

RESOLUTION No. 2022-01

RESOLUTION AUTHORIZING THE EXECUTION, TERMS, ISSUANCE, SALE, AND PAYMENT OF SALES TAX REVENUE BONDS, SERIES 2022 IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$2,800,000), OF THE CITY OF FREEMAN OF HUTCHINSON COUNTY, SOUTH DAKOTA.

WHEREAS, the City of Freeman is authorized by the provisions of SDCL §10-52-2.10 to issue Sales Tax Revenue Bonds; and

WHEREAS the City of Freeman imposes a two percent (2%) sales and service tax and use tax collected in each year pursuant to the provisions of the Ordinances of the City of Freeman, South Dakota; and

WHEREAS, the City Council has determined and does hereby declare that it is necessary and in the best interest of the City to issue Sales Tax Revenue Bonds, Series 2022 for the purpose of providing funds to (i) pay costs associated with the 2022 Street Improvement Project (the "Project") and (ii) pay the Costs of Issuance of the Bonds described herein.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREEMAN OF HUTCHINSON COUNTY, AS FOLLOWS:

ARTICLE I
DEFINITIONS

Section 1.1. Definition of Terms.

In addition to the words and terms elsewhere defined in this Bond Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings, unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" means collectively SDCL Chapter 6-8B and Chapter 10-52-2.10, as amended.

"Authorized Officer of the City" means the Mayor and the Finance Officer, or, in the case of any act to be performed or duty to be discharged, any other member, officer, or employee of the City then authorized to perform such act or discharge such duty.

"Bond Counsel" means Meierhenry Sargent LLP, a firm of attorneys recognized as having experience in matters relating to the issuance of state or local governmental obligations.

"Bond Payment Date" means the payment dates as provided in the Bond Purchase Agreement.

"Bond Purchase Agreement" means the agreement between the City and the Purchaser for the purchase of the Bonds.

"Bond Resolution" means the within Resolution, duly adopted by the City Council on the date hereof, as it may be amended from time to time.

"Bonds" mean not to exceed \$2.8 million of Sales Tax Revenue Bonds, Series 2022, dated the Closing Date, or such other designation or date as shall be determined by the City Council pursuant to Section 8.1 hereof, authorized and issued under the Bond Resolution.

"City" means the City of Freeman, Hutchinson County, South Dakota, an Aldermanic form of municipality organized under the State of South Dakota.

"City Council" means the Council Members of the City elected pursuant to the provisions of the SDCL Title 9.

"City Finance Officer" "Finance Officer" means the Chief Finance Officer or chief financial officer of the City appointed pursuant to the provisions of South Dakota Codified Laws Title 9 or, in the absence of such appointment or in the event the person so appointed is unable or incapable of acting in such capacity, the person appointed by the City Council to perform the duties otherwise performed by the City Finance Officer, or his/her designee.

"Closing Date" means the date the Bonds are exchanged for value.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the United States Department of Treasury promulgated thereunder as in effect on the date of issuance of the Bonds.

"Costs of Issuance" means all costs, fees, charges and expenses incurred in connection with the issuance of the Bonds, including costs for bond insurance and rating agency fees.

"Debt" means (1) indebtedness of the City for borrowed money or for the deferred purchase price of property or services, and expressly including the obligation to pay principal and interest on or with respect to revenue bonds, (2) the obligation of the City as lessee under leases which should be recorded as capital leases under generally accepted accounting principles, and (3) obligations of the City under direct or indirect guarantees in respect of, and obligations, contingent or otherwise, to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in subdivisions (1) and (2) above.

"Payment Dates" means the payment dates as provided in the Bond Purchase Agreement.

"Mayor" means the Mayor elected pursuant to the provisions of SDCL Chapter 9 or his or her designee acting on his or her behalf.

"Paying Agent and Registrar" means the Finance Officer of the City of Freeman, its successor or successors hereafter appointed in the manner provided in Article VI hereof.

"Person" means an individual, partnership, corporation, trust, or unincorporated organization, or a governmental entity or agency or political subdivision thereof.

"Pledged Sales Tax" means the proceeds of the proceeds of the City's Sales Tax collected in each year.

