
ORDINANCE NO. 23-19

CITY OF BEATRICE, NEBRASKA

PASSED AND APPROVED

June 19, 2023

Authorizing

NOT TO EXCEED

\$1,250,000

**ECONOMIC DEVELOPMENT BONDS
SERIES 2023**

Ordinance

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ORDINANCE NO. 23-19

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF ECONOMIC DEVELOPMENT BONDS, SERIES 2023, OF THE CITY OF BEATRICE, NEBRASKA IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$1,250,000 TO PAY THE COSTS OF PURCHASING CERTAIN REAL PROPERTY TO EXPAND THE CITY'S EXISTING INDUSTRIAL PARK; AUTHORIZING CERTAIN OFFICIALS TO DETERMINE THE AGGREGATE PRINCIPAL AMOUNT, MATURITY DATES, THE INTEREST RATES, THE REDEMPTION PROVISIONS, AND OTHER TERMS RELATING TO THE BONDS, TO SELL THE BONDS ON BEHALF OF THE CITY AND EXECUTE ALL NECESSARY CONTRACTS AND AGREEMENTS RELATING THERETO, AND TO DESIGNATE A REGISTRAR AND PAYING AGENT WITH RESPECT TO THE BONDS, ALL AS PROVIDED AND SUBJECT TO THE TERMS HEREIN; PAYING THE PRINCIPAL OF, PREMIUM, IF ANY, AND THE INTEREST ON THE BONDS FROM REVENUES AVAILABLE UNDER THE CITY'S ECONOMIC DEVELOPMENT PLAN; DESIGNATING THE BONDS AS QUALIFIED TAX-EXEMPT OBLIGATIONS; ADOPTING CERTAIN POST-ISSUANCE COMPLIANCE PROCEDURES WITH RESPECT TO THE BONDS; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BEATRICE, NEBRASKA AS FOLLOWS:

FINDINGS AND DETERMINATIONS

The Mayor and City Council (the "**City Council**") of the City of Beatrice, Nebraska (the "**City**") hereby make the following findings and determinations:

(a) The City is a city of the first class and political subdivision duly organized and validly existing under the constitution and laws of the State of Nebraska (the "**State**").

(b) At an election previously held in the City, a majority of the qualified electors voting at such election approved an Economic Development Program Plan (the "**Plan**") in accordance with the Local Option Municipal Economic Development Act, Sections 18-2701 et. seq., Reissue Revised Statutes of Nebraska (the "**Local Option Act**") and authorized the City to expend amounts collected from the City's electric system and additional non-City funds for economic development purposes as described in the Plan and the Local Option Act.

(c) Pursuant to a resolution passed by the Council on February 28, 2022 (the "**Election Resolution**") in accordance with the Local Option Act, a special election was called for and held on May 10 2022 (the "**Election**"), at which time there was submitted to the qualified electors

of the City the question of amending the Plan to expend moneys collected from each of the City's utility systems (and not otherwise pledged to other bonds) in an amount not to exceed Three Hundred Thousand Dollars (\$300,000) annually and from other non-City funds for purposes of funding the Plan.

(d) Notice of the Election and the submission of such questions was duly given to the qualified electors of the City by publication one time in the *Beatrice Daily Sun*, a legal newspaper of general circulation within the City, such publication being at least 10 days but not more than 20 days prior to the Election.

(e) The ballots cast at the Election were counted by the Election Commissioner of Gage County, Nebraska and disinterested persons appointed by said Election Commissioner. The returns of the Election and certificate of the counting board showing the results of the Election have been delivered to this Council for purpose of making a canvas thereof. (i) The Election returns and certificate show that: (i) 1,700 ballots were cast in favor of the Plan amendment, 1,214 ballots were cast against the Plan amendment, and 260 ballots were spoiled and rejected. The Council has canvassed the returns of the Election and does hereby determine that a majority of all qualified electors voting on the question described above has voted in favor of such question.

(f) The City is authorized under the Local Option Act to issue its economic development bonds, to apply the proceeds to pay all or a portion of the costs of projects and purposes set forth in the Plan, and to pay for such bonds with the revenues set forth therein.

(g) It has been proposed that the City exercise its option to purchase certain real property to expand the City's existing industrial park (the "**Project**"), and the Council hereby finds is necessary and advisable that the City issue its Economic Development Bonds, Series 2023 (the "**Bonds**"), in the aggregate principal amount of not to exceed \$1,250,000, which Bonds are to be paid from and secured by the revenue collected from the City's utility systems and from additional non-City funds, as authorized by the Plan.

(h) it is necessary that the City adopt (i) policies and procedures to satisfy all applicable requirements of federal income tax law in order to preserve, post-issuance, the tax-exempt status of the Bonds and (ii) policies and procedures to satisfy the issuance and post-issuance disclosure requirements of Rule 15c2-12 (as described herein).

(i) All conditions, acts and things required by law to exist or to be done precedent to the issuance of the Bonds as provided in this Ordinance do exist and have been done as required by law, including the Local Option Act.

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to words and terms defined elsewhere herein, the following words and terms used in this Ordinance have the following meanings:

“Administrator” means the Administrator of the City, or such other person authorized to sign on his or her behalf.

“Authorized Officer” means the Mayor of the City, the City Treasurer, the City Administrator or the City Clerk, including anyone authorized to act on behalf of any such officer.

“Beneficial Owner” means any Person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Bond Counsel” means Kutak Rock LLP, or other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the City.

“Bond Register” means the books for the registration, transfer and exchange of the Bonds kept at the office of the Paying Agent.

“Bonds” means not to exceed \$1,250,000 principal amount of Economic Development Bonds, Series 2023, authorized and issued by the City pursuant to this Ordinance.

“Business Day” means a day other than a Saturday, Sunday or holiday on which the Paying Agent is scheduled in the normal course of its operations to be open to the public for conduct of its banking operations.

“Cede & Co.” means Cede & Co., as nominee of The Depository Trust Company, New York, New York.

“City” means the City of Beatrice, Nebraska, a city of the first class and political subdivision of the State.

“Clerk” means the Clerk of the City, or such other person duly authorized to sign on his or her behalf.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the Treasury Department proposed or promulgated thereunder.

“Project Fund” means the fund by that name referred to in **Section 501**.

