

**CITY OF BOX ELDER CITY COUNCIL MEETING MINUTES**  
**Tuesday, May 19, 2020**  
**7:00 p.m. - City Council Chambers, 420 Villa Drive, Box Elder**

**Call meeting to order**

Meeting called to order at 7:00 p.m. by Mayor Larson.

**Moment of Silence/Pledge of Allegiance**

There was a moment of silence followed by the Pledge of Allegiance.

**Roll Call**

Roll was taken. Present were Mayor Larry Larson, Attorney Matt Naasz, Dawn Beltran, Rob Griffith, Jeff Hollinshead, Michael Knight, John Talich, Ben Thomas, Chief Finance Officer (CFO)/City Administrator Nicole Schneider, Community and Economic Development (CED) Director Blaise Emerson, Public Works (PW) Director Doug Curry, Police Chief Jason Dubbs, and City Clerk Jermy Washington.

**Approve the Order of Business**

Motion by Jeff Hollinshead to Approve. Seconded by Dawn Beltran.

Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous. Motion Passed.

**PUBLIC COMMENT**

No public comments made via email. No public comments from audience.

**AWARDS AND RECOGNITIONS:**

Parker Frederick -- American Legion Officer of the Year.

Chief Dubbs spoke on Officer Parker Frederick recognized for service; awarded "American Legion Officer of the Year".

**COUNCIL COMMITTEE REPORTS**

**Finance, Legal, and Public Safety Committee**

Motion by Knight to accept the Finance, Legal, and Public Safety Committee Report. Seconded by Talich.

Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous. Motion passed.

Motion by Hollinshead to adopt the Finance, Legal, and Public Safety Committee Report. Seconded by Griffith. Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous. Motion passed.

**Public Works, Planning and Zoning, and Community and Economic Development Committee**

Motion by Hollinshead to accept the Public Works, Planning and Zoning, and Community and Economic Development Committee Report. Seconded by Griffith. Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous. Motion passed.

Motion by Hollinshead to adopt the Public Works, Planning and Zoning, and Community and Economic Development Committee Report. Seconded by Knight. Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous. Motion passed.

## **CONSENT AGENDA**

- A. Approve the May 5, 2020 Council Meeting Minutes.
- B. Approve the Claims List.
- C. Retail (on-off sale) Malt Beverage & SD Farm Wine Renewal Applications

Consent Items A - C. Motion by Jeff Hollinshead to Approve. Seconded by John Talich.  
Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous.  
Motion Passed.

### **INFORMATIONAL ITEMS:**

#### **BUILD Planning Grant Application**

Chief Finance Officer (CFO) gave background BUILD Planning Grant. No action taken.

### **UNFINISHED BUSINESS:**

**Consider Resolution No. 20-11 recognizing a public health emergency and encouraging all individuals and businesses within the City of Box Elder to comply with guidelines and directives established by the CDC and State of South Dakota necessary to slow the community spread of Coronavirus (COVID-19); and recognizing the City's authority to abate nuisances necessary to protect the public health.**

CFO discussed slight changes starting with June 3, 2020 Council Meeting. Discussed specific changes to June 3rd Council Meeting and continuing future meetings same. No action taken.

**Consider Resolution No. 20-12 authorizing the Public Works Department to abate utility late fees and shut off orders on a case by case bases during the Coronavirus (COVID-19) pandemic.**

No action taken.

### **NEW BUSINESS:**

**Rezone #200052 - Rezoning request from Agricultural District to Highway Service District for proposed Lot 10, Block 4 of Liberty Park Subdivision more generally described as the eastern terminus of Constitution Boulevard.**

CED Director gave explanation. Motion by John Talich to Approve. Seconded by Jeff Hollinshead.  
Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous.  
Motion Passed.

**Plat #200060 - Consolidation Plat for Lot 8R of Hidden Springs Ranchettes No. 2 more generally described as the eastern Terminus of Morning View Drive.**

CED Director gave overview. Motion by Michael Knight to Approve. Seconded by Jeff Hollinshead.  
Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous.  
Motion Passed.

**Plat #200065 - Consolidation Plat for Lot A of Sorensen Subdivision more generally described as southwest corner of Douglas Road and Morningside Drive.**

CED Director gave overview. Motion by Jeff Hollinshead to Continue to the June 3<sup>rd</sup> meeting. Seconded by Michael Knight. Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous. Motion Passed.

**Fireworks Sales Temporary License #1881 - Application by Fireworks by Space International for temporary fireworks sales at 581 Watiki Way.**

CED Director gave overview and explained location. Motion by Michael Knight to Approve. Seconded by John Talich. Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous. Motion Passed.

**Appointment of task force members for street connectivity in SW Box Elder.**

Mayor Larson gave overview and purpose of task force. Mayor appointed Blaise Emerson, Jason Dubbs, Jeff Hollinshead and Rob Griffith from Council, Kurt Hirshfeld from Planning Commission to task force, and development owners. CFO commented cost sharing, collaboration, and connectivity. Talich voiced concern not having representative from Ward 1. Hollinshead spoke on not decision-making task force. CFO explained Council Members have say after task force reports back to Council; further explained task force. Public Comment from J.B. Brown. Motion by Dawn Beltran to Approve. Seconded by Michael Knight. Roll Call: Dawn Beltran-Aye; Rob Griffith-Aye; Jeff Hollinshead-Aye; Michael Knight-Aye; Ben Thomas-Aye. John Talich-Nay. Motion passed 5-to-1.

**Resolution 20-17 -- To Allow Fireworks (Citizen) for the 2020 Year.**

Chief Dubbs explained Resolution 20-17.

**RESOLUTION 20-17**

**A RESOLUTION TO APPROVE THE DISCHARGE OF FIREWORKS WITHIN THE CITY LIMITS OF BOX ELDER FOR THE FOURTH OF JULY HOLIDAY DURING THE YEAR 2020 FOR CITY OF BOX ELDER, MEADE COUNTY AND PENNINGTON COUNTY, SOUTH DAKOTA**

**WHEREAS**, the City of Box Elder has Ordinance 510 which bans the use or discharge of fireworks as defined in SDCL 34-37 within the jurisdiction of the City unless allowed by resolution by the Council;

**WHEREAS**, the South Dakota grassland fire danger index is below or is expected to remain below the very high or extreme category in those areas in and around the City of Box Elder, South Dakota; and

**WHEREAS**, the Common Council of the City of Box Elder deems that fireworks should be allowed in and around the Fourth of July holiday (July 3rd through July 5th), and New Year's holiday (December 31st, 2020 through January 1st, 2021).

