DRAFT

RESOLUTION NO. 20-
City Council

RESOLUTION APPROVING AN ENGAGEMENT AGREEMENT IN CONNECTION WITH THE ISSUANCE OF GENERAL OBLIGATION CAPITAL LOAN NOTES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA, that the Mayor is hereby authorized to sign an Engagement Agreement with Ahlers and Cooney, P.C., in its capacity as Bond Counsel to the City of Hiawatha, Iowa (the "Issuer") for the following purpose:

to disclose and memorialize the terms and conditions under which services will be rendered by Ahlers and Cooney, P.C. in connection with the issuance of General Obligation Capital Loan Notes, with Term of Agreement as shown in the attached Exhibit 'A'.

AYES:
NAYS:
ABSENT:

PASSED AND APPROVED this 5th day of February, 2020.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kari Graber, City Clerk

Exhibit 'A'

Ahlers & Cooney, P.C.
Attorneys at Law
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Des Moines, Iowa 50309-2231
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January 23, 2020

Via E-mail and Overnight Delivery
Cindy Kudrna
Finance Director
101 Emmons Street
Hiawatha, Iowa 52233

Re: City of Hiawatha, State of Iowa – Bond Counsel Engagement Agreement
- Not to Exceed $3,100,000 General Obligation Capital Loan Notes (ECP)
- Not to Exceed $85,600 General Obligation Capital Loan Notes (GCP)
- Not to Exceed $556,000 General Obligation Capital Loan Notes (GCP)

Dear Mayor and City Council:

The purpose of this Engagement Agreement (the "Agreement") is to disclose and memorialize the terms and conditions under which services will be rendered by Ahlers & Cooney, P.C. as bond counsel to the City of Hiawatha, Iowa (the "City" or "Issuer") in connection with the above-referenced issuance (the "Notes"). While additional members of our firm may be involved in representing the Issuer on other matters unrelated to the Notes, this Agreement relates to the agreed-upon scope of bond counsel services described herein (the "Services").

A. SCOPE OF SERVICES -- *Bond Counsel*

As Bond Counsel, we will represent the City and cooperate with the following persons and firms: the underwriters or other purchasers who purchase the Notes from the City (all of whom are referred to as the "Note Purchasers"), counsel for the Note Purchasers, the Municipal Advisor, trustee, paying agent and bond registrar and their designated counsel (you and all of the foregoing persons or firms collectively, the "Participants"). We intend to undertake each of the following as are necessary:

1. Review relevant Iowa law, including pending legislation and other recent developments, relating to the legal status and powers of the City or otherwise relating to the issuance of the Notes.

2. Obtain information about the Note transaction and the nature of use of the facilities or purposes to be financed (the "Project").

3. Review the proposed timetable and consult with the Participants as to the issuance of the Notes in accordance with the timetable.

4. Consider issues arising under the Internal Revenue Code of 1986, as amended, and applicable tax regulations and other sources of law relating to the issuance of the Notes on a tax-exempt basis; these issues include, without limitation, ownership and use of the project, use and investment of Note proceeds prior to expenditure and security provisions or credit enhancement relating to the Notes.

5. Prepare or review major Note documents, including tax compliance certificates, review the bond purchase agreement, if applicable, and, at your request, draft descriptions of the documents which we have drafted. As Bond Counsel, we assist you in reviewing only those portions of an official statement or any other disclosure document to be disseminated in connection with the sale of the Notes involving the description of the Notes, the security for the Notes (excluding forecasts, projections, estimates or any other financial or economic information in connection therewith), the description of the federal tax exemption of interest on the Notes and the "bank-qualified" status of the Notes.

6. Prepare or review all pertinent proceedings to be considered by the governing body to the City; confirm that the necessary quorum, meeting and notice requirements are contained in the proceedings and draft pertinent excerpts of minutes of the meetings relating to the financing.

7. Attend or host such drafting sessions and other conferences as may be necessary, including a preclosing, if needed, and closing; and prepare and coordinate the distribution and execution of closing documents and certificates, opinions and document transcripts.