“Debt Service Fund” means the fund by that name referred to in **Section 501**.

“Defaulted Interest” means interest on the Bonds which is payable but not paid on any Interest Payment Date.

“Defeasance Obligations” means any of the following obligations:

(a) Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(i) the obligations are (A) not subject to redemption prior to maturity or (B) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(ii) the obligations are secured by cash or Government Obligations that may be applied only to principal of, premium, if any, and interest payments on such obligations;

(iii) such cash and the principal of and interest on such Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the obligations;

(iv) such cash and Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(v) such cash and Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(vi) the obligations are rated at least “Aa” by Moody’s Investors Service, Inc. or “AA” by Standard & Poor’s Ratings Group.

“Designated Office” means the trust administration office maintained by the Paying Agent at which the Paying Agent discharges its obligations under this Ordinance and which may be changed by the Paying Agent upon written notice to the City and to each Registered Owner.

“Government Obligations” means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States, including evidences of a direct ownership interest in future interest or principal payments

on obligations issued or guaranteed by the United States (including the interest component of obligations of the Ordinance Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated at least "Aa" by Moody's Investors Service, Inc. or "AA" by Standard & Poor's Ratings Group and such obligations are held in a custodial account for the benefit of the City.

"Interest Payment Date" means the dates established by the Authorized Officers pursuant to **Section 210** for the payment of interest on the Bonds.

"Local Option Act" means the Local Option Municipal Economic Development Act, Sections 18-2701 et. seq., Reissue Revised Statutes of Nebraska, as amended.

"Maturity" when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for redemption or otherwise.

"Mayor" means the Mayor of the City, or such other person duly authorized to sign on his or her behalf.

"Ordinance" means this Ordinance passed by the Mayor and the City Council, authorizing the issuance of the Bonds, as amended from time to time.

"Outstanding" means, when used with reference to the Bond, as of any particular date of determination, the Bond theretofore authenticated and delivered hereunder.

"Paying Agent" means the City Treasurer or a third-party financial institution designated by an Authorized Officer in accordance with **Section 210** hereof, and any successors or assigns.

"Permitted Investments" means any of the following securities, if and to the extent the same are at the time legal for investment of the City's funds:

- (a) Government Obligations;
- (b) bonds, notes or other obligations of the State, or any political subdivision of the State, that at the time of their purchase are rated at least "Aa" by Moody's Investors Service, Inc. or "AA" by Standard & Poor's Ratings Group;
- (c) repurchase agreements with any bank, bank holding company, trust company, or other financial institution organized under the laws of the United States or any state, that are continuously and fully secured by any one or more of the securities described in clause (a) or (b) above and that have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such repurchase agreement and are held in a custodial or trust account for the benefit of the City;
- (d) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home

Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation; and

(e) certificates of deposit or time deposits, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of the United States or any state, provided that such certificates of deposit or time deposits shall be either (i) continuously and fully insured by the Federal Deposit Insurance Corporation, or (ii) continuously and fully secured by such securities as are described above in clauses (a) through (c), inclusive, which shall have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such certificates of deposit or time deposits.

“Person” means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

“Placement Agent” has the meaning set forth in **Section 2.09** hereof.

“Private Purchaser” has the meaning set forth in **Section 2.09** hereof.

“Project” has the meaning as set forth in the Findings and Determinations hereto.

“Purchaser” means the Underwriter, the Private Purchaser or the Lender, as specified by an Authorized Officer in accordance with the provisions of **Section 209** hereof.

“Record Date” for the interest payable on any Interest Payment Date means the fifteenth day next preceding such Interest Payment Date (whether or not a business day).

“Redemption Date” when used with respect to any Bond to be redeemed means the date fixed for the redemption of such Bond pursuant to the terms of this Ordinance.

“Redemption Price” when used with respect to any Bond to be redeemed means the price at which such Bond is to be redeemed pursuant to the terms of this Ordinance.

“Registered Owner” when used with respect to any Bond means the Person in whose name such Bond is registered on the Bond Register.

“Replacement Bond” means a Bond issued to an Owner in accordance with **Section 207** hereof.

“Securities Depository” means, initially, The Depository Trust Company, New York, New York, and its successors and assigns.

“Special Record Date” means the date fixed by the Paying Agent pursuant to **Section 204** hereof for the payment of Defaulted Interest.

“State” means the State of Nebraska.

“Tax Certificate” means the Federal Tax Certificate executed and delivered by the City in connection with the issuance of the Bonds, as the same may be amended or supplemented in accordance with the provisions thereof.

“Treasurer” means the Treasurer of the City, or such other person authorized to sign on his or her behalf.

“Underwriter” has the meaning set forth in **Section 2.09** hereof.

“United States” means the United States of America.

ARTICLE II

AUTHORIZATION OF BONDS

Section 201. Authorization of Bonds. The City is hereby authorized and directed to issue the Bonds in one or more series and in an aggregate principal amount not to exceed \$1,250,000 to pay the costs of the Project and issuing the Bonds.

Section 202. Description of Bonds. Unless otherwise determined by an Authorized Officer, the Bonds shall: consist of fully registered bonds, each series numbered from R-1 upward in order of issuance, in denominations of \$5,000 or any whole multiple thereof; be subject to registration, transfer and exchange as provided in **Section 205** hereof; be dated the date of delivery thereof; be due and payable in the amounts on the Stated Maturities, subject to redemption and payment prior to their Stated Maturities as provided in **Article III** hereof and as determined by an Authorized Officer; and bear interest at the rates determined by the Authorized Officer in accordance with the provisions of **Section 210** hereof, with such interest computed on the basis of a 360-day year of twelve 30-day months from the date thereof or from the most recent Interest Payment Date to which interest has been paid.

Each of the Bonds, as originally issued or issued upon transfer, exchange or substitution, shall be in substantially the form set forth in **Exhibit A** attached hereto.

Section 203. Designation of Paying Agent. So long as any Bonds remain unpaid, the City shall maintain a Paying Agent meeting the qualifications herein described for the performance of the duties hereunder. Unless otherwise so designated by an Authorized Officer in accordance with the provisions of **Section 210** hereof, the City Council hereby designates the City Treasurer as its paying agent for the payment of the principal or Redemption Price of and interest on the Bonds and as its bond registrar with respect to the registration, transfer and exchange of the Bonds. If the Paying Agent is other than the City Treasurer, the Paying Agent shall serve in such capacities under the terms of an agreement entitled “Bond Registrar and Paying Agent Agreement” between the City and the Paying Agent (the “**Paying Agent Agreement**”) in a form approved by an Authorized Officer in accordance with the provisions of **Section 210** hereof. Any Authorized Officer may execute the Paying Agent Agreement.