"President" means the President of the City Council who may act for the Mayor in the absence of the Mayor.

"Project" means the 2022 Street Improvement Project.

"Purchase Agreement" means the Bond Purchase Agreement authorized pursuant to and described in Section 8.1 hereof by and between the City and the Purchaser.

"Purchaser" means the entity that purchases the Bonds.

"Reserve Requirement" means the lesser of (i) 10% of the original principal amount of the Bonds, (ii) the maximum annual debt service on the Bonds, or (iii) 125% of the average annual debt service on, all outstanding Bonds having a parity lien on the Pledged Sales Tax.

"Resolution" means this Bond Resolution.

"Sales Tax" means the City's two percent (2%) retail occupational sales and service tax imposed upon the gross receipts of all persons engaged in business within the jurisdiction of the city who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL Chapter 10-45 (SDCL 10-45-1 et seq.) and the two percent (2%) excise tax on the privilege of the use, storage and consumption within the jurisdiction of the city of tangible personal property purchased, at the same rate as the municipal sales and service tax as provided in Chapter 8-1.3 upon all transactions or use, storage and consumption which are subject to the South Dakota Use Tax Act, SDCL Chapter 10-46 (SDCL 10-46-1 et seq.).

"Schedule" means the principal and interest payment schedule for the Bonds.

Section 1.2. References to Resolution.

The words "hereof", "herein", "hereunder", and other words of similar import refer to this Bond Resolution as a whole.

Section 1.3. References to Articles, Sections, Etc.

References to Articles, Sections, and other subdivisions of this Bond Resolution are to the designated Articles, Sections, and other subdivisions of this Bond Resolution as originally adopted.

Section 1.4. Headings.

The headings of this Bond Resolution are for convenience only and shall not define or limit the provisions hereof.

ARTICLE II
FINDINGS

Section 2.1

It is hereby found, declared a necessity and determined by the City Council that all limitations upon the issuance of Bonds have been met and the Bonds are being authorized, issued and sold in accordance with the provisions of the Act.

ARTICLE III
AUTHORITY, PLEDGE, LEVY AND ACCOUNTS

Section 3.1 Authority.

The City declares it necessary and is authorized by SDCL 10-52-2.10 to issue Bonds to finance the costs associated with the Project and pay Costs of Issuance. The sales tax revenue bonds shall be issued pursuant to, and in accordance with, the provisions of the Act, the Bond Resolution, and other applicable provisions of law.

Section 3.2 Pledge of Sales Tax.

The City pledges so much of the collections of the Pledged Sales Tax as may be necessary to pay the principal, premium, and interest on the Bonds, and to maintain any debt service reserve established for the Bonds, if any.

Section 3.3. Collection of Taxes.

Pursuant to SDCL 10-52-2.10, the City does hereby pledge, provide and agree that it will continue to impose and collect the Pledged Sales Tax so long as the Bonds are outstanding. The governing body shall also pledge so much of the collections of the Pledged Sales Tax as may be necessary to pay the principal, premium and interest on the bonds and to maintain any Debt Service Reserve established for the Bonds.

Section 3.4. Accounts.

(a) Sales Tax. The Finance Officer will administer, enforce and collect, or cause to be administered, enforced and collected, the Sales Tax on goods and services subject to taxes and shall take all reasonable action necessary for this responsibility in accordance with law and standard principles of accounting. Notwithstanding the following named accounts, the Finance Officer may establish such accounts as are required by the South Dakota Legislative Audit Municipal Accounting Manual.

(b) Construction Account. There is hereby created and established a “Construction Account” There shall be credited to the Construction Account the proceeds from the sale of the Bonds remaining after (a) the deposit to the Reserve Account required by Section 3.04(d), and (b) payment of the (i) Purchaser’s discount, (ii) original issue discount and (iii) any other expenses of issuing the Bonds. All moneys credited to the Construction Account shall be applied solely to the payment of the costs associated with the Project.

