

RESOLUTION NO. ____

RESOLUTION AUTHORIZING THE ISSUANCE OF SALES TAX REVENUE BONDS, SERIES 2021B TO FINANCE THE ACQUISITION AND CONSTRUCTION OF A FLOOD CONTROL PROJECT

BE IT RESOLVED by the City Council of the City of Minot, Ward County, North Dakota (the “City”) as follows:

Section 1. Recitals and Authorization.

1.01. The City is a political subdivision of the State of North Dakota and a body corporate and politic.

1.02. Under the Constitution and laws of the State of North Dakota the City is possessed of all powers which are necessary, requisite or proper for the government and administration of its local and municipal matters, and all rights and powers that now or hereafter may be granted to municipalities by the laws of the State of North Dakota or assumed by the City pursuant to its Charter.

1.03 The City is authorized by Chapter 28 ½, Article IV, of the Code of Ordinances, City of Minot, North Dakota, as amended by Ordinance No. 5511 (collectively, the “First Penny Ordinance”), to levy an excise tax upon the storage, use, or consumption within the corporate limits of the City, of tangible personal property purchased at retail for storage, use, or consumption in the City, at the rate of one (1) per cent of the purchase price of the property and on the storage, use, or consumption within the corporate limits of the City of tangible personal property not originally purchased for storage, use, or consumption in the City at the rate of one (1) per cent of the fair market value of the property at the time it was brought into the City (the “First Penny Sales Tax”). Pursuant to the First Penny Ordinance, collections of the First Penny Sales Tax are dedicated 50% to permanent flood control projects (the “First Penny Flood Control Sales Tax”); 25% for the construction, operation and maintenance of Minot-area capital improvements, including but not limited to street systems, sewer systems, water systems, airport, libraries, landfills, auditoriums, arenas, flood control public safety improvements, etc; 15% for economic development; and 10% for property tax relief.

1.04. The City is authorized by Chapter 28 ½, Article V, of the Code of Ordinances, City of Minot, North Dakota, as amended by Ordinance No. 5511 (collectively, the “Second Penny Ordinance,” and together with the First Penny Ordinance, the “Ordinance”), to levy: (i) a sales tax in the amount of one percent (1%) on the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property as provided in the Ordinance, subject to certain designated exceptions and (ii) a use tax in the amount of one percent (1%) on tangible personal property which is purchased elsewhere and subsequently brought in to the City, including tangible personal property used by contractors or subcontractors (the “Second Penny Sales Tax,” and together with the First Penny Sales Tax, the “Sales Tax”). Pursuant to the Ordinance, collections of the Second Penny Sales Tax are dedicated 40% to the construction, operation, and maintenance of Minot’s improvements, including, but not limited to, street systems, sewer systems, water systems, parking, airport, libraries, landfills, flood control, public

safety improvements, etc., 30% are dedicated to permanent flood control projects (the “Second Penny Flood Control Sales Tax”; together with the First Penny Flood Control Sales Tax, the “Pledged Revenues”), and 30% are dedicated to provide property tax relief through annual appropriations to reduce the total dollar levy.

1.05. Pursuant to the Ordinance, the City may issue revenue bonds, payable from the collections of the Pledged Revenues, to finance the costs of the acquisition and construction of flood control projects (the “Project”) upon the terms set forth in the Ordinance and this Resolution. As so authorized, the City has determined that it is necessary and desirable to issue its Sales Tax Revenue Bonds, Series 2021B in the principal amount of \$[PAR] (the “Bonds”) for the purpose of financing the Project. The Bonds are to be issued in general accordance with the provisions of the Ordinance and Chapter 40-35, North Dakota Century Code.

1.06. Bids for the purchase of the Bonds have been solicited by PFM Financial Advisors LLC (“PFM”), the City’s municipal advisor, pursuant to a Notice of Sale and an Official Statement for the sale of the Bonds, and the Council has publicly considered all sealed bids presented in conformity therewith. The bids received in accordance with the Notice of Bond Sale are attached hereto as Exhibit A. It is hereby determined that the best bid for the purchase of the Bonds is the bid received from [_____] in [_____], and associates (the “Purchaser”), said bid being to purchase the Bonds in a principal amount of \$[PAR] at a price of \$[_____] upon the further terms set forth herein.

1.07. The Mayor and the City Clerk are directed to execute in duplicate a contract on the part of the City for the sale of the Bonds in accordance with the bid described in Section 1.06, and to deliver a duplicate to the Purchaser. The City Auditor is directed to retain the Purchaser’s deposit securing the contract of sale until the Bonds are delivered and the purchase price is paid, and to return the deposits securing other bids to the respective bidders.

Section 2. Form of Bonds. The Bonds shall be prepared in substantially the form attached as Exhibit B hereto.

Section 3. Bond Terms; Registration; Redemption.

3.01. Maturities and Interest Rates. For the purposes specified in Section 1, the City authorizes the issuance of the Bonds in the aggregate principal amount of \$[PAR], originally dated September 29, 2021. The Bonds shall be issued as registered bonds in the denomination of \$5,000 each or any integral multiple thereof, and shall be payable in the years and amounts and at the rates set forth below: [to come]

| <u>Year</u> | <u>Amount</u> | <u>Rate</u> | <u>Year</u> | <u>Amount</u> | <u>Rate</u> |
|-------------|---------------|-------------|-------------|---------------|-------------|
| | \$ | % | | \$ | % |

3.02. Interest Payment Dates. Interest on the Bonds shall be payable on April 1 and October 1, commencing April 1, 2022, to the owner of record thereof at the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day.