**NOW THEREFORE BE IT RESOLVED** by the Common Council of the City of Box Elder, South Dakota, that the discharge of fireworks will be allowed within the City Limits of Box Elder for the Fourth of July, and New Year's Holiday, as designated in Ordinance #510 and SDCL 34-37. Local fireworks discharge may commence on the following dates and during the following times:

July 3rd beginning at 9:00 am and ceasing at 11:00 pm.

July 4th beginning at 9:00 am and ceasing at 11:00 pm.

July 5th beginning at 9:00 am and ceasing at 11:00 pm.

December 31st, 2020 beginning and 9:00 am and ceasing at 1:00 am on January 1st, 2021.

Citizens are responsible for all firework discharge clean up. Children, 18 and under, must be supervised by a parent or guardian when discharging fireworks. The parent or guardian is responsible for any liability for the child discharging fireworks. In the event that the grassland fire danger exceeds the "High" level, private or citizen use of fireworks would be prohibited.

Furthermore, fireworks may be discharged only on private property, with the permission of the landowner. Discharge of fireworks on public property is strictly prohibited.

Dated at Box Elder, South Dakota, this 20th day of May 2020.

BOX ELDER COMMON COUNCIL

Seal:

Attest:

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Larry Larson  
Mayor

Nicole Schneider  
Finance Officer

Motion by Jeff Hollinshead to Approve. Seconded by Dawn Beltran.  
Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous.  
Motion Passed.

**Resolution 20-18 -- Public Fireworks Display for 2020.**

Chief Dubbs gave overview.

**RESOLUTION 20-18**

**A RESOLUTION TO APPROVE A FIREWORKS DISPLAY WITHIN THE CITY LIMITS OF BOX ELDER DURING THE YEAR 2020 FOR CITY OF BOX ELDER, PENNINGTON COUNTY, SOUTH DAKOTA**

**WHEREAS**, the City of Box Elder has Ordinance 510 which bans the use or discharge of fireworks as defined in SDCL 34-37 within the jurisdiction of the City unless allowed by resolution by the Council;

**WHEREAS**, the South Dakota grassland fire danger index is below or expected to remain below the very high or extreme category in those areas in and around the City of Box Elder, South Dakota; and

**WHEREAS**, the Common Council of the City of Box Elder deems that a public fireworks display be permitted during the period of 9:00 a.m. July 3 through 12:00 p.m. July 5, 2020, and on September 12, 2020 from 6:00 p.m. to 11:00 p.m. for the Salute to Ellsworth Celebration. At a minimum, the display provider, be required to have the Fire Department present for fire protection & prevention; and

**NOW THEREFORE BE IT RESOLVED** by the Common Council of the City of Box Elder, South Dakota, that public fireworks displays will be allowed within the City Limits of Box Elder on 9:00 a.m. July 3 through 12:00 p.m. July 5, 2020, and on September 12, 2020 from 6:00 p.m. to 11:00 p.m. for the Salute to Ellsworth Celebration, as designated in Ordinance 510 and SDCL 34-37.

Dated at Box Elder, South Dakota, this 20th day of May 2020.

BOX ELDER COMMON COUNCIL

Seal:

Attest:

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Larry Larson  
Mayor

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Nicole Schneider  
Finance Officer

Motion by Dawn Beltran for approval. Seconded by John Talich.

Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous.  
Motion Passed.

**Declaration of Surplus Property.**

CFO gave overview surplus property.

Motion by Jeff Hollinshead to Approve. Seconded by Michael Knight.

Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous.  
Motion Passed.

**Approve mayor to sign, resolution for Water Revenue Bonds, Series 2020A, for the purpose of refinancing Water Revenue Bonds, Series 2006.**

CFO gave background.

**RESOLUTION NO. 20-19**

**RESOLUTION GIVING APPROVAL TO THE ISSUANCE AND SALE OF WATER REVENUE BONDS, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED TWO MILLION TWO HUNDRED THOUSAND (\$2,200,000) OF THE CITY OF BOX ELDER OF PENNINGTON COUNTY, SOUTH DAKOTA, APPROVING THE FORM OF THE REFUNDING BONDS AND PLEDGING CERTAIN REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REFUNDING BONDS; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS AND RETIREMENT OF THE REFUNDING BONDS.**

**WHEREAS**, the City of Box Elder is authorized by the provisions of SDCL §§ 6-8B-30 through 6-8B-52 to issue Water Revenue Bonds to refund and refinance validly issued outstanding Water Utility Revenue Bond, Series 2006 (the "Refunded Bond") of the City; and

**WHEREAS**, the City Council has determined that refunding certain water utility revenue bonds of the City will reduce the interest expense to the City; and

**WHEREAS**, the City Council has determined that is necessary and in the best interest of the City to issue Water Revenue Bonds, Series 2020A for the purpose of providing funds to (i) refund the outstanding Water Utility Revenue Bond, Series 2006 dated November 16, 2006 (the "Refunded Bond"), (ii) for main

line improvement, (iii) repair the roof on building that houses the wells, and (iv) to pay the costs of issuance of the Bonds described herein.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOX ELDER OF PENNINGTON 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 Title 9-40, as amended.

“Additional Bonds” means the additional parity bonds authorized to be issued by the City.

“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.

“Bonds” means collectively not to exceed \$2,200,000 in aggregate principal amount of Water Revenue Bonds, Series 2020A, dated 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.

“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 each date on which interest, or both principal and interest, shall be payable on the Bonds so long as any of the Bonds shall be outstanding.

“Bond 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.

“Bond Resolution” means this Resolution as it may be amended from time to time.

“Bondholder”, “Holder” and “Registered Owner” means the registered owner of a Bond, including any nominee of a Depository.