(c) Principal and Interest Account. There is hereby created and established a “Principal and Interest Account.” Immediately upon delivery of the Bonds, there shall be credited to the Principal and Interest Account the amount of accrued interest received from the Purchaser. Commencing on the date specified in the Bond Purchase Agreement, there shall be withdrawn from the Sales Tax receipts at least monthly and credited to the Principal and Interest Account an amount which, together with future credits, will be sufficient to pay the principal of and interest on the Outstanding Bonds as the same become due.

(d) Reserve Account. If required by the Purchaser, there shall be created and established a “Reserve Account.” If required by the Purchaser, there shall be credited to the Reserve Account from the proceeds of the Bonds, an amount equal to the Reserve Requirement. Thereafter, in the event that the amount on deposit in the Reserve Account shall thereafter fall below the Reserve Requirement, additional deposits shall be made from the Pledged Sales Tax to the Reserve Account until the Reserve Requirement is again reached. Upon the issuance of any parity lien bonds, the Reserve Requirement established in this section shall be increased to an amount equal to the combined maximum annual debt service on the Outstanding Bonds. The balance required shall be funded on the delivery date of the parity lien bonds. Moneys credited to the Reserve Account may be used only for the payment of principal of and interest on the Outstanding Bonds and shall be used only in the event that there are insufficient moneys in the Principal and Interest Account to meet such principal and interest payments promptly when due. The interest from any investment of the Reserve Account may be transferred from time to time to the Construction Account, provided that after completion of the Improvements such interest shall be transferred to the Principal and Interest Account. No transfer of investment income shall be made from the Reserve Account at any time when the balance therein is less than the Reserve Requirement. Such investments shall be subject to the limitations of South Dakota law.

(e) Subordinate Lien Bonds. After making the above required payments, any remaining Pledged Sales Tax may be used for the payment of the principal of and interest on any additional sales tax revenue bonds having a lien which is subordinate to the lien of the Outstanding Bonds, and for a reserve fund as additional security for the payment of such subordinate lien bonds.

(f) Other Expenditures. The remaining Pledged Sales Tax may be used for any legally authorized purpose.

ARTICLE IV
FORM, TERMS, EXECUTION, AND TRANSFER OF BONDS

Section 4.1. Authorized Bonds.

The aggregate principal amount of Bonds that may be issued under the Bond Resolution shall not exceed Two Million Eight Hundred Thousand and No/100 Dollars (\$2,800,000).

Section 4.2. Form of Bonds; Execution.

(a) The Bonds are issuable only as fully registered Bonds, without coupons, in any denomination. All Bonds issued under the Resolution shall be substantially in the form set forth in Exhibit A attached hereto, and by this reference incorporated herein as fully as though copied.

(b) The Bonds shall be executed in such manner as may be prescribed by applicable law in the name and on behalf of the City with the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of the City Finance Officer, and approved as to form and countersigned by a Resident Attorney by his manual or facsimile signature.

(c) In the event any officer whose manual or facsimile signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such manual or such facsimile signature shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until such delivery. Any Bonds may bear the facsimile signature of, or may be manually signed by, such individuals who, at the actual time of the execution of such Bonds, were the proper officers of the City to sign such Bonds, although on the date of the adoption by the City of this Resolution, such individuals may not have been such officers.

Section 4.3 Maturities, Interest Rates, and Certain Other Provisions of Bonds.

(a) The Bonds shall become due and payable and be subject to the terms and conditions as are set forth in the Bond Purchase Agreement.

(b) The Bonds shall be designated "Sales Tax Revenue Bonds, Series 2022," or such other designation as shall be determined by the City Council pursuant to Section 8.1 hereof. The Bonds shall bear interest from their date or from the most recent interest payment date to which interest has been paid or duly provided for, until the principal amount of the Bonds is paid, such interest (computed upon the basis of a 360-day year of twelve 30-day months) being payable on Interest Payment Dates. Interest on each Bond shall be paid by wire transfer, check or draft of the Paying Agent, payable in lawful money of the United States of America, to the person in whose name such Bond is registered at the close of business on the Record Date. The principal of the Bond shall be payable in lawful money of the United States of America at the principal office of the Paying Agent on the Bond Payment Date. Each Bond shall state that it is issued pursuant to the Act.