3.03. Optional Redemption. Bonds maturing in 2030 and later years shall each be subject to redemption and prepayment at the option of the City, in whole or in part and if in part, by lot as selected by the Registrar (or, if applicable, by the bond depository in accordance with its customary procedures) in multiples of \$5,000 on October 1, 2029, and on any date thereafter, at a price equal to the principal amount thereof and accrued interest to the date of redemption. The City Clerk shall cause notice of the call for redemption thereof to be published if and to the extent required by law, and at least 30 days prior to the designated redemption date, shall cause notice of call for redemption to be mailed, by first class mail, to the registered holders of any Bonds to be redeemed at their addresses as they appear on the bond register described in Section 3.04 hereof, but no defect in or failure to give such mailed notice of redemption shall affect the validity of proceedings for the redemption of any Bond not affected by such defect or failure. 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. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the owner without charge, representing the remaining principal amount outstanding.

Bonds maturing in the years [_____] (the “Term Bonds”) shall be subject to mandatory redemption prior to maturity pursuant to the sinking fund requirements of this Section 3.03 at a redemption price equal to the stated principal amount thereof plus interest accrued thereon to the redemption date, without premium. The Registrar shall select for redemption, by lot or other manner deemed fair, on October 1 in each of the following years the following stated principal amounts of such Bonds:

Term Bonds Maturing on October 1,
20[]

Term Bonds Maturing on October 1, 20[]

Year Principal Amount

Year Principal Amount

\$

\$

*

*

*Final Maturity

*Final Maturity

3.04. Registration. The City shall appoint, and shall maintain, a bond registrar, transfer agent and paying agent (the “Registrar”). The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

(a) Register. The Registrar shall keep a bond register in which the Registrar shall provide for the registration of ownership of Bonds and the registration of transfers and exchanges of Bonds entitled to be registered, transferred or exchanged.

(b) Transfer of Bonds. Upon surrender for transfer of any Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, new Bonds similar in form to the Bonds initially issued, of a like aggregate principal amount, as requested by the transferor.

(c) Exchange of Bonds. Whenever any Bonds are surrendered for exchange the Registrar shall authenticate and deliver the Bonds which the owner making the exchange is entitled to receive.

(d) Cancellation. All Bonds surrendered upon any transfer or exchange shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When any 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 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.

(f) Persons Deemed Owners. The City and the Registrar may treat the person in whose name any Bond is at any time registered in the bond register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner’s order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(g) Taxes Fees and Charges. For every transfer or exchange of Bonds, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the

Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Registrar shall deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any such 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 Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to it that such 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 Bonds so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the City. If the mutilated, destroyed, stolen or lost 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.

3.05. Appointment of Initial Registrar. The City hereby appoints the City Auditor, Minot, North Dakota, as the initial Registrar. The City reserves the right to remove the Registrar upon thirty (30) days notice and upon the appointment of a successor Registrar, in which event the predecessor Registrar shall deliver all cash and Bonds in its possession to the successor Registrar and shall deliver the bond register to the successor Registrar.

3.06. Execution, Authentication and Delivery. The Bonds shall be prepared under the direction of the City Clerk and shall be executed on behalf of the City by the signatures of the Mayor and the City Clerk and sealed with the official seal of the City, provided that the seal and all signatures may be printed, engraved or lithographed facsimiles of the originals. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or obligatory for any purpose or entitled to any security hereunder until the certificate of authentication on such Bond has been duly executed by the manual signature of an authorized representative of the Registrar. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Resolution.

3.07. Securities Depository.

(a) For purposes of this section the following terms shall have the following meanings:

“Beneficial Owner” shall mean, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant, or such person’s subrogee.

“Cede & Co.” shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds.

“DTC” shall mean The Depository Trust Company of New York, New York.

“Participant” shall mean any broker-dealer, bank or other financial institution for which DTC holds Bonds as securities depository.

“Representation Letter” shall mean the Representation Letter pursuant to which the sender agrees to comply with DTC’s Operational Arrangements.

(b) The Bonds shall be initially issued as separately authenticated fully registered bonds, and one Bond shall be issued in the principal amount of each stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the bond register in the name of Cede & Co., as nominee of DTC. The Registrar and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, if any, giving any notice permitted or required to be given to registered owners of Bonds under this resolution, registering the transfer of Bonds, and for all other purposes whatsoever; and neither the Registrar nor the City shall be affected by any notice to the contrary. Neither the Registrar nor the City shall have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other person which is not shown on the bond register as being a registered owner of any Bonds, with respect to the accuracy of any records maintained by DTC or any Participant, with respect to the payment by DTC or any Participant of any amount with respect to the principal of or interest on the Bonds, with respect to any notice which is permitted or required to be given to owners of Bonds under this resolution, with respect to the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds, or with respect to any consent given or other action taken by DTC as registered owner of the Bonds. So long as any Bond is registered in the name of Cede & Co., as nominee of DTC, the Registrar shall pay all principal of and interest on such Bond, and shall give all notices with respect to such Bond, only to Cede & Co. in accordance with DTC’s Operational Arrangements, and all such payments shall be valid and effective to fully satisfy and discharge the City’s obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than DTC shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the City to make payments of principal and interest. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the Bonds will be transferable to such new nominee in accordance with paragraph (e) hereof.