The City reserves the right, and does hereby authorize the Authorized Officers, or each individually, to appoint a successor Paying Agent by (a) filing with the Paying Agent then performing such function a certified copy of the proceedings giving notice of the termination of such Paying Agent and appointing a successor, and (b) causing notice of the appointment of the successor Paying Agent to be given by first-class mail to each Registered Owner. No resignation or removal of the Paying Agent shall become effective until a successor has been appointed and has accepted the duties of Paying Agent.

Unless the Paying Agent is the City Treasurer, every Paying Agent appointed hereunder shall at all times be a commercial banking association or corporation or trust company organized and doing business under the laws of the United States or of a state of the United States, authorized under such laws to exercise trust powers and subject to supervision or examination by federal or state regulatory authority.

Section 204. Method and Place of Payment of Bonds. The principal or Redemption Price of and interest on the Bonds shall be payable in legal currency of the United States. The principal or Redemption Price of each Bond shall be paid at Maturity by check or draft to the Person in whose name such Bond is registered on the Bond Register at the Maturity thereof, upon presentation and surrender of such Bond at the office so designated by the Paying Agent. The interest payable on each Bond on any Interest Payment Date shall be paid to the Registered Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest by check or draft mailed by the Paying Agent to the address of such Registered Owner shown on the Bond Register.

Notwithstanding the foregoing provisions of this **Section 204**, any Defaulted Interest with respect to any Bond shall cease to be payable to the Registered Owner of such Bond on the relevant Record Date and shall be payable to the Registered Owner in whose name such Bond is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest, which Special Record Date shall be fixed as specified in this paragraph. The City shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be at least 30 days after receipt of such notice by the Paying Agent) and shall deposit with the Paying Agent at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment. Following receipt of such funds the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment. The Paying Agent shall promptly notify the City of such Special Record Date and, in the name and at the expense of the City, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, by first-class mail, postage prepaid, to each Registered Owner of a Bond entitled to such notice at the address of such Registered Owner as it appears on the Bond Register not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep a record of the payment of the principal or Redemption Price of and interest on all Bonds and at least annually shall forward a copy or summary of such records to the City.

Section 205. Registration, Transfer and Exchange of Bonds. The City covenants that, as long as any of the Bonds remain Outstanding, it will cause the Bond Register to be kept at the office of the Paying Agent. The Bonds when issued shall be registered in the name of the Registered Owner thereof on the Bond Register. At reasonable times and under reasonable regulations established by the Paying Agent, the Bond Register may be inspected and copied by the Registered Owners of 10% or more in aggregate principal amount of the Bonds then Outstanding or any designated representative of such Registered Owners whose authority is evidenced to the satisfaction of the Paying Agent.

Bonds may be transferred and exchanged only on the Bond Register as provided in this **Section 205**. Upon surrender of any Bond at the office so designated by the Paying Agent, the Paying Agent shall transfer or exchange such Bond for a new Bond or Bonds in any authorized denomination of the same Stated Maturity and in the same aggregate principal amount as the Bond that was presented for transfer or exchange. Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Paying Agent, duly executed by the Registered Owner thereof or by the Registered Owner's duly authorized agent.

In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Paying Agent shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance. The City shall pay the fees and expenses of the Paying Agent for the registration, transfer and exchange of Bonds provided for by this Ordinance and the cost of printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Paying Agent, are the responsibility of the Registered Owners of the Bonds. In the event any Registered Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against such Registered Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Code, such amount may be deducted by the Paying Agent from amounts otherwise payable to such Registered Owner hereunder or under the Bonds.

The City and the Paying Agent shall not be required (a) to register the transfer or exchange of any Bond that has been called for redemption after notice of such redemption has been mailed by the Paying Agent pursuant to **Section 303** hereof and during the period of 15 days next preceding the date of mailing of such notice of redemption, or (b) to register the transfer or exchange of any Bond during a period beginning at the opening of business on the day after receiving written notice from the City of its intent to pay Defaulted Interest and ending at the close of business on the date fixed for the payment of Defaulted Interest pursuant to **Section 204** hereof.

The City and the Paying Agent may deem and treat the Person in whose name any Bond is registered on the Bond Register as the absolute owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price of and interest on said Bond and for all other purposes. All payments so made to any such

Registered Owner or upon the Registered Owner's order shall be valid and effective to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the City nor the Paying Agent shall be affected by any notice to the contrary.

Section 206. Execution, Registration, Authentication and Delivery of Bonds. Each of the Bonds, including any Bonds issued in exchange or as substitutions for the Bonds initially delivered, shall be signed by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk. In case any officer whose signature appears on any Bond ceases to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes, as if such person had remained in office until delivery. Any Bond may be signed by such persons who at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

The Mayor and the City Clerk are hereby authorized and directed to prepare and execute the Bonds in the manner herein specified, and, when duly executed and registered, to deliver the Bonds to the Paying Agent for authentication.

The Bonds shall have endorsed thereon a certificate of authentication substantially in the form set forth in **Exhibit A** attached hereto, which shall be manually executed by the Paying Agent. No Bond shall be entitled to any security or benefit under this Ordinance or be valid or obligatory for any purpose unless and until such certificate of authentication has been duly executed by the Paying Agent. Such executed certificate of authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Ordinance. Upon authentication, the Paying Agent shall deliver the Bonds to the Purchaser upon payment of the purchase price of the Bonds plus accrued interest thereon to the date of its delivery.

Section 207. Mutilated, Destroyed, Lost and Stolen Bonds. If (a) any mutilated Bond is surrendered to the Paying Agent or the Paying Agent receives evidence to its satisfaction of the destruction, loss or theft of any Bond, and (b) there is delivered to the Paying Agent such security or indemnity as may be required by the Paying Agent, then, in the absence of notice to the Paying Agent that such Bond has been acquired by a bona fide purchaser, the City shall execute and, upon the City's request, the Paying Agent shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same Stated Maturity and of like tenor and principal amount. Upon the issuance of any new Bond under this **Section 207**, the City may require the payment by the Registered Owner of an amount sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent) connected therewith. Every new Bond issued pursuant to this **Section 207** shall constitute a replacement of the prior obligation of the City, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds. If any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the City, in its discretion, may pay such Bond instead of issuing a new Bond.

