

RESOLUTION NO. 2810

RESOLUTION AMENDING AND RESTATING RESOLUTION NO. 2805 GIVING PRELIMINARY APPROVAL TO A PROJECT WITH BETHEL LUTHERAN HOME, AND THE ISSUANCE OF ECONOMIC DEVELOPMENT REVENUE BONDS TO FINANCE SUCH PROJECT, DECLARING THE OFFICIAL INTENT OF THE CITY TO PERMIT REIMBURSEMENT OF CERTAIN PROJECT EXPENDITURES COSTS FROM BOND PROCEEDS, REFUND OUTSTANDING BONDS AND OTHER INDEBTEDNESS, AND AUTHORIZING THE PREPARATION OF NECESSARY DOCUMENTS AND ESTABLISHING A DATE FOR A HEARING ON THE ISSUANCE OF BONDS AND THE PUBLISHING OF NOTICE FOR SUCH HEARING.

WHEREAS, the purpose of Chapter 9-54 of the South Dakota Codified Laws (the "Act") as found and determined by the legislature is to promote the welfare of the State of South Dakota (the "State") by the provision of necessary economic development facilities, including nursing homes, housing for the elderly, and other health care facilities; and

WHEREAS, Bethel Lutheran Home, a nonprofit corporation organized and existing under the laws of South Dakota (the "Corporation") operates nursing home, assisted living and independent living housing facilities for the elderly at 1001 South Egan Avenue, in Madison, South Dakota; and

WHEREAS, on May 26, 1992, the City issued its \$400,000 Economic Development Revenue Bonds (Bethel Lutheran Home Issue), Series 1992 (the "*Series 1992 Bonds*"), the proceeds of which were loaned by the City to the Corporation for the purpose of paying a portion of costs of certain improvements to the Corporation's facilities, and the cost of issuance of such bonds; and

WHEREAS, on September 26, 1996, the City issued its Economic Development Revenue Bonds, Series 1996 (Bethel Lutheran Home Project) in the amount of \$1,300,000 (the "*Series 1996 Bonds*"), the proceeds of which were loaned by the City to the Corporation for the purpose of paying a portion of costs of a construction, acquisition, remodeling and renovation project, or the reimbursement of the costs thereof, and the cost of issuance of such bonds; and

WHEREAS, on December 4, 1997, the City issued its Economic Development Revenue Bonds, Series 1997 (Bethel Lutheran Home Project) in the amount of \$1,560,000 (the "*Series 1997 Bonds*"), the proceeds of which were loaned by the City to the Corporation for the purpose of refunding the Series 1996 Bonds, and paying a portion of costs of a construction, acquisition, remodeling and renovation project, or the reimbursement of the costs thereof, and the cost of issuance of such bonds; and

WHEREAS, on May 29, 2003, the City issued its Economic Development Revenue Bond, Series 2003 (Bethel Lutheran Home Project) in the amount of \$432,687 (the "*Series 2003 Bond*"), the proceeds of which were loaned by the City to the Corporation for the purpose of refunding the Series 1992 Bonds, and paying a portion of costs of constructing an addition to the Corporation's facilities, including an addition to the dining hall and replacing the roof, or reimbursing the costs thereof (the "*2003 Project*" and together with the 1992 Project, the 1996 Project, and 1997 Project, the "*Prior Projects*"), and paying the cost of issuance of such bonds; and

WHEREAS, as of this date only the Series 1997 Bonds and the Series 2003 Bonds remaining outstanding (the "*Prior Bonds*"); and

WHEREAS, on June 29, 2009, the Corporation borrowed the sum of \$275,000 from First Bank & Trust (the "*Childcare Center Loan*") for the purpose of paying a portion of the costs of constructing,

equipping and furnishing a childcare center owned and operated by the Corporation within its facilities in the City of Madison; and

WHEREAS, the Corporation has determined that it is necessary to further improve and equip the Corporation's facilities as more fully described in *Exhibit A* (the "Project"); and

WHEREAS, the City has received from the Corporation a proposal that the City issue its economic development revenue bond pursuant to the Act in an amount up to \$1,400,000 (the "Bond") to (a) finance a portion of the costs of the Project, (b) refund the outstanding Prior Bonds and the Childcare Center Loan, and (c) pay a portion of the costs of issuance of the Bond; and