(c) In the event the City determines that it is in the best interest of the Beneficial Owners that they be able to obtain Bonds in the form of bond certificates, the City may notify DTC and the Registrar, whereupon DTC shall notify the Participants of the availability through DTC of Bonds in the form of certificates. In such event, the Bonds will be transferable in accordance

with paragraph (e) hereof. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the City and the Registrar and discharging its responsibilities with respect thereto under applicable law. In such event the Bonds will be transferable in accordance with paragraph (e) hereof.

(d) The execution and delivery of the Representation Letter to DTC by the Mayor or Director of Finance and Administrative Services is hereby ratified and confirmed.

(e) In the event that any transfer or exchange of Bonds is permitted under paragraph (b) or (c) hereof, such transfer or exchange shall be accomplished upon receipt by the Registrar of the Bonds to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee in accordance with the provisions of this resolution. In the event Bonds in the form of certificates are issued to owners other than Cede & Co., its successor as nominee for DTC as owner of all the Bonds, or another securities depository as owner of all the Bonds, the provisions of this resolution shall also apply to all matters relating thereto, including, without limitation, the printing of such Bonds in the form of bond certificates and the method of payment of principal of and interest on such Bonds in the form of bond certificates.

Any successor depository must be both a “clearing corporation” as defined in North Dakota Century Code, Section 41-08-02 and a qualified and registered “clearing agency” as provided in Section 17A of the Securities Exchange Act of 1934, as amended.

Section 4. Sales Tax Fund.

4.01. Sales Tax Fund. The City has established and will maintain, so long as any Bonds issued pursuant to this Resolution remain outstanding, the Sales Tax Fund (hereinafter referred to as the “Sales Tax Fund”) as a separate and special fund and account in the financial records of the City. Pursuant to the Ordinance the City shall deposit each month, from the proceeds of the Pledged Revenues, as received, to the Sales Tax Fund, an amount equal to the sum of one-sixth of the interest due on the next Interest Payment Date and one-twelfth of the principal due on the next two succeeding Interest Payment Dates, on the Bonds, the City’s Sales Tax Revenue Bonds, Series 2020B (the “Series 2020B Bonds”) and any other Bonds payable from the Debt Service Account within the Sales Tax Fund.

The requirements of this paragraph are cumulative, and if 100% of debt service has not been deposited, the City shall continue to make deposits until the full amount of debt service has been deposited. Within the Sales Tax Fund various separate accounts shall be created and maintained by the City in accordance with this Section 4.

4.02. Pledged Revenues. Pursuant to the First Penny Ordinance, the City has levied the First Penny Sales Tax upon the storage, use, or consumption within the corporate limits of the City, of tangible personal property purchased at retail for storage, use, or consumption in the City, subject to certain exceptions. Pursuant to the Second Penny Ordinance, effective June 1, 2021, the City has levied the Second Penny Sales Tax upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property as provided in the

Ordinance, subject to certain exceptions. The proceeds of the Pledged Revenues are irrevocably pledged and appropriated to, and shall be deposited to the Sales Tax Fund to the extent specified in Section 4.01. The Pledged Revenues shall be used and applied only in the manner and order hereinafter set forth.

4.03. Construction Account. There has been established, as an account of the Sales Tax Fund, a “Construction Account.” There shall be credited to the Construction Account the proceeds from the sale of the Bonds for payment of costs of the Project and costs of issuance of the Bonds.

4.04. Debt Service Account. There has been established, as an account of the Sales Tax Fund, a “Debt Service Account” and within the Debt Service Account are established a “First Penny Subaccount” and “Second Penny Subaccount.” Immediately upon delivery of the Bonds, there shall be credited to the Debt Service Account an amount equal to the pre-issuance accrued interest received from the Purchaser upon delivery of the Bonds, if any. The proceeds of the respective Flood Control Sales Taxes shall be credited to their respective subaccount within the Debt Service Account in the amounts shown in Section 4.01, until such time as the balance therein equals the sum of principal and interest payable with respect to the bonds payable from the Debt Service Account through the following October 1. In all events there shall be credited to the Debt Service Account amounts sufficient to pay the principal of and interest on all bonds payable from the Debt Service Account, including the Bonds, as the same become due.

4.05. Surplus Account. The Surplus Account has been established as a special account within the Sales Tax Fund. There shall be credited to the Surplus Account any and all Pledged Revenues remaining after the required credits to the Debt Service Account, any investment income and other moneys in any of the accounts within the Sales Tax Fund in excess of the requirements of said accounts and which the City determines in its discretion to transfer to said Surplus Account. Moneys from time to time on hand in the Surplus Account may be used by the City for authorized purposes, provided that pursuant to the Ordinance, proceeds of the Second Penny Flood Control Sales Tax may only be applied to the Northwest Area Water Supply Project after annual debt service on the Bonds and any other bonds payable therefrom has been paid or provided for.

