

CITY COUNCIL PROCEEDINGS
PUBLISHED SUBJECT TO THE GOVERNING BODY'S REVIEW AND REVISION

A regular meeting of the Beach City Council was called to order by Mayor Jeanne Larson on April 5, 2021 at 7:00 p.m. Present when the meeting was called to order was City Council Tim Marman, Lynn Swanson-Puckett (via telephone), Sarah Ross, Bev Wolff, Andy Zachmann, PWS Randy Dietz, City Auditor Kimberly Gaugler, Engineer Jasper Klein, guests Duane Martian, Stacey Swanson, Josh and Angelina Marman.

The Pledge of Allegiance was recited.

Roll call was taken. Nick Hegel was absent.

Mayor Larson called for any additions or corrections to the agenda. No additions or corrections were made, the agenda stands approved as presented.

Minutes

Minutes of the meeting on March 16th were presented. Marman moved to approve the minutes, second by Wolff. Motion carried unanimously.

Vouchers

Vouchers were reviewed for payment. Marman moved to approve the following vouchers, second by Wolff. Motion carried unanimously.

21732 Baker Metal & Recycling Inc. 3,746.80
21733 Beach Food Center 12.44
21734 Beach Park Board 1,844.49
21735 Boss Office Products 126.85
21736 Civic Plus LLC 1,914.42
21737 Cooperative Legal Services PLLC 600.00
21738 Coral Creek Landfill 1,664.75
21739 Core & Main, LP 930.40
21740 Dakota Dust-Tex, Inc. 82.80
21741 Farmers Union Oil 1,341.93
21742 G & G Garbage LLC 1,200.00
21743 Golden Valley County 8,757.00
21744 Golden Valley News 1,480.46
21745 Home On the Range 140.00
21746 J P Cooke Company 54.15
21747 Jill Schatz 55.64
21748 John Deere Financial 335.96
21749 Marman Plumbing & Construction 600.00
21750 Midstate Communications 369.53
21751 Montana-Dakota Utilities 6,205.85
21752 Olympic Sales, Inc. 377.06
21753 One Call Concepts 26.50
21754 Prairie Lumber Company 272.52

21755 Randall Dietz 211.36
21756 Rohan's Hardware 243.04
21757 Southwest Water Authority 12,612.89
21758 Southwestern District Health Unit 140.00
21759 Stockwell Cleaning or Nancy Stockwell 275.00
21760 Valli Information Systems 25.00
21761 Verizon Wireless 170.36
21714-21717,-88410-88408, 21723-21730,-88406-88396 Wages for March 27,429.37
21718 City of Beach 317.60
21719 Blue Cross Blue Shield 6,536.00
21720 Blue Cross Blue Shield 821.20
21721 Unum Life Insurance Company 49.95
21722 USPS 309.50
21731 City of Beach 391.69
-88407 First State Bank of Golva 2,580.47
-88395 First State Bank of Golva 3,129.21
-88394 NDPERS 3,753.07
-88393 Office of State Tax Commissioner 622.90

Public Hearing

A Public Hearing was held at 7:15 for comment on an Application for Building with 5' Variance at 442 2nd Avenue SE. Marman moved to open the Public Hearing for comment, second by Wolff. Motion carried unanimously. No written comments were received or given at the Public Hearing. Marman moved to close the Public Hearing, second by Wolff. Motion carried unanimously. Marman moved to approve the Application for Building with 5' Variance at 442 2nd Avenue SE, second by Wolff. Motion carried unanimously.

Public Works Report

PWS Dietz reviewed his written report. The lease agreement with Prairie Public Broadcasting Inc. for placement of their equipment on the South water tower expires in 2025. Dietz recommended prior to renewal additional liability language be incorporated into the lease. Prairie Public Broadcasting Inc. listed City of Beach as an additional insured. Dietz received a request from the City of Golva to use our crack sealing equipment. Marman moved to not allow use of crack sealing equipment by other individuals/entities due to liability. Motion died for lack of second. Marman moved to allow the Public Works Dept. to take equipment to Golva for crack sealing and bill accordingly, second by Wolff. Motion carried unanimously. Dietz has received requests to crack seal driveways. Marman moved to approve of crack sealing driveways and bill accordingly, second by Wolff. Motion carried unanimously. Dietz mentioned water restrictions may need to be implemented during certain times throughout the course of the two water improvement projects.

