

RESOLUTION NO. 2016-23

Resolution authorizing and approving a Loan Agreement, providing for the issuance and securing the payment of \$2,655,000 Electric Revenue Refunding Bonds, Series 2016, and approving an Escrow Agreement for the investment of bond proceeds

WHEREAS, the City of Hawarden, in Sioux County, State of Iowa (the "City"), did heretofore establish a Municipal Electric Utility System (the "Utility"), in and for the City, which has continuously supplied electrical service in and to the City and its inhabitants since its establishment; and

WHEREAS, the management and control of the Utility are vested in the City Council (the "Council") and no board of trustees exists for this purpose; and

WHEREAS, pursuant to a prior resolution (the "2011 Bond Resolution") of the Council, the City has previously issued its \$4,615,000 Electric Revenue Improvement and Refunding Bonds, Series 2011, dated November 30, 2011 (the "Series 2011 Bonds"), a portion of which remain outstanding; and

WHEREAS, pursuant to the 2011 Bond Resolution, the City reserved the right to call the Series 2011 Bonds maturing in the years 2019 to 2031, inclusive (the "Callable Series 2011 Bonds"), on any date on or after June 1, 2018; and

WHEREAS, pursuant to a prior resolution (the "2015 Bond Resolution" and, together with the 2011 Bond Resolution, the "Outstanding Bond Resolutions") of the Council, the City has also previously issued its \$2,890,000 Electric Revenue Improvement Bonds, Series 2015, dated May 5, 2015 (the "Series 2015 Bonds" and, together with the Series 2011 Bond, the "Outstanding Bonds"), a portion of which remains outstanding; and

WHEREAS, pursuant to the Outstanding Bond Resolutions, the City reserved the right to issue additional obligations payable from the net revenues of the Utility and ranking on a parity with the Outstanding Bonds; and

WHEREAS, pursuant to the provisions of Section 384.24A of the Code of Iowa, the City heretofore proposed to enter into an Electric Revenue Refunding Loan Agreement (the "Loan Agreement") and to borrow money thereunder in a principal amount not to exceed \$2,750,000 for the purpose of paying the cost, to that extent, of advance refunding the Callable Series 2011 Bonds, and pursuant to law and a notice duly published, the City Council has held a public hearing on such proposal on August 24, 2016; and

WHEREAS, a Preliminary Official Statement (the "P.O.S.") has been prepared to facilitate the sale of Electric Revenue Refunding Bonds, Series 2016 (the "Bonds") in evidence of the obligation of the City under the Loan Agreement, and the City Council has made provision for the approval of the P.O.S. and has authorized its use by D.A. Davidson & Co (the "Underwriter"); and

WHEREAS, the City has entered into a certain Bond Purchase Agreement (the "Bond Purchase Agreement") with the Underwriter with respect to the Loan Agreement and the Bonds; and

WHEREAS, it is now necessary to make final provision for approval of the Loan Agreement, to authorize the issuance of the Bonds, as Parity Obligations under the Outstanding Bond Resolutions, and to authorize an escrow agreement to facilitate the early redemption of the Callable Series 2011 Bonds and the payment of interest on the Bonds through and including June 1, 2018, thereby effectuating an advance cross over refunding structure;

NOW, THEREFORE, Be It Resolved by the City Council of the City of Hawarden, Iowa, as follows:

Section 1. The City shall enter into the Loan Agreement with the Underwriter in substantially the form as has been placed on file with the City Council, providing for a loan to the City in the principal amount of \$2,655,000, for the purpose set forth in the preamble hereof.

The Mayor and City Clerk are authorized and directed to sign the Loan Agreement on behalf of the City, and the Loan Agreement is hereby approved.

Section 2. It is hereby determined that the City shall enter into an escrow agreement (the "Escrow Agreement") with the Registrar (as hereinafter defined), as Escrow Agent, in such form as has been presented to the City Council. The Escrow Agreement is hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute the Escrow Agreement on behalf of the City. The loan proceeds shall be deposited and invested in accordance with the terms of the Escrow Agreement, and, as set forth therein, when timely, shall be used to fund the redemption of the Callable Series 2011 Bonds as hereinafter set forth.

Furthermore, Bankers Trust Company, as Registrar and Paying Agent for the Series 2011 Bonds, is hereby authorized to take all action necessary to call the Callable Series 2011 Bonds for redemption on June 1, 2018 (the "Redemption Date"), and is further authorized and directed to give notice of such redemption by sending notice to each of the registered owners of the Callable Series 2011 Bonds to be redeemed at the addresses shown on the City's registration books, not less than 30 days prior to the Redemption Date.

