set aside by the Trustee as aforesaid.

Section 3.06 Cancellation of Redeemed Bonds. All Bonds so redeemed shall forthwith be cancelled and destroyed by the Trustee and a certificate of destruction furnished to the County; and no further Bonds shall be executed or authenticated or issued hereunder in exchange or substitution therefor.

Section 3.07 Partial Redemption of Bonds. If less than all of the Bonds of a particular maturity at the time outstanding are to be called for prior redemption, the particular Bonds or portions thereof of such maturity to be redeemed shall be selected by lot, except as otherwise provided herein, by the Trustee in such manner as the Trustee, in its discretion, may determine. The Trustee shall call for redemption in accordance with the foregoing provisions as many Bonds or portions thereof as will, as nearly as practicable, exhaust the moneys available therefor. Particular Bonds or portions thereof shall be redeemed only in integral multiples of principal amount of \$5,000.

In the case of Bonds of denominations greater than \$5,000, if less than all of such Bonds then outstanding are to be called for redemption, then for all purposes in connection with redemption, each \$5,000 of principal amount shall be treated as though it was a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all of the \$5,000 units of principal amount represented by any such fully registered Bond is to be called for redemption, then upon notice of intention to redeem such \$5,000 unit or units, the owner of such fully registered Bond shall forthwith surrender such Bond to the Trustee (1) for payment of the redemption price (including the redemption premium, if any, and interest to the date fixed for redemption) of the \$5,000 unit or units of principal amount called for redemption and (2) exchange for a new Bond or Bonds of the aggregate principal amount of the unredeemed balance of the principal amount of such fully registered Bond shall be issued to the registered owner thereof, without charge therefor. If the owner of any such fully registered Bond of a denomination greater than \$5,000 shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall nevertheless become due and payable on the date fixed for redemption to the extent of the \$5,000 unit or units of principal amount called for redemption (and to that extent only). Interest shall cease to accrue on the portion of the principal amount of such Bond represented by such \$5,000 unit or units of principal amount on and after the date fixed for redemption provided that funds sufficient for the payment of the redemption price shall have been deposited with the Trustee and shall be available for the redemption of said \$5,000 unit or units on the date fixed for redemption, and in such event, such Bond shall not be entitled to the benefit or security of this Indenture, or the Loan Agreement to the extent of the portion of its principal amount (and accrued interest thereon to the date fixed for redemption and applicable premium, if any) represented by such \$5,000 unit or units of principal amount, nor shall new Bonds be thereafter issued corresponding to said unit or units.

Section 3.08 Sinking Fund. The County covenants that it will establish and maintain, so long as any of the Series 2020B Bonds shall be outstanding, with the Trustee a separate fund to be designated "Fall River County Economic Development Refunding Revenue Bonds (Fall River Health Services Project), Series 2020B Sinking Fund" (herein called the "Sinking Fund").

For the retirement of the Series 2020B Bonds, the Borrower has covenanted in the Loan Agreement to deposit in the Sinking Fund, as required, an amount sufficient to redeem on \_\_\_\_\_ 1, of the years indicated below the following principal amounts of the Series 2020B Bonds maturing on \_\_\_\_\_ 1, 20\_\_\_\_ and \_\_\_\_\_ 1, 20\_\_\_\_, on the dates specified (each such date being herein called a “Sinking Fund redemption date”) at the principal amount thereof plus accrued interest to the redemption date:

For the 20\_\_\_\_\_ Term Bonds:

<u>Year</u>	<u>Amount</u>
-------------	---------------

\*Stated Maturity

For the 20\_\_\_\_\_ Term Bonds:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
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\*Stated Maturity

From such cash Sinking Fund payments, to the maximum extent possible, the Trustee shall redeem at 100% of the principal amount thereof plus accrued interest to the Sinking Fund redemption date the Series 2020B Bonds. At its option, to be exercised on or before the forty-fifth day next preceding any such Sinking Fund redemption date, the Borrower may (i) deliver to the Trustee for cancellation such Series 2020B Bonds in any aggregate principal amount desired, or (ii) receive a credit in respect of such Sinking Fund redemption obligation for any such Series 2020B Bonds which prior to said date have been purchased or redeemed (otherwise than at the stated maturity thereof or through the operation of such Sinking Fund) and cancelled by the Trustee and not theretofore applied as a credit against such Sinking Fund redemption obligation. Each such Series 2020B Bond so delivered or previously purchased or redeemed shall be credited by the Trustee at 100% of the principal amount thereof on the obligation of the Borrower on such Sinking Fund redemption date and any excess amount shall be credited on future Sinking Fund redemption obligations in chronological order, and the principal amount of such Series 2020B Bonds to be redeemed by operation of the Sinking Fund shall be accordingly reduced. The Borrower shall on or before the forty-fifth day next preceding each such Sinking Fund redemption date furnish the Trustee with a Certificate of the Authorized Borrower Representative indicating whether or not and to what extent the provisions of clauses (i) and (ii) of this Section are to be availed of with respect to such Sinking Fund payment.

For all purposes hereof and of the Loan Agreement, the Trustee may establish the Sinking Fund as a sub-account within the Bond Fund.

## ARTICLE IV

### BOND PROCEEDS; PROJECT FUND

Section 4.01 Deposit of Series 2020B Bond Proceeds. The County shall deposit, or shall direct the Original Purchaser of the Series 2020B Bonds to deposit, with the Trustee all of the net proceeds of the sale of the Series 2020B Bonds (including accrued interest thereon from the date from which interest is to be paid thereon to the date of delivery to the Original Purchaser thereof), and the Trustee out of such proceeds shall:

- (a) Deposit to the credit of the Reserve Fund a sum equal to the Reserve Requirement; and
- (b) Deposit to the credit of the Project Fund the balance of such proceeds.

Section 4.02 Establishment of Project Fund. There is hereby established a separate fund to be maintained by the Trustee hereunder, and there shall be deposited with the Trustee to the credit of such fund (herein called the "Project Fund"), the proceeds of the Series 2020B Bonds, except as otherwise provided herein. The County has no obligation hereunder or under the Act to deposit any moneys in the Project Fund or apply moneys to Refunding Costs except proceeds of Bonds or funds made available therefor by the Borrower.

Within the Project Fund the Trustee shall establish two separate accounts, the Refunding Account and the Cost of Issuance Account.

On the Closing Date, \$ \_\_\_\_\_ of the proceeds of the Series 2020B Bonds shall be deposited by the Trustee into the Refunding Account, except as otherwise provided herein. Such proceeds shall forthwith be transferred by the Trustee to \_\_\_\_\_, to be applied to payment of the outstanding principal amount of the Refunded Indebtedness.

On the Closing Date, \$ \_\_\_\_\_ of the proceeds of the Series 2020B Bonds, together with \$ \_\_\_\_\_ of additional funds of the Borrower not constituting proceeds of the Bonds, shall be deposited by the Trustee into the Cost of Issuance Account. Such proceeds shall be applied to the payment or reimbursement of costs of issuance of the Series 2020B Bonds, as further provided in Section 4.04 hereof.

The moneys in the Project Fund shall be held in trust by the Trustee and applied to the payment of Refunding Costs, in accordance with and subject to the provisions of this Article, but shall nonetheless be subject to a lien and charge in favor of the Holders of the Bonds issued and outstanding under this Indenture and shall be held for the further security of such Holders, and may be applied by the Trustee to the payment of the interest on the Bonds, with or without a direction of the Authorized Borrower Representative.

Section 4.03 Refunding Costs Defined. For the purposes of this Indenture, the Refunding Costs shall include, without intending thereby to limit or restrict any proper definition

of such cost under any applicable laws and generally accepted accounting principles, the following:

- (1) Payment of the outstanding principal amount of the Refunded Indebtedness, together with premium thereon and interest accrued to the redemption date;
- (2) Expenses of administration, supervision and inspection properly chargeable to the Project, administrative fees and other expenses relating to the Project, title insurance premiums, abstracting and filing fees, legal expenses and fees, fiscal consultant fees and expenses, costs of audits and of preparing, offering, selling and issuing the Bonds, and initial fees of the Trustee;
- (3) Any other obligation or expense heretofore or hereafter incurred by the Borrower in connection with the Project defined as and constituting a proper project cost under the Act and approved by the Authorized Borrower Representative.

Section 4.04 Payments from Costs of Issuance Account. Any moneys on deposit in the Cost of Issuance Account shall be applied solely to the payment or reimbursement of costs of issuance of the Series 2020B Bonds. Amounts on deposit in the Cost of Issuance Account shall be disbursed by the Trustee at the direction of the Authorized Borrower Representative, in accordance with the provisions of Section 3.03 of the Loan Agreement, based upon a Draw Request signed by the Authorized Borrower Representative substantially in the form attached hereto as Exhibit A.

For purposes of complying with the requirements of this Section, the Trustee may conclusively rely on and shall be protected in acting or refraining from acting upon Draw Requests of the Borrower. The Trustee shall not be bound to make an investigation into the facts or matters stated in any Draw Request. The Trustee shall not be responsible for determining whether funds on hand in the Cost of Issuance Account are sufficient to complete payment of all costs of issuance incurred in connection with the issuance of the Bonds. The Trustee shall not be responsible to collect lien waivers.

Section 4.05 Application of Balance in Project Fund. When a Certificate of the Authorized Borrower Representative shall have been furnished to the Trustee, to the effect that all payments of Refunding Costs have been made to the satisfaction of the Borrower, any balance in the Refunding Account shall be deposited in the Bond Fund, but only if, after such deposit, not less than 95% of the proceeds of the Series 2020B Bonds (including accrued interest received upon the sale of the Series 2020B Bonds and investment earnings on the proceeds of the Series 2020B Bonds) shall have been used in accordance with the requirements of Section 145(a) of the Internal Revenue Code. Any balance not transferable to the Bond Fund may be used to redeem the largest portion of outstanding Series 2020B Bonds then subject to redemption without premium under this Indenture that does not exceed the amount of such balance. Any balance remaining in the Cost of Issuance Account, following payment in full of all costs of issuance of the Bonds, shall be transferred to the Bond Fund.



Section 4.06 Deposit and Investment of Excess Moneys. To the extent permitted by the Act, the Trustee shall invest the moneys on deposit in the Project Fund at the request of the Authorized Borrower Representative in Qualified Investments which shall (i) be payable in such amounts and at such times not later than the time or times when such moneys will be needed to pay Refunding Costs, and (ii) mature or may be redeemed no later than 12 months from the date of investment. The type, amount and maturity of Qualified Investments made pursuant to this Section shall conform to any instructions of the Authorized Borrower Representative. The Trustee may, from time to time, cause any such investments to be sold or otherwise be converted into cash, whereupon the proceeds derived from such sale or conversion shall be deposited into the Project Fund. Any interest or profit derived from investments shall be credited to said Fund. Investments permitted under this Section may be purchased from the Trustee or from any of its affiliates. The County covenants that no portion of the Project Fund representing proceeds of the Series 2020B Bonds shall be directed or permitted to be invested or used in such manner that any of the Bonds would be “arbitrage bonds” under Section 148 of the Internal Revenue Code or regulations thereunder.

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## ARTICLE V

### DISPOSITION OF PLEDGED REVENUES

Section 5.01 Bond Fund. There is hereby established and the Trustee shall maintain, so long as any of the Bonds are outstanding, a separate fund to be designated “Fall River County Economic Development Refunding Revenue Bonds (Fall River Health Services Project) Bond Fund (herein call the “Bond Fund”) into which there shall be made the following deposits:

(a) All accrued interest received from the sale of the Bonds, which sum shall be used to pay interest due on the Bonds.

(b) After the Series 2020B Bonds have been delivered, all payments by the Borrower as Loan Repayments under paragraphs (a) and (b) of Section 4.02 of the Loan Agreement.

(c) All other moneys received by the Trustee under and pursuant to any provision of the Loan Agreement, the Mortgage and the Indenture with respect to the Bonds; and

(d) All other moneys received by the Trustee from the Borrower when accompanied by directions of the Borrower that such moneys are to be paid into the Bond Fund or used for purposes for which moneys in the Bond Fund may be used.

(e) All other moneys required to be deposited in the Bond Fund pursuant to any provision of this Indenture or the Loan Agreement.

The moneys and investments in the Bond Fund are irrevocably pledged and shall be used by the Trustee, from time to time, to the extent required:

FIRST: For the payment of principal of, premium (if any) on and interest on the Bonds, due or to become due within one year, as and when such principal, premium and interest shall become due and payable; and

SECOND: To be used, upon direction by the Borrower, to purchase outstanding Bonds at purchase prices not exceeding par plus accrued interest.

Section 5.02 Optional Redemption Fund. There is hereby established and the Trustee shall maintain so long as any of the Bonds are outstanding, a separate fund to be designated “Fall River County Economic Development Refunding Revenue Bonds (Fall River Health Services Project) Optional Redemption Fund” (herein called the “Optional Redemption Fund”). There shall be deposited into the Optional Redemption Fund all amounts required to be deposited therein pursuant to any provision of the Loan Agreement or this Indenture, and all amounts designated to be deposited therein by the Borrower.

Amounts on deposit to the credit of the Optional Redemption Fund shall be used, first, to make up deficiencies in the Bond Fund and, second, for the redemption of outstanding Bonds at

the request or direction of the Borrower pursuant to Article III hereof or, at the request of the Borrower, for the purchase of outstanding Bonds on the market at prices not exceeding the redemption price on the next available date for redemption.

Notwithstanding the foregoing, the Trustee, in its discretion, is authorized to use funds and investments in the Optional Redemption Fund to pay the amount of any rebate due the United States in respect of the Bonds under Section 148(f) of the Internal Revenue Code, if the Borrower shall have failed to pay or provide for the payment thereof under Section 4.08(d) of the Loan Agreement.

Section 5.03 Reserve Fund. There is hereby established and the Trustee shall maintain so long as any of the Bonds are outstanding, a fund to be designated "Fall River County Economic Development Refunding Revenue Bonds (Fall River Health Services Project) Reserve Fund" (herein called the "Reserve Fund"), into which the County and Trustee shall make the following deposits:

(a) An amount equal to the Reserve Requirement, to be deposited from the proceeds of the Series 2020B Bonds, as further provided in Section 4.01(a) hereof.

(b) After the Series 2020B Bonds have been delivered and the Reserve Requirement has been initially met, the County and Trustee shall deposit into the Reserve Fund all moneys and income of the Trust Estate not deposited or required to be deposited in the Bond Fund, including all Loan Repayments pursuant to paragraph (d) of Section 4.02 of the Loan Agreement, in order to maintain the funds and investments on deposit in the Reserve Fund in an amount at least equal to the Reserve Requirement.

(c) All other amounts required or permitted to be deposited into the Reserve Fund hereunder or under the Loan Agreement.

In computing the amount in the Reserve Fund, Qualified Investments shall be valued at face value if purchased at par or at the amortized value if purchased at other than par; provided, however, that such Qualified Investments in the Reserve Fund are required to be valued only on each \_\_\_\_\_ 1. For purposes of this Section, "amortized value," when used with respect to an obligation purchased at a premium above or at a discount below par, means the value as of any given time obtained by dividing the total premium or discount at which such obligation was purchased by the number of days remaining to maturity on such obligation at the date of such purchase and by multiplying the amount thus calculated by the number of days having passed since such purchase; and (1) in the case of an obligation purchased at a premium by deducting the product thus obtained from the purchase price, and (2) in the case of an obligation purchased at a discount by adding the product thus obtained to the purchase price. Valuation of any particular date shall include the amount of interest then earned or accrued to such date on any moneys or investments in the Reserve Fund.

At any time the balance in the Reserve Fund is less than the Reserve Requirement, the Trustee shall send a notice to the Borrower requesting the Borrower to cure such deficiency pursuant to 4.02(d) of the Loan Agreement.

The funds and investments in the Reserve Fund are irrevocably pledged to and shall be used by the Trustee, from time to time, as may be required, for the payment of principal of, premium (if any) on and interest on the Bonds as and when such principal and interest shall become due and payable and for that purpose only; provided that (i) if investment earnings shall cause the amount on deposit in the Reserve Fund to exceed the Reserve Requirement, the Trustee shall transfer such excess to the Bond Fund, and (ii) moneys and investments in the Reserve Fund shall be transferred to the Bond Fund when the moneys and proceeds of investments in the Reserve Fund shall be sufficient (with moneys and proceeds of investments in the Bond Fund) to pay when due the principal of and interest on all outstanding Bonds.

Notwithstanding the foregoing, the Trustee, in its discretion, is authorized to use funds and investments in the Reserve Fund to pay the amount of any rebate due to the United States in respect of the Bonds under Section 148(f) of the Internal Revenue Code, if the Borrower shall have failed to pay or provide for the payment thereof under Section 4.08(d) of the Loan Agreement.

#### Section 5.04 [Reserved]

Section 5.05 Investment of Funds. To the extent authorized by the Act, moneys on deposit to the credit of any Account or Fund maintained by the Trustee hereunder shall, upon request by the Authorized Borrower Representative, be invested by the Trustee in (i) direct obligations of or obligations fully guaranteed by the United States of America; (ii) deposits in interest-bearing time deposits or certificates of deposit or similar arrangements, including repurchase agreements, secured by obligations described in (i) hereof which are in the possession of the Trustee or its agent and with respect to which the Trustee has a valid and perfected security interest free and clear of prior claims of third parties; (iii) obligations issued by any federal agency to the extent that such obligations are either guaranteed by or are direct obligations of the United States of America (other than as provided in (i) hereof) and bonds, debentures, participation certificates or notes issued by the Federal National Mortgage Association; (iv) deposits in interest-bearing time deposits or certificates of deposit or similar arrangements (without regard to whether such deposits or arrangements are insured by the Federal Deposit Insurance Corporation) of any lead bank of a bank holding company which has at least an A-1 or prime-one rating or their equivalents from Standard & Poor's Corporation or Moody's Investors Service, Inc., or their successors, or certificates of deposit of any national bank if the amount thereof is fully insured by the FDIC; (v) fixed income securities of any corporation organized and existing under the laws of any state of the United States of America or the District of Columbia which are rated not less than AA or Aa or their equivalents by Standard & Poor's Corporation or Moody's Investors Service, Inc., or their successors; (vi) commercial paper or finance company paper of an issuer which is rated not less than A- I or prime-one or their equivalents by Standard & Poor's Corporation or Moody's Investors Service, Inc., or their

successors, and whose obligations have at least an AA or Aa rating or their equivalents from Standard & Poor's Corporation or Moody's Investors Services, Inc., or their successors; (vii) a common trust fund or similar fund maintained by the Trustee exclusively for the collective investment and reinvestment of moneys contributed thereto by the Trustee in its capacity as trustee and whose only investments are in securities described herein; (viii) shares of an investment company registered under the Investment Company Act of 1940, whose shares are rated not less than AAA or Aaa by Standard & Poor's Corporation or Moody's Investors Services, Inc. or their successors; and (ix) an investment agreement (whether or not collateralized) from a provider whose obligations are rated not less than AA or Aa by Standard & Poor's Corporation or Moody's Investors Services, Inc. ("Qualified Investments"). Investments permitted under this Section may be purchased from the Trustee or from any of its affiliates. Investments so made shall be deemed at all times to be a part of the respective Fund, but may from time to time be sold or otherwise converted into cash, whereupon the proceeds derived from such sale or conversion shall be credited to such Fund. Except as may otherwise be provided in Section 4.09 of the Loan Agreement, any interest accruing on and any profit realized from such investment shall be credited to the respective Fund. Any investments purchased with amounts on deposit in any Fund under this Indenture may be exchanged for cash or investments of equal value credited to any other Fund. The Trustee shall redeem or sell, at the best price obtainable, any investments so made, whenever it shall be necessary to do so in order to provide moneys to meet any payment from the respective Fund. Neither the Trustee nor the County shall be liable for any loss resulting from any such investment, nor from failure to preserve rights against endorsers or other prior parties to instruments evidencing any such investment. Investment of funds pursuant to this Section shall be limited as to amount and yield of investment in such manner that no part of the outstanding Bonds shall be deemed "arbitrage bonds" under Section 148 of the Internal Revenue Code and regulations thereunder.

Section 5.06 Compliance with Arbitrage Restrictions; Rebate Requirements. The County and the Trustee hereby acknowledge and confirm that the maintenance of the tax-exempt status of interest on the Bonds is dependent, among other things, on compliance with the arbitrage requirements set forth in Section 148 of the Internal Revenue Code and regulations thereunder. In order to confirm and carry out such understanding, the Borrower has agreed in the Loan Agreement to make or cause to be made such periodic computations (but without expense to the County) and make such rebate payments to the United States as and when required by Section 148(f) and regulations thereunder. Specifically, the Borrower shall cause to be computed as of each computation date all rebatable arbitrage earned with respect to nonpurpose investments made with gross proceeds of the Bonds. Payment of all rebate amounts required to be made to the United States under Section 4.08(d) of the Loan Agreement and under this Section shall be made from Loan Repayments made by the Borrower under Section 4.08(d) of the Loan Agreement or from other available funds held under this Indenture. Such required rebate payments shall be made in the minimum amounts required by said Section 148(f) and regulations thereunder not later than 60 days after each installment computation date. Not later than 60 days after the final computation date, the Borrower shall pay or cause the Trustee to pay 100 percent of the aggregate amount described above not theretofore paid to the United States. In construing this Section 5.06 all terms used in this Section shall have the meanings provided in

Section 148 of the Internal Revenue Code and regulations thereunder. Notwithstanding any other provision of this Section 5.06, any requirement imposed hereunder may be deemed inapplicable and of no force or effect if an opinion is rendered by nationally recognized bond counsel to the Trustee to the effect that the failure to impose such requirement will not adversely affect the tax-exempt status of interest on the Bonds.

In order to comply with the provisions of this Section 5.06 or Section 4.08(d) of the Loan Agreement, the Trustee is hereby authorized to and may obtain such Opinions of Counsel, reports of accountants and Certificates of the Borrower as may be necessary for the purpose and any expenses thereof shall be borne by the Borrower. The Trustee is also authorized to and may apply amounts credited to the Optional Redemption Fund and Reserve Fund to the payment of any rebate then owing, as further provided in Sections 5.02 and 5.03 hereof, and to establish such other fund or account hereunder as it may deem necessary or desirable in order to maintain funds for the purpose of making any payment required under this Section 5.06.

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## ARTICLE VI

### PARTICULAR COVENANTS OF THE COUNTY

The County covenants and agrees, so long as any Bonds shall be outstanding and subject to the limitations on its obligations herein set forth, that:

Section 6.01 Payment of Bonds. It will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture and in each and every Bond executed, authenticated and delivered hereunder; will pay, from Loan Repayments by the Borrower and other amounts received or held by the Trustee hereunder, the principal of, premium (if any) on and interest on every Bond issued hereunder on the dates, at the places and in the manner prescribed in such Bonds in any coin or currency which, on the respective dates of payment of such principal and interest, is legal tender for the payment of public and private debts; and will cause such amounts received to be deposited with the Trustee prior to the due date of each installment of principal and interest and prior to the maturity of any Bond in amounts sufficient to pay such installment or Bond to the end that the Trustee may cause to be placed in any other bank of payment specified herein and in the Bonds, on time, money required for payment of principal, premium and interest; provided, however, that the principal of and interest on any Bond is not and shall not be deemed to represent a debt or pledge the faith or credit of the County or grant to the Holder of any Bond any right to have the County levy any taxes or appropriate any funds to the payment of principal of or interest on the Bonds, such payment to be made solely and only out of the moneys received pursuant to the Loan Agreement, and the funds and accounts established and maintained with the Trustee pursuant to the requirements of this Indenture and appropriated to the payment of the Bonds by the Indenture.

Section 6.02 Authority of the County. The County has undertaken, pursuant to the Constitution and Laws of the State of South Dakota to create and issue the Bonds, to loan the proceeds thereof to the Borrower, to execute this Indenture and assign and pledge to the Trustee the Trust Estate, including the Loan Repayments, and to make the covenants as herein provided. All necessary action and proceedings on its part to be taken for the creation and issuance of the Bonds and the execution and delivery of this Indenture have been duly and effectively taken, and the Bonds in the hands of the Holders or owners thereof are and will be duly issued special obligations of the County in accordance with their terms.

Section 6.03 Concerning the Loan Agreement. The County will cooperate or cause and permit the Trustee to take such action as may be necessary or advisable to enforce the covenants, terms and conditions of the Loan Agreement if such action shall, in the Trustee's discretion, be deemed to be in the best interest of the County or the Bondholders. The County shall do or cause to be done all things on its part to be performed under the Loan Agreement so that the obligations of the Borrower thereunder shall not be impaired or excused.

Section 6.04 To Observe All Covenants and Terms, Limitations on County's Obligations. The County will not issue or permit to be issued any Bonds hereunder in any

manner other than in accordance with the provisions of this Indenture and the agreements in that behalf herein contained, and will not suffer or permit any Default to occur under the Indenture, but will faithfully observe and perform all the conditions, covenants and requirements hereof. Under the Act, and it is expressly agreed that, the County has no obligation to levy taxes for, or make any advance or payment or incur any expense or liability from its general funds in performing, any of the conditions, covenants or requirements of the Bonds or this Indenture or from any funds other than revenues and income received pursuant to the Loan Agreement or moneys in the funds and accounts provided for herein.

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## ARTICLE VII

### REMEDIES ON DEFAULT

Section 7.01 Events of Default. Each of the following events is hereby defined as, and is declared to be and to constitute, an “Event of Default:”

(a) If payment of the principal of any of the Bonds, or any premium thereon, when the same shall become due and payable (whether at maturity or proceedings for redemption, declaration or otherwise), shall not be made; or

(b) If payment of any interest on the Bonds when the same shall become due and payable (in which case interest shall be payable to the extent permitted by law on any overdue installments of interest, in each case at the interest rate borne by the Bonds in respect of which such interest is overdue) shall not be made; or

(c) If the County shall default in the due and punctual performance of any of the other covenants, conditions, agreements and provisions contained in the Bonds or in this Indenture, or in any indenture supplemental hereto on the part of the County to be performed, and such default shall have continued for a period of sixty days after written notice, specifying such default and requiring the same to be remedied, shall have been given to the County and to the Borrower by the Trustee, or if such notice is given to the Trustee, the County and the Borrower by the Holders of not less than twenty-five per cent (25%) in principal amount of the Bonds then outstanding; or

(d) If any Event of Default as that term is defined in the Loan Agreement or the Mortgage shall occur and be continuing; or

(e) If an event of default under the Series 2020A Bonds, the Series 2020A Indenture or the Series 2020A Loan Agreement shall occur and be continuing.

Section 7.02 Acceleration of Maturity. Upon the occurrence of an Event of Default, the Trustee may, and upon written request of the Holders of twenty-five per centum (25%) in aggregate principal amount of Bonds outstanding hereunder shall, by notice in writing delivered to the County declare the principal of all Bonds hereby secured then outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable subject, however, to the right of the Holders of a majority in aggregate principal amount of Bonds then outstanding hereunder, by written notice to the County and to the Trustee, to annul such declaration and destroy its effect at any time if all covenants with respect to which default shall have been made shall be fully performed or made good, and all arrears of interest upon all Bonds outstanding hereunder and the reasonable expenses and charges of the Trustee, its agent and attorneys, and all other indebtedness secured hereby (except the principal of any Bonds which have not then attained their stated maturity and interest accrued on such Bonds since the last interest payment date) shall be paid, or the amount thereof shall be paid to the Trustee for the benefit of those entitled thereto.

Section 7.03 Enforcement of Covenants and Conditions. In any case of Default or breach of any of the covenants and conditions of this Indenture, or to protect the Trust Estate, the Trustee, anything herein contained to the contrary notwithstanding and without any request from any Bondholder (subject, however, to the provisions of Section 8.06 hereof), may take such action or actions for the enforcement of its rights and the rights of the Bondholders and the rights of the County under the Loan Agreement as due diligence, prudence and care would require and to pursue the same with like diligence, prudence and care.

Upon the happening and continuance of an Event of Default, the Trustee may, and shall upon the written request of the Holders of not less than twenty-five per centum (25%) in aggregate principal amount of outstanding Bonds, proceed forthwith by suit or suits at law or in equity or by any other appropriate remedy to enforce payment of the Bonds, to enforce application to such payment of the funds, revenues and income appropriated thereto by this Indenture and by the Bonds, to enforce rights of the County under the Loan Agreement, and to enforce its rights under the Mortgage, and any such other appropriate legal or equitable remedy as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of its rights or any of the rights of the Bondholders. Notwithstanding the foregoing, the Trustee need not proceed upon any such written request of the Bondholders, as aforesaid, unless such Bondholders shall have offered to the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby.

Section 7.04 Appointment of Receivers. Upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and the Holders of Bonds under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the revenues, issues, payments and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 7.05 Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Indenture, the Loan Agreement or the Mortgage shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, be deposited in the Bond Fund, and all moneys in the Bond Fund and in any other Fund or Account then maintained under this Indenture shall be applied, as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

First: To the payment to the persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege; and

Second: To the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then, subject to the provisions of paragraph (b) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (a) of this Section.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the holder of any unpaid Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all Bonds and interest thereon have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining shall be paid to the persons entitled to receive the same; if no other person shall be entitled thereto, then the balance shall be paid to the Borrower as its interests may appear.

Section 7.06 Right of Trustee to Act Without Possession of Bonds. All rights of action (including the right to file proof of claim) under this Indenture or the Loan Agreement, or under any of the Bonds, may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, without the necessity

of joining as plaintiffs or defendants any Holders of the Bonds hereby secured, and any recovery of judgment shall be for the equal benefit of the Holders of the outstanding Bonds”.

Section 7.07 Power of Majority of Bondholders. Anything in this Indenture to the contrary notwithstanding, the Holders of a majority in aggregate principal amount of Bonds outstanding hereunder shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken under this Indenture, the Loan Agreement and the Bond Ordinance; provided that such direction shall not be otherwise than in accordance with the provisions of law and that the Trustee shall be indemnified as provided in Section 8.06.

Section 7.08 Limitation on Suits by Bondholders. No Holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture, or for the execution of any trust hereof or for any other remedy hereunder, unless a Default has occurred of which the Trustee has been notified or of which it is deemed to have notice; nor unless also such Default shall have become an Event of Default and the Holders of twenty-five per centum (25%) in aggregate principal amount of Bonds outstanding hereunder shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; nor unless also they shall have offered to the Trustee indemnity as provided hereinafter; and such notification, request and offer of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for enforcement or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb, or prejudice the lien of this Indenture by his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Holders of all Bonds outstanding hereunder. Nothing in this Indenture contained shall, however, affect or impair the right of any Bondholder, which is absolute and unconditional, to enforce and bring suit for the payment of the principal of and interest on any Bond at and after the maturity thereof or the obligations of the County to pay the principal of and interest on each of the Bonds issued hereunder to the respective Holders thereof at the time and place in said Bonds expressed, in accordance with the terms of the Bonds.

Section 7.09 Waiver by Bondholders. The Trustee, upon the written request of the Holders of not less than a majority in aggregate principal amount of the Bonds at the time outstanding hereunder, shall waive any Event of Default hereunder and its consequences, except an Event of Default in the payment of the principal of the Bonds at the date of maturity specified therein; provided, however, that an Event of Default in the payment of interest on the Bonds shall not be waived unless, prior to such waiver, all arrears of interest, and all expenses of the Trustee shall have been paid or shall have been provided for by deposit with the Trustee of a sum sufficient to pay the same. In case of any such waiver, the County, the Trustee and the Holders of the Bonds shall be restored to their former positions and rights hereunder respectively. No

such waiver shall extend to any subsequent or other Default or any Event of Default or impair any right consequent thereon.

Section 7.10 Remedies Cumulative, Delay Not To Constitute Waiver. No remedy by the terms of this Indenture, the Loan Agreement, or the Bond Ordinance conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any Default or Event of Default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereon.