Section 208. Cancellation and Destruction of Bonds Upon Payment. All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either

at or before Maturity, shall be cancelled by the Paying Agent immediately upon the payment, redemption and surrender thereof to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent. The Paying Agent shall execute a certificate in duplicate describing the Bonds so cancelled and destroyed and shall file an executed counterpart of such certificate with the City.

Section 209. Sale of Bonds. In accordance with and subject to the provisions of **Section 210**, the Authorized Officers, or each individually, are hereby authorized to sell the Bonds pursuant to one or more of the following methods:

(a) The City is authorized to sell the Bonds to Piper Sandler & Co., as original purchaser of the Bonds (the **"Underwriter"**), in accordance with **Section 210** of this Ordinance. Delivery of the Bonds shall be made to the Underwriter as soon as practicable after the adoption of this Ordinance, upon payment therefor in accordance with the terms of sale. The City is authorized to enter into a Bond Purchase Agreement (the **"Purchase Agreement"**) between the City and the Underwriter in form and substance acceptable to the Authorized Officers, or each individually. Such Authorized Officer is authorized to execute the Purchase Agreement, in form and substance acceptable to such Authorized Officer, for and on behalf of the City, such officer's signature thereon being conclusive evidence of such official's and the City's approval thereof. The Underwriter shall have the right to direct the registration of the Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. Such Underwriter and its agents, representatives and counsel (including bond counsel) are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and sale of the Bonds, including, without limitation, authorizing the release of the Bonds by the Depository at closing.

(b) The City is further authorized to place the Bonds with a private purchaser (the **"Private Purchaser"**) with the assistance of Piper Sandler & Co., as placement agent of the Bonds (the **"Placement Agent"**) in accordance with **Section 210** of this Resolution. The Private Purchaser shall have the right to direct the registration of the Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. The Placement Agent and its agents, representatives and counsel (including bond counsel) are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and placement of the Bonds.

(c) The City is further authorized to (i) issue the Bonds directly to a bank or other institutional lender (the **"Lender"**) to evidence or secure a loan from such Lender to the City or (ii) enter into a loan agreement with a Lender in lieu of issuing the Series 2023 Bonds, in accordance with **Section 210** of this Ordinance and subject to the other restrictions of this Ordinance. Such Lender may be identified with the assistance of the Placement Agent. The Lender shall have the right to direct the registration of the Bonds and the denominations thereof within each maturity and shall have the right to sell participation interests in the Bonds to other banks and institutional lenders, all subject to the restrictions of this Ordinance. The Placement Agent and its agents, representatives and

counsel (including bond counsel) are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance of the Bonds.

Section 210. Authorization of Officers. The Authorized Officers, or each individually, are authorized and directed, in the exercise of such officers' independent judgment and absolute discretion, to hereafter, from time to time, specify, set, designate, determine, establish and appoint with respect to each series of the Bonds herein authorized, as the case may be, and in each case in accordance with and subject to the provisions of this Ordinance: (i) the dated date and the delivery date, which shall not be later than one year from the date of this Ordinance, (ii) the aggregate principal amount to be issued, which shall in no event exceed \$1,250,000, (iii) the date and year in which a principal maturity shall occur and the principal amount to mature or to be paid in such year, together with any mandatory sinking fund payments with respect to any Bonds which are issued as "term bonds," (iv) the date of final maturity, which shall in no event be later than December 31, 2029, (v) the Interest Payment Dates, (vi) the sale date, if applicable, (vii) the rate or rates of interest to be carried by each maturity such that the true interest cost shall not exceed 5.00, (viii) the provisions governing the redemption prior to maturity, the nature of any notice to be given in the event of any such prior redemption, the Redemption Price or prices payable upon such redemption and the respective periods in which each Redemption Price shall be payable, (ix) the form, content, terms and provisions of any Purchase Agreement entered into by the City with an Underwriter or any loan agreement between the District and the Lender, as set forth in **Section 209** hereof, (xi) the fee of the Underwriter, the Placement Agent or the Lender, which shall not be more than 2.00% of the aggregate principal amount of the Bonds, (xii) the purchase price for the Bonds, which shall not be less than 96.00% of the aggregate principal amount of the Bonds (inclusive of the Purchaser's discount and any original issue discount), (xiii) the identity of the Purchaser and structure of the Bond financing as contemplated in **Section 209** hereof, (xiv) the form and contents of any preliminary and final official statement or other offering materials of the City utilized in connection with any offering or sale of the Bonds to the public or of any term sheet or request for lenders in connection with any loan, (xv) the form, content, terms, and provisions of any closing and other documentation executed and delivered by the City in connection with authorization, issuance, sale and delivery and (xvi) all of the other terms not otherwise determined or fixed by the provisions of this Ordinance.

Section 211. Book-Entry Bonds; Securities Depository.

(a) Unless otherwise determined by the Purchaser, the Bonds shall initially be registered to Cede & Co., as nominee for the Securities Depository, and no Beneficial Owner will receive any certificate representing its respective interest(s) in the Bonds, except if the Paying Agent issues Replacement Bonds as provided in **Section 211(b)** hereof. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of the principal or Redemption Price of and interest on the Bonds to the Participants until and unless the Paying Agent authenticates and delivers Replacement Bonds to the Beneficial Owners as described in **Section 211(b)**.