(c) The Paying Agent and Registrar shall make all interest payments with respect to the Bonds on each interest payment date directly to the registered owners as shown on the bond registration

records maintained by the Paying Agent and Registrar as of the close of business on the Record Date by wire transfer, check or draft mailed to such owners at their addresses shown on said bond registration records, without, except for final payment, the presentation or surrender of such registered Bonds, and all such payments shall discharge the obligations of the City in respect of such Bonds to the extent of the payments so made. Payment of principal and premium, if any, on the Bonds shall be made upon presentation and surrender of such Bonds to the Paying Agent and Registrar as the same shall become due and payable.

Section 4.4 Negotiability of Bonds.

All Bonds issued under this Resolution shall be negotiable, subject to the provisions for registration and transfer contained in this Resolution and in the Bonds.

Section 4.5 Registration, Transfer and Exchange of Bonds.

(a) The Bonds are transferable only by presentation to the Paying Agent and Registrar by the registered owner, or his legal representative duly authorized in writing, of the registered bond(s) to be transferred with the form of assignment on the reverse side thereof completed in full and signed with the name of the registered owner as it appears upon the face of the bond(s) accompanied by appropriate documentation necessary to prove the legal capacity of any legal representative of the registered owner. Upon receipt of the bond(s) in such form and with such documentation, if any, the Paying Agent and Registrar shall issue a new bond or bonds to the assignee(s) in \$1.00 denominations, or integral multiples thereof, as requested by the registered owner requesting transfer. The Paying Agent and Registrar shall not be required to transfer or exchange any bond during the period commencing on a Record Date and ending on the corresponding interest payment date of such bond, nor to transfer or exchange any bond after the publication of notice calling such bond for redemption has been made, nor to transfer or exchange any bond during the period following the receipt of instructions from the City to call such bond for redemption; provided, the Paying Agent and Registrar, at its option, may make transfers after any of said dates. No charge shall be made to any registered owner for the privilege of transferring any Bonds, provided that any transfer tax relating to such transaction shall be paid by the registered owner requesting transfer. The person in whose name any bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and neither the City nor the Paying Agent and Registrar shall be affected by any notice to the contrary whether or not any payments due on the Bonds shall be overdue. Bonds, upon surrender to the Paying Agent and Registrar, may, at the option of the registered owner, be exchanged for an equal aggregate principal amount of Bonds of the same maturity in any authorized denomination or denominations.

Section 4.6 Mutilated, Lost, Stolen, or Destroyed Bonds.

(a) In the event any bond is mutilated, lost, stolen, or destroyed, the City may execute, and upon the request of an Authorized Officer of the City the Paying Agent and Registrar shall authenticate and deliver, a new bond of like maturity, interest rate, and principal amount, and bearing the same number (but with appropriate designation indicating that such new bond is a replacement bond) as the mutilated, destroyed, lost, or stolen bond, in exchange for the mutilated

bond or in substitution for the bond so destroyed, lost, or stolen. In every case of exchange or substitution, the bondholder shall furnish to the City and the Paying Agent and Registrar: (1) such security or indemnity as may be required by them to save each of them harmless from all risks, however remote; and, (2) evidence to their satisfaction of the mutilation, destruction, loss, or theft of the subject bond and the ownership thereof. Upon the issuance of any bond upon such exchange or substitution, the City and the Paying Agent and Registrar may require the Owner thereof to pay a sum sufficient to defray any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including printing costs and counsel fees, of the City and the Paying Agent and Registrar. In the event any bond which has matured or is about to mature shall become mutilated or be destroyed, lost, or stolen, the City may, instead of issuing a bond in exchange or substitution therefor, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated bond) if the Owner thereof shall pay all costs and expenses, including attorneys' fees, incurred by the City and the Paying Agent and Registrar in connection herewith, as well as a sum sufficient to defray any tax or other governmental charge that may be imposed in relation thereto and shall furnish to the City and the Paying Agent and Registrar such security or indemnity as they may require to save them harmless and evidence to the satisfaction of the City and the Paying Agent and Registrar the mutilation, destruction, loss, or theft of such bond and of the ownership thereof.