8. Render our legal opinion regarding the validity of the Notes, the sources of payment for the Notes and the federal income tax treatment of interest on the Notes, which opinion (the "Bond Opinion") will be delivered in written form on the date the Notes are exchanged for their purchase price (the "Closing"). The Bond Opinion will be based on facts and law existing as of its date. Please see the discussion below at Part D. Please note that our opinion represents our legal judgment based upon our review of the law and the facts so supplied to us that we deem relevant and is not a guarantee of a result.

9. Subsequent to the Closing, we will prepare and provide the Participants a bond transcript pertaining to the Notes and make certain the appropriate Federal Information Reporting Form 8038 is filed for each series.

B. LIMITATIONS

The duties covered by this Agreement are limited to those expressly set forth above. Our fee ***does not*** include the following services, or any other matter not required to render our Bond:

a) Preparing requests for tax rulings from the Internal Revenue Service, or "no action" letters from the Securities and Exchange Commission.
b) Drafting state constitutional or legislative amendments.
c) Pursuing test cases or other litigation, such as contested validation proceedings.
d) Representing the Issuer in Internal Revenue Service examinations or inquiries, or Securities and Exchange Commission investigations.
e) After Closing, providing continuing advice to the Issuer or any other party concerning actions necessary to assure that interest paid on the Notes will continue to be excludable from gross income for federal income tax purposes (e.g. this Bond Counsel engagement for the Notes does not include rebate calculations, nor continuing post-issuance compliance activities).
f) Opining on a continuing disclosure undertaking pertaining to the Notes and, after the execution and delivery of the Notes, providing advice concerning any actions necessary to assure compliance with any continuing disclosure requirements.
g) After Closing, providing continuing advice to the Issuer or any other party concerning disclosure issues or questions that relate to the Notes, e.g., questions regarding actions necessary to assure fulfillment of continuing disclosure responsibilities.

h) Undertaking responsibility as disclosure counsel engaged as recognized counsel specially experienced in Iowa law and federal law relating to disclosure requirements that pertain to governmental debt obligations, whose primary responsibility will be to render objective written advice with respect to the Issuer's issuance of Notes and its compliance with applicable rules promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

We will provide one or more of the services listed in (a)–(h) upon your request, however, a separate, written engagement or request for services in accordance with Part H - "OTHER ADVICE" herein will be required before we assume one or more of these duties. The remaining services in this list, specifically those listed in subparts (i)–(n) below, are not included in this Agreement, nor will they be provided by us at any time.

i) Providing any advice, opinion or representation as to the financial feasibility or the fiscal prudence of issuing the Notes, the financial condition of the Issuer, or to any other aspect of the financing, such as the proposed financing structure, use of a financial advisor, or the investment of proceeds of the Notes.
j) Independently establishing the veracity of certifications and representations of the City or the other Participants.
k) Acting as an underwriter, or otherwise marketing the Notes.
l) Acting in a financial advisory role.
m) Preparing blue sky or investment surveys with respect to the Notes.
n) Making an investigation or expressing any view as to the creditworthiness of the Issuer or of the Notes.

C. ATTORNEY-CLIENT RELATIONSHIP; OTHER REPRESENTATIONS

Upon execution of this Agreement and upon notification by the Issuer that our Bond Counsel services are requested with regard to a specific issue of Notes, the Issuer will be our client and an attorney-client relationship will exist between us with respect to the issuance of the Notes. We assume that all other parties will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction. We further assume that all parties understand that in this transaction we represent only the Issuer, we are not counsel to any other party, and we are not acting as an intermediary among the parties. Our services are limited to those contracted for in this Agreement; the Issuer's execution of this Agreement will constitute an acknowledgement of those limitations. Our representation of the Issuer will not affect, however, our responsibility to render an objective Bond Opinion.

Our representation of the Issuer and the attorney-client relationship created by this Agreement with respect to a series of Notes will be concluded upon issuance of such Notes. Nevertheless, subsequent to Closing, we will mail the appropriate completed Internal Revenue Service Form 8038 and prepare and distribute to the Participants a transcript of the proceedings pertaining to the Notes.

As you are aware, our firm represents many political subdivisions, companies and individuals. It is possible that during the time that we are representing the Issuer, one or more of our present or future clients will have transactions with the Issuer. We do not believe such representation, if it occurs, will adversely affect our ability to represent you as provided in this Agreement, either because such matters will be sufficiently different from the issuance of the Notes so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the issuance of the Notes. We will decline to participate in any matter where the interests of our clients, including the Issuer, may differ to the point where separate representation is advisable. The firm historically has arranged its practice to hold such occasions to a minimum, and intends to continue

doing so. Execution of this Agreement will signify the Issuer's consent to our representation of others consistent with the circumstances described in this paragraph.