(b) If (i) the City determines (A) that the Securities Depository is unable to properly discharge its responsibilities, or (B) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of

1934, as amended, or (C) that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Registered Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, or (ii) the Paying Agent receives written notice from Participants having interests in not less than 50% in aggregate principal amount of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Registered Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, then the Paying Agent shall notify the Registered Owners of such determination or such notice and of the availability of certificates to Registered Owners requesting the same, and the Paying Agent shall register in the name of and authenticate and deliver Replacement Bonds to the Beneficial Owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption, provided that in the case of a determination under this **Section 211(b)(i)(A)** or (B), the City, with the consent of the Paying Agent, may select a successor securities depository in accordance with **Section 211(c)** hereof to effect book-entry transfers. In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Paying Agent, to the extent applicable with respect to such Replacement Bonds. If the Securities Depository resigns and the City, the Paying Agent or Registered Owners are unable to locate a qualified successor of the Securities Depository in accordance with **Section 211(c)**, then the Paying Agent shall authenticate and cause delivery of Replacement Bonds to Registered Owners as provided herein. The Paying Agent may rely on information from the Securities Depository and its Participants as to the names of the Beneficial Owners of the Bonds. The cost of printing Replacement Bonds shall be paid for by the City.

(c) If the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities Exchange Act of 1934, as amended, the City may appoint a successor Securities Depository, provided the Paying Agent receives written evidence satisfactory to the Paying Agent with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Paying Agent upon its receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in appropriate denominations and form as provided herein.

Section 212. Offering Documents. The use and public distribution of any official statement, offering circular, term sheet or any other offering document (including any preliminary thereof, the “**Offering Document**”) by the Underwriter or the Placement Agent in connection with the reoffering of the Bonds is hereby authorized. Any Authorized Officer is authorized to approve the final Offering Document as so supplemented, amended and completed, and the use and public distribution of the final Offering Document by the Underwriter or the Placement Agent in connection with the reoffering of the Bonds is hereby authorized. Any Authorized Officer is

hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

The City agrees to provide to the Underwriter or the Placement Agent within seven Business Days of the date of the sale of Bonds sufficient copies of the final Offering Document to enable the Underwriter or the Placement Agent to comply with the requirements of Rule 15c2-12(b)(4) of the Securities and Exchange Commission and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board, if applicable.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Redemption Provisions.

(a) ***Optional Redemption by City.*** Unless otherwise determined by an Authorized Officer, any Bonds maturing after the date five years from their date of original issue shall be subject to redemption at the option of the City on the date five years from their date of original issue and any date thereafter, as a whole, or in part in such principal amounts and at the Redemption Prices determined by an Authorized Officer in accordance with the provisions of **Section 210** hereof.

(b) ***Mandatory Sinking Fund Redemption.*** The Authorized Officers, or each individually, may designate in a certificate certain Bonds as “**Term Bonds**”, portions of which are to be redeemed on such dates of the years (each such date being herein referred to as a “**Sinking Fund Payment Date**”) and in the amounts (hereinafter referred to as a “**Mandatory Sinking Fund Payment**”) set forth in such certificate. The Paying Agent shall select and call for redemption, in accordance with this subsection (b), from the Term Bonds the amounts specified by the Authorized Officer in the certificate, and the Term Bonds selected by the Paying Agent shall become due and payable on such date. If Term Bonds are redeemed at the option of the City pursuant to **Section 301(a)**, the Term Bonds so optionally redeemed may, at the option of the City, be applied as a credit against any subsequent Mandatory Sinking Fund Payment with respect to Term Bonds otherwise to be redeemed thereby, such credit to be equal to the principal amount of such Term Bonds redeemed pursuant to **Section 301(a)**, provided that the City shall have delivered to the Paying Agent not less than 45 days prior to such Sinking Fund Payment Date a City certificate stating its election to apply such Term Bonds as such a credit. In such case, the Paying Agent shall reduce the amount of Term Bonds to be redeemed on the Sinking Fund Payment Date specified in such City certificate by the principal amount of Term Bonds so redeemed pursuant to **Section 301(a)**. Any credit given to Mandatory Sinking Fund Payments pursuant to this subsection (b) shall not affect any subsequent Mandatory Sinking Fund Payments, which shall remain payable as otherwise provided in this subsection, unless and until another credit is given in accordance with the provisions hereof.

Section 302. Selection of Bonds to Be Redeemed.

(a) The Paying Agent shall call Bonds for redemption and payment and shall give notice of such redemption as herein provided upon receipt by the Paying Agent at least 45 days prior to the Redemption Date (or such shorter period as may be acceptable to the Paying Agent) of written instructions of the City specifying the principal amount, stated maturities, Redemption Date and Redemption Prices of the Bonds to be called for redemption. The Paying Agent may in its discretion waive such notice period so long as the notice requirements set forth in **Section 303** are met.

(b) Bonds shall be redeemed only in the principal amount of \$5,000 or any whole multiple thereof. When less than all of the Outstanding Bonds are to be redeemed, such Bonds shall be redeemed in such principal amounts and from such maturity or maturities as the City, in its sole and absolute discretion shall determine. Bonds of less than a full Stated Maturity shall be selected by the Paying Agent in \$5,000 units of principal amount by lot in such equitable manner as the Paying Agent may determine.

(c) In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than \$5,000 are then Outstanding, then for all purposes in connection with such redemption, each \$5,000 of face value shall be treated as though it were 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 face value represented by any Bond are selected for redemption, then upon notice of intention to redeem such \$5,000 unit or units, the Registered Owner of such Bond or the Registered Owner's duly authorized agent shall present and surrender such Bond to the Paying Agent (i) for payment of the Redemption Price and interest to the Redemption Date of such \$5,000 unit or units of face value called for redemption, and (ii) for exchange, without charge to the Registered Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Registered Owner of any such Bond fails to present such Bond to the Paying Agent for payment and exchange as provided, such Bond shall, nevertheless, become due and payable on the Redemption Date to the extent of the \$5,000 unit or units of face value called for redemption (and to that extent only).

Section 303. Notice and Effect of Call for Redemption. Unless waived by any Registered Owner of Bonds to be redeemed, official notice of any redemption shall be given by the Paying Agent on behalf of the City by mailing a copy of an official redemption notice by first-class mail at least 30 days (or such shorter period as may be acceptable to the then Registered Owner of the Bonds) prior to the Redemption Date to the Purchaser of the Bonds and each Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register.

All official notices of redemption shall be dated and shall contain the following information:

- (a) the Redemption Date;
- (b) the Redemption Price;

(c) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption of any Bonds, the respective principal amounts) of the Bonds to be redeemed;

(d) a statement that on the Redemption Date the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the Redemption Date; and

(e) the place where such Bonds are to be surrendered for payment of the Redemption Price, which shall be the principal corporate trust office of the Paying Agent.