WHEREAS, the City desires to facilitate the selective development of the community and help provide the range of services and employment opportunities required by its population, and the Project will assist the City in achieving those objectives; and

WHEREAS, the Internal Revenue Service has issued Treas. Reg. § 1.150-2 (the "Reimbursement Regulations") providing that proceeds of tax-exempt bonds used to reimburse prior expenditures will not be deemed spent unless certain requirements are met; and

WHEREAS, the Corporation expects to incur certain expenditures for the Project that may be financed temporarily from sources other than bonds, and reimbursed from the proceeds of a tax-exempt bond; and

WHEREAS, by the adoption of Resolution No. 2805 on March 12, 2012, the City declared its official intent (the "Declaration") to reimburse certain costs from proceeds of bonds in accordance with the Reimbursement Regulations;

WHEREAS, the City has been advised by representatives of the Corporation that at the high cost of borrowing on a conventional basis the economic feasibility of the Project would be significantly reduced, but that with the aid of municipal financing the Project is economically more feasible; and

WHEREAS, prior to the issuance of bonds, Section 147(f) of the Internal Revenue Code of 1986 (the "Code") requires that the City conduct a public hearing on the Project and the proposed financing with at least 14 days' advance notice of such hearing to be published in a locally circulated newspaper.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MADISON, SOUTH DAKOTA AS FOLLOWS:

1. The City Commission hereby gives preliminary approval to the proposal of the Corporation that the City undertake the issuance of the Bond to assist in financing the Project pursuant to the Act, pursuant to the Corporation's specifications suitable for the operations described above and to a revenue agreement between the City and the Corporation upon such terms and conditions, with provisions for revision from time to time as necessary, so as to produce income and revenues sufficient to pay, when due, the principal of and interest on the proposed Bond in the estimated maximum principal amount of \$1,400,000 to be issued pursuant to the Act to provided funds to (a) pay a portion of the costs of the Project, (b) refund the outstanding Prior Bonds and refinance the Childcare Center Loan, and (c) pay a portion of the costs of issuance of such bond, and the agreement may also provide for the entire interest of the Corporation therein to be mortgaged to the purchaser of the Bond, and the City hereby undertakes preliminarily to issue its Bond in accordance with such terms and conditions. The Commission further acknowledges that the Corporation will be solely responsible for repayment of any loan of the proceeds of the Bond preliminarily authorized herein.

2. On the basis of information available to this Commission, it appears and the Commission hereby finds that the Project constitutes properties, real and personal, used or useful in connection with one or more revenue-producing enterprises providing nursing home facilities, housing for the elderly, and other health care facilities within the meaning of Section 9-54-2.1 of the South Dakota Codified Laws; that the availability of the financing under the Act and willingness of the City to furnish such financing will be a substantial inducement to the Corporation to undertake the Project; and that the Project, if undertaken, will promote the general welfare of the City and State.

3. The Project is hereby given preliminary approval by the City subject to final approval by this Commission, the Corporation and the purchaser or purchasers of the Bond as to the ultimate details of the financing of the Project.

4. A public hearing will be conducted by the City on the proposal to undertake and finance the Project on May 14, 2012, and notice will be given for such public hearing at which hearing parties who appear will be given an opportunity to express their views with respect to said proposal. Notice of the time and place of the hearing, which will contain (i) a general, functional description of the type, use and nature of the Project, (ii) the estimated maximum aggregate face amount of the Bond to be issued with respect to the Project, (iii) the initial owner, operator or manager of the Project, and (iv) the prospective location of the Project by its street address or, if none, by a general description designed to inform the readers of the specific location of the Project will be published at least once not less than fourteen (14) days prior to the date fixed for the hearing in the City's official newspapers and a newspaper of general circulation in Madison, South Dakota, and all action heretofore taken in connection with providing such notice or in holding such hearing is hereby ratified, approved and confirmed in all respects.

5. Representatives of the City and Davenport, Evans, Hurwitz & Smith, L.L.P., as bond counsel, are hereby authorized, in cooperation with the Corporation and the Corporation's counsel, to initiate the preparation of a proposed loan agreement, mortgage, and such other documents as may be necessary or appropriate to the Project so that, when and if this Commission gives its final approval to the Project, the Project may be carried forward expeditiously. The Corporation has agreed and it is hereby determined that any and all costs incurred by the City in connection with the financing of the Project, whether or not the Bond or operative instruments are executed and whether or not approved, will be paid by the Corporation.