Section 7.11 Restoration of Rights Upon Discontinuance of Proceedings. In case the Trustee or Bondholders shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee or Bondholders, then and in every such case the County, the Borrower, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder with respect to the Trust Estate, and all rights, remedies and powers of the Trustee or Bondholders shall continue as if no such proceedings had been taken.

Section 7.12 Rights of the Holders of Parity Obligations; Cooperation; Application of Money

The Trustee and the Bondholders acknowledge the parity relationship between the Series 2020B Bonds, the Series 2020A Bonds and any other Parity Obligations. The Trustee agrees to cooperate with other Parity Obligation Holders in pursuance of the remedies hereunder, under the Mortgage, and under the Parity Obligation Issuance Documents upon the occurrence of an Event of Default. Notwithstanding any provision in this Indenture to the contrary, any moneys received pursuant to any right given or action taken under this Article, or under the Loan Agreement or the Mortgage, after payment of the Trustee and the Parity Obligation Holders of all costs and expenses of the proceedings resulting in the collection of such money and of the expenses, liabilities and advances incurred or made by the Trustee and the Parity Obligation Holders shall be paid to the Trustee and the Parity Obligation Holders on a pro rata basis in accordance with the Outstanding principal amounts of the Bonds and the Parity Obligations for further application in accordance with this Article and the Parity Obligation Issuance Documents.

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## ARTICLE VIII

### CONCERNING THE TRUSTEE

Section 8.01 Acceptance of Trust and Prudent Performance Thereof. The Trustee, prior to the occurrence of an Event of Default and after the curing of all such Events of Default as may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. The Trustee shall during the existence of any such Event of Default (which has not been cured) exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

The Trustee shall not be required to take notice or be deemed to have notice of any Default or Event of Default hereunder except Default in the deposits or payments specified, or failure by the County or the Borrower to file with it any of the documents required, or to deposit with it evidence of the insurance policies required hereunder or under the Loan Agreement, unless the Trustee shall be specifically notified in writing of such Default or Event of Default by the Borrower, by the County or by the Holders of at least twenty-five per centum (25%) in aggregate principal amount of Bonds outstanding hereunder, and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume that there is no Default or Event of Default except as aforesaid.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own gross negligent action, its own gross negligent failure to act, or its own willful misconduct, except that

(a) prior to such an Event of Default hereunder, and after the curing of all such Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and to the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Trustee conforming to the requirements of this Indenture; but in the case of any such certificate or opinion which by any provision hereof is specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not it conforms to the requirements of this Indenture; and

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(1) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts, and

(2) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority in aggregate principal amount of all the Bonds at the time outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur individual financial liability in the performance of any of its duties or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Notwithstanding anything else set forth to the contrary herein, the Trustee agrees that, to whatever extent required by law, it shall comply with the provisions of South Dakota Codified Laws, Sections 51A-5-7 to 51A-5-10.

Section 8.02 Trustee May Rely Upon Certain Documents and Opinions. Except as otherwise provided in Section 8.01,

(a) the Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, election, order, certification or demand of the County or the Borrower shall be sufficiently evidenced by an instrument signed by an Authorized Municipal Representative or an Authorized Borrower Representative, as the case may be (unless otherwise in this Indenture specifically prescribed), and any resolution of the County may be evidenced to the Trustee by a Certified Resolution;

(c) the Trustee may consult with counsel (who may be counsel for the County or the Borrower) 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 and in accordance with the opinion of such counsel; and

(d) whenever, in the administration of the trusts of this Indenture, 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) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the County and such Certificate of

the County shall, in the absence of negligence or bad faith on the part of the Trustee, be full warrant to the Trustee for any action taken or suffered by it under the provisions of this Indenture upon the faith thereof.

Section 8.03 Trustee Not Responsible for Indenture Statements, Validity. The Trustee shall not be responsible for any recital or statement herein, or in the Bonds (except in respect of the Certificate of the Trustee endorsed on Bonds), or for the validity of the execution by the County of this Indenture or the validity or execution of the Loan Agreement or the Bond Ordinance or of any supplemental instrument, or for the sufficiency of the security of the Bonds issued hereunder or intended to be secured hereby, or for the value or title of any of the Trust Estate, or otherwise as to the maintenance of the security hereof, and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenant, condition or agreement on the part of the County or the Borrower except as herein set forth, but the Trustee may require of the County and the Borrower full information and advice as to the performance of the covenants, conditions and agreements aforesaid and of the condition of the physical property included in the Trust Estate. The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder.

Section 8.04 Limits on Duties and Liabilities of Trustee. The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty of the Trustee and the Trustee shall be answerable only for its own negligence or willful default. The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

Section 8.05 Money Held in Trust. Money held by the Trustee hereunder is held in trust but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the County or the Borrower.

Section 8.06 Obligation of Trustee. The Trustee shall be under no obligation to institute any suit, or to take any proceeding under this Indenture, or to enter any appearance or in any way defend in any suit in which it may be defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder, until it shall have reasonable grounds for believing that repayment of all costs and expenses, outlays and counsel fees and other reasonable disbursements in connection therewith and adequate indemnity against all risk and liability is reasonably assured to it; the Trustee may, nevertheless, begin suit, or appear in and defend suit, or do anything else in its judgment proper to be done by it as such Trustee, without assurance of reimbursement or indemnity, and in such case the Trustee shall be reimbursed for all costs and expenses, outlays and counsel fees and other reasonable disbursements properly incurred in connection therewith. If the County shall fail to make such reimbursement, the Trustee may reimburse itself from any moneys in its possession under the provisions of this Indenture and shall be entitled to a preference therefor over any of the Bonds outstanding hereunder.



Section 8.07 Notice to Bondholders, etc. The Trustee shall give to the Holders of the Bonds whose names and addresses are known to it written notice of all Events of Default known to the Trustee by virtue of actual knowledge of a Responsible Officer, within sixty (60) days after the occurrence of the Event of Default unless such Event of Default shall have been cured before the giving of such notice; provided that, except in the case of Events of Default in the payment of principal or interest on any of the Bonds, the Trustee shall be protected in withholding such notice if and so long as its board of directors, an executive committee or trust committee of directors or chief executive officer of the Trustee in good faith determines that the withholding of such notice is in the interest of the Bondholders; and further provided that no such notice shall be given unless and until any Default becomes an Event of Default.

Section 8.08 Intervention in Judicial Proceedings. In any judicial proceeding to which the County or the Borrower is a party and which, in the opinion of the Trustee has a substantial bearing on the interest of owners of Bonds issued hereunder, the Trustee may intervene on behalf of Bondholders and shall do so if requested in writing by the owners of at least twenty-five percent (25%) in aggregate principal amount of Bonds outstanding hereunder. The rights and obligations of the Trustee under this Section are subject to the approval of the court having jurisdiction in the premises.

Section 8.09 Further Investigation by Trustee. The resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be in full warrant, protection and authority to the Trustee for its actions hereunder; but the Trustee may, in its unrestricted discretion, and shall, if requested in writing so to do by the Holders of not less than twenty-five per centum (25%) in aggregate principal amount of Bonds outstanding hereunder, cause to be made such independent investigation as it may see fit, and in that event may decline to release any property, or pay over cash, or take other action unless satisfied by such investigation of the truth and accuracy of the matters so investigated. The expense of such investigation shall be paid by the Borrower, or, if paid by the Trustee, shall be repaid to it, with interest at a rate equal to 12.00% per annum by the Borrower or from the Trust Estate.

Section 8.10 Trustee to Retain Financial Records. The Trustee shall retain all financial statements furnished by the County or the Borrower in accordance with this Indenture or the Loan Agreement so long as any of the Bonds shall be outstanding.

Section 8.11 Compensation of Trustee. All advances, counsel fees and other expenses reasonably made or incurred by the Trustee in and about the execution of the trust hereby created and reasonable compensation to the Trustee for its services in the premises shall be paid by the Borrower. The compensation of the Trustee shall not be limited to or by any provision of law in regard to the compensation of trustees of an express trust. If not paid by the Borrower, the Trustee shall have a first lien, with right of payment prior to payment on account of interest or principal of any Bond issued hereunder, for reasonable compensation, expenses, advances and counsel fees incurred in and about the execution of the trusts hereby created and exercise and performance of the powers and duties of the Trustee hereunder and the cost and expense incurred

in defending against any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence or willful default of the Trustee).

Section 8.12 Trustee May Hold Bonds. The Trustee and its officers and directors may acquire and own, or become the pledgee of, Bonds and otherwise deal with the County or the Borrower in the same manner and to the same extent and with like effect as though it were not Trustee hereunder.

Section 8.13 Appointment of Trustee. There shall at all times be a trustee hereunder which shall be an association or a corporation organized and doing business under the laws of the United States or any State thereof, authorized under such laws to exercise corporate trust powers, subject to supervision or examination by Federal or State authority, and, except for the original Trustee, having a combined capital, surplus and undivided profits of at least Seventy-Five Million Dollars (\$75,000,000). If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section the combined capital, surplus and undivided profits of such corporation shall be deemed to be its combined capital as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, and another association or corporation is eligible, the Trustee shall resign immediately in the manner and with the effect specified in Section 8.16 hereof.

Section 8.14 Merger of Trustee. Any corporation or national banking association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or national banking association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 8.15 Resignation or Removal of Trustee. The Trustee may resign and be discharged from the trusts created by this Indenture by giving to the County notice in writing, and to the Bondholders notice by certified or registered mail at its or his address as set forth on the registration books, of such resignation, such resignation to take effect upon the appointment of a successor trustee, as hereinafter provided.

Any Trustee hereunder may be removed for cause at any time by an instrument or instruments in writing, appointing a successor to the Trustee so removed, filed with the Trustee and executed by the Holders of a majority in principal amount of the Bonds hereby secured and then outstanding.

Section 8.16 Appointment of Successor Trustee. In case at any time the Trustee shall resign or shall be removed or otherwise shall become incapable of acting, or shall be adjudged a

bankrupt or insolvent, or if a receiver of the Trustee or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Trustee or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Trustee hereunder, and a successor may be appointed by the Holders of a majority in principal amount of the said Bonds hereby secured and then outstanding by an instrument or instruments in writing filed with the Trustee and executed by such Bondholders, notification thereof being given to the County, but until a new Trustee shall be appointed by the Bondholders as herein authorized, the County shall, subject to the provisions hereof, appoint a Trustee to fill such vacancy. After any such appointment by the County, it shall cause notice of such appointment to be mailed within 30 days of such appointment to the registered Holders of the Bonds or to be published at least once within 30 days of such appointment in a Financial Journal, but any new Trustee so appointed by the County shall immediately and without further act be superseded by a Trustee appointed in the manner above provided by the Holders of a majority in principal amount of said Bonds whenever such appointment by said Bondholders shall be made.

If, in a proper case, no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within six months after a vacancy shall have occurred in the office of Trustee, or after the notice of resignation given pursuant to Section 8.15, the Holder of any Bond hereby secured or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Section 8.17 Transfer of Rights and Property to Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the County an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the County or of its successor execute and deliver an instrument transferring to such successor all the estate, properties, rights, powers and trusts of such predecessor hereunder, and every predecessor trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any assignment, conveyance or instrument in writing from the County be required by any successor Trustee for more fully and certainly vesting in such successor Trustee the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Trustee, any and all such assignments, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the County. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all assignments, conveyances and other instruments provided for in this Article shall, at the expense of the County, be forthwith filed and/or recorded by the successor Trustee in each recording office where the Indenture shall have been filed and/or recorded.

Section 8.18 Co-Trustee. At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Estate may at the time be located, the County and the Trustee shall have power to appoint one or more persons approved by the

Trustee either to act as co-trustee or co-trustees, jointly with the Trustee of all or any part of the Trust Estate, or to act as separate trustee or separate trustees of all or any part of the Trust Estate, and to vest in such person or persons, in such capacity, such title to the Trust Estate or any part thereof, and such rights, powers, duties, trusts or obligations as the County and the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section.

Upon the request of the Trustee or of the Holders of at least twenty-five per cent (25%) in aggregate principal amount of Bonds outstanding hereunder, the County shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint the co-trustee. If the County shall not have joined in such appointment within fifteen (15) days after the receipt by it of a request so to do, or in case an Event of Default shall have occurred and be continuing, the Trustee alone shall have power to make such appointment.

The County shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

Every co-trustee or separate trustee shall, to the extent permitted by law but to such extent only, be appointed subject to the following terms, namely:

(a) The Bonds shall be authenticated and delivered and all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of moneys, papers, securities and other personal property shall be exercised solely by the Trustee.

(b) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustees or separate trustee or separate trustees jointly, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which even such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

(c) Any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee.

(d) Any co-trustee or separate trustee may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(e) The Trustee at any time, by an instrument in writing, with the concurrence of the County, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section and in case an Event of Default shall have occurred and be continuing, the

Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the County. Upon the request of the Trustee, the County shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal.

(f) No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(g) Any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing delivered to the Trustee shall be deemed to have been delivered to each such co-trustee or separate trustee.

(h) Any moneys, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with such title to the Trust Estate or any part thereof, and with such rights, powers, duties and obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as local law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee. Any co-trustee or separate trustee may, at any time by an instrument in writing, constitute the Trustee its or his attorney-in-fact and agent, with full power and authority to do all acts and things and to exercise all discretion on its or his behalf and in its or his name.

In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the Trust Estate, and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the manner herein provided.

Section 8.19 Appointment of Successor or Alternate Paying Agents. In the event the initial Trustee shall also have been appointed paying agent for the Series 2020B Bonds or for any Additional Bonds, a successor Trustee shall become successor paying agent with respect to such Bonds unless otherwise provided in the instrument appointing such successor Trustee. If any paying agent other than the initial Trustee shall resign or become incapable of acting, or shall be removed under a supplemental indenture entered into pursuant to the terms hereof, the Trustee may appoint a successor paying agent which is a bank or association qualified to act as paying agent under the Act and which is willing to accept the office on reasonable and customary terms approved by an Authorized Borrower Representative. The Trustee may appoint successor paying agents. "Paying agent" as used in this Section refers to the bank or association named in the form of Bond provided for the Series 2020B Bonds in the recitals hereof, or provided for Additional Bonds in a supplemental indenture, where principal of and interest on Bonds may be paid.

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## ARTICLE IX

### CONCERNING THE BONDHOLDERS

Section 9.01 Execution of Instruments by Bondholders. Any request, direction, consent or other instrument in writing required by this Indenture to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders in person or by agent duly appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments of deeds to be recorded within such jurisdiction, to the effect that the person signing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution.

(b) The ownership of Bonds shall be proved by the registration records kept under the provisions of this Indenture.

Nothing contained in this Article shall be construed as limiting the Trustee to the proof above specified, it being intended that the Trustee may accept any other evidence of the matters herein stated which to it may seem sufficient.

Section 9.02 Waiver of Notice. Any notice or other communication required by this Indenture to be given by delivery, publication or otherwise to the Bondholders or any one or more thereof may be waived, at any time before or after such notice or communication is so required to be given, by a writing mailed or delivered to the Trustee by the Holder or Holders of all of the Bonds entitled to such notice or communication.

Section 9.03 Determination of Bondholder Concurrence. In determining whether the Holders of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned by the County or the Borrower shall be disregarded and deemed not to be outstanding for the purpose of any such determination, provided that for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver only Bonds which the Trustee knows to be so owned shall be disregarded. Bonds so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by or under common control with the County or the Borrower. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

Section 9.04 Bondholders' Meeting. A meeting of the Bondholders may be called at any time and from time to time for any of the following purposes:

(1) to give any notice to the County or to the Trustee, or to give any direction to the Trustee, or to make any request of the Trustee, or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Bond holders pursuant to any of the provisions of Article VII hereof;

(2) to remove the Trustee or appoint a successor Trustee pursuant to the provisions of Article VIII hereof;

(3) subject to Article XI hereof, to consent to the execution of an indenture or indentures supplemental hereto;

(4) subject to Article XII hereof, to consent to any amendment of the Loan Agreement or to any instrument supplemental thereto; or

(5) to take any other action authorized to be taken by or on behalf of the Holders of any percentage of the outstanding Bonds under any other provisions of this Indenture or under applicable law.

Any Bondholders' meeting may be called and held as follows:

(a) A meeting of Bondholders may be held at such place within the County or in the city where the Trustee has its principal office as the Trustee or, in case of its failure to act, the County or Bondholders calling the meeting shall prescribe.

(b) Notice of every meeting of Bondholders, setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be published at least three (3) times in a financial journal, the first publication to be not less than 20 nor more than 180 days prior to the date fixed for the meeting. At the time of the first publication of such notice, the Trustee shall also mail, postage prepaid, a copy of such notice to each owner of registered Bonds. Any failure of the Trustee to mail such notice, or any defect therein shall not, however, in any way impair or affect the validity of any such meeting. If all the Bonds outstanding are registered Bonds, no such notice need be given except notice by mail as hereinabove provided.

(c) In case at any time the County, pursuant a Certified Resolution, or the Holders of at least ten percent (10%) in aggregate principal amount of the Bonds then outstanding, shall have requested the Trustee to call a meeting of the Bondholders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first giving of the notice of such meeting within 20 days after receipt of such request, then the County or the Holders of Bonds in the amount above specified may call such meeting to take any action authorized in this Section by giving notice thereof as provided in paragraph (b) of this Section.



(d) Only a Holder of one or more Bonds or a person appointed as proxy by an instrument in writing of such Holder shall be entitled to vote at or to participate with their counsel and the representatives of the Trustee or the County in such meeting. Each Holder shall be entitled to one vote for each \$1,000 in principal amount of outstanding Bonds held.

(e) The Trustee or, in case of its failure to act, the County or Bondholders calling or requesting the meeting, may make such reasonable regulations as it may deem advisable for any meeting of Bondholders in regard to proof of the holding of Bonds and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate.

(f) At any meeting of Bondholders, the presence of persons holding or representing Bonds in an aggregate principal amount sufficient under the appropriate provision of this Indenture to take action upon the business for the transaction of which such meeting was called shall constitute a quorum. Any meeting of Bondholders duly called pursuant to this Section may be adjourned from time to time by vote of the Holders (or proxies for the Holders) of a majority of the Bonds represented at the meeting and entitled to vote, whether or not a quorum shall be present; and the meeting may be held as so adjourned without further notice.

(g) The vote upon any resolution submitted to any meeting of Bondholders shall be by written ballots on which shall be subscribed the signatures of the Holders of Bonds or of their representatives by proxy and the serial number or numbers of the Bonds held or represented by them. The chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Bondholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken there at and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was published or mailed as provided in paragraph (b) hereof. Each copy shall be signed and verified by the affidavits of the chairman and secretary of the meeting and one such copy shall be delivered to the Borrower and the County and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.05 Revocation by Bondholders. At any time prior to (but not after) the evidencing to the Trustee of the taking of any action by the Holders of the percentage in aggregate principal amount of the Bonds specified in this Indenture in connection with such action, any Holder of any such Bond may, by filing written notice with the Trustee at its principal office revoke any consent given by such Holder or the predecessor Holder of such Bond. Except as aforesaid, any such consent given by the Holder of any Bond shall be conclusive and binding upon such Holder and upon all future Holders of such Bond and of any Bond issued in exchange therefor or in lieu thereof, irrespective of whether or not any notation in

regard thereto is made upon such Bond. Any action taken by the Holders of the percentage in aggregate principal amount of the specified in this Indenture in connection with such action shall be conclusively binding upon the County, the Trustee and the Holders of all the Bonds.

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## ARTICLE X

### PAYMENT, DEFEASANCE AND RELEASE

Section 10.01 Payment and Discharge of Indenture. If the Borrower or the County, its successors or assigns, shall

(a) pay or cause to be paid the principal of and premium, if any, and interest on the Bonds at the time and in the manner stipulated therein and herein, or

(b) provide for the payment of principal and premium, if any, of the Bonds and interest thereon by depositing with the Trustee at or at any time before maturity amounts sufficient either in cash or in direct obligations of or obligations fully guaranteed as to principal and interest by the United States of America, the principal and interest on which when due and payable (or redeemable at the option of the holder thereof but not at the option of the issuer thereof) and without consideration of any reinvestment thereof shall be sufficient, to pay the entire amount due or to become due thereon for principal and premium, if any, and interest to maturity of all said Bonds outstanding, or

(c) deliver to the Trustee (1) proof satisfactory to the Trustee that notice of redemption of all of the outstanding callable Bonds not surrendered or to be surrendered to it for cancellation has been given or waived as provided in Article III hereof, or that arrangements satisfactory to the Trustee have been made insuring that such notice will be given or waived, or (2) a written instrument executed by the County under its official seal and expressed to be irrevocable, authorizing the Trustee to give such notice for and on behalf of the County, or (3) file with the Trustee a waiver of such notice of redemption signed by the holders of all of such outstanding Bonds, and in any such case, deposit with the Trustee before the date on which such Bonds are to be redeemed, as provided in said Article III, the entire amount of the redemption price, including accrued interest and premium, if any, either in cash or direct obligations of or obligations fully guaranteed as to principal and interest by the United States of America (which do not permit the redemption thereof at the option of the issuer) in such aggregate face amount, bearing interest at such rates and maturing at such dates as shall be sufficient to provide for the payment of such redemption price on the date such Bonds are to be redeemed, and on such prior dates when principal of and interest on the outstanding Bonds is due and payable, or

(d) surrender to the Trustee for cancellation all Bonds for which payment is not so provided,

and shall also pay all other sums due and payable hereunder by the County or the Borrower, provided that if Bonds are to be defeased under either paragraph (b) or (c) above, an opinion of nationally recognized bond counsel shall be rendered to the Trustee to the effect that the tax-exempt status of interest on the Bonds shall not be impaired thereby, then and in that case, all the Trust Estate shall revert to the County and the Borrower as their interests may appear, and the entire estate, right, title and interest of the Trustee and of the registered owners of the Bonds in respect thereof shall thereupon cease, determine and become void; and the Trustee in such case,

upon the cancellation of all Bonds for the payment of which cash or securities shall not have been deposited in accordance with the provisions of this Indenture, shall, upon receipt of a written request of the County and of a Certificate of the County and an Opinion of Counsel as to compliance with conditions precedent, and at its cost and expense, execute to the County, or its order, proper instruments acknowledging satisfaction of this Indenture and surrender to the County and the Borrower, as their interests appear, all cash and deposited securities, if any (other than cash or securities for the payment of the Bonds and interest thereon), which shall then be held hereunder as a part of the Trust Estate.

Nothing contained in this Section 10.01 shall be construed to prohibit the defeasance of one or more, but not all, series of Bonds by any of the methods set forth in clauses (a), (b), (c) or (d) above, as the same would apply to the particular series of Bonds being discharged.

Section 10.02 Bonds Deemed Not Outstanding After Deposits. When there shall have been deposited at any time with the Trustee in trust for the purpose, cash or direct obligations of or obligations fully guaranteed by the United States of America the principal and interest on which shall be sufficient to pay the principal of any Bonds (and premium, if any) when the same become due, either at maturity or otherwise, or at the date fixed for the redemption thereof and to pay all interest with respect thereto at the due dates for such interest or to the date fixed for redemption, for the use and benefit of the holders thereof, then upon such deposit all such Bonds shall cease to be entitled to any lien, benefit or security of this Indenture except the right to receive the funds so deposited, and such Bonds shall be deemed not to be outstanding hereunder; and it shall be the duty of the Trustee to hold the cash and securities so deposited for the benefit of the Holders of such Bonds and from and after such date, redemption date or maturity, interest on such Bonds thereof called for redemption shall cease to accrue.

Section 10.03 Unclaimed Money To Be Returned. Any moneys deposited with the Trustee pursuant to the terms of this Indenture, for the payment or redemption of Bonds and remaining unclaimed by the Holders of such Bonds on the date fixed for redemption of the same, as the case may be, for a period of five years after the due date, shall, upon the written request of the Borrower, and if the County or any successor to the obligations of the County under the Indenture and the Bonds shall not at the time, to the knowledge of the Trustee, be in default with respect to any of the terms and conditions contained in the Indenture or in such Bonds, be paid to the Borrower, and such Holders of the Bonds shall thereafter look only to the Borrower, as the case may be, for payment and then only to the extent of the amounts so received without interest thereon; PROVIDED, HOWEVER, that within thirty days prior to the expiration of the five year period mentioned above, the Trustee, before being required to make any such repayment, may, at the expense of the Borrower cause to be published in a financial journal, a notice that after a date named therein said moneys will be returned to the Borrower.

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## ARTICLE XI

### SUPPLEMENTAL INDENTURES

Section 11.01 Purposes for Which Supplemental Indentures may be Executed. The County, upon resolution, and the Trustee from time to time and at any time, subject to the conditions and restrictions in this Indenture contained, may enter into such indentures supplemental hereto as may or shall by them be deemed necessary or desirable without the consent of any Bondholder for any one or more of the following purposes:

(a) To correct the description of any property hereby pledged or intended so to be, or to assign, convey, pledge or transfer and set over unto the Trustee, subject to such liens or other encumbrances as shall be therein specifically described, additional property or properties of the County or the Borrower for the equal and proportional benefit and security of the Holders and owners of all Bonds at any time issued and outstanding under this Indenture, subject, however, to the provisions hereinabove set forth with respect to extended Bonds;

(b) To add to the covenants and agreements of the County in this Indenture contained other covenants and agreements thereafter to be observed, or to surrender any right or power reserved to or conferred upon the County or to or upon any successor;

(c) To evidence the succession or successive successions of any other department, agency, body or corporation to the County and the assumption by such successor of the covenants, agreements and obligations of the County in the Bonds hereby secured and in this Indenture and in any and every supplemental indenture contained or the succession, removal or appointment of any trustee or paying agent hereunder;

(d) To cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indentures which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture or any supplemental indenture as the County may deem necessary or desirable and which shall not be inconsistent with the provisions of this Indenture or any supplemental indenture and which shall not impair the security of the same;

(e) To issue Additional Bonds as provided herein and as permitted by the Loan Agreement; and

(f) To modify, eliminate and/or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualification of this Indenture under the Trust Indenture Act of 1939, as then amended, or under any similar Federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by said Trust Indenture Act of 1939, excluding, however, the provisions referred to in Section 316(a)(2) of said Trust Indenture Act of 1939

Section 11.02 Execution of Supplemental Indenture. The Trustee is authorized to join with the County in the execution of any such supplemental indenture, to make the further agreements and stipulations which may be therein contained, and to accept the conveyance, transfer and assignment of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects its rights, duties or immunities under this Indenture.

Section 11.03 Discretion of Trustee. In each and every case provided for in this Article (other than a supplemental indenture approved by the Holders of sixty-six and two-thirds per centum (66 2/3%) in aggregate principal amount of the Bonds pursuant to Section 11.04 hereof), the Trustee shall be entitled to exercise its unrestricted discretion in determining whether or not any proposed supplemental indenture or any term or provisions therein contained is necessary or desirable, having in view the needs of the County and the respective rights and interests of the Holders of Bonds theretofore issued hereunder; and the Trustee shall be under no responsibility or liability to the County or to the Borrower or to any Holder of any such Bond, or to anyone whatever, for any act or thing which it may do or decline to do in good faith subject to the provisions of this Article, in the exercise of such discretion.

Section 11.04 Modification of Indenture with Consent of Bondholders. Subject to the terms and provisions contained in this Section, the Holders of not less than sixty-six and two-thirds per centum (66 2/3%) in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, to consent to and approve the execution by the County and the Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary or desirable by the County for the purpose of modifying, altering, amending, adding to or rescinding in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; PROVIDED, HOWEVER, that nothing herein contained shall permit or be construed as permitting, without the consent of the Holders of all outstanding Bonds, (a) an extension of the maturity of any Bond issued hereunder, or (b) a reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon, or (c) the creation of a lien upon or a pledge of revenues ranking prior to or on a parity with the lien or pledge created by this Indenture, or (d) a preference or priority of any Bond or Bonds over any others, or (e) a reduction in the aggregate principal amount of the Bonds required to consent to supplemental indentures, amendments to the Loan Agreement or (f) a reduction in the aggregate principal amount of the Bonds required to waive an Event of Default.

Whenever the County shall deliver to the Trustee a resolution of Bondholders adopted at a Bondholders' meeting approved by, or an instrument or instruments purporting to be executed by, the Holders of not less than sixty-six and two-thirds per centum (66 2/3%) in aggregate principal amount of the Bonds then outstanding, which resolution or instrument or instruments shall refer to the proposed supplemental indenture and shall specifically consent to and approve the execution thereof, thereupon, the County and the Trustee may execute such supplemental indenture without liability or responsibility to any Holder of any Bond, whether or not such Holder shall have consented thereto.

If the Holders of not less than sixty-six and two-thirds per centum (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of the execution of such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no Holder of any Bond shall have any right to object to the execution of such supplemental indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the County from executing the same or from taking any action pursuant to the provisions thereof

Section 11.05 Supplemental Indentures to be Part of Indenture. Any supplemental indenture executed in accordance with any of the provisions of this Article shall thereafter form a part of this Indenture; and all the terms and conditions contained in any such supplemental indenture as to any provisions authorized to be contained therein shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes, and the respective rights, duties and obligations under this Indenture of the County, the Trustee and all Holders of Bonds then outstanding shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modifications and amendments. If deemed necessary or desirable by the Trustee, reference to any such supplemental indenture or any of such terms or conditions thereof may be set forth in reasonable and customary manner in the text of the Bonds or in a legend stamped on the Bonds.

Section 11.06 Rights of Borrower Unaffected. Anything herein to the contrary notwithstanding, a supplemental indenture under this Article XI which adversely affects the rights of the Borrower under the Loan Agreement or this Indenture, so long as the Loan Agreement is in effect, shall not become effective unless and until the Borrower shall have consented to the execution and delivery of such supplemental indenture. The Trustee shall cause notice of the proposed execution and delivery of any such supplemental indenture to the execution and delivery of which the Borrower has not already consented, together with a copy of the proposed supplemental indenture, to be mailed to the Borrower at least thirty (30) days prior to the proposed date of execution and delivery of any such supplemental indenture.

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## ARTICLE XII

### AMENDMENTS TO THE LOAN AGREEMENT AND MORTGAGE

Section 12.01 Amendments to the Loan Agreement Not Requiring Consent of Bondholders. The County, the Borrower and the Trustee shall without the consent of or notice to the Bondholders consent to any amendment, change or modification of the Loan Agreement, as may be required (i) by the provisions of the Loan Agreement or this Indenture, (ii) for the purpose of curing any ambiguity or formal defect or omission, or (iii) in connection with any other change therein which, in the judgment of the Trustee, based upon such Opinions of Counsel or other evidence as the Trustee may reasonably request, is not to the prejudice of the Trustee or the Holders of the Bonds.

Section 12.02 Amendments to Loan Agreement Requiring Consent of Bondholders. Except for the amendments, changes or modifications as provided in Section 12.01 hereof, neither the County nor the Trustee shall consent to any other amendment, change or modification of the Loan Agreement without the written approval or consent of the Holders of not less than sixty-six and two-thirds per centum (66 2/3%) in aggregate principal amount of the Bonds at the time outstanding given and procured as in this Section provided; provided, however, that no such amendment, change or modification shall ever affect the unconditional obligation of the Borrower to make Loan Repayments as they become due and payable. If the Holders of not less than sixty-six and two-thirds per centum. (66 2/3%) in aggregate principal amount of the Bonds outstanding hereunder at the time of the execution of any such amendment, change or modification shall have consented to and approved the execution thereof as herein provided, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or in the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee, the County or the Borrower from executing the same or from taking any action pursuant to the provisions thereof.