“Book-Entry Form” or “Book-Entry System” means a form or system, as applicable, under which physical bond certificates in fully registered form are issued to a Depository or to its nominee as Registered Owner, with the certificated bonds being held by and “immobilized” in the custody of such Depository, and under which records maintained by persons, other than the City or the Registration Agent, constitute the written record that identifies, and records the transfer of the beneficial “book-entry” interests in those bonds.

“City” means the City of Box Elder, Pennington and Meade County, South Dakota.

“City Council” means the City Council of the City elected pursuant to the provisions of the Charter.

“City of Box Elder” means the City of Box Elder, Pennington and Meade County, South Dakota.

“Closing Date” means the date of delivery and payment of the Bonds.

“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.

“Finance Officer” means the Finance 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 Mayor and approved by the City Council to perform the duties otherwise performed by the Finance Officer, or his/her designee.

“Interest Payment Date” means each date on which interest shall be payable on the Bonds so long as any of the Bonds shall be outstanding.

“Mayor” means the Mayor elected pursuant to the provisions of the SDCL 9-13 or his or her designee acting on his or her behalf pursuant to the Charter.

“Original Issue Discount or OID” means an amount by which the par value of a security exceeds its public offering price at the time of its original issuance.

“Original Issue Premium or OIP” means the amount by which the public offering price of a security at the time of its original issuance exceeds its par value.

“Outstanding,” “Bonds Outstanding,” or “Outstanding Bonds” means, as of a particular date all Bonds issued and delivered under this Bond Resolution except: (1) any Bond paid or redeemed or otherwise canceled by the City at or before such date; (2) any Bond for the payment of which cash, equal to the principal amount thereof with interest to date of maturity, shall have theretofore been deposited prior to maturity by the City for the benefit of the Owner thereof; (3) any Bond for the redemption of which cash, equal to the redemption price thereof with interest to the redemption date, shall have theretofore been deposited with the Registration Agent and for which notice of redemption shall have been mailed in accordance with this Bond Resolution; (4) any Bond in lieu of or in substitution for which another Bond shall have been delivered pursuant to this Resolution, unless proof satisfactory to the City is presented that any Bond, for which a Bond in lieu of or in substitution therefor shall have been delivered, is held by a bona fide purchaser, as that term is defined in Article 8 of the Uniform Commercial Code of the State, as amended, in which case both the Bond in lieu of or in substitution for which a new Bond has been delivered and such new Bond so delivered therefor shall be deemed Outstanding; and, (5) any Bond deemed paid under the provisions of Article VII of this Resolution, except that any such Bond shall be considered Outstanding until the maturity or redemption date thereof only for the purposes of being exchanged, transferred, or registered.

“Paying Agent” means the Finance Officer or his or her 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.

“Placement Agent” means Dougherty & Company LLC acting for and on behalf of itself and such securities dealers as it may designate.

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

“Project” means for the 2006 Refunded Bonds the installation of waterlines for the city water tank. For the remaining funds issued “Project” means main line improvement and repair of the roof on the building that houses the wells.

“Purchaser” means Dacotah Bank, PO Box 1560, Aberdeen, South Dakota 57402.

“Record Date” means the dates preceding an Interest Payment Date upon which the Holder will be determined for payment purposes.

“Refunded Bond” means the Water Utility Revenue Bond, Series 2006 dated November 16, 2006.

“Registration Agent” means Finance Officer or his or her successor or successors hereafter appointed in the manner provided in Article VI hereof.

“Resolution” means this Bond Resolution.

“Schedule” means the schedule which indicates the principal and interest payments on the Bonds.

“Series 2006 Bonds” means the City’s outstanding Water Utility Revenue Bond, Series 2006 dated November 16, 2006.

“Series 2020A Bonds” means not to exceed \$2,200,000 in aggregate principal amount of Water Revenue Bonds, Series 2020A.

“System” means the City’s water utility system (the “Utility System”) that provides waterworks for the purpose of providing water and water supply for municipal, industrial, and domestic purposes.

#### 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 and determined by the City Council as follows:

(a) The refunding of the Refunded Bond as set forth herein through the issuance of the Bonds will result in the reduction in debt service payable by the City over the term of the Refunded Bond thereby effecting a cost savings to the public;

(b) It is advantageous to the City to deposit a portion of the proceeds from the sale of the Bonds and other funds of the City, if any, with the paying agent of the Refunded Bond, that will be sufficient to pay principal of, premium, if any, and interest on the Refunded Bond.

(c) The City hereby determines 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 South Dakota Codified Laws Chapter, 6-8B, Sections 6-8B-30 to 6-8B-52 inclusive.

## ARTICLE III. AUTHORITY, PLEDGE, RATES AND CHARGES AND ACCOUNTS

### Section 3.1. Authority.

In order to (i) refund the outstanding Refunded Bond, (ii) provide for main line improvement, (iii) repair the roof on building that houses the wells, and (iv) to pay the costs of issuance of the Bonds described herein, there shall be issued pursuant to, and in accordance with, the provisions of the Act, the Bond Resolution, and other applicable provisions of law, Water Revenue Bonds of the City in the aggregate principal amount of not to exceed \$2,200,000.

### Section 3.2. Pledge of Revenues.

The Bonds shall not constitute constitutional debt under Section 13 Section 4 of the South Dakota constitution. The Bonds, together with the interest thereon, shall not constitute a charge against the City's general credit or taxing power, but shall be a limited obligation of the City payable solely out of the Project Revenue Account (the "Net Income or Revenues"), which payments, revenues and receipts are hereby pledged and assigned for the equal and ratable payments of the Bonds and shall be used for no other purpose than to pay the principal of and interest on the Bonds (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The City covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges which will be sufficient to provide for the payments upon the Bonds issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the System, and depreciation, and the rate ordinance or resolution shall be revised from time to time so as to produce these amounts. The City hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Refunded Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the City set forth in this Section 3.2 or any other. The Finance Officer will present to the City Council for inclusion in the annual appropriation ordinance an appropriation sufficient to pay all principal and interest payments on the Bonds and other Outstanding Bonds of the City, and in the event there is insufficient revenues to pay the Bonds when due, the City will take all other actions necessary to raise rates to provide moneys for the payment of the Bonds of the City or from sources lawfully available for this purpose.

Section 3.3. Segregation. The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges and surcharges.

Section 3.4. Periodic review. The amount of the surcharge shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement's rate covenant and to pay principal of and interest the Bond when due. The surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

Section 3.5. Project Fund Accounts.