(b) Every bond issued pursuant to the provisions of this section shall constitute an additional contractual obligation of the City (whether or not the destroyed, lost, or stolen bond shall be found at any time to be enforceable) and shall be entitled to all the benefits of this Bond Resolution equally and proportionately with any and all other Bonds duly issued under this Bond Resolution.

(c) All Bonds shall be held and owned upon the express condition that the provisions of this Section are exclusive, with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Bonds, and, to the maximum extent legally permissible, shall preclude all other rights or remedies, notwithstanding any law or statute now existing or hereafter enacted to the contrary.

Section 4.7 Authentication.

The Paying Agent and Registrar is hereby authorized to authenticate and deliver the Bonds to the Purchaser or as it may designate upon receipt by the City of the proceeds of the sale thereof, to authenticate and deliver Bonds in exchange for Bonds of the same principal amount delivered for transfer upon receipt of the bond(s) to be transferred in proper form with proper documentation as hereinabove described. The Bonds shall not be valid for any purpose unless authenticated by the Paying Agent and Registrar by the manual signature of an officer thereof on the certificate set forth herein on the bond form.

ARTICLE V ***REDEMPTION OF BONDS PRIOR TO MATURITY***

Section 5.1 Redemption.

(a) **Redemption.** The Bonds shall be redeemable as set forth in the Bond Purchase Agreement.

ARTICLE VI
PAYING AGENT AND REGISTRAR

Section 6.1. Appointment and Acceptance of Duties.

(a) The City hereby authorizes the City Finance Officer as Paying Agent and Registrar with respect to the Bonds and authorizes and directs the Paying Agent and Registrar to maintain bond registration records with respect to the Bonds, to authenticate and deliver the Bonds as provided herein, either at original issuance, upon transfer, or as otherwise directed by the City, to effect transfers of the Bonds, to give all notices of redemption as required herein, to make all payments of principal and interest with respect to the Bonds as provided herein, to cancel and destroy Bonds which have been paid at maturity or upon earlier redemption or submitted for exchange or transfer, to furnish the City at least annually a certificate of destruction with respect to Bonds canceled and destroyed, and to furnish the City at least annually an audit confirmation of Bonds paid, Bonds Outstanding and payments made with respect to interest on the Bonds. The Mayor and the City Finance Officer, or either of them is hereby authorized to execute and the City Finance Officer is hereby authorized to attest such written agreement between the City and the Paying Agent and Registrar as they shall deem necessary or proper with respect to the obligations, duties and rights of the Paying Agent and Registrar. The payment of all reasonable fees and expenses of the Paying Agent and Registrar for the discharge of its duties and obligations hereunder or under any such agreement is hereby authorized and directed.

Section 6.2. Permitted Acts and Functions.

The Paying Agent and Registrar may become the Owner of any Bonds, with the same rights as it would have if it were not a Paying Agent and Registrar. The Paying Agent and Registrar may act as an Purchaser or fiscal agent in connection with the sale of the Bonds or of any other securities offered or issued by the City.

Section 6.3. Resignation or Removal of the Paying Agent and Registrar and Appointment of Successors.

(a) The Paying Agent and Registrar may at any time resign and be discharged of the duties and obligations created by the Bond Resolution by giving at least sixty (60) calendar days' written notice to the City Finance Officer. The Paying Agent and Registrar may be removed at any time by the City Finance Officer, provided that such removal does not constitute a breach of any contractual agreement with any such Paying Agent and Registrar, by filing written notice of such removal with such Paying Agent and Registrar. Any successor Paying Agent and Registrar shall be appointed by the City Finance Officer and shall be a trust company or a bank having the powers of a trust company willing to accept the office of Paying Agent and Registrar on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by the Bond Resolution.

(b) In the event of the resignation or removal of the Paying Agent and Registrar, such Paying Agent and Registrar shall pay over, assign and deliver any monies and securities held by it as

Paying Agent and Registrar, and all books and records and other properties held by it as Paying Agent and Registrar, to its successor, or if there be no successor then appointed, to the City Finance Officer until such successor be appointed.

Section 6.4. Merger or Consolidation of Paying Agent and Registrar.