6. The adoption of this resolution does not constitute a guarantee or a firm commitment that the City will issue the Bond as requested by the Corporation. The City retains the right in its sole discretion to withdraw from participation and, accordingly, not issue the Bond should the City at any time prior to the issuance thereof determine that it is in the best interest of the City not to issue the Bond or should the parties to the transaction be unable to reach agreement as to the terms and conditions of any of the documents required for the transaction.

7. Nothing in this resolution or in the documents prepared pursuant hereto will authorize the expenditure of any City funds on the Project other than the revenues derived from the Project or otherwise granted to the City for this purpose. The Bond will not constitute a charge, lien or encumbrance, legal or equitable, upon any property or funds of the City except the revenue and proceeds pledged to the payment thereof nor will the City be subject to any liability thereon. The holder or holders from time to time of the Bond will never have the right to compel any exercise of the taxing power of the City to pay the outstanding principal on the Bond or the interest thereon or to enforce payment thereof against any property of the City. The Bond will recite in substance that the Bond, including interest thereon, are payable solely from the revenue and proceeds pledged to the payment thereof. The Bond will not constitute a debt of the City within the meaning of any constitutional or statutory limitation.

8. The City reasonably anticipates that the amount of the tax exempt obligations which will be issued by the City and all entities subordinate to, or treated as one issuer with, the City during calendar year 2012 will not exceed \$10,000,000 and will designate the Bond as "qualified tax exempt obligations" under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

9. The City reasonably expects to reimburse the expenditures made for certain costs of the Project from the proceeds of bonds to be issued by the City in an estimated maximum principal amount of \$1,400,000. All reimbursed expenditures will be capital expenditures, costs of issuance of the Bond, or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Reimbursement Regulations.

10. The Declaration was made not later than 60 days after payment of any original expenditure to be subject to a reimbursement allocation with respect to the proceeds of bonds, except for the following expenditures: (a) costs of issuance of bonds; (b) costs in an amount not in excess of the lesser of \$100,000 or 5 percent of the proceeds of an issue; or (c) "preliminary expenditures" up to an amount not in excess of 20 percent of the aggregate issue price of the issue or issues that finance or are reasonably expected by the City to finance the project for which the preliminary expenditures were incurred. The term "preliminary expenditures" includes architectural, engineering, surveying, bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction or rehabilitation of a project, other than land acquisition, site preparation, and similar costs incident to commencement of construction.

11. The Declaration is an expression of the reasonable expectations of the City based on the facts and circumstances known to the Corporation and represented to the City as of the date of the Declaration and the date hereof. The anticipated original expenditures for the Project and the principal amount of the Bond described in paragraph 1 are consistent with the Corporation's budgetary and financial circumstances. No sources other than proceeds of the Bond are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside pursuant to the Corporation's budget or financial policies to pay such Project expenditures.

12. The Declaration is intended to constitute a declaration of official intent for purposes of the Reimbursement Regulations.

Dated at Madison, South Dakota this 23<sup>rd</sup> day April, 2012.

CITY OF MADISON

/s/Gene Hexom  
Mayor

ATTEST: /s/Jeff Heinemeyer  
City Finance Officer

{SEAL}

## EXHIBIT A

### DESCRIPTION OF PROJECT

The project includes (a) an addition to the Corporation's facilities to house a new beauty salon, resident craft room, and records storage room, (b) to remodel the original nursing home, including (1) new resident room lighting and ceiling fans and exhaust fans, (2) sprinkler systems in any remaining portions of the original nursing home not so equipped, (3) replacing the original toilets in each resident bathroom with ADA equipment, (4) replacing the original flooring in the resident bathrooms, resident rooms, and in each neighborhood hallway area, (5) remodeling the original nurse station area to include a redesigned medication room, charting room, resident snack bar area, additional nursing supply storage, and a new nursing conference room, (6) a new wireless nurse call system, (7) replace doors, windows, and handrails, (8) install new electrical service in certain areas, and (9) purchase adjoining property for future expansion.