

CITY OF LAKE NORDEN

October 19, 2023

Council met in special session at 5:00 PM, at the Lake Norden Community Center. Mayor Aho presiding.

Members present: Jason Aho, Janet Andrews, Cameron Larson, Gordon Kangas and Dorene Lemme

Absent: John Layman and Kim St. John

City employees present: Shari Layman, Kellee Dragt, and Roy Hauschildt

Absent: Dan Koistinen, Chief Tony Aas Sgt. Mike Morgan and Jim Donnelly

Others present: Alex Kahnke (First District), Tobin Morris (Colliers Securities), Quinn Reimers (Colliers Securities), Jason Koistinen (Basin) and Grant McDaniels (Basin)

Motion made by Kangas and seconded by Larson to approve the agenda, as presented. All voted aye.

Motion made by Larson to approve the Adoption of Financing Resolution #17/10/2023.

RESOLUTION NO. #17/10/2023

RESOLUTION RELATING TO LEASE-PURCHASE OF THE CITY PUBLIC SAFETY BUILDING PROJECT IN AN AMOUNT NOT TO EXCEED \$3,500,000; AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE, LEASE AND APPROVING AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.

WHEREAS, the City is authorized by South Dakota Codified Laws, Chapter 9-12-1 and 9-21-18.1 inclusive, as amended (the "Act"), to enter into a lease for acquisition of real and personal property that the governing body considers necessary or appropriate to carry out its governmental and proprietary functions. The governing body deems that it is necessary and appropriate to fund the construction of a public safety building within the City of Lake Norden and pay the costs of issuance (the "Project").

BE IT RESOLVED by the Common Council of Lake Norden, South Dakota (the "City"), as follows:

Section 1. Conditions satisfied. All acts, conditions and things required by law to exist, happen and be performed precedent to and in the execution of a Ground Lease and Lease have existed, happened and been performed in due time, form and manner as required by law, and the City is now authorized pursuant to every requirement of law to execute a Ground Lease (the "Ground Lease") and Lease (the "Lease") in the manner and form as is provided in this resolution.

Section 2. Lease Financing. The City does hereby authorize and declare a necessity to enter into a ground lease (the "Ground Lease"), as lessor, and a lease not to exceed a term plus annual

renewals of twenty (20) years ("Lease"), as lessee, of certain land and improvements located on real property owned by the City of Lake Norden, Hamlin County, South Dakota (the "Land").

Section 3. Forms of the Documents. Forms of the following documents relating to the Project (the "Documents") shall be prepared and submitted to the City and are hereby directed to be filed with the City Finance Officer and are open to public inspection at the City Finance Office during regular business hours: (a) the Trust Indenture, (b) the Lease, (c) the Ground Lease, and (c) any related documents as may be required. The forms of Documents are approved, subject to such modifications as are deemed appropriate and approved by the City Attorney. The Mayor and City Finance Officer are directed to execute the Lease, the Ground Lease and the related documents. The Mayor, City Finance Officer, City Attorney and are also authorized and directed to execute such other instruments as may be required to give effect to the transactions therein contemplated. The Trust Indenture will not be required if the Lease is privately placed.

Section 4. Authorization and Approval of the Documents. The financing described above is found to be favorable and is hereby approved. The Mayor and Finance Officer are authorized to approve the final terms of the Trust Indenture, Ground Lease, and Lease. The principal component amount of the Lease shall not exceed \$3,500,000.

Section 5. Payment of Lease Payments. The City will pay to the purchaser of the Lease promptly when due, all annual Lease Payments ("Lease Payments") and other amounts required by the Lease, all subject to annual appropriations. To provide moneys to make such payments, the City intends to include in its annual budget, for each fiscal year, moneys sufficient to pay and for the purpose of paying all Lease Payments and other amounts payable under the Lease, and will take all other actions necessary to provide moneys for the payment of the obligations of the City under the Lease from sources of the City lawfully available for this purpose, including the levy of such taxes as may be necessary therefor, subject only to the limitations on such levies imposed by South Dakota law. SAID LEASE SHALL NOT CONSTITUTE DEBT WITH THE MEANING OF THE SOUTH DAKOTA CONSTITUTION ARTICLE XIII SECTION 4 AND THE LEVY FOR PAYMENT OF THE LEASE SHALL BE AN ANNUAL LEVY.