D. OTHER TERMS OF THE ENGAGEMENT; CERTAIN OF YOUR UNDERTAKINGS

Please note our understanding with respect to this Agreement and your role in connection with the issuance of the Notes:

1. In rendering the Bond Opinion and in performing any other Services hereunder, we will rely upon the certified proceedings and other certifications you and other persons furnish us. Other than as we may determine as appropriate to rendering the Bond Opinion, we are not engaged and will not provide services intended to verify the truth or accuracy of these proceedings or certifications. Except by request, we do not ordinarily attend meetings of the governing body of the City at which proceedings related to the Notes are discussed or passed unless special circumstances require our attendance.

2. The factual representations contained in those documents which are prepared by us, and the factual representations which may also be contained in any other documents that are furnished to us by you are essential for and provide the basis for our conclusions that there is compliance with State law requirements for the issue and sale of valid Notes and with the Federal tax law for the tax exemption of interest paid on the Notes. Accordingly, it is important for you to read and understand the documents we provide to you because you will be confirming the truth, accuracy and completeness of matters contained in those documents at the issuance of the Notes.

3. If the documents contain incorrect or incomplete factual statements, you must call those to our attention. We are always happy to discuss the content or meaning of the transaction documents with you. Any untruth, inaccuracy or incompleteness may have adverse consequences affecting either the tax exemption of interest paid on the Notes or the adequacy of disclosures made in the Official Statement under the State and Federal securities laws, with resulting potential liability for you. During the course of this engagement, we will further assume and rely on you to provide us with complete and timely information on all developments pertaining to any aspect of the Notes and their security. We understand that you will cooperate with us in this regard.

4. You should carefully review all of the representations you are making in the transaction documents. We are available and encourage you to consult with us for explanations as to what is intended in these documents. To the extent the facts and representations stated in the documents we provide to you appear reasonable to us, and are not corrected by you, we are then relying upon your signed certifications for their truth, accuracy and completeness.

5. Issuing the Notes as "securities" under State and Federal securities laws and on a tax-exempt basis is a serious undertaking. As the issuer of the Notes, the City is obligated under the State and Federal securities laws and the Federal tax laws to disclose all material facts. The City's lawyers, financial advisors and bankers can assist the City in fulfilling these duties, but the City in its corporate capacity, including your knowledge, has the collective knowledge of the facts pertinent to the transaction and the ultimate responsibility for the presentation and disclosure of the relevant information. Further, there are complicated Federal tax rules applicable to the Notes. The IRS has an active program to audit such transactions. The documents we prepare are designed so that the Notes will comply with the applicable rules, but this means you must fully understand the documents, including the representations and

the covenants relating to the continuing compliance with the federal tax requirements. Accordingly, we want you to ask questions about anything in the documents that is unclear.

6. As noted, the members of the governing body of the City also have duties under the State and Federal Securities and tax laws with respect to these matters and should be knowledgeable as to the underlying factual basis for the bond issue size, use of proceeds and related matters.

E. FEES

It is our practice to bill our fees as Bond Counsel on a transactional basis instead of hourly. Factors which affect our billing include: (a) the amount of the issuance; (b) an estimate of the time necessary to do the work; (c) the complexity of the issue (number of parties, timetable, type of financing, legal issues and so forth); (d) recognition of the partially contingent nature of our fee, since it is customary that in the case no financing is ever completed, we render a greatly reduced statement of charges; and (e) a recognition that we carry the time for services rendered on our books until a financing is completed, rather than billing monthly or quarterly.

We estimate that our fee for Bond Counsel services will not exceed $10,500. If, at any time, we believe that circumstances require an adjustment of our original fee estimate(s), we will advise you of such requirement. Such adjustment might be necessary in the event: (a) the principal amount of Notes actually issued differs significantly from the amount anticipated at the time we initially estimated our fee(s); (b) material changes in the structure or schedule of the financing occur; or (c) unusual or unforeseen circumstances arise which require a significant increase or decrease in our time or responsibility, such as personal attendance at meetings, significant travel, or unexpected revision of the issuance documents at the request of the Issuer, any agent acting on your behalf (such as a financial advisor), the purchaser, a bond insurer, other counsel providing services with respect to issuance of a particular issuance of obligations.

