



## Finance Department

**DATE:** 3/15/2022

**FROM:** Dmitriy Chernyak, Finance Director

**ITEM:** Authorizing the resolution for the issuance of the Lodging and Restaurant Tax Refunding Bonds, Series 2022 to refund the Lodging and Restaurant Tax Bonds, Series 2013

### **REQUEST:**

City Commission to authorize the resolution for the issuance of the Lodging and Restaurant Tax Refunding Bonds, Series 2022, to refund the Lodging and Restaurant Tax Bonds, Series 2013, and approve Colliers Securities, LLC, as the placement agent for this negotiated bond sale.

Please place this item on the March 22, 2022 City Commission meeting agenda.

### **BACKGROUND INFORMATION:**

The City will issue new debt through a negotiated sale to refund the existing debt (Liquor and Restaurant Tax Bonds, Series 2013) for the main purpose of obtaining a lower interest rate and reducing the interest paid by the Liquor, Lodging, and Restaurant Tax annually until the end of the bond term in 2034.

The City will issue \$20,420,000 in new debt (Lodging and Restaurant Tax Bonds, Series 2022) in order to refund the \$19,455,000 principal amount to reduce the interest rate paid on the debt to a net interest cost of 2.55%. This will create economic gain of approximately \$1,222,274 for the remainder of the debt term (through December 2034).

The original issue (Lodging and Restaurant Tax Bonds, Series 2013) were issued in 2013 to finance the construction of the City's Event Center Exhibit Hall expansion.

The City is using a new type of refunding in order to obtain the lowest possible interest rate and cost savings for the City. The new debt will be taxable to the investor until the 2013 bond call date of December 2022. At that point, the debt will become tax-exempt for the investor for the remainder of the debt term (through December 2034).

The debt will include a cost of issuance of approximately \$193,150 that will be paid by the issuance of the new debt.

After obtaining several proposals, the City determined that Colliers Securities provided the best offer for the City based on the economic gains, net interest cost, and timing of the currently volatile market.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve the resolution authorizing the City to issue Lodging and Restaurant Tax Bonds, Series 2022, to refund the Lodging and Restaurant Tax Bonds, Series 2013, and approve Colliers Securities, LLC, as the placement agent for this negotiated bond sale.

**STAFF CONTACT INFORMATION:**

Dmitriy Chernyak, Finance Director – 701-355-1600 [dchernyak@bismarcknd.gov](mailto:dchernyak@bismarcknd.gov)

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**RESOLUTION AUTHORIZING THE ISSUANCE OF  
LODGING AND RESTAURANT TAX REFUNDING REVENUE NOTE, SERIES 2022**

**of the**

**CITY OF BISMARCK, NORTH DAKOTA**

**(PARAMETERS RESOLUTION)**

**Adopted: March 22, 2022**

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This instrument was drafted by:  
Ohnstad Twichell, P.C.  
P.O. Box 458  
West Fargo, North Dakota 58078

Commissioner \_\_\_\_\_ introduced the following Resolution and moved its adoption:

RESOLUTION PROVIDING FOR THE ISSUANCE OF  
LODGING AND RESTAURANT TAX REFUNDING REVENUE NOTE, SERIES 2022  
OF THE CITY OF BISMARCK, NORTH DAKOTA  
(PARAMETERS RESOLUTION)

WHEREAS, the City of Bismarck, North Dakota (the “Issuer”), by resolution has previously authorized the issuance of its Lodging and Restaurant Tax Revenue Bonds, Series 2013 (the “Refunded Bonds”); and

WHEREAS, on the date of this Resolution, the 2022-2034 maturities of the Refunded Bonds are outstanding; and

WHEREAS, the Issuer, through the issuance of its Lodging and Restaurant Tax Refunding Revenue Note, Series 2022 (the “Revenue Note” or the “Note”) for the purpose of advance refunding the 2022-2034 maturities of the Refunded Bonds, can reduce the debt service thereon; and

WHEREAS, the Issuer has pledged for the payment of the Note, the one percent (1%) lodging and restaurant tax authorized under Section 40-57.3-01 of the North Dakota Century Code and Section 7-05-02 of the Code of Ordinances of the Issuer (the “Restaurant and Lodging Tax”); and

