

RESOLUTION NO. 2022-20

RESOLUTION RELATING TO LEASE-PURCHASE OF THE CITY HALL/COMMUNITY CENTER PROJECT IN AN AMOUNT NOT TO EXCEED \$2,500,000; 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 complete the construction and equipping of City Hall/Community Center (the "Project").

BE IT RESOLVED by the Common Council of Salem, 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-five (25) years ("Lease"), as lessee, of certain land and improvements located on real property owned by the City of Salem, McCook 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 \$2,500,000.

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 2017 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 or underwriter.

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 by Rayman was seconded by Mokros and upon vote being taken the following voted AYE: Mayrose, Mokros, Rayman, Harris, Karel

and the following voted NAY: None

(SEAL)

Ron Mayrose
Council President

ATTEST:

Lori Heumiller
Finance Officer

Adopted: September 26, 2022

Published: September 29, 2022

Effective: October 19, 2022