Section 12.03 No Amendment May Reduce Loan Repayments. Under no circumstances shall any amendment to the Loan Agreement reduce the Loan Repayments without the consent of the Holders of all the Bonds outstanding.

Section 12.04 Rights of County. The County has no duty or obligation to consent to any proposed amendment to the Loan Agreement, and may, at the expense of the Borrower, request and receive an opinion of such counsel as the County may select in connection with any matter relating to a proposed amendment.

Section 12.05 Amendment, Etc. to Mortgage Not Requiring Consent of Bondholders.

The Borrower and the Trustee may without the consent of or notice to the Bondholders or any Parity Obligation Holders consent to any amendment, change or modification of any Mortgage or the Exhibits thereto as may be required (i) by the provisions of the Mortgage or this Indenture, (ii) for the purpose of curing any ambiguity, inconsistency, formal defect or omission, (iii) to provide for the issuance of Additional Bonds or Parity Obligations, or (iv) to describe



more fully or to amplify or correct or substitute the description of any property referred to in the Mortgage or intended so to be or in connection with any other change therein which, in the judgment of the Trustee, is not to the prejudice of the Trustee or such Bondholders or Parity Obligation Holders; provided that neither the Trustee nor the County shall consent to any other change, modification or amendment to the Mortgage without notice and the written consent or approval of the Owners of 100% in aggregate principal amount of such Bonds and Parity Obligations at the time Outstanding.

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## ARTICLE XIII

### MISCELLANEOUS

Section 13.01 Covenants of County Bind Successors and Assigns. All the covenants, stipulations, promises and agreements in this Indenture contained, by or in behalf of the County, shall bind and inure to the benefit of its successors and assigns, whether so expressed or not.

Section 13.02 Immunity of Officers. No recourse for the payment of any part of the principal of or interest on any Bond or for the satisfaction of any liability arising from, founded upon or existing by reason of the issue, purchase or ownership of the Bonds shall be had against any officer, member or agent of the County Commission, the County or the State of South Dakota, as such, all such liability being hereby expressly released and waived as a condition of and as a part of the consideration for the execution of this Indenture and the issuance of the Bonds.

Section 13.03 No Benefits to Outside Parties. Nothing in this Indenture, express or implied, is intended or shall be construed to confer upon or to give to any person or corporation, other than the Borrower, the parties hereto and the Holders of the Bonds issued hereunder, any right, remedy or claim under or by reason of this Indenture or covenant, condition or stipulation thereof; and the covenants, stipulations and agreements in this Indenture contained are and shall be for sole and exclusive benefit of the Borrower, the parties hereto, their successors and assigns, and the Holders of the Bonds.

Section 13.04 Separability of Indenture Provisions. In case any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture, but this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

Section 13.05 Execution of Indenture in Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

Section 13.06 Headings Not Controlling. The headings of the several Articles and Sections hereof are inserted for the convenience of reference only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 13.07 Notices, etc. to Trustee, County, Borrower, Etc. Any request, demand, authorization, direction, notice, consent of Bondholders or other document provided or permitted by this Indenture shall be sufficient for any purpose under this Indenture or the Loan Agreement, when hand delivered or mailed first class, postage prepaid (except as otherwise provided in this Indenture) (with a copy to the other parties) at the following addresses (or such other address as may be provided by any party by notice) and shall be deemed to be effective upon receipt:

- A. To the County                      Fall River County, South Dakota  
County Courthouse  
906 N. River Street  
Hot Springs, South Dakota 57747  
Attention: \_\_\_\_\_
  
- B. To the Borrower                    Fall River Health Services  
1201 Highway 71 South  
Hot Springs, South Dakota 57747  
Attention: [CEO]
  
- C. To the Trustee                      UMB Bank, N.A.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_
  
- D. To the Original Purchaser        UMB Bank, N.A.  
928 Grand Blvd., 14<sup>th</sup> Floor  
Kansas City, Missouri 64106  
Attention: \_\_\_\_\_

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IN WITNESS WHEREOF, the FALL RIVER COUNTY by its County Commission has caused this Indenture to be signed in its name by its duly authorized officers, all as of the day and year first above written.

FALL RIVER COUNTY

By \_\_\_\_\_  
Chair

And By \_\_\_\_\_  
County Auditor

Signature Page to Trust Indenture,  
between Fall River County and UMB Bank, N.A.

UMB Bank, N.A., as Trustee, to evidence its acceptance of the trust hereby created, has caused this Indenture to be signed in its name by authorized officers of the Trustee, all as of the day and year first above written

UMB BANK, N.A., as Trustee

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

Signature Page to Trust Indenture  
between Fall River County and UMB Bank, N.A.

**EXHIBIT A**

**DRAW REQUEST**

To: \_\_\_\_\_, as trustee

1. The undersigned Authorized Borrower Representative (the "Authorized Borrower Representative") of Fall River Health Services (the "Borrower") hereby authorizes and requests the above-referenced trustee (the "Trustee") to disburse \$ \_\_\_\_\_ from the Cost of Issuance Account held by the Trustee, pursuant to the Trust Indenture dated as of \_\_\_\_\_ 1, 2020, (the "Indenture"), from Fall River County, South Dakota (the "County") to the Trustee, in order to (i) reimburse the Borrower for certain expenditures paid by the Borrower prior to the issuance of the Series 2020B Bonds described in the Indenture (the "Bonds") pursuant to the Indenture, or (ii) pay designated parties for expenditures by the Borrower paid after the issuance of the Bonds, all as more specifically described in the attachments hereto.

2. The Authorized Borrower Representative further certifies, pursuant to Section 4.04 of the Indenture, that (i) none of the items for which reimbursement or payment is sought has formed the basis for any payment heretofore made from the Project Fund, and (ii) each item for which reimbursement or payment is sought is or was necessary in connection with the Project.

3. The undersigned further certifies that this statement and all exhibits and attachments hereto, and documents furnished in connection herewith, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Trustee for its actions taken pursuant hereto, and that this statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized.

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

\_\_\_\_\_  
Authorized Borrower Representative

---

\$ \_\_\_\_\_  
Fall River County, South Dakota  
Economic Development Refunding Revenue Bonds  
(Fall River Health Services Project)  
Series 2020B

**LOAN AGREEMENT**

Dated as of \_\_\_\_\_ 1, 2020

Between

**FALL RIVER COUNTY**

and

**FALL RIVER HEALTH SERVICES**

---

This instrument was drafted by:

Dorsey & Whitney LLP  
801 Grand, Suite 4100  
Des Moines, Iowa 50309

§ \_\_\_\_\_ Fall River County, South Dakota  
Economic Development Refunding Revenue Bonds  
(Fall River Health Services Project),  
Series 2020B

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## LOAN AGREEMENT

This LOAN AGREEMENT, made as of the 1st day of \_\_\_\_\_, 2020, between the FALL RIVER COUNTY, a South Dakota municipal corporation (herein sometimes called the "County"), and FALL RIVER HEALTH SERVICES, a nonprofit corporation organized and existing under the laws of South Dakota (herein sometimes called the "Borrower"),

### WITNESSETH:

WHEREAS, South Dakota Codified Laws, Chapter 9-54, as amended, and Chapter 6-8B, as amended (the "Act"), authorize and empower municipalities of the State of South Dakota to issue and sell revenue bonds and lend the proceeds thereof to a nonprofit corporation for the purpose of financing and refinancing projects authorized thereby; and

WHEREAS, the Borrower has determined to cause certain outstanding indebtedness of the Borrower (as more fully described herein, the "Refunded Indebtedness") to be refinanced; and

WHEREAS, the Borrower has proposed that the County issue its refunding revenue bonds, in one or more series, for the purpose of obtaining funds to loan to the Borrower hereunder to cause the Refunded Indebtedness to be refunded in full, and to fund required reserves and defray costs of issuance of the bonds; and

WHEREAS, the Borrower is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the County proposes to issue its \$ \_\_\_\_\_ Economic Development Refunding Revenue Bonds (Fall River Health Services Project), Series 2020B (the "Series 2020B Bonds"), pursuant to a Trust Indenture of even date herewith, between the County and UMB Bank, N.A., as Trustee (the "Trustee"), to provide the funds to be loaned to the Borrower hereunder and to assign its interests in this Loan Agreement (except for its rights to repayment of expenses and advances and indemnity, all as further provided herein) to the Trustee as security for the Bonds; and

WHEREAS, the Borrower has requested the City of Hot Springs, South Dakota (the "City") to issue its \$ \_\_\_\_\_ Economic Development Refunding Revenue Bonds (Fall River Health Services Project), Series 2020A (the "Series 2020A Bonds") pursuant to a Trust Indenture dated as of even date herewith (the "Series 2020A Indenture") between the City and the Trustee, as trustee thereunder (in such capacity, the "Series 2020A Trustee"), and loan the proceeds of the Series 2020A Bonds to the Borrower pursuant to a Loan Agreement, dated as even date herewith (the "Series 2020A Loan Agreement") between the City and the Borrower; and

WHEREAS, the Borrower has agreed to execute and deliver to the Trustee a [Mortgage] of even date herewith, to equally and ratably secure the payment of the Series 2020A Bonds, the Series 2020B Bonds and any Additional Bonds (as defined herein and in the Series 2020B

Indenture) and the Borrower's obligations under the Loan Agreement and the Series 2020B Loan Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

Section 1.01 Definitions. All words and phrases defined in Article I of the Indenture and in the Mortgage and not otherwise defined herein shall have the same meaning in this Indenture unless the context hereof clearly requires otherwise. In addition, unless the context otherwise requires, the terms defined in this Article I and in the recitals and succeeding Articles of this Loan Agreement shall, for all purposes of this Loan Agreement and of any agreement supplemental hereto, have the meanings herein specified, such definitions to be equally applicable to both the singular and plural forms of any of the terms defined:

“Act” means, collectively, South Dakota Codified Laws, Chapter 9-54, as amended, and Chapter 6-8B, as amended.

“Affiliate” means any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Borrower. For purposes of this definition, “control” when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Affiliation Transaction” means the consolidation, merger or affiliation of the Borrower with another entity or entities and the inclusion of the Borrower or such entity or entities as a member or members of a System Group, which consolidation, merger or affiliation involves (i) the release or discharge of any collateral security for any Bonds at the time Outstanding, (ii) the issuance of obligations of the System Group under its Group Financing Document to secure the Bonds, which obligations would constitute the joint and several obligations of the members of the System Group or the obligation of the controlling member of the System Group, as appropriate, and (iii) the replacement of all or a portion of the Borrower’s financial and operating covenants and related definitions set forth in the Agreement, or any other documents relating to the Bonds with the financial and operating covenants and related definitions set forth in the Group Financing Document of such System Group.

“Additional Parity Indebtedness” shall mean any Indebtedness incurred or assumed by the Borrower subsequent to the date of issuance of the Series 2020B Bonds, which Indebtedness is secured by the Mortgage on a parity with the Series 2020B Bonds and other Parity Obligations, whether in the form of Additional Bonds issued under this Indenture or the Series 2020B Indenture or additional Parity Obligations issued under the Bond Resolution or such other Parity Obligation Issuance Document.

“Balloon Indebtedness” means Long-Term Indebtedness, 25% or more of the original principal of which becomes due and payable (either by maturity or mandatory redemption), during the same Fiscal Year, if such principal becoming due is not required to be amortized below such percentage by mandatory redemption or prepayment prior to such Fiscal Year.

“Bond Fund” means the Bond Fund established under Section 5.01 of the Indenture.

“Book Value” means the value of the Property of the Borrower, net of accumulated depreciation and amortization, as reflected in or derived from the most recent audited financial statements of the Borrower, and in conformity with GAAP.

“Borrower” means Fall River Health Services, a South Dakota nonprofit corporation, its successors and assigns.

“Business Day” means any day on which the Trustee is authorized or required to be open for business.

“Call Date” means \_\_\_\_\_, 2020, the date on which the principal of and accrued interest on the Refunded Indebtedness is to be paid in full.

“Certificate” means a certification in writing required or permitted by the provisions of this Loan Agreement or the Indenture, signed and delivered to the Trustee or other proper person or persons. If and to the extent required by the provisions of Section 1.02 hereof, each Certificate shall include the statements provided for in said Section 1.02.

“Commitment Indebtedness” means the obligation of the Borrower to repay amounts disbursed pursuant to a binding commitment from a financial institution (including a line of credit, letter of credit, standby bond purchase agreement, reimbursement agreement or similar credit or liquidity facility or arrangement established in connection with the issuance or incurrence of any Indebtedness) to refinance, pay, purchase or redeem when due, tendered or required to be paid, purchased or redeemed, other Indebtedness of the Borrower, which other Indebtedness was incurred in accordance with this Indenture, and the obligation of the Borrower to pay interest payable on amounts disbursed for such purposes, plus any fees payable to such financial institution for such commitment.

“Completion Indebtedness” means Long-Term Indebtedness of the Borrower incurred for the purpose of financing, without materially changing the scope thereof, (a) the completion of facilities for which Long-Term Indebtedness was previously incurred as permitted by this Indenture, or (b) the improvement, replacement or substitutions for, or additions to, facilities for which Long-Term Indebtedness was previously incurred, necessitated by faulty design, damage to or destruction of such facilities, or required by enactment of legislation or the promulgation of any ruling affecting the operation of the Project Facilities by a government agency.

“Days Cash on Hand” means, as of the date of calculation, the number obtained by dividing (a) the amount of Unrestricted Cash and Investments of the Borrower plus the amount then on deposit in the Interest Fund and such other fund held for the payment of interest on any Parity Obligations, all as of that date, by (b) the quotient resulting from dividing (1) the sum of the total operating expenses for the most recent Fiscal Year for which audited financial statements of the Borrower are available (excluding depreciation and amortization but including interest expense), by (2) 365 or 366, as appropriate.

“Debt Service Payments” means, for any period or payable at any time, the principal, and interest on the Series 2020A Bonds, the Series 2020B Bonds and any other Parity Obligations for that period or payable at that time whether due at maturity or upon redemption or acceleration.

“Default” means default by the Borrower in the performance or observance of any of the covenants, agreements or conditions on its part contained in this Loan Agreement, exclusive of any notice or period of grace required for a default to constitute an “Event of Default” as described in Section 7.01 of this Loan Agreement.

“Event of Default” means an Event of Default described in Section 7.01 of this Loan Agreement which has not been cured.

“Fiscal Year” shall mean the fiscal year of the Borrower commencing on the first day of \_\_\_\_\_ a year and ending on the \_\_\_\_ day of \_\_\_\_\_ of the following year, or such other period as is established from time to time for accounting purposes of the Borrower.

“Gross Revenues” means the total unrestricted revenues, gains and other support of the Borrower for a specified period, as determined in accordance with generally accepted accounting principles and shown on the Statement of Operations of the Borrower for such period.

“GAAP” means generally accepted accounting principles as issued by the Financial Accounting Standards Board from time to time, consistently applied.

“Group Financing Document” means the master trust indenture, and the amendments and supplements thereto, or any other document or documents which set forth financial and operating covenants and related definitions for a System Group and provisions setting forth conditions to the issuance of obligations by the System Group.

“Historical Debt Service Coverage Ratio” means, for any historical period of time, the ratio determined by dividing (a) a numerator equal to the Net Income Available for Debt Service for that period by (b) a denominator equal to the Debt Service Payments for that period.

“Historical Pro Forma Debt Service Coverage Ratio” means, for any historical period of time, the ratio determined by dividing (a) a numerator equal to the Net Income Available for Debt Service for that period by (b) a denominator equal to the Maximum Annual Debt Service for the Long-Term Indebtedness then Outstanding which are also Bonds (other than any Bonds being refunded with the Long-Term Indebtedness then proposed to be issued) and the Long-Term Indebtedness which are also Bonds proposed to be issued.

“Holder” or “Bondholder” or “Owner” means the person in whose name a Bond shall be registered in the registration records maintained by the Trustee.

“Indebtedness” shall mean (i) all indebtedness, whether or not represented by bonds, debentures, notes or other securities, for the repayment of money borrowed, (ii) all indebtedness for the payment of the purchase price of property or assets purchased, (iii) all guaranties,

endorsements, assumptions and other contingent obligations with respect to, or to purchase or to otherwise acquire, indebtedness of others, (iv) all indebtedness secured by any mortgage, pledge or lien existing on property owned, subject to such mortgage, pledge or lien, whether or not indebtedness secured thereby shall have been assumed, and (v) installment purchase contracts, loans secured by purchase money security interests, lease-purchase agreements or capital leases (including leases of real property), entered into by the Borrower in connection with the acquisition of property not previously owned by the Borrower and computed in accordance with generally accepted accounting principles; provided, however, that "Indebtedness" does not include: (a) debt up to the amount of the aggregate cash equivalents and marketable securities (valued at market) held in the funds of the Borrower which have been pledged and designated by the Borrower (consistent with the restriction attendant to such funds) to satisfy a specified debt of the Borrower, (b) non-capitalized leases related to the operation of the Borrower, (c) unsecured borrowings from any Affiliate of the Borrower, or (d) trade accounts payable and accrued expenses incurred in the normal course of business. For purposes of this definition no single evidence of indebtedness shall be counted more than once even though more than one of the clauses (i) - (v) above may apply.

"Indenture" means the Trust Indenture between the County and \_\_\_\_\_, as Trustee, of even date herewith, under which the Bonds are authorized to be issued, and including any indenture supplemental thereto.

"Independent Accountant" means a certified public accountant or firm of certified public accountants selected by the Borrower, which certified public accountant or firm of certified public accountants must have no specific interest, direct or indirect, in the Borrower, and, in the case of an individual, must not be a director, officer or employee of the Borrower, and, in the case of a firm, must not have a partner, director, officer or employee who is a director, officer or employee of the Borrower.

"Independent Consultant" shall mean a person or firm who is nationally recognized, not an employee or officer of the Borrower, qualified to pass upon questions relating to the financial affairs of organizations engaged in like operations to those of the Borrower and having a favorable reputation for skill and experience in such financial affairs.

"Independent Insurance Consultant" means (i) the Borrower's insurance consultants at the time of issuance and delivery of the Project Bonds or (ii) any nationally recognized insurance consultant or firm of insurance consultants who is or whose employees or members are not an officer, Board member or employee of the Borrower.

"Land" means the land and interests in land constituting the site of the Project Buildings, including the hospital and nursing facilities and related parking facilities, as described in the Mortgage.

"Loan" means the loan made under this Loan Agreement from the County to the Borrower.



“Loan Agreement” means this Loan Agreement between the County and the Borrower dated as of \_\_\_\_\_ 1, 2020, as from time to time amended or supplemented.

“Loan Repayments” means the payments made or to be made by the Borrower pursuant to Section 4.02 of this Loan Agreement.

“Long-Term Indebtedness” means (a) Indebtedness having an original stated maturity or term greater than one year, or (b) Indebtedness having an original stated maturity or term equal to or less than one year that is renewable or extendable at the option of the debtor for a period greater than one year from the date of original issuance or incurrence thereof, or with respect to which the Borrower has incurred Commitment Indebtedness that would refinance such Indebtedness for a period extending beyond one year from the date of original issuance or incurrence thereof.

“Maximum Annual Debt Service” means the maximum amount of Debt Service Payments as computed for any Fiscal Year.

“Mortgage” means the [Mortgage] dated as of \_\_\_\_\_ 1, 2020 between the Borrower and the Trustee, as amended and supplemented from time to time.

“County” means the Fall River County, a South Dakota municipal corporation, its successors and assigns.

“Net Income Available for Debt Service” means, for any period of calculation, with respect to the Borrower, the excess of revenues over expenses before depreciation, amortization and interest expense, all as determined in accordance with GAAP consistently applied; provided, that no determination thereof shall take into account:

(a) any gain or loss resulting from either the early extinguishment or refinancing of Indebtedness or the sale, exchange or other disposition of capital assets not made in the ordinary course of business;

(b) gifts, grants, bequests, donation or contributions, and income therefrom, to the extent permanently restricted by the donor in writing or by law to a particular purpose inconsistent with their use for the payment of Debt Service Payments;

(c) the net proceeds of insurance (other than business interruption insurance) and condemnation awards;

(d) adjustments to the value of assets or liabilities resulting from changes in GAAP, or resulting from a provision for impairment of assets which does not result in the expenditure of cash;

(e) unrealized gains or losses that do not result in the receipt or expenditure of cash;  
and

- (f) any temporary or other than temporary impairment of investment securities; and
- (g) nonrecurring items which do not involve the receipt, expenditure or transfer of assets.

“Net Proceeds” means, when used with respect to proceeds of insurance or a condemnation award, moneys received or receivable by the Borrower, as owner of the Project Facilities, less the cost of recovery (including attorneys’ fees) of such moneys from the insuring company or the condemning authority.

“Operating Expenses” means the costs of operating and maintaining the Project Facilities which shall include salaries, wages, cost of maintenance and operation, materials, supplies, insurance, and all other items normally included under recognized accounting practices but not including allowances for depreciation in the valuation of physical property.

“Opinion of Counsel” means a written opinion of counsel (who need not be Independent Counsel unless so specified) appointed by the Borrower or County and acceptable to the Trustee or appointed by the Trustee. If and to the extent required by the provisions of Section 1.02 hereof, each Opinion of Counsel shall include the statements provided for in said Section 1.02.

“Parity Obligations” means the Series 2020A Bonds, the Series 2020B Bonds, any Additional Bonds issued hereunder or Additional Bonds issued under the Series 2020A Indenture, in each case issued on a parity with the Series 2020A Bonds and the Series 2020B Bonds, and any Additional Indebtedness permitted by the provisions of the Loan Agreement incurred on a parity with the Series 2020A Bonds and the Series 2020B Bonds, all equally and ratably secured under the Mortgage.

“Parity Obligation Issuance Documents” means a loan agreement, indenture or other document, as the case may be, authorizing and issuing Parity Obligations.

“Parity Obligation Holder” means any current owner of any Parity Obligation, except that if the Parity Obligation Issuance Documents identify a trustee or other fiduciary to act on behalf of the holders of Parity Obligations, such trustee or other fiduciary shall be considered to be the holder of such Parity Obligations so long as it is so acting.

“Project Buildings” means all buildings or similar improvements now or hereafter located on the Land, as the same are described in Section 1.03 hereof and as the same may be improved or expanded from time to time.

“Project Equipment” means all those items of equipment and fixtures located in any Project Building or on the Land.

“Project Facilities” means the Land, the Project Buildings and the Project Equipment, all as the same may at any time exist.

“Projected Debt Service Coverage Ratio” means, for any future period, the ratio determined by dividing (a) a numerator equal to the projected Net Income Available for Debt Service for that period by (b) a denominator equal to the Maximum Annual Debt Service for the Long-Term Indebtedness (which is also Parity Obligations) expected to be Outstanding during such period.

“Purchase Money Indebtedness” means Indebtedness incurred pursuant to a purchase money contract, conditional sale agreement, installment purchase contract, capitalized lease, or other similar debt or title retention agreement in connection with the acquisition of real or personal property and secured by a purchase money mortgage, security interest or lien with respect to the property acquired, where the lien of the seller or lender under such agreement is limited to such property.

“Redeem” or “redemption” means “prepay” or “prepayment” as the case may be.

“Refunding Costs” mean the costs defined as such in Section 4.03 of the Indenture.

“Refunding Indebtedness” means Long-Term Indebtedness issued for the purpose of refunding other Long-Term Indebtedness (including Long-Term Indebtedness commonly referred to as current refunding indebtedness, advance refunding indebtedness or cross-over refunding indebtedness where the proceeds of such Refunding Indebtedness are deposited in an irrevocable escrow or trust account to secure the payment on the applicable payment dates of the interest and principal on such Refunding Indebtedness and/or the Indebtedness being refunded).

“Short-Term Indebtedness” means Indebtedness having an original maturity less than or equal to one year from the date of original incurrence thereof, and not renewable at the option of the debtor for a term greater than one year beyond the date of original incurrence.

“Subordinated Indebtedness” means Indebtedness of the Borrower that by the terms thereof is specifically junior and subordinate to the Bonds with respect to payment of principal and interest thereon and that is evidenced by an instrument containing provisions substantially the same as those set forth in Exhibit A hereto.

“System Group” means a group of entities joined under a Group Financing Document for the purpose of aggregating their financial and operational resources. The term System Group includes, but is not limited to, such groups that are commonly referred to as either an “Obligated Group” or a “Restricted Group.”

“Tax Exempt Organization” means a nonprofit corporation organized under the laws of one of the states of the United States or the District of Columbia which is an organization described in Section 501(c)(3) of the Code and exempt from federal income taxes under Section 501(a) of the Code.

“Unrestricted Cash and Investments” means, as of the date of determination, the unrestricted cash, unrestricted cash equivalents, unrestricted marketable securities, and board

designated or trustee held funds of the Borrower (specifically excluding amounts in any fund or account held by a trustee (including the Trustee) as a bond, debt service, debt service reserve or similar fund or account (including the Bond Fund, the Sinking Fund and the Debt Service Reserve Fund) and any funds held by a self-insurance plan trustee, or any funds held by a trustee or other custodian for any pension plan or other employee benefit plan), all to the extent available for the payment of operating expenses and Debt Service Payments and as evidenced by the most recent financial statements of the Borrower, less all Short-Term Indebtedness.

Section 1.02 Characteristics of Certificate or Opinion. Every Certificate or Opinion of Counsel with respect to compliance with a condition or covenant provided for in the Indenture or this Loan Agreement, shall include: (i) a statement that the person or persons making such certificate or opinion have read such covenant or condition and the definitions herein relating thereto; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (iii) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such covenant or condition has been complied with; and (iv) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any such Certificate made or given by an officer of the County or the Borrower may be based, insofar as it relates to legal matters, upon an Opinion of Counsel, unless such officer knows that the Opinion of Counsel with respect to the matters upon which the Certificate may be based as aforesaid is erroneous, or, in the exercise of reasonable care, should have known that the same was erroneous. Any such Opinion of Counsel may be based (insofar as it relates to factual matters with respect to which is in the possession of the County or the Borrower), upon the Certificate of an officer or officers of the County or the Borrower, unless such counsel knows that the Certificate with respect to the matters upon which his opinion may be based as aforesaid is erroneous, or, in the matters upon which his opinion may be based as aforesaid is erroneous, or, in the exercise of reasonable care, should have known that the same was erroneous.

Section 1.03 Description of Project. The term “Project” refers to the facilities originally financed or refinanced with the proceeds of the Refunded Indebtedness, consisting of the Project Facilities, including a 25-bed hospital facility and ancillary services, a 48-bed nursing facility attached to the hospital, a physician’s outpatient clinic, and site and other improvements, all located at 1201 Highway 71 South, Hot Springs, South Dakota 57747. The Series 2020B Bonds are being issued to refund in full the Refunded Indebtedness and, accordingly will provide refinancing for the Project.

Section 1.04 Additional Provisions as to Interpretation. All references herein to “Articles”, “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Loan Agreement; and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Loan Agreement as a whole and not any particular Article, Section or subdivision hereof.

Whenever in this Loan Agreement it is provided or permitted that there be deposited with or held in trust by the Trustee money or funds in the necessary amount to pay or redeem any Bonds, the amount so to be deposited or held shall be the principal amount of such Bonds and all unpaid interest thereon to maturity, except that in the case of Bonds which are to be redeemed prior to maturity and in respect of which there shall have been furnished to the Trustee proof satisfactory to it that notice of such redemption on a specified redemption date has been duly given or provision satisfactory to the Trustee shall be made for such notice, the amount so to be deposited or held shall be the principal amount of such Bonds and interest thereon to the redemption date, together with the redemption premium, if any.

Any terms defined in the Indenture but not defined herein shall have the same meaning herein unless the context hereof clearly requires otherwise.

This Loan Agreement is governed by and shall be construed in accordance with the laws of South Dakota.

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## ARTICLE II

### REPRESENTATIONS, ETC.

Section 2.01 Representations by the County. The County makes the following representations as the basis for its undertakings herein:

(a) The County is a duly organized and existing municipal corporation and political subdivision under the laws of South Dakota.

(b) The Project constitutes an authorized “project,” within the meaning of the Act, for which the County’s revenue bonds may be issued.

(c) The Project, the issuance and sale of the Series 2020B Bonds, the execution and delivery of this Loan Agreement and the Indenture, the performance of all covenants and agreements of the County contained in this Loan Agreement and the Indenture, and the loan hereunder are authorized and have been duly authorized by resolutions of the County Commission, including the Bond Ordinance duly adopted at a meeting of the County Commission duly called and held, by the requisite vote of its members, and published, as required by law.

(d) The proceeds of the Series 2020B Bonds to be deposited in the Project Fund, together with the other funds to be contributed by the Borrower in accordance with this Loan Agreement, will be sufficient to pay all costs of the refunding of the Refunded Indebtedness and the costs of issuance of the Series 2020B Bonds, as further described herein and in the Indenture.

(e) On October 20, 2020, the County Commission, as the applicable elected representative, for purposes of Section 147(f) of the Code, granted final approval to refinancing the Project and the issuance of the Series 2020B Bonds.

(f) There is no litigation pending or, to the best of its knowledge threatened, against the County relating to the Project or to the Series 2020B Bonds or to this Loan Agreement or the Indenture or questioning the powers or authority of the County under the Act, or questioning the corporate existence or boundaries of the County or the title of any of the present officers of the County to their respective offices.

(g) The execution, delivery and performance of this Loan Agreement does not violate any agreement or any court order or judgment in any litigation to which the County is a party or by which it is bound.

(h) To the best of the County’s knowledge and belief, no council member of the County and no other elected or appointed official who is authorized to take part in the making of this Loan Agreement or the Indenture or the issuance of the Series 2020B Bonds, is directly or indirectly interested in this Loan Agreement, the Series 2020B Bonds, the Project, or any

contract, agreement or job hereby contemplated to be entered into or undertaken for completion of the Project.

Section 2.02 Representations, Warranties and Covenants by the Borrower. The Borrower makes the following representations, warranties and covenants:

(a) The Borrower is a nonprofit corporation duly organized and existing under the laws of South Dakota.

(b) Except as otherwise provided in Sections 5.02 and 6.04 hereof, the Borrower intends to own and operate or cause to be operated the Project Facilities from the date hereof to the expiration or sooner termination of this Loan Agreement, as provided herein, except to the extent such operation may be interrupted by strikes, riots, acts of God or public enemy or other circumstances beyond the control of the Borrower.

(c) The execution and delivery of this Loan Agreement and the consummation of the transactions herein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which the Borrower is a party or by which it is bound, or violate any law, regulation or order of the United States or the State of South Dakota or agency or political subdivision thereof, or any court order or judgment in any proceeding to which the Borrower is or was a party or by which it is bound.

(d) The proceeds of the Bonds to be deposited in the Project Fund, together with any other funds to be contributed thereto by the Borrower in accordance with this Loan Agreement, will be sufficient to pay the total Refunding Costs.

(e) There is no litigation pending, or to the best of its knowledge threatened, against the Borrower affecting its ability to carry out the terms of this Loan Agreement.

(f) [Intentionally Omitted]

(g) The Land is currently zoned properly for the Project Facilities and the Borrower has obtained or will timely obtain all necessary licenses and permits required in connection with the acquisition, construction and use of all Project Buildings.

(h) The Preliminary Official Statement and Official Statement relating to the issue and sale of the Series 2020B Bonds, including all Appendices thereto, do not contain any untrue statement of a material fact and does not omit to state a material fact which is necessary in order to make the statements contained therein not misleading.

(i) No council member or other officer or employee of the County is directly or indirectly interested in this Loan Agreement, the Series 2020B Bonds, the Project or any contract, agreement or job hereby contemplated to be entered into or undertaken.

(j) The Borrower has reviewed the Indenture and hereby approves its provisions, consents to its terms, and agrees to abide by and perform all specific covenants and obligations contained in the Indenture that are therein (or elsewhere) specifically made, or which may become, applicable to the Borrower.