Section 3 The Bonds, in the aggregate principal amount of \$2,655,000, are hereby authorized to be issued in evidence of the City's obligations under the Loan Agreement. The Bonds shall be dated October 27, 2016, shall be issued in the denomination of \$5,000 each or any integral multiple thereof and shall mature on June 1 in each of the years, in the respective principal amounts, and bear interest at the respective rates as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate Per Annum</u>	<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate Per Annum</u>
2019	\$180,000	2.00%	2026	\$205,000	2.50%
2020	\$185,000	2.00%	2027	\$210,000	2.50%
2021	\$185,000	2.00%	2028	\$215,000	2.20%
2022	\$190,000	2.00%	2029	\$220,000	2.75%
2023	\$195,000	2.00%	2030	\$230,000	2.35%
2024	\$200,000	2.00%	2031	\$235,000	2.50%
2025	\$205,000	2.25%			

Section 4. Bankers Trust Company, Des Moines, Iowa, is hereby designated as the Registrar and Paying Agent for the Bonds and may be hereinafter referred to as the "Registrar" or the "Paying Agent." The City shall enter into an agreement (the "Registrar/Paying Agent Agreement") with the Registrar, in substantially the form as has been placed on file with the City Council; the Mayor and City Clerk are hereby authorized and directed to sign the Registrar/Paying Agent Agreement on behalf of the City; and the Registrar/Paying Agent Agreement is hereby approved.

The City reserves the right to optionally prepay part or all of the principal of the Bonds maturing in the years 2025 to 2031, inclusive, prior to and in any order of maturity on June 1, 2024, or on any date thereafter upon terms of par and accrued interest. If less than all of the Bonds of any like maturity are to be redeemed, the particular part of those Bonds to be redeemed shall be selected by the Registrar by lot. The Bonds may be called in part in one or more units of \$5,000.

If less than the entire principal amount of any Bond in a denomination of more than \$5,000 is to be redeemed, the Registrar will issue and deliver to the registered owner thereof, upon surrender of such original Bond, a new Bond or Bonds, in any authorized denomination, in a total aggregate principal amount equal to the unredeemed balance of the original Bond. Notice of such redemption as aforesaid identifying the Bond or Bonds (or portion thereof) to be redeemed shall be sent by electronic means or mailed by certified mail to the registered owners thereof at the addresses shown on the City's registration books not less than 30 days prior to such redemption date. Any notice of redemption may contain a statement that the redemption is conditioned upon the receipt by the Paying Agent of funds on or before the date fixed for redemption sufficient to pay the redemption price of the Bonds so called for redemption, and that if funds are not available, such redemption shall be cancelled by written notice to the owners of the Bonds called for redemption in the same manner as the original redemption notice was sent. All of such Bonds as to which the City reserves and exercises the right of redemption and as to which notice as aforesaid shall have been given and for the redemption of which funds are duly provided, shall cease to bear interest on the redemption date.

Accrued interest on the Bonds shall be payable semiannually on the first day of June and December in each year, commencing June 1, 2017. Interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months. Payment of interest on the Bonds shall be made to the registered owners appearing on the registration books of the City at the close of business on the fifteenth day of the month next preceding the interest payment date and shall be paid to the registered owners at the addresses shown on such registration books. Principal of the Bonds shall be payable in lawful money of the United States of America to the registered owners or their legal

representatives upon presentation and surrender of the Bond or Bonds at the office of the Paying Agent.

The Bonds shall be executed on behalf of the City with the official manual or facsimile signature of the Mayor and attested with the official manual or facsimile signature of the City Clerk, and shall be fully registered Bonds without interest coupons. The issuance of the Bonds shall be recorded in the office of the City Treasurer, and the certificate on the back of each Bond shall be executed with the official manual or facsimile signature of the City Treasurer. In case any officer whose signature or the facsimile of whose signature appears on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

The Bonds shall not be valid or become obligatory for any purpose until the Certificate of Authentication thereon shall have been signed by the Registrar.

All of the Bonds and the interest thereon, together with the Outstanding Bonds and any additional obligations as may be hereafter issued and outstanding from time to time ranking on a parity therewith under the conditions set forth herein (which additional obligations are hereinafter sometimes referred to as "Parity Obligations"), shall be payable solely from the Net Revenues of the Utility and the Sinking Fund and certain funds pledged to the payment thereof, which are hereby pledged to the payment of the Bonds. The Bonds shall be a valid claim of the owners thereof only against said Net Revenues and Sinking Fund and certain funds pledged to the payment thereof. None of the Bonds shall be a general obligation of the City, nor payable in any manner by taxation, and under no circumstances shall the City be in any manner liable by reason of the failure of the Net Revenues of the Utility to be sufficient for the payment in whole or in part of the Bonds and the interest thereon.

The Bonds shall be fully registered as to principal and interest in the names of the owners on the registration books of the City kept by the Registrar, and after such registration, payment of the principal thereof and interest thereon shall be made only to the registered owners, or their legal representatives or assigns. Each Bond shall be transferable only upon the registration books of the City upon presentation to the Registrar, together with either a written instrument of transfer satisfactory to the Registrar or the assignment form thereon completed and duly executed by the registered owner or the duly authorized attorney for such registered owner.

The record and identity of the owners of the Bonds shall be kept confidential as provided by Section 22.7 of the Code of Iowa.