4.06. Reserve Account. There has been established, as an account of the Sales Tax Fund, a Debt Service Reserve Account (the “Reserve Account”). There shall be credited to the Reserve Account from proceeds of the Series 2021B Bonds or equity of the City an amount equal to the least of (i) 10% of the original principal amount of, (ii) the maximum annual debt service on, or (iii) 125% of the average annual principal and interest requirements on the Series 2020B Bonds, the Bonds and any other obligations secured by the Pledged Revenues and secured by the Reserve Account (the “Minimum Reserve”). Thereafter, in the event that the amount on deposit in the Reserve Account shall thereafter fall below the Minimum Reserve, additional deposits shall be made from the Pledged Revenues to the Reserve Account until the Minimum Reserve is again reached. Moneys credited to the Reserve Account may be used only for the payment of principal of and interest on the outstanding Bonds secured by the Reserve

Account and shall be used only in the event that there are insufficient moneys in the Debt Service Account to meet such principal and interest payments promptly when due. The interest from any investment of the Reserve Account may be transferred from time to time to the Construction Fund, provided that after completion of the Project such interest shall be transferred to the Debt Service Account. No transfer of investment income shall be made from the Reserve Account at any time when the balance therein is less than the Minimum Reserve. Such investments shall be subject to the limitations of North Dakota law.

4.07. Deposit and Investment of Funds. The City Auditor shall cause all moneys pertaining to the Sales Tax Fund, including the various accounts therein established pursuant to Sections 4.03 through 4.06 above, to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of Chapter 21-04, North Dakota Century Code, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the City, so long as any of the bonds payable from the Debt Service Account and the interest thereon shall remain unpaid; provided that moneys may be invested only in permitted investments maturing and bearing interest at the times and in the amounts estimated to be required to provide cash when needed for the purposes of the respective accounts.

4.08. Priority of Payment. All bonds issued and made payable from the Debt Service Account shall be secured and payable equally, without preference or distinction by reason of date of issue, maturity or redemption date, or otherwise, except that if funds on hand in the Debt Service Account should at any time be insufficient to pay all principal and interest then due on bonds payable therefrom, then said moneys shall be applied first to pay the interest then due on all bonds, and the balance shall be applied in payment of the maturing principal, in order of the maturities of the bonds then due and payable, and all bonds having the same maturity date shall share such moneys equally and ratably.

Section 5. Parity Bonds.

5.01. Parity Bonds. Except as provided in Sections 5.01 and 5.02 hereof, no additional bonds shall be issued by the City and made payable from the Pledged Revenues on a parity with the bonds then outstanding. Additional bonds constituting a lien upon the Pledged Revenues equal to or on a parity with the lien of the Bonds authorized herein may be issued, provided (i) the City is current in the payment of principal and interest on the Bonds and Series 2020B Bonds and is current in the accumulations required for the Debt Service Account and the Reserve Account, (ii) the City is in compliance with the covenants herein contained, and either (iii) the Pledged Revenues collected by the City in the last preceding fiscal year (as determined by the City) is sufficient to cover 1.25 times the combined average annual principal and interest requirements on the Bonds, the Series 2020B Bonds and the proposed parity lien bonds, or (iv) the estimated Pledged Revenues to be collected in the fiscal year in which the proposed parity lien bonds will be issued shall be at least equal to 1.25 times the combined average annual principal and interest requirements of the Bonds, the Series 2020B Bonds and the proposed parity lien bonds.

5.02. Refunding Bonds. The City reserves the right and privilege of refunding any or all of the bonds issued and made payable from the Debt Service Account subject to the following conditions:

(a) Any bonds due or about to become due may be refunded by the issuance of additional bonds if and to the extent funds on deposit in the Debt Service Account or available for transfer thereto, within the limitations of Section 4.05, are insufficient to make such payment in full.

(b) Any bonds may be refunded prior to maturity, as and when they become prepayable according to their terms.

(c) Provision may be made for the payment and refunding of any unmatured bonds prior to the date they become prepayable by defeasing said bonds in accordance with Section 6 hereof or by refunding such bonds in a crossover refunding.

(d) Any refunding revenue bonds issued for the above purposes may be made payable from the Debt Service Account on a parity as to interest with all then outstanding bonds payable therefrom, provided that (1) the maturity of each refunding bond shall be subsequent to the last maturity of any then outstanding bonds which are not refunded and (2) no bondholder shall be required to accept a refunding bond in exchange for any bond owned by such bondholder.

5.03. Subordinate Bonds. Except as provided in Sections 5.01 and 5.02, any bonds or other obligations issued and made payable from the Pledged Revenues shall be expressly made junior and subordinate to the bonds issued and made payable from the Debt Service Account as to their lien or charge upon the Pledged Revenues, and any such additional bonds or other obligations shall be made payable solely from surplus Pledged Revenues to be segregated within a special account within the Sales Tax Fund, and the moneys on hand from time to time in any such account shall be used to the extent required to pay principal and interest on the bonds made payable from the Debt Service Account, and for a reserve fund as additional security for the payment of such subordinate lien bonds.