For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal and interest on the Bond, the following mandatory asset segregations shall be included in the water system account of the City and shall be used solely for the following respective purposes until payment in full of the principal and interest on the Bonds:

(a) Project Revenue Account. There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the resolutions and ordinances of the City (collectively the "Rate Resolution"). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

(b) Project Debt Service Account. Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal and/or interest payment on the Bonds.

(c) Depreciation Account. There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Common Council to be a proper and adequate amount for repair and depreciation of the Project.

(d) Project Surplus Account. There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the City Finance Officer to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes and not otherwise:

To redeem and prepay the Bond when and as such Bond becomes prepayable according to its terms;  
To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account

are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:

To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or

To be used for any other authorized municipal purpose designated by the Common Council.

No moneys shall at any time be transferred from the Project Surplus Account or any other account of the Fund to any other fund of the City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

#### 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 Two Hundred Thousand Dollars (\$2,200,000).

##### Section 4.2. Form of Bonds; Execution.

(a) The Bonds are issuable only as fully registered Bonds, without coupons, in the denomination of one penny (\$0.01) or any integral multiple thereof (but no single Bond shall represent installments of principal maturing on more than one date). All Bonds issued under this Resolution shall be substantially in the form set forth in Exhibit A attached hereto and on file with the Finance Officer and open to public inspection at regular business hours, 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 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 Bond shall cease to be such officer before the delivery of such Bond, 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 Bond may bear the facsimile signature of, or may be manually signed by, such individuals who, at the actual time of the execution of such Bond, were the proper officers of the City to sign such Bond, 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 as set forth in the Bond Purchase Agreement.

(b) The Bonds shall be designated "Water Revenue Bonds, Series 2020A" 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 Bond is paid, such interest 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 Dates. 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 in full compliance with SDCL Chapter 6-8b.

(c) The Registration Agent 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 Registration Agent 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, 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 of and premium, if any, on the Bonds shall be made upon presentation and surrender of such Bonds to the Registration Agent as the same shall become due and payable.

#### 4.4. Additional Bonds.

As permitted by SDCL 9-40-8 and SDCL 9-40-9, Additional Bonds payable from revenues and income of the Project may be issued as provided in the Bond Purchase Agreement, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Bonds.

#### Section 4.5. 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 4.6. Registration, Transfer and Exchange of Bonds.

The Bonds are transferable only by presentation to the Registration Agent 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 Registration Agent shall issue a new Bond or Bonds to the assignee(s) in \$0.01 denominations, or integral multiples thereof, as requested by the registered owner requesting transfer. The Registration Agent 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 Registration Agent, 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 Bond, 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 Registration Agent 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 Registration Agent, 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 4.7. 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 Registration Agent 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 Registration Agent: (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 Registration Agent 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 Registration Agent. 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 attorney's fees, incurred by the City and the Registration Agent 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 Registration Agent such security or indemnity as they may require to save them harmless and evidence to the satisfaction of the City and the Registration Agent 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 4.8. Authentication.

The Registration Agent 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 Registration Agent by the manual signature of an officer thereof on the certificate set forth herein on the Bond form.

#### Section 4.9. Financial Advisor.

The Mayor and Finance Officer are authorized to retain Dougherty & Company LLC as the Financial Advisor for the Bonds upon such terms as they approve.

#### Section 4.10. Bond Counsel.

The Mayor and Finance Officer are authorized to retain Meierhenry Sargent LLP as Bond Counsel upon such terms as they approve.

#### Section 4.11. Dissemination Agent.

The City authorizes the Authorized Officer of the District to retain a dissemination agent with regard to the written undertaking authorized in Section 10.7 hereof.

#### ARTICLE V. REDEMPTION OF BONDS PRIOR TO MATURITY

##### Section 5.1. Optional Redemption.

The Bonds shall be subject to optional redemption as set forth in the Bond Purchase Agreement.

#### ARTICLE VI. REGISTRATION AGENT

##### Section 6.1. Appointment and Acceptance of Duties.

(a) The City hereby authorizes the Finance Officer to appoint the Registration and Paying Agent with respect to the Bonds and authorizes and directs the Registration Agent 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 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 Finance Officer, or either of them is hereby authorized to execute and the Finance Officer is hereby authorized to attest such written agreement between the City and the Registration Agent as they shall deem necessary or proper with respect to the obligations, duties and rights of the Registration Agent. The payment of all reasonable fees and expenses of the Registration Agent 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 Registration Agent may become the Owner of any Bonds, with the same rights as it would have if it were not a Registration Agent. The Registration Agent may act as a 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 Registration Agent and Appointment of Successors.

(a) The Registration Agent 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 Finance Officer. The Registration Agent may be removed at any time by the Finance Officer, provided that such removal does not constitute a breach of any contractual agreement with any such Registration Agent, by filing written notice of such removal with such Registration Agent. Any successor Registration Agent shall be appointed by the Mayor and shall be a trust company or a bank having the powers of a trust company, having a combined capital, surplus, and undivided profits aggregating at least Seventy-Five Million Dollars (\$75,000,000), willing to accept the office of Registration Agent 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 Registration Agent, such Registration Agent shall pay over, assign and deliver any monies and securities held by it as Registration Agent, and all books and records and other properties held by it as Registration Agent, to its successor, or if there be no successor then appointed, to the Finance Officer until such successor be appointed.

