

CITY OF NOME, ALASKA

RESOLUTION NO. R-19-10-5

A RESOLUTION OF THE CITY OF NOME, ALASKA PROVIDING FOR THE ISSUANCE OF A UTILITY REVENUE ANTICIPATION NOTE OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$5,000,000.00 TO FINANCE THE PURCHASE OF DIESEL FUEL FOR THE NOME JOINT UTILITY SYSTEM AND AUTHORIZING THE SALE OF THE NOTE BY NEGOTIATION.

WHEREAS, the City of Nome (the "City"), a first class city organized under the statutes of the State of Alaska, now owns and operates the Nome Joint Utility System (the "Utility") as a separate utility under Title 15 of its Code of Ordinances; and

WHEREAS, it is deemed necessary and in the best interest of the City that a utility revenue anticipation note of the City now be authorized to be sold and the funds derived therefrom be used to purchase diesel fuel for electric power generation (the "Fuel Purchases"); and

WHEREAS, the Constitution and statutes of the State of Alaska permit the City to issue revenue anticipation notes payable from the revenues of the Utility without ratification by an election; and

WHEREAS, the City anticipates that the Utility will receive sufficient revenues to pay the Note when due; and

NOW THEREFORE, BE IT RESOLVED:

1. Definitions. In addition to the terms that are defined in the recitals above, the following terms shall have the following meanings in this Resolution:

1.1 "Authorized Denominations" means \$250,000 or any greater amount in multiples of \$5,000, or if the principal amount is at any time less than \$250,000, the principal amount of the outstanding Note.

1.2 "Bond Counsel" means Birch Horton Bittner & Cherot or any other law firm appointed by the City, having a national reputation in the field of municipal finance whose opinions are generally accepted by purchasers of municipal bonds.

1.3 "City" means the City of Nome, a municipal corporation of the State of Alaska, organized as a first class city under Title 29 of the Alaska Statutes.

1.4 “Code” means the Internal Revenue Code of 1986, as amended from time to time, together with all regulations applicable thereto.

1.5 “Council” means the Council of the City of Nome, as the general legislative authority of the City, as the same shall be duly and regularly constituted from time to time.

1.6 “Default Rate” means the interest rate per annum equal to the sum of three percent (3.00%) plus the greatest of (i) the Prime Rate plus one percent (1.00%), (ii) the Federal Funds Rate plus two percent (2.00%), or (iii) seven percent (7.00%).

1.7 “Determination of Taxability” means (a) the occurrence of any action that, in the judgment of the City, in reliance on the advice of Bond Counsel, will adversely affect the tax-exempt status of the Note, (b) the failure to take any action that, in the judgment of the City, in reliance on the advice of Bond Counsel, is necessary to preserve the exemption from income taxation of interest on the Note, (c) a final judgment or order of a court of competent jurisdiction, or a final ruling or decision of the Internal Revenue Service, in any such case to the effect that the interest on the Note is includable for Federal income tax purposes in the gross income of the recipients thereof, or (d) the enactment of Federal legislation that would cause the interest on the Note to be includable for Federal income tax purposes in the gross income of the recipients thereof. A judgment or order of a court of competent jurisdiction or a ruling or decision of the Internal Revenue Service shall be considered final only if no appeal or action for judicial review has been filed (and is pending) and the time for filing such right of appeal or action has expired.

1.8 “Material Adverse Effect” means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business or operations of the City, (b) the ability of the City to carry out its business as of the date of the issuance of the Note or as proposed to be conducted or to meet or perform its obligations under this Resolution or any of the Note Documents on a timely basis, (c) the validity or enforceability of this Resolution or any other Note Documents, or (d) the rights or remedies of the Registered Owner under this Resolution or any other Note Documents.

1.9 “Note” means the “Utility Revenue Anticipation Note, 2019” of the City of Nome, the issuance and sale of which are authorized herein.

1.10 “Note Documents” mean and include, without limitation, the Note, this Resolution and all other documents relating to the Note.

1.11 “Note Register” means the registration books maintained by the Registrar as Note registrar, which include the names and addresses of the owners or nominees of the owners of the Note.