5.04. Terms of Additional Bonds. Any parity bonds issued pursuant to Sections 5.01 or 5.02 hereof shall mature on October 1 and shall pay interest on April 1 and October 1. No parity bonds shall mature later than the last date the City is authorized by law to levy and collect the Sales Tax.

Section 6. Defeasance. When the Bonds have been discharged as provided in this section, all pledges, covenants and other rights granted by this resolution shall cease. The City may discharge its obligations with respect to the Bonds on any date by depositing with the paying agent on or before that date a sum sufficient for the payment thereof in full; or, if the Bonds should not be paid when due, the same may nevertheless be discharged by depositing with the paying agent a sum sufficient for the payment thereof in full with interest accrued from the due date of such deposit. The City may also discharge its obligations with respect to the Bonds according to its terms by depositing with the paying agent on or before that date an amount equal to the principal and interest which are then due, provided that notice of such redemption has been

duly given as provided herein. The City may also discharge its obligations with respect to the Bonds by irrevocably depositing in escrow with a bank or trust company qualified by law to act as an escrow agent, for the purpose of paying all principal and interest due on the Bonds prior to a date upon which all of the same will be prepayable according to their terms and paying all remaining bonds of the series on that date, a sum of cash and securities of the types described in North Dakota Century Code, Section 21-03-06(7), in such aggregate amount, bearing interest at such rates and maturing or callable at the holder's option on such dates as shall be required to provide funds sufficient for this purpose.

Section 7. Covenants of the City. The City hereby irrevocably covenants and agrees with each and every holder of the bonds issued and made payable from the Debt Service Account, including the Bonds, that so long as any bonds remain outstanding:

(a) It will not amend or repeal the Ordinance relating to the Sales Taxes by decreasing the rates of the Sales Taxes or the allocation of revenues thereof to the Sales Tax Fund, or in any way that would adversely affect the amount of Pledged Revenues. However, nothing shall prevent the City from amending the Ordinance in order to make certain changes in the administration, collection or enforcement of the Sales Taxes, provided that such changes would not materially adversely affect the owners of bonds issued pursuant hereto.

(b) It will administer, enforce, and collect, or cause to be administered, enforced or collected, the Sales Taxes authorized by the Ordinance, and shall take such necessary action to collect delinquent payments in accordance with law.

(c) It will keep or cause to be kept complete books and records showing the receipt, deposit and disbursement of the proceeds of the Sales Taxes in accordance with this resolution and generally accepted principles of accounting, and any owner of any Bond shall have the right at all reasonable times upon reasonable notice to the City to inspect the records and accounts relating to the collection and expenditure of such Sales Taxes.

(d) In the event the Sales Taxes of the City are replaced and superseded by a state imposed-locally shared sales tax or taxes, or is replaced and superseded in some other manner from some other source or sources, the revenues derived by the City from the replacement source or sources, as received by the City, shall be appropriated in the same manner as if the City had continued to collect the Sales Taxes. From and after the date of a replacement, the bonds issued pursuant hereto, together with any other parity indebtedness incurred pursuant to Section 5 hereof, shall have a first and prior lien upon such replacement revenues appropriated to the Sales Tax Fund in the same manner as herein specified with respect to the Sales Taxes.

(e) Each and every holder of bonds issued and made payable from the Debt Service Account shall have all rights and remedies afforded to the holders of revenue bonds issued pursuant to North Dakota Century Code, Sections 40-35-15 through 40-35-19.

Section 8. Tax Covenants; Arbitrage Matters; Reimbursement and Continuing Disclosure.

8.01. Arbitrage Certification. The Mayor and the City Clerk being the officers of the City charged with the responsibility for issuing the Bonds pursuant to this resolution, are authorized and directed to execute and deliver to the Purchaser a certificate in accordance with the provisions of Section 148 of the Internal Revenue Code and applicable Regulations, stating the facts, estimates and circumstances in existence on the date of issue and delivery of the Bonds which make it reasonable to expect that the proceeds of the Bonds will not be used in a manner that would cause the Bonds to be arbitrage bonds within the meaning of the Internal Revenue Code and Regulations.

8.02. Rebate. The City acknowledges that the Bonds are subject to the rebate requirements of Section 148(f) of the Internal Revenue Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Regulations to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes, unless the proceeds of the Bonds qualify for an exception from the rebate requirement pursuant to one of the spending exceptions set forth in Section 1.148-7 of the Regulations and no “gross proceeds” of the Bonds (other than amounts constituting a “bona fide debt service fund”) arise during or after the expenditure of the original proceeds thereof.

8.03. Reimbursement. The City certifies that the proceeds of the Bonds will not be used by the City to reimburse itself for any expenditure with respect to the Project which the City paid or will have paid prior to the issuance of the Bonds unless, with respect to such prior expenditures, the City shall have made a declaration of official intent which complies with the provisions of Section 1.150-2 of the Regulations; provided that this certification shall not apply (i) with respect to certain de minimis expenditures, if any, with respect to the Project meeting the requirements of Section 1.150-2(f)(1) of the Regulations, or (ii) with respect to “preliminary expenditures” for the Project as defined in Section 1.150-2(f)(2) of the Regulations, including engineering or architectural expenses and similar preparatory expenses, which in the aggregate do not exceed 20% of the “issue price” of the Bonds.