Section 5. Notwithstanding anything above to the contrary, the Bonds shall be issued initially as Depository Bonds, with one fully registered Bond for each maturity date, in principal amounts equal to the amount of principal maturing on each such date, and registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"). On original issue, the Bonds shall be deposited with DTC for the purpose of maintaining a book-entry system for recording the ownership interests of its participants and the transfer of those interests among its participants (the "Participants"). In the event that DTC determines not to continue to act as securities depository for the Bonds or the City determines not to continue the

book-entry system for recording ownership interests in the Bonds with DTC, the City will discontinue the book-entry system with DTC. If the City does not select another qualified securities depository to replace DTC (or a successor depository) in order to continue a book-entry system, the City will register and deliver replacement bonds in the form of fully registered certificates, in authorized denominations of \$5,000 or integral multiples of \$5,000, in accordance with instructions from Cede & Co., as nominee for DTC. In the event that the City identifies a qualified securities depository to replace DTC, the City will register and deliver replacement bonds, fully registered in the name of such depository, or its nominee, in the denominations as set forth above, as reduced from time to time prior to maturity in connection with redemptions or retirements by call or payment, and in such event, such depository will then maintain the book-entry system for recording ownership interests in the Bonds.

Ownership interest in the Bonds may be purchased by or through Participants. Such Participants and the persons for whom they acquire interests in the Bonds as nominees will not receive certificated Bonds, but each such Participant will receive a credit balance in the records of DTC in the amount of such Participant's interest in the Bonds, which will be confirmed in accordance with DTC's standard procedures. Each such person for which a Participant has an interest in the Bonds, as nominee, may desire to make arrangements with such Participant to have all notices of redemption or other communications of the City to DTC, which may affect such person, forwarded in writing by such Participant and to have notification made of all interest payments.

The City will have no responsibility or obligation to such Participants or the persons for whom they act as nominees with respect to payment to or providing of notice for such Participants or the persons for whom they act as nominees.

As used herein, the term "Beneficial Owner" shall hereinafter be deemed to include the person for whom the Participant acquires an interest in the Bonds.

DTC will receive payments from the City, to be remitted by DTC to the Participants for subsequent disbursement to the Beneficial Owners. The ownership interest of each Beneficial Owner in the Bonds will be recorded on the records of the Participants whose ownership interest will be recorded on a computerized book-entry system kept by DTC.

When reference is made to any action which is required or permitted to be taken by the Beneficial Owners, such reference shall only relate to those permitted to act (by statute, regulation or otherwise) on behalf of such Beneficial Owners for such purposes. When notices are given, they shall be sent by the City to DTC, and DTC shall forward (or cause to be forwarded) the notices to the Participants so that the Participants can forward the same to the Beneficial Owners.

Beneficial Owners will receive written confirmations of their purchases from the Participants acting on behalf of the Beneficial Owners detailing the terms of the Bonds acquired. Transfers of ownership interest in the Bonds will be accomplished by book entries made by DTC and the Participants who act on behalf of the Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except as specifically provided herein. Interest and principal will be paid when due by the City to DTC, then paid by DTC to the Participants and thereafter paid by the Participants to the Beneficial Owners.

Section 6. The Bonds shall be in substantially the following form:

The City reserves the right to optionally prepay part or all of the principal of the Bonds maturing in each of the years 2025 to 2031, inclusive, prior to and in any order of maturity on June 1, 2024, or on any date thereafter upon terms of par and accrued interest.

If less than all of the Bonds of any like maturity are to be redeemed, the particular part of those Bonds to be redeemed shall be selected by the Registrar by lot. The Bonds may be called in part in one or more units of \$5,000. If less than the entire principal amount of any Bond in a denomination of more than \$5,000 is to be redeemed, the Registrar will issue and deliver to the registered owner thereof, upon surrender of such original Bond, a new Bond or Bonds, in any authorized denomination, in a total aggregate principal amount equal to the unredeemed balance of the original Bond. Notice of such redemption as aforesaid identifying the Bond or Bonds (or portion thereof) to be redeemed shall be sent by electronic means or by certified mail to the registered owners thereof at the addresses shown on the City's registration books not less than 30 days prior to such redemption date. All of such Bonds as to which the City reserves and exercises the right of redemption and as to which notice as aforesaid shall have been given and for the redemption of which funds are duly provided, shall cease to bear interest on the redemption date.

The Bonds are not general obligations of the City but, together with the City's outstanding Electric Revenue Improvement and Refunding Bonds, Series 2011, dated November 30, 2011; Electric Revenue Improvement Bonds, Series 2015, dated May 5, 2015; and any additional obligations as may be hereafter issued and outstanding from time to time ranking on a parity therewith under the conditions set forth in the Resolution, are payable solely and only out of the future Net Revenues of the Utility, a sufficient portion of which has been ordered set aside and pledged for that purpose. This Bond is not payable in any manner by taxation, and under no circumstances shall the City be in any manner liable by reason of the failure of the said Net Revenues to be sufficient for the payment of this Bond and the interest hereon.

This Bond is fully negotiable but shall be fully registered as to both principal and interest in the name of the owner on the books of the City in the office of the Registrar, after which no transfer shall be valid unless made on said books and then only upon presentation of this Bond to the Registrar, together with either a written instrument of transfer satisfactory to the Registrar or the assignment form hereon completed and duly executed by the registered owner or the duly authorized attorney for such registered owner.