##### Section 6.4. Merger or Consolidation of Registration Agent.

Any corporation or association into which the Registration Agent 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 Registration Agent 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 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.DEFEASANCE OF BONDS

##### Section 7.1. Defeasance of Bonds.

If the City shall pay and discharge the indebtedness evidenced by any of the Bonds in any one or more of the following ways, to wit:

(a) By paying or causing to be paid, by deposit of sufficient funds as and when required with the Registration Agent, the principal of and interest on such Bonds as and when the same become due and payable;

(b) By depositing or causing to be deposited with any trust company or financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or similar federal agency and which has trust powers ("an Agent"; which Agent may be the Registration Agent) in trust or escrow, on or before the date of maturity or redemption, sufficient money or Federal Obligations, as hereafter defined, the principal of and interest on which, when due and payable, will provide sufficient moneys to pay or redeem such Bonds and to pay premium, if any, and interest thereon when due until the maturity or redemption date (provided, if such Bonds are to be redeemed prior to maturity thereof, proper notice of such redemption shall have been given or adequate provision shall have been made for the giving of such notice);

(c) By delivering such Bonds to the Registration Agent, for cancellation by it; and if the City shall also pay or cause to be paid all other sums payable hereunder by the City with respect to such Bonds, or make adequate provision therefor, and by resolution of the Governing Body instruct any such Escrow Agent to pay amounts when and as required to the Registration Agent for the payment of principal of and interest and redemption premiums, if any, on such Bonds when due, then and in that case the indebtedness evidenced by such Bonds shall be discharged and satisfied and all covenants, agreements and obligations of the City to the holders of such Bonds shall be fully discharged and satisfied and shall thereupon cease, terminate and become void.

If the City shall pay and discharge the indebtedness evidenced by any of the Bonds in the manner provided in either clause (a) or clause (b) above, then the registered owners thereof shall thereafter be entitled only to payment out of the money or Federal Obligations deposited as aforesaid.

Except as otherwise provided in this Section, neither Federal Obligations nor moneys deposited with the Registration Agent pursuant to this Section nor principal or interest payments on any such Federal Obligations shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal and premium, if any, and interest on said Bonds; provided that any cash

received from such principal or interest payments on such Federal Obligations deposited with the Registration Agent, (A) to the extent such cash will not be required at any time for such purpose, shall be paid over to the City as received by the Registration Agent and (B) to the extent such cash will be required for such purpose at a later date, shall, to the extent practicable, be reinvested in Federal Obligations maturing at times and in amounts sufficient to pay when due the principal and premium, if any, and interest to become due on said Bonds on or prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the City, as received by the Registration Agent. For the purposes of this Section, Federal Obligations shall mean direct obligations of, or obligations, the principal of and interest on which are guaranteed by, the United States of America, or any agency thereof, obligations of any agency or instrumentality of the United States or any other obligations at the time of the purchase thereof are permitted investments under South Dakota Law for the purposes described in this Section, which Bonds or other obligations shall not be subject to redemption prior to their maturity other than at the option of the registered owner thereof.

#### ARTICLE VIII. SALE OF BONDS, DEPOSIT OF PROCEEDS AND TAX MATTERS

##### 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, are authorized to make such changes in the structuring of the terms and sale of the Bonds as they shall deem necessary to maximize the savings from the refunding of the Refunded Bond. 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, cause fewer than all the Refunded Bond to be refunded, 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 President, or either of them, are hereby authorized to execute and the 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 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. If legally possible the Mayor and Finance Officer are authorized to designate any series of the Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. The Mayor and the Finance Officer, or any of them, are authorized to cause the Bonds to be authenticated and delivered by the Registration Agent to the Purchaser and to execute, publish, and deliver all certificates and documents, including the Official Statement, and closing certificates 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) An amount which, together with other legally available funds of the City, if any, and investment earnings thereon and on said Bond proceeds, will be sufficient to redeem on the earliest possible date, the Refunded Bond, shall be transferred to the Paying Agent; and



(b) The proceeds of the sale of the Bonds shall 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, 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.

(c) The remaining proceeds of the sale of the Bonds shall be deposited into an account of the City and used for the construction of the Project.

#### Section 8.4. Tax Matters.

(a) The City covenants and agrees with the registered owners from time to time of the Series 2020A 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 Series 2020A 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 Series 2020A Bonds will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

(b) The Mayor and the Finance Officer, being the officers of the City charged with the responsibility for issuing the Series 2020A 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 Series 2020A Bonds, it is reasonably expected that the proceeds of the Series 2020A Bonds will be used in a manner that would not cause the Series 2020A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.

(c) The City hereby covenants and agrees to make the determinations, retain records and rebate to the United States the amounts at the times and in the manner required by said Section 148(f).

(d) The City shall file with the Secretary of the Treasury a statement concerning the Series 2020A Bonds containing the information required by Section 149(e) of the Code.

(e) Pursuant to Section 265(b)(3)(B)(ii) of the Code, the City hereby designates the Series 2020A Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. The City hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including "qualified 501 (c)(3) Bonds" but excluding other "private activity Bonds," as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the City and all "subordinate entities" of the City in 2020 in an amount greater than \$10,000,000.

#### ARTICLE IX. NOTICE OF REFUNDING

##### Section 9.1 Notice of Refunding.

After the issuance of the Bonds, notice of the City's intention to refund the Refunded Bond shall be shall be posted on <http://emma.msrb.org>, if necessary, and be given, at the direction of the Finance Officer, by the respective paying agents for the Refunded Bond, to the respective Registered Owners of the

Refunded Bond. Such notice shall be in substantially the form as provided in Exhibit B attached hereto and by this reference made a part hereof.

#### ARTICLE X. MISCELLANEOUS

##### Section 10.1. Failure to Present Bonds.

(a) Subject to the provisions of 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 Registration Agent 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 Registration Agent 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 this Resolution or on, or with respect to, said Bond.

(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 Registration Agent shall, subject to the provisions of any applicable escheat or other similar law, pay to the City any monies then held by the Registration Agent 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 10.2. Payments Due on Saturdays, Sundays, and Holidays.

In any case where the date of maturity or interest on or principal of any Bond, or the date fixed for redemption of any Bond, 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 Registration Agent 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 Registration Agent 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 10.3. 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 this 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 10.4. 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 10.5. No Recourse Under Bond Resolution or on Bonds.

All stipulations, promises, agreements, and obligations of the City contained in this Resolution 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 on this Resolution against any officer, director, or employee of the City or against any official or individual executing the Bonds.

Section 10.6. 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 10.7. Post Issuance Compliance.

The City does hereby adopt Meierhenry Sargent Post-Issuance Compliance Policy and Tax-Advantaged Obligations and Continuing Disclosure with regard to the Bonds attached hereto with regard to the Bonds. The City appoints the Finance Officer as its chief post issuance compliance officer.

10.8. Conflicting Resolutions Repealed.

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

Section 10.9. Effective Date.

This Bond Resolution shall take effect from and after its adoption, the welfare of the City requiring it.