(k) The Borrower covenants that it will comply with and fulfill all other requirements and conditions of the Internal Revenue Code and regulations and rulings issued pursuant thereto, and not take any action, or refrain from taking any action or permit others to take any action or refrain from taking any action, if a result thereof is to cause the interest on the Series 2020B Bonds to be included in gross income of the holders thereof for federal income tax purposes in each case, which action or refrain from action is reasonably practicable for the Borrower to undertake and within the Borrower's control.

(l) All property to be provided with proceeds of the Bonds shall be owned either by a governmental unit or an organization described in Section 501 (c)(3) of the Internal Revenue Code, all within the meaning of Section 145(a) of the Code.

(m) Not less than 95% of the proceeds of the Series 2020B Bonds will be used in accordance with the requirements of Section 145(a) of the Internal Revenue Code.

(n) The Borrower is an organization described in Section 501(c)(3) of the Internal Revenue Code, exempt from the payment of federal income taxes under Section 501(a) of the Code, and no revenues derived or to be derived from any portion of the Project Facilities are or shall be derived from any "private business use" or from an "unrelated trade or business," within the meaning of Section 513(a) of the Code, except as may be specifically contemplated by Section 145(a) of the Code in amounts that would not require the interest on the Series 2020B Bonds to become includible in the gross income of the recipients thereof, for purposes of Federal income taxation. The Borrower covenants that it shall make no use of the Project, including but not limited to entering into any service agreements or services for the management of the Project or any similar agreement, the effect of which would cause the Series 2020B Bonds not to constitute a "qualified 501(c)(3) bond," within the meaning of Section 145 of the Code and related Sections of the Code, and any management or service contract to be entered into with respect to the Project (unless entered into with an organization described in Section 501(c)(3) of the Code) shall constitute a "qualified management agreement" within the meaning of all pertinent provisions of law, including all relevant provisions of the Code and regulations, rulings, and revenue procedures thereunder, including Revenue Procedure 17-13, 1997-1 C.B. 632.

(o) None of the proceeds of the Bonds shall be used to provide an airplane, skybox or other private luxury box, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises, and the Borrower does not expect that the Project Facilities, or any portion thereof, shall subsequently be used for any of such purposes.



(p) The weighted average maturity of the Series 2020B Bonds does not exceed 120% of the remaining average reasonably expected economic life of the Project Facilities, all within the meaning of Section 147(b) of the Internal Revenue Code.

(q) Proceeds of the Bonds may be expended to pay amounts owing as interest on the Bonds, provided, however, that such amounts shall not exceed the lesser of the following: (i) an amount sufficient to pay interest only on the Bonds for a period of time not exceeding the period of time allocable to the construction period for the Project; or (ii) in the aggregate, the amount permitted under Treasury Regulation, Section 1.148-6(d)(3)(ii)(A)(3), such amount generally being equal to interest owing on the Bonds for a period commencing on the Closing Date and ending on the date that is the later of three years from the Closing Date or one year after the date on which the Project is placed in service.

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## ARTICLE III

### ISSUANCE OF THE SERIES 2020B BONDS; REFUNDING OF REFUNDED INDEBTEDNESS; PROJECT FUND

Section 3.01 Completion of Refunding. The Borrower shall promptly undertake and complete the refunding of the Refunded Indebtedness, as provided herein and in the Indenture. The Borrower may make changes in the Project Buildings or items of Project Equipment at any time as further provided herein; provided that no changes will be made which would delete from the Project Facilities any essential characteristics of the Project as specified in Section 1.03 nor which materially and adversely affect the total operating unity and efficiency or capacity of the Project Facilities and that, after such changes, the Project Facilities shall remain in compliance with all applicable requirements of law, including the applicable provisions of the Act and of Section 145 of the Internal Revenue Code. The Project Facilities, to the best knowledge of the Borrower, are in compliance with all applicable zoning, planning and building regulations of governmental authorities having jurisdiction of the Project Facilities.

Section 3.02 Agreement to Issue Series 2020B Bonds; Application of Series 2020B Bond Proceeds. In order to provide funds to loan to the Borrower for payment of the Refunding Costs, the County has, or will have, upon or promptly after the execution of this Loan Agreement, issued and delivered the Series 2020B Bonds to the Original Purchaser and the County has or will have deposited the proceeds of said Series 2020B Bonds, as follows: (i) in the Reserve Fund an amount derived from proceeds of the Series 2020B Bonds equal to the Reserve Requirement, and (iii) in the Project Fund the balance of the proceeds received from said sale, all as further provided in Section 4.01(b) of the Indenture.

#### Section 3.03 Disbursements from the Project Fund.

(a) Pursuant to the Indenture, the Trustee has been directed to establish within the Project Fund two separate accounts, the Refunding Account and the Cost of Issuance Account, into which proceeds of the Series 2020B Bonds shall be deposited, as provided in Section 4.02 of the Indenture.

(b) Pursuant to Section 4.02 of the Indenture, \$\_\_\_\_\_ of the proceeds of the Series 2020B Bonds held in the Refunding Account are to be applied exclusively to payment of the outstanding principal amount of and accrued interest on the Refunded Indebtedness due on the Call Date.

(c) Pursuant to Section 4.02 of the Indenture, \$\_\_\_\_\_ of the Borrower not constituting proceeds of the Series 2020B Bonds are to be deposited and held in the Cost of Issuance Account and are to be applied to the payment of costs of issuance of the Series 2020B Bonds, as further provided therein. Moneys in the Cost of Issuance Account shall, in accordance with Section 4.04 of the Indenture, be disbursed by the Trustee, upon the direction of the Authorized Borrower Representative. Each

disbursement shall be made pursuant to a Draw Request substantially in the form of Exhibit A to the Indenture.

(d) Notwithstanding any other provision hereof, the Borrower covenants that the issuance costs financed by the Series 2020B Bonds (including underwriting discount) will not exceed 2.00% of the proceeds of the Series 2020B Bonds.

Section 3.04 Obligation of the Borrower to Cooperate in Furnishing Documents to Trustee. The Borrower agrees to cooperate in furnishing to the Trustee (i) the documents referred to in Section 3.03 hereof that are required to effect payments out of the Project Fund, and to cause such orders to be directed by the Authorized Borrower Representative to the Trustee as may be necessary to effect payments out of the Project Fund in accordance with Section 3.03 hereof, and (ii) the documents referred to in Section 2.08 of the Indenture required for the authentication and delivery of the Series 2020B Bonds. Such obligations are subject to any provision of this Loan Agreement or the Indenture requiring additional documentation.

Section 3.05 Redemption of Refunded Indebtedness. The Borrower agrees that it will cause the Refunded Indebtedness to be paid in whole on the Call Date and, in connection therewith, will apply proceeds of the Series 2020B Bonds thereto, as provided herein and in the Indenture, and, to the extent that such proceeds are insufficient to pay in full the respective redemption prices therefor, the Borrower shall apply such additional funds of the Borrower to such redemption, as may be necessary for the purpose. In furtherance thereof, the Borrower shall cause the redemption of the Refunded Indebtedness to be effected in accordance with all relevant provisions of the Prior Indenture and specifically covenants to cause notice of redemption of the Refunded Indebtedness to be given in accordance with the provisions of the Prior Indenture.

Section 3.06 Borrower Required to Pay Refunding Costs in Event Project Fund Insufficient. In the event, after the Bonds have been issued, that the moneys in the Project Fund available for payment of Refunding Costs should not be sufficient to pay such costs in full, the Borrower agrees, for the benefit of the County and the Bondholders, to pay the remaining Refunding Costs, and, at the request of the Trustee, to deposit an amount equal to such shortfall to the credit of the Project Fund to be used for such purpose. The County does not make any warranty, either express or implied, that the moneys, which will be paid into the Project Fund will be sufficient to pay all Refunding Costs. The Borrower agrees that if after exhaustion of the moneys in the Project Fund the Borrower should pay any portion of the Refunding Costs pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the County, the Trustee, or the Holders of any of the Bonds, nor shall it be entitled to any diminution in or postponement of payments to be made under Section 4.02, 4.03 or 4.04 hereof. Specifically, the Borrower covenants that it will pay from its own funds, and not from proceeds of the Series 2020B Bonds, all costs of issuance of the Series 2020B Bonds in excess of those permitted to be paid from proceeds of the Series 2020B Bonds (which permitted amount shall not exceed 2.00% of the proceeds of the Series 2020B Bonds).

Section 3.07 The Mortgage. Concurrently with the sale and delivery of the Series 2020B Bonds, the Borrower shall execute and deliver the Mortgage to the Trustee as additional security for the Borrower's obligations under this Loan Agreement and under the Series 2020B Loan Agreement, and for payment of the Series 2020B Bonds and the Series 2020B Bonds.

Section 3.08 Title to the Project. The County acknowledges and agrees that as between the County and the Borrower, the Borrower shall be the sole owner of the Land, the Project Buildings, the Project Equipment and other Project Facilities and shall be entitled to sole and exclusive possession thereof, subject to the rights of the Trustee under the Mortgage.

Section 3.09 Investment of Project Fund Moneys Permitted. To the extent authorized by the Act, any moneys held as a part of the Project Fund shall, at the written request of the Authorized Borrower Representative, be invested or reinvested by the Trustee in Qualified Investments which shall (i) be payable in such amounts and at such times not later than the time or times when such moneys will be needed to pay the Refunding Costs, and (ii) mature or may be redeemed at not less than the purchase price no later than twelve months from the date of investment. Investments permitted under this Section may be purchased from the Trustee or any of its affiliates. The Borrower covenants that the portion of the Project Fund representing proceeds of the Bonds shall be directed to be invested and deposited only for a temporary period pending the need for expenditure to pay costs of the Project, and it further covenants that said portion representing said proceeds shall not be directed to be invested or used in such manner that any of the Bonds would be "arbitrage bonds" for purposes of Section 148 of the Internal Revenue Code. Income and profits realized from investment of moneys in the Project Fund shall be credited to and deposited in the Project Fund.

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## ARTICLE IV

### LOAN PAYMENTS AND DEPOSITS

Section 4.01 The Loan. The County agrees, upon the terms and conditions in this Loan Agreement, to lend to the Borrower the gross proceeds of issuance of the Bonds and further agrees to deposit the net proceeds of sale thereof into the Bond Fund, the Reserve Fund and the Project Fund established with the Trustee as provided herein and in the Indenture. Such proceeds shall thereafter be invested and disbursed by the Trustee in accordance with the provisions of this Loan Agreement and the Indenture.

Section 4.02 Repayment of Loan. The Borrower covenants and agrees to repay the Loan, together with interest and premium, if any, in Loan Repayments which in the aggregate shall be in an amount sufficient to pay, in full and when due, all the Bonds. To provide for the repayment of the Loan (until the principal of, premium (if any) on and interest on the Bonds shall have been fully paid or provision for payment thereof shall have been made in accordance with the Indenture), the Borrower agrees to pay for the account of the County the following amounts:

(a) Interest: On or before the 20<sup>th</sup> day of each calendar month (or on the first Business Day thereafter if such day is not a Business Day) commencing on the 20<sup>th</sup> day of \_\_\_\_\_, 2020, an amount which will be not less than \_\_\_\_\_ (1/\_\_\_\_) of the interest to become due on the next succeeding Interest Payment Date and thereafter on or before the 20<sup>th</sup> day of each month thereafter, an amount equal to 1/6 of the interest becoming due on the Bonds on the next Interest Payment date (net of any accrued interest and capitalized interest on deposit in the Bond Fund to be used to pay interest on such series of Bonds).

(b) Principal: On or before the 20<sup>th</sup> day of each month commencing on \_\_\_\_\_, whether by maturity or mandatory sinking fund redemption, an amount equal to 1/12<sup>th</sup> (or such other equal monthly installment amount) of the principal of Bonds coming due on such \_\_\_\_\_ 1 and continuing each month thereafter; provided, however, that no monthly deposit need be made to the extent that there is a sufficient amount already on deposit in the Sinking Fund to pay principal of the Bonds on the next principal payment date.

(c) into the Optional Redemption Fund such amount, if any, as may be necessary and sufficient to provide for the redemption of Bonds subject to redemption from the Optional Redemption Fund; and

(d) into the Reserve Fund an amount necessary to make the balance therein equal to the Reserve Requirement within 30 days of receiving notice of deficiency from the Trustee; and

(e) into any fund designated by the Trustee moneys in any amount necessary to comply with the provisions of Section 4.08(d) hereof or Section 5.06 of the Indenture; subject, however, to the amounts of any credits allowable under Section 4.09 hereof. Each payment by the Borrower under this Section shall be made directly to the Trustee at its corporate trust office

for the account of the County for deposit as provided in the Indenture. The Borrower shall furnish to the County, if the County so requests, advice of the transmittal of such payments at the time of transmittal of payment.

Section 4.03 [Reserved]

Section 4.04 Additional Payments. The Borrower also agrees:

(a) to pay to the Trustee, for itself or remittance to the paying agents, promptly after being billed, until the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the provisions of the Indenture, (i) an amount equal to the annual fee of the Trustee, as trustee, for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture during the preceding billing period, (ii) the reasonable fees and charges of paying agents on the Bonds for acting as paying agent as provided in the Indenture, as and when the same become due, and (iii) the reasonable fees and charges of the Trustee for necessary extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture and the Mortgage, as and when the same become due; provided, that the Borrower may, without creating a default hereunder, contest in good faith the necessity for any such extraordinary services and extraordinary expenses and the reasonableness of any such fees, charges or expenses; and

(b) to pay to the County all reasonable fees and expenses of the County incurred in connection with the issuance, payment, redemption and exchange of Bonds or otherwise in connection with the transactions contemplated by this Loan Agreement, the Indenture and the Mortgage.

Section 4.05 No Set-Off; Borrower's Obligations Unconditional. The obligation of the Borrower to make the payments required hereby shall be absolute and unconditional. Until such time as the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, the Borrower (i) will perform and observe all of its agreements contained in this Loan Agreement and (ii) will pay without abatement, diminution or deduction (whether for taxes or otherwise) all amounts required to be paid hereunder, regardless of any cause or circumstance whatsoever including, without limiting the generality of the foregoing: any defense, set-off, recoupment or counterclaim which the Borrower may have or assert against the County, the Trustee, any Holder of a Bond or any other person; any failure of the County to perform any covenant or agreement contained herein or in any other agreement between the County and the Borrower; any indebtedness or liability at any time owing to the Borrower by the County, the Trustee, any Holder of a Bond or any other person; any acts or circumstances that may constitute failure of consideration; damage to or condemnation of the Project Facilities; failure or delay in completion of the Project; eviction by paramount title; commercial frustration of purpose; bankruptcy or insolvency of the County or the Trustee; any change in the tax or other laws of the United States of America or of the State of South Dakota or any political subdivision of either; or any failure of the County or the Trustee to perform and observe any agreement, whether express

or implied, or any duty, liability or obligation, arising out of or connected with this Loan Agreement or the Indenture.

The Borrower hereby waives, to the extent permitted by law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate or cancel, or to limit its liability under, this Loan Agreement except in accordance with the express terms hereof.

Section 4.06 Interest on Loan Repayments and Other Overdue Payments. In the event the Borrower shall fail to make Loan Repayments required by Section 4.02 hereof, the installment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and if such failure shall result in a failure to pay any principal of, premium, if any, or interest on the Bonds, the Borrower agrees to pay interest on such sum from such date at the rate or rates of interest specified in the Bonds. In the event the Borrower shall fail to make any payment required under Section 4.04 hereof or if advances are made pursuant to Section 7.05 hereof, the item so in default shall continue as an obligation of the Borrower until the amount shall have been fully paid and the Borrower agrees to pay interest on such payment in default at the rate or rates of interest specified in Section 7.05 hereof.

Section 4.07 Options to Prepay Loan. The Series 2020B Bonds will be subject to prior redemption by the County at the direction of the Borrower, and the Borrower shall have and is hereby granted, the option to prepay the Loan and require the Series 2020B Bonds to be redeemed on such dates and at such redemption prices as are set forth in Section 3.01 of the Indenture.

The option of the Borrower to prepay the Loan specifically includes the option to do so, as further provided in Article III of the Indenture, on any interest payment date, in whole but not in part, and without prepayment or penalty, if:

(i) the Project Facilities shall be damaged or destroyed or taken in condemnation proceedings and the Borrower shall determine not to rebuild, repair, restore or replace the Project Facilities pursuant to this Loan Agreement, all as further provided in Section 5.10 hereof; or

(ii) as a result of any changes in the Constitution of the State of South Dakota or the Constitution of the United States of America or of legislative or administrative action (whether state or federal) or of a final decree, judgment or order of any court or administrative body (whether state or federal) this Loan Agreement shall have become void or unenforceable or impossible of performance in any material respect in accordance with the intent and purposes of the parties as expressed herein.

To exercise the options granted in this Section, the Borrower shall, at least forty-five (45) days prior to the date upon which such prepayment is to be made, give written notice of such prepayment to the County and the Trustee. Such notice shall request the redemption pursuant to Article III of the Indenture of a specified principal amount of Bonds if less than all outstanding

Bonds are to be redeemed and shall otherwise comply with the provisions hereof and of Article III of the Indenture. On or before the date specified for the redemption of the Bonds, the Borrower shall pay the Trustee for deposit in the Optional Redemption Fund an amount which, together with other funds held by the Trustee and available for the purpose, is equal to the redemption price of the Bonds to be redeemed and accrued interest thereon to the redemption date, and in any case, such further amounts, if any, as may be required to redeem the Bonds called for redemption by the Trustee on the redemption date.

The County, at the request at any time of the Borrower and if the Bonds are then callable, shall forthwith take all steps that may be necessary under the applicable redemption provisions of the Indenture to effect redemption of all or part of the then outstanding Bonds, as may be specified by the Borrower, on the earliest redemption date on which such redemption may be made under such applicable provisions, provided that the Borrower shall have made available funds in adequate amount therefor or shall have made arrangements satisfactory to the County therefor. Except as herein otherwise provided, Bonds shall be called for redemption only upon the direction of the Borrower.

Section 4.08 Tax-Exempt Status of Bonds. It is the intention of the parties hereto that the interest paid on the Bonds will not be included in the gross income of the recipients of said interest by reason of Sections 103 and 145 and related Sections of the Internal Revenue Code. In order to confirm and carry out such intention:

(a) The Borrower shall (i) provide such Certificates of the Authorized Borrower Representative, Opinions of Bond Counsel, and other evidence as may be necessary or requested by the County or the Trustee to establish the tax-exempt status of interest on the Series 2020B Bonds under Sections 103 and 145 and related Sections of the Internal Revenue Code, and (ii) file such information and statements, acting alone or with the County, with the Internal Revenue Service, as may be required from the Borrower or the County to establish or preserve such tax-exempt status or as may be required by Section 149(e) and related Sections of the Internal Revenue Code, regulations thereunder and related provisions of law or regulation.

(b) If there shall occur a Determination of Taxability, the Borrower shall have the obligation to, and hereby covenants and agrees that it shall forthwith repay the Loan and cause the Series 2020B Bonds to be redeemed on the next interest payment date occurring at least 45 days following notice to the Borrower of the Determination of Taxability and the County agrees to call the Series 2020B Bonds for redemption on such date. Any redemption required under this Section shall be effected upon the following terms and conditions:

(i) Within ten days after notice to the Borrower of the Determination of Taxability the Borrower shall give written notice of the Determination of Taxability and of its intention to redeem the outstanding Series 2020B Bonds to the County and the Trustee, stating the date of redemption and the Borrower shall make arrangements satisfactory to the Trustee for the giving of notice required for redemption of all of the



outstanding Series 2020B Bonds and for the transmittal of funds needed for such redemption in advance of that date.

(ii) The aggregate redemption price payable by the Borrower shall be an amount which, when added to all amounts then held under the Indenture and available for the purpose, will be equal to the principal amount of all then outstanding Series 2020B Bonds, plus accrued interest thereon to the redemption date.

(iii) The Borrower shall also pay an amount equal to the Trustee's and any paying agent's fees under the Indenture, accrued and to accrue until final payment and redemption of the Series 2020B Bonds and all other advances, fees, costs and expenses incurred by the Trustee under the Indenture.

(c) If there shall be a Determination of Taxability and the Borrower shall fail to give notice thereof and of its intention to redeem the Series 2020B Bonds as above described, the Trustee shall nevertheless be authorized to give notice of redemption of the outstanding Series 2020B Bonds on the next interest payment date occurring at least thirty-five (35) days thereafter whenever it shall have determined, in good faith, that a Determination of Taxability has been made; and the Trustee shall give such notice of redemption if the County or any Bondholder shall furnish to the Trustee a copy of the Determination of Taxability duly certified or authenticated to the satisfaction of the Trustee. The Trustee shall furnish to the Borrower and the County a copy of the notice given or to be given by it pursuant to this paragraph, and the Borrower shall thereupon become obligated to pay the aggregate redemption price to the Trustee as a Loan Repayment prior to the redemption date and to pay all fees, expenses, costs and advances of the Trustee and any paying agent under the Indenture.

(d) The Borrower hereby acknowledges and confirms its obligations under Section 148 of the Internal Revenue Code and regulations thereunder. Specifically, the Borrower agrees to comply with the rebate requirements imposed under said Section 148(f) and pertinent regulations, including the requirement to make or cause to be made periodic computations (but without expense to the County) of the amount subject to rebate thereunder, and to maintain or cause the Trustee to maintain records of such determinations until six years after the retirement of the Bonds, and the requirement to make all required rebate payments to the United States not later than 60 days after each computation date to and until the date which is 60 days after the final computation date and for such purpose to pay to the Trustee for the account of the County or to the United States for the account of the County the amount (if any) to be rebated to the United States on account of earnings from nonpurpose investments of gross proceeds (as defined in Section 148(f) of the Internal Revenue Code and regulations thereunder) of the Bonds, all to the extent and in the amounts and at the times required by the Internal Revenue Code and regulations thereunder, including Section 148(f) of the Internal Revenue Code. If the Borrower shall fail to pay or deposit with the Trustee the amount of any rebate required to be paid by the Borrower when such deposit is due, the Trustee is authorized and directed to make payment of the rebate amount from monies on deposit in the Optional Redemption Fund or Reserve Fund, as further provided in the Indenture, and upon notice to the

Borrower from the Trustee, the Borrower shall forthwith reimburse the Trustee for any amount so withdrawn from the Optional Redemption Fund or Reserve Fund. In construing the Borrower's obligations hereunder, all terms used in this paragraph (d) shall have the meanings provided in said Section 148(f) and regulations thereunder, and all provisions set forth in the Indenture for the purpose of complying with said Section and regulations shall be incorporated herein by reference. Rebate payments required to be made by the Borrower shall constitute additional Loan Repayments under Section 4.02 hereof.

Section 4.09 Investment of Funds, Credits. To the extent authorized by the Act, moneys on deposit to the credit of any Account or Fund maintained by the Trustee under the Indenture shall be invested by the Trustee, upon request by the Authorized Borrower Representative to the Trustee, in Qualified Investments. Investments permitted under this Section may be purchased from the Trustee or any of its affiliates. Investments so purchased shall be deemed at all times to be a part of the respective Fund, but may from time to time be sold or otherwise converted into cash, whereupon the proceeds derived from such sale or conversion shall be credited to the respective Fund. Except as hereinafter provided in this Section 4.09, any interest or profit shall be credited to the respective Fund. The Trustee shall redeem or sell, at the best price obtainable, any investments so purchased, whenever it shall be necessary to do so in order to provide moneys to meet any payment from the Bond Fund, Sinking Fund, Reserve Fund, or Optional Redemption Fund. Neither the Trustee nor the County shall be liable for any loss resulting from any such investment, nor from failure to preserve rights against endorsers or other prior parties to instruments evidencing any such investment. Investment of funds pursuant to this Section shall be limited as to amount and yield of investment in such manner that no part of the outstanding Bonds shall be deemed "arbitrage bonds" under Section 148 of the Internal Revenue Code and regulations thereunder.

Notwithstanding any other provision hereof or of the Indenture, earnings credited to the Reserve Fund shall be transferred from time to time to the Bond Fund to serve as a credit against the obligation of the Borrower to make Loan Repayments under Section 4.02(a) and (b) hereof, provided, however, that no such transfer shall be made if the effect thereof would cause the amount on hand in the Reserve Fund to be less than the Reserve Requirement, as computed in accordance with Section 5.03 of the Indenture.

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## ARTICLE V

### PROJECT FACILITIES

Section 5.01 Use of Project Facilities. The Borrower will use the Project Facilities only in furtherance of its lawful purposes, only as required by Section 145(a) of the Internal Revenue Code, and only as a facility eligible to be and defined as a “project” under the Act.

The Borrower will not use or permit any person to use the Project Facilities for any use or purpose in violation of the laws of the United States, the State of South Dakota, or any ordinance of the County, and agrees to comply with all the orders, rules, regulations and requirements of the Board of Fire Underwriters and officers or boards of the County, County or State or other governmental authority having jurisdiction over the Project Facilities. The Borrower shall have the right to contest by appropriate legal proceedings, without cost or expense to the County, the validity of any law, ordinance, order, rule, regulation or requirement of the nature herein referred to.

Section 5.02 Ownership, Maintenance and Possession of Project Facilities by Borrower. The Borrower agrees that so long as the Bonds are outstanding, the Borrower will own, use and keep or cause to be kept the Project Facilities in good repair and good operating condition, at its own cost, making such repairs and replacements as are necessary in the judgment of the Borrower, all in order that the interest on the Bonds will not become includible in gross income for purposes of federal income taxation. The Borrower represents that it has no present intention to sell, lease or otherwise dispose of the Project Facilities, but the Borrower may sell or lease all or any part of the Project Facilities to a governmental unit or an organization described in Section 501(c)(3) of the Internal Revenue Code, or enter into an agreement for the management or use of the Project Facilities, so long as no such sale, lease or agreement shall be inconsistent with the provisions of this Loan Agreement, the Indenture or the Act, including Sections 5.07, 6.04 and 6.05 hereof.

Section 5.03 Liens. The Borrower will pay or cause to be paid all utility charges and other charges arising from the operations at the Project Facilities which, if unpaid, would become a lien on the Project Facilities and will not permit any lien or encumbrance except the Mortgage and Permitted Encumbrances (as defined in the Mortgage) to be established or to remain unsatisfied against the Project Facilities, including any mechanics’ liens; provided, that the Borrower may in good faith contest any mechanics’ or other liens filed or established against the Project Facilities, 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 County or the Trustee shall notify the Borrower that, in the opinion of Independent Counsel, by nonpayment of any such items the Project Facilities or any part thereof will be subject to loss or forfeiture, in which event the Borrower shall promptly pay and cause to be satisfied and discharged all such unpaid items.

Section 5.04 Taxes and Other Governmental Charges. The Borrower will pay or cause to be paid, as the same respectively become due, any taxes, special assessments, license fees and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project Facilities, or any improvements, equipment or related property installed or brought by the Borrower therein or thereon, or this Loan Agreement, the Indenture, or the interest of the County, the Trustee, or the Bondholders therein. The Borrower may, at its expense, in good faith contest any such taxes, assessments, license fees and other governmental charges and, in the event of any such contest, may permit the taxes, assessments, license fees or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the County or the Trustee shall notify the Borrower that, in the opinion of Independent Counsel, by nonpayment of any such items, the Project Facilities or any part thereof, or the revenue therefrom, will be subject to loss or forfeiture, in which event such taxes, assessments, license fees or charges shall be paid promptly.

Section 5.05 Alterations to Project Buildings. The Borrower shall have the privilege from time to time at its cost and expense, of remodeling and of making additions, modifications, alterations, improvements and changes (hereinafter collectively referred to as “alterations”) in or to the Project Buildings as it, in its discretion, may deem to be desirable for its uses and purposes, subject, however, to the following:

(a) All alterations to the Project Buildings shall be located within the boundary lines of the Land and shall become a part of the Project Facilities;

(b) The alterations shall not substantially impair the structural strength, utility or market value thereof or significantly alter the character or purpose or detract from the value or operating efficiency of the Project Facilities, and the Borrower shall have delivered to the Trustee a Certificate of the Authorized Borrower Representative to such effect; and

(c) The alterations shall not significantly impair the revenue producing capacity of the Project Facilities, and the Borrower shall have delivered to the Trustee a Certificate of the Authorized Borrower Representative to such effect.

The Trustee may, in its discretion, require the Borrower to furnish an opinion of an Independent Engineer, at the expense of the Borrower, to the effects of paragraph (b) or (c) or both if the alterations shall exceed \$750,000 in the aggregate.

All work in connection with any alterations shall be done promptly and in good workmanlike manner and in compliance with the building and zoning laws of the County and other governmental subdivisions wherein the Project Facilities are situated, and with all laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof, and shall not violate the provisions of any policy of insurance covering the Project Facilities; and the work shall be prosecuted with reasonable dispatch, unavoidable delays excepted.

Section 5.06 Installation of Equipment. The Borrower may, from time to time in its discretion and at its own cost and expense, install or place other equipment and tangible personal property in the Project Buildings and on the Land. In the event that a lessor, vendor or purchase money lender is entitled to and does remove any equipment or other property, any damage resulting to the Project Facilities therefrom shall be repaired and the Project Facilities restored to their previous condition at the sole expense of the party effecting such removal or at the sole expense of the Borrower.

Section 5.07 Sale or Other Disposition of Property. The Borrower will not, in any Fiscal Year sell, lease, transfer or otherwise dispose of Property related to the Project Facilities in an aggregate amount which, together with all other Property transferred by the Borrower, in such Fiscal Year (other than any such transfers otherwise permitted by clauses (a) through (f) below), is in excess of [1.0]% of the Book Value of the Project Facilities, except for transfers of Property as follows:

(a) Transfers of Property to any Person in the ordinary course of business and leases, under which the Borrower is lessor, of a portion of the Property which is of a type that is customarily the subject of such leases including without limitation leases of office space for physicians and educational institutions, food service facilities, parking facilities, day care centers, gift shops, barber shops, beauty shops, flower shops, radiology, pathology or other hospital based specialty services, and pharmacy and similar departments.

(b) Transfers of Property other than real property to any Person for fair market value on terms no less favorable to the Borrower than would be obtained in a comparable arm's-length transaction.

(c) Transfers of Property to any Person if, in the reasonable judgment of the Borrower, such Property has, or within the next succeeding 24 calendar months is reasonably expected to, become inadequate, obsolete or worn out, or otherwise unsuitable, unprofitable, undesirable or unnecessary for the operation of the Project Facilities.

(d) Transfers of Property to any Person, if such Property consists solely of assets which are specifically restricted by the donor or grantor to a particular purpose which is inconsistent with their use for Debt Service Payments.

(e) Transfers of equipment to any Person if the equipment to be transferred is not essential to operation of the Project Facilities and the removal thereof does not materially adversely affect the revenue producing capacity of the Project Facilities.

Transfers of real property if (1) the proceeds of the disposition are used to purchase additional real property or to repay the Debt Service Payments on Parity Obligations, (2) the transfer is for fair market value on terms no less favorable to the Borrower than would be obtained in a comparable arm's-length transaction, (3) the real property transferred is not essential to operation of the Project Facilities and the removal thereof does not materially

adversely affect the revenue producing capacity of the Project Facilities, and (4) ingress and egress to and from the Project Facilities is not materially impaired.

Section 5.08 [This Section intentionally omitted.]

Section 5.09 Insurance. The Borrower shall maintain, or cause to be maintained, at its cost and expense, insurance as follows:

(a) Insurance against loss and/or damage to the Project Facilities under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire and extended coverage in an amount not less than 100% of the full insurable replacement value of the Project Facilities, less an amount equal to the fair market value of the Land, but any such policy may have a deductible amount of not more than \$10,000. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of coinsurance provisions or otherwise, without the prior consent thereto in writing by the Trustee. The term "full insurable replacement value" shall mean the actual replacement cost of the Project Facilities (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items) and equipment, and shall be determined from time to time at the request of the Trustee, but not more frequently than once every three years, by an insurance consultant or insurer, selected and paid for by the Borrower and approved by the Trustee. The Net Proceeds of such insurance required by this paragraph (a) with respect to the Project Facilities shall be applied as provided in Section 5.10 hereof.