The failure of any Registered Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the City shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds that are to be redeemed on that date.

Official notice of redemption having been given as provided, the Bonds or portions of Bonds to be redeemed shall become due and payable on the Redemption Date, at the Redemption Price therein specified, and from and after the Redemption Date (unless the City defaults in the payment of the Redemption Price) such Bonds or portion of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with such notice, the Redemption Price of such Bonds shall be paid by the Paying Agent. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Registered Owner a new Bond or Bonds of the same Stated Maturity in the amount of the unpaid principal as provided herein. All Bonds that have been surrendered for redemption shall be cancelled and destroyed by the Paying Agent as provided herein and shall not be reissued.

The Paying Agent is directed to comply with any mandatory or voluntary standards then in effect for processing redemptions of municipal securities established by the Securities and Exchange Commission. Failure to comply with such standards shall not affect or invalidate the redemption of any Bond.

ARTICLE IV

SECURITY FOR AND PAYMENT OF BONDS

In accordance with the Plan, the Bonds are payable from (a) revenue generated from the City's utility systems and deposited in the City's general fund (and not otherwise pledged to other bonds) in an amount not to exceed Three Hundred Thousand Dollars (\$300,000) annually and (b) additional non-City funds.

The Bonds shall not be or constitute a general obligation of the City and are payable solely as described above. The taxing power of the City is not pledged to the payment of debt service on the Bonds.

The provisions of this Ordinance shall constitute a contract between the City and the registered owners of the Bonds, and any registered owners of any Bond may either in law or equity or suit, action, mandamus or other proceedings enforce or compel performance of this Ordinance.

The City may issue additional bonds on a parity with the Bonds and payable from the Plan revenues described above solely as permitted in the Local Option Act and in accordance with the Election.

ARTICLE V

ESTABLISHMENT OF FUNDS; DEPOSIT AND APPLICATION OF MONEY

Section 501. Establishment of Funds. There have been or shall be established in the treasury of the City and shall be held and administered by the Treasurer of the City the following separate funds:

- (a) Project Fund; and
- (b) Debt Service Fund.

Section 502. Deposit of Bond Proceeds. The net proceeds received from the sale of the Bonds shall be deposited simultaneously with the delivery of the Bond as follows:

- (a) All accrued interest received from the sale of the Bonds shall be deposited in the Debt Service Fund and applied in accordance with **Section 504** hereof.
- (b) The remaining balance of the proceeds derived from the sale of the Bonds shall be deposited in the Project Fund and shall be applied in accordance with **Section 503** hereof.

Section 503. Application of Money in the Project Fund. Money in the Project Fund shall be used by the City solely for the purpose of (a) acquiring the Project, and (b) paying the costs and expenses of issuing the Bonds. Upon acquisition of the Project and the payment of all issuance costs, any surplus remaining in the Project Fund shall be transferred to and deposited in the Debt Service Fund.

Section 504. Application of Money in the Debt Service Fund. All amounts paid and credited to the Debt Service Fund shall be expended and used by the City for the sole purpose of paying the principal or Redemption Price of and interest on the Bonds as and when the same become due and the usual and customary fees and expenses of any Paying Agent. The City Treasurer is authorized and directed to withdraw from the Debt Service Fund sums sufficient to pay both principal or Redemption Price of and interest on the Bonds and the fees and expenses of the Paying Agent as and when the same become due, and to forward such sums to the Paying Agent in a manner which ensures that the Paying Agent will receive immediately available funds

in such amounts on or before the Business Day immediately preceding the dates when such principal, interest and fees of the Paying Agent will become due. If, through the lapse of time or otherwise, the Registered Owner of any Bond is no longer entitled to enforce payment of such Bond or the interest thereon, the Paying Agent shall return such funds to the City. All money deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance and shall be held in trust by the Paying Agent for the benefit of the Registered Owners of the Bonds entitled to payment from such money. Any money or investments remaining in the Debt Service Fund after the retirement of the indebtedness for which the Bonds were issued and all other indebtedness of the City shall be transferred and paid into the general fund of the City.

Section 505. Deposits and Investment of Money. Money in each of the funds created by and referred to in this Ordinance shall be deposited in a bank or banks or other legally permitted financial institutions that are members of the Federal Deposit Insurance Corporation. All such deposits shall be continuously and adequately secured by the financial institutions holding such deposits as provided by the laws of the State. All money held in the funds created by this Ordinance shall be kept separate and apart from all other funds of the City so that there shall be no commingling of such funds with any other funds of the City.

Money held in any fund referred to in this Ordinance may be invested by the City Treasurer at the direction of the City Council, in accordance with this Ordinance and the Tax Certificate, in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than the date when the money invested may be needed for the purpose for which such fund was created. All earnings on any investments held in any fund shall accrue to and become a part of such fund.

Section 506. Payments Due on Saturdays, Sundays and Holidays. If any payment on any Bond is due on a date which is not a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such payment date, and no interest shall accrue for the period after such payment date.

Section 507. Nonpresentment of the Bonds. If any Bond is not presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Bond have been made available to the Paying Agent all liability of the City to the Registered Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Registered Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his or her part under this Ordinance or on, or with respect to, such Bond. If any Bond is not presented for payment within four years following the date when such Bond becomes due at Maturity, the Paying Agent shall repay to the City the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the City, and the Registered Owner thereof shall be entitled to look only to the City for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the City shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

ARTICLE VI

REMEDIES

Section 601. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Registered Owners of the Bonds, and the Registered Owner or Owners of not less than 10% in principal amount of the Bonds at the time Outstanding shall have the right for the equal benefit and protection of all Registered Owners of Bonds similarly situated:

(a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such Registered Owner or Owners against the City and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Ordinance or by the constitution and laws of the State;

(b) by suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Registered Owners of the Bonds.

Section 602. Limitation on Rights of Owners. The covenants and agreements of the City contained herein and in the Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Bonds. All of the Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Bonds, or otherwise, except as to rate of interest, or date of Maturity or right of prior redemption as provided in this Ordinance. No one or more Owners secured hereby shall have any right in any manner whatever by his or her or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Registered Owners of such Outstanding Bonds.