Any corporation or association into which the Paying Agent and Registrar 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 association resulting from any such conversion, sale, merger, consolidation, or transfer to which it is a party shall be and become successor Paying Agent and Registrar hereunder and shall be vested with all the trusts, powers, discretion, immunities, privileges, and 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 contained to the contrary notwithstanding. Upon any such conversion, merger, consolidation, sale or transfer, the City Finance Officer shall have the right and option, upon notice to such converted, merged, consolidated or acquiring entity, to remove such entity and appoint a successor thereto pursuant to the procedures and requirements set forth in Section 6.3 hereof.

**ARTICLE VII
ADDITIONAL BONDS**

The City may issue additional bonds (the “Parity Bonds”) payable from the Pledged Sales Tax and having a lien upon such revenues on a parity with the Bonds and the Outstanding Parity Bonds providing that:

1. the City is current in the payment of principal and interest on the Outstanding Bonds and is current in the collections required for the Principal and Interest Account and the Reserve Account.
2. the City is in compliance with all covenants of outstanding sales tax revenue bonds and
3. the Pledged Sales Tax collected by the City in the last preceding fiscal year are sufficient to cover 1.25 times the combined average annual principal and interest requirements on the Outstanding Bonds and the proposed Parity Bonds.

ARTICLE VIII
SALE OF BONDS AND DEPOSIT OF PROCEEDS

Section 8.1. Sale of Bonds.

The Bonds shall be sold to the Purchaser at a price to be set forth in the Bond Purchase Agreement. The Mayor and the Finance Officer, or either of them, in consultation with the Purchaser, is authorized to make such changes in the structuring of the terms and sale of the Bonds as they shall deem necessary. In this regard, they, or either of them, in consultation with the Purchaser, are authorized to cause to be sold an aggregate principal amount of the Bonds less than that authorized herein, to sell any or all of the Bonds as term Bonds with annual mandatory redemption requirements which will produce substantially the same annual principal reductions as authorized herein, to change the dated date of the Bonds, and to adjust principal and interest payment dates and redemption dates of the Bonds. The form of the bond set forth in Exhibit A attached hereto shall be conformed to reflect any changes, if any, as hereinbefore mentioned. The Mayor and the City Finance Officer, or either of them, are hereby authorized to execute and the City Finance Officer is authorized to attest the Bond Purchase Agreement with the Purchaser providing for the purchase and sale of the Bonds. The Bond Purchase Agreement shall be in form and content acceptable to the Mayor and City Finance Officer, the execution thereof by either of them to constitute conclusive evidence thereof, provided the Bond Purchase Agreement effects the sale of the Bonds in accordance with the provisions of this Resolution, and is not inconsistent with the terms hereof. The Mayor and the City Finance Officer are authorized to cause the Bonds to be authenticated and delivered by the Paying Agent and Registrar to the Purchaser and to execute, publish, and deliver all Bonds and documents, including the Official Statement, and closing Bonds and documents, as they shall deem necessary in connection with the sale and delivery of the Bonds.

Section 8.2. Disposition of Bond Proceeds.

The proceeds of the sale of the Bonds shall be disbursed as follows:

- (a) If required by the Purchaser, an amount, if any, necessary to fund the Reserve Account;
- (b) An amount to fund the Project will be deposited into the Construction Account; and
- (c) Any remaining amount will be used to pay the costs of issuance and sale of the Bonds including necessary legal, accounting and fiscal expenses, printing, engraving, advertising and similar expenses, administrative and clerical costs, rating agency fees, Paying Agent and Registrar fees, and other necessary miscellaneous expenses incurred in connection with the issuance and sale of the Bonds. Any funds remaining after payment of said expenses shall be used to pay interest on the Bonds on the first interest payment date following delivery of the Bonds.

In the event that the Bonds will be draw down bond, all draws after the initial draw disbursed in accordance with Section 8.2(a) through 8.2(c), shall be deposited in the Construction Account.

Section 8.3. Tax Matters.

(a) The City covenants and agrees with the registered owners from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bonds to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the basic interest on the Bonds will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

(b) The Mayor and the City Finance Officer, being the officers of the City charged with the responsibility for issuing the Bonds pursuant to this Resolution are hereby authorized and directed to execute and deliver to the Purchaser thereof a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Bonds, it is reasonably expected that the proceeds of the Bonds will be used in a manner that would not cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.