Board of Equalization

At 7:30 p.m., Marman moved to adjourn as the Beach City Council and meet as Board of Equalization, second by Wolff. Motion carried unanimously. Minutes of the Board of Equalization meeting on April 28, 2020 were approved. Golden Valley County Tax Director Angelina Marman along with mentor Stacey Swanson provided information on

increases/decreases in true and full valuation of property, eligible property tax exemptions and sales ratio analysis. Total True & Full Valuation for 2021 in the City of Beach is \$81,649,400, an increase of \$1,060,000 from 2020. Overall, Commercial Lots increased \$82,200, Commercial Structures increased \$810,900, Residential Lots decreased \$33,100, and Residential Structures increased \$200,000. Based on Sales Ratio Study for the 2021 assessments, the average price for a residential structure is \$126,780. Based on Sales Ratio Study for the 2021 assessments, the average price for a commercial structure is \$90,640. Twenty applicants are tax exempt under Non-Profit, Religious Organization, Veterans and Blind Persons. Twenty-nine applicants qualified for Senior Citizens/Disabled Persons Tax Credits.

Marman moved a finding be made that all classifications of property have been reviewed and we find them proper as assessed, second by Wolff. Motion carried unanimously. Marman moved that a finding be made that we have reviewed all Exemption Applications and Homestead Credit Applications and find them proper as presented, second by Wolff. Motion carried unanimously. Marman moved that a finding be made that the overall Assessment Roll for the City of Beach for 2021 has been reviewed and find it proper as assessed, second by Wolff. Motion carried unanimously. Zachmann moved based on preceding findings, we declare the Assessment Roll for 2021 for the City of Beach equalized, second by Ross. Motion carried unanimously. Zachmann moved to adjourn as the Board of Equalization and reconvene as the Beach City Council, second by Marman. Motion carried unanimously.

Auditor Report

Gaugler reviewed her written report.

Engineers Report

Engineer Klein reviewed his written report. 2021 Street and Utility Project pre-construction meeting was held on April 1st. Contractor will begin work this week. 2021 6th Street Watermain Improvements Project Contractor Agreements are completed. Pre-construction meeting was held March 17. Loan closing will be April 15th. Klein reviewed Change Order 1 in the amount of \$153,000. Zachmann moved to approve Change Order 1, second by Marman. Motion carried unanimously. Klein presented Amendment 1 in the amount of \$25,000 to the Owner-Engineer Agreement which will cover the additional work identified in Change Order 1. Zachmann moved to approve Amendment 1 to the Owner-Engineer Agreement, second by Ross. Motion carried unanimously.

Committee Reports

Strategic Planning – Mayor Larson reported Consultant JM Strategies is planning Visioning Sessions to be held late April or early May.

Unfinished Business

Garbage rates for licensed daycare or home-based businesses. Marman moved to set rates for licensed daycares and home based businesses at a minimum of \$25/month, second by Wolff. Motion carried unanimously.

New Business

Correspondence was read from North Dakota Insurance Reserve Fund regarding 2020 Conferment of Benefits.

Marman moved to approve Amendment Number Six to the Contract Number SWC -1736-5 for Water Service from the Southwest Pipeline Project, North Dakota, second by Zachmann. Motion carried unanimously.

Member Marman introduced the following resolution and moved its adoption:

RESOLUTION 2021-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BEACH AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS WATER FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the City of Beach (herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of Two Hundred Ninety Thousand & 00/100 pursuant to the provisions of 40-35; and

WHEREAS, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments

incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.

6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.

7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.

8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.

9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.

10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.

12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.

13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.

14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be

withdrawn and used for such things as emergency maintenance, extensions to facilities and replacement of short lived assets.

15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.

16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.

17. To accept a grant in an amount not to exceed \$236,250.00 under the terms offered by the Government; that the Mayor and City Auditor of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

The motion for the adoption of the foregoing resolution was duly seconded by Member Zachmann. On roll call vote the following members voted aye: Marman, Swanson-Puckett, Ross, Wolff, and Zachmann. The following members voted nay: none. The following members were absent and not voting: Hegel. The majority having voted aye, the motion carried and the resolution was duly adopted.

IN WITNESS WHEREOF, the City Council of the City of Beach has duly adopted this resolution and caused it to be executed by the officers below in duplicate on this April 5th, day of 2021

(SEAL)

Jeanne Larson, Mayor

ATTEST:

Kimberly Gaugler, City Auditor

RESOLUTION 2021-11

CITY OF BEACH, NORTH DAKOTA RESOLUTION AUTHORIZING ISSUANCE OF WATER REVENUE BOND, SERIES 2021

WHEREAS, City of Beach, North Dakota (the "City") owns, operates and maintains a water system as a public utility for the purpose of providing to the residents of the City water facilities; and

WHEREAS, the City has undertaken certain improvements to the water utility system, including water main improvements (the "Project"); and

WHEREAS, the City Council finds that it is financially feasible and in its best interest to finance the Project through the issuance of revenue bonds pursuant to Chapter 40-35 of the N.D.C.C; and

WHEREAS, the City has received a commitment from the United States Department of Agriculture, Rural Utilities Service to provide long-term financing for the Project through the purchase of its revenue bonds in the amount of \$290,000 pursuant to a Letter of Conditions dated December 8, 2020 and on the terms and conditions set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Beach, North Dakota, as follows:

SECTION 1. DEFINITIONS. As used in this Resolution, the following words shall have the following meanings:

"Bond Fund" means the Bond Fund established pursuant to Section 7 hereof.