The above and foregoing resolution was moved for adoption by Jeff Hollinshead, seconded by Ben Thomas and upon roll call vote,

voted aye, Dawn Beltran, Rob Griffith, Jeff Hollinshead, Michael Knight, John Talich, and Ben Thomas.

voted nay, 0

Absent: None

whereupon the Mayor declared this Resolution to be duly passed and adopted.

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Mayor

Attest:

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Finance Officer

Adopted: 05/19/2020

Published: 06/10/2020

Effective Date: 05/19/2020

## **ATTACHMENT TO RESOLUTION**

### **Post-Issuance Compliance Policy for Tax-Exempt and Tax-Advantaged Obligations and Continuing Disclosure**

#### Definitions

“Compliance Officer” means the Finance Officer of the Issuer.

“Issuer” means the City of Box Elder.

#### Statement of Purpose

This Post-Issuance Compliance Policy (the “Policy”) sets forth specific policies of the Issuer designed to monitor post-issuance compliance:

(i) with applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations promulgated thereunder (“Treasury Regulations”) for obligations issued by the Issuer on tax-exempt or tax-advantaged basis (“Obligations”); and

(ii) with applicable requirements set forth in certificates and agreement(s) (“Continuing Disclosure Agreements”) providing for ongoing disclosure in connection with the offering of obligations to investors (“Offerings”), for obligations (whether or not tax-exempt/tax-advantaged) subject to the continuing disclosure requirements of Rule 15c2-12(b)(5) (the “Rule”) promulgated by the Securities and Exchange Council (“SEC”) under the Securities Exchange Act of 1934.

This Policy documents practices and describes various procedures and systems designed to identify on a timely basis facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of Obligations in order that the interest on such Obligations continue to be eligible to be excluded from gross income for federal income tax purposes or that the Obligations continue to receive tax-advantaged treatment. The federal tax law requirements applicable to each particular issue of Obligations will be detailed in the arbitrage or tax certificate prepared by bond counsel and signed by officials of the Issuer and the post-closing compliance checklist provided by bond counsel with respect to that issue. This Policy establishes a permanent, ongoing structure of practices and procedures that will facilitate compliance with the requirements for individual borrowings.

This Policy similarly documents practices and describes various procedures and systems designed to ensure compliance with Continuing Disclosure Agreements, by preparing and disseminating related reports and information and reporting “material events” for the benefit of the holders of the Issuer's obligations and to assist the Participating Purchasers (within the meaning of the Rule) in complying with the Rule.

The Issuer recognizes that compliance with pertinent law is an on-going process, necessary during the entire term of the obligations, and is an integral component of the Issuer's debt management. Accordingly, the analysis of those facts and implementation of the Policy will require on-going monitoring and consultation with bond counsel and the Issuer's accountants and advisors.

#### General Policies and Procedures

The following policies relate to procedures and systems for monitoring post-issuance compliance generally.

- A. The Compliance Officer shall be responsible for monitoring post-issuance compliance issues.
- B. The Compliance Officer will coordinate procedures for record retention and review of such records.
- C. All documents and other records relating to Obligations issued by the Issuer shall be maintained by or at the direction of the Compliance Officer. In maintaining such documents and records, the Compliance Officer will comply with applicable Internal Revenue Service (“IRS”) requirements, such as those contained in Revenue Procedure 97-22.
- D. The Compliance Officer shall be aware of options for voluntary corrections for failure to comply with post-issuance compliance requirements (such as remedial actions under Section 1.141-12 of the Regulations and the Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program) and take such corrective action when necessary and appropriate.
- E. The Compliance Officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.

#### Issuance of Obligations - Documents and Records

With respect to each issue of Obligations, the Compliance Officer will:

- A. Obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents (the “Transcript”).
- B. Confirm that bond counsel has filed the applicable information report (e.g., Form 8038, Form 8038-G, Form 8038-CP) for such issue with the IRS on a timely basis.
- C. Coordinate receipt and retention of relevant books and records with respect to the investment and expenditure of the proceeds of such Obligations with other applicable staff members of the Issuer.

#### Arbitrage

The following policies relate to the monitoring and calculating of arbitrage and compliance with specific arbitrage rules and regulations.

The Compliance Officer will:

- A. Confirm that a certification of the initial offering prices of the Obligations with such supporting data, if any, required by bond counsel, is included in the Transcript.
- B. Confirm that a computation of the yield on such issue from the Issuer's Purchaser or bond counsel (or an outside arbitrage rebate specialist) is contained in the Transcript.
- C. Maintain a system for tracking investment earnings on the proceeds of the Obligations.
- D. Coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of the Obligations will be funded with multiple sources of funds, confirm that the Issuer has adopted an accounting methodology that maintains each source of financing separately and monitors the actual expenditure of proceeds of the Obligations.
- E. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures. This procedure shall include an examination of the expenditures made with proceeds of the Obligations within 18 months after each project financed by the Obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury Regulations.
- F. Monitor compliance with the applicable "temporary period" (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.
- G. Ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.
- H. Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.
- I. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.
- J. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.
- K. Monitor compliance with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.
- L. Procure a timely computation of any rebate liability and, if rebate is due, to file a Form 8038-T and to arrange for payment of such rebate liability.

M. Arrange for timely computation and payment of “yield reduction payments” (as such term is defined in the Code and Treasury Regulations), if applicable.

#### Private Activity Concerns

The following polices relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations.

The Compliance Officer will:

A. Maintain records determining and tracking facilities financed with specific Obligations and the amount of proceeds spent on each facility.

B. Maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.

C. Maintain records allocating to a project financed with Obligations any funds from other sources that will be used for otherwise non-qualifying costs.

D. Monitor the expenditure of proceeds of an issue and investment earnings for qualifying costs.

E. Monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:

1. Sale of the facilities, including sale of capacity rights;
2. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
3. Management contracts (in which the Issuer authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;
4. Preference arrangements (in which the Issuer permits a third party preference, such as parking in a public parking lot);
5. Joint-ventures, limited liability companies or partnership arrangements;
6. Output contracts or other contracts for use of utility facilities (including contracts with large utility users);
7. Development agreements which provide for guaranteed payments or property values from a developer;
8. Grants or loans made to private entities, including special assessment agreements; and
9. Naming rights arrangements.