Section 6. Tax Matters. The City covenants and agrees with the purchaser and the registered owner from time to time of the Lease, 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 Lease to become subject to taxation under §103 of the Internal Revenue Code of 1986, as amended (the "Code"), and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the interest on the Lease will not become subject to taxation under the Code and the Regulations. The City will cause to be filed with the United States Secretary of the an information reporting statements in the form and at the time prescribed by the Code. The City will comply with the provisions of Section 148(f) the Code, relating to the rebate of arbitrage profits to the United States, if and to the extent that such provisions are applicable to the Lease.

Section 7. Arbitrage Certification. The Mayor and the Finance Officer, being the officers of the City charged with the responsibility for the Lease pursuant to this Resolution, are authorized and directed to execute and deliver to the Bank the Lease in accordance with the provisions of

Section 148 of the Code, and Sections 1.148-1 et al of the Regulations, stating the facts, estimates and circumstances in existence on the date of issue and delivery of the Lease which make it reasonable to expect that the proceeds of Lease will not be used in a manner that would cause the Lease to be arbitrage bonds within the meaning of the Code and Regulations.

Section 8. Qualified, Tax-Exempt- Obligation. The City hereby designates the Lease as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code relating to the disallowance of interest expense for financial institutions, and hereby finds that the reasonably anticipated amount of qualified tax-exempt obligations (within the meaning of Section 265(b)(3) of the Code) which will be issued by the City and all subordinate entities during calendar year 2023 including the issuance of the Lease does not exceed \$10,000,000.

Section 9. Official Statement. If required, the Mayor and Finance Officer are hereby authorized and directed to provide for the preparation and distribution of a Preliminary Official Statement describing the Lease and Certificates of Participation (the "Preliminary Official Statement"). After the Certificates of Participation have been sold, the Mayor and Finance Officer shall make such completions, omissions, insertions and changes in the Preliminary Official Statement not inconsistent with this Resolution as are necessary or desirable to complete it as a final Official Statement for purposes of Rule 15c2-12(e)(3) of the Securities and Exchange Commission.

To comply with paragraph (b) (3) of Rule 15c2 12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule") and with Rule G 32 and all other applicable rules of the Municipal Securities Rulemaking Board, the City Common Council agrees to deliver to the underwriter, the Official Statement (which shall be a final official statement, as such term is defined in the Rule, as of its date) in an electronic format as prescribed by the MSRB.

Section 10. Retention of Bond Counsel and Private Placement Agent. The City does hereby authorize the retention of Meierhenry Sargent LLC as bond counsel and Colliers Securities LLC, Sioux Falls, South Dakota, as placement agent.

Section 11. Authorization of Officers. The Mayor, Finance Officer and City Attorney are authorized and directed to take such action as they deem necessary to carry out the intent of this resolution.

Section 12. Record Retention and Post Issuance Compliance. The City does hereby adopt written post issuance compliance procedures with regard to the current financing. The Finance Officer is appointed as the chief compliance officer.

Section 13. Continuing Disclosure. If required by the issuance, the City hereby covenants and agrees that it will provide financial information which is customarily prepared and publicly available and material event notices as required by Rule 15c2-12 of the Securities Exchange Commission for the Certificates. The Mayor and/or Finance Officer is authorized to execute at the Closing of the sale of the Certificates of Participation, an agreement for the benefit of and enforceable by the owners of the Certificates of Participation specifying the details of the financial information and material event notices to be provided and its obligations relating thereto. Failure of the City to comply with the undertaking herein described and to be detailed in said closing

agreement, shall not be a default hereunder, but any such failure shall entitle the owner or owners of any of the Certificates of Participation to take such actions and to initiate such proceedings as shall be necessary and appropriate to cause the City to comply with its undertaking as set forth herein and in said agreement, including the remedies of mandamus and specific performance.

Section 12. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Resolution.