(b) Comprehensive general public liability insurance, including personal injury liability, and, if the Borrower owns or leases any automobiles, automobile insurance, including owned, non-owned and hired automobiles, against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$\_\_\_\_\_, for public liability not arising from ownership or operation of automobiles (or other motor vehicles), and in the minimum amount of \$\_\_\_\_\_ for each occurrence and for each year for liability arising out of ownership or operation of automobiles (or other motor vehicles) and shall be endorsed to show the Trustee and County as an additional insured. The Borrower may be self-insured with respect to all or any part of its comprehensive general public liability, including personal injury liability.

(c) Such other insurance, including workers' compensation insurance respecting all employees of the Borrower, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Borrower may be self-insured with respect to all or any part of its liability for workers' compensation.

All insurance required in this Section shall be taken out and maintained in responsible insurance companies selected by the Borrower which are authorized under the laws of South Dakota to assume the risks covered thereby. The Borrower will deposit annually with the Trustee policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Each policy shall contain a provision that the

insurer shall not cancel nor modify it without giving written notice to the Borrower and the Trustee at least thirty (30) days before the cancellation or modification becomes effective. Not less than 30 days prior to the expiration of any policy, the Borrower shall furnish the Trustee evidence satisfactory to the Trustee that the policy has been renewed or replaced by another policy conforming to the provisions of this Section, or that there is no necessity therefor under the terms hereof. In lieu of separate policies, the Borrower may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Borrower shall deposit with the Trustee a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Project Facilities.

Section 5.10 Damage or Destruction and CondemnationIn the event of damage to, or destruction of, the Project Facilities or any portion thereof resulting from fire or other casualty, or the condemnation or sale of the Project Facilities or any portion thereof pursuant to any condemnation proceedings in exercise of the power of eminent domain or under the threat thereof, the Net Proceeds of any insurance, condemnation awards or sale proceeds relating thereto, if such Net Proceeds are [5]% of Book Value or less, shall be paid directly to the Borrower and the Borrower shall forthwith replace, repair, reconstruct and restore the Project Facilities to substantially the same or an improved condition or utility value as existed prior to that event, and will to the extent necessary apply any such Net Proceeds received by the Borrower to the payment or reimbursement of the costs of such replacement, repair, reconstruction and restoration. The Borrower shall complete such replacement, repair, reconstruction and restoration, whether or not any Net Proceeds received by the Borrower for such purposes are sufficient to pay the same. Any remaining balance not required for said purpose shall be applied on a pro rata basis in accordance with the Outstanding principal amounts of the Bonds, the Series 2020B Bonds and any other Parity Obligations to (i) the prepayment of the Series 2020B Bonds and any other Parity Obligations and (ii) make a deposit to the Sinking Fund to be used to redeem Bonds.

In the event of damage to, or destruction of, the Project Facilities or any portion thereof resulting from fire or other casualty, or the condemnation or sale of the Project Facilities or any portion thereof pursuant to any condemnation proceedings in exercise of the power of eminent domain or under the threat thereof and the Net Proceeds of any insurance, condemnation awards or sale proceeds relating thereto exceed [5]% of the Book Value of the Project Facilities, those Net Proceeds shall be paid directly to the Trustee. Within 90 days after such damage or destruction, the Borrower shall elect one of the following two options by written notice of such election to the Trustee:

(a) *Option A – Repair and Restoration.* The Borrower may elect to use all or part of such Net Proceeds to replace, repair, reconstruct and restore the Project Facilities. In such event the Borrower shall proceed forthwith to replace, repair, reconstruct and restore the Project Facilities to substantially the same condition or utility value as existed prior to that event and will apply such Net Proceeds to the payment or reimbursement of the costs of such replacement, repair and reconstruction. So long as no Event of Default exists hereunder, any Net Proceeds received by the Trustee shall be deposited in a separate account to be established and released

from time to time by the Trustee to the Borrower upon the receipt of the written request of an Authorized Borrower Representative specifying the expenditures made or to be made or the indebtedness incurred in connection with such replacement, repair, reconstruction and restoration and stating that such Net Proceeds, together with any other moneys legally available for those purposes, will be sufficient to complete the replacement, repair, reconstruction and restoration.

If the Borrower elects this Option A or is unable to obtain the opinion required by Option B below, the Borrower shall complete the replacement, repair, reconstruction and restoration of the Project Facilities, whether or not the Net Proceeds received by the Borrower for such purposes are sufficient to pay for the same. Upon completion of the replacement, repair, reconstruction and restoration, any excess moneys from the Net Proceeds over and above the costs of the replacement, repair, reconstruction and restoration shall be applied on a pro rata basis in accordance with the Outstanding principal amounts of the Bonds, the Series 2020B Bonds and any other Parity Obligations to (i) the prepayment of the Series 2020B Bonds and any other Parity Obligations and (ii) make a deposit to the Sinking Fund to be used to redeem Bonds.

If the Borrower elects to use only part of the Net Proceeds for replacement, repair, reconstruction and restoration of the Project Facilities, then the remaining Net Proceeds shall be applied on a pro rata basis in accordance with the Outstanding principal amounts of the Bonds, the Series 2020B Bonds and any other Parity Obligations to (i) the prepayment of the Series 2020B Bonds and any other Parity Obligations and (ii) make a deposit to the Sinking Fund to be used to redeem Bonds.

The Borrower agrees to apply such Net Proceeds so received solely to the purposes specified in such notice of election.

(b) *Option B – Redemption of Bonds and Prepayment of Outstanding Loans.* The Borrower may elect to have all or part of the Net Proceeds applied to the redemption of Bonds and prepayment of the Series 2020B Bonds and any other Parity Obligations, provided that the Borrower supplies the Trustee with an opinion of an Independent Consultant stating that the property destroyed was not essential to the use of the Project Facilities as a complete and operational health care facility and that the Net Income Available for Debt Service will not be materially adversely affected by such damage or destruction; provided, however, no such opinion shall be required if all Parity Obligations Outstanding are to be prepaid and redeemed. In such event the Borrower shall, in its notice of election to the Trustee, direct that the Net Proceeds be applied on a pro rata basis in accordance with the Outstanding principal amounts of the Bonds, the Series 2020B Bonds and any other Parity Obligations to (i) the prepayment of the Series 2020B Bonds and any other Parity Obligations and (ii) make a deposit to the Sinking Fund to be used to redeem Bonds. If only part of the Net Proceeds is applied as provided under this Option B, then the remaining part of the Net Proceeds shall be applied as provided under Option A above.

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## ARTICLE VI

### SPECIAL COVENANTS

Section 6.01 No Warranty of Condition or Suitability; Indemnification. The County does not make any warranty, either express or implied, as to the design or capacity of the Project Facilities, as to the suitability for operation of the Project Facilities, or that they will be suitable for the Borrower's purposes or needs. The Borrower releases the County from, agrees that the County shall not be liable for, and agrees to hold the County, its County Commission and its respective officers and employees, harmless against, any claim, cause of action, suit or liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project Facilities or the use thereof.

The Borrower further agrees to indemnify and hold harmless the County, its officers and employees, against any and all losses, claims, damages or liability to which the County, its officers and employees, may become subject under any law in connection with the issuance and sale of the Bonds and the carrying out of the transactions contemplated by this Loan Agreement, and to reimburse the County, its officers and employees, for any out-of-pocket legal and other expenses (including reasonable counsel fees) incurred by the County, its officers and employees, in connection with investigating any such losses, claims, damages or liabilities or in connection with defending any actions relating thereto. The County agrees, at the request and expense of the Borrower, to cooperate in the making of any investigation in defense of any such claim and promptly to assert any or all of the rights and privileges and defenses which may be available to the County. The provisions of this Section shall survive the payment and redemption of the Bonds.

Section 6.02 Access to Books and Records of the Borrower, Financial Reporting. . All books and documents in the possession of the Borrower relating to the Project Facilities and the moneys, revenues or receipts derived from the Project Facilities shall at all reasonable times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate. This paragraph shall not permit access to any documents that have personally identifiable patient information, except as permitted by law.

An Authorized Borrower Representative shall furnish to the Trustee and the Original Purchaser and to the Owners or beneficial owners of any Bonds that request the information in writing from the Borrower and the Trustee the following:

(a) *Quarterly Financial Statements and Utilization Statistics.* As soon as practicable after they are available but in no event more than 45 days after the end of each quarter, commencing with the quarter ending [December 31, 2020], (i) the unaudited financial statements for that quarter, including statements of revenues and expenses during that quarter, and a balance sheet as of the end of that quarter, in reasonable detail and certified, subject to year end adjustment, by the chief financial officer or other authorized financial officer of the Borrower.

(b) *Annual Financial Statements.* As soon as practicable after they are available but in no event more than 180 days after the last day of each Fiscal Year, the audit report and audited financial statements of the Borrower for such Fiscal Year certified by the Borrower's Independent Accountant, together with the utilization statistics for the Borrower for that Fiscal Year presented in the form set forth in Appendix A to the Official Statement for the Project Bonds, with such modifications as are necessary or appropriate in the judgment of the Borrower to reflect changes in the operation of the Project Facilities.

(c) *Officer's Compliance Certificate.* At the time of delivery of the audit report and financial statements referred to in Subsection (b) above, a separate written certificate of an Authorized Borrower Representative (1) stating that the Authorized Borrower Representative has no knowledge of any default in the fulfillment of any of the covenants, provisions or conditions of this Indenture, or if such Authorized Borrower Representative has obtained knowledge of any such default or defaults, disclosing the default or defaults and the nature thereof, and (2) stating the Historical Debt Service Coverage Ratio for the most recently completed Fiscal Year and the Unrestricted Cash and Investments expressed as a number of Days Cash on Hand at the end of the most recently completed Fiscal Year, both calculated on the basis of said audited financial statements. In addition, as soon as practicable but in no event more than 60 days after each date the calculation of Days Cash on Hand is required, a separate written certificate of the Authorized Borrower Representative stating the Unrestricted Cash and Investments expressed as a number of Days Cash on Hand.

The Borrower will at any and all times, upon the written request of the Trustee, permit the Trustee by its representatives, to the extent permitted by law, to inspect the properties, books of account, records, reports and other papers of the Borrower, except donor records, patient records, personnel records, and any other confidential records, and to take copies and extracts therefrom, and will afford and procure a reasonable opportunity to make any such inspection, and, to the extent permitted by law, the Borrower will furnish to the Trustee any and all information as the Trustee may reasonably request, with respect to the performance of the covenants in this Indenture.

Section 6.03 [Reserved]Maintenance of Corporate Existence and Status as a Tax-Exempt Organization; Critical Access. Except for mergers, transfers or consolidations permitted by Section 6.05 hereof, the Borrower agrees that it will at all times maintain its existence as a nonprofit corporation and that it will not take any action or suffer any action to be taken by others which will alter, change or destroy its status as a nonprofit corporation or its status as a Tax-Exempt Organization.

The Borrower further agrees that it will not use the Facilities, or permit the same to be used in such a way, as to affect adversely the status of the Borrower as a Tax-Exempt Organization nor will it use any tax-exempt Bond proceeds or property constructed or acquired with tax-exempt Bond proceeds in any unrelated trade or business within the meaning of Section 513(a) of the Code; nor will it use or permit the Project Facilities to be used by any person other than a Tax-Exempt Organization or a governmental unit in such manner as would result in the

loss of tax exemption for interest on the Series 2020B Bonds or any tax-exempt Additional Bonds otherwise afforded under Section 103(a) of the Code; nor will it act in any other manner which would adversely affect the tax free nature for federal income tax purposes of the interest on the Series 2020B Bonds or any tax-exempt Additional Bonds.

The Borrower further covenants that none of its revenues, income or profits, whether realized or unrealized, will be distributed to any of its officers or members, or inure to the benefit of any private person, association or corporation, other than for the lawful corporate purposes of the Borrower; provided, however, that the Borrower may pay to any person, association or corporation the value of any service or product performed for or supplied to the Borrower by such person, association or corporation.

The Borrower also covenants to cause any order, writ or warrant of attachment, garnishment, execution, replevin or similar process filed against any part of the funds or accounts held by the Trustee under the Indenture to be discharged, vacated, bonded or stayed within 90 days after such filing (which 90-day period shall be extended for so long as the Borrower is contesting such process in good faith), but, notwithstanding the foregoing, in any event not later than five days prior to any proposed execution or enforcement with respect to such filing or any transfer of moneys or investments pursuant to such filing.

The Borrower will use its best efforts to refrain from any activity the performance of which would ultimately result in the Borrower losing its status as a critical access hospital for Medicare reimbursement purposes, and will use its best efforts to cause to be performed any activity the non-performance of which would ultimately result in the Borrower losing its status as a critical access hospital for Medicare reimbursement purposes, except that the Borrower may terminate the its critical access status if before the termination there has been delivered to the Trustee a certificate from an Independent Consultant to the effect that termination of the critical access status is projected to have no adverse effect on the ability of the Borrower to make Debt Service Payments, and:

(a) *Historical Pro Forma Debt Service Coverage Test:* A written report of an Independent Consultant to the effect that the Historical Pro Forma Debt Service Coverage Ratio for the most recent Fiscal Year for which audited financial statements of the Borrower are available, computed as though the Borrower's critical access designation was not in effect at any time during that Fiscal Year, was not less than 1.50; or

(b) *Modified Historical Pro Forma Debt Service Coverage Test:* A written report of an Independent Consultant to the effect that the Historical Pro Forma Debt Service Coverage Ratio, after giving effect to the termination of the Borrower's critical access designation and adjusting revenues to reflect any estimated change in revenues resulting from any change in reimbursement rates which have become effective prior to the delivery of such report, for the most recent Fiscal Year for which audited financial statements of the Borrower are available, computed as though the Borrower's critical access designation was not in effect at any time during that Fiscal Year, was not less than 1.50; or

*Historical and Projected Debt Service Coverage Test:* (A) A written report of an Independent Consultant to the effect that the Historical Debt Service Coverage Ratio for the most recent Fiscal Year for which audited financial statements of the Borrower are available, computed as though the Borrower's critical access designation was not in effect at any time during that Fiscal Year, was not less than 1.50; and (B) a written report of an Independent Consultant to the effect that the Projected Debt Service Coverage Ratio for the next succeeding Fiscal Year, after giving effect to the termination of the Borrower's critical access designation, is not less than 1.50, which report shall include forecasted balance sheets, statements of revenues, expenses and changes in net assets and statements of cash flows for such Fiscal Year and a statement of the relevant assumptions upon which such forecasted statements are based.

Section 6.05 Transfer, Merger or Consolidation. (a) The Borrower is and the Borrower agrees that, it will remain duly qualified to do business as a nonprofit corporation in the State of South Dakota and will maintain its corporate existence and will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into any other corporation unless at the time of such merger or consolidation or transfer of assets and after giving effect thereto:

(i) the Borrower or the other corporation surviving such merger or consolidation or to whom such assets are conveyed (the "Surviving Corporation") shall be a Tax-Exempt Organization;

(ii) either the Borrower shall be the successor of such merger or consolidation or the Surviving Corporation shall expressly assume in writing the due and punctual performance and observance of all of the covenants and conditions of this Agreement;

(iii) no Event of Default shall have occurred and be continuing and no event shall have occurred and be continuing which, with the lapse of time or giving of notice, or both, would constitute an Event of Default;

(iv) the Borrower or the Surviving Corporation could satisfy the requirements of Section 6.11 hereof for the incurrence of \$1.00 of Long Term Indebtedness;

(v) such merger or consolidation or transfer of assets will not adversely affect the exemption from federal income taxes of the interest on any tax-exempt Bonds.

Upon any such merger or consolidation or transfer of assets the Borrower or the Surviving Corporation shall deliver to the Trustee a certificate signed by its President or any Vice President and its chief financial officer demonstrating that all of the foregoing conditions have been satisfied, which certificate shall be supported: as to paragraph (i) above, by an opinion of counsel for the Borrower and, as to paragraph (v) above, by an opinion of nationally recognized municipal bond attorneys.

(b) The Borrower may implement an Affiliation Transaction if there is delivered to the Trustee, (i) evidence that the long term debt of the System Group is rated at one of the three

highest categories (without regard to any refinements or gradation of rating category by numerical modifier or otherwise) by either Moody's or S & P or a rating letter from either Moody's or S & P showing a rating on the Bonds immediately after the implementation of the Affiliation Transaction of one of the three highest categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) by such rating agency, (ii) an Opinion of Bond Counsel to the effect that under the then existing law the implementation of the Affiliation Transaction would not adversely affect the validity of the Bonds or the exclusion from federal income taxation of interest payable on the Bonds, and (iii) an opinion of Counsel to the System Group to the effect that (1) the obligations of the System Group, or the controlling member of the System Group, as the case may be, to be delivered to secure the Bonds constitute legal, valid and binding obligations of the members of the System Group, or the controlling member of the System Group, as the case may be, enforceable in accordance with their terms, except to the extent that enforceability of such obligations may be limited by any applicable bankruptcy, insolvency, liquidation, rehabilitation or other similar laws or enactments generally affecting the enforcement of creditors' rights and application of general principles of equity and other standard exceptions, and (2) the issuance of the obligations will not cause the Bonds or such obligations to become subject to the registration requirements pursuant to the Securities Act of 1933, as amended.

Upon request of the Borrower, the Trustee and the Borrower shall cooperate with the Borrower in the implementation of an Affiliation Transaction and shall execute and deliver any and all documents needed to implement the Affiliation Transaction. Any terms and provisions of this Agreement may be modified, amended, changed or any covenant, agreement, term or provision removed in order to implement an Affiliation Transaction; provided, however, that no such modification, amendment, change, removal or release shall occur unless there is delivered to the Trustee an Opinion of Bond Counsel to the effect that the same will not adversely affect the validity of the Bonds or the exclusion from federal income taxation of interest payable on the Bonds.

Section 6.06 Restrictions Against Future Liens. The Borrower covenants that, throughout the term of this Loan Agreement, it shall have good and marketable title to the Project Facilities and it shall not permit any lien to be created or established against the Project Facilities in connection with incurring any indebtedness in respect of borrowed funds, including any mortgage liens or security interests against Project Equipment, provided, however, that this Section 6.06 shall not preclude the Borrower from granting purchase money security interests in connection with the acquisition of equipment or furnishings for use at the Project Facilities (for items of equipment or furnishings not purchased with proceeds of the Bonds).

Section 6.07 Assignments. The Borrower consents to the pledge and assignment of the Loan Repayments and other interests of the County in this Loan Agreement by the County to the Trustee as provided in the Indenture. Except as otherwise provided in Section 5.02 hereof, the interests and obligations of the Borrower under this Loan Agreement are nonassignable and shall not be assigned except to a trustee in bankruptcy or similar officer pursuant to the Bankruptcy Code or similar law. Without limiting the foregoing, money and investments in any Fund or

Account maintained by the Trustee under the Indenture and other funds comprising the Trust Estate are trust funds not subject to assignment by the Borrower or execution, attachment, or garnishment by any creditor of the Borrower.

Section 6.08 Observance of Indenture Covenants and Terms. The Borrower will not do, in any manner, anything which will cause or permit to occur any default under the Indenture, but will faithfully observe and perform, and will do all things necessary so that the County may observe and perform, all the conditions, covenants and requirements of the Indenture. The County agrees that it will observe and perform all obligations imposed upon it by the Indenture and the Bonds, and will not suffer or permit any default to occur under the Indenture; provided that the County has no obligation to use its own funds or funds of the State to perform or cause performance of any such obligations.

Section 6.09 Rates and Charges. The Borrower shall operate the Project Facilities on a revenue producing basis and charge such fees and rates for its services and exercise such skill and diligence as to provide income from the Borrower together with other available funds sufficient to pay promptly Debt Service Payments, all expenses of operation, maintenance and repair of the Project Facilities, enable the Borrower to have in each Fiscal Year Historical Debt Service Coverage Ratio not less than \_\_\_\_\_ for such Fiscal Year beginning with the Fiscal Year ending \_\_\_\_\_, 202\_\_ and provide all other payments required to be made by it hereunder to the extent permitted by law. In addition, the Borrower shall, from time to time as often as necessary and to the extent permitted by law, revise its rates, fees and charges in such manner as may be necessary or proper to comply with the provisions of this Section.

If the Historical Debt Service Coverage Ratio is less than \_\_\_\_ for any Fiscal Year beginning with the Fiscal Year ending June 30\_\_\_\_\_, 202\_\_, then the Borrower shall (i) retain an Independent Consultant to make recommendations with respect to the rates, fees and charges of the Project Facilities and the Borrower's methods of operation and other factors affecting its financial condition in order to increase the Historical Debt Service Coverage Ratio for subsequent Fiscal Years to at least \_\_\_\_, and (ii) notify the Trustee that the Borrower is required by this Section to retain an Independent Consultant; provided, however, the Debt Service Payments of any Parity Obligations issued to finance capital improvements to or for the Project Facilities shall not be included in the calculation of Historical Debt Service Coverage Ratio until the Fiscal Year subsequent to the Fiscal Year the capital improvements are placed in service. A copy of the report of such Independent Consultant and recommendations, if any, shall be filed with the Trustee and the Owners or beneficial owners of any Bonds that have either requested such notice in writing or have filed with the Trustee a written request to receive financial statements of the Borrower pursuant to Section 6.02. So long as the Borrower retains an Independent Consultant and complies with such Independent Consultant's reasonable recommendations to the extent not prohibited by law, and the Historical Debt Service Coverage Ratio is not less than 1.00, then no default shall be declared with respect to this Section of the Indenture, provided all required payments are being timely made under this Indenture. This Section shall not be construed to prohibit the Borrower from serving indigent patients to the extent the Borrower is required to do so or from serving any other class or classes of patients

without charge or at reduced rates so long as such service does not prevent the Borrower from satisfying the other requirements of this Section.

**Section 6.10 Liquidity Covenant.** The Borrower will use its best efforts to maintain Unrestricted Cash and Investments as of each June 30 and December 31 (the “Reporting Dates”) equal to at least \_\_\_ Days Cash on Hand on \_\_\_\_\_, 202\_\_\_ continuing on each Reporting Date thereafter. The Borrower shall provide a written certification within 60 days of each Reporting Date as required by Section 6.02(c). If the amount of Unrestricted Cash and Investments on any Reporting Date is less than the required number of Days Cash on Hand, then the Borrower shall deliver, not later than 30 days after delivery of the certificate disclosing such deficiency pursuant to Section 6.02(c), a management report setting forth reasonable reasons for such deficiency and adopting a specific plan with respect to rates, fees, charges and the Borrower’s methods of operation and other factors affecting its financial condition to increase the Unrestricted Cash and Investments to at least the required number of Days Cash on Hand for future Reporting Dates. A copy of the management report and the specific plan shall be filed with the Trustee and with all Owners or beneficial owners of any Bonds that have filed a written request to receive financial information pursuant to Section 6.2. If the Borrower has not maintained Unrestricted Cash and Investments equal to at least the required number of Days Cash on Hand for two consecutive Reporting Dates, the Borrower shall obtain, not later than 60 days from the reported deficiency, a report of an Independent Consultant setting forth the reasons for the deficiency and recommendations with respect to rates, fees, charges and the Borrower’s methods of operation and other factors affecting its financial condition in order to increase Unrestricted Cash and Investments to the required number of Days Cash on Hand for future Reporting Dates. A copy of the report of the Independent Consultant and recommendations, if any, shall be filed with the Trustee and with all Owners or beneficial owners of any Bonds that have filed a written request to receive financial information pursuant to Section 6.02. The Borrower shall follow each reasonable recommendation of the management report or Independent Consultant report to the extent permitted by law and shall not be considered in default under this Indenture so long as the Borrower follows each recommendation of the management report or Independent Consultant report to the extent permitted by law.

**Section 6.11 Restrictions as to Incurrence of Additional Parity Indebtedness; Incurrence of Subordinated Indebtedness.** I. Restrictions on Incurrence of Additional Parity Indebtedness.

So long as any of the Bonds are Outstanding, the Borrower shall not incur any Additional Parity Indebtedness except as authorized by any of the following subsections of this Section 6.11(I); provided however, that the Borrower may enter into the Series 2020B Loan Agreement and borrow the proceeds of the Series 2020B Bonds:

(a) *Long-Term Indebtedness.* Long-Term Indebtedness if prior to incurrence thereof or, if such Long-Term Indebtedness was incurred in accordance with another Subsection of this Section and the Borrower wishes to have such Indebtedness reclassified as having been issued under this Subsection (a), prior to such reclassification, there is delivered to the Trustee:

(i) *Historical Pro Forma Debt Service Coverage Test:* An Officer's Certificate demonstrating that the Historical Pro Forma Debt Service Coverage Ratio, after giving effect to the incurrence of such Indebtedness, for the most recent Fiscal Year for which audited financial statements of the Borrower are available was not less than 1.25; or

(ii) *Modified Historical Pro Forma Debt Service Coverage Test:* A written report of an Independent Consultant to the effect that the Historical Pro Forma Debt Service Coverage Ratio, after giving effect to the incurrence of such Indebtedness and adjusting revenues to reflect any estimated change in revenues resulting from any change in reimbursement rates which have become effective prior to the delivery of such report, for the most recent Fiscal Year for which audited financial statements of the Borrower are available was not less than 1.25; or

(iii) *Historical and Projected Debt Service Coverage Test:* (A) An Officer's Certificate demonstrating that the Historical Debt Service Coverage Ratio for the most recent Fiscal Year for which audited financial statements of the Borrower are available was not less than 1.25; and (B) a written report of an Independent Consultant to the effect that the Projected Debt Service Coverage Ratio for the next succeeding Fiscal Year or, if such Indebtedness is being incurred in connection with the financing of an Additional Project, the first Fiscal Year succeeding the projected completion date of the Additional Project, is not less than 1.25, which report shall include forecasted balance sheets, statements of revenues, expenses and changes in net assets and statements of cash flows for such Fiscal Year and a statement of the relevant assumptions upon which such forecasted statements are based.

(b) *Commitment Indebtedness.* Commitment Indebtedness if the Indebtedness supported by such Commitment Indebtedness was incurred in accordance with one of the provisions of this Section.

(c) *Refunding Indebtedness.* Refunding Indebtedness for the purpose of refunding (whether in advance of maturity or otherwise) any outstanding Long-Term Indebtedness, if the Borrower determines that such refunding is in the best interest of the Borrower and that, taking into account the issuance of the proposed Refunding Indebtedness and the application of the proceeds thereof and any other funds available to be applied to such refunding, the Maximum Annual Debt Service will not be increased by more than 10%.

(d) *Completion Indebtedness.* Completion Indebtedness in a principal amount not in excess of the amount required to provide completed and equipped facilities of substantially the same type and scope contemplated at the time Long-Term Indebtedness was originally incurred for that purpose and in any event not in excess of 10% of the original principal amount of such previously incurred Long-Term Indebtedness, to provide for capitalized interest during the period of construction, to provide any reserve fund relating to such Completion Indebtedness and to pay the costs and expenses of issuing or incurring such Completion Indebtedness, if before the



incurrence thereof there is delivered to the Trustee an certificate executed by an Authorized Borrower Representative stating: (1) that at the time the original Long-Term Indebtedness for the facilities to be completed was incurred, the Borrower had reason to believe that the proceeds of such Indebtedness together with other moneys then expected to be available would provide sufficient moneys for the completion of those facilities; (2) the amount estimated to be needed to so complete the facilities; and (3) that the proceeds of such Completion Indebtedness to be applied to the completion of the facilities, together with a reasonable estimate of investment income to be earned on such proceeds and available to pay such costs, the amount of moneys, if any, committed to such completion from available cash or marketable securities and reasonably estimated earnings thereon, enumerated bank loans (including letters or lines of credit) and any other moneys reasonably expected to be available, will be in an amount not less than the estimated amount needed to complete the facilities set forth in such certificate executed by an Authorized Borrower Representative.

(e) *Purchase Money Indebtedness.* Purchase Money Indebtedness if, immediately after incurring into such Purchase Money Indebtedness, the aggregate principal amount due on all Purchase Money Indebtedness outstanding under this Subsection, together with any outstanding Short-Term Indebtedness incurred under Subsection (f), will not exceed 15% of the Borrower's total operating revenues for the most recent Fiscal Year for which audited financial statements are available. All capital leases existing on the date of this Indenture shall be deemed to have been originally issued under this Subsection.

(f) *Short-Term Indebtedness.* Short-Term Indebtedness if, immediately after the incurrence of such Short-Term Indebtedness, the total principal amount of outstanding Short-Term Indebtedness under this Subsection, together with any outstanding Purchase Money Indebtedness incurred under Subsection (e), will not exceed 15% of the Borrower's total operating revenues for the most recent Fiscal Year for which audited financial statements are available; provided that for a period of at least 30 consecutive calendar days in each Fiscal Year the total amount of such Short-Term Indebtedness outstanding under this Subsection shall be not more than 5% of the Borrower's total operating revenues for the most recent Fiscal Year for which audited financial statements are available, plus such additional amount as an Authorized Borrower Representative certifies in a certificate executed by the Authorized Borrower Representative is (1) attributable to Short-Term Indebtedness incurred to offset a temporary delay in the receipt of funds due from third-party payors and (2) in the minimum amount reasonably practicable taking into account such delay.

Indebtedness may be classified and incurred under any of the above-referenced Subsections with respect to which the tests set forth in such Subsections are met. The Borrower may elect to have Indebtedness that was classified and issued pursuant to one Subsection, reclassified as having been incurred under another Subsection, by demonstrating compliance with such other Subsection on the assumption that such Indebtedness is being reissued on the date of delivery of the materials required to be delivered under such other Subsection. From and after such demonstration, such Indebtedness shall be deemed to have been incurred under the

Subsection with respect to which such compliance has been demonstrated until any subsequent reclassification of such Indebtedness.

## II. Incurrence of Subordinated Indebtedness.

Subordinated Indebtedness may be incurred without limitation.

### Section 6.12 Calculation of Debt Service

For purposes of the various calculations under this Indenture, the amount of Indebtedness of the Borrower, the amortization schedule of such Indebtedness and the Debt Service Payments with respect to such Indebtedness shall be calculated in accordance with the actual amortization schedule for such Indebtedness, except as follows:

(a) *Balloon Indebtedness.* The Debt Service Payments on Balloon Indebtedness may be deemed to be payable as follows:

(i) If there is in effect at the time any such Indebtedness is incurred Commitment Indebtedness to provide refinancing sufficient to pay the principal amount of any such Balloon Indebtedness becoming due in each Fiscal Year in which 25% or more of the original principal amount of such Balloon Indebtedness comes due, such Indebtedness may be deemed to be payable in accordance with the terms of such Commitment Indebtedness; or

(ii) If the Borrower delivers a certificate executed by an Authorized Borrower Representative to the Trustee that establishes an amortization schedule for any such Indebtedness, which provides for payments of principal and interest for each Fiscal Year that are sufficient to make any actual payments required to be made in such Fiscal Year by the terms of such Indebtedness; and the Borrower agrees in such certificate that the Borrower will deposit for each Fiscal Year with a bank or trust company (pursuant to an agreement between the Borrower and such bank or trust company), the amount of principal shown on such amortization schedule net of any amount of principal actually paid on such Indebtedness during such Fiscal Year (other than from amounts on deposit with such bank or trust company), which deposit shall be made prior to any such required actual payment during such Fiscal Year if the amounts so on deposit are intended to be the source of such actual payments, then such Indebtedness may be deemed to be payable in accordance with the terms of such amortization schedule and agreement; or

(iii) Such Indebtedness may be deemed to be Long-Term Indebtedness payable on a level annual debt service basis for 15 years from any year in which 25% or more of the original principal of which becomes due and payable, but not more than 30 years from the date of issuance or incurrence of such Indebtedness, bearing interest on the unpaid principal balance at the rate equal to the rate set forth in the 30-year Bond Buyer Revenue Bond Index most recently published in The Bond Buyer (or such other index as set forth and deemed reasonable in a report of an Independent Consultant).