WHEREAS, due to certain provisions contained in the Internal Revenue Code of 1986, as amended (the “Code”), it is necessary to issue the Note to advance refund the Refunded Bonds on a taxable basis, while also maintaining the ability to convert the Note into tax-exempt obligations when and if permitted under the Code; and

WHEREAS, it is desired to provide for the redemption of the Refunded Bonds from the proceeds of the Note; and

WHEREAS, the City Commission of the City of Bismarck (the “Governing Body”) does hereby create a Pricing Committee composed of the President of the Board of City Commissioners and the Finance Director, and does hereby grant them the authority to accept bids on the Note; and

WHEREAS, the Pricing Committee is hereby authorized to accept a bid at a later date for the Note, provided the maximum par amount of the Note does not exceed \$20,000,000; and

NOW, THEREFORE, be it resolved by the Governing Body of the Issuer as follows:

Section 1. Definitions and Legal Authorization.

1.01. The terms herein shall have the meaning as assigned to them in this Note Resolution, unless a different meaning clearly appears from the context. All references in this instrument to designated “Articles,” “Sections,” and other subdivisions are to the designated

Articles, Sections, and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” and “hereunder,” and other words of similar import refer to this Resolution as a whole not to a particular Article, Section, or subdivision.

1.02. The Issuer is a political subdivision duly organized under the Constitution and laws of the State of North Dakota and is authorized to issue and sell the Note for the purposes, in the manner, and upon the terms and conditions set forth in this Resolution.

Section 2. Not to Exceed.

2.01. The Pricing Committee is authorized to complete the following Resolution in substantially the same form as presented, provided the maximum par amount of the Note does not exceed \$20,000,000.

Section 3. Authorization and Sale.

3.01. There is hereby authorized to be issued a Note designated the Issuer’s Lodging and Restaurant Tax Refunding Revenue Note, Series 2022. The Pricing Committee shall have the authority to negotiate the terms of the Note with Truist Bank, a North Carolina banking corporation (“Truist”), in accordance with Section 2 hereof, to determine the final par amount and amortization schedule for the Note *without further action of the Governing Body of the City*, and to complete the Certificate of Pricing Committee.

3.02. It is hereby found and determined that the Issuer will accept a proposal from Truist, to purchase the Note at a Taxable rate of 3.15% converting to a Tax-Exempt Non-Bank Qualified rate of 2.52% not less than ninety (90) days before December 1, 2022, and upon compliance with the terms and conditions set forth in this Resolution and a Bond Purchase Agreement, dated the date of issuance of the Note, between the Issuer and Truist (the “Bond Purchase Agreement”), as lender and purchaser.

3.03. It is hereby found and determined that the proposal of Truist to purchase the Note, and upon the further terms and conditions set forth in this Note Resolution and the Bond Purchase Agreement. The Bond Purchase Agreement, substantially in the form presented at this meeting, is hereby approved. The Bond Purchase Agreement and a Wire Transfer Agreement, dated the date of issuance of the Note (the “Wire Agreement”), between the Issuer and Truist are each authorized to be executed in the name of the Issuer by the President of the Board of City Commissioners and the Finance Director, at such time, if any, as they deem appropriate, or executed to or attested to by other officers of the Issuer, in substantially the form on file, but with all such changes therein, not inconsistent with the Applicable Law, as may be approved by the officers executing the same, which approval shall be conclusively evidenced by execution thereof.

Section 4. Terms.

4.01. The Note shall initially be dated as of the date of issuance. The Note issued upon exchange or transfer after December 1, 2022, shall be dated as of the interest payment date next preceding their issuance, or if the date of such issuance shall be on an interest payment date as of

the date of such issue; provided, however, that if interest on the Note shall be in default, the Note shall be dated as of the date to which interest has been paid in full on the Note being transferred. The Note shall be issued in fully registered form in denominations of \$5,000 or any multiple thereof, of single maturities. The Note shall be numbered in consecutive numerical order from R-1 upwards as issued and shall mature on December 1 in the years and in the amounts and shall bear interest set forth in the Certificate of Pricing Committee.