Section 603. Remedies Cumulative. No remedy conferred herein upon the Owners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Registered Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies consequent thereon. No delay or omission of any Registered Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Registered Owners of the Bonds by this Ordinance may be enforced and exercised from time to time and as often as may be deemed

expedient. If any suit, action or proceedings taken by any Registered Owner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or has been determined adversely to such Registered Owner, then, and in every such case, the City and the Registered Owners of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as if no such suit, action or other proceedings had been brought or taken.

ARTICLE VII

DEFEASANCE

When any or all of the Bonds or scheduled interest payments thereon have been paid and discharged, then the requirements contained in this Ordinance and the pledge of the City's faith and credit hereunder and all other rights granted hereby shall terminate with respect to the Bonds or scheduled interest payments thereon so paid and discharged. Bonds or scheduled interest payments thereon shall be deemed to have been paid and discharged within the meaning of this Ordinance if there has been deposited with the Paying Agent, or other commercial bank or trust company located in the State and having full trust powers, at or prior to the Stated Maturity or Redemption Date of such Bonds or the interest payments thereon, in trust for and irrevocably appropriated thereto, money and/or Defeasance Obligations which, together with the interest to be earned on any such Defeasance Obligations, will be sufficient for the payment of the principal of such Bonds and/or interest accrued to the Stated Maturity or Redemption Date, or if default in such payment has occurred on such date, then to the date of the tender of such payments; provided, however, that if any such Bonds are to be redeemed prior to their Stated Maturity, (a) the City has elected to redeem such Bonds, and (b) either notice of such redemption has been given, or the City has given irrevocable instructions, or shall have provided for an escrow agent to give irrevocable instructions, to the Paying Agent to give such notice of redemption in compliance with **Section 302(a)** of this Ordinance. Any money and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the City, for the purpose of paying and discharging any of the Bonds, shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank or trust company in trust for the respective Registered Owners of the Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All money and Defeasance Obligations deposited with the Paying Agent or other bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions of this Ordinance.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 801. Tax Covenants.

(a) The City covenants and agrees that (i) it will comply with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from federal gross income of the interest on the Bonds, and (ii) it will not use or permit the use of any proceeds of Bonds or any other funds of the City, nor take or permit any other action, or fail to take any action, which would adversely affect the exclusion from federal gross income of the interest on the Bonds. The City will also adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with other applicable future law, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

(b) The City covenants and agrees that (i) it will use the proceeds of the Bonds as soon as practicable and with all reasonable dispatch for the purposes for which the Bonds are issued, and (ii) it will not invest or directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the City in any manner, or take or omit to take any action, that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.

(c) The City covenants and agrees that it will pay or provide for the payment from time to time of all arbitrage rebate to the United States pursuant to Section 148(f) of the Code and the Tax Certificate. This covenant shall survive payment in full or defeasance of the Bonds. The Tax Certificate may be amended or replaced if, in the opinion of Bond Counsel, such amendment or replacement will not adversely affect the exclusion from federal gross income of the interest on the Bonds.

(d) The City covenants and agrees that it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, (i) in a manner that would cause any Bond to be a "private activity bond" within the meaning of Section 141(a) of the Code, or (ii) to make or finance a loan to any Person.

(e) The City makes the following representations in connection with the exception for small governmental units from the arbitrage rebate requirements under Section 148(f)(4)(D) of the Code:

(i) the City is a governmental unit under Nebraska law with general taxing powers;

(ii) the Bonds are not private activity bonds as defined in Section 141 of the Code;

(iii) ninety-five percent or more of the net proceeds of the Bonds are to be used for local governmental activities of the City;

(iv) the aggregate face amount of all tax-exempt bonds (other than private activity bonds and certain refunding bonds) issued by the City (and all subordinate entities thereof) during the calendar year in which the Bonds are issued is not reasonably expected to exceed \$5,000,000; and

(v) the City (including all subordinate entities thereof) will not issue in excess of \$5,000,000 of tax-exempt bonds (including the Bonds but excluding private activity bonds and certain refunding bonds) during the calendar year in which the Bonds are issued without first obtaining an opinion of Bond Counsel that the exclusion of the interest on the Bond from federal gross income will not be adversely affected thereby.

(f) The City hereby designates the Bonds as “qualified tax-exempt obligations” as defined in Section 265(b)(3) of the Code. In addition, the City hereby represents that:

(i) the aggregate face amount of all tax-exempt obligations (other than private activity bonds which are not “qualified 501(c)(3) bonds” and certain refunding bonds) which will be issued by the City (and all subordinate entities thereof) during the calendar year in which the Bonds are issued is not reasonably expected to exceed \$10,000,000; and

(ii) the City (including all subordinate entities thereof) will not issue an aggregate principal amount of obligations designated by the City to be “qualified tax-exempt obligations” during the calendar year in which the Bonds are issued, including the Bonds, in excess of \$10,000,000, without first obtaining an opinion of Bond Counsel that the designation of the Bonds as a “qualified tax-exempt obligation” will not be adversely affected.

Any Authorized Officer is hereby authorized to take such other action as may be necessary to make effective the designation in this **Section 801(f)**.

(g) The City hereby adopts the Post-Issuance Compliance Procedures attached to this Ordinance as **Exhibit B** to ensure that all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds which are intended to be tax-exempt are met. The City reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as it may determine. The City also reserves the right to change these policies and procedures from time to time, without notice.

(h) The foregoing covenants shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to **Article VII** of this Ordinance or any other provision of this Ordinance, until the final Maturity of the Bond.

Section 802. Continuing Disclosure.

(a) The City (i) authorizes and directs the Authorized Officers, or each individually, to execute and deliver, on the date of issue of the Bonds, an undertaking (the “**Undertaking**”) pursuant to Rule 15c2-12 in such form as shall be satisfactory to Bond Counsel and the Purchaser,

and (ii) covenants and agrees that it will comply with and carry out all of the provisions of the Undertaking. Notwithstanding any other provision of this Ordinance, failure of the City to comply with the Undertaking shall not be considered an event of default hereunder; however, any Participating Underwriter (as such term is defined in the Undertaking) or any Beneficial Owner or any Registered Owner of a Bond may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this **Section 802**.

The City hereby adopts the Disclosure Policies and Procedures attached to this Ordinance as **Exhibit C** to ensure that the City satisfies the requirements of Rule 15c2-12 and the Undertaking. The City reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as it may determine. The City also reserves the right to change such policies and procedures from time to time, without notice.