Said motion was seconded by Gordon Kangas and upon vote being taken the following voted

AYE: Cameron Larson, Dorene Lemme, Janet Andrews and Gordon Kangas

and the following voted NAY: _____

Adopted this 19th day of October 2023

ATTEST: _____ /S/ _____
Mayor

_____/S/_____
Finance Officer

Motion made by Larson to approve the Adoption of Resolution #18/10/2023 Authorizing Grant Anticipation Note.

RESOLUTION #18/10/2023 AUTHORIZING GRANT ANTICIPATION NOTE

WHEREAS all conditions precedent to the grant approved by Department of Agriculture and Natural Resources for a Community Development Block Grant (\$1,500,000) (the "Grant");

WHEREAS, City Council may, by resolution, borrow money from any source willing to lend the money by issuing a promissory note subject to the restrictions and limitations set in SDCL §§ 9-25-13 to 9-25-16 and 6-8B, inclusive;

WHEREAS, the Note and interest thereon are payable from the Grant;

WHEREAS, the Note shall not be issued for a term in excess of two years, no election is required, and the Note does not count toward the constitutional debt limit; and

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE NORDEN, SOUTH DAKOTA AS FOLLOWS:

SECTION 1. Definitions.

The following capitalized terms used in this resolution shall have the meanings defined for those terms in this Section.

"Act" means SDCL 6-8B and 9-25.

"Purchaser" means a bank, savings, and loan association, finance company, bank holding company, insurance company, and other financial institution, whether such institution is incorporated or chartered in the state of South Dakota or in another state, or under federal law, its affiliates, or successors as owners of the Note.

"City" means the City of Lake Norden, South Dakota.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Note" means the City's Grant Anticipation Note, Series 2023, which is authorized by this resolution.

SECTION 2. Interim Financing Authorized.

The City does hereby authorize the issuance and sale of Grant Anticipation Note in the principal amount of not to exceed \$1,500,000.

SECTION 3. Tax-Exemption

The City covenants not to take any action or omit any action that would cause the interest paid on the Note to be included in gross income under the Code.

SECTION 4. Designation as Qualified Tax-Exempt Obligation

The City reasonably expects that it and its subordinate entities will not issue more than \$10,000,000 of tax-exempt obligations during calendar year 2023. The City hereby designates the Note as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3).

SECTION 5. Delegation

The Mayor and Finance Officer or a person designated by the Mayor to act on behalf of the City under this resolution (the "City Official") may, on behalf of the City and without further action by the Council:

- (a) establish the final principal amount, repayment schedule, interest rate, redemption terms, payment terms and dates, and other terms of the Note, subject to the limitations of this resolution and the Act;
- (b) enter into additional covenants for the benefit of the owner of the Note which are intended to enhance the creditworthiness of the Note;
- (c) negotiate the terms of, and execute and deliver an agreement to sell the Note to the Purchaser or its affiliates;
- (d) execute and deliver the Note; and
- (e) take any other action and execute any other documents in connection with the Note which the City Official finds will be advantageous to the City.

ATTEST: _____/S/_____
 Mayor

_____/S/_____
 Finance Officer

Adopted: October 19, 2023
 Approved: October 19, 2023
 Published: October 25, 2023

The motion for adoption of the foregoing Resolution #18/10/2023 was duly seconded by Council Member Dorene Lemme and upon vote being taken thereof, the following voted YEA: Cameron Larson Gordon Kangas, Janet Andrews, Dorene Lemme

And the following voted NAY:

Whereupon said Resolution #18/10/2023 was declared duly passed and adopted.

ATTEST: _____/S/_____
 Mayor

_____/S/_____
 Finance Officer

Motion made by Kangas, seconded by Larson to approve the CMAR Services Contract, Agreement Between Owner and Construction Manager at Risk and GMP Contract. All voted aye.

Motion made by Kangas, seconded by Larson to approve the award to Basin Construction for Bid Packages #1 & 2. All voted aye.

Notice to Proceed was signed to begin construction.

Motion made by Larson, seconded by Andrews to approve one new siren for the city of Lake Norden. All voted aye.

Motion made by Lemme and seconded by Andrews to adjourn at 5:35 PM. All voted aye.

Jason Aho
Mayor

Shari Layman
Finance Officer



"This institution is an equal opportunity provider, and employer."

Publish once at an approximate cost of _____