The City, the Registrar and the Paying Agent may deem and treat the registered owner hereof as the absolute owner for the purpose of receiving payment of or on account of principal hereof, premium, if any, and interest due hereon and for all other purposes, and the City, the Registrar and the Paying Agent shall not be affected by any notice to the contrary.

And It Is Hereby Certified, Recited and Declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Bonds have existed, have happened and have been performed in due time, form and manner, as required by law, and that the issuance of the Bonds does not exceed or violate any constitutional or statutory limitation or provision.

IN TESTIMONY WHEREOF, the City of Hawarden, Iowa, by its City Council, has caused this Bond to be executed with the duly authorized facsimile signature of the Mayor and attested with the duly authorized facsimile signature of the City Clerk, all as of October 27, 2016.

CITY OF HAWARDEN, IOWA

By (Facsimile Signature)
Mayor

Attest:

(Facsimile Signature)
City Clerk

Registration Date: (Registration Date)

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within-mentioned Resolution.

Bankers Trust Company
Des Moines, Iowa
Registrar

By _____
Authorized Officer

STATE OF IOWA
COUNTY OF SIOUX
CITY OF HAWARDEN

SS: CITY TREASURER'S CERTIFICATE

The original issuance of the Bonds, of which this Bond is a part, was duly and properly recorded in my office as of October 27, 2016.

By (Facsimile Signature)
City Treasurer, Hawarden, Iowa

ABBREVIATIONS

The following abbreviations, when used in this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	-	as tenants in common	UTMA	_____
				(Custodian)
TEN ENT	-	as tenants by the entireties	As Custodian for	_____
TEN	-	as joint tenants with right of survivorship and not as tenants in common		(Minor)
			under Uniform Transfers to Minors Act	_____
				(State)

Additional abbreviations may also be used though not in the list above.

ASSIGNMENT

For valuable consideration, receipt of which is hereby acknowledged, the undersigned assigns this Bond to

(Please print or type name and address of Assignee)

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

and does hereby irrevocably appoint _____, Attorney, to transfer this Bond on the books kept for registration thereof with full power of substitution.

Dated: _____

Signature guaranteed:

Signature(s) must be guaranteed by an eligible guarantor institution which is a member of a recognized signature guarantee program.

NOTICE: The signature to this Assignment must correspond with the name of the registered owner as it appears on this Bond in every particular, without alteration or enlargement or any change whatever.

Section 7 The Bonds shall be executed as herein provided as soon after the adoption of this resolution as may be possible and thereupon they shall be delivered to the Registrar for registration, authentication and delivery to or upon direction of the Underwriter, upon receipt of the loan proceeds (the "Loan Proceeds"), and all action heretofore taken in connection with the Loan Agreement is hereby ratified and confirmed in all respects.

The Loan Proceeds received from the sale of the Bonds shall be (1) deposited with the Escrow Agent and shall be invested and used in accordance with the Escrow Agreement as set forth in Section 2; and (2) used to pay costs of issuance of the Bonds. To the extent that Loan Proceeds remain after the full payment of the costs set forth in (1) and (2) in the preceding sentence, such Loan Proceeds shall be used for the payment of interest on the Bonds. The City shall keep a detailed and segregated accounting of the expenditure of, and investment earnings on, the Loan Proceeds to ensure compliance with the requirements of the Internal Revenue Code, as hereinafter defined.

Section 8. So long as any of the Bonds, the Outstanding Bonds or any Parity Obligations are outstanding, the City shall continue to maintain the Utility in good condition, and the Utility shall continue to be operated in an efficient manner and at a reasonable cost as a revenue producing undertaking. The City Council shall establish, impose, adjust and provide for the collection of rates to be charged to customers of the Utility, including the City, to produce gross revenues (hereinafter sometimes referred to as the "Gross Revenues") at least sufficient to pay the expenses of operation and maintenance of the Utility, which shall include salaries, wages, cost of maintenance and operation, materials, supplies, insurance and all other items normally included under recognized accounting practices (but does not include allowances for depreciation in the valuation of physical property) (which such expenses are hereinafter sometimes referred to as the "Operating Expenses") and to leave a balance of net revenues (herein referred to as the "Net Revenues") equal to at least 110% of the amount of the average annual payments of principal of and interest on all of the Bonds, the Outstanding Bonds and any Parity Obligations outstanding from time to time, as the same become due, and to maintain a reasonable reserve for the payment of such principal and interest, as hereinafter provided.

Section 9 The provisions, covenants, undertakings and stipulations for the operation of the Utility and for the collection, application and use of the Gross Revenues and income from such operation, as set forth in the Outstanding Bond Resolutions (including without limitation the establishment and maintenance of the funds described therein) shall inure and appertain to the Bonds to the same extent and with like force and effect as if herein set out in full, except only insofar as the same may be inconsistent with this resolution. Such provisions, covenants, undertakings and stipulations shall remain in full force and effect for the benefit of the Purchaser and the Bonds in the event the Outstanding Bonds are paid in full or otherwise cease to be outstanding.