8.04. Not Qualified Tax-Exempt Obligations. The Bonds are *not* designated as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code relating to the disallowance of interest expense for financial institutions.

8.05. Continuing Disclosure. (a) Purpose and Beneficiaries. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit the Purchaser and other participating underwriters in the primary offering of the Bonds to comply with amendments to Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12), relating to continuing disclosure (as in effect and interpreted from time to time, the Rule), which will enhance the marketability of the Bonds, the City hereby makes the following covenants and agreements for the benefit of the Owners (as hereinafter defined) from time to time of the Outstanding Bonds. The City is the only obligated person in respect of the Bonds within the meaning of the Rule for purposes of identifying the entities in respect of which continuing disclosure must be made. If the City fails to comply with

any provisions of this section, any person aggrieved thereby, including the Owners of any Outstanding Bonds, may take whatever action at law or in equity may appear necessary or appropriate to enforce performance and observance of any agreement or covenant contained in this section, including an action for a writ of mandamus or specific performance. Direct, indirect, consequential and punitive damages shall not be recoverable for any default hereunder to the extent permitted by law. Notwithstanding anything to the contrary contained herein, in no event shall a default under this section constitute a default under the Bonds or under any other provision of this resolution. As used in this section, Owner or Bondowner means, in respect of a Bond, the registered owner or owners thereof appearing in the bond register maintained by the Registrar or any Beneficial Owner (as hereinafter defined) thereof, if such Beneficial Owner provides to the Registrar evidence of such beneficial ownership in form and substance reasonably satisfactory to the Registrar. As used herein, Beneficial Owner means, in respect of a Bond, any person or entity which (i) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, such Bond (including persons or entities holding Bonds through nominees, depositories or other intermediaries), or (ii) is treated as the owner of the Bond for federal income tax purposes.

(b) Information To Be Disclosed. The City will provide, in the manner set forth in subsection (c) hereof, either directly or indirectly through an agent designated by the City, the following information at the following times:

- (1) on or before twelve months after the end of each fiscal year of the City, commencing with the fiscal year ending December 31, 2021, the following financial information and operating data in respect of the City (the “Disclosure Information”):
 - (A) the audited financial statements of the City for such fiscal year, prepared in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under North Dakota law, as in effect from time to time, or, if and to the extent such financial statements have not been prepared in accordance with such generally accepted accounting principles for reasons beyond the reasonable control of the City, noting the discrepancies therefrom and the effect thereof, and certified as to accuracy and completeness in all material respects by the fiscal officer of the City; and
 - (B) to the extent not included in the financial statements referred to in paragraph (A) hereof, the information for such fiscal year or for the period most recently available of the type contained in the Official Statement under the headings: “APPENDIX A – City Information – OUTSTANDING INDEBTEDNESS – *Sales Tax Revenue Debt* – Table A-29 and Table A-30;” and “– FINANCIAL INFORMATION – *Sales Taxes* – Tables A-51.”

Notwithstanding the foregoing paragraph, if the audited financial statements are not available by the date specified, the City shall provide on or before such date unaudited financial statements in the format required for the audited financial statements as part of the Disclosure Information and, within 10 days after the receipt thereof, the City shall provide the audited financial statements. Any or all of the Disclosure Information may be incorporated by reference, if it is updated as required hereby, from other documents, including official statements, which have been filed with the SEC or have been made available to the public on the Internet Web site of the Municipal Securities Rulemaking Board (“MSRB”). The City shall clearly identify in the Disclosure Information each document so incorporated by reference. If any part of the Disclosure Information can no longer be generated because the operations of the City have materially changed or been discontinued, such Disclosure Information need no longer be provided if the City includes in the Disclosure Information a statement to such effect; provided, however, if such operations have been replaced by other City operations in respect of which data is not included in the Disclosure Information and the City determines that certain specified data regarding such replacement operations would be material (as defined in paragraph (2) hereof), then, from and after such determination, the Disclosure Information shall include such additional specified data regarding the replacement operations. If the Disclosure Information is changed or this section is amended as permitted by this paragraph (b)(1) or subsection (d), then the City shall include in the next Disclosure Information to be delivered hereunder, to the extent necessary, an explanation of the reasons for the amendment and the effect of any change in the type of financial information or operating data provided.

- (2) In a timely manner not in excess of ten business days after the occurrence of the event, notice of the occurrence of any of the following events (each a “Material Fact”):
 - (A) Principal and interest payment delinquencies;
 - (B) Non-payment related defaults, if material;
 - (C) Unscheduled draws on debt service reserves reflecting financial difficulties;
 - (D) Unscheduled draws on credit enhancements reflecting financial difficulties;
 - (E) Substitution of credit or liquidity providers, or their failure to perform;
 - (F) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with

respect to the tax status of the security, or other material events affecting the tax status of the security;

- (G) Modifications to rights of security holders, if material;
- (H) Bond calls, if material, and tender offers;
- (I) Defeasances;
- (J) Release, substitution, or sale of property securing repayment of the securities, if material;
- (K) Rating changes;
- (L) Bankruptcy, insolvency, receivership or similar event of the obligated person;
- (M) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (N) Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (O) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and
- (P) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