Monitoring of private use should include the following:

1. Procedures to review the amount of existing private use on a periodic basis; and
2. Procedures for identifying in advance any new sale, lease or license, management contract, sponsored research arrangement, output or utility contract, development agreement or other arrangement involving private use of financed facilities and for obtaining copies of any sale agreement, lease, license, management contract, research arrangement or other arrangement for review by bond counsel.

If the Compliance Officer identifies private use of facilities financed with tax-exempt or tax-advantaged debt, the Compliance Officer will consult with the Issuer's bond counsel to determine whether private use will adversely affect the tax status of the issue and if so, what remedial action is appropriate. The Compliance Officer should retain all documents related to any of the above potential private uses.

#### Qualified Tax-Exempt Obligations

If the Issuer issues qualified tax-exempt obligations in any year, the Compliance Officer shall monitor all tax-exempt financings (including lease purchase arrangements and other similar financing arrangements and conduit financings on behalf of 501(c)(3) organizations) to assure that the \$10,000,000 "Small Issuer" limit is not exceeded.

#### Federal Subsidy Payments

The Compliance Officer shall be responsible for the calculation of the amount of any federal subsidy payments and the timely preparation and submission of the applicable tax form and application for federal subsidy payments for tax-advantaged obligations such as Build America Bonds, New Clean Renewable Energy Bonds and Qualified School Construction Bonds.

#### Reissuance

The following policies relate to compliance with rules and regulations regarding the reissuance of Obligations for federal law purposes.

The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.

#### Record Retention

The following policies relate to retention of records relating to the Obligations issued. The Compliance Officer will:

- A. Coordinate with staff regarding the records to be maintained by the Issuer to establish and ensure that an issue remains in compliance with applicable federal tax requirements for the life of such issue.
- B. Coordinate with staff to comply with provisions imposing specific recordkeeping requirements and cause compliance with such provisions, where applicable.



C. Coordinate with staff to generally maintain the following:

1. The Transcript relating to the transaction (including any arbitrage or other tax certificate and the bond counsel opinion);
2. Documentation evidencing expenditure of proceeds of the issue;
3. Documentation regarding the types of facilities financed with the proceeds of an issue, including, but not limited to, whether such facilities are land, buildings or equipment, economic life calculations and information regarding depreciation.
4. Documentation evidencing use of financed property by public and private entities (e.g., copies of leases, management contracts, utility user agreements, developer agreements and research agreements);
5. Documentation evidencing all sources of payment or security for the issue; and
6. Documentation pertaining to any investment of proceeds of the issue (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received by the investment of proceeds, guaranteed investment contracts, and rebate calculations).

D. Coordinate the retention of all records in a manner that ensures their complete access to the IRS.

E. Keep all material records for so long as the issue is outstanding (including any refunding), plus seven years.

#### Continuing Disclosure

Under the provisions of SEC Rule 15c2-12 (the "Rule"), Participating Purchasers (as defined in the Rule) are required to determine that issuers (such as the Issuer) have entered into written Continuing Disclosure Agreements to make ongoing disclosure in connection with Offerings subject to the Rule. Unless the Issuer is exempt from compliance with the Rule or the continuing disclosure provisions of the Rule as a result of certain permitted exemptions, the Transcript for each issue of related obligations will include a Continuing Disclosure Agreement executed by the Issuer.

In order to monitor compliance by the Issuer with its Continuing Disclosure Agreements, the Compliance Officer will, if and as required by such Continuing Disclosure Agreements:

- A. Assist in the preparation or review of annual reports ("Annual Reports") in the form required by the related Continuing Disclosure Agreements.
- B. Maintain a calendar, with appropriate reminder notifications, listing the filing due dates relating to dissemination of Annual Reports, which annual due date is generally expressed as a date within a certain number of days (e.g., 365 days) following the end of the Issuer's fiscal year (the "Annual Report Due Date"), as provided in the related Continuing Disclosure Agreements.

C. Ensure timely dissemination of the Annual Report by the Annual Report Due Date, in the format and manner provided in the related Continuing Disclosure Agreements, which may include transmitting such filing to the Municipal Securities Rulemaking Board (“MSRB”) through the Electronic Municipal Market Access (“EMMA”) System at [www.emma.msrb.org](http://www.emma.msrb.org) in the format prescribed by the MSRB.

D. Monitor the occurrence of any “Material Event” (as defined in the Continuing Disclosure Agreements) and timely file notice of the occurrence of any such Material Event in the manner provided under the Continuing Disclosure Agreements. To be timely filed, such notice must be transmitted within 10 days (or such other time period as set forth in the Continuing Disclosure Agreements) of the occurrence of such Material Event.

E. Ensure timely dissemination of notice of any failure to perform under a Continuing Disclosure Agreement, if and as required by the Continuing Disclosure Agreement.

F. Respond to requests, or ensure that the Issuer Contact (as defined in the Continuing Disclosure Agreement) responds to requests, for information under the Rule, as provided in the Continuing Disclosure Agreements.

G. Monitor the performance of any dissemination agent(s) engaged by the Issuer to assist in the performance of any obligation under the Continuing Disclosure Agreements.

PASSED and ADOPTED by the City of Box Elder, this 19th day of May, 2020.

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Mayor

ATTEST:

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Finance Officer

Motion by Jeff Hollinshead to Approve. Seconded by Rob Griffith.

Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous.  
Motion Passed.

**Approve Mayor to sign, assignment agreement for TIF#4 Joint Powers agreement, for the purpose of having the preapproved tax increment revenues (\$250,000) to route directly from the County to Dacotah Bank.**

CFO gave overview. Motion by Jeff Hollinshead to Approve. Seconded by Ben Thomas.

Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous.  
Motion Passed.

#### **DEPARTMENT HEAD REPORTS**

**Community and Economic Development -- Update Elevate Rapid City.**

CED Director gave updates on Elevate Rapid City. There was discussion on Elevate. No action taken.

Finance - Nicole Schneider - gave finance updates; upcoming June 3rd mid-year budget presentation from Department Heads.

Public Works - Doug Curry - gave Public Works updates; research and changes water fill station.

Community and Economic Development- Blaise Emerson - updates on development activity.