1.12 “Operating Expenses” means the current expenses incurred for operation, maintenance or repair of the System of a non-capital nature, and shall include, without limiting the generality of the foregoing, payments required by any power purchase agreements, source of supply expenses, fuel expenses, production, transmission and distribution expenses, customer accounts expenses, administrative and general expenses, insurance premiums, lease rentals, legal and engineering expenses, payments to pension, retirement, group life insurance, health and hospitalization funds or other employee benefit funds which are properly chargeable to current operations, interest on customers’ deposits, payroll tax expenses, and any other expenses required to be paid under the provisions of this Resolution or by law or permitted by standard practices for public utility systems similar to the properties and business of the System (adjusted to reflect public ownership) and applicable in the circumstances. Operating Expenses shall not include any allowances for depreciation or amortization or any principal, redemption price or purchase price of, or interest on, any obligations of the City incurred in connection with and payable from Revenues, except that operating expenses shall include equal monthly payments required for repayment of principal and interest on borrowings to provide for the bulk purchase of diesel fuel for the operation of the System’s electric generators.

1.13 “Prime Rate” means, for any day, the rate of interest per annum announced from time to time by the Registered Owner in its sole discretion as its prime rate. The Prime Rate shall change on the day on which such a change is announced by the Registered Owner. The Prime Rate is not necessarily announced to the public or the lowest rate charged to any corporate customer by the Registered Owner.

1.14 “Registered Owner” means the person named as the registered owner of the Note in the Note Register. Wells Fargo Bank, National Association is the initial Registered Owner.

1.15 “Registrar” means the City Treasurer, or any successor that the City may appoint by resolution.

1.16 “Resolution” means this Resolution No. R-19-10-5 of the City.

1.17 “Revenues” means all rates and charges and other income, in each case derived by or for the account of the City from the ownership, leasing or operation of the System except interest received and profits derived from the investment of moneys other than moneys in the Utility Revenue Fund. For purposes of this Resolution, Revenues shall not include allowance for funds used during construction.

1.18 “System” means the existing electric, sewer and water utility system of the City as the same may be added to, improved and extended for as long the Note is outstanding.

1.19 “Utility Revenue Fund” means the special fund of that name created by Ordinance No. O-88-8-2, as amended.

2. Authorization of Note and Purpose of Issuance. For the purpose of providing part of the funds necessary for the Fuel Purchases, and to pay all costs incidental thereto and to the issuance of the Note, the City shall issue the Note in a principal amount equal to the aggregate amount of the advances that the Registered Owner makes to the City for Fuel Purchases, but not to exceed \$5,000,000.00.

3. Obligation of Note. The Note shall be an obligation only of the Utility Revenue Fund and shall be payable and secured as provided herein. Neither the faith and credit nor the taxing power of the City is pledged for the payment of the Note.

4. Description of Note. The Note shall be designated "City of Nome Utility Revenue Anticipation Note, 2019", shall be issued in fully registered form, and shall be numbered in the manner and with such additional designation as the Registrar deems necessary for purposes of identification. The Note shall be dated as of its delivery date and shall bear interest at a rate of two and thirteen hundredths percent (2.13%) per annum. Interest on the Note shall be computed on the basis of a 360-day year for the actual number of days elapsed.

The Note shall be payable in an installment of principal plus accrued interest in the amount of \$493,005.68 on November 26, 2019, and thereafter in eight equal monthly installments of principal and interest, commencing on December 26, 2019, and on the same day of each month thereafter until July 26, 2020 (each, an "interest payment date"), when the remaining principal balance of the Note, plus accrued interest, shall be due and payable.

Upon the occurrence of a Determination of Taxability, the interest rate on the Note shall automatically adjust to a rate equal to the product of the (i) original interest rate on the Note and (ii) one divided by one minus the prevailing maximum federal corporate tax rate. The City also shall pay any other expense incurred by the Registered Owner as a result of the Determination of Taxability.

5. Optional Redemption. The Note shall be subject to optional redemption in whole or in part on any interest payment date, at a redemption price equal to the principal amount of the Note to be redeemed plus accrued interest to the date of redemption.

6. Notice of Redemption. Notice of any intended redemption of the Note shall be given not less than 10 nor more than 45 days prior to the date fixed for redemption by first class mail to the Registered Owner of the Note at its address as it appears on the Note Register on the day the notice is mailed. The requirements of this section shall be deemed to be complied with when notice is mailed as herein provided, whether or not it is actually received by the Registered Owner. All official notices of redemption shall be dated and shall state the redemption date and the redemption price.