"Bonds" means the Series 2021 Bonds and any Parity Bonds or other parity obligations issued pursuant to this Resolution.

"City" means the City of Beach, a North Dakota political subdivision and its successors and assigns.

"City Council" means the City Council of the City of Beach, North Dakota.

"Construction Fund" means the Construction Fund established pursuant to Section 9 hereof.

"Date of Issue" means April 15, 2021, or the first date on which the aggregate draws under the Series 2021 Bond exceed the lesser of \$50,000 or five percent (5%) of the issue price.

“Default” means any event specified in Section 15(a) of this Resolution.

“Facilities” means the water facilities of the City.

“Gross Revenues” means all fees and charges collected for use of the Facilities and other revenues collected by the City in connection with the Facilities; however, Gross Revenues does not include: (a) collection of ad valorem taxes; (b) any payments of assessments levied against benefitted properties; (c) the proceeds of any grants; (d) the proceeds of any borrowing for capital improvements; (e) the proceeds of any liability insurance; and (f) the proceeds of any casualty insurance which the City intends to utilize for repair or replacement of the Facilities.

“N.D.C.C.” means the North Dakota Century Code.

“Net Revenues” means Gross Revenue less Operating Expenses.

“Operating Expenses” means all normal, reasonable and current expenses incurred for operation, maintenance and repair of the Facilities, including but not limited to administrative expenses, financial and auditing expenses, insurance premiums, claims (to the extent moneys are not available from proceeds of insurance), taxes, legal and engineering expenses relating to operation and maintenance, payments and reserves for pension, retirement, health, hospitalization, and sick leave benefits, payments to reserve funds, and any other similar expenses to be paid to the extent properly and directly attributable to operations of the Facilities, but excluding depreciation, debt service, amortization and capital expenditures.

“Parity Bonds” means any revenue bonds or other obligations of the City issued hereafter which comply with the provisions of Section 14 of this Resolution for the issuance of Parity Bonds.

“Project” means water main improvements in the City.

“Registrar” means the City Auditor of the City or any other entity which is under contract with the City to serve as paying agent and registrar for the Series 2021 Bonds and its successors and assigns.

“Reserve Fund” means the Reserve Fund established pursuant to Section 8 hereof.

“Reserve Fund Requirement” means an amount equal to at least one annual principal and interest payment with respect to the Series 2021 Bonds.

“RUS” means Rural Utilities Service, an agency of the United States Department of Agriculture.

“Series 2021 Bonds” means the \$290,000 Water Revenue Bonds, Series 2021 issued pursuant to this Resolution.

SECTION 2. AUTHORIZATION AND SALE OF THE SERIES 2021 BONDS.

Pursuant to the authority of Chapter 40-35 of the N.D.C.C., the City Council hereby authorizes and directs the issuance of the City of Beach, North Dakota, Water Revenue Bonds, Series 2021, in the aggregate principal amount not to exceed **Two Hundred Ninety Thousand Dollars (\$290,000)**. The actual amount drawn may be less. The Series 2021 Bonds shall initially be dated the Date of Issue, shall be issued as a single bond in fully registered form and shall bear interest on the outstanding principal amount payable annually on the anniversary of the Date of Issue in each year until maturity or prior redemption at the rate of **1.75%** per annum commencing on the first anniversary of the Date of Issue. The Series 2021 Bonds shall mature in forty (40) mandatory annual sinking fund installments (2022-2061) of principal, commencing on the first anniversary of the Date of Issue, in the years and amounts set forth in the amortization schedule attached to the Bond. The preliminary amortization schedule has been presented to this meeting and is hereby approved.

The Series 2021 Bonds shall be limited obligations of the City, and shall be payable solely from the Net Revenues, as provided by this Resolution. The City Council hereby accepts the offer of RUS to purchase the Series 2021 Bonds at a price of \$290,000 and on the terms and conditions set forth in this Resolution and in the RUS Letter of Conditions dated December 8, 2020 the terms of which are incorporated herein by reference.

SECTION 3. REDEMPTION. Prepayments of scheduled installments on the Series 2021 Bonds, or any portion thereof, may be made at any time at the option of City. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Series 2021 Bonds, shall, after payment of interest, be applied to the principal. Partial prepayment shall not affect the obligation of the City to pay the remaining installments as scheduled on the Series 2021 Bond.