**EXECUTIVE SESSION:**

Motion by Jeff Hollinshead to Enter into Executive Session. Seconded by John Talich.

Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous. Motion Passed.

Entered into Executive Session at 8:19 p.m. Out of Executive Session at 8:26 p.m.

Roll was taken. Present were Dawn Beltran, Rob Griffith, Jeff Hollinshead, Michael Knight, John Talich, and Ben Thomas.

Quorum established.

**EXECUTIVE SESSION ACTION:**

Mayor to sign Release of Claims with Revize, LLC. Motion by Michael Knight to Authorize. Seconded by Jeff Hollinshead. Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous. Motion Passed.

**ADJOURNMENT**

Motion by Michael Knight to Adjourn. Seconded by Jeff Hollinshead.

Roll Call: Beltran-Aye; Griffith-Aye; Hollinshead-Aye; Knight-Aye; Talich-Aye; Thomas-Aye. Unanimous. Motion Passed.

Meeting adjourned at 8:28 p.m.

Seal:

Attest:

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Larry Larson  
Mayor

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Nicole Schneider  
City Administrator/Finance Officer

AFLAC	INSURANCE	\$	956.80
BAN-KOE SYSTEMS, INC	TIME CLOCK	\$	109.04
CITY OF RAPID CITY	BULK WATER	\$	283.94
CLARK EQUIPMENT COMPANY	EQUIPMENT	\$	16,902.56
COCA COLA BOTTLING COMPANY HIGH COUNTR	WATER	\$	67.50
CODE WORKS, INC.	BUILDING INSPECTOR	\$	833.40
CREDIT COLLECTIONS BUREAU	COLLECTION FEES	\$	150.23
DELTA DENTAL OF SOUTH DAKOTA	INSURANCE	\$	1,707.75
DELUXE SMALL BUSINESS SALES, INC	CHECKS	\$	415.70
DEPT OF TREASURY- IRS	TAXES	\$	29,301.56
EPIC OUTDOOR ADVERTISING	ADVERTISING	\$	525.00
FEEDING SOUTH DAKOTA	DONATION	\$	550.00
FERBER ENGINEERING COMPANY	EAST MALL DR	\$	17,909.55
FIDELITY SECURITY LIFE INSURANCE CO.	INSURANCE	\$	205.21
GREAT WESTERN BANK	CREDIT CARD	\$	9,523.22
GREAT WESTERN TIRE	REPAIRS	\$	24.95
GUNDERSON, PALMER, NELSON, & ASHMORE L	ATTORNEY	\$	20,681.00
HEALTH POOL OF SD	INSURANCE	\$	21,995.49
HEAVY CONSTRUCTORS, INC.	EAST MALL DR	\$	154,795.66
HUMANE SOCIETY OF THE BLACK HILLS	ANIMAL CONTROL	\$	294.90
JOHNNY SUNDBY PHOTOGRAPHY, INC.	WEBSITE PHOTOS	\$	74.00
KLJ ENGINEERING LLC	ENGINEERING	\$	29,795.31
KT CONNECTIONS, INC	IT	\$	11,698.02
LAKOTA CONTRACTING, INC	UNIFORMS	\$	2,025.60
LIGHTING MAINTENANCE CO	REPAIRS	\$	216.00
MATHESON TRI-GAS INC dba LINWELD	RENTALS	\$	121.49
MCKIE FORD LINCOLN, INC.	REPAIRS	\$	155.37
MIDCONTINENT COMMUNICATIONS	PHONE	\$	586.68
MIDCONTINENT TESTING LABORATORIES, INC	WATER TESTING	\$	210.00
NEW YORK LIFE	INSURANCE	\$	111.00
OFFICE OF CHILD SUPPORT ENFORCEMENT	FEES	\$	66.68
PENNINGTON COUNTY TREASURER	TAXES	\$	1,497.76
PENNINGTON COUNTY REGISTER OF DEEDS	FEES	\$	30.00
THE PITNEY BOWES RESERVE ACCOUNT	POSTAGE	\$	685.00
QUALIFIED PRESORT SERVICE, LLC	MAILINGS	\$	723.18
RAPID CITY JOURNAL C/O LEE ENTERPRISES	PUBLICATIONS	\$	367.29
RAPID CITY POLICE DEPARTMENT	FEES	\$	60.00
ROBERT SHARP & ASSOCIATES, INC	WEBSITE	\$	3,450.00
SANDER SANITATION	TRASH COLLECTIONS	\$	25,717.52
SD DEPT OF LABOR	FEES	\$	25.00
SD ONE CALL	LOCATOR FEES	\$	211.05
SDRS SUPPLEMENTAL RETIREMENT PLAN	INSURANCE	\$	30.00
SENSUS METERING SYSTEMS	IT	\$	1,949.94
SERVALL UNIFORM & LINEN SUPPLY	UNIFORMS	\$	179.87
SOUTH DAKOTA RETIREMENT SYSTEM	INSURANCE	\$	15,464.28
STURDEVANT'S AUTO PARTS	REPAIRS	\$	198.44
TEAMSTERS LOCAL NO. 120	UNION FEES	\$	529.00

US BANK TRUST NATIONAL ASSOC - CITY HA	BOND PAYMENT	\$	29,996.25
US BANK VOYAGER FLEET SYSTEMS	FUEL	\$	4,974.47
WEST RIVER ELECTRIC ASSOCIATION, INC	UTILITIES	\$	25,925.92
GIFFORD/MULTZ	REIMBURSEMENT	\$	31.11
K&D CONSTRUCTION	REIMBURSEMENT	\$	21.41
K&D CONSTRUCTION	REIMBURSEMENT	\$	21.41
JENSEN, MICHAEL	REIMBURSEMENT	\$	4.35
ISAAK, JAARON	REIMBURSEMENT	\$	2.28
MILLER, JOSHUA	REIMBURSEMENT	\$	14.10
**PAYROLL EXPENSES	GG	\$	5,247.96
	FO	\$	8,710.52
	PD	\$	44,284.67
	STREETS	\$	13,084.93
	PARKS	\$	9,274.75
	CED	\$	3,194.69
	PZ	\$	6,012.40
	WATER	\$	15,594.20
	SEWER	\$	13,299.30
	SOLID WASTE	\$	790.79
		\$	553,897.45