Nothing in this resolution shall be construed to impair the rights vested in the registered holders of the Outstanding Bonds. The amounts herein required to be paid into the various funds hereinafter referred to shall be in addition to all payments required in respect to the Outstanding Bond Resolutions. The provisions of the Outstanding Bond Resolutions and the provisions of this resolution are to be construed whenever possible so that the same will not be in conflict. In the event such construction is not possible, the provisions of the resolution first adopted shall prevail

until such time as the obligations authorized by such resolution have been paid or otherwise satisfied as therein provided, at which time the provisions of this resolution shall again prevail.

Section 10. The provisions in and by the Outstanding Bond Resolutions whereby there has been created and is to be maintained an Electric Revenue Fund (herein referred to as the "Revenue Fund") are all hereby ratified and confirmed and after the issuance of the Bonds, the Gross Revenues of the Utility shall continue to be set aside into the City's Revenue Fund. The Revenue Fund shall be used in maintaining and operating the Utility, and after payment of the Operating Expenses shall, to the extent hereinafter provided, be used to pay the principal of and interest on the Bonds, the Outstanding Bonds and any Parity Obligations, and to create and maintain the several separate funds hereinafter established and in the following priority.

A. Sinking Fund. The provisions in and by the Outstanding Bond Resolutions whereby there has been created and is to be maintained an Electric Revenue Bond Sinking Fund (herein referred to as the "Sinking Fund"), and for the payment into said fund from the Net Revenues of the Utility such portion thereof as will be sufficient to pay the interest on and principal of the Outstanding Bonds, are all hereby ratified and confirmed, and all such provisions shall inure and constitute the security for the payment of the interest on and principal of the Bonds hereby authorized as may be outstanding from time to time; provided, however that on the first day of each month of each year, the minimum amount to be set aside, in addition to the amounts required to be set aside in the Outstanding Bond Resolutions and paid into the Sinking Fund shall be not less than as follows:

Commencing June 1, 2018, an amount equal to 1/6th of the installment of interest coming due on the next succeeding interest payment date on the then outstanding Bonds. Additionally, commencing on June 1, 2018, and continuing to and including final maturity, an amount equal to 1/12th of the installment of principal coming due on such Bonds on the next succeeding principal payment date, until the full amount of such installment is on deposit in the Sinking Fund.

The payment of interest on the Bonds through and including June 1, 2018 shall be paid from amounts on deposit in the Escrow Agreement and shall be accounted for in the Sinking Fund as appropriate.

Money in the Sinking Fund shall be used solely for the purpose of paying principal of and interest on the Bonds, the Outstanding Bonds and any Parity Obligations as the same shall become due and payable. Whenever Parity Obligations are issued under the conditions and restrictions hereinafter set forth, provisions shall be made for additional payments to be made into the Sinking Fund for the purpose of paying the interest on and principal of such Parity Obligations.

If at any time there be a failure to pay into the Sinking Fund the full amount above stipulated, then an amount equivalent to the deficiency shall be paid into the Sinking Fund from the Net Revenues of the Utility as soon as available, and the same shall be in addition to the amount otherwise required to be so set apart and paid into the Sinking Fund.

No further payments need be made into the Sinking Fund when and so long as the amount therein is sufficient to retire all of the Bonds, the Outstanding Bonds and any Parity Obligations

then outstanding which are payable from the Sinking Fund and to pay all interest to become due thereon prior to such retirement, or if provision for such payment has been made.

All of such payments required to be made into the Sinking Fund shall be made in equal monthly installments on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday, then such payments shall be made on the next succeeding secular day. Sinking Fund from the Net Revenues of the Utility as soon as available, and the same shall be in addition to the amount otherwise required to be so set apart and paid into the Sinking Fund.

B. Reserve Fund. The provisions of the Outstanding Bond Resolutions whereby there has been created and is to be maintained a special fund to be known and designated as the Principal and Interest Reserve Fund (hereinafter referred to as the "Reserve Fund") are all hereby ratified and confirmed, and the Reserve Fund shall be maintained in an amount representing the maximum amount of principal and interest payable on the Bonds and the Outstanding Bonds (the "Required Reserve Fund Balance"), which amount has been determined to be \$434,262.50, of which \$382,243 is attributable to the Series 2011 Bonds (the "Required Series 2011 Reserve"). From and after the issuance of the Bonds and until the Series 2011 Bonds are no longer outstanding on June 1, 2018, the Reserve Fund shall only secure the Outstanding Bonds and not the Bonds or any Parity Obligations; however, on and after June 1, 2018, the Reserve Fund shall secure the Bonds, and the Required Series 2011 Reserve shall be reduced to \$432,600. The excess amount of the Required Series 2011 Reserve remaining in the Reserve Fund on June 1, 2018 (approximately \$1,662.50) will be applied to the June 1, 2018 debt service payment on the Series 2011 Bonds; and thereafter, the Required Reserve Fund Balance shall be \$432,600.