Unless waived by any holder of Series 2021 Bonds to be redeemed, official notice of any such redemption shall be given by the Registrar on behalf of the City by mailing a copy of any official redemption notice by first class mail at least thirty (30) days prior to the date fixed for redemption to the registered owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Registrar.

Prior to any redemption date, the City shall deposit with the Registrar an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest.

The City will comply with the graduation requirement set forth in 7 U.S.C. Section 1983(3).

SECTION 4. FORM OF BOND. The Series 2021 Bonds shall be in substantially the form on file with the City Auditor and shall contain a recital that they are issued under Chapter 40-35 of the N.D.C.C.

SECTION 5. DISPOSITION OF SERIES 2021 BOND PROCEEDS. Proceeds of the Series 2021 Bonds shall be advanced in installments and deposited in the Construction Fund hereby created and shall be disbursed to pay costs of the Project, to reimburse the City for certain prior expenditures on the Project, and to pay costs incurred in connection with the issuance of the Series 2021 Bonds in accordance with Section 9 hereof. Each advance shall be recorded on the grid on the reverse of the Series 2021 Bond.

SECTION 6. PLEDGE AND DISPOSITION OF NET REVENUES. The City hereby pledges the Net Revenues to the payment of principal and interest on the Series 2021 Bonds and any Parity Bonds. The Series 2021 Bonds and any Parity Bonds issued by the City are equally and ratably secured by pledge of Net Revenues and shall not be entitled to any priority regardless of series designation or time to issuance. The City hereby covenants with the owners of the Series 2021 Bonds that it will, so long as any Series 2021 Bonds remain outstanding, make deposits from the Net Revenues into the Bond Fund and the Reserve Fund at the times and in the amounts required by Sections 7 and 8 hereof.

SECTION 7. BOND FUND. The City Council shall establish and maintain so long as the Series 2021 Bonds are outstanding a separate fund to be designated the "Bond Fund." The City Council shall make the following deposits into the Bond Fund:

- (a) Commencing the first month following the Date of Issue, and monthly thereafter the City will deposit into the Bond Fund Net Revenues in an amount equal to one-twelfth (1/12) of the amount necessary to pay Bond interest which will become due on the next interest payment date after crediting any earnings on the Bond Fund. Prepayment of monthly deposits will fulfill this requirement. Notwithstanding the foregoing, the City shall deposit into the Bond Fund from the Net Revenues an amount sufficient to permit all interest due on the Series 2021 Bonds to be paid on the date it is due.
- (b) Commencing on the first month following the Date of Issue, and monthly thereafter, the City will deposit into the Bond Fund Net Revenues in an amount equal to one-twelfth (1/12) of the amount necessary to pay any Bond principal which will become due on the next principal payment date. Prepayment of monthly deposits will fulfill this requirement. Notwithstanding the foregoing, the City will deposit into the Bond Fund from the Net Revenues an amount sufficient to permit all principal due on the Series 2021 Bonds to be paid on the date it is due.

- (c) On each principal and interest payment date, from funds on deposit in the Reserve Fund, such additional amounts, if any, as may be necessary to meet principal and interest payments then due.

Deposits required to be made pursuant to Sections 7(a) and 7(b) above are cumulative, and if the Net Revenues are not sufficient to credit the amount required in any month, an amount equal to the deficiency shall be credited from the next Net Revenues thereafter received. The moneys and investments in the Bond Fund are irrevocably pledged to and shall be used to the extent required for the payment of principal of and interest on the Series 2021 Bonds when and as the same shall become due and payable and for that purpose only.

SECTION 8. RESERVE FUND. The City shall accumulate a balance in the Reserve Fund at least equal to the Reserve Fund Requirement through monthly installments commencing on the first month following the Date of Issue and continuing until an amount equal to the Reserve Requirement is accumulated. If at any time after the tenth anniversary of the Date of Issue the balance in the Reserve Fund is less than the Reserve Fund Requirement, the City will transfer Net Revenues in monthly installments to the Reserve Fund until the deficiency is cured.

Moneys required to be maintained in the Reserve Fund will be used only to pay principal and interest on the Series 2021 Bonds, and only in the event that the Net Revenues and moneys in the Bond Fund are insufficient to pay Bond principal, premium, if any, and interest when due; provided, however, that when the balances of the Bond Fund and the Reserve Fund equal an amount sufficient to redeem or pay at maturity all outstanding Series 2021 Bonds, together with interest thereon and premium, if any, said balances may be applied to such redemption or payment at maturity, as the case may be, whether or not other moneys are available for such payment.