(b) *Capital Appreciation Indebtedness.* The principal amount of Indebtedness that constitutes “capital appreciation indebtedness” (defined below) shall be deemed to be the “accreted value” (defined below) thereof as of the relevant date. “Capital appreciation indebtedness” means any Long-Term Indebtedness for which interest is payable only at the maturity of such Indebtedness, upon the prepayment or redemption of such Indebtedness before maturity, or upon the conversion of such Indebtedness to Indebtedness with interest payable periodically in installments prior to maturity. “Accreted value” means with respect to any capital appreciation indebtedness (a) as of any “valuation date” (defined below), the amount set forth in the supplemental indenture authorizing such Indebtedness as the value of such Indebtedness on such valuation date and (b) as of any date other than a valuation date the sum of (i) the accreted value on the next preceding valuation date and (ii) the product of (A) a fraction, the numerator of which is the number of days having elapsed from the preceding valuation date and the denominator of which is the number of days from such preceding valuation date to the next succeeding valuation date and (B) the difference between the accreted values for such valuation dates. “Valuation date” means with respect to any capital appreciation indebtedness the date or dates set forth in the supplemental indenture relating to such Indebtedness on which specific accreted values are assigned to the capital appreciation indebtedness.

(c) *Capital Leases.* The principal amount of Indebtedness in the form of a “capital lease” (defined below) shall be deemed to be the amount, as of the date of determination, at which the aggregate “net rentals” (defined below) due and to become due under such capital lease would be reflected as a liability on the balance sheet of the lessee, and the Debt Service Payments on a capital lease for the period of time for which calculated shall be deemed to be the aggregate amount of net rentals to be payable under such capital lease during such period. “Capital lease” means any lease of real or personal property that is capitalized on the balance sheet of the lessee under GAAP. “Net rentals” means all fixed rents (including as such all payments which the lessee is obligated to make to the lessor on termination of the lease or surrender of the property other than upon termination of the lease for a default thereunder) payable under such lease excluding any amounts required to be paid by the lessee (whether or not designated as rents or additional rents) on account of maintenance, repairs, insurance, interest, taxes and similar charges. Net rentals for any future period under any so called “percentage lease” shall be computed on the basis of the amount reasonably estimated to be payable thereunder for such period, but in any event not less than the amount paid or payable thereunder during the immediately preceding period of the same duration as such future period; provided that the amount estimated to be payable under any such percentage lease shall in all cases recognize any change in the applicable percentage called for by the terms of such lease.

(d) *Commitment Indebtedness.* No Debt Service Payments shall be deemed payable with respect to Commitment Indebtedness until such time as the obligation to make payments under the commitment actually rises (and only to the extent of advances actually made under such Commitment Indebtedness) except as provided in Subsection (a) or (e). From and after such funding, the amount of such debt service shall be calculated in accordance with the actual amount required to be repaid on such Commitment Indebtedness and the actual interest rate and

amortization schedule applicable thereto. No new Indebtedness shall be deemed to arise when any funding occurs under any such commitment.

(e) *Long-Term Indebtedness Supported By Commitment Indebtedness.* The Debt Service Payments on Long Term Indebtedness with respect to which Commitment Indebtedness has been incurred that would refinance such Indebtedness for a period extending beyond its original maturity date, may be deemed to be payable in accordance with the terms of such Commitment Indebtedness.

(f) *Variable Rate Indebtedness.* In determining the Debt Service Payments on any Indebtedness which provides for interest to be payable thereon at a rate per annum that may vary from time to time over the term thereof in accordance with procedures provided in the instrument creating such Indebtedness and which for any future period of time is not susceptible of precise determination, the interest rate on such Indebtedness for any period prior to the date of calculation or for which the interest rate has been determined shall be the actual interest payable during such period, and for each year in which such Indebtedness is Outstanding and for which the actual interest rate cannot be determined, the interest rate on such Indebtedness for the period of determination shall be deemed to be the average annual rate of interest payable on such Indebtedness during the 12 months (or 24 months at the option of the Borrower) immediately preceding the date of calculation, or if such Indebtedness is to be incurred or was incurred less than 12 months (or 24 months as applicable) preceding such date, (1) if the Indebtedness bears interest at Tax Exempt rates, an interest rate equal to the 12-month average of the Bond Market Association Index (as most recently published in The Bond Buyer prior to the issuance of the Indebtedness), unless such index is no longer published in The Bond Buyer, in which case the index to be used in its place shall be that index which an Authorized Borrower Representative determines most clearly replicates such index set forth in a certificate delivered to the Trustee, (2) if the Bonds bears interest at taxable rates, an interest rate equal to the rate of the thirty (30) day London Interbank Offered Rate (LIBOR) (as most recently published prior to the issuance of the Indebtedness).

*Escrowed Deposits.* Such payments shall be excluded from Debt Service Payments to the extent that cash, including proceeds of Indebtedness or Defeasance Obligations (including, where appropriate, the earnings or other increment to accrue thereon) that are on deposit in an irrevocable escrow or trust account with the Trustee or a third party escrow agent and are required to be applied to pay all or a portion of the principal of and interest on, as the same shall become due, any Indebtedness which would otherwise be considered Outstanding and such amounts so required to be applied are sufficient to pay such principal and interest.

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## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

Section 7.01 Events of Default. The following shall be “Events of Default” under this Loan Agreement and the term “Event of Default” shall mean, whenever used in this Loan Agreement, any one or more of the following events:

- (a) If the Borrower fails to pay the amount of any Loan Repayment required to be paid under Section 4.02 hereof and if, as a result thereof, the principal of, premium, if any, or interest on any Bond shall not be paid when due; or
- (b) If the Borrower shall default in the due and punctual performance of any of the other covenants, conditions, agreements and provisions contained in this Loan Agreement on the part of the Borrower to be performed, and such Default shall have continued for a period of thirty days after written notice, specifying such Default and requiring the same to be remedied, shall have been given to the Borrower by the County or Trustee; or
- (c) If any representation or warranty of the Borrower made herein or in any report, certificate or financial statement provided by the Borrower in connection with this Loan Agreement shall prove to be false or misleading in any material respect; or
- (d) If a default or event of default shall occur under the Series 2020A Loan Agreement, the Series 2020A Indenture or the Mortgage.
- (e) If the Borrower files a petition in voluntary bankruptcy, for the composition of its affairs or for its reorganization under any state or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or consents in writing to the appointment of a trustee or receiver for itself or for the whole or any substantial part of its property; or
- (f) If a court of competent jurisdiction shall enter an order, judgment or decree declaring the Borrower an insolvent, or adjudging the Borrower bankrupt, or appointing a trustee or receiver of the Borrower or of the whole or any substantial part of the property of the Borrower under any applicable law or statute of the United States of America or any State thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of the entry thereof; or
- (g) If, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Borrower or of the whole or any substantial part of its property, and such custody or control shall not be terminated within 60 days from the date of assumption of such custody or control.

The provisions of paragraph (b) of this Section are subject to the following limitations:

(1) No Default in the payment of money to the County (other than a Loan Repayment) shall become an Event of Default. (2) If by reason of force majeure the Borrower is unable in whole or in part to carry out its agreements contained herein, the Borrower shall not be deemed in default during the continuance of such disability. The term "force majeure" as used herein includes but is not limited to the following: acts of God; strikes, lockouts or other employee disturbances; acts of public enemies; orders of any kind of the government of the United States of America or of the State of South Dakota or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes, storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Borrower. (3) If the Default can be remedied but not within a period of thirty days after notice and if the Borrower has taken all action reasonably possible to remedy such Default within such thirty day period, the Default shall not become an Event of Default for so long as the Borrower shall diligently proceed to remedy such Default and in accordance with any directions or limitations of time made by the Trustee. The Borrower agrees, however, to use its best efforts to remedy with all reasonable dispatch any cause or causes preventing the Borrower from carrying out its agreements.

Section 7.02 Remedies on Default. Whenever any Event of Default shall have happened and be subsisting, any one or more of the following steps may be taken:

(a) The Trustee may declare all or any amounts of Loan Repayments thereafter to become due and payable under Section 4.02 hereof or otherwise for the remainder of the term of this Loan Agreement to be immediately due and payable, whereupon the same shall become immediately due and payable.

(b) The Trustee may take whatever action in law or in equity which appears necessary or desirable to enforce this Loan Agreement or the Indenture in accordance with the provisions thereof.

Any amounts collected by the Trustee pursuant to action taken under the foregoing paragraphs shall be applied as provided in Sections 7.05 and 7.12 of the Indenture.

Whenever any Default shall occur, the Trustee (or the County directly and without the necessity of consent of or joinder by the Trustee, with respect to Sections 4.04(b), 6.01, 7.04 and 7.05 hereof) may take whatever action at law or in equity which may appear necessary or desirable to collect the payments then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement.

Upon the occurrence of a Default, the Trustee may also take whatever action at law or equity may appear necessary or appropriate to collect the Loan Repayments then due and thereafter to become due or to enforce performance and observance of an obligation, agreement or covenant of the Borrower under this Loan Agreement or the Mortgage.

Section 7.03 Remedies Cumulative, Delay Not to Constitute Waiver. No remedy conferred upon or reserved to the County, the Trustee, or a receiver by this Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power, and any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the County, the Trustee, or a receiver to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event any agreement contained in this Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to a particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.04 Agreement to Pay Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Loan Agreement and the County or the Trustee should employ attorneys or incur other expenses for the collection of payments due or to become due hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Loan Agreement, the Borrower agrees that it will on demand therefor reimburse the reasonable fee of such attorneys and such other expenses so incurred.

Section 7.05 Advances. In the event the Borrower shall fail to pay any Loan Repayments under Section 4.02 hereof, or to do any other thing or make any other payment required to be done or made by any other provision of this Loan Agreement, the County or the Trustee, each in its own discretion, may do or cause to be done any such thing or make or cause to be made any such payment at the expense or as an advance for the account of the Borrower, and the Borrower shall pay to the County or the Trustee, as the case may be, upon demand, all costs and expenses so incurred and advances so made, with interest at the rate of eight percent (8.00%) per annum. Any such advance shall be entitled to priority of payment from any funds thereafter received from the Borrower or under Section 7.02.

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ARTICLE VIII

MISCELLANEOUS

Section 8.01 Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining in any Fund or Account maintained by the Trustee under the Indenture, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) and any additional amounts payable to the Trustee and fees, charges and expenses of any paying agents and all other amounts required to be paid under the Indenture, shall belong to and be paid to the Borrower by the Trustee as overpayment of the Loan Repayments under Section 4.02 hereof.

Section 8.02 Notices. All notices, certificates, requests or other communications hereunder shall be sufficiently given and shall be deemed given when delivered personally or mailed by either first class mail, return receipt requested, postage prepaid, addressed as follows:

- A. To the County                      Fall River County  
County Courthouse  
906 N. River Street  
Hot Springs, South Dakota 57747  
Attention: \_\_\_\_\_
  
- B. To the Borrower                      Fall River Health Services  
1201 Highway 71 South  
Hot Springs, South Dakota 57747  
Attention: \_\_\_\_\_
  
- C. To the Trustee                      \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_
  
- D. To the Original Purchaser              UMB Bank, N.A.  
927 Grand Blvd., 14<sup>th</sup> Floor  
Kansas City, Missouri 64106  
Attention: Public Finance

A duplicate copy of each notice, certificate, request or other communication given hereunder to the County, the Borrower, the Trustee or the Original Purchaser shall also be given to the others. The Borrower, the County, the Trustee and the Original Purchaser may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.



Section 8.03 Reference to Bonds Ineffective after Bonds Paid. Upon payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) and all fees and charges of the Trustee and any paying agents of the Bonds, all references in this Loan Agreement to the Bonds and the Trustee shall be ineffective and neither the Trustee nor the Holders of any of the Bonds shall thereafter have any rights hereunder, saving and accepting those that shall have heretofore vested.

Section 8.04 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the County, the Borrower and their respective successors, heirs and assigns, and subject to the further limitation that any obligation of the County created by or arising out of this Loan Agreement shall not be a general debt of the County but shall be payable solely out of the proceeds derived from this Loan Agreement or the sale of the Bonds.

Section 8.05 Amendments, Changes and Modifications. Except as otherwise provided in this Loan Agreement or in the Indenture, subsequent to the issuance of the Bonds and prior to payment of the Bonds in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, and the Indenture may not be effectively amended, changed, modified, altered or terminated except as provided in the Indenture.

Section 8.06 Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Loan Agreement.

Section 8.07 Severability. In case any section or provision of this Loan Agreement, or in case any covenant, stipulation, obligation, agreement, act, or action, or part thereof, made, assumed, entered into, or taken under this Loan Agreement, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable by reason of any law, or actions thereunder, such illegality or invalidity or inoperability shall not affect this remainder thereof or any other section or provision of the Loan Agreement or any other covenant, stipulation, obligation, agreement, act, or action, or part thereof, made, assumed, entered into, or taken under this Loan Agreement, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained therein, nor shall such illegality or invalidity or inoperability or any application thereof affect any legal and valid and operable application therefor from time to time, and each such section, provision, covenant, stipulation, obligation, agreement, act, or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

Section 8.08 Captions. The captions or headings in this Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

Section 8.09 Benefit of Bondholders. This Loan Agreement is executed in part to induce the purchase by others of Bonds to be issued by the County, and accordingly all

covenants and agreements on the part of the Borrower and the County as set forth in this Loan Agreement are hereby declared to be for the benefit of the holders from time to time of the Bonds.

Section 8.10 Limitation on Liability of the County. It is understood and agreed by the Borrower that the Bonds shall not be general obligations of the County or give rise to a charge against the general credit or taxing powers of the County, but rather shall be special obligations payable solely from revenues pledged and assigned to the payment thereof and secured by this Loan Agreement. No Holder or Holders of the Bonds shall ever have the right to compel any exercise of the taxing power of the County to pay the Bonds or the interest or premium, if any, thereon, nor to enforce payment thereof against any property of the County except the revenues under this Loan Agreement pledged to the payment thereof. No failure of the County to comply with any term, condition, covenant or agreement herein shall subject the County to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be recovered from the Project or revenues therefrom, including those derived pursuant to this Loan Agreement, and no execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing power of the County. The Bonds shall not constitute a debt of the County within the meaning of any constitutional, statutory or charter limitation. However, nothing contained in this paragraph shall impair the right of the Holder or Holders of the Bonds to enforce covenants made for the security thereof as provided under the Act.

Section 8.11 Term of Agreement. Except as otherwise provided herein, this Loan Agreement shall remain in full force and effect from the date of execution hereof until such time as the Indenture has been discharged in accordance with its terms.

[The balance of this page is intentionally left blank.]

IN WITNESS WHEREOF, the County and the Borrower have caused this Loan Agreement to be duly executed in their respective names, all as of the date first above written.

FALL RIVER COUNTY

By \_\_\_\_\_  
Chair

And by \_\_\_\_\_  
County Auditor

Signature Page to Loan Agreement between the  
Fall River County, South Dakota, and Fall River Health Services]

IN WITNESS WHEREOF, the Borrower has caused this Loan Agreement to be duly executed in its name, by its duly authorized officers, all as of the date first above written.

FALL RIVER HEALTH SERVICES

By \_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_

## EXHIBIT A

### SUBORDINATED INDEBTEDNESS PROVISIONS

Any issue of Subordinated Indebtedness shall be evidenced by instruments, or issued under an indenture or other document, containing provisions for the subordination of such Indebtedness substantially as follows (the term "debentures" being, for convenience, used in the provisions set forth below to designate the instruments issued to evidence Subordinated Indebtedness and the term "this indenture" to designate the instrument, indenture or other document containing such provisions):

\* \* \*

All debentures issued under this indenture shall be issued subject to the following provisions and each person taking or holding any such debenture whether upon original issue or upon transfer or assignment thereof accepts and agrees to be bound by such provisions.

All debentures issued hereunder and any coupons thereto appertaining shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right to the prior payment in full of Superior Indebtedness as defined in this Section. For all purposes of this Section, the term "Superior Indebtedness" shall mean the Bonds, the Series 2020B Bonds, and all bonds now or hereafter issued and secured under that certain Trust Indenture dated as of \_\_\_\_\_ 1, 2020 (the "Series 2020B Indenture"), between the Fall River County, South Dakota (the "County"), and \_\_\_\_\_, as trustee (the "Series 2020B Trustee"), as the same may hereafter from time to time be further supplemented and modified, and all bonds now or hereafter issued under that certain Trust Indenture dated as of \_\_\_\_\_ 1, 2020 (the "Series 2020B Indenture"), between the Fall River County, South Dakota (the "County"), and \_\_\_\_\_, as trustee (the "Series 2020B Trustee"), as the same may hereafter from time to time be further supplemented and modified, and all other Indebtedness (as defined in the hereinafter defined Loan Agreements) issued as Parity Obligations (as defined in the Loan Agreement dated as of \_\_\_\_\_ 1, 2020 (the "Series 2020B Loan Agreement") between the County and Fall River Health Services (the "Borrower") and the Loan Agreement dated as of \_\_\_\_\_ 1, 2020 (the "Series 2020B Loan Agreement" and, together with the Series 2020B Loan Agreement, the "Loan Agreements") between the County and the Borrower).

No payment on account of principal, premium, if any, sinking funds or interest on the debentures shall be made, nor shall any property or assets be applied to the purchase or other acquisition or retirement of the debentures, unless full payment of amounts then due and payable for principal, premium, if any, sinking funds and interest on Superior Indebtedness is made or duly provided for in accordance with the terms of such Superior Indebtedness. No payment on account of principal, premium, if any, sinking funds or interest on the debentures shall be made, nor shall any property or assets be applied to the purchase or other acquisition or retirement of the debentures, if, at the time of such payment or application or immediately after giving effect thereto, (i) there shall exist a default in the payment of principal, premium, if any, sinking funds or interest with respect to any Superior Indebtedness, or (ii) there shall have occurred any other

Event of Default with respect to any Superior Indebtedness, as defined therein or in the instrument under which the same is outstanding, permitting the Owners thereof to accelerate the maturity thereof and such Event of Default is not cured or waived or shall not have ceased to exist.

Upon any acceleration of maturity of the principal amount due on the debentures or any payment or distribution of any kind or character, whether in cash, property or securities, upon any dissolution or winding up or total or partial liquidation, reorganization or arrangement of the Borrower, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all principal, premium, if any, and interest due or to become due upon all Superior Indebtedness shall first be paid in full, or payment thereof provided for in accordance with the terms of such Superior Indebtedness, before any payment is made on account of the principal, premium, if any, or interest on the indebtedness evidenced by the debentures, and upon any such dissolution or winding up or liquidation, reorganization or arrangement, any payment or distribution of any kind or character, whether in cash, property or securities, to which the owners of the debentures or the trustee under this indenture would be entitled, except for the provisions hereof, shall be paid by the Borrower, or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, to the Trustee or the owners of the Completion Bonds, as applicable to the extent necessary to pay all Superior Indebtedness in full, before any payment or distribution is made to the owners of the indebtedness evidenced by the debentures or to the trustee under this Indenture.

In the event that, in violation of any of the foregoing provisions, any payment or distribution of any kind or character, whether in cash, property or securities, shall be received by the trustee under this indenture or by the owners of the debentures before all Superior Indebtedness is paid in full, or provision made for such payment in accordance with the terms of such Superior Indebtedness, such payment or distribution shall be held in trust for the benefit of, and shall be paid over or delivered to the Trustee or the owners of the Completion Bonds, as applicable, for application to the payment of all Superior Indebtedness remaining unpaid to the extent necessary to pay all such Superior Indebtedness in full in accordance with its terms.

No present or future owner of Superior Indebtedness shall be prejudiced in his right to enforce subordination of the indebtedness evidenced by the debentures by any act or failure to act on the part of the Borrower or anyone in custody of its assets or property.

The foregoing subordination provisions shall be for the benefit of the owners of Superior Indebtedness and may be enforced by the Trustee and/or the owners of the Completion Bonds against the owners of debentures or any trustee thereof; provided, however: (i) that the foregoing provisions are solely for the purpose of defining the relative rights of the owners of Superior Indebtedness on the one hand and the owners of the subordinated debt on the other hand, and that nothing herein shall impair, as between the Borrower and the owners of the subordinated debt, the obligation of the Borrower, which is unconditional and absolute, to pay to the owners thereof the principal thereof, premium, if any, and interest thereon in accordance with its terms, nor shall anything herein prevent the owners of the subordinated debt or the trustee on their behalf from exercising all remedies otherwise permitted by applicable law or hereunder upon default

hereunder, subject to the rights set forth above of the owners of Superior Indebtedness to receive cash, property or securities otherwise payable or deliverable to the owners of the subordinated debt, (ii) that upon any payment or distribution of assets of the Borrower of the character referred to in the fourth paragraph of the foregoing provisions, the trustee under this indenture shall be entitled to rely upon any order or decree of a court of competent jurisdiction in which such dissolution, winding up, liquidation, reorganization or arrangement proceedings are pending, and upon a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making any such payment or distribution, delivered to said trustee for the purpose of ascertaining the persons entitled to participate in such distribution, the owners of Superior Indebtedness and other indebtedness of the Borrower, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to the foregoing provisions, and (iii) that the trustee under this indenture and any paying agent hereunder shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of moneys to or by such trustee or such paying agent, unless and until such trustee or such paying agent, as the case may be, shall have received written notice thereof from the Borrower or from one or more owners of Superior Indebtedness, or from the Trustee or the owners of the Completion Bonds.





Gilmore & Bell, P.C.  
Draft – September 30, 2020

**[\$[Principal Amount]**  
**FALL RIVER COUNTY, SOUTH DAKOTA**  
**ECONOMIC DEVELOPMENT REFUNDING REVENUE BONDS**  
**(FALL RIVER HEALTH SERVICE PROJECT)**  
**SERIES 2020B**

\_\_\_\_\_, 2020

**BOND PURCHASE AGREEMENT**

Fall River County, South Dakota  
Hot Springs, South Dakota

Fall River Health Service  
Hot Springs, South Dakota

Ladies and Gentlemen:

On the basis of the representations, warranties and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, the undersigned, UMB Bank, N.A. (the “Purchaser”), hereby offers to purchase from Fall River County, South Dakota, a municipal corporation duly organized and existing under the laws of the State of South Dakota (the “County”), its Economic Development Refunding Revenue Bonds (Fall River Health Service Project) Series 2020B, in the principal amount of \$[Principal Amount] (the “Bonds”), which Bonds are being issued pursuant to an ordinance of the County authorizing the issuance of said Bonds (the “Ordinance”) and a Trust Indenture dated as of November 1, 2020, (the “Indenture”) between the County and UMB Bank, N.A., as trustee (the “Trustee”). Capitalized terms used herein have the meanings set forth in the Indenture unless some other meaning is plainly indicated.

The Bonds are being issued for the purposes of providing funds, together with certain funds of Fall River Health Service, a South Dakota nonprofit corporation (the “Borrower”), to (a) refinance a portion of certain outstanding indebtedness of the Borrower (the “Refunded Indebtedness”), (b) establish a Reserve Fund for the Bonds, and (c) pay certain costs associated with the issuance of the Bonds.

In connection with the issuance of the Bonds, the County is entering into a Loan Agreement (the “Loan Agreement”) with the Borrower. Under the Loan Agreement, the Borrower is required to complete the refunding of the Refunded Indebtedness and to make Loan Repayments in amounts and at times sufficient to provide for payment in full of all principal of, premium, if any, and interest on the Bonds when due. The Bonds will be secured by a Mortgage on a parity basis with the Borrower’s obligations relating to City of Hot Springs, South Dakota Economic Development Refunded Revenue Bonds (Fall River Health Service Project) Series 2020A (the “Series 2020A Bonds,” and together with the Bonds, the “Series 2020 Bonds”), a portion of the proceeds of which the Borrower expects to use to refund a portion of the Refunded Indebtedness. The issuance of the Series 2020B Bonds is not conditioned upon the

issuance of the Series 2020A Bonds. The Borrower's obligations under the Loan Agreement will be secured by the Mortgage. The Indenture, Loan Agreement, and Mortgage are referred to in this Bond Purchase Agreement as the "Bond Documents."

This offer is made subject to acceptance of this Bond Purchase Agreement by the County and the Borrower on or before 7:00 p.m., Hot Springs time, on \_\_\_\_\_, 2020.

## **SECTION 1. ISSUER'S REPRESENTATIONS AND WARRANTIES**

By acceptance hereof, the County hereby represents and warrants to the Purchaser that:

(a) The County is a municipal corporation, duly organized and existing under the laws of the State of South Dakota, is authorized to provide for issuance of the Bonds as hereinafter described. The Bonds are issued under the authority of South Dakota Codified Laws, Chapter 9-54, as amended, and Chapter 6-B, as amended (the "Act").

(b) The County has complied with all provisions of the Constitution and the laws of the State of South Dakota, including particularly the Act, and has full power and authority to consummate all transactions contemplated by the Bond Documents to which it is a party and this Bond Purchase Agreement, and all other agreements relating thereto.

(c) The County has duly authorized by all necessary action to be taken by the County (1) the issuance and sale of the Bonds upon the terms set forth herein and in the Indenture and the Official Statement; (2) the execution, delivery and performance of this Bond Purchase Agreement and the Bond Documents to which the County is a party; (3) the approval of the Official Statement; (4) the execution and performance of any and all such other agreements and documents as may be required to be executed, delivered and performed by the County in order to carry out, give effect to and consummate the transactions contemplated by the Indenture, the Loan Agreement and this Bond Purchase Agreement; and (5) the carrying out, giving effect to and consummation of the transactions contemplated by the Indenture, the Loan Agreement and this Bond Purchase Agreement. Executed counterparts of the Bond Documents and all such other agreements and documents specified herein will be delivered to the Purchaser by the County at the Closing Time (as defined below).

(d) The Indenture, the Loan Agreement and this Bond Purchase Agreement, when executed and delivered by the County, will be the legal, valid and binding obligations of the County enforceable in accordance with their terms, except to the extent that enforcement thereof may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors' rights generally or against entities such as the County and further subject to the availability of equitable remedies.

(e) The Bonds have been duly authorized by the County, and when issued, delivered and paid for as provided for herein and in the Indenture, will have been duly executed, authenticated, issued and delivered and will constitute valid and binding obligations of the County enforceable in accordance with their terms and entitled to the benefits and security of the Indenture (subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors' rights generally or against entities such as the County and further subject to the availability of equitable remedies). Except for application of the revenues to be received from the Hospital under the Loan Agreement to the payment of the Bonds, which revenues the County assigns to the Trustee pursuant to the Indenture, the County has no obligation

to make any payment in respect of the Bonds, and there is no right to resort to any other revenues or properties of the County for payment of the Bonds.

(f) The execution and delivery of the Indenture, the Loan Agreement, this Bond Purchase Agreement and the Bonds and compliance with the provisions thereof, will not conflict with or constitute on the part of the County a violation or breach of, or a default under, any existing law, regulation, court or administrative decree or order, or any agreement, mortgage, lease or other instrument to which it is subject or by which it is or may be bound.

(g) The County is not, or with the giving of notice or lapse of time or both would not be, in violation of or in default under any indenture, mortgage, deed of trust, loan agreement, bonds or other agreement or instrument to which the County is a party or by which it is or may be bound, except for violations and defaults which individually and in the aggregate are not material to the County and will not be material to the holders of the Bonds. As of the Closing Time, no event will have occurred and be continuing which with the lapse of time or the giving of notice, or both, would constitute an event of default under the Indenture, the Loan Agreement or the Bonds.

(h) The information contained in the Preliminary Official Statement dated October \_\_, 2020, amended and supplemented by the final Official Statement, and in any amendment or supplement thereto that may be authorized for use by the County with respect to the Bonds (collectively, the "Official Statement"), under the captions "THE COUNTY" and "LITIGATION—The County," is, and as of the Closing Time will be, true, correct and complete in all material respects and does not omit and will not omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(i) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the County, threatened against or affecting the County (or, to its knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or by the Indenture or the Loan Agreement or the validity of the Bonds, the Indenture, the Loan Agreement, this Bond Purchase Agreement or any agreement or instrument to which the County is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or by the Indenture.

Any certificate signed by any of the authorized officials of the County and delivered to the Purchaser in connection with the Closing shall be deemed a representation and warranty by the County to the Purchaser as to the statements made therein.

## **SECTION 2. CORPORATION'S REPRESENTATIONS AND WARRANTIES**

By acceptance hereof, the Borrower hereby represents and warrants to the Purchaser, that:

(a) The Borrower is a South Dakota nonprofit corporation and authorized to do business in and in good standing under the laws of the State and has full power and authority under the laws of the State of South Dakota and its Articles of Incorporation and Bylaws to enter into the transactions contemplated by this Bond Purchase Agreement, the Bond Documents and any and all other agreements relating thereto and to carry out its obligations hereunder and thereunder.

(b) The Borrower is not operated for private or corporate profit and is an organization described in Section 501(a) of the Internal Revenue Code of 1986, as amended (the

“Code”), and is exempt from tax under Section 501(c)(3) of the Code. The Borrower has received a ruling or letter from the Internal Revenue Service to that effect, and such ruling or letter has not been modified, limited or revoked. The Borrower is in compliance with all terms, conditions and limitations, if any, contained in such ruling or letter. The facts and circumstances which form the basis for such ruling or letter as represented to the Internal Revenue Service continue substantially to exist and the Borrower agrees that it shall not perform any acts which could adversely affect such federal income tax status. The Borrower’s operation of the Project Facilities and application of Bond proceeds will be in pursuance of the Borrower’s exempt purposes. The Borrower is not a “private foundation” as defined in Section 509(a) of the Code and has not declared and has not been determined to have, and does not have, any “unrelated business taxable income” as defined in Section 512 of the Code (except as reported by the Borrower on its Form 990-Ts filed with the Internal Revenue Service), and has no such “unrelated business taxable income” (including that reported on its Form 990-Ts) that could have a material adverse effect on its status as an organization described in Section 501(c)(3) of the Code or that, if such income were subject to federal income taxation, could have a material adverse effect on the condition, financial or otherwise, of the Borrower.

(c) The Borrower has duly authorized by all necessary action to be taken by the Borrower (i) the execution, delivery or receipt, as appropriate, of this Bond Purchase Agreement, the Bond Documents to which the Borrower is a party and any and all such other agreements and documents as may be required to be executed, delivered or received by the Borrower in order to carry out, give effect to and consummate the transactions contemplated hereby or by the Official Statement; and (ii) the carrying out, giving effect to and consummation of the transactions contemplated hereby or by the Official Statement. Executed counterparts of the Official Statement and the Bond Documents to which the Borrower is a party will be delivered to the Purchaser at the Closing Time.

(d) This Bond Purchase Agreement and the Bond Documents to which the Borrower is a party, when executed and delivered by the Borrower, will be the legal, valid and binding obligations of the Borrower enforceable in accordance with their terms, except to the extent that enforcement thereof may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors’ rights generally and by the availability of equitable remedies.

(e) The execution and delivery of this Bond Purchase Agreement, the Bond Documents to which the Borrower is a party, and the other agreements contemplated hereby or by the Official Statement, and the performance by the Borrower of its obligations under the aforementioned, do not and will not violate the Articles of Incorporation or Bylaws of the Borrower or any existing law, court or administrative regulation, decree or order or any agreement, indenture, mortgage, lease, note or other obligation or instrument to which the Borrower is subject or by which it is or may be bound, and no approval or other action by any governmental authority or agency is required in connection therewith.