Whenever the sum on deposit in the Reserve Fund has been reduced to less than the Required Reserve Fund Balance by the expenditure of all or a portion of the funds on deposit therein for any of the purposes specified herein, there shall be deposited into the Reserve Fund the remaining Net Revenues after first making the required deposits into the Sinking Fund, until the sum on deposit in the Reserve Fund has been restored to the Required Reserve Fund Balance.

All money credited to the Reserve Fund shall be used and is hereby pledged for the payment of the principal of and interest on the Bonds and the Outstanding Bonds whenever for any reason the funds on deposit in the Sinking Fund are insufficient to pay such principal and interest when due. If and to whatever extent Parity Obligations to be secured by the Reserve Fund shall be issued under the conditions set forth in this resolution, provision shall be made to create and maintain a reasonable reserve therefor as determined at the time of the marketing of such Parity Obligations.

C. Improvement Fund. The provisions in and by the Outstanding Bond Resolutions, whereby there is to be maintained a separate and special fund known as the Improvement Fund providing for a balance of \$100,000 (the "Required Improvement Fund Balance") to be used for the purposes and with the priorities specified in the Outstanding Bond Resolutions and as hereinafter set out, are all hereby ratified and confirmed. The Required Improvement Fund Balance shall remain at \$100,000, and such funds shall be maintained on deposit in the Improvement Fund until such time as all of the Outstanding Bonds and the Bonds have been paid in full, both principal and interest, or provision for such payment has been made. Whenever the sum on deposit in the Improvement Fund has been reduced to less than the Required Improvement Fund Balance by the expenditure of all or a portion of such funds for any of the permitted purposes, monthly payments of \$2,500 shall be deposited into such Improvement Fund from the Net Revenues remaining after first making the required deposits into the Sinking Fund and the Reserve Fund, and after the Reserve Fund contains the Required Reserve Fund Balance, until the sum on deposit in the Improvement Fund has been restored to the Required Improvement Fund Balance. From and after the issuance of the Bonds and throughout the time any of the Bonds, the Outstanding Bonds or any Parity Obligations are outstanding, money on deposit in the Improvement Fund not otherwise specially limited by other provisions contained herein or in Outstanding Bond Resolutions, shall be used solely and only for the following purposes and with the following priorities:

First, if for any reason there exists a deficiency in the required balance in the Sinking Fund and provided sufficient amounts are not available in the Revenue Fund to pay such deficiency, there shall be paid into the Sinking Fund an amount equal to the deficiency from the amounts on deposit in the Improvement Fund.

Second, said money shall be transferred and credited to the Reserve Fund whenever any deficiency may exist in the Reserve Fund.

Third, not exceeding one half (1/2) of the amount required to be paid into the Improvement Fund each month may be pledged, set aside, used and applied to the payment of principal of and interest on subordinate revenue bonds issued to pay the cost of making necessary improvements and extensions to the Utility, provided there has first been procured and filed with the City the written opinion of a reputable consulting engineer employed by the City that the proposed improvements and extensions are required to insure the continued efficient and successful operation of the Utility.

Fourth, to pay for the cost of capital improvements and extensions to the Utility provided, however, that prior to the expenditure no deficiency exists in the amounts required to be paid into the Sinking Fund and the Reserve Fund, and there has first been procured and placed on file with the City the written opinion of a reputable consulting engineer employed by the City that the proposed capital improvements and extensions are required to insure the continued efficient and successful operation of the Utility.

D. Surplus Fund. There shall continue to be maintained a special fund to be known and designated as the Surplus Fund into which there shall be set apart and paid all of the Net

Revenues remaining after first making any required payments into the Sinking Fund, the Reserve Fund and the Improvement Fund and after the Reserve Fund and the Improvement Fund each contain the required balances, and. All money credited to the Surplus Fund shall be transferred and credited to the Sinking Fund whenever necessary to prevent or remedy a default in the payment of the principal of or interest on the Bonds, the Outstanding Bonds and any Parity Obligations or shall be transferred and credited to the Reserve Fund whenever any deficiency may exist in the Reserve Fund or shall be transferred and credited to the Improvement Fund whenever any deficiency may exist in the Improvement Fund.

As long as the Sinking Fund, the Reserve Fund and the Improvement Fund have the full amounts required to be deposited therein by this resolution, any balance in the Surplus Fund may be made available to the City as the City Council, or such other duly constituted body as may then be charged with the operation of the Utility, may from time to time direct.

Section 11. All of such payments required to be made into any fund created or to be maintained under the terms of this resolution shall be made in equal monthly installments as hereinbefore provided on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday, then such payments shall be made on the next succeeding secular day, and all money held in any fund created or to be maintained under the terms of this resolution shall be deposited in lawful depositories of the City or invested in accordance with Chapters 12B and 12C of the Code of Iowa and continuously held and secured as provided by the laws of the State of Iowa relating to the depositing, securing, holding and investing of public funds. All interest received by the City as a result of investments under this section shall be deposited in or transferred to the Sinking Fund and used solely and only for the purposes specified herein for such fund.