7. Form of Note. Each Note shall be in substantially the following form, with such variations, omissions and insertions as may be required or permitted by this Resolution:

UNITED STATES OF AMERICA
STATE OF ALASKA
CITY OF NOME

TRANSFER RESTRICTED

THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN ACCORDANCE
WITH THE REQUIREMENTS SET FORTH IN THE NOTE.

No. _____

\$5,000,000

UTILITY REVENUE ANTICIPATION NOTE, 2019

REGISTERED OWNER: Wells Fargo Bank, National Association

PRINCIPAL AMOUNT: Five Million Dollars

The City of Nome (the "City"), a municipal corporation of the State of Alaska, acknowledges itself indebted and for value received promises to pay (but only out of the sources mentioned herein) to the Registered Owner identified above, or its registered assigns, a principal amount equal to the aggregate amount of the advances that the Registered Owner makes to the City for Fuel Purchases, but not to exceed \$5,000,000, together with accrued interest on the outstanding principal balance of this Note at a rate of two and thirteen hundredths percent (2.13%) per annum. This Note is payable in an installment of principal plus accrued interest in the amount of \$493,005.68 on November 26, 2019, and thereafter in eight equal monthly installments of principal and interest, commencing on December 26, 2019, and on the same day of each month thereafter until July 26, 2020 (each, an "interest payment date"), when the remaining principal balance of this Note, plus accrued interest, shall be due and payable. Both principal of and interest on this Note shall be payable in any lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest on the Note shall be computed on the basis of a 360-day year for the actual number of days elapsed. Installments of principal and interest on the Note shall be paid at Wells Fargo Bank, National Association in Nome, Alaska, or at the option of the Registered Owner at the office of the Treasurer of the City in Nome, Alaska. For each payment of principal or interest which has not been paid in full within fifteen days after its date due, the City will pay to the Registered Owner a late charge of \$15.00 or five percent (5%) of the amount due, whichever is greater. The City acknowledges and agrees that the amount of this late fee is reasonable with respect to this Note, taking into account the Registered Owner's expectation of timely receipt of payments with regard to the favorable pricing of this Note, and the operational, administrative and regulatory burdens flowing from late payments

and delinquencies. To the extent this late fee or any other fee or charge set forth in this Note may be prohibited or exceed any limit provided by any present or future applicable law, such fee or charge shall be reduced to the maximum amount allowed.

Upon the occurrence of a Determination of Taxability, the interest rate on this Note shall automatically adjust to a rate equal to the product of the (i) original interest rate on this Note and (ii) one divided by one minus the prevailing maximum federal corporate tax rate. The City also shall pay any other expense incurred by the Registered Owner as a result of the Determination of Taxability.

Each of the following shall constitute an event of default under this Note: (1) the City fails to make any payment when due under this Note; (2) any event which results in a Material Adverse Effect (as defined in the Resolution); and (3) Resolution R-19-10-5 of the City, duly and regularly adopted on October 30, 2019 (the "Resolution"), or any other document executed in connection with the issuance of the Note is deemed invalid. Upon default, the Registered Owner may declare the entire unpaid principal balance under this Note and all accrued and unpaid interest immediately due, and then City will pay that amount, and upon default in the payment of principal or interest on the Note, the Note thereafter shall bear interest at the Default Rate (as defined in the Resolution). Upon default, the Registered Owner may offset against any monies, securities, or accounts of the Nome Joint Utility System that are held separately pursuant to Nome Ordinance 15.10.090 and that are on deposit with the Registered Owner, and apply said offset funds against the amounts due hereunder.

This Note is subject to prepayment by or on behalf of the City, in whole or in part on any interest payment date without penalty, upon notice as provided in the Resolution.

This Note is issued pursuant to Chapter 47, Title 29 of the Alaska Statutes and the Resolution, for the purpose of providing funds to acquire diesel fuel for use in the provision of electric utility service in the City and is the single registered Note entitled \$5,000,000 City of Nome Utility Revenue Anticipation Note, 2019.