(f) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the Borrower’s knowledge, threatened against or affecting the Borrower (or, to the Borrower’s knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would have a material adverse effect on the transactions contemplated hereby or by the Official Statement or the validity or enforceability of the Bonds, any of the Bond Documents, this Bond Purchase Agreement or any agreement or documents which is used or contemplated for use in the consummation of the transactions contemplated hereby or by the Official Statement.

(g) The information contained in the Official Statement is, and as of the Closing Time will be, true and does not omit and will not omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, except that the Borrower makes no representation regarding the information contained in the Official Statement under the captions “THE COUNTY,” “BOOK-ENTRY ONLY SYSTEM,” “TAX MATTERS,” “UNDERWRITING,” or “LITIGATION – The County.”

(h) For the purpose of enabling the Purchaser to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, promulgated under the Securities Exchange Act of 1934 (the “1934 Act”), the Borrower hereby deems the information contained in the Preliminary Official Statement to be “final” as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1), such as offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, identity of the underwriters and other terms of the Bonds depending on such matters.

(i) The audited consolidated financial statements of the Borrower for the fiscal years ended December 31, 2018 and 2019 and the unaudited financial information of the Borrower, as of and for the 8-month-periods ended August 31, 2019 and 2020, which has been prepared by the Borrower, is contained in the Official Statement, and any other later available unaudited financial information of the Borrower in connection with the transactions contemplated hereby present fairly and accurately the financial position of the Borrower as of the dates indicated and the results of their operations for the periods specified, and such financial reports and statements have been prepared in conformity with generally accepted accounting principles consistently applied in all material respects to the periods involved.

(j) The Borrower has not, since the end of the last fiscal year for which audited financial information is included in the Official Statement incurred any material liabilities and there has been no material adverse change since such date in the financial position of the Borrower other than as set forth in the Official Statement.

(k) No notification of or filing with, or consent or approval of any governmental agency or entity is required with respect to the operation of the Project Facilities or the transactions contemplated by the Official Statement, which has not been made or obtained, as the case may be. The financing of the costs of the Project Facilities, as contemplated by the Official Statement, is consistent with and does not violate or conflict with the terms of the various consents or approvals of any such agencies or entities.

(l) The Borrower has or on the Closing Date will have fee title to or a valid leasehold interest in all of its material properties (including the Project Facilities) subject to lease, free and clear of all encumbrances, except Permitted Encumbrances (as defined in the Mortgage).

(m) The Borrower will enter into a Continuing Disclosure Agreement between the Borrower and UMB Bank, N.A., as dissemination agent (the “Continuing Disclosure Agreement”), pursuant to which the Borrower will agree to provide the annual and quarterly financial information and event notices to information repositories in the manner and to the extent required by Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (“Rule 15c2-12”), and in a manner and to the extent described in the Preliminary Official Statement under the caption “CONTINUING DISCLOSURE.”

(n) No event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute an Event of Default under the Bond Documents.

Any certificate signed by an authorized officer of the Borrower delivered to the County or the Purchaser shall be deemed a representation and warranty by the Borrower to such parties as to the statements made therein.

### **SECTION 3. COVENANTS AND AGREEMENTS OF THE COUNTY AND THE CORPORATION**

The County and the Borrower covenant and agree with the Purchaser for the time period specified, and if no period is specified, for so long as any of the Bonds remain outstanding, as follows:

(a) To cooperate with the Purchaser and its counsel in any reasonable endeavor to qualify the Bonds for offering and sale under the securities or "Blue Sky" laws of such jurisdictions of the United States as the Purchaser may reasonably request; and the Borrower shall, if so requested by the Purchaser, with respect to the offer or sale of the Bonds, file written consents to suit and file written consents to service of process in any jurisdiction in which such consent may be required by law or regulation so that the Bonds may be offered or sold. The County and the Borrower consent to the use of drafts of the Preliminary Official Statement, the Preliminary Official Statement and drafts of the Official Statement prior to the availability of the Official Statement by the Purchaser in obtaining such qualification. The Purchaser shall pay all expenses and costs (including legal, registration and filing fees) incurred in connection therewith.

(b) If, prior to the earlier of (1) 90 days after the "end of the underwriting period" (as defined in Rule 15c2-12 under the 1934 Act) or (2) the time when the Official Statement is available to any person from a nationally recognized municipal securities information repository, but in no case earlier than 25 days after the end of the underwriting period, any event shall occur as a result of which it is necessary to amend or supplement the Official Statement in order to make the statements therein, in the light of the circumstances existing when the Official Statement is delivered to a purchaser, not materially misleading, or the Official Statement is required to be amended or supplemented to comply with law, the County and the Borrower shall promptly prepare and furnish, at the expense of the Borrower, to the Purchaser and to the dealers (whose names and addresses the Purchaser will furnish to the County) to which Bonds may have been sold by the Purchaser and to any other dealers upon request, such amendments or supplements to the Official Statement as may be necessary so that the statements in the Official Statement as so amended or supplemented will not, in the light of the circumstances existing when the Official Statement is delivered to a purchaser of the Bonds, be misleading or so that the Official Statement will comply with law.

(c) Within seven business days after the date of this Bond Purchase Agreement or within sufficient time to accompany any confirmation that requests payment from any customer of the Purchaser, whichever is earlier, the County and the Borrower shall provide to the Purchaser sufficient copies of the Official Statement to enable the Purchaser to comply with the requirements of Rule 15c2-12(b)(4) under the 1934 Act, and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

(d) From the date hereof until the Closing Time, the County and the Borrower shall furnish the Purchaser with a copy of any proposed amendment or supplement to the Official Statement for review and shall not use any such proposed amendment or supplement to which the Purchaser reasonably objects.

#### **SECTION 4. PURCHASE, SALE AND DELIVERY OF THE BONDS**

On the basis of the representations, warranties, covenants and agreements contained herein and in the other agreements and documents referred to herein, and subject to the terms and conditions herein set forth, at the Closing Time the Purchaser agrees to purchase from the County and the County agrees to sell to the Purchaser the Bonds at a purchase price of \$\_\_\_\_\_ (which gives effect to an underwriter's discount of \$\_\_\_\_\_). The Bonds shall be issued under and secured as provided in the Indenture, and the Bonds shall have the maturities and interest rates and be subject to redemption as set forth in **Schedule 1** attached hereto.

Payment for the Bonds shall be made by federal wire transfer of immediately available federal funds payable to the order of the Trustee for the account of the County. The closing shall be held at the offices Dorsey & Whitney LLP, Des Moines, Iowa, at 9:00 a.m., local time, on \_\_\_\_\_, 2020, or such other place, time or date as shall be mutually agreed upon by the County and the Purchaser. Upon such payment, the Bonds shall be delivered and released upon the instructions of the Purchaser to The Depository Trust Company, New York, New York. The date of such delivery and payment is herein called the "Closing Date," and the hour and date of such delivery and payment is herein called the "Closing Time."

The delivery of the Bonds shall be made in definitive form, as fully registered bonds duly executed and authenticated and bearing CUSIP numbers (provided neither the printing of a wrong number on any Bond nor the failure to print a number thereon shall constitute cause to refuse delivery of any Bond) to The Depository Trust Company or its designated agent.

#### **SECTION 5. ESTABLISHMENT OF ISSUE PRICE.**

For purposes of this section the following definitions shall apply:

"Agreement" means this Bond Purchase Agreement.

"Effective Time" means the time on the Sale Date that this Agreement to purchase the Series 2020B Bonds becomes enforceable.

"Holding Period" means with respect to each Undersold Maturity the period beginning on the Sale Date and ending on the earlier of the following:

- (1) the close of the fifth (5<sup>th</sup>) business day after the Sale Date; or
- (2) the date and time at which the Purchaser has sold at least 10% of that Undersold Maturity of the Series 2020B Bonds to the Public at one or more prices that are no higher than the Initial Offering Price.

"Initial Offering Price" means the price listed on **Schedule 1** for each Maturity.

"Maturity" means Series 2020B Bonds with the same credit and payment terms; Series 2020B Bonds with different maturity dates, or Series 2020B Bonds 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 Underwriting Firm or a related party to an Underwriting Firm. An Underwriting Firm and a person are related if it and the person are subject, directly or indirectly, to (A) more than 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).

“Sale Date” means the date of execution of this Agreement.

“Undersold Maturity” or “Undersold Maturities” means any Maturity for which less than 10% of the principal amount of Series 2020B Bonds of that Maturity have been sold.

“Underwriting Firm” means (A) any person that agrees pursuant to a written contract with the Issuer or the Borrower (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2020B Bonds to the Public, and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) of this definition to participate in the initial sale of the Series 2020B Bonds to the Public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Series 2020B Bonds to the Public).

The Purchaser represents and agrees as follows:

1. As of the Effective Time all of the Series 2020B Bonds have been the subject of an initial offering to the Public.
2. As of the Effective Time none of the Series 2020B Bonds have been sold to any person at a price higher than the Initial Offering Price for that Maturity.
3. During the Holding Period each Underwriting Firm agrees it will not offer nor sell Series 2020B Bonds of an Undersold Maturity to the Public at a price that is higher than the respective Initial Offering Price for that Undersold Maturity.
4. Any separate agreement among any Underwriting Firm related to the sale of an Undersold Maturity during the Holding Period does or shall contain the agreement referenced in 3 above.
5. The Purchaser will assist the Issuer in establishing the issue price of the Series 2020B Bonds and shall execute and deliver to the Issuer at Closing 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 Purchaser, the Issuer and Bond Counsel, to demonstrate, as applicable, the sales price or prices or the Initial Offering Price of the Series 2020B Bonds.

## **SECTION 6. USE OF OFFICIAL STATEMENT**

The County and the Borrower hereby ratify and confirm the Purchaser’s use of the Preliminary Official Statement; and the County and the Borrower authorize, and will make available, the Official Statement for the use by the Purchaser in connection with the sale of the Bonds.

## **SECTION 7. CONDITIONS TO THE PURCHASER’S OBLIGATIONS**



The Purchaser's obligations hereunder shall be subject to the due performance by the County and the Borrower of their respective obligations and agreements to be performed hereunder at or prior to the Closing Time and to the accuracy and completeness of the County's and the Borrower's representations and warranties contained herein, as of the date hereof and as of the Closing Time, and are also subject to the following conditions:

(a) The Bonds and the Bond Documents shall have been duly authorized, executed and delivered in the form heretofore approved by the Purchaser with only such changes therein as shall be mutually agreed upon by the Purchaser, the County and the Borrower.

(b) At the Closing Time, the Purchaser shall receive:

(1) The opinion in form and substance satisfactory to the Purchaser, dated as of the Closing Date, of Dorsey & Whitney LLP, Bond Counsel, relating to the valid authorization and issuance of the Bonds, the due authorization and adoption of the Indenture by the County, the exclusion of interest on the Bonds from gross income for federal income tax purposes and certain other matters and the supplemental opinion of Bond Counsel in form satisfactory to the Purchaser;

(2) The opinion dated as of the Closing Date of Lynn, Jackson, Schultz and Lebrun, P.C., counsel to the Borrower, in form satisfactory to the Purchaser;

(3) The opinion, in form and substance acceptable to the Purchaser, dated as of the Closing Date, of Gilmore & Bell, P.C., the Purchaser's counsel.

(4) Certified copies of resolutions or ordinances, as appropriate, of the County and the Borrower authorizing or approving, as appropriate, the execution and delivery of the Official Statement, this Bond Purchase Agreement, the Bond Documents and the Bonds, together with certificates dated the Closing Date to the effect that such resolutions or ordinances have not been modified, amended or repealed;

(5) A certificate of the County, satisfactory in form and substance to the Purchaser, dated as of the Closing Date, to the effect that (i) there is no action, suit, proceeding or, to the knowledge of the County, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to the knowledge of the County, threatened against or affecting the County, its officers or its property or, to the knowledge of the County, any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or by the Bond Documents or the Official Statement or the validity or enforceability of the Bonds or the Bond Purchase Agreement, which are not disclosed in the Official Statement; (ii) to the knowledge of the County, the information contained in the Official Statement under the captions "THE COUNTY" and "LITIGATION—The County," is true in all material respects and does not contain any untrue statement of a material fact and does not omit 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; (iii) the County has duly authorized, by all necessary action, the execution, delivery and due performance by the County of the Bond Documents to which the County is a party and this Bond Purchase Agreement; and (iv) the representations and warranties of the County set forth herein were accurate and complete as of the date hereof and are accurate and complete as of the Closing Time;

(6) A certificate of the Borrower, satisfactory in form and substance to the Purchaser, dated as of the Closing Date, to the effect that (i) since the date of the Preliminary Official Statement there has not been any material adverse change in the business, properties, financial condition or results of operations of the Borrower, whether or not arising from transactions in the ordinary course of business, from that set forth in the Preliminary Official Statement, and except in the ordinary course of business or as set forth in the Preliminary Official Statement, the Borrower has not incurred any material liability; (ii) there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower, its officers or its property or, to the knowledge of the Borrower, any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the Borrower, the transactions contemplated hereby or by the Bond Documents or the Official Statement or the validity or enforceability of the Bonds or the Bond Purchase Agreement, which are not disclosed in the Official Statement; (iii) the information contained in the Official Statement (other than the information contained in the Official Statement under the captions "THE COUNTY," "BOOK-ENTRY ONLY SYSTEM," "TAX MATTERS," "UNDERWRITING," or "LITIGATION – The County") is true in all material respects and does not contain any untrue statement of a material fact and does not omit 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; (iv) the Borrower has duly authorized, by all necessary action, the execution, delivery and due performance by the Borrower of this Bond Purchase Agreement; and (v) the representations and warranties of the Borrower set forth herein were accurate and complete as of the date hereof and are accurate and complete as of the Closing Time;

(7) The Continuing Disclosure Agreement duly executed by the Borrower and the Trustee; and

(8) Such additional certificates, legal and other documents, listed on a closing agenda to be approved by Bond Counsel and counsel to the Purchaser, as the Purchaser may reasonably request to evidence performance or compliance with the provisions hereof and the transactions contemplated hereby and by the Bond Documents, or as Bond Counsel shall require in order to render its opinion, all such certificates and other documents to be satisfactory in form and substance to the Purchaser.

## **SECTION 8. CONDITIONS TO THE COUNTY'S OBLIGATIONS**

The obligations of the County hereunder are subject to the Purchaser's performance of its obligations hereunder.

## **SECTION 9. THE PURCHASER'S RIGHT TO CANCEL**

The Purchaser shall have the right to cancel its obligations hereunder to purchase the Bonds (which cancellation shall not constitute a default for purposes of **Section 4** hereof) by notifying the County and the Borrower in writing or by telegram of its election to make such cancellation prior to the Closing Time, if at any time prior to the Closing Time:

(a) The Preliminary Official Statement deemed by the Borrower to be "final" pursuant to **Section 2(h)** is thereafter amended or supplemented in a manner that may, in the reasonable judgment of the Purchaser, have a material adverse effect on the marketability of the Bonds.

(b) A committee of the House of Representatives or the Senate of the Congress of the United States shall have pending before it legislation which, if enacted in its form as introduced or as amended, would have the purpose or effect of imposing federal income taxation upon revenues or other income of the general character to be derived by the County or by any similar body or upon interest received on obligations of the general character of the Bonds, or the Bonds, which, in the Purchaser's opinion, materially adversely affects the market price of the Bonds;

(c) A tentative decision with respect to legislation shall be reached by a committee of the House of Representatives or the Senate of the Congress of the United States, or legislation shall be favorably reported by such a committee or be introduced, by amendment or otherwise, in or be passed by the House of Representatives or the Senate, or be recommended to the Congress of the United States for passage by the President of the United States, or be enacted by the Congress of the United States, or a decision by a court established under Article III of the Constitution of the United States or the Tax Court of the United States shall be rendered, or a ruling, regulation or order of the Treasury Department of the United States or the Internal Revenue Service shall be made or proposed having the purpose or effect of imposing federal income taxation, or any other event shall have occurred which results in the imposition of federal income taxation, upon revenues or other income of the general character to be derived by the County or by any similar body or upon interest received on obligations of the general character of the Bonds, or the Bonds, which, in the Purchaser's opinion, materially and adversely affects the market price of the Bonds;

(d) Any legislation, ordinance, rule or regulation shall be introduced in or be enacted by the Legislature of the State of South Dakota or by any other governmental body, department or agency of the State of South Dakota, or a decision by any court of competent jurisdiction within the State of South Dakota shall be rendered which, in the Purchaser's opinion, materially and adversely affects the market price of the Bonds, or litigation challenging the law under which the Bonds are to be issued shall be filed in any court in the State of South Dakota;

(e) A stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including all underlying obligations, as contemplated hereby or by the Official Statement, is in violation or would be in violation of any provision of the Securities Act of 1933, as amended (the "1933 Act"), the 1934 Act or the Trust Indenture Act of 1939, as amended;

(f) Legislation shall be enacted by the Congress of the United States of America, or a decision by a court of the United States of America shall be rendered, to the effect that obligations of the general character of the Bonds, or the Bonds, including all the underlying obligations, are not exempt from registration under or from other requirements of the 1933 Act or the 1934 Act;

(g) Any event shall have occurred, or information become known, which, in the Purchaser's opinion, makes untrue in any material respect any statement or information contained in the Preliminary Official Statement as originally circulated, or has the effect that the Preliminary Official Statement as originally circulated contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(h) Additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange;

(i) The New York Stock Exchange or any other national securities exchange, or any governmental authority, shall impose, as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Purchaser;

(j) Any general banking moratorium shall have been established by federal, New York or South Dakota authorities;

(k) A material default shall have 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 County located in the United States having a population in excess of one million persons or any entity issuing obligations on behalf of such a County or state which, in the Purchaser's opinion, materially adversely affects the market price of the Bonds;

(l) Any proceeding shall be pending or threatened by the Securities and Exchange Commission against the County or the Borrower; or

(m) A war involving the United States shall have been declared, or any conflict involving the armed forces of the United States shall have escalated, or any other national emergency relating to the effective operation of government or the financial community shall have occurred, which, in the Purchaser's opinion, materially adversely affects the market price of the Bonds.

## SECTION 10. INDEMNIFICATION AND CONTRIBUTION

(a) *Borrower.* The Borrower agrees, to the extent legally permitted, to indemnify and hold harmless the Purchaser and any director, officer, employee or controlling person (within the meaning of Section 15 of the 1933 Act) of the Purchaser and the County and any member, officer, official, employee or controlling person of the County (collectively, the "Indemnified Parties"), against any and all losses, claims, damages, liabilities or expenses whatsoever caused by any untrue statements or misleading statement or allegedly misleading statement of a material fact contained in the Official Statement or caused by any omission or alleged omission from the Official Statement of any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall have no indemnification obligation with respect to any statement or omission in the information contained in the Official Statement under the headings "Underwriting" or "The County."

(b) *Purchaser.* The Purchaser agrees to indemnify and hold harmless the County, the Borrower, and each director, member, officer, official, employee or controlling person (within the meaning of Section 15 of the 1933 Act) of the County or the Borrower, (collectively, the "Indemnified Parties") against any and all losses, claims, damages, liabilities or expenses whatsoever caused by any untrue statements or misleading statement or allegedly misleading statement of a material fact contained in the Official Statement or caused by any omission or alleged omission from the Official Statement of any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading; provided that such indemnification shall be limited solely to statements that appear in, or matter omitted pertaining to material appearing under the caption

“Underwriting” or such information in the Official Statement setting forth the principal amount, interest rates and prices of the Bonds.

(c) *Procedures.* In case a claim shall be made or any action shall be brought against one or more of the Indemnified Parties for which indemnification may be sought against the Borrower under paragraph (a) or against the Purchaser under paragraph (b) (as, applicable, the “Indemnifying Party”), the Indemnified Parties shall promptly notify the Indemnifying Party in writing, and the Indemnifying Party shall promptly assume the defense thereof, including with the consent of the Indemnified Party, which consents shall not be unreasonably withheld, the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel with respect to any such claim or 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 Indemnified Party or Indemnified Parties unless the employment of such counsel has been specifically authorized, in writing, by the Indemnifying Party or there is a conflict of interest that would prevent counsel for the Indemnifying Party from adequately representing both the Indemnifying Party and the Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any such action effected without its written consent, but if settled with the written consent of the Indemnifying Party or if there be a final judgment for the plaintiff in any such action which the Indemnifying Party is required hereunder to assume the defense of, the Indemnifying Party agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of settlement or judgment.

(d) *Contribution.* In the event and to the extent that an Indemnified Party is entitled to indemnification from the Indemnifying Party under the terms of paragraph (a) or (b) above in respect of any of the losses, claims, damages, liabilities or expenses referred to therein, but such indemnification is unavailable to an Indemnified Party in respect of any such losses, claims, damages, liabilities or expenses referred to in paragraph (a) or (b) above, due to such indemnification being impermissible under applicable law or otherwise, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative benefits received by the Indemnifying Party and the Indemnified Party, respectively, from the offering of the Bonds, the relative fault of the Indemnifying Party and such Indemnified Party, respectively, in connection with the statements or omissions which resulted in such claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact related to information supplied by the Indemnifying Party or the Indemnified Party and the relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission of the Indemnifying Party or the Indemnified Party. The Borrower, the Purchaser and the County, respectively, agree that it would not be just and equitable if contribution pursuant to this paragraph (d) were determined by pro rata allocation or by any other method of allocation which does not take into account the equitable considerations referred to above in this paragraph (d). The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages or liabilities referred to above in this paragraph (d) shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Party in connection with defending any such action or claim. This paragraph (d) shall not apply in the event of losses, claims, damages, liabilities or expenses caused by or attributable to the willful misconduct or gross negligence of an Indemnified Party. Notwithstanding anything to the contrary contained in this paragraph (d), it is understood and agreed that this paragraph (d) is not intended, and shall not be construed, to expand, broaden or increase in any way, whether in terms of scope, amount or otherwise, the liability of the Borrower or the Purchaser in respect of any of the losses, claims, damages, liabilities or expenses referred to in paragraphs (a) and (b) above or this paragraph (d) or otherwise, as that liability is set forth in paragraphs (a) and (b) above.

(e) *Survival.* The covenants and agreements of the Borrower and the Purchaser in this **Section 10** shall survive the delivery of the Bonds.

#### **SECTION 11. PAYMENT OF EXPENSES**

Whether or not the Bonds are sold by the County to the Purchaser (unless such sale be prevented at the Closing Time by the Purchaser's default), the Purchaser shall be under no obligation to pay any expenses incident to the performance of the obligations of the County or the Borrower hereunder. If the Bonds are sold by the County to the Purchaser, all expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds (including, without limitation, the fees and disbursements of Gilmore & Bell, P.C., as Bond Counsel, the fees and disbursements of the Purchaser, in connection with the offering and sale of the Bonds and the expenses and costs for the preparation, printing, photocopying, execution and delivery of the Bonds, the Official Statement, this Bond Purchase Agreement and all other agreements and documents contemplated hereby) will be paid by the Borrower. If the Bonds are not sold by the County to the Purchaser (unless such sale be prevented at the Closing Time by the Purchaser's default), all such expenses and costs shall be paid by the Borrower.

#### **SECTION 12. NO FIDUCIARY RELATIONSHIP**

The County and the Borrower acknowledge and agree that: (i) the primary role of the Purchaser is to purchase the Bonds in an arm's-length commercial transaction between the County and the Purchaser, and that the Purchaser has financial and other interests that differ from those of the County and the Borrower (ii) the Purchaser is not acting as a municipal advisor, financial advisor or fiduciary to the County, the Borrower or any other person or entity and has not assumed any advisory or fiduciary responsibility to the County or the Borrower with respect to the transaction contemplated hereby and the discussions, undertakings and proceedings leading thereto (irrespective of whether the Purchaser has provided other services or is currently providing other services to the County on other matters), (iii) the only obligations the Purchaser has to the County or the Borrower with respect to the transaction contemplated hereby expressly are set forth in this Bond Purchase Agreement, and (iv) the County and the Borrower have consulted their own legal, accounting, tax, financial and other advisors, as applicable, to the extent each has deemed appropriate in connection with the transaction contemplated hereby.

#### **SECTION 13. NOTICE**

Any notice or other communication to be given under this Bond Purchase Agreement may be given by mailing or delivering the same in writing to the applicable person, as follows:

(a) If to the County:

Fall River County  
906 N. River Street  
Hot Springs, South Dakota 57747  
Attention: County Auditor

(b) If to the Borrower:

Fall River Health Service  
1201 Highway 71 South  
Hot Springs, South Dakota 57747  
Attention: Chief Financial Officer

(c) If to the Purchaser:

UMB Bank, N.A.  
928 Grand Blvd, 14<sup>th</sup> Floor  
Kansas City, MO 64106  
Attention: Scott A. Crist, Vice President

**SECTION 14. APPLICABLE LAW: NONASSIGNABILITY**

This Bond Purchase Agreement shall be governed by the laws of the State of South Dakota. This Bond Purchase Agreement shall not be assigned.

**SECTION 15. EXECUTION OF COUNTERPARTS**

This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

**SECTION 16. RIGHTS HEREUNDER**

This Bond Purchase Agreement is made for the benefit of the County, the Borrower and the Purchaser and no other person including any purchaser of the Bonds shall acquire or have any rights hereunder or by virtue hereof.

[Remainder of page intentionally left blank]

**SECTION 17. EFFECTIVE DATE**

This Bond Purchase Agreement shall become effective upon acceptance hereof by the County and the Borrower.

Upon your acceptance of the offer, the foregoing agreement will be binding upon each of you and the Purchaser. Please acknowledge your agreement with the foregoing by executing the enclosed copy of this Bond Purchase Agreement prior to the date and time specified on page 2 hereof and returning it to the undersigned.

Very truly yours,

**UMB BANK, N.A.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and agreed to as of  
the date first above written.

**FALL RIVER COUNTY, SOUTH DAKOTA**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**FALL RIVER HEALTH SERVICE**

By: \_\_\_\_\_  
Title: Chief Executive Officer



SCHEDULE 1

MATURITIES, AMOUNTS, INTEREST RATES AND PRICES

\$[Principal Amount]  
FALL RIVER COUNTY, SOUTH DAKOTA  
ECONOMIC DEVELOPMENT REFUNDING REVENUE BONDS  
(FALL RIVER HEALTH SERVICE PROJECT)  
SERIES 2020B

Serial Bonds

<u>Due</u> <u>1</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Price</u>
------------------------	-----------------------------------	--------------------------------	--------------

The Bonds are subject to optional redemption prior to maturity as described below.

*Optional Redemption.* Series 2020B Bonds maturing on or after [Maturity Month] 1, 20\_\_ are subject to optional redemption on [Maturity Month] 1, 20\_\_ or any date thereafter, in whole or in part, and if in part, in such principal amounts and maturities as the Hospital may designate, at a redemption price of par plus accrued interest to the date fixed for redemption, but without any premium.

*Mandatory Sinking Fund Redemption of Series 2020B Bonds.* The Series 2020B Bonds maturing on [Maturity Month] 1, 20\_\_, and [Maturity Month] 1, 20\_\_, are subject to mandatory redemption pursuant to the operation of the mandatory Sinking Fund provided for in the Indenture, from Loan Repayments to be made by the Hospital under the Loan Agreement, in such manner as the Trustee may determine, at a redemption price equal to the principal amount thereof to be redeemed, plus accrued interest to the redemption date, on [Maturity Month] 1 of the years and in the principal amounts, as follows:

For the 20\_\_ Term Bonds

<u>Year</u>	<u>Amount</u>
-------------	---------------

\*Stated Maturity

For the 20\_\_ Term Bonds

Year

Amount

Year

Amount

\*\*Final Maturity

**EXHIBIT A**

**UNDERWRITER'S RECEIPT FOR BONDS AND CLOSING CERTIFICATE**

**FALL RIVER COUNTY, SOUTH DAKOTA  
ECONOMIC DEVELOPMENT REFUNDING REVENUE BONDS  
(FALL RIVER HEALTH SERVICE PROJECT)  
SERIES 2020B**

The undersigned, on behalf of UMB Bank, N.A. (the "Purchaser"), as the Purchaser of the above-described bonds (the "Bonds"), being issued on the date of this Certificate by City of Hot Springs, South Dakota (the "County"), the proceeds of which are being loaned to Fall River Health Service, a South Dakota nonprofit corporation (the "Borrower"), certifies and represents as follows:

**1. Receipt for Bonds.** The Purchaser acknowledges receipt on the issue date of the Bonds consisting of fully registered Bonds in authorized denominations in a form acceptable to the Underwriter.

**2. Issue Price.**

The Purchaser represents as follows:

(a) Attached as **Attachment 1** is a copy of the pricing wire or similar communication used to communicate the Initial Offering Price of each Maturity to the Public.

(b) As of the Effective Time all the Bonds were the subject of an initial offering to the Public.

(c) As of the Effective Time none of the Bonds were sold to any person at a price higher than the Initial Offering Price for that Maturity.

(d) As of the Effective Time there were no Undersold Maturities.

(e) Defined terms used in this certificate shall have the meanings set forth in the Bond Purchase Agreement for the Bonds.

This certificate may be relied upon by the Issuer, the Trustee and the Borrower in executing and delivering the Tax Agreement, and by Dorsey & Whitney LLP., Bond Counsel, in rendering its opinion relating to the exclusion from federal gross income of the interest on the Bonds.

Dated: \_\_\_\_\_, 2020

**UMB BANK, N.A.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**Attachment A**

**Initial Offering Price Documentation**

[Attach Pricing Wire or Other Initial Offering Price Documentation]

IN WITNESS WHEREOF, the FALL RIVER COUNTY by its County Commission has caused this Indenture to be signed in its name by its duly authorized officers, all as of the day and year first above written.

FALL RIVER COUNTY

By \_\_\_\_\_  
Chair

And By \_\_\_\_\_  
County Auditor

Signature Page to Trust Indenture,  
between Fall River County and UMB Bank, N.A.