Section 803. Amendments. The rights and duties of the City and the Registered Owners, and the terms and provisions of the Bonds or of this Ordinance, may be amended or modified at any time in any respect by an ordinance of the City with the written consent of the Registered Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by such Registered Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the Clerk.

Without the written consent of the Registered Owners of all of the Bonds at the time Outstanding, no modification or alteration of this Ordinance shall:

- (a) extend the maturity of any payment of principal or interest due upon any Bond;
- (b) effect a reduction in the amount which the City is required to pay as principal of or interest on any Bond;
- (c) permit preference or priority of any Bond over any other Bond; or
- (d) reduce the percentage in principal amount of Bonds required for the written consent to any modification or alteration of the provisions of this Ordinance.

Any provision of the Bonds or of this Ordinance may, however, be amended or modified by ordinance duly adopted by the governing body of the City at any time in any legal respect with the written consent of the Registered Owners of all of the Bonds at the time Outstanding.

Without notice to or the consent of any Registered Owners, the City may amend or supplement this Ordinance for the purpose of curing any formal defect, omission, inconsistency or ambiguity therein or in connection with any other change therein which is not materially adverse to the interests of the Registered Owners.

Every amendment or modification of the provisions of the Bonds or of this Ordinance, to which the written consent of the Registered Owners is given, as above provided, shall be expressed in an ordinance adopted by the City Council amending or supplementing the provisions of this Ordinance and shall be deemed to be a part of this Ordinance. A certified copy of every such amendatory or supplemental ordinance, if any, and a certified copy of this Ordinance shall always be kept on file in the office of the City Clerk, shall be made available for inspection by the Registered Owner of any Bond or a prospective purchaser or owner of any Bond authorized by this Ordinance, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental ordinance of this Ordinance will be sent by the City Clerk to any such Registered Owner or prospective purchaser.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the City Clerk a copy of such amendatory or supplemental ordinance of the City, duly certified, as well as proof of any required consent to such modification by the Registered Owners of the Bonds then Outstanding. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification.

The City shall furnish to the Paying Agent a copy of any amendment to the Bonds or this Ordinance which affects the duties or obligations of the Paying Agent under this Ordinance.

Section 804. Notices, Consents and Other Instruments by Registered Owners. Any notice, consent, request, direction, approval or other instrument to be signed and executed by any Registered Owner may be in any number of concurrent writings of similar tenor and may be signed or executed by such Registered Owner in person or by an agent with written authorization. Proof of the execution of any such instrument or writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Ordinance, and shall be conclusive in favor of the City and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

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

(b) The fact of ownership of Bonds, the amount or amounts, numbers and other identification of Bonds, and the date of holding the same shall be proved by the Bond Register.

In determining whether the Registered Owners of the requisite aggregate principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Ordinance, Bonds owned by the City shall be disregarded and deemed not to be Outstanding under this Ordinance, except that, in determining whether the Registered Owners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Registered Owners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not

be disregarded as provided if the pledgee establishes to the satisfaction of the Registered Owners the pledgee's right so to act with respect to such Bonds and that the pledgee is not the City.

Section 805. General and Specific Authorizations; Ratification of Prior Actions. Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the City Council hereby (a) authorizes and directs the Authorized Officers and all other officers, officials, employees and agents of the City to carry out or cause to be carried out, and to perform such obligations of the City and such other actions as they, or any of them, in consultation with Bond Counsel, the Purchaser and its counsel shall consider necessary, advisable, desirable or appropriate in connection with this Ordinance, including without limitation the execution and delivery of all related documents, instruments, certifications and opinions, and (b) delegates, authorizes and directs the Authorized Officers, or each individually, the right, power and authority to exercise his or her independent judgment and absolute discretion in (i) determining and finalizing all terms and provisions to be carried by the Bonds not specifically set forth in this Ordinance and (ii) the taking of all actions and the making of all arrangements necessary, proper, appropriate, advisable or desirable in order to effectuate the issuance, sale and delivery of the Bonds. The execution and delivery by any Authorized Officer or by any such other officers, officials, employees or agents of the City of any such documents, instruments, certifications and opinions, or the doing by them of any act in connection with any of the matters which are the subject of this Ordinance, shall constitute conclusive evidence of both the City's and their approval of the terms, provisions and contents thereof and of all changes, modifications, amendments, revisions and alterations made therein and shall conclusively establish their absolute, unconditional and irrevocable authority with respect thereto from the City and the authorization, approval and ratification by the City of the documents, instruments, certifications and opinions so executed and the actions so taken.

All actions heretofore taken by any Authorized Officer and all other officers, officials, employees and agents of the City, including without limitation the expenditure of funds and the selection, appointment and employment of Bond Counsel and financial advisors and agents, in connection with issuance and sale of the Bonds, together with all other actions taken in connection with any of the matters which are the subject hereof, be and the same is hereby in all respects authorized, adopted, specified, accepted, ratified, approved and confirmed.

Section 806. Benefits of Ordinance Limited to the City and the Owners. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or the Bonds is intended or should be construed to confer upon or give to any person other than the City and the Owners of the Bonds any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City and the Owner from time to time of the Bonds as herein and therein provided.

Section 807. No Personal Liability. No officer or employee of the City shall be individually or personally liable for the payment of the principal of or interest on any Bond. Nothing herein contained shall, however, relieve any such officer or employee from the performance of any duty provided or required by law.

Section 808. Severability. If any section or other part of this Ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

Section 809. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State.

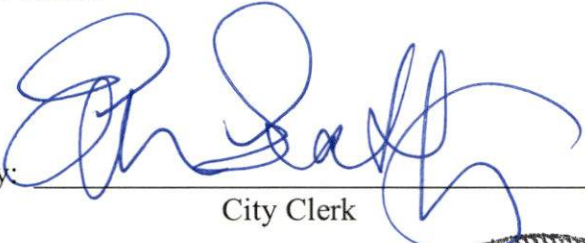
Section 810. Effective Date. This Ordinance shall take effect and be in full force from and after its passage and publication in pamphlet form as provided by law.

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DATED: June 19, 2023.

CITY OF BEATRICE, NEBRASKA

ATTEST:

By: 

City Clerk

By: 

Mayor