4.02. Interest on the Note and, upon presentation and surrender thereof, the principal thereof shall be payable in lawful money of the United States of America by ACH payment, wire transfer or other electronic means through the Paying Agent (as defined herein). Interest shall be payable on June 1 and December 1 in each year, commencing December 1, 2022, to the holder of record on the close of the 15th day (whether or not a business day) of the immediately preceding month. Interest on the Note shall cease at maturity or on a date prior thereto on which they have been duly called for redemption unless the holder thereof shall present the same for payment and payment is refused. Interest on the Note shall be calculated on the basis of a year of 360 days of 12 months of 30 days. Truist shall not be required to present the Note to receive any payment.

Section 5. Conversion from Taxable to Tax-Exempt.

5.01. The Note is initially being issued as a debt obligation, the interest on which is includable in the gross income of the holder for federal income tax purposes. Effective on any business day on or after the Conversion Date (September 5, 2022, or such later date as the conditions of the Bond Purchase Agreement have been complied with by the Issuer to the satisfaction of Truist), the Issuer may cause the Note to be an obligation, the interest on which is excludable from the gross income for federal income tax purposes. Upon receipt of the items requested in this paragraph, if such items are acceptable to Truist, which approval will not be unreasonably withheld by Truist, then Truist shall execute and deliver such reasonable documentation requested by the Issuer or the Paying Agent for the Note as necessary to evidence the conversion of the interest on the Note from taxable to tax-exempt.

Section 6. Redemption.

6.01. As set forth in the Certificate of Pricing Committee and the BPA, the Note is subject to redemption on December 1, 2028, and each semi-annual payment date thereafter (each June 1 and December 1), in whole, but not in part, at the option of the Issuer, at a price equal to the principal amount to be redeemed plus accrued interest. Not less than thirty (30) calendar days prior to the date specified for redemption and prepayment of the Note, the Issuer will cause notice of the call thereof to be sent by mail to the Registrar, Paying Agent, and registered owner of the Note to be redeemed in whole or in part at the address shown on the registration books of the Registrar.

Section 7. Execution.

7.01. The Note shall be printed under the supervision and at the direction of the Finance Director, executed by the manual signature of the President of the Board of City Commissioners, and attested to by the manual signature of the Finance Director and delivered to the holder at closing upon receipt of the purchase price plus any accrued interest. The Note shall not be valid or

become obligatory for any purpose or be entitled to any security or benefit under this Note Resolution until the Certificate of Authentication thereon shall have been executed by the Registrar by manual signature of one of its authorized representatives.

7.02. The Note shall be reproduced in substantially the form attached to this Resolution as Attachment 1.

Section 8. Funds and Accounts.

8.01. *Lodging and Restaurant Tax Fund.* The Issuer shall maintain a Lodging and Restaurant Tax Fund, into which it will place all Restaurant and Lodging Tax revenues as collected until the Note is paid in full. Monies in the Lodging and Restaurant Tax Fund shall be used first to fund the Revenue Note Fund in the manner provided in 8.02 of the Resolution, and if funds are not so needed may be used for any lawful purpose in accordance with North Dakota law and the Bismarck City Code.

8.02. *Revenue Note Fund.* So long as any of the Note issued hereunder is outstanding and unpaid, the Issuer shall maintain a Lodging and Restaurant Tax Refunding Revenue Note Fund (the "Revenue Note Fund") as a separate and special bookkeeping account to be used for no other purpose than the payment of the principal and interest on the Note. To the Revenue Note Fund, on a first, priority lien basis, there shall be credited, each month out of the proceeds of the Lodging and Restaurant Tax Fund on hand at the time of each such distribution, an amount equal to not less than one-sixth (1/6) of the amount necessary to pay interest which becomes due on the next interest payment date, and an amount equal to not less than one-twelfth (1/12) of the sum of the principal payments to become due on the next principal payment date on the Note. These amounts may be reduced by an amount equal to the monthly interest earnings on the Revenue Note Fund, and any amounts transferred that month to the Revenue Note Fund from the Reserve Fund. If the proceeds of the Lodging and Restaurant Tax Fund on hand at any time are insufficient to permit the transfer to said Revenue Note Fund of the full amount so required, such deficiencies shall be restored out of the next net proceeds from the Lodging and Restaurant Tax Fund hereafter received. There shall also be credited to said account the premium and accrued interest, if any, paid on the Revenue Note Fund payable from said account. The money in said Revenue Note Fund shall be used solely for the purposes of paying principal and interest, as such principal and interest respectfully come due, on the Note which are issued and made payable therefrom.