(c) The City shall file with the Secretary of the Treasury a statement concerning the Bonds containing the information required by Section 149(e) of the Code.

(d) The City anticipates that it will issue tax exempt Bonds in an amount not to exceed \$10,000,000 and the Bonds shall be designated as bank qualified under 265(b)(3) of the Internal Revenue Code.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Failure to Present Bonds.

(a) Subject to the provisions of Section 4.7 hereof, in the event any Bond shall not be presented for payment when the principal or redemption price hereof becomes due, either at maturity or at the date fixed for prior redemption thereof or otherwise, and in the event monies sufficient to pay such Bond shall be held by the Paying Agent and Registrar for the benefit of the Owner thereof, all liability of the City to such Owner for the payment of such Bond shall forthwith cease, determine, and be completely discharged. Whereupon, the Paying Agent and Registrar shall hold such monies, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such monies for any claim under the Resolution or on, or with respect to, said Bonds.

(b) If any Bond shall not be presented for payment within a period of five years following the date when such Bond becomes due, whether by maturity or otherwise, the Paying Agent and Registrar shall, subject to the provisions of any applicable escheat or other similar law, pay to the

City any monies then held by the Paying Agent and Registrar for the payment of such Bond and such Bond shall (subject to the defense of any applicable statute of limitation) thereafter constitute an unsecured obligation of the City.

Section 9.2. Payments Due on Saturdays, Sundays, and Holidays.

In any case where the date of maturity or interest on or principal of any Bonds, or the date fixed for redemption of any Bonds, shall be a Saturday or Sunday or shall be, at the place designated for payment, a legal holiday or a day on which banking institutions similar to the Paying Agent and Registrar are authorized by law to close, then the payment of the interest on, or the principal, or the redemption price of, such Bond need not be made on such date but must be made on the next succeeding day not a Saturday, Sunday, or a legal holiday or a day upon which banking institutions similar to the Paying Agent and Registrar are authorized by law to close, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 9.3. Miscellaneous Acts.

The appropriate officers of the City are hereby authorized, empowered, and directed to do any and all such acts and things, and to execute, acknowledge, deliver, and, if applicable file or record, or cause to be filed or recorded, in any appropriate public offices, all such documents, instruments, and certifications, in addition to those acts, things, documents, instruments, and certifications hereinbefore authorized and approved, as may, in their discretion, be necessary or desirable to implement or comply with the intent of the Bond Resolution, or any of the documents herein authorized and approved, or for the authorization, issuance, and delivery by the City of the Bonds.

Section 9.4. Amendment.

The City Council is hereby authorized to make such amendments to the Bond Resolution as will not impair the rights of the Bondholders.

Section 9.5. No Recourse Under Bond Resolution or on Bonds.

All stipulations, promises, agreements, and obligations of the City contained in the Resolution or any supplemental resolutions shall be deemed to be the stipulations, promises, agreements, and obligations of the City and not of any officer, director, or employee of the City in his or her individual capacity, and no recourse shall be had for the payment of the principal of or interest on the Bonds or for any claim based thereon or on the Resolution against any officer, director, or employee of the City or against any official or individual executing the Bonds.

Section 9.6. Partial Invalidity.

If any one or more of the provisions of the Bond Resolution, or of any exhibit or attachment thereto, shall be held invalid, illegal, or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other

provision hereof, or of any exhibit or attachment thereto, but the Bond Resolution, and the exhibits and attachments thereto, shall be construed the same as if such invalid, illegal, or unenforceable provision had never been contained herein, or therein, as the case may be.

Section 9.7. Post Issuance Compliance.

The City does hereby adopt Meierhenry Sargent LLP Post Issuance Compliance Manual procedures with regard to the Bonds. The City directs the Finance Officer to formalize the written procedures.

Section 9.9. Conflicting Resolutions Repealed.

All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

Said motion was seconded by Member Pummel and upon vote being taken the following voted AYE: All

and the following voted NAY: None

Michael Walter, Mayor
Lisa M. Jensen, Finance Officer