THIS NOTE MAY ONLY BE TRANSFERRED IN AUTHORIZED DENOMINATIONS AND ONLY TO (I) AN AFFILIATE OF THE REGISTERED OWNER, (II) A TRUST OR OTHER CUSTODIAL ARRANGEMENT ESTABLISHED BY THE REGISTERED OWNER OR ONE OF ITS AFFILIATES, THE OWNERS OF THE BENEFICIAL INTERESTS IN WHICH ARE LIMITED TO "QUALIFIED INSTITUTIONAL BUYERS" AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (III) A PERSON THAT IS A QUALIFIED INSTITUTIONAL BUYER AND A COMMERCIAL BANK HAVING CAPITAL AND SURPLUS, DETERMINED AS OF THE DATE OF ANY TRANSFER, OF \$5,000,000,000 OR MORE THAT HAS EXECUTED AND DELIVERED TO THE REGISTERED OWNER AND THE CITY AN INVESTOR LETTER IN THE FORM OF EXHIBIT A TO THE RESOLUTION. THE PERSONS AND ENTITIES IDENTIFIED IN CLAUSES (I) AND (II) OF THE FOREGOING SENTENCE SHALL BE REFERRED TO AS

THE "ELIGIBLE TRANSFEREE(S)." NOTWITHSTANDING THE FOREGOING, IF THE PRINCIPAL AMOUNT OF THE OUTSTANDING NOTE IS LESS THAN \$250,000, THE NOTE MAY NOT BE TRANSFERRED TO ANY ELIGIBLE TRANSFEREE WITHOUT THE PRIOR WRITTEN CONSENT OF THE CITY.

THIS NOTE IS PAYABLE SOLELY FROM THE REVENUES OF THE UTILITY. THIS NOTE IS NOT A GENERAL OBLIGATION OF THE CITY AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY IS PLEDGED FOR ITS REPAYMENT.

IT IS HEREBY CERTIFIED and declared that this Note is issued pursuant to and in strict compliance with the Constitution and laws of the State of Alaska and the ordinances of the City of Nome, and that all acts, conditions and things required to happen, to be done and to be performed precedent to and on the issuance of this Note have happened, been done and been performed.

IN WITNESS WHEREOF, the City of Nome, Alaska, has caused this Note to be executed by the signature of its Mayor and attested by its Clerk under the seal of the City on this ____ day of October, 2019.

CITY OF NOME

By: _____
Mayor

[S E A L]

A T T E S T:

City Clerk

ASSIGNMENT

For value received, the undersigned sells, assigns and transfers to (print or typewrite name, address, zip code and Social Security number or other tax identification number of Transferee)

this Note and irrevocably constitutes and appoints _____

attorney to transfer this Note on the Note Register, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of this Note.

8. Execution. The Note shall be executed in the name of the City by the signature of the Mayor, and its corporate seal shall be impressed or otherwise reproduced thereon and attested by the signature of the City Clerk. The execution of the Note on behalf of the City by persons who at the time of the execution are duly authorized to hold the proper offices shall be valid and sufficient for all purposes, although any such person shall have ceased to hold office at the time of delivery of the Note or shall not have held office on the date of the Note.

9. Payment of Principal and Interest. The Note shall be payable in lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Installments of principal and interest on the Note shall be paid at the office of Wells Fargo Bank, National Association, in Nome, Alaska, or at the option of the Registered Owner at the office of the Registrar in Nome, Alaska, without presentment of the Note to the Registrar for such payment; provided that the final installment of the principal of the Note, plus accrued interest, shall be payable upon presentation and surrender of the Note by the Registered Owner at the principal office of the Registrar. For each payment of principal or interest which has not been paid in full within fifteen days after its date due, the City will pay to the Registered Owner a late charge of \$15.00 or five percent (5%) of the amount due, whichever is greater. The City acknowledges and agrees that the amount of this late fee is reasonable with respect to this Note, taking into account the Registered Owner's expectation of timely receipt of payments with regard to the favorable pricing of this Note, and the operational, administrative and regulatory burdens flowing from late payments and delinquencies. To the extent this late fee or any other fee or charge set forth in the Note may be prohibited or exceed any limit provided by any present or future applicable law, such fee or charge shall be reduced to the maximum amount allowed.

10. Registration.

10.1 Note Register. The Note shall be issued only in registered form as to both principal and interest. The Registrar shall keep, or cause to be kept, a Note Register at

its principal office. The treasurer of the City is hereby appointed as Registrar and paying agent for the Note.

10.2 Registered Ownership. The City and the Registrar, each in its discretion, may deem and treat the Registered Owner of the Note as the absolute owner thereof for all purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary. Payment of the Note shall be made only as described in Section 9 hereof, but such registration may be transferred as herein provided. All such payments made as described in Section 9 shall satisfy and discharge the liability of the City upon the Note to the extent of the amount or amounts so paid.