Any amounts on deposit in the Reserve Fund, including interest earnings, in excess of the Reserve Fund Requirement shall be transferred to the Bond Fund. Any surplus remaining in the Reserve Fund after all Series 2021 Bonds have been paid may be used for any lawful purpose determined by the City Council.

SECTION 9. CONSTRUCTION FUND. The City Council shall establish a Construction Fund and shall deposit to the credit of such Fund the advances of the Series 2021 Bonds as set forth in Section 5 hereof. The moneys in the Construction Fund shall be held in trust by the City and applied to the payment of costs of the Project, reimbursement to the City for certain Project costs paid by the City and the payment of the costs incurred in connection with the issuance of the Series 2021 Bonds in accordance with and subject to the provisions of this Section. Pending such application, moneys in the Construction Fund shall be subject to a lien and charge in favor of the owners of the Series 2021 Bonds and shall be held for the further security of such owners until paid out as herein provided.

Moneys in the Construction Fund may be deposited with a qualified depository and any deposits in excess of federal deposit insurance corporation insurance shall be collateralized in accordance with Section 21-04-09 of the N.D.C.C. Moneys in the Construction Fund shall be subject to withdrawal from time to time by the Mayor and City Auditor for the purpose of paying

the costs of the Project, reimbursement to the City for payments theretofore made by the City and the cost of issuance.

Moneys in the Construction Fund may be invested in such investments as are authorized by law for the City. Earnings from investment of the funds in the Construction Fund shall remain in the Construction Fund, and shall be treated and disbursed as Bond proceeds. Any proceeds of the Series 2021 Bonds and any interest earnings thereon remaining in the Construction Fund after payment of all costs of the Project, reimbursement of prior expenditures and issuance costs shall be transferred to the Bond Fund.

SECTION 10. [RESERVED].

SECTION 11. RATE COVENANT. The City covenants that it will establish, impose and maintain rates, charges and fees in connection with the operation of the Facilities which are projected to generate Net Revenues at least equal to 1.20 times the annual debt service on all outstanding Series 2021 Bonds and any other Parity Bonds as it becomes due. If the Net Revenues fail to meet this level, the City shall promptly increase its rates, charges and fees to a level so that Net Revenues are projected to meet the required level. Provided, however, the City may deviate from the foregoing covenant if the City Council shall determine that compliance therewith will reduce Net Revenues.

SECTION 12. GENERAL COVENANTS. The City hereby covenants and agrees with the owners of all outstanding Series 2021 Bonds as follows:

- (a) That it will, to the extent the Net Revenues are sufficient, promptly cause the principal and interest on the Series 2021 Bonds to be paid as they become due.
- (b) That it will maintain complete books and records relating to the operation of the Facilities, the Construction Fund, the Bond Fund and the Reserve Fund and will cause such books and records to be audited annually at the end of each fiscal year or will provide financial statements, as required in the Letter of Conditions. Such audit or financial statements will be prepared in accordance with Generally Accepted Government Auditing Standards in the form directed by RUS.
- (c) That it will not issue bonds or other obligations having a claim upon the Net Revenues superior to the claim of the Series 2021 Bonds and any other Parity Bonds.
- (d) That it will impose, maintain and collect the rates and charges for its water utility in an amount sufficient to pay all Operating Costs, to fund the Reserve Fund and to produce Net Revenues sufficient to pay the principal of and interest on the Series 2021 Bonds and any other Parity Bonds as the same becomes due.

- (e) That all users of the Facilities will be metered.
- (f) That it will adopt rate schedules and rules for the operation of the Facilities and will operate the Facilities in an efficient and economical manner and maintain, preserve and keep every part of the Facilities in good repair, working order and condition.

SECTION 13. AUTHENTICATION, REGISTRATION AND TRANSFER.

- (a) All Series 2021 Bonds shall be in fully registered form. The City hereby appoints the City Auditor of the City to serve as Registrar for the Series 2021 Bonds (the "Registrar"). A successor Registrar may be appointed for the Series 2021 Bonds by resolution of the City. The Registrar shall provide notice to Bondholders of any change in the Registrar not later than the interest payment date following the change in Registrar.
- (b) No Bond shall be entitled to any right or benefit under this Resolution unless it shall have been manually signed by the Mayor and the City Auditor or, if signed by facsimile signatures, authenticated by an authorized officer of the City's Registrar.
- (c) The ownership of all Series 2021 Bonds shall be entered in the Bond Register maintained by the Registrar and the City and the Registrar may treat the person listed as owner in the Bond Register as the owner of the Bond for all purposes.
- (d) The principal of and interest on the Series 2021 Bonds shall be paid on each payment date to the Bondholder by preauthorized debit. If the preauthorized debit payment process is discontinued for any reason, the Registrar shall mail each Bond principal and interest payment on the payment date to the name and address of the Bondholder, as that name and address appear on the Bond Register as of the fifteenth (15th) day of the month preceding a Bond interest payment date (the "Record Date"). If payment is so mailed, neither the City nor the Registrar shall have any further liability to any party for such payment. The final payment of principal of the Series 2021 Bonds shall be payable only upon presentation and surrender of the Series 2021 Bonds at the office of the Registrar.
- (e) Series 2021 Bonds may be exchanged for an equal principal amount of Series 2021 Bonds of the same maturity which are in different authorized denominations, and Series 2021 Bonds may be transferred to other owners if the Bondholder submits the following to the Registrar:
 - i. written instructions for exchange or transfer satisfactory to the Registrar, signed by the Bondholder or his attorney in fact and