For purposes of the events identified in paragraphs (O) and (P) above, the term “financial obligation” means (i) a debt obligation; (ii) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) a guarantee of (i) or (ii). The term “financial obligation” shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

As used herein, for those events that must be reported if material, an event is “material” if it is an event as to which a substantial likelihood exists that a reasonably prudent investor would attach importance thereto in deciding to buy,

hold or sell a Bond or, if not disclosed, would significantly alter the total information otherwise available to an investor from the Official Statement, information disclosed hereunder or information generally available to the public. Notwithstanding the foregoing sentence, an event is also “material” if it is an event that would be deemed material for purposes of the purchase, holding or sale of a Bond within the meaning of applicable federal securities laws, as interpreted at the time of discovery of the occurrence of the event.

For the purposes of the event identified in (L) hereinabove, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

- (3) In a timely manner, notice of the occurrence of any of the following events or conditions:
 - (A) the failure of the City to provide the Disclosure Information required under paragraph (b)(1) at the time specified thereunder;
 - (B) the amendment or supplementing of this section pursuant to subsection (d), together with a copy of such amendment or supplement and any explanation provided by the City under subsection (d)(2);
 - (C) the termination of the obligations of the City under this section pursuant to subsection (d);
 - (D) any change in the accounting principles pursuant to which the financial statements constituting a portion of the Disclosure Information are prepared; and
 - (E) any change in the fiscal year of the City.

(c) Manner of Disclosure.

- (1) The City agrees to make available to the MSRB, in an electronic format as prescribed by the MSRB from time to time, the information described in subsection (b).

(2) All documents provided to the MSRB pursuant to this subsection (c) shall be accompanied by identifying information as prescribed by the MSRB from time to time.

(d) Term; Amendments; Interpretation.

(1) The covenants of the City in this section shall remain in effect so long as any Bonds are Outstanding. Notwithstanding the preceding sentence, however, the obligations of the City under this section shall terminate and be without further effect as of any date on which the City delivers to the Registrar an opinion of Bond Counsel to the effect that, because of legislative action or final judicial or administrative actions or proceedings, the failure of the City to comply with the requirements of this section will not cause participating underwriters in the primary offering of the Bonds to be in violation of the Rule or other applicable requirements of the Securities Exchange Act of 1934, as amended, or any statutes or laws successory thereto or amendatory thereof.

(2) This section (and the form and requirements of the Disclosure Information) may be amended or supplemented by the City from time to time, without notice to (except as provided in paragraph (b)(3) hereof) or the consent of the Owners of any Bonds, by a resolution of this Council filed in the office of the recording officer of the City accompanied by an opinion of Bond Counsel, who may rely on certificates of the City and others and the opinion may be subject to customary qualifications, to the effect that: (i) such amendment or supplement (a) is made in connection with a change in circumstances that arises from a change in law or regulation or a change in the identity, nature or status of the City or the type of operations conducted by the City, or (b) is required by, or better complies with, the provisions of paragraph (b)(5) of the Rule; (ii) this section as so amended or supplemented would have complied with the requirements of paragraph (b)(5) of the Rule at the time of the primary offering of the Bonds, giving effect to any change in circumstances applicable under clause (i)(a) and assuming that the Rule as in effect and interpreted at the time of the amendment or supplement was in effect at the time of the primary offering; and (iii) such amendment or supplement does not materially impair the interests of the Bondowners under the Rule.

If the Disclosure Information is so amended, the City agrees to provide, contemporaneously with the effectiveness of such amendment, an explanation of the reasons for the amendment and the effect, if any, of the change in the type of financial information or operating data being provided hereunder.

(3) This section is entered into to comply with the continuing disclosure provisions of the Rule and should be construed so as to satisfy the requirements of paragraph (b)(5) of the Rule.

Section 9. Certification of Proceedings.

9.01. Official Statement. The Preliminary Official Statement relating to the Bonds, dated [_____], 2021, prepared and distributed on behalf of the City by PFM Financial Advisors, LLC is hereby approved, and the officers of the City are hereby authorized and directed to execute such certificates as may be appropriate concerning the accuracy, completeness and sufficiency thereof.

9.02. Authentication of Transcript. The officers of the City are hereby authorized and directed to prepare and furnish to the Purchaser and to Dorsey & Whitney LLP, Bond Counsel, certified copies of all proceedings and records relating to the Bonds and such other affidavits, certificates and information as may be required to show the facts relating to the legality and marketability of the Bonds, as the same appear from the books and records in their custody and control or as otherwise known to them, and all such certified copies, affidavits and certificates, including any heretofore furnished, shall be deemed representations of the City as to the correctness of all statements contained therein.

Adopted this 7th day of September, 2021.

Approved: _____
Mayor

Attest: _____
City Clerk

Exhibit A
Bid Tabulation
[to come]

**Exhibit B
Form of Bond**

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
COUNTY OF WARD

CITY OF MINOT

SALES TAX REVENUE BOND
SERIES 2021B

No. R-1 \$_____

| <u>Rate</u> | <u>Final Maturity</u> | <u>Date of Original Issue</u> | <u>CUSIP Number</u> |
|-------------|-----------------------|-----------------------------------|---------------------|
| _____% | October 1, 20__ | September 29, 2021 | |

Registered Owner: CEDE & CO.