- A. To the County                      Fall River County, South Dakota  
County Courthouse  
906 N. River Street  
Hot Springs, South Dakota 57747  
Attention: \_\_\_\_\_
  
- B. To the Borrower                      Fall River Health Services  
1201 Highway 71 South  
Hot Springs, South Dakota 57747  
Attention: [CEO]
  
- C. To the Trustee                      UMB Bank, N.A.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_
  
- D. To the Original Purchaser              UMB Bank, N.A.  
928 Grand Blvd., 14<sup>th</sup> Floor  
Kansas City, Missouri 64106  
Attention: \_\_\_\_\_

[The balance of this page is intentionally left blank]

## CONTRACT FOR HEALTH CARE SERVICES

This Agreement is entered between Fall River Health Services, 1201 Hwy 71 South, Hot Springs, South Dakota 57747 hereinafter referred to as "FRHS" and Fall River County, 906 North River Street, Hot Springs, South Dakota 57747 hereinafter referred to as "COUNTY." The parties agree as follows:

- 1) **SCOPE OF SERVICES:** COUNTY hereby contracts with FRHS to provide healthcare services for inmates that are under arrest by any law enforcement agency that are being held prior to being charged that cannot be otherwise freely released back into the public or inmates that are currently incarcerated within the COUNTY jail, as well as victims of crimes covered under the Crime Victims Assistance Program.
- 2) **TERM.** This Agreement shall be effective on October 1, 2020, and shall end on September 30, 2021, unless sooner terminated pursuant to the terms hereof. This contract will be automatically renewed on subsequent one year terms unless terminated pursuant to the terms of section 5 Termination.
- 3) **COMPENSATION.** FRHS will be compensated at the rate of 70% of billed charges for all services provided. COUNTY is the payor of last resort. Any available alternative coverage will be billed prior to billing the COUNTY for services provided.
- 4) **BUSINESS ASSOCIATE AGREEMENT.** The parties acknowledge that they will send and receive patient information and medical records under this Agreement. Accordingly, the parties have entered into a Business Associate Agreement which is attached hereto as Attachment 1 and is incorporated herein by this reference.
- 5) **TERMINATION.** This Agreement may be terminated in the following manner:
  - a. TERMINATION DUE TO LACK OF LEGAL AUTHORITY. This Agreement may be terminated immediately if FRHS is determined to lack the legal capacity to fulfill this Agreement due to the lack of certification or licensure.
  - b. TERMINATION WITHOUT CAUSE. This Agreement may be terminated without cause by either party by providing sixty (60) days' written notice to the other party.
  - c. TERMINATION FOR CAUSE. This Agreement may be terminated with 30 day notice for good cause, such as a deficiency in the quality of service provided by FRHS or non-payment for services by the COUNTY.
- 6) **LIABILITY INSURANCE.** FRHS shall maintain current general professional liability insurance with a limit of not less than one million dollars (\$1,000,000.00) for each occurrence and three million dollars (\$3,000,000.00) in the aggregate. If insurance provided by FRHS is provided on claims made basis, then FRHS shall provide "tail" coverage for a period of five (5) years after the termination of coverage.
- 7) **BUSINESS AUTOMOBILE LIABILITY INSURANCE.** FRHS will maintain business automobile liability insurance or its equivalent with a limit of not less than \$500,000.00 for each occurrence. That insurance will include coverage for owned, hired or non-owned vehicles.
- 8) **WORKER'S COMPENSATION INSURANCE.** In the event FRHS utilizes its employees in performing the terms of this Agreement, FRHS shall procure and maintain worker's compensation and employer's liability insurance for those employees.

- 9) **INDEMNIFICATION.** FRHS agrees to hold harmless and indemnify the County, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require FRHS to be responsible for or defend against claims or damages arising solely from errors or omissions of the COUNTY, its officers, agents or employees.
- 10) **LICENSURE.** FRHS and any employees, subcontractors or agents of FRHS who perform services pursuant to this Agreement shall be licensed, certified or registered, as appropriate, in their respective areas of professional expertise as required by applicable South Dakota state law. Any such employees, subcontractors and agents who are or become subject to license revocation, suspension, or the institution of disciplinary proceedings, will be suspended immediately by FRHS upon discovery by FRHS and shall remain suspended pending the outcome of such proceedings. FRHS shall immediately notify COUNTY upon discovery. A failure to give such notice will constitute good cause under Section 5. The foregoing suspension requirement may be waived as to an employee or agent only upon written approval by the COUNTY.
- 11) **MEDICAL RECORDS.** FRHS will maintain complete and adequate medical records for each resident who receives healthcare services from FRHS. Such medical records will be maintained in accordance with applicable laws and standards including, without limitation, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and related regulations.
- 12) **NOTICE.** Unless otherwise provided in this Agreement, all notices or other communications required to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered personally by hand or by certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at the following address or to any other person at any other address as may be designated in writing by the parties:
- a. Fall River Health Services  
Jesse Naze, CFO  
1201 Hwy 71 South  
Hot Springs, SD 57747
  - b. Fall River County  
Sue Ganje, County Auditor  
900 N. River St.  
Hot Springs, SD 57747
- 13) **FORCE MAJEURE.** Notwithstanding anything in this Agreement to the contrary, neither party shall be liable for any delay or failure to perform under the terms and conditions of this Agreement, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, earthquake or any act of God, or other causes beyond the party's reasonable control. Provided, however, that in order to be excused from delay or failure to perform, the party must act diligently to remedy the cause of such delay or failure and must give notice to the other party as provided in this Agreement as soon as reasonably possible of the length and cause of the delay in performance.
- 14) **MODIFICATION.** This Agreement may be modified or amended only by a written agreement, executed with the same formalities as this instrument.
- 15) **WAIVER OF BREACH.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision in this Agreement.
- 16) **SEVERABILITY.** In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement which shall remain in full force and effect.
- 17) **ENTIRE AGREEMENT.** This Agreement embodies the entire agreement of the parties and supersedes all previous communications, representations, or agreements, either verbal or written, between the parties.

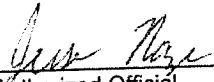


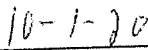
- 18) **HEADINGS.** The headings in this Agreement are for convenience and reference only and shall not govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

**AUTHORIZED SIGNATURES:**

In witness hereto, the Parties signify their agreement by affixing their signatures hereto.

Fall River Health Services

  
\_\_\_\_\_  
Authorized Official

  
\_\_\_\_\_  
Date

Fall River County

\_\_\_\_\_  
Authorized Official

\_\_\_\_\_  
Date

## ATTACHMENT A: BUSINESS ASSOCIATES AGREEMENT

This Agreement is made as of the 1<sup>st</sup> day of October, 2020, (“the Effective Date”) by and between Fall River Health Services (“Covered Entity”), a South Dakota non-profit corporation, and Fall River County (“Business Associate”).

In consideration of the mutual covenants contained in the Agreement and intending to be legally bound, and in consideration of other agreements creating a business associate relationship between Covered Entity and Business Associate, the parties agree as follows:

### **Section 1. Definitions:**

- a) **Breach:** “*Breach*” means the acquisition, access, use or disclosure of PHI in a manner that is not permitted by the HIPAA Privacy Regulations, as may be amended from time to time and is not excluded from the definition of “Breach” found at 45 C.F.R. 164.402. In the event of any inconsistency between the definition of “Breach” in this Agreement and the definition in the HIPAA Regulations, the definition in the HIPAA Regulations will control.
- b) **HITECH Act:** “*HITECH Act*” shall mean the Health Information Technology for Economics and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act, Pub. L. No. 111-5.
- c) **Privacy Regulations:** “*Privacy Regulations*” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- d) **Security Regulations:** “*Security Regulations*” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- e) **Secretary:** “*Secretary*” shall mean the Secretary of the Federal Department of Health and Human Services.
- f) **Unsecured Protected Health Information:** “*Unsecured Protected Health Information*” shall mean Protected Health Information in any form, including electronic, paper or verbal, that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the Secretary pursuant to the HITECH Act, as such guidance may be updated by the Secretary from time to time.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. 160.103, 164.304, and 164.501.

### **Section 2. Obligations and Activities of Business Associate:**

Business Associate agrees to:

- a) Not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
- b) Use appropriate safeguards, and comply with Subpart C of 45 CFR with respect to electronic protected health information, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d) Immediately (not more than five (5) days) report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410,

and any security incident of which it becomes aware. With respect to Breaches of Unsecured Protected Health Information, such report shall include at least the following information:

- 1) The identity of each individual whose information was accessed, acquired or disclosed during the breach.
  - 2) A brief description of what happened.
  - 3) The date of discover of the breach.
  - 4) The nature of the Unsecured Protected Health Information that was involved (e.g., social security numbers, date of birth, etc.).
  - 5) Any steps individuals should take to protect themselves from potential harm resulting from the breach.
  - 6) A brief descriptions of what the Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches.
- e) Reimburse Covered Entity for all breach notification costs incurred as a result of Business Associate's or Business Associate's subcontractor's breach of this Agreement or HIPAA requirements.
  - f) In accordance with 45 CFR 154.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirement that apply to the Business Associate with respect to such information.
  - g) Provide access to Protected Health Information in a designated record set to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR 164.524.
  - h) Make any amendment(s) to Protected Health Information in a Designated Record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526 within the time and in the manner designated by Covered Entity.
  - i) Make its internal practices, books, and records, including policies and procedures and Protected Health Information relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Regulations.
  - j) Maintain and make available to Covered Entity documentation of disclosures of Protected Health Information and information related to such disclosures as required for Covered Entity or Business Associate to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
  - k) Provide to Covered Entity or an Individual information collected in accordance with Section 2(j) of this Agreement, to satisfy the requirements for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528 or Section 13405(c)(3) of the HITECH Act.
  - l) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, and comply with the provisions of the Security Rule identified in Section 3(a)(1)(B) of this Agreement.
  - m) Ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it.
  - n) Report to Covered Entity within 5 days any material attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

### Section 3. Permitted Uses and Disclosers by Business Associates:

a) Statutory Duties:

- 1) Business Associate acknowledges that it has a statutory duty under the HITECH Act to, among other duties:
  - i. Use and disclose Protected Health Information only in compliance with 45 CFR 164.504(e) (the provisions of which have been incorporated into this Agreement).
  - ii. Comply with 45 CFR 164.308 ("Security Standards: General Rules"), 164.310 ("Administrative Safeguards"), 164.312 ("Technical Safeguards"), and 164.316 ("Policies and Procedures and Documentation Requirements"). In complying with 45 CFR 164.312 ("Technical Safeguards"), Business Associate shall consider guidance issued by the Secretary pursuant to Section 13401(c) of the HITECH Act and, if a decision is made to not follow such guidance, document the rationale for that decision.
- 2) Business Associate acknowledges that its failure to comply with these or any other statutory duties could result in civil and/or criminal penalties under 42 U.S.C. 1320d- 5 and 1320d-6.

b) General Use and Disclosure: Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to any underlying agreements between the parties, provided that such use or disclosure would not violate the Privacy Regulations if done by Covered Entity or the Covered Entity's minimum necessary policies and procedures.

c) Specific Use and Disclosure Provisions:

- 1) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 2) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 3) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).
- 4) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).
- 5) As of the effective date of Section 13405(d) of the HITECH Act, business Associate may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by the Act or regulations issued by the Secretary.
- 6) Business Associate may use the Protected Health Information only for the specific uses and disclosures as defined in any agreements between the parties.

#### **Section 4. Obligations of Covered Entity:**

##### **Covered Entity Shall:**

- a) Notify Business Associate of any limitation(s) in its Notice of Privacy Practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b) Notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- c) Notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

#### **Section 5. Permissible Requests by Covered Entity:**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

#### **Section 6. Term and Termination:**

- a) **Term:** The Term of this Agreement shall be effective as of the Effective Date and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is not feasible to return or destroy the Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- b) **Termination for Cause:** Upon Covered Entity's knowledge of a material breach by Business Associate or any subcontractor engaged by Business Associate, Covered Entity shall either:
  - 1) Provide an opportunity for Business Associate to cure the breach or end the violation. Covered Entity retains the right to terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity.
  - 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  - 3) If neither termination nor cure is feasible, report the violation to the Secretary.
- c) **Effect of Termination:**
  - 1) Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Neither Business Associate nor any of its subcontractors will not retain any copies in any form of the Protected Health Information.
  - 2) In the event that Business Associate or any of its subcontractors determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Covered Entity and Business Associate that return or destruction of Protected Health Information is not feasible, Business Associate

shall extend the protections of the Agreement to such Protected Health information and limit further uses and disclosures of such Protected Health Information to those purposed that make the return or destruction infeasible, for so long as Business Associate Maintains such Protected Health Information.

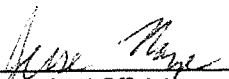
**Section 7. Miscellaneous:**

- a) **Regulatory References.** A reference in this Agreement to a section in the Privacy Regulations or Security Regulations means the section in effect, or as amended.
- b) **Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Regulations, the Security Regulations, the Health Insurance Portability and Accountability Act, and the HITECH Act and its implementing regulations or any other local, state or federal laws which may be imposed on Covered Entity.
- c) **Survival.** The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement.
- d) **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with Privacy Regulations, the Security Regulations, the Health Insurance Portability and Accountability Act, and the HITECH Act or other applicable legal authority.
- e) **Identity Theft Regulations.** To the extent that Business Associate provides services in connection with an account maintained by the Covered Entity that permits patients to make multiple payments for services rendered by the Covered Entity (including, but not limited to, billing and collection services), Business Associate shall have and follow policies to detect and prevent identity theft in accordance with the identity theft regulations of the Federal Trade Commission, 16 CFR 681.2. In addition, in such case Business Associate shall: (1) report to Covered Entity and pattern, practice, or specific activity that indicates the possible existence of identity theft ("Red Flags") involving anyone associated with Covered Entity, including its patients, employees, and contractors, and (2) take appropriate steps to prevent or mitigate identity theft when a Red Flag is detected.
- f) **Independent Contractor.** Business Associate is an independent contractor rather than an agent of Covered Entity. Nothing in this agreement creates an employer/employee relationship between Covered Entity and Business Associate or any relationship other than that of independently contracted entities.

The parties have caused this Agreement to be executed on date first written above.

Fall River Health Services

Fall River County

  
\_\_\_\_\_  
Authorized Official

\_\_\_\_\_  
Authorized Official

10-1-20  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## CONTRACT FOR HEALTH CARE SERVICES

This Agreement is entered between Fall River Health Services, 1201 Hwy 71 South, Hot Springs, South Dakota 57747 hereinafter referred to as "FRHS" and Fall River County, 906 North River Street, Hot Springs, South Dakota 57747 hereinafter referred to as "COUNTY." The parties agree as follows:

- 1) **SCOPE OF SERVICES:** COUNTY hereby contracts with FRHS to provide healthcare services for inmates that are under arrest by any law enforcement agency that are being held prior to being charged that cannot be otherwise freely released back into the public or inmates that are currently incarcerated within the COUNTY jail, as well as victims of crimes covered under the Crime Victims Assistance Program.
- 2) **TERM.** This Agreement shall be effective on October 1, 2020, and shall end on September 30, 2021, unless sooner terminated pursuant to the terms hereof. This contract will be automatically renewed on subsequent one year terms unless terminated pursuant to the terms of section 5 Termination.
- 3) **COMPENSATION.** FRHS will be compensated at the rate of 70% of billed charges for all services provided. COUNTY is the payor of last resort. Any available alternative coverage will be billed prior to billing the COUNTY for services provided.
- 4) **BUSINESS ASSOCIATE AGREEMENT.** The parties acknowledge that they will send and receive patient information and medical records under this Agreement. Accordingly, the parties have entered into a Business Associate Agreement which is attached hereto as Attachment 1 and is incorporated herein by this reference.
- 5) **TERMINATION.** This Agreement may be terminated in the following manner:
  - a. TERMINATION DUE TO LACK OF LEGAL AUTHORITY. This Agreement may be terminated immediately if FRHS is determined to lack the legal capacity to fulfill this Agreement due to the lack of certification or licensure.
  - b. TERMINATION WITHOUT CAUSE. This Agreement may be terminated without cause by either party by providing sixty (60) days' written notice to the other party.
  - c. TERMINATION FOR CAUSE. This Agreement may be terminated with 30 day notice for good cause, such as a deficiency in the quality of service provided by FRHS or non-payment for services by the COUNTY.
- 6) **LIABILITY INSURANCE.** FRHS shall maintain current general professional liability insurance with a limit of not less than one million dollars (\$1,000,000.00) for each occurrence and three million dollars (\$3,000,000.00) in the aggregate. If insurance provided by FRHS is provided on claims made basis, then FRHS shall provide "tail" coverage for a period of five (5) years after the termination of coverage.
- 7) **BUSINESS AUTOMOBILE LIABILITY INSURANCE.** FRHS will maintain business automobile liability insurance or its equivalent with a limit of not less than \$500,000.00 for each occurrence. That insurance will include coverage for owned, hired or non-owned vehicles.
- 8) **WORKER'S COMPENSATION INSURANCE.** In the event FRHS utilizes its employees in performing the terms of this Agreement, FRHS shall procure and maintain worker's compensation and employer's liability insurance for those employees.

- 9) **INDEMNIFICATION.** FRHS agrees to hold harmless and indemnify the County, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require FRHS to be responsible for or defend against claims or damages arising solely from errors or omissions of the COUNTY, its officers, agents or employees.
- 10) **LICENSURE.** FRHS and any employees, subcontractors or agents of FRHS who perform services pursuant to this Agreement shall be licensed, certified or registered, as appropriate, in their respective areas of professional expertise as required by applicable South Dakota state law. Any such employees, subcontractors and agents who are or become subject to license revocation, suspension, or the institution of disciplinary proceedings, will be suspended immediately by FRHS upon discovery by FRHS and shall remain suspended pending the outcome of such proceedings. FRHS shall immediately notify COUNTY upon discovery. A failure to give such notice will constitute good cause under Section 5. The foregoing suspension requirement may be waived as to an employee or agent only upon written approval by the COUNTY.
- 11) **MEDICAL RECORDS.** FRHS will maintain complete and adequate medical records for each resident who receives healthcare services from FRHS. Such medical records will be maintained in accordance with applicable laws and standards including, without limitation, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and related regulations.
- 12) **NOTICE.** Unless otherwise provided in this Agreement, all notices or other communications required to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered personally by hand or by certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at the following address or to any other person at any other address as may be designated in writing by the parties:
- a. Fall River Health Services  
Jesse Naze, CFO  
1201 Hwy 71 South  
Hot Springs, SD 57747
  - b. Fall River County  
Sue Ganje, County Auditor  
900 N. River St.  
Hot Springs, SD 57747
- 13) **FORCE MAJEURE.** Notwithstanding anything in this Agreement to the contrary, neither party shall be liable for any delay or failure to perform under the terms and conditions of this Agreement, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, earthquake or any act of God, or other causes beyond the party's reasonable control. Provided, however, that in order to be excused from delay or failure to perform, the party must act diligently to remedy the cause of such delay or failure and must give notice to the other party as provided in this Agreement as soon as reasonably possible of the length and cause of the delay in performance.
- 14) **MODIFICATION.** This Agreement may be modified or amended only by a written agreement, executed with the same formalities as this instrument.
- 15) **WAIVER OF BREACH.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision in this Agreement.
- 16) **SEVERABILITY.** In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement which shall remain in full force and effect.
- 17) **ENTIRE AGREEMENT.** This Agreement embodies the entire agreement of the parties and supersedes all previous communications, representations, or agreements, either verbal or written, between the parties.



18) **HEADINGS.** The headings in this Agreement are for convenience and reference only and shall not govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

**AUTHORIZED SIGNATURES:**

In witness hereto, the Parties signify their agreement by affixing their signatures hereto.

Fall River Health Services

Fall River County

  
\_\_\_\_\_  
Authorized Official

\_\_\_\_\_  
Authorized Official

10-1-20  
Date

\_\_\_\_\_  
Date

## ATTACHMENT A: BUSINESS ASSOCIATES AGREEMENT

This Agreement is made as of the 1<sup>st</sup> day of October, 2020, (“the Effective Date”) by and between Fall River Health Services (“Covered Entity”), a South Dakota non-profit corporation, and Fall River County (“Business Associate”).

In consideration of the mutual covenants contained in the Agreement and intending to be legally bound, and in consideration of other agreements creating a business associate relationship between Covered Entity and Business Associate, the parties agree as follows:

### **Section 1. Definitions:**

- a) **Breach:** “*Breach*” means the acquisition, access, use or disclosure of PHI in a manner that is not permitted by the HIPAA Privacy Regulations, as may be amended from time to time and is not excluded from the definition of “Breach” found at 45 C.F.R. 164.402. In the event of any inconsistency between the definition of “Breach” in this Agreement and the definition in the HIPAA Regulations, the definition in the HIPAA Regulations will control.
- b) **HITECH Act:** “*HITECH Act*” shall mean the Health Information Technology for Economics and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act, Pub. L. No. 111-5.
- c) **Privacy Regulations:** “*Privacy Regulations*” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- d) **Security Regulations:** “*Security Regulations*” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- e) **Secretary:** “*Secretary*” shall mean the Secretary of the Federal Department of Health and Human Services.
- f) **Unsecured Protected Health Information:** “*Unsecured Protected Health Information*” shall mean Protected Health Information in any form, including electronic, paper or verbal, that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the Secretary pursuant to the HITECH Act, as such guidance may be updated by the Secretary from time to time.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. 160.103, 164.304, and 164.501.

### **Section 2. Obligations and Activities of Business Associate:**

Business Associate agrees to:

- a) Not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
- b) Use appropriate safeguards, and comply with Subpart C of 45 CFR with respect to electronic protected health information, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d) Immediately (not more than five (5) days) report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410,

and any security incident of which it becomes aware. With respect to Breaches of Unsecured Protected Health Information, such report shall include at least the following information:

- 1) The identity of each individual whose information was accessed, acquired or disclosed during the breach.
  - 2) A brief description of what happened.
  - 3) The date of discover of the breach.
  - 4) The nature of the Unsecured Protected Health Information that was involved (e.g., social security numbers, date of birth, etc.).
  - 5) Any steps individuals should take to protect themselves from potential harm resulting from the breach.
  - 6) A brief descriptions of what the Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches.
- e) Reimburse Covered Entity for all breach notification costs incurred as a result of Business Associate's or Business Associate's subcontractor's breach of this Agreement or HIPAA requirements.
  - f) In accordance with 45 CFR 154.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirement that apply to the Business Associate with respect to such information.
  - g) Provide access to Protected Health Information in a designated record set to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR 164.524.
  - h) Make any amendment(s) to Protected Health Information in a Designated Record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526 within the time and in the manner designated by Covered Entity.
  - i) Make its internal practices, books, and records, including policies and procedures and Protected Health Information relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Regulations.
  - j) Maintain and make available to Covered Entity documentation of disclosures of Protected Health Information and information related to such disclosures as required for Covered Entity or Business Associate to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
  - k) Provide to Covered Entity or an Individual information collected in accordance with Section 2(j) of this Agreement, to satisfy the requirements for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528 or Section 13405(c)(3) of the HITECH Act.
  - l) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, and comply with the provisions of the Security Rule identified in Section 3(a)(1)(B) of this Agreement.
  - m) Ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it.
  - n) Report to Covered Entity within 5 days any material attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

### **Section 3. Permitted Uses and Disclosers by Business Associates:**

a) **Statutory Duties:**

- 1) Business Associate acknowledges that it has a statutory duty under the HITECH Act to, among other duties:
  - i. Use and disclose Protected Health Information only in compliance with 45 CFR 164.504(e) (the provisions of which have been incorporated into this Agreement).
  - ii. Comply with 45 CFR 164.308 ("Security Standards: General Rules"), 164.310 ("Administrative Safeguards"), 164.312 ("Technical Safeguards"), and 164.316 ("Policies and Procedures and Documentation Requirements"). In complying with 45 CFR 164.312 ("Technical Safeguards"), Business Associate shall consider guidance issued by the Secretary pursuant to Section 13401(c) of the HITECH Act and, if a decision is made to not follow such guidance, document the rationale for that decision.
- 2) Business Associate acknowledges that its failure to comply with these or any other statutory duties could result in civil and/or criminal penalties under 42 U.S.C. 1320d-5 and 1320d-6.

b) **General Use and Disclosure:** Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to any underlying agreements between the parties, provided that such use or disclosure would not violate the Privacy Regulations if done by Covered Entity or the Covered Entity's minimum necessary policies and procedures.

c) **Specific Use and Disclosure Provisions:**

- 1) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 2) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 3) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).
- 4) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).
- 5) As of the effective date of Section 13405(d) of the HITECH Act, business Associate may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by the Act or regulations issued by the Secretary.
- 6) Business Associate may use the Protected Health Information only for the specific uses and disclosures as defined in any agreements between the parties.

#### **Section 4. Obligations of Covered Entity:**

##### **Covered Entity Shall:**

- a) Notify Business Associate of any limitation(s) in its Notice of Privacy Practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b) Notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- c) Notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

#### **Section 5. Permissible Requests by Covered Entity:**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

#### **Section 6. Term and Termination:**

- a) **Term:** The Term of this Agreement shall be effective as of the Effective Date and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is not feasible to return or destroy the Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- b) **Termination for Cause:** Upon Covered Entity's knowledge of a material breach by Business Associate or any subcontractor engaged by Business Associate, Covered Entity shall either:
  - 1) Provide an opportunity for Business Associate to cure the breach or end the violation. Covered Entity retains the right to terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity.
  - 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  - 3) If neither termination nor cure is feasible, report the violation to the Secretary.
- c) **Effect of Termination:**
  - 1) Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Neither Business Associate nor any of its subcontractors will not retain any copies in any form of the Protected Health Information.
  - 2) In the event that Business Associate or any of its subcontractors determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Covered Entity and Business Associate that return or destruction of Protected Health Information is not feasible, Business Associate

shall extend the protections of the Agreement to such Protected Health information and limit further uses and disclosures of such Protected Health Information to those purposed that make the return or destruction infeasible, for so long as Business Associate Maintains such Protected Health Information.

**Section 7. Miscellaneous:**

- a) Regulatory References. A reference in this Agreement to a section in the Privacy Regulations or Security Regulations means the section in effect, or as amended.
- b) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Regulations, the Security Regulations, the Health Insurance Portability and Accountability Act, and the HITECH Act and its implementing regulations or any other local, state or federal laws which may be imposed on Covered Entity.
- c) Survival. The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement.
- d) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with Privacy Regulations, the Security Regulations, the Health Insurance Portability and Accountability Act, and the HITECH Act or other applicable legal authority.
- e) Identity Theft Regulations. To the extent that Business Associate provides services in connection with an account maintained by the Covered Entity that permits patients to make multiple payments for services rendered by the Covered Entity (including, but not limited to, billing and collection services), Business Associate shall have and follow policies to detect and prevent identity theft in accordance with the identity theft regulations of the Federal Trade Commission, 16 CFR 681.2. In addition, in such case Business Associate shall: (1) report to Covered Entity and pattern, practice, or specific activity that indicates the possible existence of identity theft ("Red Flags") involving anyone associated with Covered Entity, including its patients, employees, and contractors, and (2) take appropriate steps to prevent or mitigate identity theft when a Red Flag is detected.
- f) Independent Contractor. Business Associate is an independent contractor rather than an agent of Covered Entity. Nothing in this agreement creates an employer/employee relationship between Covered Entity and Business Associate or any relationship other than that of independently contracted entities.

The parties have caused this Agreement to be executed on date first written above.

Fall River Health Services

Fall River County

  
\_\_\_\_\_  
Authorized Official

\_\_\_\_\_  
Authorized Official

10-1-20  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

EXHIBIT A

NOTICE OF INTENTION TO ISSUE REVENUE BONDS OR NOTES  
(FALL RIVER HEALTH SERVICES PROJECT)

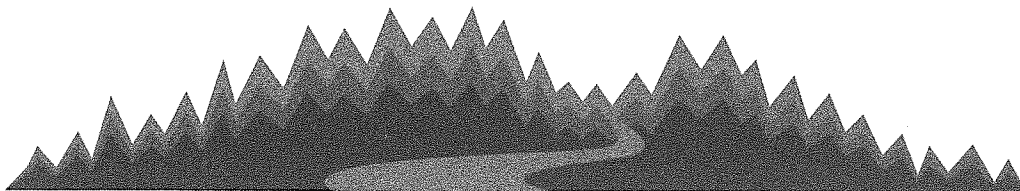
The County Commission of Fall River County, South Dakota, (the "County") will meet on the 20th day of October, 2020, at \_\_: \_\_ \_\_.m., at the County Courthouse, 906 North River Street, Hot Springs, South Dakota, for the purpose of conducting a public hearing on the proposal to issue revenue refunding bonds or notes, in one or more series, of the County, in an aggregate principal amount not to exceed \$10,000,000 in one or more series (the "Bonds"), and to loan said amount to Fall River Health Services, a South Dakota nonprofit corporation (the "Borrower"), for the purpose of providing funds to the Borrower to (a) refinance certain outstanding indebtedness of the Borrower, the proceeds of which were used to acquire, construction, furnish and equip a new 25- bed hospital facility and ancillary services, a 48-bed new nursing facility attached to the hospital, a physician's outpatient clinic, and site and other improvements, all located at 1201 Highway 71 South, Hot Springs, South Dakota 57747 (the "Project") (b) to fund any necessary reserve funds, and (c) to pay certain costs of issuance and certain other costs associated with the issuance of the Bonds. The Project and the facilities refinanced by the Bonds will be owned and operated by the Borrower.

The Bonds, when issued, will not constitute general obligations of the County nor will they be payable in any manner by taxation, but the Bonds will be payable solely and only from amounts received by the County under a Loan Agreement between the County and the Borrower, the obligations of which will be sufficient to pay the principal of and interest and redemption premium, if any, on the Bonds as and when the same shall become due.

At the time and place stated above, oral or written objections from any resident or property owner of the County may be presented. At such meeting or any adjournment thereof, the County shall adopt an ordinance determining whether or not to proceed with the issuance of the Bonds. Written comments may also be submitted to the County at the County Courthouse, 906 North River Street, Hot Springs, South Dakota 57747. Written comments must be received by the above hearing date.

By order of the County Commission of Fall River County, South Dakota.

\_\_\_\_\_ [add name]  
Chair/County Auditor



## Black Hills Regional Multiple Use Coalition

P.O. Box 9496 • Rapid City, SD 57709 • 605-341-0875 • Fax 605-341-8651

September 17, 2020

TO: BOARD OF DIRECTORS

SUBJECT: MEETING NOTICE

The September meeting of the Board of Directors will be September 25<sup>th</sup> and will be a field trip in the Black Hills.

The trip will be led by Matt Kemmerer, a grazing permittee on the Black Hills National Forest. Details of the trip are as follow:

We will meet at Three Forks (junction of HWYs 16 and 385) and plan to depart at 2pm:

On the trip, we plan to look at:

- 1) A spring with OHV damage.
- 2) A rogue OHV trail on FS land which leads to a cattle gate, near HWY 385, that is routinely left open.
- 3) An area that was previously burned in a prescribed fire.
- 4) A fence line that has been cut multiple times and, most recently, led to the fatal accident involving a motorcyclist and a cow.

We expect to be back at Three Forks by 4:30pm.

Feel free to call me at 605-341-0875 if you have any questions or comments.

Ben Wudtke  
Executive Secretary



## Black Hills Regional Multiple Use Coalition- August 21, 2020

The August 2020 BHRMUC meeting was called to order at 4:08 pm at the Holiday Inn in Spearfish, SD. Those in attendance were Ben Wudtke, Don Hausle, Dave Moline, Hugh Thompson, Scott Edoff, Veronica Edoff, Druse Kellogg, Eric Jennings, and Matt Lottes.

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The previous meeting's minutes were reviewed and approved.

Treasurer's report: Eric passed out copies of a treasury statement. This was approved.

Discussion of September field trip: The Edoff's discussed their relative Matt Cameron's troubles regarding ATV use conflicting with his grazing allotments. Gates are being left open and riparian areas are being damaged. Veronica called Matt during the meeting to set up a meeting/field trip to visit these areas as a group. It was decided to meet at 3 Forks Gas station (Hill City) on Sept 25 at 2 pm and spend a couple hours visiting with Matt and the areas of concern. Will try to get the District Ranger to attend as well as a media source.

Don discussed issues with fencing where he grazes near the Englewood Road. He's seeing lackluster fence work and some landowners adjacent to the Forest are not fencing out their properties and cattle risk getting out onto county roads and wandering afar.

Don and Eric spoke on their frustrations with elk eating grass and damaging fences and the possibility of deprivation tags being made available to reduce the elk population.

Round Robin:

-discussion of the woman recently rag-dolled by a buffalo in Custer State Park (don't get too close)

-If anyone has one or knows where one is, Druse would like a copy of "Wolves of Russia" to give to a friend

-Matt gave a brief update on Neiman's progress salvaging tornado damage in the Stolen Kiss, Red Lake, and Timber Gulch areas. Approximately 400 loads of logs have been salvaged from the storm damage thus far, and roughly 700 loads will end up being salvaged.

-The Edoff's gave an update on their neighboring buffalo situation. The Forest Service changed the wording in their grazing regulations to indicate that buffalo branding will follow State branding laws.

-Don has been considering litigious action against SD Game Fish and Parks regarding not doing enough to control elk populations

Meeting adjourned at 5:38 PM

Minutes by Matt Lottes