10.3 Transfer or Exchange of Registered Ownership; Change in Denominations.

10.3.1 The registered ownership of the Note may be transferred or exchanged, but no transfer of the Note shall be valid unless it is surrendered to the Registrar with the assignment form appearing on such Note duly executed by the Registered Owner or such Registered Owner's duly authorized agent in a manner satisfactory to the Registrar. Upon such surrender, the Registrar shall cancel the surrendered Note and shall cause to be executed and delivered, without charge to the Registered Owner or transferee, a new Note (or Notes at the option of the new Registered Owner) of the same date, maturity and interest rate and for the same aggregate principal amount, naming as Registered Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered and canceled Note. The Note may be surrendered to the Registrar and exchanged, without charge, for an equal aggregate principal amount of Notes of the same date, maturity, and interest rate. The Registrar shall not be obligated to transfer or exchange the Note following any notice of redemption.

10.3.2 Notwithstanding anything herein to the contrary, the Note may only be transferred in Authorized Denominations and must be in compliance with the securities laws of the United States of America; and to (i) an affiliate of the Registered Owner, (ii) a trust or other custodial arrangement established by the Registered Owner or one of its affiliates, the owners of the beneficial interests in which are limited to "qualified institutional buyers" as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, or (iii) a Person that is a qualified institutional buyer and a commercial bank having capital and surplus, determined as of the date of any transfer, of \$5,000,000,000 or more that has executed and delivered to the Registered Owner and the City investor letters in the form of Exhibit A hereto. The persons and entities identified in clauses (i) and (ii) of the foregoing sentence shall be referred to as the "Eligible Transferee(s)." Notwithstanding the foregoing, if the principal amount of the outstanding Note is less than \$250,000, the Note may not be

transferred to any Eligible Transferee without the prior written consent of the City.

11. Lost Stolen, Destroyed or Mutilated Note. Upon surrender to the Registrar of a mutilated Note, the City shall execute and deliver a new Note of like maturity and principal amount. Upon filing with the Registrar of evidence satisfactory to the City that a Note has been destroyed, stolen or lost and of the ownership thereof, and upon furnishing the City with indemnity satisfactory to it, the City shall execute and deliver a new Note of like maturity and principal amount. The person requesting the execution and delivery of a new Note under this section shall comply with such other reasonable regulations as the City may prescribe and pay such expenses as the City may incur in connection therewith.

12. Utility Fund and Priority of Use of Revenues. There has heretofore been created a special fund known as the "Utility Revenue Fund." The City hereby obligates and binds itself to set aside and pay into such Fund as collected all Revenues. Such Revenues and the moneys in the Utility Revenue Fund are hereby pledged first to pay the principal and interest on the Note and thereafter Operating Expenses, and all other payments required for any other legally authorized purpose.

13. Specific Covenants. The City hereby covenants with the owner of the Note for as long as the same remains outstanding as follows:

13.1 That it will at all times operate the System in an efficient manner and at a reasonable cost and will maintain, preserve and keep the System and every part and parcel thereof in good repair, working order and condition; and will from time to time make or cause to be made all necessary and proper repairs, renewals and replacements thereto so that the business carried on in connection therewith may be properly and advantageously conducted.

13.2 That it will at all times carry fire insurance and such other forms of insurance on such of the buildings, equipment, property and facilities of the System as are ordinarily insured in such amounts and with such deductibles as under good business practice are ordinarily carried on such buildings, equipment, property and facilities.

13.3 That it will not expend any of the money in the Utility Revenue Fund for any extensions or betterments which are not economically sound and which will not contribute to the operation of the System in an efficient and economical manner unless such extensions or betterments are required by law or by any regulatory body having valid jurisdiction.

13.4 That it will keep and maintain proper books and accounts with respect to the operation of the System in such manner as prescribed by any authorities having jurisdiction over public utilities operated by municipal corporations in Alaska; and that it will cause its books and accounts to be audited annually by a certified public accountant, copies of which audits shall, upon request, be furnished to the Registered Owner of the

Note. Said audits shall show whether or not the City has in all respects performed and complied with the covenants set forth in this Resolution.

13.5 That all employees and agents of the City collecting or handling money of the City in connection with the management and operation of the System shall be bonded in an amount commensurate with the funds they handle and sufficient to protect the City from loss.