8.03. *Escrow Account.* There is hereby created an Escrow Account (the "Escrow Account") with Bank of North Dakota as set forth in the Escrow Agreement described herein. Funds within the Escrow Account will be used for the sole purpose of payment of principal and interest on the Refunded Bonds. Any funds remaining in the Escrow Account following the redemption of the Refunded Bonds as set forth in the following section shall be deposited into the Revenue Note Fund and applied to the payment of principal and interest on the Note.

Section 9. Dedication of Lodging and Restaurant Tax.

9.01. The Issuer hereby dedicates and pledges for annual payment of the principal and interest on the Note and any Note issued to refund the Note, the Lodging and Restaurant Tax. The

proceeds of the Lodging and Restaurant Tax shall be deposited into the Funds in the manner set forth in Section 8 of this Resolution. Such Lodging and Restaurant Tax and dedication shall be irrevocable so long as any principal of or interest on the Note, or any Note issued to refund the Note remains outstanding and unpaid, and the Issuer shall also not reduce the rate of the Lodging and Restaurant Tax while the Note is outstanding. Upon issuance of the Note, the Note will have a first priority lien upon the Lodging and Restaurant Tax proceeds because the Refunded Bonds will be defeased and will look to amounts in the Escrow Account for repayment.

Section 10. Retirement of Refunded Bonds.

10.01. At closing on the Note, the Issuer shall deposit the proceeds of the Note and, if necessary, other funds of the Issuer, into the Escrow Account in an amount equal to the amount necessary to pay the principal of and interest, if any, on all of the Refunded Bonds on the June 1, 2022, and December 1, 2022, payment dates. Alternatively, the Issuer will invest such funds in a manner so that the original funds, together with the investment earnings, will be sufficient to pay the principal of and interest, if any, on all of the Refunded Bonds on the June 1, 2022, and December 1, 2022, payment dates.

Section 11. Covenants and Agreements of the Issuer.

11.01. Until the Note has been discharged as herein provided, the Issuer does hereby covenant and agree with the purchaser and holders thereof from time to time that the Issuer will fully and properly perform each and all of the covenants contained and referred to in the BPA and this Resolution and in the form of the Note attached to this Resolution. The Issuer also covenants that it shall levy and collect the Lodging and Restaurant Tax heretofore appropriated for the payment of the Note.

11.02. The Issuer covenants that as long as any principal or interest on the Note authorized by this Resolution is outstanding, that the monies in the Lodging and Restaurant Tax Fund described in Section 8 of this Resolution shall only be used for permitted purposes as set out in Section 8 of this Resolution or for the payment of additional Notes with an inferior lien to the Note in accordance with the provisions of 12.02 of this Resolution.

Section 12. Additional Notes.

12.01. The Issuer covenants as long as any principal or interest on the Note authorized by this Resolution are outstanding, that it shall not issue any notes with a superior lien on the Lodging and Restaurant Tax revenues pledged for the payment of the Note. The Issuer reserves the right of refunding any Note which have matured or are then subject to prepayment, for the payment of which funds are not at the time available, by the issuance of additional Notes on parity as to interest, but which shall mature subsequent to the maturity of all outstanding Notes. The Issuer also reserves the right of issuing additional Notes on parity as to both principal and interest, and payable from the same funds established in Section 8, *provided* that net revenues of the Lodging and Restaurant Tax have been equal to at least 120% of the average annual payments on the Note and the proposed additional Note for the last calendar year preceding issuance of the additional Notes.



12.02. The Issuer reserves the right of issuing additional Notes which may have a lien upon the Lodging and Restaurant Tax proceeds placed into the Lodging and Restaurant Tax Fund, which lien shall be expressly made junior and subordinate to the lien on the Note, and such additional Notes or obligations shall not be payable from the Revenue Note Fund herein created.

Section 13. Limited Obligations.