Section 12. The City hereby covenants and agrees with the owner or owners of the Bonds, the Outstanding Bonds and any Parity Obligations, or any of them, that may be outstanding from time to time, that it will faithfully and punctually perform all duties with reference to the Utility required and provided by the Constitution and laws of the State of Iowa, that it will segregate the Gross Revenues of the Utility and make application thereof in accordance with the provisions of this resolution and that it will not sell, lease or in any manner dispose of the Utility or any part thereof, including any and all extensions and additions that may be made thereto, until all of the Bonds, the Outstanding Bonds and any Parity Obligations have been paid in full, both principal and interest, or unless and until provision shall have been made for the payment thereof in full, both principal and interest; provided, however, that the City may dispose of any property which in the judgment of the City Council, or the duly constituted body as may then be charged with the operation of the Utility, is no longer useful or profitable in the operation of the Utility nor essential to the continued operation thereof and when the sale thereof will not operate to reduce the revenues to be derived from the operation of the Utility.

Section 13. Upon a breach or default of a term of the Bonds, the Outstanding Bonds or any Parity Obligations and this resolution, a proceeding may be brought in law or in equity by suit, action or mandamus to enforce and compel performance of the duties required under the terms of this resolution and Division V of Chapter 384 of the Code of Iowa or an action may be brought to obtain the appointment of a receiver to take possession of and operate the Utility and to perform the duties required by this resolution and Division V of Chapter 384 of the Code of Iowa.

Section 14. The provisions of the Outstanding Bond Resolutions with respect to the issuance of Parity Obligations are hereby recognized and confirmed. The Bonds, the Outstanding Bonds or any Parity Obligations shall not be entitled to priority or preference one over the other in the application of the Net Revenues of the Utility, regardless of the time or times of the issuance thereof, it being the intention of the City that there shall be no priority among the Bonds, the Outstanding Bonds or Parity Obligations, regardless of the fact that they may have been actually issued and delivered at different times. The City hereby covenants and agrees that so long as any of the Bonds, the Outstanding Bonds or any Parity Obligations are outstanding and unpaid, no other bonds or obligations payable from the Net Revenues of the Utility will be issued except upon the basis of such bonds or obligations being subject to the priority and security for payment of the Bonds, the Outstanding Bonds or any Parity Obligations then outstanding; provided, however, that the City reserves the right and privilege of issuing Parity Obligations in order to pay the cost of improvements and extensions to the Utility or for refunding any bonds or obligations payable from the Net Revenues of the Utility, but only if the officially reported Net Revenues of the Utility for the last preceding fiscal year prior to the issuance of such Parity Obligations (with adjustments as hereinafter provided) were equal to at least 125% of the maximum amount of principal and interest that will become due in any subsequent year during the life of the Bonds for the Bonds, the Outstanding Bonds and any Parity Obligations then outstanding and the Parity Obligations then proposed to be issued.

The amount of Gross Revenues of the Utility may be adjusted for the purpose of the foregoing computations by an independent consulting engineer or, after the Series 2015 Bonds are no longer outstanding, a municipal financial advisor, in either case, not a regular employee of the City, so as to reflect any revision in the schedule of rates and charges being imposed at the time of the issuance of any such Parity Obligations.

Obligations issued to refund the Bonds, the Outstanding Bonds or any Parity Obligations shall not be subject to the foregoing restrictions, provided the Bonds, the Outstanding Bonds or Parity Obligations being refunded mature within three (3) months of the date of such refunding and no other funds are available to pay such maturing Bonds, the Outstanding Bonds or Parity Obligations, or the issuance of the refunding obligations will not cause an increase in the annual debt service requirements during the life of any of the Bonds, the Outstanding Bonds or any Parity Obligations then outstanding which are not being refunded but otherwise any Parity Obligations shall only be issued subject to the restrictions of this resolution.

Section 15. The City agrees that so long as the Bonds, the Outstanding Bonds or any Parity Obligations remain outstanding, it will maintain insurance for the benefit of the owners of the Bonds, the Outstanding Bonds and any Parity Obligations on the insurable portions of the Utility of a kind and in an amount which usually would be carried by private companies or municipalities engaged in a similar type of business. The City will keep proper books of record and account, separate from all other records and accounts, showing the complete and correct entries of all transactions relating to the Utility, and the owners of the Bonds, the Outstanding Bonds or any Parity Obligations shall have the right at all reasonable times to inspect the Utility and all records, accounts and data of the City relating thereto.

Section 16. The provisions of this resolution shall constitute a contract between the City and the owners of the Bonds, and after the issuance of the Bonds, no change, variation or alteration

of any kind of the provisions of this resolution shall be made which will adversely affect the owners of the Bonds until all of the Bonds and the interest thereon shall have been paid in full, except as hereinafter provided.