13.6 That it will not sell, lease or otherwise dispose of the System or any portion thereof (other than the disposition and replacement of components of the System due to wear and tear), or enter into any operating agreement with respect thereto, unless contemporaneously with such sale, lease or disposal there shall be paid to the Registered Owner of the Note a sum sufficient to pay the principal of and interest on the Note then outstanding to the date on which it first may be redeemed, nor will the City sell, lease or otherwise dispose of any part of the System which is material to the production of Revenues unless, in the opinion of an independent consulting engineer licensed to practice in the State of Alaska and experienced in the construction and operation of municipal utilities, the remaining System will generate Revenues sufficient to enable the City to comply with the requirements of this Resolution.

13.7 That it shall not breach any contract with or obligation due to a third party or default in the payment of any indebtedness when such contract, obligation or indebtedness is equal to or greater than \$100,000, in each instance, unless such breach or default is cured within any grace period applicable to such contract, obligation or indebtedness.

13.8 That it shall not default in the payment or the performance of any of its obligations under any other loans, contracts or agreements with the Registered Owner or the Registered Owner's affiliates.

13.9 That it shall give notice of any Material Adverse Effect, defaults, material litigation and material governmental proceedings to the Registered Owner within thirty (30) days of the City or the Utility being notified.

13.10 That it irrevocably authorizes the Registered Owner to debit from time to time a deposit account of the Nome Joint Utility System designated by the Utility and held by the Registered Owner for the amount of principal and interest due on the Note held by the Registered Owner, and shall maintain sufficient funds in the account for that purpose.

13.11 That it shall permit no security interests or liens in the Utility's diesel fuel inventory and the accounts and proceeds thereof during the term of the Note.

13.12 If applicable, that it shall (a) post all documents in connection with the Note with the MSRB and EMMA, provided that, all pricing and confidential information, as directed by the Registered Owner shall be redacted prior to such posting

and (b) shall deliver all documents in connection with the Note to any relevant rating agencies.

13.13 During any period that the initial Registered Owner is the Owner of the Note, the Note shall not be (i) assigned a rating by any credit rating agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) offered pursuant to any type of offering document or official statement or (iv) assigned a CUSIP number by Standard & Poor's CUSIP Service. No placement agent or underwriter is involved in the sale and purchase of the Note.

13.14 That it shall not issue any additional debt with a senior or parity lien on the Revenues during the term of the Note.

13.15 The City shall appropriate funds from any Utility legally unrestricted sources to pay any deficiency in the payment of principal and interest on the Note.

13.16 The City shall deliver of cause to be delivered to the Registered Owner the following:

13.16.1 Promptly upon receipt by the City or the Utility and in no event later than 240 days after the end of each fiscal year (unless otherwise agreed in writing by the Registered Owner), the City will furnish, or cause to be furnished, to the Registered Owner an audit report of an Independent Certified Public Accountant with respect to such fiscal year of the City and the Utility, for said fiscal year.

13.16.2 The City shall also deliver to the Registered Owner a copy of the City's and the Utility's budgets adopted for a fiscal year within thirty (30) days of the end of the prior fiscal year.

14. Application of Note Proceeds. The proceeds of the sale of the Note shall be applied to pay costs of the Fuel Purchases, issuance costs of the Note and accrued interest on the Note, and shall be deposited in the appropriate funds or accounts of the City for such purposes.

15. Amendatory and Supplemental Resolutions.

15.1 The Council from time to time and at any time may adopt a resolution or resolutions supplemental hereto, which resolution or resolutions thereafter shall become a part of this Resolution, for any one or more of the following purposes:

15.1.1 To add to the covenants and agreements of the City in this Resolution, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the City.

15.1.2 To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this Resolution or in regard to matters or questions arising under this Resolution as the Council may deem necessary or desirable and not inconsistent with this Resolution and which shall not adversely affect the interests of the Registered Owner of the Note.

Any such supplemental resolution may be adopted without the consent of the Registered Owner of the Note, notwithstanding any of the provisions of subsection 15.2.

15.2 With the consent of the Registered Owners of not less than 60 percent in aggregate principal amount of the Note at the time outstanding, the Council may adopt a resolution or resolutions supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Resolution or of any supplemental resolution; provided, however, that no such supplemental resolution shall:

15.2.1 Extend the due date of any principal installment payable under the Note, or reduce the rate of interest thereon, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Registered Owners of the Note so affected; or

15.2.2 Reduce the aforesaid percentage of Registered Owners of the Note required to approve any such supplemental resolution without the consent of all of the Registered Owners of the Note then outstanding.