13.01. The Note issued hereunder shall not constitute a charge, lien, or encumbrance upon any property of the Issuer, and no holder or holders thereof shall ever have the right to compel any exercise of the taxing power of the Issuer to pay the principal or interest on the Note, other than the Lodging and Restaurant Tax proceeds heretofore dedicated for the payment of the Note. The principal and interest of the Note shall not be a general obligation of the Issuer, but are payable solely from the Lodging and Restaurant Tax proceeds authorized and dedicated to the payments of the Note herein.

Section 14. Discharge.

14.01. When the Note, and the interest thereon has been discharged as provided in this paragraph, all pledges, covenants, and other rights granted by this Note Resolution shall cease. The Issuer may discharge all Notes and interest due on any date by depositing with the paying agent on or before the date a sum sufficient for the payment thereof in full; or if any Note or interest thereon 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 to the date of such deposit. The Issuer may also discharge all prepayable Notes called for redemption on any date when they are prepayable according to their terms, by depositing with the Paying Agent on or before that date a sum sufficient for the payment thereof in full, provided that notice of the redemption thereof has been duly given as provided herein. The Issuer may also discharge all Notes at any time by irrevocably depositing in escrow with the Paying Agent, for the purpose of paying all principal and interest due on such Note prior to a date upon which all of the same will be prepayable according to their terms, and paying all remaining Notes on that date, a sum of cash and securities of the types described in Section 40-27-13 of the North Dakota Century Code 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, provided that notice of the redemption of all prepayable Notes on or before such date has been duly given as required herein.

Section 15. Arbitrage.

15.01. The Issuer covenants and agrees with the holders from time to time of the Note that after the Conversion Date it will not take or permit to be taken by any of its officers, employees, or agents, any action which would cause the interest on the Note to become subject to taxation under the Code, and Regulations, Amended Regulations, and Proposed Regulations issued thereunder, as now existing or as hereinafter amended or proposed and in effect at the time of such action.

Section 16. Taxability.

16.01. From and after the Conversion Date and the conversion of the interest on the Note from taxable to tax-exempt, in the event that the Issuer shall fail to observe any covenant, agreement or representation in the Note, this Resolution and the BPA, which failure results in the interest on the Note not to be exempt from Federal income tax, the interest rate on the Interest will increase to a rate equal to the interest rate on this **Certificate** (2.520%) divided by 67.5%. In addition, the Issuer will pay an amount equal to the difference between the interest paid at the tax-exempt rate and the interest which would have been paid if the interest rate would have been the taxable rate from the date that the Note was determined to be taxable, plus any penalties, interest, assessments and additions to tax payable by the holder as a result of the loss of the tax-exempt status of interest on the Note.

Section 17. Designation of Registrar and Paying Agent.

17.01. The Issuer hereby designates the Finance Director of the City of Bismarck, North Dakota, as Paying Agent and Registrar for the Note.

Section 18. Certificate of Proceedings.

18.01. The officers of the Issuer are authorized and directed to prepare and furnish to the attorneys passing on the legality of the Note, certified copies of all proceedings, ordinances, resolutions, and records and all such certificates and affidavits and other instruments as may be required to evidence the legality and marketability of the Note, and all certified copies, certificates, affidavits, and other instruments so furnished shall constitute representations of the Issuer as to the correctness of all facts stated or recited therein.

Section 19. Book Entry System.

19.01. *Truist has not requested that the Note be subject to the provisions of the Book-Entry System. Therefore, no CUSIP will be assigned to the Note.*

Section 20. [Reserved]

Section 21. Transfer.

21.01. Except as provided above, the Note is transferable upon the books of the Issuer at the principal office of the Registrar in Bismarck, North Dakota, by the registered owner thereof, in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Note of other authorized denominations. Upon such transfer or exchange the Issuer will cause a new Note or Notes 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. No transfer of a Note shall be required to be made during the fifteen (15) days next preceding an

interest payment date, nor during the forty-five (45) days next preceding the date fixed for redemption of such Notes.

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

Section 22. Amendment of Resolution.

22.01. This Resolution may be amended without the consent of any holders for any one or more of the following purposes:

(a) To add to the covenants and agreements of the Issuer in this Resolution and any other covenants and agreements thereafter to be observed by the Issuer, or to surrender any right or power herein reserved to or conferred upon the Issuer.