guaranteed or witnessed in a manner satisfactory to the Registrar;
and

ii. the Series 2021 Bonds to be exchanged or transferred.

(f) The Registrar shall not be required to exchange or transfer any Series 2021 Bonds submitted to it during any period beginning with a Record Date and ending on the next following interest payment date; however, such Series 2021 Bonds shall be exchanged or transferred promptly following that interest payment date. In addition, no transfer or exchange of Series 2021 Bonds shall be required to be made during the period beginning fifteen days before any selection of Series 2021 Bonds for redemption and ending on the day of such selection, or for any Bond selected for redemption in whole or in part.

(g) Each Bond delivered under this Resolution upon transfer or exchange for, or in lieu of, any other Bond shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond, and each such Bond shall be so dated that neither gain nor loss in interest shall result from such transfer, exchange or substitution. Each Bond shall be dated by the Registrar as of the last interest payment date preceding the date of authentication to which interest on the Bond has been paid or made available for payment, unless

- i. the date of authentication is an interest payment date to which interest has been paid or made available for payment, in which case such Bond shall be dated as of the date of authentication, or
- ii. the date of authentication of a Series 2021 Bond is prior to the first interest payment date, in which case such Bond shall be dated as of the Date of Issue.

(h) For purposes of this Section, Series 2021 Bonds shall be considered submitted to the Registrar on the date the Registrar actually receives the materials described in subsection (e) of this Section.

(i) The City may require payment by the Bondholder of a sum sufficient to pay any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Series 2021 Bonds. All other expenses incurred by the City or the Registrar in connection with any transfer or exchange of Series 2021 Bonds shall be paid by the City.

(j) All Series 2021 Bonds surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the City.

(k) When any Series 2021 Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the

endorsement on such Series 2021 Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

- (l) In case any Series 2021 Bond shall become mutilated or be destroyed, stolen or lost, the Registrar shall deliver a new Series 2021 Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Series 2021 Bond or in lieu of and in substitution for any such Series 2021 Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Series 2021 Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to it that such Series 2021 Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. All Series 2021 Bonds so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, 8 destroyed, stolen or lost Series 2021 Bond has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Bond prior to payment.
- (m) The City may alter these provisions regarding the registration and transfer by mailing notification of the altered provisions to all Bondholders. The altered provisions shall take effect on the date stated in the notice, which shall not be earlier than forty-five (45) days after notice is mailed.

SECTION 14. PARITY BONDS. The City may issue additional Parity Bonds to provide funds to: (i) finance the acquisition, construction and equipping of additions to Facilities, (ii) repair and improve the Facilities, or (iii) refund the outstanding Series 2021 Bonds, upon the following conditions:

- (a) No Default has occurred and is continuing;
- (b) At the time of the issuance of the Parity Bonds there is no deficiency in the Bond Fund or the Reserve Fund, provided that the Reserve Fund or any other account required to be funded in installments need not be fully funded at the time of issuance of the Parity Bonds if all required deposits have been made and are current; and
- (c) The Resolution authorizing the issuance of the additional Parity Bonds contains a covenant requiring the City to charge fees projected to generate Net Revenues for the fiscal year following the year in which

the additional Parity Bonds are issued at least equal to 1.20 times the average annual debt service on all outstanding bonds including the additional Parity Bonds;

All Parity Bonds issued in accordance with this Section shall have a lien on the Net Revenues which is equal to the lien of the Series 2021 Bonds and all other Parity Bonds issued in accordance with this Section. Notwithstanding the foregoing, any Parity Bonds shall not have a lien on or be secured by the Reserve Fund established to secure the Series 2021 Bonds. Nothing in this Resolution shall preclude the City from issuing additional bonds which are expressly made a charge on only the surplus Net Revenues of the Facilities subordinate to the pledge of Net Revenues to the Series 2021 Bonds authorized hereunder. Notwithstanding the foregoing, the City may issue Parity Bonds with the written consent of the owners of all of the outstanding principal of the Parity Bonds and the Series 2021 Bonds.