In addition to our flat fees, we will charge for any incidental costs (copies, overnight charges, bond printing, travel reimbursement, deliveries, etc.), at actual costs incurred. We estimate that such charges will not exceed $750. We will contact you prior to incurring expenses that exceed this amount.

The delivery of written advice, or opinions beyond the Bond Opinion, to third parties at the request of the Issuer with respect to a series of Notes shall be subject to a separate opinion charge in an amount established at the time of the request.

Billing Matters:

We will submit a summary invoice for the professional services described herein after Closing. In the event of a substantial delay in completing the financing, we reserve the right to present an interim statement for payment. Unless other arrangements have been agreed upon in advance, we anticipate our statements to be paid in full within thirty (30) days of receipt.

If, for any reason, the financing represented by an issue of Notes is not consummated or is completed without the delivery of our Bond Opinion, or our services are otherwise terminated, we will expect to be compensated at our normal hourly rates[1], plus incidental costs, as described above (not to exceed the fee we would have received if we had rendered our Bond Opinion).

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1. The firm reviews hourly rates on an annual basis, and reserves the right to implement rate adjustments. If implemented in any particular year, adjustments generally become effective on January 1. Accordingly, our work on this matter will be billed at the hourly rate in effect at the time services are performed. Our current (2020) hourly rates are as follows:
   a. Attorneys: $200-$355/hour (for reference purposes, the undersigned's hourly rate as of 1/1/20 is $295/hour).
   b. Legal Assistants: $120/hour.

F. RISK OF AUDIT BY THE INTERNAL REVENUE SERVICE (IRS)

The IRS has an ongoing program of auditing tax-exempt obligations to determine whether, in the view of the IRS, interest on such tax-exempt obligations is excludable from gross income of the owners for federal income tax purposes. We can give no assurances as to whether the IRS might commence an audit of the Notes or whether, in the event of an audit, the IRS would agree with our opinions. If an audit were to be commenced, the IRS may treat the City as the taxpayer for purposes of the examination. As noted in Part C above, the scope of our representation does not include responding to such an audit. However, if we were separately engaged at the time, and subject to the applicable rules of professional conduct, we may be able to represent the City in the matter.

G. RECORDS

At your request, papers and property furnished by you will be returned promptly upon receipt of payment for outstanding fees and client charges. Our own files, including lawyer work product, pertaining to the transaction will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to dispose of any documents or other material retained by us after the termination of this Agreement. It is our practice to retain transcripts for each financing for at least the life of the Notes. We may store some or all client file materials in a digital format. In the process of digitizing such documents, any original paper documents provided by you will be returned to you. Any copies of paper documents provided by you will not be returned to you unless you request such copies in writing. You will be notified prior to destruction of our file, and will have the option to request them, should you desire.

H. OTHER ADVICE

If requested, we will maintain one or more separate accounts for periodic services rendered to the Issuer in connection with other matters unrelated to any particular Bond financing. Such services may involve the rendering of advice, opinions or other assistance in connection with such issues including, but not limited to (i) financing alternatives in connection with a particular project, (ii) compliance with lending programs, (iii) the impact of specified actions on tax-exempt status of outstanding Notes, (iv) interpretation and/or required actions with regard to other "financial obligations" under a continuing disclosure certificate, or (v) other matters the Issuer may seek advice or guidance upon. Billings for such separate services will be based on our standard hourly rate of the individual attorney at the time of performing such separate services.

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Please carefully review the terms and conditions of this Agreement. ***If the above correctly reflects our mutual understanding, please so indicate by returning a signed and dated copy of this Agreement, retaining an original for your file as well.***

If you have questions regarding any aspect of the above or our representation as Bond Counsel, please do not hesitate to contact me.

Very truly yours,

Jason L. Comisky
FOR THE FIRM

JLC:ks

Accepted:
City of Hiawatha, Iowa

By: _____ Date: _____

*Approved by action of the governing body on _____, 2020.