(b) To cure any ambiguity or formal defect contained in this Resolution, that cure does not, in the judgment of the Issuer and with an opinion of counsel, adversely affect the interests of the Note owners.

(c) To issue parity Notes in accordance with Section 12.01 hereof.

22.02. This Resolution may be amended for any other purpose only upon the consent of the owners or holders of not less than one hundred percent (100%) an aggregate principal amount of the Note outstanding, provided, however, that no amendment shall be valid which:

(a) Extends the maturity of any Note, reduces the rate of interest upon any Note, extends the time of payment of interest on the Note, reduces the amount of principal payable on any Note, or reduces any premium payable on any Note, without the consent of the affected owner; or

(b) Reduces the percent of Note owners required to approve the mandatory resolutions.

Section 23. Repealer.

23.01. All prior resolutions and other acts or proceedings of this governing body which are in any way inconsistent with the terms of this Note Resolution are hereby amended to the extent necessary to give full force and effect to this Note Resolution.

23.02. Nothing herein contained shall be deemed to modify, amend, violate, repudiate, or repeal any provision or covenant contained in any Note, or any resolution pursuant to which any note has been issued and is outstanding, to the extent that a modification, amendment, violation, repudiation, or repealer would impair the obligation or contract owed to any holders of such Note or would otherwise be invalid or ineffective.

Section 24. Insurance.

24.01. *Reserved for future use.*

Section 25. Headings.

25.01. Headings in this Resolution are included for convenience of reference only and are not a part hereof, and shall not limit or define the meaning of any provision hereof.

Section 26. North Dakota Law Applies.

26.01. This Resolution shall be controlled by the laws of the State of North Dakota, and as a result, any claim, demand, or cause of action arising under the terms of this Resolution shall be brought in an appropriate venue in the State of North Dakota.

Section 27. Escrow Agreement.

27.01. The President of the Board of City Commissioners and the Finance Director are hereby authorized to execute the Escrow Agreement with the Escrow Agent, and any attendant documents necessary to the execution thereof, in substantially the form presented to the City Commission.

Section 28. Verification Agent.

Section 28.01. Robert Thomas, CPA, or his designee is authorized to serve as verification Agent for this transaction.

Section 29. Bond Purchase Agreement.

29.01 The President of the Board of City Commissioners and the Finance Director are hereby authorized to execute the Bond Purchase Agreement, and any attendant documents necessary to the execution thereof, in substantially the form presented to the City Commission.

Section 30. Wire Transfer Agreement.

30.01. The President of the Board of City Commissioners and the Finance Director are hereby authorized to execute the Wire Transfer Agreement, and any attendant documents necessary to the execution thereof, in substantially the form presented to the City Commission.

Section 31. Disclosure.

31.01. The Finance Director is hereby authorized to deliver to Truist, or its successor, annual audited financial statements within two hundred seventy (270) days after the conclusion of each financial year commencing with the fiscal year ending December 31, 2022. The annual report may be submitted as a single document or as a separate document comprising of a single package.

Section 32. Electronic Signatures.

32.01. The parties agree that the electronic signature of a party to this Resolution shall be as valid as an original signature of such party and shall be effective to bind such party to this Note Resolution. For purposes hereof: (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

*(Signatures appear on the following page.)*

ATTEST

CITY OF BISMARCK

\_\_\_\_\_  
Finance Director

\_\_\_\_\_  
President of the Board of City  
Commissioners

The motion for the adoption of the foregoing Note Resolution was duly seconded by Commissioner \_\_\_\_\_. On roll call vote, the following Commissioners voted aye: \_\_\_\_\_  
\_\_\_\_\_. The following Commissioners voted nay: \_\_\_\_\_. The following were absent and not voting: \_\_\_\_\_. The majority having voted aye, the motion carried, and the Note Resolution was duly adopted.