15.2.3 Remove the pledge and lien of this Resolution on Revenues or the moneys in the Utility Revenue Fund.

It shall not be necessary for the consent of the Registered Owner of the Note under this subsection 15.2 to approve the particular form of any proposed supplemental resolution, but it shall be sufficient if such consent shall approve the substance thereof.

15.3 Upon the adoption of any supplemental resolution pursuant to the provisions of this section, this Resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Resolution of the City and the Registered Owner of the Note shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendment, and all the terms and conditions of any such supplemental resolution shall be deemed to be part of the terms and conditions of this Resolution for any and all purposes.

15.4 Any Note executed and delivered after the adoption of any supplemental resolution pursuant to this section may bear a notation as to any matter provided for in the supplemental resolution, and if the supplemental resolution shall so provide, a new Note so modified as to conform, in the opinion of the Council, to any

modification of this Resolution contained in any such supplemental resolution may be prepared by the City and delivered without cost to the Registered Owners of the Note then outstanding, upon surrender for cancellation of such Note in an equal aggregate principal amount.

16. Tax Covenants. The City covenants to comply with any and all applicable requirements set forth in the Code in effect from time to time to the extent that such compliance shall be necessary for the exclusion of the interest on the Note from gross income for federal income tax purposes. The City covenants that it will make no use or investment of the proceeds of the Note that will cause the Note to be an “arbitrage bond” subject to federal income taxation by reason of Section 148 of the Code. The City covenants that it will not take or permit any action that would cause the Note to be a “private activity bond” as defined in Section 141 of the Code.

17. Designation as Qualified Tax Exempt Obligation. The Note is hereby designated as a “qualified tax exempt obligation” in accordance with Section 265(b)(3) of the Code, and the City hereby covenants that it shall not issue during the calendar year 2019 more than \$10,000,000 in aggregate principal amount of tax exempt obligations other than tax exempt obligations described in Section 265(b)(3)(C)(ii) of the Code.

18. Sale of Note. The Note shall be sold at negotiated sale to Wells Fargo Bank, National Association. The City Manager and Utility Manager each is hereby authorized and directed to do everything necessary to complete such sale and delivery of the Note to the Registered Owner thereof upon payment of the purchase price thereof.

19. Authority of Officers. The City Manager, the acting City Manager, the Utility Manager, the acting Utility Manager, the Clerk and the acting Clerk are, and each of them hereby is, authorized and directed to do and perform all things and determine all matters not determined by this Resolution, to the end that the City may carry out its obligations under the Note and this Resolution.

20. Payment of Registered Owner’s Expenses. The City shall pay and reimburse Registered Owner for Registered Owner’s expenses incurred for the purchase of the Note including but not limited to Registered Owner’s reasonable attorneys’ fees and expenses, and fees incurred by Registered Owner for searches of Uniform Commercial Code financing statements.

21. Termination of UCC Financing Statements. The City represents that, as of the issue date of the Note, all previous credit facilities, loans or notes secured by the Utility’s inventory of diesel fuel and the accounts and proceeds thereof have been paid in full. The City will cause all creditors other than Registered Owner who have filed Uniform Commercial Code Financing Statements describing diesel fuel inventory and the accounts and proceeds thereof as collateral to terminate such financing statements.

22. Miscellaneous. No recourse shall be had for the payment of the principal of or the interest on the Note or for any claim based thereon or on this Resolution against any member of the Council or officer of the City or any person executing the Note. The Note is not and shall not be in any way a debt or liability of the State of Alaska or of any political subdivision thereof, except the City, and does not and shall not create or constitute an indebtedness or obligation, either legal, moral or otherwise, of said state or of any political subdivision thereof, except the City.

23. Severability. If any one or more of the provisions of this Resolution shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this Resolution and shall in no way affect the validity of the other provisions of this Resolution or of the Note.

24. Effective Date. This Resolution shall take effect upon adoption.

ADOPTED by the Council of the City of Nome this 30th day of October, 2019.

CITY OF NOME



JERALD BROWN, Acting Mayor

ATTEST:



BRYANT HAMMOND, City Clerk