Provided that prior to issuing Parity Bonds under this Section, the City shall obtain the consent of RUS.

SECTION 15. DEFAULT AND REMEDIES.

(a) The following events shall constitute Default:

- i. failure to pay the Bond principal or interest when due; or
- ii. failure to perform any other obligation of the City imposed by the Resolution or the Series 2021 Bonds, but only if:
 - A. the failure continues for a period of more than ninety (90) days after demand has been made on the City to remedy the failure, and
 - B. the City fails to take reasonable steps to remedy the failure within that 90-day period; or
- iii. imposition of a receivership upon the City; or
- iv. written admission by the City that the City is unable to pay its debts as they become due.

(b) Upon Default, any Bondholder may exercise any of the following remedies:

- i. by mandamus or other suit, action, or proceeding at law or in equity, enforce the holder's rights against the City and its City Council and any of its officers, agents, and employees and may require the City or the City Council or any officers, agents, or employees of the City or City Council to perform their duties and obligations under Chapter 40-35 of the N.D.C.C. and the covenants and agreements contained herein;

- ii. by action or suit in equity, require the City and the City Council to account as if they were the trustees of an express trust;
- iii. by action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders; or
- iv. bring suit upon the Series 2021 Bonds.

A right or remedy conferred by this Section upon any bondholder is not intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter or by any other law of the State.

SECTION 16. INSURANCE AND FIDELITY BOND. The City covenants to maintain insurance appropriate to the risks associated with operation of its Facilities.

- (a) The City shall maintain public liability insurance coverage in amounts which will adequately cover the City.
- (b) The City shall maintain a fidelity bond for all persons who have access to funds in an amount not less than the annual principal and interest payable on the Series 2021 Bonds.
- (c) The City shall maintain property damage and extended coverage in such amount as recommended by the City's Engineer.
- (d) Workers Compensation coverage will be provided in accordance with state law and recommendation of the City's Attorney.
- (e) Certificates of insurance or copies of the policies shall be provided to RUS upon request.

SECTION 17. SALES AND LEASES. The City may not sell or exchange or otherwise dispose of any property constituting a part of the Project unless such property is either worn out or obsolete or, in the opinion of the City, is no longer useful in the operation of the Project. Any proceeds of such sale, exchange or other disposition not used to replace the property so sold or exchanged shall be deposited in the Bond Fund.

The City may lease as lessor or make contracts or grant licenses for the operation of, or grant easements or other rights with respect to any part of the Facilities if such lease, contract, license, easement or right does not, in the opinion of the City, impede the operation of the Facilities, and in the opinion of Bond Counsel, does not affect the tax-exempt status of the Series 2021 Bonds.

Provided that prior to any sales or leases under this Section, the City shall obtain the consent of RUS.

SECTION 18. AMENDMENT OF RESOLUTION.

(a) This Resolution may be amended without the consent of any Bondholders for any one or more of the following purposes:

- i. to add to the covenants and agreements of the City in this Resolution any other covenants and agreements thereafter to be observed by the City or to surrender any right or power herein reserved to or conferred upon the City;
- ii. to cure any ambiguity or formal defect contained in this Resolution, if that cure does not, in the judgment of the City Council, adversely affect the interests of the Bondholders;
- iii. to issue Parity Bonds in accordance with Section 14 hereof; or
- iv. to make any other change which, in the opinion of Bond Counsel, is not to the prejudice of the holders of the Series 2021 Bonds.

(b) This Resolution may be amended for any other purpose only upon consent of not less than fifty percent (50%) in aggregate principal amount of the Series 2021 Bonds outstanding; provided, however, that no amendment shall be valid which:

- i. extends the maturity of any Bond, reduces the rate of interest upon any Bond, extends the time of payment of interest on any Bond, reduces the amount of principal payable on any Bond, or reduces any premium payable on any Bond, without the consent of the affected Bondholder; or
- ii. reduces the percent of Bondholders required to approve the amendatory resolutions.

SECTION 19. DISCHARGE. When all of the Series 2021 Bonds, and the interest thereon, have been discharged as provided in this Section, all pledges, covenants and other rights granted by this Resolution shall cease. The City may discharge all Series 2021 Bonds due on any date by depositing with the Registrar on or before that date a sum sufficient for the payment thereof in full; or if any Series 2021 Bond or interest thereon should not be paid when due, the same may nevertheless be discharged by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued from the due date to the date of such deposit. The City may also discharge all prepayable Series 2021 Bonds called for redemption on any date when they are prepayable according to their terms, by depositing with the Registrar on or before that date a sum sufficient for the payment thereof in full, provided that notice of the redemption thereof has been duly given as provided herein.