CITY OF BISMARCK  
STATE OF NORTH DAKOTA

\$ \_\_\_\_\_  
LODGING AND RESTAURANT TAX REFUNDING REVENUE NOTE,  
SERIES 2022

Registered  
Number

Registered  
Dollars

<u>RATE</u>	<u>MATURITY</u>	<u>DATE OF ORIGINAL ISSUE</u>	<u>CUSIP</u>
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REGISTERED OWNER:

PRINCIPAL AMOUNT: DOLLARS

KNOW ALL MEN BY THESE PRESENTS that the City of Bismarck, North Dakota (the “Issuer”), acknowledges itself to be specially indebted and for value received promises to pay to the registered owner specified above or registered assigns, the principal amount specified above, but only from its Lodging and Restaurant Tax Refunding Revenue Note Fund (the “Revenue Note Fund”) on the maturity date specified above, with interest thereon from the date hereof at the annual rate specified above, payable on June 1 and December 1 in each year, commencing December 1, 2022, to the holder of record on the close of the 15th day (whether or not a business day) of the immediately preceding month, all subject to the provisions referred to herein with respect to the redemption of the principal of this Note before maturity. 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 by the Finance Director of the City of Bismarck, North Dakota, as Paying Agent, or its successor.

This Note is one of an issue in the aggregate principal amount of \$ \_\_\_\_\_ all of like date and tenor except as to serial number, maturity date, interest rate, and redemption privilege issued, pursuant to the Resolution adopted by the governing body of the Issuer (the “Resolution”) for the purpose of refunding the Issuer’s 2022 through 2034 maturities of the Lodging and Restaurant Tax Revenue Bonds, Series 2013 (the “Refunded Bonds”), in full conformity with the Constitution and laws of the State of North Dakota.

The Note is initially being issued as a debt obligation, the interest on which is includable in the gross income of the holder for federal income tax purposes. Effective on any business day on or after the Conversion Date (September 5, 2022, or such later date as the conditions of the Bond Purchase Agreement have been complied with by the Issuer to the satisfaction of Truist), the Issuer may cause the Note to be an obligation, the interest on which is excludable from the gross income for federal income tax purposes. At least fifteen (15) business days (or such shorter time period as approved by Truist) prior to the Conversion Date the following items shall be delivered by the Issuer to Truist for approval, which items shall be in a form acceptable to Truist, which approval will not be unreasonably withheld by Truist: (i) a written notice of such conversion from the Issuer to Truist signed by an authorized representative of the Issuer, together with the form of an opinion of Bond Counsel to the effect that the interest on the Note will be excludable from the gross income of the holder thereof for federal income tax purposes and State of North Dakota income tax purposes from and after the Conversion Date; (ii) the form of a tax or arbitrage matters certificate of the Issuer with respect to the Note signed by one (1) or more authorized officers of the Issuer (the “Conversion Tax Certificate”); (iii) the form of the IRS Form 8038-G (or other required information return required by the Internal Revenue Service) for the Note; and (iv) a form of a certificate of the Issuer signed by one or more officers of the Issuer that there is no litigation pending or threatened against the Issuer questioning the validity of the Note or this Note Resolution or that would materially adversely affect the financial condition of the Issuer or the ability of the Issuer to impose and receive the Restaurant and Lodging Tax (the “Conversion Issuer Certificate”).

At least two (2) business days before the scheduled Conversion Date, the following items shall be delivered to Truist in order for conversion on the Conversion Date to be effective, and such items shall be: (i) a replacement original Note indicating the new interest rate then in effect for the Note and stating that the interest on such Note is excludable from gross income for federal income tax purposes; (ii) an executed original opinion of Bond Counsel to the effect that the interest on the Note will be excludable from the gross income of the holder thereof for federal income tax purposes and State of North Dakota income tax purposes from and after the Conversion Date, (iii) a fully executed Conversion Tax Certificate; (iii) a pdf of a fully executed IRS Form 8038-G (or other required information return required by the Internal Revenue Service); and (iv) a fully executed Conversion Issuer Certificate. Upon receipt of the items requested in this paragraph, if such items are acceptable to Truist, which approval will not be unreasonably withheld by Truist, then Truist shall execute and deliver such reasonable documentation requested by the Issuer or the Paying Agent for the Note as necessary to evidence the conversion of the interest on the Note from taxable to tax-exempt.

Notes of this issue maturing on or after December 1, 2028, may be redeemed in whole prior to their respective maturity dates, at the option of the Issuer, at a price equal to the principal amount plus accrued interest. Not less than thirty (30) days prior to the date specified for redemption and prepayment of any of the Note, the Issuer will cause notice of the call thereof to be sent by mail to the Registrar, Paying Agent, and registered owner of the Note to be redeemed in whole **or in part** at the address shown on the registration books of the Registrar.

As provided in the Resolution and subject to certain limitations set forth therein, this Note is transferable upon the books of the Issuer at the principal office of the Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together



with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Notes of other authorized denominations. Upon such transfer or exchange, the Issuer will cause a new Note or Notes to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, being 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 Issuer and the Registrar may deem and treat the person in whose name this Note is registered as the absolute owner hereof, whether this Note is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the Issuer nor the Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED, AND AGREED that all acts, conditions, and things required by the Constitution and laws of the State of North Dakota to be done, to exist, to happen, and to be performed precedent to and in the valid issuance of this Note have been done, do exist, have happened, and have been performed in regular and due form, time, and manner as so required; that the Issuer has duly created the Revenue Note Fund as a separate and special fund and has appropriated thereto all of the funds heretofore appropriated for the payment of the Refunded Bonds, subject to the prior lien of the Refunded Bonds upon such funds until they have been fully paid or redeemed; the proceeds of the Note, less certain amounts required to pay costs of issuance, and certain other funds now on hand and available are hereby irrevocably appropriated to the Revenue Note Fund for the Refunded Bonds and, simultaneously with the delivery of the Notes herein authorized, an amount equal to the amount needed to pay and redeem all of the principal of the Refunded Bonds and interest on the Refunded Bonds on December 1, 2022, the first call date, shall be deposited in the Revenue Note Fund for the Refunded Bonds and such funds may only be used for the purpose of paying and redeeming the Refunded Bonds plus accrued interest on December 1, 2022; that in and by the Note Resolution the Issuer makes further covenants and agreements with the holders from time to time of the Notes, which covenants and agreements will be fully and properly complied with by the Issuer and each and all of its officers and agents; and that the issuance of this Note does not cause the indebtedness of the Issuer to exceed any constitutional or statutory limitation of indebtedness.

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

IN WITNESS WHEREOF the City of Bismarck, North Dakota, by its governing body, has caused this Note to be executed on its behalf by the manual signatures of the President of the Board of City Commissioners and the Finance Director, and has caused the certificate appearing on the following page to be executed by the manual signatures of said officers.

Dated: \_\_\_\_\_.

CERTIFICATE OF AUTHENTICATION

CITY OF BISMARCK

This is one of the Notes  
delivered pursuant to the  
Resolution mentioned within.

FINANCE DIRECTOR  
City of Bismarck, North Dakota  
221 North Fifth Street  
P.O. Box 5503  
Bismarck, ND 58506-5503

\_\_\_\_\_  
President of the Board of City Commissioners

BY: \_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Finance Director

CERTIFICATE AS TO LEGAL OPINION

We certify that attached is the legal opinion rendered by Bond Counsel on the issue of the Note which includes the within Note, dated as of the date of delivery of and payment for the Note.

\_\_\_\_\_  
Finance Director

\_\_\_\_\_  
President of the Board of City  
Commissioners

The following abbreviations when used in the inscription on the face of this Note, shall be construed as though they were written in full according to applicable laws and regulations:

TEN COM – as tenants in common

TEN ENT – as tenants by the entireties

JT TEN – as joint tenants with right of survivorship  
and not as tenants in common

UTMA-ACT \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)

Under Uniform Transfer to Minors Act \_\_\_\_\_  
(State)

Additional abbreviations may also be used.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto \_\_\_\_\_ the within Note and all rights thereunder, and hereby irrevocably appoints \_\_\_\_\_ attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

DATED: \_\_\_\_\_

Please insert social security  
or other identifying number  
of Assignee:

NOTICE: The signature to this Assignment  
must correspond to the name as it appears  
upon the face of the within Note in every  
particular, without alteration, enlargement or  
any change whatsoever.

\_\_\_\_\_  
Signature Guaranteed: NOTICE:  
Signature(s) must be guaranteed  
by a member of the Medallion  
Signature Program.