The owners of a majority in principal amount of the Bonds, the Outstanding Bonds and Parity Obligations at any time outstanding (not including in any case any obligations which may be then held or owned by or for the account of the City, but including such obligations as may be issued for the purpose of refunding any of the Bonds, the Outstanding Bonds or any Parity Obligations if such obligations shall not then be owned by the City) shall have the right from time to time to consent to and approve the adoption by the City Council, or such other duly constituted body as may then be charged with the operation of the Utility, of a resolution or resolutions modifying or amending any of the terms or provisions contained in this resolution; provided, however, that this resolution may not be so modified or amended in such manner as to:

- a. make any change in the maturity or redemption terms of the Bonds, the Outstanding Bonds or any Parity Obligations;
- b. make any change in the rate of interest borne by the Bonds, the Outstanding Bonds or any Parity Obligations;
- c. reduce the amount of the principal payable on any Bonds, Outstanding Bonds or Parity Obligations;
- d. modify the terms of payment of principal of or interest on the Bonds, the Outstanding Bonds or any Parity Obligations, or any of them, or impose any conditions with respect to such payment;
- e. affect the rights of the owners of less than all of the Bonds, the Outstanding Bonds or any Parity Obligations then outstanding; or
- f. reduce the percentage of the principal amount of the Bonds, the Outstanding Bonds or any Parity Obligations, the consent of the owners of which shall be required to effect a further modification.

Whenever the City shall propose to amend or modify this resolution under the provisions of this section, it shall (1) prior to the publication of the notice hereinafter provided for in (2), cause notice of the proposed amendment to be mailed to each of the owners of the Bonds, the Outstanding Bonds and Parity Obligations at the addresses appearing on the registration books of the City and also to the Lender, and (2) cause notice of the proposed amendment to be published one time in a newspaper published and/or having a general circulation in the City of Hawarden, Iowa. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory resolution is on file in the office of the City Clerk.

If the owners of at least a majority in aggregate principal amount of the Bonds, the Outstanding Bonds or any Parity Obligations outstanding at the time of the adoption of such amendatory resolution shall have consented to and approved the adoption thereof as herein provided, no owner of any Bonds, the Outstanding Bonds or Parity Obligations shall have any right or interest to object to the adoption of such amendatory resolution or to object to any of the

terms or provisions therein contained or to the operation thereof or to enjoin or restrain the City from taking any action pursuant to the provisions thereof.

Any consent given by the owners of a Bond, Outstanding Bond or Parity Obligation pursuant to the provisions of this section shall be irrevocable for a period of six (6) months from the date of such consent and shall be conclusive and binding upon all future owners of the same Bond, Outstanding Bond or Parity Obligation during such period. Such consent may be revoked at any time after six (6) months from the date of such consent by the owner who gave such consent or by a successor in title, but such revocation shall not be effective if the owners of a majority in aggregate principal amount of the Bonds, the Outstanding Bonds and Parity Obligations outstanding as in this section defined shall have, prior to the attempted revocation, consented to and approved the amendatory resolution referred to in such revocation.

The fact and date of the execution of any instrument under the provisions of this section may be proved by the certificate of any officer in any jurisdiction who by the laws thereof is authorized to take acknowledgments of deeds within such jurisdiction, that the persons signing such instrument acknowledged before him the execution thereof, or may be proved by an affidavit of a witness to such execution sworn to before such officer.

Section 17. It is the intention of the City that interest on the Bonds be and remain excluded from gross income for federal income tax purposes pursuant to the appropriate provisions of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations in effect with respect thereto (all of the foregoing herein referred to as the "Internal Revenue Code"). In furtherance thereof the City covenants to comply with the provisions of the Internal Revenue Code as they may from time to time be in effect or amended and further covenants to comply with applicable future laws, regulations, published rulings and court decisions as may be necessary to insure that the interest on the Bonds will remain excluded from gross income for federal income tax purposes. Any and all of the officers of the City are hereby authorized and directed to take any and all actions as may be necessary to comply with the covenants herein contained.

The City hereby designates the Bonds as "Qualified Tax Exempt Obligations" as that term is used in Section 265(b)(3)(B) of the Internal Revenue Code.

Section 18. The Securities and Exchange Commission (the "SEC") has promulgated certain amendments to Rule 15c2-12 under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule") that make it unlawful for an underwriter to participate in the primary offering of municipal securities in a principal amount of \$1,000,000 or more unless, before submitting a bid or entering into a purchase contract for such securities, an underwriter has reasonably determined that the issuer or an obligated person has undertaken in writing for the benefit of the holders of such securities to provide certain disclosure information to prescribed information repositories on a continuing basis so long as such securities are outstanding.

On the date of issuance and delivery of the Bonds, the City will execute and deliver a Continuing Disclosure Certificate pursuant to which the City will undertake to comply with the Rule. The City covenants and agrees that it will comply with and carry out the provisions of the Continuing Disclosure Certificate. Any and all of the officers of the City are hereby authorized

and directed to take any and all actions as may be necessary to comply with the Rule and the Continuing Disclosure Certificate.

Section 19. If any section, paragraph, clause or provision of this resolution shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this resolution.

Section 20. All resolutions and orders or parts thereof in conflict with the provisions of this resolution are, to the extent of such conflict, hereby repealed.

Section 21. This resolution shall be in full force and effect immediately upon its adoption and approval, as provided by law.

Passed and approved October 12, 2016.

Richard R. Portier
Mayor

Attest:

Gay W. Tucker
City Clerk

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On motion and vote, the meeting adjourned.

Richard R. Portier
Mayor

Attest:

Gay W. Tucker
City Clerk