SECTION 20. TAX COVENANTS. The City covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Series 2021 Bonds under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). The City will not directly or indirectly

use or permit the use of any proceeds of the Series 2021 Bonds or any other funds of the City, or take or omit to take any action that would cause the Series 2021 Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code. To that end, the City will comply with all requirements of Section 148 of the Code and any applicable regulations to the extent applicable to the Series 2021 Bonds. In the event that any time the City is of the opinion that for purposes of this Section it is necessary to restrict or limit the yield on the investment of any moneys held in the Bond Fund, the 2021 Construction Fund or the Reserve Fund, the City shall take such action as may be necessary.

Without limiting the generality of the foregoing, the City agrees that there shall be paid from time to time all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the Series 2021 Bonds from time to time. This covenant shall survive payment in full or defeasance of the Series 2021 Bonds.

Notwithstanding any provision of this Section, if the City receives an opinion of nationally recognized bond counsel to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the Series 2021 Bonds pursuant to Section 103 of the Code, the City may rely conclusively on such opinion in complying with the provisions hereof.

SECTION 21. QUALIFIED TAX-EXEMPT OBLIGATION. The City hereby designates the Series 2021 Bonds as “qualified tax-exempt obligations” for purposes of paragraph (3) of Section 265(b) of the Code and covenants that the Series 2021 Bonds do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income taxes (excluding, however, private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code), including the Series 2021 Bonds, have been or shall be issued by the City, including all subordinate entities of the City, during the calendar year 2021.

SECTION 22. REBATE. For purposes of qualifying for the small issuer exception to the federal arbitrage rebate requirements in accordance with Section 148(f)(4)(D) of the Code, the City covenants that it is a governmental unit with general taxing powers; that the Series 2021 Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the Net Proceeds of the Series 2021 Bonds are to be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City), and that the aggregate face amount of the all tax exempt obligations (other than private activity bonds as defined in Section 141 of the Code) issued by the City including all subordinate entities of the City, during the calendar year 2021 will not exceed \$5,000,000.

SECTION 23. OTHER DOCUMENTS AND PROCEEDINGS. The officers of the City are hereby authorized and directed to execute and carry out or cause to be carried out the obligations which are necessary or advisable in connection with this Resolution and the issuance, sale and delivery of the Series 2021 Bonds. The officers of the City are further authorized and

directed to prepare, execute and furnish to the attorneys passing on the legality of the Series 2021 Bonds, certified copies of all proceedings, ordinances, resolutions and records and all such certificates and affidavits and other instruments as may be required to evidence the legality and marketability of the Series 2021 Bonds, and all certified copies, certificates, affidavits and other instruments so furnished shall constitute representations of the City as to the correctness of all facts stated or recited therein. The City hereby ratifies, confirms, and adopts all acts performed, resolutions, motions or ordinances passed or adopted and publications had in and incidental to the sale and issuance of the Series 2021 Bond whether or not reflected on the official minutes and records of the City.

SECTION 24. CERTIFICATES. The Mayor and City Auditor (each an “Authorized Officer”), in consultation with counsel, are hereby authorized to deliver a Certificate which cures ambiguities, defects or omissions herein, corrects, amends or supplements any provision herein, lessens the obligations of the City hereunder, adds to the rights or options of the City, or otherwise makes changes to the provisions hereof, which such Authorized Officer determines are in furtherance of the financing contemplated herein, which determination shall be evidenced conclusively by the execution of such certificate.

SECTION 25. WATER SERVICE AGREEMENT. The City has entered into a water service contract with North Dakota State Water Commission (Southwest Water Authority) (the “**Authority**”), dated March 15, 1983 (the “**Water Service Contract**”). Pursuant to the Water Service Contract the Authority sells water to the City for the City’s re-sale to customers and residents. Article VIII, Section G of the Water Service Contract provides that the City may not transfer or assign the contract or any rights or obligations under the contract without the express written consent of the Authority. The City agrees to seek Authority approval for an assignment of or security interest in the Water Service Contract if required by RUS.

(Remainder of page intentionally left blank.)

Dated: April 5, 2021.

CITY OF BEACH, NORTH DAKOTA

Attest:

Mayor

City Auditor

The governing body of the City acted on the foregoing resolution at a properly noticed meeting held in Beach, North Dakota, on April 5, 2021, with the motion for adoption made by Marman and seconded by Wolff, and the roll call vote on the motion was as follows:

"Aye"

Marman, Swanson-Puckett, Ross, Wolff, and Zachmann

"Nay"

Absent

Hegel

Abstain

No other business was brought forward. Marman moved to adjourn, second by Wolff. Meeting adjourned at 8:20 p.m.

ATTEST:

Jeanne Larson, Mayor

Kimberly Gaugler, City Auditor