Principal Amount:

KNOW ALL PERSONS BY THESE PRESENTS that the City of Minot, North Dakota, acknowledges itself specially indebted and for value received hereby promises to pay to the registered owner designated above, or registered assigns, solely from Pledged Revenues hereinafter defined, the principal sum specified above, with interest thereon from the date hereof at the annual rate specified above, payable on April 1 and October 1 in each year, commencing April 1, 2022, to the person in whose name this Bond is registered at the close of business on the fifteenth day (whether or not a business day) of the immediately preceding month. The interest hereon and, upon presentation and surrender hereof, the principal hereof are payable in lawful money of the United States of America by check or draft, or other agreed means of payment, by the City Auditor, in Minot, North Dakota, as Bond Registrar and Paying Agent (the "Registrar"), or his successor designated under the Resolution described herein.

This Bond is issued by the City to provide funds to finance the costs of the acquisition and construction of a flood control project in the City, and in full conformity with the provisions of the Constitution and laws of the State of North Dakota and ordinances of the City, including Title 40, Chapters 35, North Dakota Century Code, as amended, and Article V, Section 28 ½, of the Code of Ordinances, City of Minot, North Dakota, as amended, including by Ordinance No. 5511 (collectively, the "Ordinance"), and pursuant to an authorizing resolution adopted by the City Council on September 7, 2021 (the "Resolution"), to which reference is made for a description of the nature and extent of the security for the Bonds, the rights thereunder of the

City and the Bondholders, and the terms upon which the Bonds and any additional bonds may be issued and secured.

The Bonds are not general obligations of the City and the City's general credit and taxing powers are not pledged to the payment of the Bonds or the interest thereon. The Bonds are payable solely from the Pledged Revenues (hereinafter defined) and such other amounts as set forth in the Resolution.

Bonds maturing in 2030 and later years shall each be subject to redemption and prepayment at the option of the City, in whole or in part and if in part, in such order as the City shall determine and within a maturity by lot as selected by the Registrar in multiples of \$5,000 on October 1, 2029, and on any date thereafter, at a price equal to the principal amount thereof and accrued interest to the date of redemption. The City Clerk shall cause notice of the call for redemption thereof to be published if and to the extent required by law, and at least 30 days prior to the designated redemption date, shall cause notice of call for redemption to be mailed, by first class mail, to the registered holders of any Bonds to be redeemed at their addresses as they appear on the bond register described in the Resolution, but no defect in or failure to give such mailed notice of redemption shall affect the validity of proceedings for the redemption of any Bond not affected by such defect or failure. 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. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the owner without charge, representing the remaining principal amount outstanding.

Bonds maturing in the years [] shall be subject to mandatory redemption, at a redemption price equal to their principal amount plus interest accrued thereon to the redemption date, without premium, on October 1 in each of the years shown below, in an amount equal to the following principal amounts:

Term Bonds Maturing on October 1,
20[]

| <u>Year</u> | <u>Principal Amount</u> |
|-------------|-------------------------|
| | \$ |
| * | |

*Final Maturity

Term Bonds Maturing on October 1, 20[]

| <u>Year</u> | <u>Principal Amount</u> |
|-------------|-------------------------|
| | \$ |
| * | |

*Final Maturity

Notice of redemption shall be given as provided in the preceding paragraph.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the principal office of the Bond Registrar, by the registered owner hereof in person or by the owner's attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or the owner's attorney, and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange, the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Bond Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under Ordinance or the Resolution until the Certificate of Authentication hereon shall have been executed by manual signature of the Bond Registrar or an authorized representative.

Notwithstanding any other provisions of this Bond, so long as this Bond is registered in the name of Cede & Co., as nominee of The Depository Trust Company, or in the name of any other nominee of The Depository Trust Company or other securities depository, the Bond Registrar shall pay all principal of and interest on this Bond, and shall give all notices with respect to this Bond, only to Cede & Co. or other nominee in accordance with the operational arrangements of The Depository Trust Company or other securities depository as agreed to by the City.

IT IS CERTIFIED, RECITED, COVENANTED AND AGREED that under the laws, ordinances and Resolution referred to above, the City has duly created a Debt Service Account in its Sales Tax Fund and has agreed to deposit thereto each month, as a first lien on the collections of the Pledged Revenues, as defined in the Resolution, amounts sufficient to pay all principal of and interest on bonds payable therefrom, including the Bonds, as such becomes due; that bonds have been previously issued and additional bonds may be issued and made payable from the Pledged Revenues on a parity with the bonds theretofore issued in the manner and upon the conditions set forth in the Resolution; that all acts, conditions and things required by the Constitution and laws of the State of North Dakota, to be done precedent to and in the issuance of this Bond, in order to make it a valid and binding special obligation of the City in accordance with its terms, have been done, have happened and have been performed in regular and due time, form and manner as so required.

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto _____ the within Bond and all rights thereunder, and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Bond on the books kept for registration of the within Bond, with full power of substitution in the premises.

Dated: _____

Notice: The Assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Please insert social security or other identifying number of assignee:
